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FOR THE PERIOD

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A. M. No. P-14-3233. October 14, 2019]
(Formerly OCA I.P.I. No. 12-3783-P)

LYDIA BALMACEDA-TUGANO, *complainant, vs.* **JERRY R. MARCELINO, Sheriff III, Metropolitan Trial Court, Branch 71, Quezon City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; SHERIFFS; THE SHERIFF'S DUTY IN THE EXECUTION OF A WRIT IS PURELY MINISTERIAL AND HE IS TO EXECUTE THE ORDER OF THE COURT STRICTLY TO THE LETTER.— Well settled is that the sheriff's duty in the execution of a writ is purely ministerial; he is to execute the order of the court strictly to the letter. He has no discretion whether to execute the judgment or not. When the writ is placed in his hands, it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to implement it in accordance with its mandate. It is only by doing so could he ensure that the order is executed without undue delay. This holds especially true herein where the nature of the case requires immediate execution. Absent a [temporary restraining order] TRO, an order of quashal, or compliance with Section 19, Rule 70 of the Rules of Court, respondent sheriff has no alternative but to enforce the writ.

2. ID.; ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION; THE SHERIFF'S ACT OF ENFORCING THE WRIT OF EXECUTION WITH UNDUE HASTE AND WITHOUT GIVING THE COMPLAINANT THE REQUIRED PRIOR NOTICE AND REASONABLE TIME TO VACATE THE SUBJECT PREMISES, A CASE OF; PENALTY IN CASE AT BAR.— [I]mmediacy of the execution does not mean instant execution. The sheriff must comply with the Rules of Court in executing a writ. Any act deviating from the procedure laid down in the Rules of Court is a misconduct and warrants disciplinary action. Marcelino's duties as a sheriff in implementing a writ of execution for the delivery and restitution of real property are outlined in Rule 39, Section 10(c) and (d), and Section 14 of the Rules of Court x x x. It is then clear that the x x x provisions mandate that upon the issuance of the writ of execution, the sheriff must demand that the person against whom the writ is directed must peaceably vacate the property within three (3) working days; otherwise, they will be forcibly removed from the premises. Even in cases wherein decisions are immediately executory, the required three-day notice cannot be dispensed with. A sheriff who enforces the writ without the required notice or before the expiry of the three-day period is running afoul with the Rules. In the instant case, the guilt of Marcelino is undisputed. He admitted that he merely posted the notice to vacate on the front door of complainant's house because the latter was nowhere to be found. Likewise, he enforced the writ of execution on the same day he posted the notice to vacate on the door by forcibly opening the door, and took out movables from the subject premises, *albeit*, in the presence of barangay officials. There was no prior notice given. x x x Clearly, this arbitrary manner in which Marcelino acted in delivering possession of the subject premises to the plaintiff is inexcusable. It must be emphasized that the requirement of notice is based on the rudiments of justice and fair play. It frowns upon arbitrariness and oppressive conduct in the execution of an otherwise legitimate act. It is an amplification of the provision that every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith. Indeed, having enforced the writ of execution with undue haste and without giving complainant the required prior notice and reasonable time to vacate the subject premises, Marcelino is guilty of grave abuse of authority. Under

Section 52(A)(14), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, grave abuse of authority (oppression) is punishable by suspension for six months and one day to one year. However, in an earlier case decided by the Court entitled *Antonio K. Litonjua v. Jerry R. Marcelino*, Marcelino was already meted the penalty of dismissal along with its accessory penalties for serious dishonesty and dereliction of duty. Thus, instead of suspension, the penalty of a fine in the amount of ₱10,000.00 is, thus, appropriate to be imposed on him, which amount shall be deducted from his accrued leave credits, and if such is insufficient, he shall be ordered to pay the balance.

R E S O L U T I O N

PERALTA, *J.*:

For resolution is a Complaint[1] filed by Lydia Balmaceda-Tugano (*complainant*) against Jerry R. Marcelino (*Marcelino*), Sheriff III, Branch 71, Metropolitan Trial Court (*MeTC*), Pasig City, for grave abuse of authority, in relation to Civil Case No. 17144, entitled "*Heirs of Leonila Licerio-Bautista, etc. vs. Lydia Tugano*" for unlawful detainer.

The facts are as follows:

Complainant is the defendant in the aforesaid unlawful detainer case. In a Decision dated February 22, 2010, the MeTC, Branch 71, Pasig City, ordered complainant to vacate the subject premises and peacefully surrender possession to the plaintiffs therein. Complainant appealed before the Regional Trial Court of Pasig City, Branch 161, however, the appeal was likewise dismissed. Consequently, on November 3, 2011, the court *a quo* issued a Writ of Execution.[2] Aware of her impending eviction upon finality of the decision, complainant tried to gather good lumber, galvanized iron and other materials from her house to be able to build another home in another place. However, she was

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

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

prevented from taking away the said materials by the barangay officials of Barangay Oranbo, Pasig City, despite her explanation that the decision of the court covered only the lot and not the house which she built using her own resources.

In her complaint, complainant assailed the manner by which Marcelino enforced the writ of execution. She claimed that all the defendants in the case were neither notified nor furnished with a copy of the writ of execution and were not given sufficient time of at least five (5) days to vacate the premises. She also averred at the time Marcelino enforced the writ, she was not at home because she was looking for a new place where they could move in. She lamented that Marcelino hastily took over the possession and occupancy of their house and turned it over to the plaintiffs without even giving them a chance to remove their house so that they could rebuild in another place.

On January 30, 2012, the Office of the Court Administrator (*OCA*) directed Marcelino to submit his comment on the charge against him.[3]

In his Comment[4] dated February 23, 2012, Marcelino explained that contrary to complainant's claim, he issued a Notice to Vacate[5] which he posted on the front door of complainant's house because the latter was not around. He admitted that he opened the house and enforced the writ *albeit* in the presence of two (2) barangay peace officers and one (1) barangay councilor.

In her Reply[6] dated April 13, 2012, complainant maintained that she never received personally from Marcelino the copy of the Writ of Execution. She pointed out that Marcelino essentially admitted that he indeed violated the procedures when he served the writ of execution on November 7, 2011 by merely posting

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[3] *Id.* at 4.

[4] *Id.* at 5.

[5] *Id.* at 11.

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

it on the door of the subject premises, and forcibly opened the locked door of the house to remove and bring out all her belongings. She asserted that because Marcelino unlawfully and whimsically evicted her, she had no place to even put her personal belongings which resulted to its loss and damage.

On May 22, 2014, the OCA recommended that the instant administrative complaint be re-docketed as a regular administrative matter, and that Marcelino be fined in the amount of Five Thousand Pesos (₱5,000.00) for having been found guilty of grave abuse of authority.[7]

We adopt the findings and recommendation of the OCA.

Well settled is that the sheriffs duty in the execution of a writ is purely ministerial; he is to execute the order of the court strictly to the letter. He has no discretion whether to execute the judgment or not. When the writ is placed in his hands, it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to implement it in accordance with its mandate. It is only by doing so could he ensure that the order is executed without undue delay.[8] This holds especially true herein where the nature of the case requires immediate execution. Absent a [temporary restraining order] TRO, an order of quashal, or compliance with Section 19, Rule 70 of the Rules of Court, respondent sheriff has no alternative but to enforce the writ.[9]

However, immediacy of the execution does not mean instant execution. The sheriff must comply with the Rules of Court in executing a writ. Any act deviating from the procedure laid down in the Rules of Court is a misconduct and warrants disciplinary action. Marcelino's duties as a sheriff in implementing a writ of execution for the delivery and restitution of real property

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[7] *Id.* at 23-27.

[8] *Cebu International Finance Corporation v. Cabigon*, A.M. No. P-06-2107, February 14, 2007, 515 SCRA 616, 622.

[9] *Alconera v. Pallanan*, A.M. No. P-12-3069, January 20, 2014.

are outlined in Rule 39, Section l0(c) and (d), and Section 14 of the Rules of Court:

> Section 10. *Execution of judgments for specific act.*—
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> x x x x x x x x x
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> (c) Delivery or restitution of real property. — The officer shall demand of the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him to peaceably vacate the property within three (3) working days, and restore possession thereof to the judgment obligee, otherwise, the officer shall oust all such persons therefrom with the assistance, if necessary, of appropriate peace officers, and employing such means as may be reasonably necessary to retake possession, and place the judgment obligee in possession of such property. Any costs, damages, rents or profits awarded by the judgment shall be satisfied in the same manner as a judgment for money.
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> (d) Removal of improvements on property subject of execution. When the property subject of the execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon motion of the judgment obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court.
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> x x x x x x x x x

It is then clear that the above-cited provisions mandate that upon the issuance of the writ of execution, the sheriff must demand that the person against whom the writ is directed must peaceably vacate the property within three (3) working days; otherwise, they will be forcibly removed from the premises.[10] Even in cases wherein decisions are immediately executory, the required three-day notice cannot be dispensed with. A sheriff who enforces the writ without the required notice or before the expiry of the three-day period is running afoul with the Rules.[11]

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[10] *Santos v. Leano, Jr.*, A.M. No. P-16-3419 [Formerly OCA I.P.I. No. 11-3648-P], February 23, 2016.

[11] *Supra* note 9.

In the instant case, the guilt of Marcelino is undisputed. He admitted that he merely posted the notice to vacate on the front door of complainant's house because the latter was nowhere to be found. Likewise, he enforced the writ of execution on the same day he posted the notice to vacate on the door by forcibly opening the door, and took out movables from the subject premises, *albeit*, in the presence of barangay officials. There was no prior notice given. Complainant only learned of the issuance of the writ of execution at the time it was being enforced by Marcelino. Moreover, the latter neither made any effort to ascertain the whereabouts of complainant nor made any attempt to ensure that complainant received personally the notice to vacate. Clearly, this arbitrary manner in which Marcelino acted in delivering possession of the subject premises to the plaintiff is inexcusable.

It must be emphasized that the requirement of notice is based on the rudiments of justice and fair play. It frowns upon arbitrariness and oppressive conduct in the execution of an otherwise legitimate act. It is an amplification of the provision that every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.[12] Indeed, having enforced the writ of execution with undue haste and without giving complainant the required prior notice and reasonable time to vacate the subject premises, Marcelino is guilty of grave abuse of authority.

Under Section 52(A)(14), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, grave abuse of authority (oppression) is punishable by suspension for six months and one day to one year.[13]

However, in an earlier case decided by the Court entitled *Antonio K. Litonjua v. Jerry R. Marcelino*,[14] Marcelino was

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[12] *Pineda v. Torres*, A.M. No. P-12-3027, January 30, 2012.

[13] Uniform Rules on Administrative Cases in the Civil Service, Rule IV, Section 52(A)(l4).

[14] A.M. No. P-18-3865, October 9, 2018.

already meted the penalty of dismissal along with its accessory penalties for serious dishonesty and dereliction of duty. Thus, instead of suspension, the penalty of a fine in the amount of ₱10,000.00 is, thus, appropriate to be imposed on him, which amount shall be deducted from his accrued leave credits, and if such is insufficient, he shall be ordered to pay the balance.

WHEREFORE, premises considered, respondent Jerry R. Marcelino is found **GUILTY** of grave abuse of authority. He is **ORDERED** to **PAY** a fine of ₱10,000.00 to be deducted from his accrued leave credits. In case his leave credits be found insufficient, he is directed to pay the balance within ten (10) days from receipt of this Resolution.

SO ORDERED.

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

Leonen, J., on wellness leave.

THIRD DIVISION

[A.M. No. RTJ-16-2462. October 14, 2019]
(Formerly OCA IPI No. 14-4311-RTJ)

FREDDIE J. FARRES and ORWEN L. TRAZO, *complainants, vs.* **JUDGE EDGARDO B. DIAZ DE RIVERA, JR., Branch 10, Regional Trial Court, La Trinidad, Benguet,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; THE REDUCTION OF BAIL BOND ALONE DOES NOT PROVE THAT JUDGE WAS BIASED AGAINST COMPLAINANTS. — The reduction of the bail bond from ₱40,000.00 to ₱10,000.00

maybe said to be excessively lower under the circumstances, but this fact alone does not make or prove that respondent Judge was biased or hostile against complainants. x x x Prosecutor Suaking of the Benguet Prosecution Office, Atty. Andrada of the DENR, and complainants were present during the hearing on the motion, but none of them made a counter manifestation to or a refutation of the grounds offered for the reduction of bail. After a short discussion on the matter, respondent Judge stated that the bail was set at ₱10,000.00. Respondent Judge asked the prosecution whether there were objections to the amount, but Prosecutor Suaking stated that he was submitting the incident "*to the sound discretion of the court*." Consequently, there being no objection, the bail was set at ₱10,000.00 for each of the accused.

2. ID.; ID.; ADMINISTRATIVE CIRCULAR NO. 3-99 ON STRICT OBSERVANCE OF SESSION HOURS OF TRIAL COURTS AND EFFECTIVE MANAGEMENT OF CASES. — Administrative Circular No. 3-99 dated January 15, 1999 mandates the "Strict Observance of Session Hours of Trial Courts and Effective Management of Cases to Ensure Their Speedy Disposition." x x x The circular enshrine the fundamentals set forth in the Canons of Judicial Ethics which mandate that judges must be punctual in the performance of their judicial functions. Likewise, these circulars give emphasis to the importance of the time of litigants, witnesses, and attorneys, so that if the judge is not punctual in the performance of his duties, he already sets a bad example to the bar and accordingly, affects the administration of justice.

3. ID.; ID.; ID.; VIOLATIONS IN CASE AT BAR. — In this case, respondent Judge said that the pendency of the Criminal Case No. 11-CR-8444 for three years from the time it was raffled to him was due to the absence of the accused and Atty. Richard Zarate, the accused's counsel. However, as correctly appreciated by the OCA, judges have a wide latitude of discretion in granting or denying a plea for continuance or postponement. Sound practice requires a judge to remain, at all times, in full control of the proceedings in his sala and to adopt a firm policy against improvident postponements. x x x Further, respondent Judge ascribes the delay in resolving Criminal Case No. 11-CR-8444 to his failing health that he suffered a stroke that paralyzed the left side of his body which required him to follow a strict

regimen of medication and diet, and subjected him to a series of physical therapy. As a necessary consequence, he had to take numerous leaves of absence from work. However, this excuse deserves scant consideration. While this Court is emphatic on respondent Judge's fate, still it was incumbent upon him to inform this Court, through the OCA, of his inability to seasonably decide the case before him because the demands of public service could not abide by his illness. In this case, this Court notes that respondent Judge failed to make such a request.

4. ID.; ID.; ID.; PENALTY FOR VIOLATION THEREOF; CASE AT BAR. — As to the imposition of the penalty to be imposed upon the erring respondent Judge, this Court adopts the OCA's recommendation that a violation of Supreme Court rules, directives and circulars is a less serious charge punishable by suspension from office without salary and other benefits for not less than one nor more than three months, or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. The fines to be imposed have varied in each case, depending chiefly on the number of cases not decided within the reglementary period. Also, this Court has to take into consideration the presence of aggravating or mitigating circumstances such as, but not limited to, the damage suffered by the parties from the delay, the health condition and age of the judge. In this case, this Court takes into account the health of respondent Judge and the fact that this is his first administrative infraction. This Court also notes that respondent Judge requested before the OCA for an assisting judge; and that sometime in 2014, the OCA appointed an assisting judge to Branch 10 to hear pending cases in the said court. However, considering that respondent Judge is undeniably guilty of undue delay or of violation of Supreme Court rules, directives and circulars, this Court finds that the amount of ₱5,000.00 as recommended by the OCA is too minimal. Hence, the Court deems it proper and just to increase the fine to ₱10,000.00 to be deducted from his disability retirement benefits.

D E C I S I O N

INTING, *J.*:

"*We must once more impress upon the members of the Judiciary their sworn duty of administering justice without undue delay under the time-honored precept that justice delayed, is justice denied. The present clogged condition of the courts' docket in all levels of our judicial system cannot be cleared unless each and every judge earnestly and painstakingly takes it upon himself to comply faithfully with the mandate of the law. No less important than the speedy termination of hearings and trials of cases is the promptness and dispatch in the making of decisions and judgment, the signing thereof and filing the same with the Clerk of Court.*"[1]

Antecedents

Freddie J. Farres and Orwen L. Trazo (complainants) filed a Joint Affidavit Complaint[2] dated September 8, 2014 against Judge Edgardo B. Diaz De Rivera, Jr., (respondent Judge) of Branch 10, Regional Trial Court (RTC), La Trinidad, Benguet for violation of Republic Act No. (RA) 3019, also known as the Anti-Graft and Corrupt Practices Act, Section 1, Canon 3,[3] and Canon 5[4] of the Code of Judicial Conduct.

Complainants alleged that they were the private complainants in Criminal Case No. 11-CR-8444 filed against Priston Paran and Jimboy Alumpit (accused) for the Violation of Presidential

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[1] *Castro v. Judge Malazo*, 187 Phil. 595, 601 (1980).

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

[3] CANON 3 *Impartiality*. Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

Sec. 1. Judges shall perform their judicial duties without favor, bias or prejudice.

[4] CANON 5 *Equality*. Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

Decree (P.D.) No. 705, otherwise known as "The Revised Forestry Code of the Philippines." The criminal case was assigned to the *sala* of respondent Judge sometime in May 2011, and as of the filing of the complaint, the case has been pending for three years and four months, and the prosecution has not yet finished with the presentation of witnesses. To date, there were only four hearings conducted.[5]

Both of the accused in the criminal case were allowed by respondent Judge to post a cash bail amounting to one-fourth of the bail recommended by the Benguet Provincial Prosecutors Office. However, in a summary of 50 cases concerning P.D. No. 705 and raffled to respondent Judge's court, it appeared that none of the accused therein were even allowed a 75% reduction of bail.

Further, while complainants were aware that respondent Judge had a stroke sometime in the latter part of 2012, he was already conducting hearings in his *sala* in 2013. Hence, complainants believed that the delays in conducting trials could not be justified by the medical condition of respondent Judge.

In his Comment[6] dated March 10, 2015, respondent Judge averred that based on the records, the following is the chronological summary of the significant incidents of the case:

May 23, 2011 – Information was filed. Accused were under detention.

June 14, 2011 – Both accused were present but the arraignment was postponed and reset to June 21, 201[1], because their retained counsel, Atty. Richard Zarate was absent. Accused declined services of counsel-de-oficio from the Public Attorneys Office.

June 21, 2011 – Accused were arraigned and pleaded Not Guilty. Pre-trial was set on July 18, 2011. Accused, through counsel, filed a motion to reduce the recommended bail bond from ₱40,000.00 to ₱5,000.00. The court deferred the hearing on the motion and directed the prosecution to file a written comment and/or an opposition to the motion.

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[5] *Rollo*, p. 1.

[6] *Id.* at 25-31.

June 28, 2011 – Prosecutor Winston Suaking filed a "Comment" for the reduction of bond that ended with the statement: "we submit the incident to the sound discretion of the Honorable Court."

July 18, 2011 – The motion was heard. The court set the bail bond at ₱10,000 each.

August 24, 2011 – Pretrial was cancelled due to the absence of defense counsel.

September 28, 2011 – Pretrial was cancelled as both accused were absent due to a passing typhoon (Pedring). It was manifested by defense counsel that the accused (who resided in Itogon – some 20 kilometers from La Trinidad) probably could not attend due to the inclement weather that made the roads impassable or too risky to traverse.

October 26, 2011 – Pretrial was cancelled. Prosecution requested and was given time to conduct a reinvestigation to determine the total amount of lumber allegedly to have been illegally cut and to include the identities and true names of two more accused who were not named in the original information.

December 6, 2011 – Pretrial was cancelled. Atty. Zarate was again absent and fined ₱500.00

December 6, 2011 – Motion to amend the Information was filed

February 7, 2012 – Amended Information was admitted.

March 13, 2012 – Pretrial was finally conducted and terminated. The prosecution requested and was granted eight (8) trial dates to present its evidence to wit: June 18, 25; July 16, 23, 30; and August 6, 13, 20, 2012 all at 8:30 in the morning.

June 25, 2012 – Initial trial hearing.. Frederick Farres was presented and testified. After his testimony, prosecution prayed for continuance.

July 23, 2012 – Prosecution had no witness to present; the accused and defense counsel were also absent[.]

July 30, 2012 – The court allowed the second prosecution witness, Orwen Trazo, to be presented and testify despite the absence of the accused and their counsel.

August 6, 2012 – Atty. Zarate was again absent and fined ₱500. He was warned that should he fail to attend the next scheduled hearing,

the accused shall be deemed to have waived the right to cross-examine the second prosecution witness.

August 13, 2012 – Atty. Zarate cross examined the witness Orwen Trazo[.]

September 3, 2012 – SPO1 Balaso and PO3 E. Bocalan were presented as additional prosecution witnesses[.]

(October 12, 2012 – Presiding judge suffered severe stroke that paralyzed the left side of his body. He was confined at the Medical City Hospital, Ortigas center, Metro Manila. He was confined there for about a month. When he was discharged, his doctors advised him to adhere to a strict regimen of medication and diet and to undergo a series of prescribed physical therapy to regain the use of his left limbs. Due to his continuous physical therapy sessions, he had to take numerous leaves of absence from work.)

October 17, 2012 – No hearing.. Judge on leave.

November 27, 2013 – Accused and counsel were not in court. Atty. Zarate was fined ₱500[.]

February 12, 2014 – Judge on leave[.]

June 16, 2014 – Judge on leave[.]

Nov. 26, 2014 – Both accused were in court but Atty. Zarate was not in court. Hearing cancelled.

Feb. 18, 2015 – Hearing was cancelled as Atty. Zarate was not in court.[7]

Further, respondent Judge stressed that on October 12, 2012, he suffered a stroke that paralyzed the left side of his body. He was confined at the Medical City Hospital, Ortigas Center, Metro Manila for about a month. When he was discharged, his doctors advised him to adhere to a strict regimen of medication and diet, and to undergo a series of prescribed physical therapy to regain the use of his left limbs. Due to his continuous physical therapy sessions, he had to take numerous leaves of absence from work. Upon his request by midyear of 2014, the Office

[7] *Id.* at 26-27.

of the Court Administrator (OCA) appointed an assisting judge to Branch 10 to hear pending cases.

As to the allegation that both the accused in Criminal Case No. 11-CR-8444 were allowed to post a cash bail bond amounting to only one-fourth of the recommended bail by the Benguet Provincial Prosecutors Office, respondent Judge explained that the accused in the criminal case requested a reduction of the bail from ₱40,000.00 to ₱5,000.00 considering that they could not raise the amount as they were in their early twenties, unemployed, dependent and living with their parents. Prosecutor Winston Suaking (Prosecutor Suaking) of the Benguet Prosecution Office, Atty. Cleo Sabado Andrada (Atty. Andrada) of the DENR, and complainants were present; but none of them raised any objection on the matter and agreed to submit the incident to the discretion of the court.[8]

With respect to the allegation that the accused in the 50 cases concerning P.D. No. 705 were not even allowed a 75% reduction of bail, respondent Judge explained that assuming without admitting that the data was correct and accurate, it was because none of the accused in those 50 cases mentioned asked for more than 50% reduction of the recommended bail. Respondent Judge further averred that it was best if the prosecuting attorneys and the counsel of the DENR be requested or directed to submit their respective comments to shed light on the matter. He clarified that his bases for the grant of reduction of bail were the financial capacity of the accused and their right to bail.[9]

Respondent Judge asserted that the public prosecutors assigned to his court and the counsel of the DENR, who have been actively participating in environmental cases for more than 10 years, be directed to submit their respective comments on the matter as they would definitely give a more objective and clearer picture on the manner of how respondent Judge

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[8] *Id.* at 28.

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

conducted this type of cases. These persons can very well attest to his several admonitions made in open court to determine whether the private individuals involved in these cases had a selfish motive and/or hidden agenda in pursuing their complaints; most especially, when these individuals were the contending claimants of the land where trees were allegedly illegally cut, and the criminal proceedings were used as a threat and a leverage to claim possession and ownership over a disputed parcel of land.[10]

On July 14, 2015, respondent Judge filed an application for disability retirement before the Employees Welfare and Benefits Division and the OCA, which was made effective on April 30, 2015.[11]

In a Report and Recommendation[12] dated April 1, 2016, the OCA recommended that the administrative complaint against respondent Judge be re-docketed as a regular administrative matter, and he be found liable for violation of Supreme Court rules, directives and circulars, and be fined in the amount of ₱5,000.00 to be deducted from his disability benefits that may be due him.

The OCA Report and Recommendation is well-taken.

The reduction of the bail bond from ₱40,000.00 to ₱10,000.00 alone does not make or prove that respondent was biased or hostile against complainants.

The reduction of the bail bond from ₱40,000.00 to ₱10,000.00 maybe said to be excessively lower under the circumstances, but this fact alone does not make or prove that respondent Judge was biased or hostile against complainants. This Court adheres to the explanation proffered by respondent Judge in his comment, which reads:

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[10] *Id.* at 29.

[11] *Id.* at 33.

[12] *Id.* at 32-35.

The recommended bail proposed by the Benguet Provincial Prosecutors Office for violations under PD 705 ((The Revised Forestry Code of the Philippines) has uniformly and consistently been set at ₱40,000.00 regardless of the volume and the value of the forest products involved. The prosecution manifested that it usually does not object to a fifty percent reduction provided that the bond be in cash. In this particular case, the accused requested that bail be reduced from ₱40,000.00 to ₱5,000.00. During the hearing on the motion, Atty. Zarate presented the accused; the accused manifested that [he] could not raise the bail amount of ₱40,000.00; they were in their early twenties, unemployed, were dependent and still living with their parents who were permanent residents of Itogon.[13] (Underscoring supplied.)

Needless to state, Prosecutor Suaking of the Benguet Prosecution Office, Atty. Andrada of the DENR, and complainants were present during the hearing on the motion, but none of them made a counter manifestation to or a refutation of the grounds offered for the reduction of bail.[14] After a short discussion on the matter, respondent Judge stated that the bail was set at ₱10,000.00. Respondent Judge asked the prosecution whether there were objections to the amount, but Prosecutor Suaking stated that he was submitting the incident "*to the sound discretion of the court.*" Consequently, there being no objection, the bail was set at ₱10,000.00 for each of the accused.[15]

The respondent Judge is found liable for violation of Supreme Court rules, directives and circulars.

Administrative Circular No. 3-99 dated January 15, 1999 mandates the "Strict Observance of Session Hours of Trial Courts and Effective Management of Cases to Ensure Their Speedy Disposition." Thus:

To insure speedy disposition of cases, the following guidelines must be faithfully observed:

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[13] *Id.* at 28.

[14] *Id.*

[15] *Id.*

I. The session hours of all Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts, and Municipal Circuit Trial Courts shall be from 8:30 A.M. to noon and from 2:00 P.M. to 4:30 P.M., from Monday to Friday. The hours in the morning shall be devoted to the conduct of trial, while the hours in the afternoon shall be utilized or (1) the conduct of pre-trial conferences; (2) writing or decisions, resolutions or orders; or (3) the continuation of trial on the merits, whenever rendered necessary, as may be required by the Rules of Court, statutes, or circulars in specified cases.

x x x x x x x x x

II. Judges must be punctual at all times.

x x x x x x x x x

IV. There should be strict adherence to the policy on avoiding postponements and needless delay.

x x x x x x x x x

VI. All trial judges must strictly comply with Circular No. 38-98, entitled "Implementing the Provisions of Republic Act No. 8493" ("An Act to Ensure a Speedy Trial of All Cases Before the Sandiganbayan, Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court and Municipal Circuit Trial Court, Appropriating Funds Therefor, and for Other Purposes") issued by the Honorable Chief Justice Andres R. Narvasa on 11 August 1998 and which took effect on 15 September 1998.[16]

The aforecited circulars enshrine the fundamentals set forth in the Canons of Judicial Ethics which mandate that judges must be punctual in the performance of their judicial functions.[17] Likewise, these circulars give emphasis to the importance of the time of litigants, witnesses, and attorneys, so that if the judge is not punctual in the performance of his duties, he already sets a bad example to the bar and accordingly, affects the administration of justice.[18]

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[16] *Gadencio v. Pacis*, 455 Phil. 778, 787-788 (2003).

[17] *Id.* at 788.

[18] *Id.*

In this case, respondent Judge said that the pendency of the Criminal Case No. 11-CR-8444 for three years from the time it was raffled to him was due to the absence of the accused and Atty. Richard Zarate, the accused's counsel. However, as correctly appreciated by the OCA, judges have a wide latitude of discretion in granting or denying a plea for continuance or postponement.[19] Sound practice requires a judge to remain, at all times, in full control of the proceedings in his sala and to adopt a firm policy against improvident postponements.[20] In *Naguiat v. Capellan*,[21] this Court stressed that:

> The Court has time and again admonished judges to be prompt in the performance of their solemn duty as dispenser of justice, since undue delays erode the people's faith in the judicial system. Delay not only reinforces the belief of the people that the wheels of justice grind ever so slowly, but invites suspicion, however unfair, of ulterior motives on the part of the judge. The *raison d'etre* of courts lies not only in properly dispensing justice but also in being able to do so seasonably.[22]

Further, respondent Judge ascribes the delay in resolving Criminal Case No. 11-CR-8444 to his failing health that he suffered a stroke that paralyzed the left side of his body which required him to follow a strict regimen of medication and diet, and subjected him to a series of physical therapy. As a necessary consequence, he had to take numerous leaves of absence from work.

However, this excuse deserves scant consideration. While this Court is emphatic on respondent Judge's fate, still it was incumbent upon him to inform this Court, through the OCA,

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[19] *Naguiat v. Capellan*, 661 Phil. 476, 482 (2011), citing *Philippine National Bank v. Donasco*, G.R. No. L-18638, February 28, 1963, 7 SCRA 409, 413-419.

[20] *Id.* at 483, citing *Sevilla v. Quintin*, A.M. No. MTJ-05-1603, October 25, 2005.

[21] 661 Phil. 476 (2011).

[22] *Id.* at 483-484.

of his inability to seasonably decide the case before him because the demands of public service could not abide by his illness. In this case, this Court notes that respondent Judge failed to make such a request. Similarly in the case of *Juson v. Judge Mondragon*,[23] this Court ruled as follows:

> In case of poor health, the Judge concerned needs only to ask this Court for an extension of time to decide/resolve cases/incidents, as soon as it becomes clear to him that there would be delay in his disposition thereof. The Court notes that Judge Mondragon made no such request. Also, if his health problems had indeed severely impaired his ability to decide cases, Judge Mondragon could have retired voluntarily instead of remaining at his post to the detriment of the litigants and the public.[24]

As to the imposition of the penalty to be imposed upon the erring respondent Judge, this Court adopts the OCA's recommendation that a violation of Supreme Court rules, directives and circulars is a less serious charge punishable by suspension from office without salary and other benefits for not less than one nor more than three months, or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.[25]

The fines to be imposed have varied in each case, depending chiefly on the number of cases not decided within the reglementary period. Also, this Court has to take into consideration the presence of aggravating or mitigating circumstances such as, but not limited to, the damage suffered by the parties from the delay, the health condition and age of the judge.[26]

In this case, this Court takes into account the health of respondent Judge and the fact that this is his first administrative infraction. This Court also notes that respondent Judge requested

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[23] *Juson v. Judge Mondragon*, 558 Phil. 613 (2007).

[24] *Id.* at 623.

[25] *Rollo*, p. 35.

[26] *Re: Failure of Judge Carbonell to Decide Cases and to Resolve Pending Motions in the RTC, Br. 27, San Fernando, La Union*, 713 Phil. 594, 600 (2013).

before the OCA for an assisting judge; and that sometime in 2014, the OCA appointed an assisting judge to Branch 10 to hear pending cases in the said court.

However, considering that respondent Judge is undeniably guilty of undue delay or of violation of Supreme Court rules, directives and circulars, this Court finds that the amount of ₱5,000.00 as recommended by the OCA is too minimal. Hence, the Court deems it proper and just to increase the fine to P10,000.00 to be deducted from his disability retirement benefits.

WHEREFORE, Judge Edgardo B. Diaz De Rivera, Jr. is found **GUILTY** of undue delay in the disposition of the Criminal Case No. 11-CR-8444. He is ordered to pay a **FINE** of Ten Thousand Pesos (Php10,000.00) to be deducted from his disability retirement benefits that may be due him.

SO ORDERED.

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

Leonen, J., on leave.

THIRD DIVISION

[G.R. No. 198404. October 14, 2019]

MELVIN G. SAN FELIX, *petitioner, vs.* **CIVIL SERVICE COMMISSION,** *respondent.*

SYLLABUS

1. POLITICAL LAW; 1987 PHILIPPINE CONSTITUTION; CIVIL SERVICE COMMISSION (CSC); ON MARCH 6, 1998, THE ACT PROVIDING FOR THE REFORM AND

REORGANIZATION OF THE PHILIPPINE NATIONAL POLICE (R.A. NO. 8551, WHICH AMENDED R.A. NO. 6975) TRANSFERRED THE POWER TO ADMINISTER AND CONDUCT ENTRANCE AND PROMOTIONAL EXAMINATIONS TO POLICE OFFICERS FROM THE CSC TO THE NATIONAL POLICE COMMISSION (NPC) ON THE BASIS OF THE STANDARDS SET BY THE LATTER; POLICE EXAMINATIONS CONDUCTED BY THE CSC ON MARCH 29, 1998 WAS WITHOUT LEGAL EFFECT. — The Civil Service Commission (CSC) has the authority and jurisdiction to investigate anomalies and irregularities in the civil service examinations and to impose the necessary and appropriate sanctions. The Constitution grants to the CSC, administration over the entire civil service. As defined, the civil service embraces every branch, agency, subdivision, and instrumentality of the government, including every government-owned or controlled corporation. Section 91 of R.A. No. 6975 or the *Department of Interior and Local Government Act of 1990* provides that the "Civil Service Law and its implementing rules and regulations shall apply to all personnel of the Department," to which herein petitioner belongs. x x x However, it bears noting that on March 6, 1998, The Act providing for the Reform and Reorganization of the Philippine National Police (R.A. No. 8551), which amended R.A. No. 6975, became effective transferring the power to administer and conduct entrance and promotional examinations to police officers from the CSC to the National Police Commission (NPC) on the basis of the standards set by the latter. Thus, as of March 6, 1998, the CSC had no more authority to administer entrance and promotional examinations for police officers. x x x In effect, the CSC then had no power to grant police officer eligibility in order for an applicant to be appointed in a police officer and senior police officer position. Consequently, the examination conducted on March 29, 1998 was without legal effect and conferred no rights in view of the effectivity of R.A. No. 8551 amending R.A. No. 6975.

2. **ID.; ID.; ID.; THE CSC HAS JURISDICTION TO INVESTIGATE THE VERACITY OF THE FACTS STATED BY THE CIVIL SERVANT IN HIS/HER PERSONAL DATA SHEET (PDS); QUALIFICATIONS FALSIFIED IN CASE AT BAR TAINTED WITH MALICE AND BAD FAITH. —** [A]s the central personnel agency, the CSC has the original disciplinary

jurisdiction over the act of petitioner in order to protect the integrity of the civil service system, which is an integral part of the CSC's duty, authority and power as provided in Article IX-B, Section 3 of the Constitution, by removing from its roster of eligibles those who falsified their qualifications. x x x [T]he NPC has no jurisdiction concerning matters involving the integrity of the civil service system. [T]he CSC properly investigated the act of the petitioner of making false statements in his Personal Data Sheet (PDS), x x x The evidence clearly shows that petitioner stated in his PDS that he has Police Officer I eligibility when the records show that he cheated on the March 29, 1998 examinations administered by the CSC (albeit, without legal effect) by allowing another person take the said examination in his behalf. Petitioner stated in his PDS that he passed the Police Officer I Examination knowing fully well that it was not true because he did not take the said exam. As an aspirant for a police officer position, he has a legal obligation to disclose the truth regarding his personal circumstances in the PDS, which is a requirement for his employment. x x x Petitioner cannot justify his dishonest act with the fact that the CSC already lost its authority to administer the March 29, 1998 Police Officer I examinations because he cannot be considered to have acted in good faith in the first place. Petitioner's act of passing off in his PDS that he has successfully hurdled the Police Officer I examinations, constituted malice on his part thereby negating any assertion of good faith. Neither can petitioner argue that his appointment was a permanent one which entitled him to security of tenure. A perusal of his appointment showed that the same was subject to the verification of his civil service eligibility which in this case, he evidently has none.

APPEARANCES OF COUNSEL

Hector L. Hofileña Law Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

HERNANDO, *J.*:

Challenged in this petition[1] is the October 28, 2010 Decision[2] and August 11, 2011 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CEB- SP No. 03560, which affirmed the January 19, 2007 Resolution No. 070100[4] and April 28, 2008 Resolution No. 080780[5] of the Civil Service Commission (CSC), which found petitioner Melvin G. San Felix (San Felix) guilty of dishonesty and meted him the penalty of dismissal from service together with the accessory penalties of disqualification from reemployment in the government service, cancellation of eligibility, forfeiture of retirement benefits, and bar from taking civil service examination.

The Antecedents

On March 8, 2001, the CSC Regional Office No. 6 of Iloilo City charged petitioner San Felix with dishonesty for allegedly conspiring with and allowing another person to take, in his behalf, the Police Officer I Examination held on March 29, 1998.[6] The CSC noted that the picture and the signature of San Felix in the application form and the seat plan were not identical with those found in petitioner's Personal Data Sheet (PDS). Thus, the CSC Regional Office No. 6 arrived at the conclusion that San Felix conspired with another person by allowing the latter to impersonate him and take the examination in his behalf, indicating in all the pertinent documents the personal

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[1] *Rollo*, pp. 25-47.

[2] CA *rollo*, pp. 156-163; penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justices Pampio A. Abarintos and Edgardo L. Delos Santos.

[3] *Id.* at 204-205.

[4] *Id.* at 44-52.

[5] *Id.* at 53-57.

[6] *Id.* at 27-29.

circumstances of San Felix and writing his name and affixing his signature therein.

In his Answer,[7] petitioner denied having conspired with another person to impersonate him and take in his behalf the Police Officer I Examination on March 29, 1998. He insisted that he personally took the said examination. He explained that the disparity in the pictures in his application form and in the seat plan with those in the PDS might be due to a mix-up or that his picture was interchanged or replaced with another person's picture.

Thereafter, petitioner filed a Motion to Dismiss[8] asserting that by virtue of the ruling in *Civil Service Commission v. Court of Appeals*,[9] the CSC has been divested of its authority and jurisdiction to conduct entrance examination or promotional examination to the members of the Philippine National Police (PNP). In the said case, the Supreme Court ordered the CSC to desist from further conducting any promotional examination for police officers (POs) and senior police officers (SPOs). However, the CSC Regional Office No. 6 of Iloilo City denied[10] petitioner's Motion to Dismiss and directed the hearing officer to continue with the formal investigation.

Ruling of the CSC Regional Office

Thus, on July 19, 2004, the CSC Regional Office No. 6 of Iloilo City rendered its Decision[11] which found petitioner guilty of dishonesty and meted him the penalty of dismissal with the accessory penalties of disqualification for reemployment in the government service, cancellation of eligibility, forfeiture of retirement benefits, and bar from taking any civil service examination. It found that the picture on the seat plan was in

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[7] *Id.* at 30.

[8] *Id.* at 31-32.

[9] G.R. No. 141732 (Resolution), September 25, 2001.

[10] CA *rollo*, pp. 33-35.

[11] *Id.* at 36-43.

fact different from the picture on petitioner's PDS dated August 26, 1997 and May 2, 1998. Also, petitioner's signature in his PDS was different from the signature affixed in the seat plan. The CSC held that the significant differences in the strokes and general appearances of the two sets of signatures only proved that the two signatures were not written nor signed by one and the same person.

Ruling of the CSC Proper

The CSC issued its January 19, 2007 Resolution No. 070100[12] which dismissed petitioner's appeal and affirmed the July 19, 2004 Decision of the CSC Regional Office No. 6 of Iloilo City. It ruled that the decision of the Supreme Court in *Civil Service Commission v. Court of Appeals* has prospective application. Thus, CSC's acts of administering examination for members of the PNP, prosecuting violations thereof, and issuing Police Officer I eligibility were deemed effective from the time of issuance of CSC Resolution No. 96-5487 on August 26, 1996 until the promulgation of the decision of this Court in *Civil Service Commission v. Court of Appeals* on September 25, 2001. The CSC Resolution No. 96-5487 enjoyed the presumption of regularity from the time of its issuance until the promulgation of the Supreme Court's decision declaring the said resolution null and void. Hence, the CSC has jurisdiction over the subject incident.

Moreover, the CSC held that petitioner's declaration in his PDS that he passed the Police Officer I Examination made him liable for falsification of a document by making untruthful statement in a narration of facts as defined under Article 171, paragraph 4 of the Revised Penal Code (RPC). By making a false statement in his PDS to make him appear eligible for appointment as Police Officer I, petitioner prejudiced other qualified applicants for the same position.

Petitioner filed a motion for reconsideration which was denied by the CSC in its April 28, 2008 Resolution No. 080780.[13]

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[12] *Supra* note 4.

[13] *Supra* note 5.

Ruling of the Court of Appeals

The appellate court dismissed petitioner's petition for review and affirmed *in toto* CSC's January 19, 2007 Resolution No. 070100.[14] The CA sustained the jurisdiction of the CSC to investigate the alleged examination taken by petitioner and to impose upon him the appropriate penalty or sanction. The CA opined that *Civil Service Commission v. Court of Appeals* did not completely divest the CSC of its original jurisdiction over all cases involving civil service examination anomalies or irregularities. What the Supreme Court invalidated was Item No. 3 of CSC Resolution No. 96-5487 because it was considered an encroachment on the exclusive power of the National Police Commission (NPC) under Section 32 of Republic Act (R.A.) No. 6975 to administer promotional examinations for police officers and to impose qualification standards for promotion of PNP personnel to the ranks of PO2 up to Senior Police Officers 1-4. Moreover, *Civil Service Commission v. Court of Appeals* merely ordered the CSC to desist from further conducting any entrance and promotional examination for police officers and senior police officers, but did not expressly prohibit the Commission from pursuing any investigation regarding anomalies committed on previous examinations.

Finally, the CA held that petitioner was given ample opportunity to defend himself. His failure to present additional evidence was a waiver on his part and not a denial of his right to due process. Besides petitioner and his counsel were the ones who failed to attend the hearings scheduled for the reception of their evidence.

Petitioner filed a motion for reconsideration which was denied by the appellate court in its August 11, 2011 Resolution.[15]

Hence, petitioner filed this Petition for Review on *Certiorari* under Rule 45 raising the lone issue of whether or not the CSC has jurisdiction to conduct investigations and render administrative

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[14] *Supra* note 2.

[15] *Supra* note 3.

decisions based on alleged anomalies in police entrance and promotional examinations when it no longer had any authority after the creation of the NPC.

Petitioner argues that although the CSC was formerly vested with authority to administer the qualifying entrance examinations for police officers, the same was withdrawn with the enactment of R.A. No. 8551 which took effect on March 6, 1998 and mandated the NPC to administer both the entrance and promotional examinations for police officers. He argues that the authority of the NPC to administer the qualifying examination was upheld by the Supreme Court in *Civil Service Commission v. Court of Appeals* wherein it declared that the NPC has the exclusive power to administer the police entrance and promotional examinations.

Petitioner asserts that the appellate court's pronouncement that R.A. No. 8551 never expressly ordered the CSC to desist from investigating anomalies committed during such examinations, although the CSC no longer had the authority to conduct police entrance examinations, was flawed as it implied that the NPC only had supervisory powers regarding police examinations which was in direct contravention of existing laws and jurisprudence.

On the other hand, the CSC, through the Office of the Solicitor General (OSG), maintains that it is vested with jurisdiction over cases involving anomalies or irregularities in the civil service examination pursuant to Article IX (B) of the 1987 Constitution; Sections 4 and 6, Rule I of CSC Resolution No. 99-1936; and the Omnibus Civil Service Rules Implementing Book V of Executive Order No. 292.

Moreover, the CSC claims that Item No. 3 of CSC Resolution No. 96-5487 dated August 8, 1996, which required police officers and senior police officers to take and pass the CSC Police Officer Entrance Examination before being appointed, enjoyed the presumption of regularity from its issuance on August 26, 1996 until the promulgation of *Civil Service Commission v. Court of Appeals* by the Supreme Court on September 25, 2001, which nullified and voided Item No. 3 of CSC Resolution No. 96-5487.

The Court's Ruling

We find the petition without merit.

The CSC has the authority and jurisdiction to investigate anomalies and irregularities in the civil service examinations and to impose the necessary and appropriate sanctions. The Constitution grants to the CSC administration over the entire civil service.[16] As defined, the civil service embraces every branch, agency, subdivision, and instrumentality of the government, including every government-owned or controlled corporation.[17] Section 91 of R.A. No. 6975 or the *Department of Interior and Local Government Act of 1990* provides that the "Civil Service Law and its implementing rules and regulations shall apply to all personnel of the Department," to which herein petitioner belongs.

As the central personnel agency of the government, the CSC under Article IX-B, Section 3 of the Constitution shall:

> [E]stablish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service. It shall strengthen the merit and rewards system, integrate all human resources development programs for all levels and ranks, and institutionalize a management climate conducive to public accountability. It shall submit to the President and the Congress an annual report on its personnel programs.

Furthermore, Section 12[18] of Executive Order (E.O.) No. 292, otherwise known as the *Administrative Code of 1987*, enumerates the powers and functions of the CSC, to wit:

> SEC. 12. *Powers and Functions*. — The Commission shall have the following powers and functions:

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[16] CONSTITUTION (1987), Art. IX(B), Sec. 1.

[17] The Administrative Code (1987), Book V, Title I, Subtitle A, Section 6; *id.*, Sec. 2.

[18] *Id.*, Section 12.

(1) Administer and enforce the constitutional and statutory provisions on the merit system for all levels and ranks in the Civil Service;

x x x x x x x x x

(7) Control, supervise and coordinate Civil Service examinations. x x x

x x x x x x x x x

(11) Hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments, and review decisions and actions of its offices and the agencies attached to it. x x x

Specifically, Section 32 of R.A. No. 6975 vests upon the CSC the power to administer the qualifying entrance examinations for police officers on the basis of the standards set by NPC. Thus, the CSC issued Resolution No. 96-5487 dated August 8, 1996 which took effect on August 26, 1996 which provided that in order to be appointed to police officer and senior police officer positions in the PNP, the applicant is required to pass any of the following examinations: (a) INP Entrance Examination; (b) Police Officer 3rd Class Examination; and (c) CSC Police Officer Entrance Examination.

In case of irregularities or anomalies connected with the examinations, Section 28, Rule XIV of the Omnibus Civil Service Rules and Regulations specifically conferred upon the CSC the authority to take cognizance of said cases, thus:

Sec. 28. The Commission shall have original disciplinary jurisdiction over all its officials and employees and over all cases involving civil service examination anomalies or irregularities.

To carry out this mandate, the CSC issued Resolution No. 991936, or the Uniform Rules on Administrative Cases in the Civil Service, empowering its Regional Offices to take cognizance of cases involving CSC examination anomalies:

SECTION 6. *Jurisdiction of Civil Service Regional Offices*. — The Civil Service Commission Regional Offices shall have jurisdiction over the following cases:

A. Disciplinary

1. Complaints initiated by, or brought before, the Civil Service Commission Regional Offices provided that the alleged acts or omissions were committed within the jurisdiction of the Regional Office, including Civil Service examination anomalies or irregularities and the persons complained of are employees of agencies, local or national, within said geographical areas[.]

Based on the foregoing, the CSC undoubtedly, has jurisdiction to take cognizance of cases involving examination anomalies and irregularities which the commission itself administered. However, it bears noting that on March 6, 1998, R.A. No. 8551, which amended R.A. No. 6975, became effective transferring the power to administer and conduct entrance and promotional examinations to police officers from the CSC to the NPC on the basis of the standards set by the latter.[19] Thus, as of March 6, 1998, the CSC had no more authority to administer entrance and promotional examinations for police officers. This has been affirmed in our Minute Resolution dated September 25, 2001 in G.R. No. 141732 in which we sustained the authority of the NPC to administer promotional examinations for police officers. However, the lack of authority of the CSC to conduct the examinations for Police Officer I on March 29, 1998 should not be used as a shield to petitioner's wrongdoing as he was not in good faith. As appropriately held by the Court of Appeals: "To rule otherwise would be tantamount to condoning petitioner's dishonesty during the March 29, 1998 Police Officer I Examination and allowing him to continue benefiting from the eligibility he acquired fraudulently."[20]

Upon the effectivity of R.A. No. 8551, certain provisions of R.A. No. 6975, in regard to its operative effect, were considered amended or repealed. Hence, when the CSC conducted the qualifying entrance examinations for Police Officer I on March 29, 1998, which herein petitioner took and allegedly

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[19] Republic Act No. 8551, Section 21.

[20] CA *rollo*, p. 162.

passed, it no longer had any authority to do so. Nonetheless, petitioner was granted a Police Officer I eligibility and was appointed to a police officer position in PNP Regional Office No. 6, Iloilo City by reason of his alleged passing of the subject examination.

To reiterate, as of March 6, 1998, the CSC had no more authority to conduct entrance and promotional examinations for police officer and senior police officer positions by virtue of R.A. No. 8551, which amended R.A. No. 6975. In effect, the CSC then had no power to grant police officer eligibility in order for an applicant to be appointed in a police officer and senior police officer position. Consequently, the said examination conducted on March 29, 1998 was without legal effect and conferred no rights in view of the effectivity of R.A. No. 8551 amending R.A. No. 6975.

Petitioner's reliance on the CSC's authority to conduct the Police Officer I Examinations on March 29, 1998 and conferment of police officer eligibility for allegedly passing the said exam could not serve as a bar to investigate the concomitant anomalies he committed since he was never in good faith to start with.

Indeed, petitioner has the right to assume that the CSC had performed its functions in accordance with the applicable law and he should not be prejudiced by the CSC's mistake in conducting an examination without an authority. However, petitioner cannot now impugn the validity of CSC Resolution No. 96-5487 dated August 8, 1996 and enjoy its benefits, that is, the grant of Police Officer I Eligibility, when he, in fact, was not in good faith when he took the subject examination on March 29, 1998. The records show that petitioner committed an act of dishonesty when he allowed another person to take in his behalf the Police Officer I Examination dated March 29, 1998 which resulted in the conferment of eligibility upon him and later an appointment to a permanent status police officer position. Petitioner cannot challenge the CSC's authority to conduct said examination and at the same time rely on its effects only when the same redound to his benefit. He cannot argue on the premise that at the time he took the examination he had

no knowledge that the grant unto him of his police officer eligibility lacked legal basis by virtue of the enactment of R.A. No. 8551, as he himself was in bad faith when he cheated in order to pass the examinations and obtain a Police Officer I eligibility.

Furthermore, despite the fact that the CSC had no authority to administer entrance and promotional examinations for police officers, this did not divest the CSC of its jurisdiction to investigate on the veracity of the facts stated by a civil servant in his or her PDS. It is true that the NPC has the power and authority to administer entrance and promotional examinations for police officer and senior police officer positions and consequently, investigate on the anomalies and irregularities committed during said examinations. However, as the central personnel agency, the CSC has the original disciplinary jurisdiction over the act of petitioner in order to protect the integrity of the civil service system which is an integral part of the CSC's duty, authority and power as provided in Article IX-B, Section 3 of the Constitution by removing from its roster of eligibles those who falsified their qualifications. This should be distinguished from ordinary proceedings intended to discipline a *bona fide* member of the system, for acts or omissions that constitute violations of the law or the rules of service.[21] Clearly, the NPC has no jurisdiction concerning matters involving the integrity of the civil service system.

Based on the foregoing, the CSC properly investigated the act of the petitioner of making false statements in his PDS, that is, his claim that he possesses the necessary civil service eligibility to be appointed in a police officer position as well as the discrepancy in his signatures in the PDS, in the application form and picture-seat plan of the Police Officer I Examination dated March 29, 1998. As held by this Court in *Inting v. Tanodbayan*,[22] "the accomplishment of the Personal Data Sheet,

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[21] *Civil Service Commission v. Albao*, 509 Phil. 530, 539 (2005), cited in *Capablanca v. Civil Service Commission,* 620 Phil. 62, 76 (2009).

[22] 186 Phil. 343, 348 (1980), cited in *Lumancas v. Intas*, 400 Phil. 785, 799 (2000).

being a requirement under the Civil Service Rules and Regulations in connection with employment in the government, the making of an untruthful statement therein was, therefore, intimately connected with such employment x x x."

The evidence clearly shows that petitioner stated in his PDS that he has Police Officer I eligibility when the records show that he cheated on the March 29, 1998 examinations administered by the CSC by allowing another person take the said examination in his behalf. Petitioner stated in his PDS that he passed the Police Officer I Examination knowing fully well that it was not true because he did not take the said exam. As an aspirant for a police officer position, he has a legal obligation to disclose the truth regarding his personal circumstances in the PDS, which is a requirement for his employment.

In *Villordon v. Avila*,[23] this Court held:

> This Court has already ruled in the past that willful concealment of facts in the PDS constitutes mental dishonesty amounting to misconduct. **Likewise, making a false statement in one's PDS amounts to dishonesty and falsification of an official document.** x x x
>
> **Dishonesty has been defined as "intentionally making a false statement on any material fact."** Dishonesty evinces "a disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity, lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray." (Emphasis ours)

Petitioner cannot justify his dishonest act on the fact that the CSC already lost its authority to administer the March 29, 1998 Police Officer I examinations because he cannot be considered to have acted in good faith in the first place. Petitioner's act of passing off in his PDS that he has hurdled successfully the Police Officer I examinations constituted malice on his part thereby negating any assertion of good faith. Neither can petitioner argue that his appointment was a permanent one which entitled him to security of tenure. A perusal of his

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[23] 692 Phil. 388, 395-396 (2012).

appointment showed that the same was subject to the verification of his civil service eligibility which in this case, he evidently has none.

Finally, we note that petitioner was meted the accessory penalty of forfeiture of all his retirement benefits. The same however, must be modified to exclude forfeiture of his accrued leave credits.[24]

WHEREFORE, the Petition is **DENIED**. The assailed October 28, 2010 Decision and August 11, 2011 Resolution of the Court of Appeals in CA-G.R. CEB-SP No. 03560 are **AFFIRMED** with **MODIFICATION** that the forfeiture of all his retirement benefits excludes his accrued leave credits.

SO ORDERED.

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

Leonen, J., on official leave.

FIRST DIVISION

[G.R. No. 208472. October 14, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDUARDO LACDAN *y* PEREZ @ "Edwin" and ROMUALDO VIERNEZA *y* BONDOC @ "Ulo",** *accused-appellants.*

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[24] *Mallonga v. Manio*, 604 Phil. 247 (2009). See also *Office of the Court Administrator v. Besa,* 437 Phil. 372 (2002).

SYLLABUS

CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS: CHAIN OF CUSTODY RULE: NON-COMPLIANCE RENDERED THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS HIGHLY COMPROMISED, WARRANTING ACQUITTAL OF ACCUSED APPELLANT. — [I]t is essential that the identity of the dangerous drugs be established with moral certainty, considering that the dangerous drugs 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 which therefore warrants an acquittal. In order to establish the identity of the dangerous drug with moral certainty, there must be observance of the chain of custody rule enshrined in Section 21 of R.A. 9165. Here, since the buy-bust operation was conducted prior to the amendment of R.A. 9165, the apprehending team is mandated immediately after seizure and confiscation, to conduct a physical inventory and to photograph and 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: (1) a representative from the media; (2) a representative from the DOJ; and (3) any elected public official. In this case, the record provide that the inventory of the illicit drugs was made in the PDEA Office in Camp Vicente Lim in Calamba City, Laguna when the buy-bust operation was conducted in San Pedro, Laguna. Further, the inventory was only witnessed by the accused, a representative from the media, and an elected public official. The illicit drug was not even photographed as required by Section 21. There was no explanation offered as to [these lapses]. x x x These glaring non-compliance with the provisions of Section 21 of R.A. 9165 render the integrity and the evidentiary value of the seized items to be highly compromised, consequently warranting accused-appellants' acquittal.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARANDANG, *J.*:

Before this Court is an ordinary appeal[1] filed by Eduardo Lacdan *y* Perez @ "Edwin" (Lacdan) and Romualdo Vierneza *y* Bondoc @ "Ulo" (Vierneza; collectively, accused-appellants) assailing the Decision[2] dated January 16, 2012 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03717, which affirmed the Judgment[3] dated November 25, 2008 of the Regional Trial Court of San Pedro, Laguna, Branch 31 (RTC) finding accused-appellants guilty beyond reasonable doubt of violation of Section 5 of Republic Act No. (R.A.) 9165, 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.

Facts of the Case

On February 11, 2004, an Information[4] was filed against accused-appellants charging them with violation of Section 5, in relation to Section 26 of R.A. 9165, involving 10.03 grams of *shabu*.

The prosecution's version of the incident, as culled from the records, are as follows:

On February 9, 2004, at around 5:00 p.m., a confidential informant went to Philippine Drug Enforcement Agency, Regional Office, Calabarzon (PDEA), stationed at Camp Vicente Lim in Calamba City, Laguna to relay to Regional Director Sgt. Amado Marquez (Sgt. Marquez) that he was able to negotiate

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[1] *Rollo*, at pp. 15-16.

[2] Penned by Associate Justice Noel G. Tijam (Former Member of this Court), with Associate Justices Romeo F. Barza and Edwin D. Sorongon, concurring; *id* at 2-14.

[3] CA *rollo*, pp. 36-44.

[4] Records, pp. 1-3.

a drug deal with accused-appellants involving 10.03 grams of *shabu* worth ₱18,000.00.[5]

Sgt. Marquez referred the matter to Police Senior Inspector Julius Ceasar Ablang (S/Insp. Ablang) who verified the information and formed a buy-bust team to conduct the operation against accused-appellants.[6] A team composed of S/Insp. Ablang as the team leader, Inspector Josefino Ligan (Insp. Ligan) as Assistant Team Leader, SPO4 Marianito Villanueva (SPO4 Villanueva) as arresting officer, PO3 Danilo Liona (PO3 Liona) as member and PO3 Marino Garcia (PO3 Garcia) as the poseur-buyer was formed.[7] It was agreed that once the arresting officer sees the poseur-buyer give the buy-bust money to accused-appellants, the team would come forward and arrest them. S/Insp. Ablang gave PO3 Garcia two pieces of genuine ₱500.00 bills marked with "MAG" while the rest of the ₱18,000.00 used to purchase the *shabu* consisted of "boodle" money. The boodle money was placed in between the two genuine ₱500.00 bills.[8]

At around 3:00 a.m. of February 10, 2004, the team proceeded to the San Pedro Town Center in San Pedro, Laguna and arrived at the parking lot at around 4:00 a.m. The confidential informant, through cellular phone, was in constant communication with accused-appellants.[9] After one and a half hours of waiting, PO3 Garcia saw accused-appellants disembark from a tricycle. The confidential informant introduced PO3 Garcia to accused-appellants who asked if the former had with him the ₱18,000.00 agreed upon. PO3 Garcia pulled out the buy-bust money from his pocket and flashed it to accused-appellants. Vierneza pulled out from his pocket one big heat-sealed transparent sachet containing white crystalline substance and handed the same to

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[5] *Rollo,* p. 4.

[6] *Id.*

[7] *Id.* at 5.

[8] *Id.*

[9] *Id.*

PO3 Garcia. When Lacdan demanded payment for the substance, PO3 Garcia handed him the buy-bust money.[10]

Upon seeing that the sale had been consummated, the rest of the buy-bust team rushed accused-appellants and introduced themselves as members of the PDEA. Upon having been apprised of their constitutional rights, accused-appellants were brought to the PDEA Office in Camp Vicente Lim. At the PDEA Office, PO3 Garcia placed his initials on the plastic sachet and inventoried the same in the presence of an elected official and a representative from media. Thereafter, the plastic sachet was submitted to the crime laboratory for testing. The forensic examination yielded a positive result that the white crystalline substance contained in the confiscated plastic sachet was indeed *shabu*.[11]

The defense presented accused-appellants and two others as their witnesses.

Lacdan testified that on February 10, 2004, he was resting at home when he received a call from a certain "Karen" asking him to go to Sogo Hotel at San Pedro, Laguna. When Lacdan arrived at Sogo Hotel, he proceeded to Room 122 and was surprised to see Karen with a companion inside who pointed a gun at him. Thereafter, two more men entered the room and forced Lacdan to bring them to a place where a certain "Arnel" lives. When they arrived at Arnel's place, there were about five to six people conversing and were also arrested. They were all brought to Canlubang, Laguna where they were detained.[12]

Vierneza, for his part, stated that at the time of the incident, he was gathering food for his pigs when he saw four to five people conversing. All of a sudden, a Toyota Revo stopped by and five armed men alighted therefrom. Someone poked a gun at Vierneza who forced him to ride the Revo. While on board

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

[11] *Id.* at 6.

[12] *Id.* at 7.

the Revo, he overheard the men saying, "*hindi naman ito ang tao*."[13]

The two other witnesses corroborated Vierneza's testimony.[14]

On November 25, 2008, the RTC rendered its Decision finding that the elements of illegal sale of *shabu* were proven beyond reasonable doubt by the prosecution.[15] The RTC gave more credence to the testimonies of the police officers who were presumed to have regularly performed their duties than the accounts of accused-appellants.[16]

Aggrieved by their conviction, accused-appellants filed an appeal to the CA. On January 16, 2012, the CA affirmed their conviction. It was determined that not only did the prosecution establish the elements of illegal sale of *shabu* but also the observance of the chain of custody rule. The CA concluded that through the testimony of SPO4 Villanueva, it was proved that an illegal sale of *shabu* transpired between accused-appellants as sellers and PO3 Garcia as poseur-buyer. The sachet of *shabu* was thereafter submitted to the crime laboratory for testing.[17] This was concluded as sufficient to prove the *corpus delicti* of the crime.

In their Supplemental Brief,[18] accused-appellants questioned the lack of compliance with Section 21(a) of the Implementing Rules and Regulations of R.A. 9165 in the conduct of the buy-bust operation and their subsequent arrest. Specifically, accused-appellants claimed that the illicit drugs allegedly recovered from them were not photographed and the inventory was not done in the presence of a representative from the media, a representative from the Department of Justice (DOJ) and an elected official.

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[13] *Id*.

[14] CA *rollo*, pp. 40-41.

[15] *Id*. at 44.

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

[17] Records, p. 14.

[18] *Rollo*, pp. 29-35.

The Office of the Solicitor General (OSG) manifested that they would no longer file a supplemental brief and instead, adopted the Appellee's Brief it filed to the CA.

Issue

The sole issue in this case is whether or not the CA erred in upholding the conviction of accused-appellants for violation of Section 5, Article II of R.A. 9165.

Our Ruling

The appeal is meritorious.

Before going into the discussion on the non-compliance with the requirements for the proper custody of seized dangerous drugs under R.A. 9165, the Court must first re-examine the penchant of police officers in using boodle money in the conduct of buy-bust operations. "Boodle" money means bundles of cut-out newspapers in the size of money bills. They are not counterfeit money so they do not appear as though they are genuine bills. Hence, even to an ordinary person who sees genuine money on a regular basis, they would appear obvious as newspaper cut-outs and not genuine peso bills.

In this case, it was established that PO3 Garcia allegedly paid ₱18,000.00 for 10.03 grams of *shabu* using two genuine ₱500.00 bills with the remaining boodle money to have been placed in between the two ₱500.00 bills. When asked by Lacdan if he had the money, PO3 Garcia showed the money to him. Lacdan gave a hand signal and immediately, Vierneza pulled out from his pocket the plastic sachet and gave it to PO3 Garcia. PO3 Garcia then handed the two ₱500.00 bills and the boodle money to Lacdan. It was also established that the alleged buy-bust operation was made at around 6:00 a.m., which was already bright and the sun having already risen. Hence, it is more in accord with human experience that the ₱18,000.00 with only two genuine ₱500.00 bills would be obvious to accused-appellants who would have been alerted that something was off and which could have led to the non-consummation of the alleged buy-bust operation. The narration of the police officers that accused-

appellants accepted the payment of the illicit drugs without raising any alarm even if it would have been apparent that the money paid was only boodle money is, at best, questionable and not credible.

In addition to the questionable conduct of the buy-bust operation using boodle money, in cases of illegal sale of dangerous drugs under R.A. 9165, it is also 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.[19] 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 which therefore warrants an acquittal.[20] In order to establish the identity of the dangerous drug with moral certainty, there must be observance of the chain of custody rule enshrined in Section 21 of R.A. 9156.

Here, since the buy-bust operation was conducted prior to the amendment of R.A. 9165, 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: (1) a representative from the media; (2) a representative from the DOJ; and (3) any elected public official.[21]

In this case, the records provide that the inventory of the illicit drugs was made in the PDEA Office in Camp Vicente Lim in Calamba City, Laguna when the buy-bust operation was conducted in San Pedro, Laguna or some 20 kilometers away from the former. Further, the inventory was only witnessed by the accused, a representative from the media, and an elected public official. The illicit drug was not even photographed as required by Section 21. There was no explanation offered as

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[19] *People v. Crispo*, G.R. No. 230065, March 14, 2018.

[20] See *People v. Gamboa*, G.R. No. 233702, June 20, 2018.

[21] R.A. 9165, Section 21(1).

to: (1) why the inventory was made in Calamba City and not in San Pedro; (2) why there was no photograph of the illicit drug; and (3) why the inventory was not witnessed by a representative from the DOJ.

These glaring non-compliance with the provisions of Section 21 of R.A. 9165 render the integrity and the evidentiary value of the seized items to be highly compromised, consequently warranting accused-appellants' acquittal.

As much as convictions for violations of R.A. 9165 almost always reach the Court, a continuous reminder must be given to prosecutors of their duty to prove compliance with the provisions laid down in Section 21 or to present justifications in cases of deviation thereof before the trial court. It must be borne in mind that the Court will not hesitate to overturn the conviction of the accused in case of non-compliance or failure to justify the deviations on the procedure laid down by the law, as in this case.

WHEREFORE, the appeal is **GRANTED**. The Decision dated January 16, 2012 of the Court of Appeals in CA-G.R. CR-HC No. 03717 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellants Eduardo Lacdan *y* Perez @ "Edwin" and Romualdo Vierneza *y* Bondoc @ "Ulo" are **ACQUITTED** of the crime charged against them and are **ORDERED** to be immediately released, unless they are being lawfully held in custody for any other reason.

SO ORDERED.

Bersamin, C.J. (Chairperson), Gesmundo,[*] and *Zalameda,*[**] *JJ.,* concur.

Perlas-Bernabe, J., on official business.

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[*] Acting Working Chairperson.

[**] Designated as Additional Member of the First Division per Special Order No. 2712.

THIRD DIVISION

[G.R. No. 216157. October 14, 2019]

MARIA PEREZ, *petitioner, vs.* **MANOTOK REALTY, INC.,** *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; A JUDGMENT MAY BE EXECUTED ON MOTION WITHIN FIVE YEARS FROM THE DATE OF ITS ENTRY OR FROM THE DATE IT BECOMES FINAL AND EXECUTORY; THE PERIOD MAY BE EXTENDED UPON MERITORIOUS GROUNDS; IN CASE AT BAR, THE DELAYS CAUSED BY PETITIONER FOR HER ADVANTAGE THAT IS OUTSIDE THE CONTROL OF RESPONDENT DEEMED TO HAVE EFFECTIVELY INTERRUPTED THE FIVE YEAR PERIOD. –– [Under] Section 6, (Execution by Motion or by Independent Action), Rule 39 (Execution, Satisfaction and Effect of Judgments) of the 1997 Rules of Civil Procedure, as amended x x x a judgment may be executed on motion within five years from the date of its entry or from the date it becomes final and executory. After that, a judgment may be enforced by action before it is barred by the statute of limitations. However, there are instances where this Court allowed execution by motion even after the lapse of five years upon meritorious grounds. x x x Under the circumstances of the case at bar where the delays were caused by petitioner for her advantage, as well as outside of respondent's control, this Court holds that the five-year period allowed for enforcement of the judgment by motion was deemed to have been effectively interrupted or suspended. This Court reiterates the principle that the purpose of the law in prescribing time limitations for enforcing judgments is to prevent parties from sleeping on their rights. This Court finds in this case that respondent, far from sleeping on its rights, was diligent in seeking the execution of the judgment in its favor.

APPEARANCES OF COUNSEL

JC Yrreverre Law Firm for petitioner.
Samuel A. Laurente for respondent.

D E C I S I O N

INTING, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court of the Decision[2] dated January 14, 2014 and Resolution[3] dated November 28, 2014 of the Court of Appeals (CA) in CA-G.R. SP. No. 126833 which affirmed the Decision[4] dated July 23, 2012 of Branch 26, Regional Trial Court, Manila (RTC Branch 26) in Civil Case No. 11-126705 for unlawful detainer.

The antecedents, as borne by the records, are as follows:

Manotok Realty, Inc. (respondent) filed a case for unlawful detainer against Maria Perez (petitioner) before Branch 22, Metropolitan Trial Court (MeTC), Manila, docketed as Civil Case No. 151271-CV. On March 31, 1998, the MeTC rendered a Decision[5] in favor of respondent. After the decision became final and executory, respondent filed a Motion for Execution.[6] In an Order[7] dated July 27, 1998, the MeTC granted the motion. On October 1, 1998, a writ of execution[8] was issued.

Meanwhile, petitioner filed before Branch 47, Regional Trial Court, Manila (RTC Branch 47), a Petition for *Certiorari*, Prohibition and Injunction with prayer for issuance of temporary restraining order, docketed as Civil Case No. 99-92853, seeking

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[1] *Rollo*, pp. 3-18.

[2] *Id.* at 20-30; penned by Associate Justice Stephen C. Cruz with Associate Justices Magdangal M. De Leon and Eduardo B. Peralta, Jr., concurring.

[3] *Id.* at 32-33.

[4] *Id.* at 34-40.

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

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

[7] *Id.* at 106.

[8] *Id.* at 53.

[9] *Id.* at 112-120.

the nullification of the proceedings in Civil Case No. 151271-CV. The petition was later amended.[9] On March 9, 1999, the RTC Branch 47 issued an Order[10] directing the Sheriff III MeTC to put on hold any further action on the case without giving due course to petitioner's prayer for issuance of temporary restraining order.

On April 20, 1999, the parties entered into a Compromise Agreement[11] in relation to Civil Case No. 151271-CV. In a Decision[12] dated July 15, 1999, the MeTC approved the Compromise Agreement. However, petitioner violated the terms and conditions thereof. Thus, respondent moved for the execution[13] of the MeTC Decision dated July 15, 1999. On May 4, 2001, the MeTC granted respondent's motion, and ordered the issuance of a writ of execution for the enforcement of the July 15, 1999, Decision.[14]

On July 6, 2004, the Sheriff of the MeTC served a copy of the Writ of Execution and a Notice to Vacate to petitioner. In the Sheriff's Return[15] dated July 19, 2004, the Sheriff reported that the writ was not implemented due to his receipt of a written communication from petitioner's counsel strongly urging him, under pain of contempt of court, to desist from taking any action against petitioner in view of the case lodged before the RTC Branch 47 which was then pending resolution.

The petition before the RTC Branch 47 was dismissed on May 10, 2004.[16] Petitioner appealed the dismissal to the CA,

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[10] *Id.* at 130.

[11] *Id.* at 121-122.

[12] *Id.* at 123-124.

[13] *Id.* at 125-127.

[14] *Id.* at 58.

[15] *Id.* at 129.

[16] *Id.* at 60-63.

[17] *Id.* at 64-71; penned by Associate Justice Aurora Santiago-Lagman

but it was dismissed in a Decision[17] dated March 23, 2007. Petitioner moved for reconsideration, but it was still denied in a Resolution dated December 28, 2007.[18] Still unsatisfied, petitioner assailed the ruling of the CA through a petition for *certiorari* before this Court. However, in a Resolution[19] dated July 2, 2008, this Court dismissed the petition. In a subsequent Resolution[20] dated November 17, 2008, this Court denied with finality petitioner's motion for reconsideration.

After the finality of the dismissal, respondent filed a Motion to Enforce Writ of Execution[21] on April 28, 2010 before the MeTC, praying for the enforcement of the July 15, 1999, Decision. In an Order[22] dated October 1, 2010, entitled "*Rosa R. Manotok v. Maria Perez*" the MeTC granted respondent's motion, and ordered the sheriff to enforce the Writ of Execution dated October 1, 1998. In a subsequent Amended Order[23] dated January 5, 2011, the MeTC corrected the title of the case changing it to "*Manotok Realty, Inc. v. Maria Perez*." Of this Amended Order, petitioner moved for reconsideration contending that, "*the writ of execution dated October 1, 1998 directing the sheriff to execute the Decision of this Court dated March 31, 1998 could no longer be enforced because said writ has already been set aside and rendered ineffective by the consequent issuance of the later Decision dated July 15, 1999 and its corresponding Writ of Execution [d]ated May 4, 2001*."[24]

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with Associate Justices Bienvenido L. Reyes and Enrico A. Lanzanas, concurring.

[18] *Id.* at 23.

[19] *Id.* at 72-73.

[20] *Id.* at 74.

[21] *Id.* at 158-160.

[22] *Id.* at 76-78.

[23] *Id.* at 79-81.

[24] *Id.* at 82.

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

On March 15, 2011, the MeTC issued a Resolution[25] granting petitioner's motion for reconsideration; thus, setting aside its earlier Resolution dated January 5, 2011. The MeTC held that respondent's Motion to Enforce Writ of Execution, the subject of which being the July 15, 1999, Decision, was filed only on April 28, 2010. The MeTC found that this motion was filed beyond the 10-year period provided under Section 6, Rule 39 of the 1997 Rules of Civil Procedure, for the enforcement of a judgment through a motion.[26]

The MeTC disposed of the March 15, 2011, Resolution in this wise:

> WHEREFORE, premises considered, the Motion for Reconsideration is hereby GRANTED. The Amended Order of this Court dated January 5, 2011 is hereby RECONSIDERED and SET ASIDE. The Motion to Enforce Writ of Execution filed by plaintiff thru counsel, on April 28, 2010 is hereby DENIED.[27]

Respondent moved for reconsideration of the above Resolution, but it was denied an Order[28] dated June 30, 2011. Thereafter, respondent appealed to the RTC Branch 26.

In a Decision[29] dated July 23, 2012, the RTC Branch 26 reversed the MeTC, and ruled in favor of respondent, granting his Motion to Enforce Writ of Execution. The trial court held that the Decision dated July 15, 1999 of the MeTC can still be enforced by mere motion despite the lapse of more than five years inasmuch as the delays were caused by petitioner.

Petitioner assailed the RTC Branch 26 Decision through a petition for review before the CA. In a Decision[30] rendered on

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[26] *Id.* at 83-84.

[27] *Id.* at 84.

[28] *Id.* at 85.

[29] *Id.* at 34-40.

[30] *Id.* at 20-30.

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

January 14, 2014, the CA denied the petition, and affirmed the RTC Branch 26.

The CA observed that the second Writ of Execution dated May 4, 2001 was already being implemented before it was interrupted by petitioner's counsel. The CA then proceeded to rule as follows:

> x x x We also hereby clarify that a writ of execution cannot be stayed by the filing of a petition for *certiorari*. It is a basic rule that a petition for *certiorari* under Rule 65 does not by itself interrupt the course of the proceedings. It is necessary to avail of either a temporary restraining order or a writ of preliminary injunction to be issued by a higher court against a public respondent so that it may, during the pendency of the petition, refrain from further proceedings. In the instant case, no temporary restraining order or writ of preliminary injunction was issued against the writ of execution, thus, the same is still valid and can be enforced.[31]

Petitioner moved for reconsideration, but to no avail.[32]

Hence, this petition for review raising the following issues:

WHETHER OR NOT RESPONDENT'S RIGHT FOR THE EXECUTION OF THE 15 JULY 1999 JUDGMENT HAS ALREADY EXPIRED;

WHETHER OR NOT THE JUDGMENT IN FAVOR OF RESPONDENT CAN BE EXECUTED BY A MERE MOTION EVEN AFTER THE LAPSE OF FIVE YEARS.[33]

Ruling of the Court

The petition lacks merit.

Section 6, Rule 39 of the 1997 Rules of Civil Procedure, as amended provides:

> Sec. 6. *Execution by motion or by independent action*. — A final and executory judgment or order may be executed on motion within

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[32] *Id.* at 32-33.

[33] *Id.* at 10.

[34] *Yau v. Silverio, Sr.*, 567 Phil. 493, 502 (2008).

five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

According to the above rule, a judgment may be executed on motion within five years from the date of its entry or from the date it becomes final and executory. After that, a judgment may be enforced by action before it is barred by the statute of limitations. However, there are instances where this Court allowed execution by motion even after the lapse of five years upon meritorious grounds.[34]

In the case of *Lancita, et al. v. Magbanua, et al.*,[35] this Court pronounced:

> In computing the time limited for suing out of an execution, although there is authority to the contrary, the general rule is that there should not be included the time when execution is stayed, either by agreement of the parties for a definite time, by injunction, by the taking of an appeal or writ of error so as to operate as a supersedeas, by the death of a party or otherwise. Any interruption or delay occasioned by the debtor will extend the time within which the writ may be issued without *scire facias*.[36]

The foregoing principle had been applied by this Court in several cases. As discussed in *Francisco Motors Corp. v. Court of Appeals*:[37]

> In *Blouse Potenciano v. Mariano*, we held that the motion for examination of the judgment debtor, which is a proceeding supplementary to execution, and the action for mandamus amounted to a stay of execution which effectively interrupted or suspended the five (5)-year period for enforcing the judgment by motion. In

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[35] 117 Phil. 39 (1963).

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

[37] 535 Phil. 736 (2006).

[38] *Id.* at 751-752.

Camacho v. Court of Appeals, et al., where after a final judgment, the petitioner (obligor) moved to defer the execution, elevated the matter to the CA and the Supreme Court, transferred the property to her daughter, in addition to the issues regarding counsel and subsequent vacancies in the courts, we ruled that:

> Under the peculiar circumstances of the present case where the delays were occasioned by petitioner's own initiatives and for her advantage as well as beyond the respondents' control, we hold that the five [5]-year period allowed for the enforcement of the judgment by motion was deemed to have been effectively interrupted or suspended. Once again we rely upon basic notions of equity and justice in so ruling.
>
> The purpose of the law in prescribing time limitations for enforcing judgment or actions is to prevent obligors from sleeping on their rights. Far from sleeping on their rights, respondents persistently pursued their rights of action. It is revolting to the conscience to allow petitioner to further avert the satisfaction of her obligation because of sheer literal adherence to technicality.

We also subtracted from the five (5)-year period the time when the judgment could not be enforced due to the restraining order issued by this Court, and when the records of the case were lost or misplaced through no fault of the petitioner. In *Provincial Government of Sorsogon v. Vda. de Villaroya*, we likewise excluded the delays caused by the auditor's requirements which were not the fault of the parties who sought execution, and ruled that "[i]n the eight years that elapsed from the time the judgment became final until the filing of the restraining motion by the private respondents, the judgment never became dormant. Section 6, Rule 39 of the Revised Rules of Court does not apply." *In Jacinto v. Intermediate Appellate Court*, this Court further held:

> Granting for the sake of argument that the motion for an alias writ of execution was beyond the five [5]-year limitation within which a judgment may be executed by mere motion, still under the circumstances prevailing wherein all the delay in the execution of the judgment lasting for more than eight [8]-years was beneficial to private respondents, this Court[,]for reasons of equity[,] is constrained to treat the motion for execution as

having been filed within the reglementary period required by law.[38] (Emphasis omitted; citation omitted.)

Also, in *Yau v. Silverio, Sr.*, the writ of execution could not be enforced for the full satisfaction of the trial court's judgment within the five-year period by reason of the petitions challenging the trial court's judgment and the writ of execution. This Court held that the petitions suspended or interrupted the further enforcement of the writ.[39]

In *Rizal Commercial Banking Corp. (RCBC) v. Serra*,[40] RCBC sought to enforce against Serra a decision that had already become final and executory. However, to evade his obligation, Serra transferred the property to his mother who then transferred it to another person. This prompted RCBC to file an annulment case. This Court held therein that the delay in the execution of the decision was caused by Serra for his own advantage. Thus, the pendency of the annulment case effectively suspended the five-year period to enforce the decision through a motion.[41]

In the case under consideration, the judgment sought to be executed is the July 15, 1999, Decision of the MeTC which approved the Compromise Agreement of the parties. The writ of execution was issued on May 4, 2001. However, it could not be enforced by the sheriff because petitioner filed an Amended Petition for *certiorari* and prohibition with prayer for issuance of a restraining order dated February 22, 1999 before RTC Branch 47. The petition was assailing the validity of the proceedings in Civil Case No. 151271-CV before the MeTC on the ground of lack of jurisdiction. Thus, in his Return dated July 19, 2004, the sheriff reported that on July 6, 2004, he served a copy of the Writ of Execution on petitioner. According to him, what subsequently happened was as follows:

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[39] *Yau v. Silverio, Sr., supra* note 34.

[40] 713 Phil. 722 (2013).

[41] *Id.* at 727.

On July 12, 2004, the undersigned received a communication from defendant's counsel, Atty. Alejandro G. Yrreverre, Jr. strongly urging the undersigned, under pain of Contempt of Court, to desist from further taking action against the defendant alleging that the Petition they have filed with the Regional Trial Court of Manila, Branch 47, Presided by the Hon. Lorenzo B. Veneracion, who issued an Order dated March 9, 1999, requesting the undersigned from further taking action on this case, has not been resolved with finality.[42]

Indeed, through an Order dated March 9, 1999, the RTC Branch 47 requested the sheriff of the MeTC to hold in abeyance any action on the case, such as the implementation of a writ of execution.

As stated earlier, on May 10, 2004, RTC Branch 47 dismissed petitioner's petition. On appeal to the CA, the latter affirmed the RTC in a Decision dated March 23, 2007. Then, in a Resolution dated July 2, 2008 in G.R. No. 181948, this Court dismissed petitioner's petition for *certiorari*. On November 17, 2008, this Court denied with finality petitioner's motion for reconsideration. And in the instant petition, petitioner is attacking the RTC and CA's ruling of granting respondent's motion for execution. Because of petitioner's acts, there has been a long delay in the enforcement of the July 15, 1999, MeTC Decision. The enforcement of the MeTC's Decision by motion has been interrupted by the acts of petitioner, the judgment debtor.

Under the circumstances of the case at bar where the delays were caused by petitioner for her advantage, as well as outside of respondent's control, this Court holds that the five-year period allowed for enforcement of the judgment by motion was deemed to have been effectively interrupted or suspended.

This Court reiterates the principle that the purpose of the law in prescribing time limitations for enforcing judgments is to prevent parties from sleeping on their rights. This Court finds in this case that respondent, far from sleeping on its rights, was diligent in seeking the execution of the judgment in its favor.

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[42] *Rollo*, p. 129.

"*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 through a mere subterfuge, deprived of the fruits of the verdict. Courts must therefore guard against any scheme calculated to bring about that result. Constituted as they are to put an end to controversies, courts should frown upon any attempt to prolong them.*"[43]

WHEREFORE, the petition for review on *certiorari* is **DENIED**. The Decision dated January 14, 2014 and the Resolution dated November 28, 2014 of the Court of Appeals in CA-G.R. SP. No. 126833, are **AFFIRMED.**

SO ORDERED.

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

Leonen, J., on leave.

FIRST DIVISION

[G.R. No. 228509. October 14, 2019]

CAPT. JOMAR B. DAQUIOAG, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN and HADJI SALAM M. ALABAIN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; LIMITED TO QUESTIONS OF LAW; EXCEPTIONS; WHERE THE COURT MAY RULE ON QUESTIONS OF FACT. ––

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[43] *Sps. Selga v. Brar*, 673 Phil. 581, 597 (2011).

Section 27 of R.A. 6770 provides that "[f]indings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive." As such, this Court generally accords great respect and even finality to the findings of the Office of the Ombudsman. Petitions for review on *certiorari* should be limited to questions of law. However, there are exceptions to this well-established rule wherein this Court may rule on questions of fact, some of which are: (1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is a grave abuse of discretion; and (4) the judgment is based on a misapprehension of facts.

2. ID.; ID.; EVIDENCE; AFFIDAVIT OF DESISTANCE; APPRECIATION THEREOF. — It is true that an affidavit of desistance is "viewed with suspicion and reservation because it can easily be secured from a poor and ignorant witness, usually through intimidation or for monetary consideration." It is not binding on the OMB[-MOLEO] which has the power to investigate and prosecute on its own any act or omission of a public officer or employee, office or agency which appears to be illegal, unjust, improper or inefficient. Nonetheless, affidavits of desistance may still be considered in certain cases. In *Marcelo v. Bungubung*, this Court held that the express repudiation in the affidavit of desistance of the material points in the complaint-affidavit may be admitted into evidence, absent proof of fraud or duress in its execution. The affidavit of desistance makes the complaint-affidavit questionable and the CA took proper notice of it.

APPEARANCES OF COUNSEL

Col. Basilio B. Pooten for petitioner.

D E C I S I O N

CARANDANG, *J.*:

Before this Court is an Amended Petition for Review on *Certiorari*[1] filed by petitioner Captain Jomar B. Daquioag (Capt.

[1] *Rollo*, pp. 123-138. The original petition (pp. 11-26) was amended pursuant to the Court's Resolution dated June 6, 2018 (p. 116).

Daquioag) assailing the Decision[2] dated August 10, 2015 and Resolution[3] dated November 22, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 119051. The CA affirmed the Decision[4] dated November 27, 2009 and Order[5] dated December 1, 2010 of the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices (OMB-MOLEO) in OMB-P-A-09-0099-B, finding Capt. Daquioag guilty of grave misconduct and imposing upon him the penalty of dismissal from service.

The Antecedents

On August 10, 2008, Hadja Nihma Alabain (Hadja Alabain), her grandson Qamar Mujanil[6] (Mujanil), nephew Munajin Alabain (Alabain), and farm workers Julito Maghilum (Maghilum), Ronald Francisco (Francisco), his nephew Robert Alviar (Alviar), and Francisco's son Jaivin Palces (Palces) were on their way home from the farm of Hadja Alabain's husband, Hadji Salam Alabain (Hadji Alabain), in Baas, Lamitan, Basilan, when they saw patrolling Philippine Marine soldiers led by Capt. Daquioag.[7] Francisco threw away the shotgun he was holding, raised his hands, and shouted "civilian" but the soldiers still fired upon them.[8] As a result, Alviar died[9] while Palces sustained a minor injury. Hadja Alabain and Mujanil were subjected to one hour of interrogation. They were allowed to go home afterwards but their shotgun and farm implements were confiscated. Two days after the incident, the carabao that Alviar was riding died.[10]

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[2] Penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Noel G. Tijam (Former Member of this Court) and Francisco P. Acosta, concurring; *id*. at 57-75.

[3] *Id*. at 100-101.

[4] Penned by Graft Investigation and Prosecution Officer Dyna I. Camba and approved by Overall Deputy Ombudsman Orlando C. Casimiro; *id*. at 32-35.

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

[6] Named "Mujaril" in other parts of the *rollo*.

[7] *Rollo*, p. 32.

[8] *Id*. at 30.

[9] *Id*.

[10] *Id*.

On August 20, 2008, Hadji Alabain and Hadja Alabain together with Spouses Diosdado and Evelyn Alviar (Spouses Alviar) filed a complaint against Capt. Daquioag, among others, before the Commission on Human Rights (CHR). Hadji Alabain and Hadja Alabain, Francisco, Maghilum, Palces, Mujanil, Alabain, and Spouses Alviar executed affidavits in support thereof.[11]

On December 11, 2008, the CHR issued a Resolution[12] recommending that the case be forwarded to the OMB-MOLEO for the filing of appropriate criminal and administrative charges against Capt. Daquioag and his co-respondents. The CHR held that Capt. Daquioag and his co-respondents failed to verify that their target is a military objective. The attack upon Alviar and his companions was unjustified because they were civilians and non-combatants.[13]

Ruling of the OMB-MOLEO

In its Decision[14] dated November 27, 2009, the OMB-MOLEO found Capt. Daquioag guilty of grave misconduct and imposed upon him the penalty of dismissal from the service. The OMB-MOLEO directed the Secretary of the Department of National Defense (DND Secretary) and the Commanding General or Commandant of the Philippine Marine Corps (PMC Commandant) to implement the decision.[15]

The OMB-MOLEO ruled that there was substantial evidence against Capt. Daquioag.[16] He was positively identified by Hadja Alabain as the leader of the group who shot them and it was not shown that Hadja Alabain had ill-motive or bad faith against

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[11] *Id*. at 58.

[12] Penned by Legal Officer Brendo D. Morales and approved by Regional HR Director Jose Manuel S. Mamauag; *id*. at 30-31.

[13] *Id*. at 31.

[14] *Id*. at 32-35.

[15] *Id*. at 34.

[16] *Id*. at 32.

him. Even though Master Sergeant Urbanito G. Tomas, Technical Sergeant (TSgt.) Edwin Z. Victa, TSgt. Warlito V. Abalos, and Private First Class Bernie S. Baloca signed as witnesses in Capt. Daquioag's affidavit to affirm his claim that he was at their camp when the incident took place, the OMB-MOLEO was not convinced that it was physically impossible for him to be at the place of the incident since the camp is also in Lamitan. In addition, members of the operating troops did not corroborate his claim that they were not with him when the incident took place. The OMB-MOLEO was likewise not persuaded that Capt. Daquioag's group encountered armed members of the Moro Islamic Liberation Front (MILF). Two of the members of Alviar's group were minors and only Alviar carried a shotgun. Hadja Alabain even sought financial assistance from their office to transfer Alviar's remains and to recover the shotgun. As such, Alviar and his companions were not members of the MILF and were not a threat to the soldiers.[17]

Capt. Daquioag's failure to perform his duties and skills with the highest degree of excellence, professionalism, intelligence, and skill resulted in the death of Alviar and sowed fear in minors Mujanil and Palces. His failure to prevent the assault was found inexcusable.[18] Cap. Daquioag filed a motion for reconsideration but it was denied[19] so he filed petition for review with the CA.

Ruling of the CA

On August 10, 2015, the CA rendered its Decision[20] denying respondent's petition and affirming the OMB-MOLEO.[21] *First*, the CA held that the OMB-MOLEO was authorized to penalize Capt. Daquioag and to order the DND Secretary and the PMC Commandant to implement his dismissal under Republic Act

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[17] *Id*. at 33.

[18] *Id*. at 34.

[19] *Id*. at 37-39.

[20] *Id*. at 57-75.

[21] *Id*. at 74.

No. (R.A.) 6770,[22] otherwise known as the Ombudsman Act of 1989.[23] *Second*, there was substantial evidence to prove that Capt. Daquioag was the leader of the group that fired upon Alviar. Hadja Alabain positively identified him while he failed to prove that he was not present when the incident took place, which was more or less five kilometers away from the south of the camp. The CA agreed with the OMB-MOLEO that the assault led by Capt. Daquioag on Alviar and his group constitutes grave misconduct.[24] Despite Hadji and Hadja Alabain, Maghilum, Alabain, Mujanil, Francisco, and Palces executing a joint affidavit of desistance before the Officer-In-Charge-City Prosecutor of Lamitan City on August 2011, the CA still upheld the penalty of dismissal. This is in accordance with Our ruling in *Ombudsman v. Medrano*[25] that the execution of affidavits of desistance which resulted in the dismissal of criminal cases will not alter the finding on the administrative liability of the respondent.[26]

Capt. Daquioag filed a motion for reconsideration but it was denied by the CA. Accordingly, he filed a petition before this Court to assail the ruling of the CA. He explained that he was then the Civil Military Officer (CMO) of Marine Battalion Landing Team 7 (MBLT-7). As CMO, he was tasked to foster a good relationship between the military and the public and was prohibited from engaging in armed combat.[27] Lieutenant Colonel Leonard Vincent D. Teodoro (LtCol. Teodoro), commanding officer of the MBLT-7, and 2nd Lieutenant Rod Bryan S. Eribal (2Lt. Eribal), commanding officer of the 27th Marine Company of

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[22] "An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes," approved on November 17, 1989.

[23] *Rollo*, pp. 61-67.

[24] *Id*. at 67-71.

[25] 590 Phil. 762 (2008).

[26] *Rollo*, pp. 73-74.

[27] *Id*. at 129-130.

the MBLT-7, executed their respective Affidavits[28] to attest that Capt. Daquioag was not involved in the firefight on August 10, 2008. He only accompanied LtCol. Teodoro to the scene at 6 p.m. to collect the body of one enemy who was killed in action, who turned out to be Alviar, and to take it to the City Hall for proper disposition. The Special Operations Platoon-7 commanded by 2Lt. Eribal and the 37th Marine Company commanded by First Lieutenant Reyson O. Talingdan (1Lt. Talingdan) were the ones involved in the encounter with the MILF.[29] Capt. Daquioag further argues that the CA erred in disregarding the joint affidavit of desistance.[30]

The OMB filed its Comment[31] wherein it argued that the petition raises questions of fact which are not covered by a petition for review under Rule 45 of the Rules of Court.[32] In any event, the OMB-MOLEO was correct in holding Capt. Daquioag liable for grave misconduct. He was positively identified by Hadja Alabain as the leader of the group who shot Alviar. Capt. Daquioag did not submit sufficient evidence to dispute this.[33] With respect to the joint affidavit executed in the criminal case, it was a mere afterthought. It has no effect on Capt. Daquioag's administrative liability which is different and distinct from his criminal liability.[34] The OMB also pointed out that Hadja Alabain did not inspect Capt. Daquioag's exhibits which was the basis for the affiants' declaration that he was not the one who led the attack against them. Therefore, the joint affidavit is unreliable.[35]

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[28] *Id*. at 94-95.

[29] *Id*. at 130-132.

[30] *Id*. at 133-136.

[31] *Id*. at 239-259.

[32] *Id*. at 247.

[33] *Id*. at 250-251.

[34] *Id*. at 252.

[35] *Id*. at 254.

Issue

Whether the CA erred in upholding the finding of grave misconduct against Capt. Daquioag and ordering his dismissal from the service.

Ruling of the Court

The petition is meritorious.

Section 27 of R.A. 6770 provides that "[f]indings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive." As such, this Court generally accords great respect and even finality to the findings of the Office of the Ombudsman.[36]

Petitions for review on *certiorari* should be limited to questions of law. However, there are exceptions to this well-established rule wherein this Court may rule on questions of fact, some of which are: (1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is a grave abuse of discretion; and (4) the judgment is based on a misapprehension of facts.[37]

In this case, the CA and the OMB-MOLEO relied on the statement of Hadja Alabain that Capt. Daquioag was the leader of the group that fired upon her and her companions. According to the CA and the OMB-MOLEO, substantial evidence or relevant evidence, which is reasonable mind might accept as adequate to support a conclusion,[38] was satisfactorily presented in this case. We disagree.

Our perusal of Hadja Alabain's affidavit reveals that she did not state when she saw Capt. Daquioag or how she was able to identify him. She said that more or less 100 armed men

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[36] *Diaz v. Office of the Ombudsman*, G.R. No. 203217, July 2, 2018.

[37] *Office of the Ombudsman v. Bernardo*, 705 Phil. 524, 534-535 (2013).

[38] *Miro v. Vda. de Erederos*, 721 Phil. 772, 787 (2013).

located around 20 feet away fired upon them. She did not aver that Capt. Daquioag was one of these men. In fact, Hadja Alabain mentioned him in her affidavit only once stating "That I executed this affidavit to attest to the truthfulness of the foregoing statements and to file appropriate charges against the Marine personnel led by Capt. Jomar Daquioag, PN (M)."[39] None of her companions corroborated her statement that Capt. Daquioag commanded the soldiers who attacked them.[40] Hadji Alabain, who was not present when the incident occurred, was the only one who said in his affidavit that Capt. Daquioag led the soldiers during the incident.[41] Considering this, the CA and the OMB-MOLEO unduly gave weight to Hadja Alabain's identification of Capt. Daquioag.

Capt. Daquioag's explanation that as the CMO of the MBLT-7 he was prohibited from engaging in armed combat and, as such, he did not participate in the armed conflict on August 10, 2008, was more credible. LtCol. Teodoro not only affirmed Capt. Daquioag's statement but also identified 1Lt. Talingdan and 2Lt. Eribal as the ones who were truly in charge of the troops involved [in] an armed encounter with the MILF.[42] 2Lt. Eribal himself confirmed this in his affidavit, stating that Capt. Daquioag "was not directly involved on the said operation. The said officer was the ACO, HSC/CMO officer of the unit at the time and only accompanied the former CO Battalion during the visit near the scene to coordinate and inquire about the recent incident."[43] The CA and the OMB-MOLEO should have appreciated the detailed statements of LtCol. Teodoro and 2Lt. Eribal which established that Capt. Daquioag did not commit the act subject of the charge against him.

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[39] *Rollo*, p. 96.

[40] *Id*. at 311-314, 316.

[41] *Id.* at 308.

[42] *Id*. at 94.

[43] *Id*. at 95.

In addition, Hadja Alabain executed a joint affidavit with Hadji Alabain, Maghilum, Alabain, Mujanil, Francisco, and Palces dated August 2011, which states:

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3. That when we filed the case before the office of the Commission on Human Rights in Zamboanga City, we thought it was the accused Capt. Jomar B. Daquioag who led the marine soldiers, but we were mistaken. On two (2) occasions, during arraignment and pre-trial, Hadji Salam A. Alabain and her [*sic*] daughter Jasmin A. Mujamil was able to confer with the accused and when the latter introduced his documentary exhibits during pre-trial, we were able to secure two of which, the affidavit of Lt. Col. Leonard Vincent D. Teodoro and that of 2nd Lt. Rod Bryan S. Eribal; that in both affidavit[s], affiants admitted that the former was the then Battalion Commander and the latter together with 1Lt. Reyson O. Talingdan commanded the group of marine soldiers who shot us and killed Robert Alviar;

4. That we now know 2nd Lt. Eribal and 1st Lt. Talingdan were the ones who led the marine soldiers and not the herein accused Capt. Jomar B. Daquioag. [*sic*]

5. That for these reasons we are no longer interested to pursue the case against Capt. Daquioag [*sic*] and we will no longer testify against him in court; that instead, we will pursue our complaint before the Commission on Human Rights against the real culprits who made themselves known in their affidavits.

x x x x x x x x x[44]

It is true that an affidavit of desistance is "viewed with suspicion and reservation because it can easily be secured from a poor and ignorant witness, usually through intimidation or for monetary consideration."[45] It is not binding on the OMB [-MOLEO] which has the power to investigate and prosecute on its own any act or omission of a public officer or employee, office or agency which appears to be illegal, unjust, improper

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[44] *Id*. at 104.

[45] *Miro v. Vda. de Erederos*, *supra* note 38.

or inefficient.[46] Nonetheless, affidavits of desistance may still be considered in certain cases. In *Marcelo v. Bungubung*,[47] this Court held that the express repudiation in the affidavit of desistance of the material points in the complaint-affidavit may be admitted into evidence, absent proof of fraud or duress in its execution. The affidavit of desistance makes the complaint-affidavit questionable and the CA took proper notice of it.[48]

The joint affidavit in this case was executed after the OMB-MOLEO rendered its decision in relation to the criminal case for attempted murder against Capt. Daquioag. Hence, it cannot be considered binding upon the OMB-MOLEO and the CA. Even so, Hadja Alabain expressly repudiated her previous statement in her affidavit. She did not simply say that she was no longer interested in pursuing a case against Capt. Daquioag but that she mistakenly identified him. She even identified the persons who were actually involved in the incident. There is no proof that she was coerced to execute the joint affidavit. In fact, the criminal cases against Capt. Daquioag were both dismissed on the basis of the joint affidavit for murder.[49] Consequently, the finding that Capt. Daquioag headed the group that fired upon Alviar lacks factual basis. There is no proof that he committed an act constituting grave misconduct. Thus, the CA erred in upholding the OMB-MOLEO's decision instead of dismissing the complaint against Capt. Daquioag.

WHEREFORE, the petition is **GRANTED**. The Decision dated August 10, 2015 and Resolution dated November 22, 2016 of the Court of Appeals in CA-G.R. SP No. 119051 are hereby **REVERSED** and **SET ASIDE**. The complaint against petitioner Captain Jomar B. Daquioag for Grave Misconduct is **DISMISSED.**

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[46] *Loquias v. Office of the Ombudsman*, 392 Phil. 596, 605 (2000).

[47] 575 Phil. 538 (2008).

[48] *Id*. at 562-563.

[49] *Rollo*, pp. 107-109.

SO ORDERED.

Bersamin, C.J. (Chairperson), Gesmundo,[*] and *Zalameda,*[**] *JJ.*, concur.

Perlas-Bernabe, J., on official business.

THIRD DIVISION

[G.R. No. 241135. October 14, 2019]

JAKE MESA *y* SAN JUAN, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; THE PROSECUTION MUST PROVE WITH MORAL CERTAINTY THE IDENTITY OF THE PROHIBITED DRUG, CONSIDERING THAT THE DANGEROUS DRUG ITSELF FORMS PART OF THE *CORPUS DELICTI* OF THE CRIME.— To convict an accused who is charged with illegal possession of dangerous drugs, defined and penalized under Section 11, Article II of R.A. No. 9165, the prosecution must establish the following elements by proof beyond reasonable doubt: (a) that the accused was in possession of dangerous drugs; (b) such possession was not authorized by law; and (c) the accused was freely and consciously aware of being in possession of dangerous drugs. The prosecution must prove

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[*] Acting Working Chairperson.

[**] Designated as Additional Member of the First Division per Special Order No. 2712.

with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms part of the *corpus delicti* of the crime. The prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link in the chain of custody from the moment that the illegal drugs are seized up to their presentation in court as evidence of the crime.

2. ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; INVENTORY AND TAKING OF PHOTOGRAPHS; WITNESS RULE; COMPLIANCE THEREWITH IS MANDATORY BUT SINCE A PERFECT CHAIN OF CUSTODY IS ALMOST ALWAYS IMPOSSIBLE TO ACHIEVE, MINOR PROCEDURAL DEVIATIONS FROM THE PRESCRIBED CHAIN OF CUSTODY ARE EXCUSED SO LONG AS IT CAN BE SHOWN BY THE PROSECUTION THAT THE ARRESTING OFFICERS PUT IN THEIR BEST EFFORT TO COMPLY WITH THE SAME AND THE JUSTIFIABLE GROUND FOR NON-COMPLIANCE IS PROVEN AS A FACT. — Section 21, Article II of R.A. No. 9165 laid down the procedure that must be observed and followed by police officers in the seizure and custody of dangerous drugs. Paragraph 1 not only provides the manner by which the seized drugs must be handled, but likewise enumerates the persons who are required to be present during the inventory and taking of photographs x x x. In 2014, R.A. No. 10640 partly amended R.A. No. 9165, specifically Section 21 thereof, to further strengthen the anti-drug campaign of the government. Paragraph 1 of Section 21 was amended, in that the number of witnesses required during the inventory stage was reduced from three (3) to only two (2) x x x. Since the offenses subject of this appeal were committed before the amendment introduced by R.A. No. 10640, the old provisions of Section 21 and its Implementing Rules and Regulations (IRR) should apply x x x. The use of the word "shall" means that compliance with the x x x requirements is mandatory. Section 21(a) expressly provides that physical inventory and the taking of photographs must be made in the presence of the accused or his/her representative or counsel and the following **indispensable** witnesses: **(1) an elected public official, (2) a representative from the DOJ**

and (3) a representative from the media. The Court, in *People v. Mendoza*, explained that the presence of these witnesses would preserve an unbroken chain of custody and prevent the possibility of tampering with or "planting" of evidence x x x. In the present case, only one out of three of the required witnesses was present during the inventory stage – media representative Barquilla. There was no elected barangay official or representative from the DOJ. Neither was it shown nor alleged by the police officers that earnest efforts were made to secure the attendance of the other witnesses. The Court is well aware that a perfect chain of custody is almost always impossible to achieve and so it has previously ruled that minor procedural lapses or deviations from the prescribed chain of custody are excused so long as it can be shown by the prosecution that the arresting officers put in their best effort to comply with the same and the justifiable ground for non-compliance is proven as a fact. x x x Simply put, the prosecution cannot simply invoke the saving clause found in Section 21 – that the integrity and evidentiary value of the seized items have been preserved – without justifying their failure to comply with the requirements stated therein. Even the presumption as to regularity in the performance by police officers of their official duties cannot prevail when there has been a clear and deliberate disregard of procedural safeguards by the police officers themselves. x x x The unjustified absence of two witnesses during the inventory stage is not a mere minor lapse which courts can simply brush aside without consequence. Failure to adduce justifiable grounds for these absences constitutes a substantial gap in the chain of custody which in turn, casts serious doubts on the integrity and evidentiary value of the *corpus delicti*. As such, the petitioner must be acquitted.

3. CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; PRESUMPTION OF INNOCENCE; THE PROSECUTION HAS THE BURDEN TO OVERCOME THE PRESUMPTION AND IF IT FAILS TO DISCHARGE ITS BURDEN, THE ACCUSED DESERVES A JUDGMENT OF ACQUITTAL.—[I]t cannot be gainsaid that it is mandated by no less than the Constitution that an accused in a criminal case shall be presumed innocent until the contrary is proved. In *People of the Philippines v. Marilou Hilario y Diana and Laline Guadayo y Royo*, the Court ruled that the prosecution bears the burden to overcome such presumption. If the prosecution

> fails to discharge this burden, the accused deserves a judgment of acquittal. On the other hand, if the existence of proof beyond reasonable doubt is established by the prosecution, the accused gets a guilty verdict. In order to merit conviction, the prosecution must rely on the strength of its own evidence and not on the weakness of evidence presented by the defense

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

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

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated March 23, 2018 and Resolution[3] dated July 11, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 39978, which affirmed the conviction of Jake Mesa *y* San Juan (petitioner) for violation of Section 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. In a Decision[4] dated February 28, 2007, the Regional Trial Court (RTC) of Binangonan, Rizal, Branch 67, in Criminal Case No. 12-0647, found the petitioner guilty beyond reasonable doubt of Illegal Possession of Dangerous Drugs. He was sentenced to suffer an indeterminate penalty of twelve (12) years and one (1) day imprisonment, as minimum, to thirteen (13) years, as maximum, and to pay a fine of ₱300,000.00.

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[1] *Rollo,* pp. 12-28.

[2] Penned by Associate Justice Jhosep Y. Lopez, with Associate Justices Japar B. Dimaampao and Manuel M. Barrios concurring; *id*. at 34-42.

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

[4] Penned by Judge Dennis Patrick Z. Perez; *id*. at 81-82.

The Facts

The petitioner was charged with violation of Section 11, Article II of R.A. No. 9165. The accusatory portion of the Information against him reads as follows:

> That on or about the 25th day of November 2012, in the Municipality of Binangonan, Province of Rizal, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, not being lawfully authorized to possess any drug, did then and there willfully, unlawfully and knowingly possess and have in his custody and control 0.05 gram of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet which substance was found positive to the tests for Methamphetamine Hydrochloride, also known as "shabu," a dangerous drug, in violation of the above cited law.
>
> Contrary to law.[5]

On arraignment, the petitioner pleaded "not guilty" to the charge. Thereafter, pre-trial and trial on the merits ensued.[6]

Version of the Prosecution

That on November 25, 2012, at around 8:30 a.m., while Police Officer 1 Rommel Bilog (PO1 Bilog) was on duty at the Binangonan Police Station, a confidential informant arrived and relayed to the police officers that a certain *alias "Sapyot"* was selling illegal drugs in Barangay Mahabang Parang, Binangonan, Rizal.[7]

When the Chief of Police received the information, he immediately instructed PO1 Bilog and PO1 Raul Paran (PO1 Paran) to verify the report. The police officers, along with the confidential informant, went to the scene. Thereat, they were able to observe Sapyot who came from a house and was then approached by another man to whom the former gave a small

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[5] *Id*. at 35.

[6] *Id*.

[7] *Id*.

[8] *Id*. at 36.

plastic sachet.[8]

When the police officers advanced to investigate further, firecrackers suddenly exploded alerting Sapyot and his companion. At that instance, Sapyot and his male companion ran away. The police officers got hold of the male companion who was later identified as Jake Mesa, the petitioner, while Sapyot was able to evade arrest. Right then and there, the police officers ordered the petitioner to empty his pockets revealing a plastic sachet containing white crystalline substance. Upon confiscation, PO1 Bilog marked the plastic sachet with "JAK," made an inventory of the evidence seized as witnessed by Cesar Barquilla (Barquilla), a media representative, and brought the petitioner to the police station.[9]

The seized item was sent to the Philippine National Police Crime Laboratory in Taytay, Rizal for the conduct of a qualitative examination. The examination of the plastic sachet yielded positive for the presence of methamphetamine hydrochloride, otherwise known as "*shabu,*" as contained in Chemistry Report No. D-549-12.[10]

Version of the Defense

At around noon of November 25, 2012, the petitioner was in the house of Eric Mesa when he heard an explosion and thought that an accident occurred. When he looked around, he saw four armed men running towards the house of Sapyot, Eric's neighbor. Startled, he hid at the back of Eric's house and thereafter saw Sapyot being chased by two police officers. When the police officers failed to catch Sapyot, they turned towards him and accosted him instead. The police officers told him that if they cannot catch Sapyot, they will charge him instead. According to the petitioner, he had nothing to do with Sapyot's business and was only there to feed and take care of the fighting cocks. The police officers ignored his plea and brought him to the police station where he was handcuffed to a steel bar for

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[9] *Id*.

[10] *Id*.

three days and was forced to hold a gun allegedly recovered from Sapyot.[11]

In its Decision[12] dated February 28, 2017, the trial court found the petitioner guilty beyond reasonable doubt of the crime charged. The dispositive portion of the decision reads:

> In light of the above, we find [the petitioner] GUILTY beyond reasonable doubt of violating Section 11, Article II, [R.A.] No. 9165 and illegally possessing a total of 0.05 gram of Methamphetamine Hydrochloride or shabu and accordingly sentence him to suffer an indeterminate penalty of 12 years and 1 day as minimum to 13 years as maximum and to pay a fine of ₱300,000.00. Bail posted for his provisional liberty is hereby REVOKED and we ORDER his immediate arrest.
>
> Let the drug samples in this case be forwarded to the Philippine Drug Enforcement Agency (PDEA) for proper disposition. Furnish PDEA with a copy of this Decision per OCA Circular No. 70-2007.
>
> SO ORDERED.[13] (Underscoring in the original)

Undeterred, the petitioner interposed an appeal asseverating that his warrantless arrest was illegal and that the required procedure as regards the chain of custody was not complied with. In a Decision[14] dated March 23, 2018, the CA affirmed the ruling of the trial court and held that the prosecution convincingly proved that there was substantial compliance with the rule on chain of custody. The decretal portion of the CA decision reads:

> **WHEREFORE**, in view of the foregoing, the appeal is hereby **DISMISSED**. The Decision dated February 28, 2017 of the [RTC] of Binangonan, Rizal, Branch 67, in Criminal Case No. 12-0647 is **AFFIRMED**.

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[11] *Id*.

[12] *Id*. at 81-82.

[13] *Id*. at 59.

[14] *Id*. at 34-42.

SO ORDERED.[15] (Emphases in the original)

Petitioner moved for reconsideration of the aforementioned decision, but the same was denied by the CA in a Resolution[16] dated July 11, 2018.

Hence, the present petition.

The Issues

Whether or not the CA committed grave error in affirming the petitioner's conviction for violation of Section 11 of R.A. No. 9165 notwithstanding the following:

I. Inadmissibility of the allegedly confiscated drugs for being fruit of the poisonous tree;

II. Irregularities in marking and conduct of inventory of the allegedly confiscated item; and

III. Failure of the prosecution to overcome the presumption of innocence afforded to the petitioner by the Philippine Constitution.

Ruling of the Court

The petition is impressed with merit.

To convict an accused who is charged with illegal possession of dangerous drugs, defined and penalized under Section 11, Article II of R.A. No. 9165, the prosecution must establish the following elements by proof beyond reasonable doubt: (a) that the accused was in possession of dangerous drugs; (b) such possession was not authorized by law; and (c) the accused was freely and consciously aware of being in possession of dangerous drugs.[17]

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[15] *Id*. at 42.

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

[17] *People v. Ismael*, 806 Phil. 21, 29 (2017); *Reyes v. Court of Appeals*, 686 Phil. 137, 148 (2012), citing *People v. Sembrano*, 642 Phil. 476, 490-491 (2010).

The prosecution must prove with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms part of the *corpus delicti* of the crime. The prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link in the chain of custody from the moment that the illegal drugs are seized up to their presentation in court as evidence of the crime.[18]

Here, the petitioner was charged with Illegal Possession of Dangerous Drugs, defined and penalized under Section 11,[19] Article II of R.A. No. 9165. As to the legality of his arrest, the Court agrees with the CA that since the petitioner's objections were belatedly raised, he is deemed to have waived the inadmissibility of the evidence obtained.

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[18] *People of the Philippines v. Ronaldo Paz y Dionisio*, G.R. No. 229512, January 31, 2018, citing *People v. Viterbo*, 739 Phil. 593, 601 (2014); *People v. Alivio, et al.*, 664 Phil. 565, 580 (2011); *People v. Denoman*, 612 Phil. 1165, 1175 (2009).

[19] **Section 11.** *Possession of Dangerous Drugs.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x x x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x x x x x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

Petitioner maintains that he should be acquitted for failure of the prosecution to establish every link in the chain of custody of the seized dangerous drugs and its failure to comply with the procedure outlined in Section 21 of R.A. No. 9165.

Section 21, Article II of R.A. No. 9165 laid down the procedure that must be observed and followed by police officers in the seizure and custody of dangerous drugs. Paragraph 1 not only provides the manner by which the seized drugs must be handled, but likewise enumerates the persons who are required to be present during the inventory and taking of photographs, *viz.*:

> **SEC. 21.** *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/ paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence 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 and underscoring ours)

In 2014, R.A. No. 10640[20] partly amended R.A. No. 9165, specifically Section 21 thereof, to further strengthen the anti-drug campaign of the government. Paragraph 1 of Section 21 was amended, in that the number of witnesses required during the inventory stage was reduced from three (3) to only two (2), to wit:

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[20] AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002." Approved on June 9, 2014.

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 person/s for 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 by the apprehending officer/ team, shall not render void and invalid such seizures and custody over said items. (Emphasis and underscoring ours)

A comparison of the cited provisions show that the amendments introduced by R.A. No. 10640 reduced the number of witnesses required to be present during the inventory and taking of photographs from three to two - an elected public official AND a representative of the National Prosecution Service (DOJ) OR the media. These witnesses must be present during the inventory stage and are likewise required to sign the copies of the inventory and be given a copy of the same, to ensure that the identity and integrity of the seized items are preserved and that the police officers complied with the required procedure. Failure of the arresting officers to justify the absence of any of the required witnesses, *i.e.*, the representative from the media

or the DOJ and any elected official shall constitute as a substantial gap in the chain of custody.

Since the offenses subject of this appeal were committed before the amendment introduced by R.A. No. 10640, the old provisions of Section 21 and its Implementing Rules and Regulations (IRR) should apply, *viz.:*

> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and 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.

The use of the word "shall" means that compliance with the foregoing requirements is mandatory. Section 21(a) expressly provides that physical inventory and the taking of photographs must be made in the presence of the accused or his/her representative or counsel and the following **indispensable** witnesses: **(1) an elected public official, (2) a representative from the DOJ and (3) a representative from the media.** The Court, in *People v. Mendoza*,[21] explained that the presence of these witnesses would preserve an unbroken chain of custody and prevent the possibility of tampering with or "planting" of evidence, *viz.:*

> [W]ithout the insulating presence of the representative from the media or the [DOJ], or any elected public official during the seizure and

[21] 736 Phil. 749 (2014).

marking of the [seized drugs], the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of [R.A. No.] 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.[22]

In the present case, only one out of three of the required witnesses was present during the inventory stage — media representative Barquilla. There was no elected barangay official or representative from the DOJ. Neither was it shown nor alleged by the police officers that earnest efforts were made to secure the attendance of the other witnesses. The Court is well aware that a perfect chain of custody is almost always impossible to achieve and so it has previously ruled that minor procedural lapses or deviations from the prescribed chain of custody are excused so long as it can be shown by the prosecution that the arresting officers put in their best effort to comply with the same and the justifiable ground for non-compliance is proven as a fact.

In the recent case of *People of the Philippines v. Romy Lim y Miranda*,[23] the Court, speaking through now Chief Justice Diosdado M. Peralta, reiterated the rule that apprehending/seizing officers, in their sworn affidavits, must state their compliance with the requirements of Section 21(1) of R.A. No. 9165, as amended and its IRR. The prosecution witnesses must establish in detail that earnest efforts to coordinate with and secure the presence of the required witnesses were made. In addition, it pointed out that, given the increasing number of poorly built up drug-related cases in the courts' docket, Section 1 (A.1.10) of the Chain of Custody IRR should be enforced as a mandatory policy. The pertinent portions of the Decision[24] read:

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[22] *Id.* at 764.

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

[24] *Id.*

To conclude, judicial notice is taken of the fact that arrests and seizures related to illegal drugs are typically made without a warrant; hence, subject to inquest proceedings. Relative thereto, Sections 1 (A.1.10) of the Chain of Custody [IRR] directs:

A.1.10. Any justification or explanation in cases of noncompliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, shall be clearly stated in the sworn statements/ affidavits of the apprehending/ seizing officers, as well as the steps taken to preserve the integrity and evidentiary value of the seized/ confiscated items. Certification or record of coordination for operating units other than the PDEA pursuant to Section 86(a) and (b), Article IX of the IRR of R.A. No. 9165 shall be presented.

While the above-quoted provision has been the rule; it appears that it has not been practiced in most cases elevated before Us. Thus, in order to weed out early on from the courts' already congested docket any orchestrated or poorly built-up drug-related cases, the following should henceforth be enforced as a mandatory policy:

1. In the sworn statements/ affidavits, the apprehending/ seizing officers must state their compliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended and its IRR.

2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/ confiscated items.

3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.

4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, rules of Court.[25]

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[25] *Id*.

Simply put, the prosecution cannot simply invoke the saving clause found in Section 21 — that the integrity and evidentiary value of the seized items have been preserved — without justifying their failure to comply with the requirements stated therein. Even the presumption as to regularity in the performance by police officers of their official duties cannot prevail when there has been a clear and deliberate disregard of procedural safeguards by the police officers themselves. The Court's ruling in *People v. Umipang*[26] is instructive on the matter:

> Minor deviations from the procedures under R.A. [No.] 9165 would not automatically exonerate an accused from the crimes of which he or she was convicted. This is especially true when the lapses in procedure were recognized and explained in terms of justifiable grounds. There must also be a showing that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason. However, when there is gross disregard of the procedural safeguards prescribed in the substantive law (R.A. [No.] 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. This uncertainty cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties. As a result, the prosecution is deemed to have failed to fully establish the elements of the crimes charged, creating reasonable doubt on the criminal liability of the accused.
>
> For the arresting officers' failure to adduce justifiable grounds, we are led to conclude from the totality of the procedural lapses committed in this case that the arresting officers deliberately disregarded the legal safeguards under R.A. [No.] 9165. These lapses effectively produced serious doubts on the integrity and identity of the *corpus delicti*, especially in the face of allegations of frame-up. Thus, for the foregoing reasons, we must resolve the doubt in favor of accused-appellant, as every fact necessary to constitute the crime must be established by proof beyond reasonable doubt.
>
> As a final note, we reiterate our past rulings calling upon the authorities to exert greater efforts in combating the drug menace using

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[26] 686 Phil. 1024 (2012).

the safeguards that our lawmakers have deemed necessary for the greater benefit of our society. The need to employ a more stringent approach to scrutinizing the evidence of the prosecution especially when the pieces of evidence were derived from a buy-bust operation redounds to the benefit of the criminal justice system by protecting civil liberties and at the same time instilling rigorous discipline on prosecutors.[27] (Citations omitted)

The unjustified absence of two witnesses during the inventory stage is not a mere minor lapse which courts can simply brush aside without consequence. Failure to adduce justifiable grounds for these absences constitutes a substantial gap in the chain of custody which in turn, casts serious doubts on the integrity and evidentiary value of the *corpus delicti.* As such, the petitioner must be acquitted.

At a time when there is very little distinction when it comes to the imposition of penalties in drug-related cases, courts are tasked to review cases with a more stringent level of scrutiny and to diligently follow the procedural safeguards set forth in our laws to ensure that no innocent man is unjustly punished or deprived of liberty. A miniscule amount of prohibited drugs can imprison a person for nearly a quarter of his life and in severe or aggravated cases, can imprison him for life without the benefit of parole.

Finally, it cannot be gainsaid that it is mandated by no less than the Constitution[28] that an accused in a criminal case shall

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[27] *Id*. at 1053-1054.

[28] Article III, Section 14(2) of the Constitution mandates:

Sec. 14. x x x

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

be presumed innocent until the contrary is proved. In *People of the Philippines v. Marilou Hilario y Diana and Laline Guadayo y Royo*,[29] the Court ruled that the prosecution bears the burden to overcome such presumption. If the prosecution fails to discharge this burden, the accused deserves a judgment of acquittal. On the other hand, if the existence of proof beyond reasonable doubt is established by the prosecution, the accused gets a guilty verdict. In order to merit conviction, the prosecution must rely on the strength of its own evidence and not on the weakness of evidence presented by the defense.

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision dated March 23, 2018 and Resolution dated July 11, 2018 of the Court of Appeals in CA-G.R. CR No. 39978, affirming the conviction of petitioner Jake Mesa *y* San Juan for violation of Section 11, Article II of Republic Act No. 9165, are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Jake Mesa *y* San Juan 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. Let entry of final judgment be issued immediately.

SO ORDERED.

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

Leonen, J., on wellness leave.

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[29] G.R. No. 210610, January 11, 2018.

FIRST DIVISION

[G.R. No. 244327. October 14, 2019]

ROWENA PADAS *y* GARCIA @ "WENG", *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS. — In every criminal prosecution, the Constitution affords the accused presumption of innocence until his or her guilt for the crime charged is proven beyond reasonable doubt. The prosecution bears the burden of overcoming this presumption and proving the liability of the accused by presenting evidence which shows that all the elements of the crime charged are present. To successfully prosecute a case of illegal possession of dangerous drugs, the following elements must be established: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.

2. ID.; ID.; CHAIN OF CUSTODY RULE; PRESENCE OF WITNESSES REQUIRED. — Apart from showing the presence of the elements, it is of utmost importance to likewise establish with moral certainty the identity of the confiscated drug. To remove any doubt or uncertainty on the identity and integrity of the seized drug, it is imperative to show that the substance illegally possessed and sold by the accused is the same substance offered and identified in court. This requirement is known as the Chain of Custody Rule under R.A. No. 9165 created to safeguard doubts concerning the identity of the seized drugs. Chain of custody (under Section 21) means the duly recorded, authorized movements, and custody of the seized drugs at each state, from the moment of confiscation to the receipt in the forensic laboratory for examination until it is presented to the court. x x x Before its amendment by R.A. No. 10640, R.A. No. 9165 required the apprehending team, after seizure and confiscation, to immediately conduct a physical inventory of, and photograph, the seized drugs in the presence of (a) the

accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, (b) a representative from the media (c) a representative from the DOJ, and (d) an elected public official. These four witnesses must all sign the copies of the inventory and obtain a copy thereof.

3. ID.; ID.; ID.; ID.; STRICT COMPLIANCE IS REQUIRED; SAVINGS CLAUSE IN CASE OF NON-COMPLIANCE NOT APPRECIATED IN THE ABSENCE OF RECOGNITION AND JUSTIFIABLE GROUNDS FOR THE LAPSES. — In this case, no DOJ representative and elected public official were present at the time of the physical inventory, marking, and taking of photographs of the evidence seized from petitioner. Additionally, PO1 Villanueva testified that Crisostomo, the media representative, was not present when petitioner was arrested and the seized evidence were marked. Crisostomo merely signed the inventory after the marking of the evidence. It is therefore unclear whether he witnessed the actual physical inventory of the seized drugs. Nevertheless, there is a saving clause under the IRR of R.A. No. 9165 in case of non-compliance with the Chain of Custody Rule. This saving clause, however, applies only (1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved. The prosecution, thus, loses the benefit of invoking the presumption of regularity and bears the burden of proving — with moral certainty — that the illegal drug presented in court is the same drug that was confiscated from the accused during his arrest. In this case, however, the prosecution offered no justification [nor explanation and] did not even recognize their procedural lapses x x x As a rule, strict compliance with the prescribed procedure is required because of the illegal drug's unique characteristic rendering it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. x x x This Court has ruled that even if the prosecution had proven the illegal sale of a dangerous drug, it is still charged to prove the integrity of the *corpus delicti*. Thus, even if there was a sale, the *corpus delicti* could not be proven if the chain of custody was defective. The prosecution's failure to prove that the integrity and evidentiary value of the evidence seized were preserved is fatal to the case.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; OBJECTION MUST BE MADE BEFORE ARRAIGNMENT OR THE SAME IS DEEMED WAIVED. — As to the issue of petitioner's illegal apprehension, it is now too late in the day for petitioner to question the legality of her arrest. The established rule is that an accused may be estopped from assailing the legality of her arrest if she failed to move for the quashing of the Information against her before arraignment. Any objection involving the arrest or the procedure in the court's acquisition of jurisdiction over the person of an accused must be made before she enters her plea; otherwise, the objection is deemed waived.

APPEARANCES OF COUNSEL

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

D E C I S I O N

GESMUNDO,[*] *J.*:

This is an appeal by *certiorari*[1] seeking to reverse and set aside the September 27, 2018 Decision[2] and January 23, 2019 Resolution[3] of the Court of Appeals (*CA*) in CA-G.R. CR No. 40322. The CA affirmed the June 5, 2017 Decision[4] of the Regional Trial Court of Manila, Branch 2 (*RTC*), finding Rowena Padas *y* Garcia @ "Weng" (*petitioner*) guilty beyond reasonable doubt of Illegal Possession of Dangerous Drugs under Section 11(3),

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[*] Acting Working Chairperson, Per Special Order No. 2717 dated October 10, 2019.

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

[2] *Id*. at 31-42; penned by Associate Justice Stephen C. Cruz with Associate Justices Zenaida T. Galapate-Laguilles and Rafael Antonio M. Santos, concurring.

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

[4] *Id*. at 62-71; penned by Presiding Judge Sarah Alma M. Lim.

Article II of Republic Act (*R.A.*) No. 9165, also known as the "Comprehensive Dangerous Drugs Act of 2002."

The Antecedents

In an Information[5] filed before the RTC, petitioner was charged with Illegal Possession of Dangerous Drugs, in violation of Section 11(3), Article II of R.A. No. 9165. The accusatory portion of the Information states:

CRIMINAL CASE NO. 13-298456

That on or about July 20, 2013, in the City of Manila, Philippines, the said accused, not being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in her possession and under her custody and control three (3) heat-sealed transparent plastic sachets with the following recorded net weight to wit:

1. 'RGP' - containing ZERO POINT ZERO TWO (0.02) GRAM
2. 'RGP-1' -containing ZERO POINT ZERO TWO (0.02) GRAM
3. 'RGP-2'- containing ZERO POINT ZERO FOUR (0.04) GRAM

Or all in the total net weight of ZERO POINT ZERO EIGHT (0.08) gram of white crystalline substance commonly known as 'SHABU', containing Methamphetamine Hydrochloride, a dangerous drug.

Contrary to law.[6]

Upon arraignment, petitioner pleaded not guilty to the crime charged. Thereafter, trial ensued.[7]

Evidence of the Prosecution

On July 20, 2013, Police Officer I Acemond Villanueva (*PO1 Villanueva*) and Senior Police Officer II Mario Sanchez (*SPO2 Sanchez*) went to Bohol Street, Balic Balic, Sampaloc on board a tricycle to conduct a surveillance against one *alias* "Manok." The purpose of the surveillance was to familiarize themselves

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[5] *Id.* at 32.

[6] *Id.*

[7] *Id.*

with the area. After about an hour of not seeing their supposed target, PO1 Villanueva and SPO2 Sanchez decided to leave. As they were about to leave while still on board the tricycle, PO1 Villanueva and SPO2 Sanchez allegedly saw a woman taking out, from her right front pocket, one (1) heat-sealed transparent plastic sachet containing white crystalline substance. The woman, later identified as petitioner, was showing the plastic sachet to an unidentified man. Upon seeing this, PO1 Villanueva and SPO2 Sanchez alighted from the tricycle and arrested petitioner. The unidentified man, however, escaped. PO1 Villanueva marked the plastic sachet with "RGP" and the two other sachets found in petitioner's possession with "RGP-1" and "RGP-2". The physical inventory and taking of photographs of the seized evidence were conducted at the place of arrest in the presence of petitioner and Rene Crisostomo (*Crisostomo*), a media representative.[8]

PO1 Villanueva then brought petitioner and the seized evidence to the police station. Police Officer III Boy Niño Baladjay (*PO3 Baladjay*), the investigator on duty, prepared the request for laboratory examination, booking sheet, and arrest report. PO1 Villanueva thereafter brought the seized evidence to the crime laboratory. Police Chief Investigator Mark Alain Ballesteros (*PCI Ballesteros*) conducted an examination of the three (3) heat-sealed plastic sachets with markings "RGP", "RGP-1", and "RGP-2", weighing 0.02 gram, 0.02 gram, and 0.04 gram, respectively. PCI Ballesteros found the contents of the sachet positive for methamphetamine hydrochloride or *shabu*.[9]

Evidence of the Defense

Petitioner testified that on July 20, 2013, while she was washing clothes in front of her house, a police officer placed his hand on her shoulder and forced her to board a vehicle. At that time, she saw at least five (5) police officers nearby. Inside the vehicle, she was ordered to empty her pockets. The police

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[8] *Id.* at 33.

[9] *Id.* at 37.

officer took her money amounting to ₱1,500.00, a silver bracelet, and a pair of silver earrings. Petitioner claimed that her husband saw her being apprehended and that she refused to file a complaint against the police officers due to fear.[10]

The RTC Ruling

In its June 5, 2017 Decision[11] the RTC found petitioner guilty beyond reasonable doubt of illegal possession of dangerous drugs and sentenced her to suffer the indeterminate penalty of twelve (12) years and one (1) day of imprisonment, as minimum, to seventeen (17) years and four (4) months of imprisonment, as maximum, and to pay a fine of ₱300,000.00.[12]

The RTC held that the chain of custody of the seized evidence was adequately established by the prosecution. It gave credence to PO1 Villanueva's testimony regarding the marking of the plastic sachets and their subsequent turnover to PCI Ballesteros for forensic examination. It noted the defense's admission that the specimens submitted to the court were the same evidence examined by PCI Ballesteros. It ruled that non-compliance with Section 21 of R.A. No. 9165 by the police officers was not fatal, especially because the integrity and evidentiary value of the seized evidence were preserved. It gave no credence to petitioner's defense of denial and alibi, as against PO1 Villanueva's positive identification of petitioner.[13]

Aggrieved, petitioner appealed to the CA.

The CA Ruling

In its September 27, 2018 Decision,[14] the CA affirmed *in toto* the conviction of petitioner for illegal possession of dangerous drugs. It ruled that PO1 Villanueva's testimony was clear and

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[10] *Id*. at 33-34.

[11] *Supra* note 4.

[12] *Rollo*, p. 71.

[13] *Id*. at 70-71.

[14] *Supra* note 2.

convincing and that all the elements of the crime and links in the chain of custody were established by the prosecution. It noted the defense's failure to show any ill motive on the part of the police officers and to present petitioner's husband despite the former's testimony that he was present at the time of her arrest.[15]

Petitioner filed a Motion for Reconsideration,[16] which the CA denied in its January 23, 2019 Resolution.[17] Hence, this appeal.

Issues

I.

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE CONVICTION OF PETITIONER DESPITE THE UNCORROBORATED TESTIMONY OF PO1 VILLANUEVA.

II.

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE CONVICTION OF PETITIONER DESPITE HER UNLAWFUL WARRANTLESS ARREST.

III.

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE PROSECUTION'S EVIDENCE DESPITE THE ARRESTING OFFICER'S NON-COMPLIANCE WITH THE REQUIREMENTS FOR THE PROPER CUSTODY OF SEIZED DANGEROUS DRUGS UNDER SECTION 21, R.A. NO. 9165 AND FOR FAILURE TO PROVE THE DRUGS' INTEGRITY AND IDENTITY.

IV.

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE CONVICTION OF PETITIONER DESPITE THE

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[15] *Rollo*, p. 38.

[16] *Id*. at 90-96.

[17] *Supra* note 3.

FAILURE OF THE PROSECUTION TO PROVE HER GUILT BEYOND REASONABLE DOUBT.[18]

The Court's Ruling

The appeal is meritorious.

In every criminal prosecution, the Constitution affords the accused presumption of innocence until his or her guilt for the crime charged is proven beyond reasonable doubt.[19] The prosecution bears the burden of overcoming this presumption and proving the liability of the accused by presenting evidence which shows that all the elements of the crime charged are present.[20]

To successfully prosecute a case of illegal possession of dangerous drugs, the following elements must be established: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.[21]

Apart from showing the presence of the above-cited elements, it is of utmost importance to likewise establish with moral certainty the identity of the confiscated drug.[22] To remove any doubt or uncertainty on the identity and integrity of the seized drug, it is imperative to show that the substance illegally possessed and sold by the accused is the same substance offered and identified in court.[23] This requirement is known as the Chain

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[18] *Rollo*, pp. 16-17.

[19] Constitution, Article III, Section 14(2).

[20] See *People of the Philippines v. Garcia*, 599 Phil. 416, 426 (2009).

[21] *People of the Philippines v. Climaco*, 687 Phil. 593, 603 (2012), citing *People of the Philippines v. Alcuizar*, 662 Phil. 794, 808 (2011).

[22] See *People of the Philippines v. Lorenzo*, 633 Phil. 393, 403 (2010).

[23] See *People of the Philippines v. Pagaduan*, 641 Phil. 432, 442-443 (2010).

of Custody Rule under R.A. No. 9165 created to safeguard doubts concerning the identity of the seized drugs.[24]

Chain of custody means the duly recorded, authorized movements, and custody of the seized drugs at each state, from the moment of confiscation to the receipt in the forensic laboratory for examination until it is presented to the court.[25] Under Section 21 of R.A. No. 9165:

> (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.

The Chain of Custody Rule was further expounded under Section 21(a), Article II of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165:

> 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

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[24] *People of the Philippines v. Climaco, supra* note 21.

[25] Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002.

the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

x x x x x x x x x

Before its amendment by R.A. No. 10640, R.A. No. 9165 required the apprehending team, after seizure and confiscation, to immediately conduct a physical inventory of, and photograph, the seized drugs in the presence of (a) the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, (b) a representative from the media (c) a representative from the DOJ, and (d) an elected public official. These four witnesses must all sign the copies of the inventory and obtain a copy thereof.[26]

The apprehending team's failure to strictly comply with Section 21 of R.A. No. 9165 is fatal to the prosecution's case

In this case, no DOJ representative and elected public official were present at the time of the physical inventory, marking, and taking of photographs of the evidence seized from petitioner. Additionally, PO1 Villanueva testified that Crisostomo, the media representative, was not present when petitioner was arrested and the seized evidence were marked. Crisostomo merely signed the inventory after the marking of the evidence.[27] It is therefore unclear whether he witnessed the actual physical inventory of the seized drugs.

Nevertheless, there is a saving clause under the IRR of R.A. No. 9165 in case of non-compliance with the Chain of Custody Rule. This saving clause, however, applies only (1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved. The prosecution,

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[26] Republic Act No. 9165 (2002), Section 21.

[27] *Rollo*, p. 65.

thus, loses the benefit of invoking the presumption of regularity and bears the burden of proving — with moral certainty — that the illegal drug presented in court is the same drug that was confiscated from the accused during his arrest.[28]

In this case, however, the prosecution offered no justification as to the absence of a representative from the DOJ and the elected public official. The prosecution did not even recognize their procedural lapses or give any justifiable explanation on why the apprehending team did not conduct the inventory, marking, and taking of photographs of the seized evidence in the presence of an elected public official and a DOJ representative.

As a rule, strict compliance with the prescribed procedure is required because of the illegal drug's unique characteristic rendering it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.[29] The presence of the four witnesses mandated by Section 21, Article II of R.A. No. 9165 safeguards the accused from any unlawful tampering of the evidence against him.

Moreover, Crisostomo, who was the sole witness, only signed the inventory after the marking of the seized drugs. He did not witness the marking and it is unclear whether he witnessed the actual physical inventory of the seized evidence.

The practice of police operatives of not bringing to the intended place of arrest the witnesses required by law does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs. They must not merely be called to witness the inventory, marking, and taking of photographs of the confiscated evidence.[30]

Consequently, the signature of Crisostomo on the inventory

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[28] *People of the Philippines v. Carlit*, 816 Phil. 940, 951-952 (2017), citing *People of the Philippines v. Cayas*, 789 Phil. 70, 80 (2016).

[29] *People v. Pagaduan*, *supra* note 23, at 444.

[30] *People of the Philippines v. Tomawis*, G.R. No. 228890, April 18, 2018.

form is rendered useless. The intent of the provisions of the law — to ensure the prevention and elimination of any possibility of tampering, alteration, or substitution, as well as the presentation in court of the drug that was confiscated at the time of apprehension of the accused[31] — was not carried out in the instant case. Indeed, it is as if there were no witnesses to the inventory and marking of the evidence against the accused, which is a total disregard of the requirements of Section 21, Article II of R.A. No. 9165.

This Court has ruled that even if the prosecution had proven the illegal sale of a dangerous drug, it is still charged to prove the integrity of the *corpus delicti*. Thus, even if there was a sale, the *corpus delicti* could not be proven if the chain of custody was defective.[32] The prosecution's failure to prove that the integrity and evidentiary value of the evidence seized were preserved is fatal to the case.

As to the issue of petitioner's illegal apprehension, it is now too late in the day for petitioner to question the legality of her arrest. The established rule is that an accused may be estopped from assailing the legality of her arrest if she failed to move for the quashing of the Information against her before arraignment. Any objection involving the arrest or the procedure in the court's acquisition of jurisdiction over the person of an accused must be made before she enters her plea; otherwise, the objection is deemed waived.[33]

In view of the foregoing, the Court concludes that there was no proper inventory, marking, and taking of photographs of the seized items considering the absence of the required witnesses under the law and the prosecution's lack of justification for

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[31] *People of the Philippines v. Nepomuceno*, G.R. No. 216062, September 19, 2018.

[32] *People of the Philippines v. Marcelo*, G.R. No. 228893, November 26, 2018.

[33] See *Zalameda v. People of the Philippines*, 614 Phil. 710, 729 (2009).

their absence. Given the procedural lapses, serious uncertainty hangs over the identification of the *corpus delicti* that the prosecution introduced into evidence. In effect, the prosecution failed to fully prove the elements of the crime charged, creating reasonable doubt on the criminal liability of the accused.

WHEREFORE, the appeal is **GRANTED**. The September 27, 2018 Decision and January 23, 2019 Resolution of the Court of Appeals in CA- G.R. CR No. 40322 are hereby **REVERSED** and **SET ASIDE** for failure of the prosecution to prove beyond reasonable doubt the guilt of Rowena Padas *y* Garcia @ "Weng." She is hereby **ACQUITTED** of the crime charged against her and ordered immediately **RELEASED** from custody, unless she is being held for some other lawful cause.

The Director of the Bureau of Corrections is **ORDERED** to implement this Decision and to inform this Court of the date of the actual release from confinement of Rowena Padas *y* Garcia @ "Weng" within five (5) days from receipt hereof.

SO ORDERED.

Bersamin, C.J., Carandang, and *Zalameda*,[**] *JJ.*, concur.

Perlas-Bernabe, J., on official business.

[**] Designated as additional member per Special Order No. 2712 dated September 27, 2019.

SECOND DIVISION

[G.R. No. 247819. October 14, 2019]

GUIDO B. PULONG, *petitioner, vs.* **SUPER MANUFACTURING INC., ENGR. EDUARDO DY and ERMILO PICO,** *respondents.*

SYLLABUS

1. LABOR LAWS AND SOCIAL LEGISLATION; LABOR CODE; NEW RETIREMENT PAY LAW (ARTICLE 287); RETIREMENT PLANS ALLOWING RETIREMENT OF EMPLOYEES BELOW COMPULSORY RETIREMENT AGE OF SIXTY-FIVE (65) YEARS ALLOWED PROVIDED THE RETIREMENT BENEFITS ARE NOT LOWER THAT THOSE PRESCRIBED BY LAW AND THERE IS EMPLOYEE'S CONSENT. — Article 287 of the Labor Code, as amended by Republic Act 7641 (RA No. 7641) otherwise known as the "New Retirement Pay Law" governs the retirement of employees in the private sector, x x x By its express language, the law permits employers and employees to fix the employee's retirement age. Absent such an agreement, the law fixes the age for compulsory retirement at sixty-five (65) years, while the minimum age for optional retirement is set at sixty (60) years. Thus, retirement plans allowing employers to retire employees who have not yet reached the compulsory retirement age of sixty-five (65) years are not *per se* repugnant to the constitutional guaranty of security of tenure, *provided that the retirement benefits are not lower than those prescribed by law and they have the* ***employee's consent.*** It is axiomatic, therefore, that a retirement plan giving the employer the option to retire its employees below the ages provided by law must be assented to by the latter, otherwise, its adhesive imposition will amount to a deprivation of property without due process. In the recent case of ***Laya, Jr. v. Philippine Veterans Bank***, we emphasized the character of the employee's consent to the employer's early retirement policy: it must be explicit, voluntary, free, and uncompelled.

2. ID.; ID.; ID.; ID.; RETIREMENT IS VOLUNTARY AGREEMENT BETWEEN EMPLOYER AND EMPLOYEE; IN THE MEMORANDUM OF AGREEMENT (MOA) IN CASE AT

BAR, THE PROVISIONS ON COMPULSORY RETIREMENT AT AGE SIXTY (60) IS A UNILATERAL IMPOSITION THAT DOES NOT BIND THE EMPLOYEE; THE ACCEPTANCE OF BENEFITS THAT ARE USUAL GRATUITIES GRANTED TO EMPLOYEES DOES NOT EQUATE TO AN ASSENT TO THE RETIREMENT PLAN. — Retirement is the result of a bilateral act of the parties, a **voluntary agreement** between the employer and the employee whereby the latter, after reaching a certain age, agrees to sever his or her employment with the former. x x x [The] MOA here was not assented to by petitioner and his coworkers. It was not executed after consultations and negotiations with the employees' authorized bargaining representative. The MOA, therefore, does not bind petitioner; much less, its provisions on compulsory retirement at age sixty (60). For it was not a result of any bilateral act; instead, it was a unilateral imposition of SMI upon petitioner. x x x [Petitioner's acceptance of the] benefits [that] are usual gratuities granted to the employees as a matter of company practice does not equate to his assent to SMI's retirement plan. For petitioner was a mere passive recipient of whatever benefits were given him. Nothing more may be implied therefrom. At any rate, the acquiescence by the employee to an early retirement plan cannot be lightly inferred from his acceptance of employment, or in this case, employment benefits. The acceptance must be unequivocal such that his consent specifically referred to the retirement plan. In early retirement programs, the offer of benefits must be certain while the acceptance to be retired should be absolute.

3. **ID.; ID.; EMPLOYMENT; ILLEGAL DISMISSAL; DAMAGES AWARDED; BACKWAGES WITH INTEREST, SEPARATION PAY IN LIEU OF REINSTATEMENT AND RETIREMENT BENEFITS UNDER ARTICLE 287 OF THE LABOR CODE.** — [H]aving terminated petitioner solely on the basis of a provision of a retirement plan which was not freely assented to by him, SMI is guilty of illegal dismissal. It is thus liable to pay petitioner backwages and to reinstate him without loss of seniority and other benefits. At this point, however, reinstatement is no longer possible since petitioner had already reached the mandatory retirement age of sixty-five (65) years. For this reason, we grant him separation pay in lieu of reinstatement. Hence, we modify the award of backwages in his favor, computed from the time of his illegal dismissal up to his compulsory retirement age of

sixty-five (65) years. These backwages shall be subject to six percent (6%) interest per annum from [the time of illegal dismissal] until full satisfaction. Petitioner must also receive the retirement benefits due him in accordance with Article 287of the Labor Code, as amended.

APPEARANCES OF COUNSEL

Velandrez & Associates for petitioner.
Law Firm of Rodeo J. Nuñez, Jr. for respondents.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This petition seeks to nullify the following dispositions of the Court of Appeals in CA-G.R. SP No. 146616:

1. Decision[1] dated July 13, 2018 affirming the ruling of the National Labor Relations Commission (NLRC) that petitioner was not illegally dismissed but had validly retired from service.

2. Resolution[2] dated March 6, 2019 denying petitioner's motion for reconsideration.

Antecedents

On September 30, 2014, petitioner Guido B. Pulong filed a complaint for illegal dismissal, non-payment of wages, 13th month pay, damages, and attorney's fees against herein respondents.

He essentially alleged that, in December 1978, respondent Super Manufacturing Inc., (SMI) hired him as a spot welder in

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[1] Penned by Associate Justice Eduardo B. Peralta, Jr. with Associate Justices Ricardo R. Rosario and Ronaldo Roberto B. Martin concurring, *Rollo*, pp. 257-268.

[2] *Rollo*, pp. 280-282.

its production plant in Quezon City.[3] In May 1998, he and other workers were granted their separation pay following the transfer of SMI's production plant to Calamba City, Laguna. On August 1, 1998, SMI re-employed him as a Senior Die Setter. He had since continued working for SMI.

On September 22, 2014, however, he was denied entry into SMI's production plant. SMI's Personnel Manager Ermilo Pico showed him a document stating he was compulsory retired since he had already turned sixty (60) years old. He refused to sign the retirement papers because he still wanted to work until sixty-five (65) years old. SMI, nevertheless, prevented him from returning work.[4]

For their part, respondents countered that petitioner was not illegally dismissed. Rather, he was compulsorily retired pursuant to the Memorandum of Agreement[5] (MOA) dated January 1, 2013 between SMI and its workers, purportedly represented by Safety/Liaison Officer Eduardo K. Abad, Painter II Glenn B. Bionat, and Rewinder I Julio D. Cruz, *viz*:

MEMORANDUM OF AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This Agreement executed by and between:

Super Manufacturing, Inc., Laguna Plant

x x x x x x x x x.

and

The Workers of Super Manufacturing, Inc., Laguna Plant located at Barangay Saimsim, Calamba City, Laguna.

x x x x x x x x x

III MISCELLANEOUS

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[3] *Id.* at 6.

[4] *Id.* at 144.

[5] *Id.* at 339-341.

5. Retirement pay – in accordance with law

5.1. Retirement Age – 60 years with at least 5 years of continuous service

5.2. Optional – 20 years of continuous service[6]

In his Reply and Rejoinder, petitioner argued that the MOA dated January 1, 2013 did not bind him for he was not a signatory therein. Abad, Bionat, and Cruz signed the MOA without authority to represent SMI's workers. As proof, petitioner submitted an Affidavit signed by thirteen (13) workers of SMI declaring they did not authorize Abad, Bionat, and Cruz to sign any contract in their behalf and they were not aware of the MOA; much less, the 60-year threshold for SMI workers.[7]

On the other hand, in their Reply and Rejoinder, respondents maintained that the MOA was validly entered into by SMI and the workers' representatives. Further, petitioner was estopped from claiming that the MOA did not bind him considering he had already availed of the benefits enumerated therein, *e.g.* uniform, Christmas gift, monetization of leave credits, and health card.[8]

Labor Arbiter's Ruling

Under Decision[9] dated June 10, 2015, Labor Arbiter Danna M. Castillon ruled that petitioner was illegally dismissed. Respondents failed to prove that the MOA dated January 1, 2013 was executed upon consultation with SMI's workers.[10] SMI failed to establish that Abad, Bionat, and Cruz were the authorized bargaining agents of its workers. The labor arbiter thus ruled:

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[6] *Id.* at 339-340.

[7] *Id.* at 258.

[8] *Id.* at 202.

[9] *Id.* at 116-122.

[10] *Id.* at 121.

WHEREFORE, premises considered, the complainant is declared illegally dismissed by the respondent Super Manufacturing Inc. Thus, it is ordered to reinstate complainant to his former position without loss of seniority rights and to pay his backwages in the amount of **₱125,815.03**.

Respondent is directed to report compliance on the reinstatement aspect of this decision within ten (10) days from receipt of this decision.

It is further ordered to pay ten percent (10%) attorney's fees.

SO ORDERED.[11]

The NLRC's Ruling

On appeal, the NLRC affirmed.[12] It found that respondents failed to prove that Abad, Bionat, and Cruz were either appointed or elected by their co-workers to sign the MOA in their behalf.

Respondents filed a Motion for Reconsideration submitting for the first time documentary proofs of petitioner and his co-workers' receipt of benefits provided under the MOA, *i.e.* uniform, Christmas gift (a sack of rice, t-shirt, calendar, and ₱250.00 cash gift), monetization of 2013 leave credits, and health cards.[13]

But the tides had turned under Resolution dated February 29, 2016.[14] The NLRC found that petitioner and his co-workers' acceptance of benefits under the MOA estopped them from assailing its validity, as well as the authority of Abad, Bionat, and Cruz to sign it. Instead of paying petitioner's money claims on ground of illegal dismissal, SMI was thus ordered to pay petitioner's retirement benefits, *viz*:

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[11] *Id.* at 258-259.

[12] Under Decision dated September 30, 2015, penned by Comm. Grace E. Maniquiz-Tan and concurred in by Comms. Dolores Peralta-Beley and Mercedes R. Posada-Lacap; *Rollo*, pp. 143-150.

[13] *Rollo*, p. 202.

[14] *Id.* at 201-207.

WHEREFORE, the motion for reconsideration of respondent Super Manufacturing Inc. is **GRANTED** and the 30 September 2015 Decision is **REVERSED AND SET ASIDE**. The complaint is **DISMISSED** for lack of merit. Nonetheless, respondent Super Manufacturing Inc. is **DIRECTED** to pay complainant's retirement pay in the amount of **₱211,200.00**.

SO ORDERED.[15]

Petitioner filed a motion for reconsideration but the NLRC denied with modification under Resolution dated April 29, 2016,[16] thus:

WHEREFORE, complainant's motion for reconsideration and respondents' *Motion to Recompute Retirement Pay* are **DENIED** for lack of merit. However, the 29 February 2016 Resolution is **MODIFIED** by increasing complainant's retirement pay from ₱211,200.00 to ₱216,000.00 pursuant to the clarified computation of retirement pay in *Elegir v. Philippine Airlines, Inc*. No motion for reconsideration of the same tenor shall be entertained.

SO ORDERED.[17]

Aggrieved, petitioner sought to nullify the NLRC dispositions via a petition for *certiorari* before the Court of Appeals.

The Court of Appeals' Ruling

Under Decision[18] dated July 13, 2018, the Court of Appeals affirmed. It upheld SMI's compulsory retirement under the MOA, finding it was signed by authorized representatives of SMI's workers. The appellate court ruled that the MOA was the covenant between SMI and its workers for there was neither union nor a CBA at that time of its execution.[19]

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[15] *Id.* at 206.

[16] *Id.* at 220-226.

[17] *Id.* at 226.

[18] *Id.* at 257-268.

[19] *Id.* at 265-266.

Petitioner moved for a reconsideration but the Court of Appeals denied the same through its Resolution dated March 6, 2019.[20]

The Present Petition

Petitioner now seeks affirmative relief from the Court. He maintains he was illegally dismissed when respondents retired him at the age of sixty (60) against his will.[21] He argues that he accepted the benefits given him under the belief they were gratuities from SMI.[22]

In their Comment,[23] respondents riposte that petitioner's enjoyment of the benefits under the MOA proves its binding force upon him thus, precluding him from assailing its validity.

Issue

Did the Court of Appeals err in upholding petitioner's compulsory retirement at the age of sixty (60) years under the MOA dated January 1, 2013?

Ruling

We grant the petition.

Article 287[24] of the Labor Code, as amended by Republic Act 7641 (RA No. 7641) otherwise known as the "New Retirement Pay Law"[25] governs the retirement of employees in the private sector, *viz*:

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[20] *Id.* at 280-282.

[21] *Id.* at 9.

[22] *Id.* at 23.

[23] *Id.* at 301-332.

[24] Pursuant to Department of Labor and Employment (DOLE) Advisory No. 1, Series of 2015, Renumbering of the Labor Code of the Philippines, As Amended, Art. 287 has been renumbered to Art. 302.

[25] Entitled "An Act Amending Article 287 of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines, by Providing for Retirement Pay to Qualified Private Sector Employees in the Absence of Any Retirement Plan in the Establishment."

Art. 287. Retirement. — **Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.**

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: provided, however, that an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided herein.

In the absence of a retirement plan or agreement plan providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty five (65) years which is hereby declared as the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (½) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

Unless the parties provide for broader inclusions, the term one-half (½) month salary shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves. xxx (emphasis supplied)

By its express language, the law permits employers and employees to fix the employee's retirement age. Absent such an agreement, the law fixes the age for compulsory retirement at sixty-five (65) years, while the minimum age for optional retirement is set at sixty (60) years.[26] Thus, retirement plans allowing employers to retire employees who have not yet reached the compulsory retirement age of sixty-five (65) years are not *per se* repugnant to the constitutional guaranty of security of tenure, *provided that the retirement benefits are not lower than those prescribed by law*[27] *and they have the* ***employee's consent***.[28]

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[26] *Manila Hotel Corp. v. De Leon*, G.R. No. 219774, July 23, 2018.

[27] *Laya, Jr. v. Philippine Veterans Bank*, G.R. No. 205813, January 10, 2018, 850 SCRA 315, 348.

[28] *Jaculbe v. Silliman University*, 547 Phil. 352, 359 (2007).

It is axiomatic, therefore, that a retirement plan giving the employer the option to retire its employees below the ages provided by law must be assented to by the latter, otherwise, its adhesive imposition will amount to a deprivation of property without due process.[29]

In the recent case of ***Laya, Jr. v. Philippine Veterans Bank***,[30] we emphasized the character of the employee's consent to the employer's early retirement policy: it must be explicit, voluntary, free, and uncompelled. Unfortunately, this is not the case here. In fact, petitioner was not at all shown to have voluntarily acquiesced to SMI's compulsory retirement age of sixty (60).[31]

Petitioner did not give his consent to the MOA dated January 1, 2013

It is incumbent upon SMI to prove that Abad, Bionat, and Cruz were the duly authorized bargaining representatives of SMI's workers for purposes of signing the MOA. This, SMI failed to do. For it merely asserts that Abad and Bionat were among the representatives of SMI's workers in the previous MOAs of SMI and the employees, *viz*:

1) MOA dated January 1, 2004 was signed by **Abad** together with one Servando Alvarico;[32]

2) MOA dated January 1, 2008 was signed by **Abad** with a certain Edgar S. De Leon and Nilo C. Charlon;[33] and

3) MOA dated January 1, 2009 was signed by **Bionat** together with Edgar S. De Leon and one Ronaldo L. Nacion signed.[34]

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[29] *Cercado v. UNIPROM, Inc.*, 647 Phil. 603, 611 (2010).

[30] G.R. No. 205813, January 10, 2018, 850 SCRA 315, 341-342; citing *Cercado v. UNIPROM, Inc.*, 647 Phil. 603 (2010).

[31] *Supra* note 29.

[32] *Rollo*, p. 295.

[33] *Id.* at 296.

[34] *Id.* at 297.

This is *non-sequitur*. Even assuming that one (1) of the three (3) signatories to the MOA dated January 1, 2013 had, on different periods, validly represented SMI's workers, SMI still had to establish that all three (3) signatories, Abad, Bionat, and Cruz, were authorized by SMI's workers to represent them in the subsequent negotiations and execution of the MOA dated January 1, 2013. But this, SMI failed to do.

SMI has not shown any proof that Abad, Bionat, and Cruz were authorized to represent SMI's workers to sign the January 1, 2013 MOA in their behalf. It did not even disclose under what capacity or authority they could have represented SMI's workers, including herein petitioner.[35] In fact, by Decision dated September 30, 2015, the NLRC found that SMI failed to submit any evidence showing that Abad, Bionat, and Cruz were either appointed or elected by their co-workers to represent them in negotiations with SMI.[36] Evidently, the January 1, 2013 MOA is not the "covenant" between SMI and its workers. For Abad, Bionat, and Cruz were not proven to have been chosen by SMI's workers as their true collective bargaining representative. The MOA dated January 1, 2013, therefore, does not govern the employment terms and conditions of SMI's workers, let alone, petitioner's "retirement".

Retirement is the result of a bilateral act of the parties, a **voluntary agreement** between the employer and the employee whereby the latter, after reaching a certain age, agrees to sever his or her employment with the former.[37] In *Cercado v. Uniprom, Inc.*,[38] we held that an early retirement plan must be voluntarily assented to by the employees, thus:

Acceptance by the employees of an early retirement age option must be explicit, voluntary, free, and uncompelled. **While an employer**

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[35] *Id.* at 147.

[36] *Id.* at 146.

[37] See *Cercado v. UNIPROM, Inc.*, 647 Phil. 603, 608 (2010); and *Banco De Oro Unibank, Inc. v. Sagaysay*, 769 Phil. 897, 906 (2015).

[38] *Supra* note 29.

may unilaterally retire an employee earlier than the legally permissible ages under the Labor Code this prerogative must be exercised pursuant to a mutually instituted early retirement plan. In other words, only the implementation and execution of the option may be unilateral, but not the adoption and institution of the retirement plan containing such option. **For the option to be valid, the retirement plan containing it must be voluntarily assented to by the employees or at least by a majority of them through a bargaining representative.** (emphasis supplied).

As stated, the MOA here was not assented to by petitioner and his co workers. It was not executed after consultations and negotiations with the employees' authorized bargaining representative. The MOA, therefore, does not bind petitioner; much less, its provisions on compulsory retirement at age sixty (60). For it was not a result of any bilateral act; instead, it was a unilateral imposition of SMI upon petitioner.

Petitioner is not estopped from assailing the validity of the MOA

To force upon petitioner the binding effect of the MOA's retirement provisions, respondents argue that petitioner's receipt of the benefits provided therein estops him from questioning their validity.

We disagree.

The benefits which petitioner received under the January 1, 2013 MOA are, as follows:

1. Uniform: Wagner T-shirts – six (6) pcs. for June and six (6) pcs. for December;
2. Christmas Gift: one (1) sack of rice, one (1) calendar, one (1) Wagner T-shirt and ₱250.00 cash;
3. Monetization of 2013 Leave Credits: January to June – ₱3,289.46 July to December – ₱3,600.69; and
4. Health Card: ValuCare (semi-private with dental) – ₱72,062.00.[39]

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[39] *Rollo,* pp. 298-305.

These benefits are the usual gratuities granted to the employees as a matter of company practice. Petitioner's acceptance of these benefits does not equate to his assent to SMI's retirement plan. For petitioner was a mere passive recipient of whatever benefits were given him. Nothing more may be implied therefrom.

At any rate, the acquiescence by the employee to an early retirement plan cannot be lightly inferred from his acceptance of employment, or in this case, employment benefits.[40] The acceptance must be unequivocal such that his consent specifically referred to the retirement plan.[41] In early retirement programs, the offer of benefits must be certain while the acceptance to be retired should be absolute.[42]

It would be absurd, therefore, to equate petitioner's receipt of employment benefits as his acquiescence to SMI's retirement plan.

All told, an employee who did not expressly agree to an early retirement plan cannot be retired from service before he reaches the age of sixty-five (65) years. Even implied knowledge, regardless of duration, cannot equate to the voluntary acceptance required by law in granting an early retirement age option.[43] The law demands more than a passive acquiescence on the part of the employee, considering that his early retirement age option involves conceding the constitutional right to security of tenure.[44] We defer to Senior Associate Justice Antonio T. Carpio's separate concurring opinion in *Laya, Jr. v. Philippine Veterans Bank*:[45] **any waiver of a constitutional right must be clear, categorical, knowing, and intelligent,** thus:

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[40] *Supra* note 27.

[41] *Supra* note 29.

[42] *Robina Farms Cebu v. Villa*, 784 Phil. 636, 650 (2016).

[43] *Supra* note 29.

[44] *Supra* note 26.

[45] *Supra* note 27; citing *Cercado v. UNIPROM, Inc.*, 647 Phil. 603 (2010).

Section 3, Article XIII of the 1987 Constitution provides that an employee **"shall be entitled to security of tenure."** Thus, the right to security of tenure is a **constitutional right** of an employee.

This Court has explained that "[s]ecurity of tenure is a right of paramount value. Precisely, it is given specific recognition and guarantee by the Constitution no less. The State shall afford protection to labor and 'shall assure the rights of workers to x x x security of tenure." This Court has explained further: "It stands to reason that a right so highly ranked as security of tenure should not lightly be denied on so nebulous a basis as mere speculation."

The well-recognized rule is that any waiver of a **constitutional right** must be **clear, categorical, knowing, and intelligent.** Thus, in a long line of cases, this Court has ruled: "The relinquishment of a constitutional right has to be laid out convincingly. **Such waiver must be clear, categorical, knowing, and intelligent**."

x x x x x x x x x

There is no showing here that petitioner has an actual intention to waive his constitutional right to security of tenure. **Such intention to waive a fundamental constitutional right cannot be presumed but must be actually shown and established.** The bar against any implied waiver is very high because this Court "indulges [in] every reasonable presumption against any waiver of fundamental constitutional rights." xxx. (emphases in the original)

Verily, having terminated petitioner solely on the basis of a provision of a retirement plan which was not freely assented to by him; SMI is guilty of illegal dismissa1.[46] It is thus liable to pay petitioner backwages and to reinstate him without loss of seniority and other benefits. At this point, however, reinstatement is no longer possible since petitioner had already reached the mandatory retirement age of sixty-five (65) years. For this reason, we grant him separation pay in lieu of reinstatement.[47]

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[46] *Supra* note 28.

[47] *Supra* note 27 and 28.

Hence, we modify the award of backwages in his favor, computed from the time of his illegal dismissal on September 20, 2014 up to his compulsory retirement age of sixty-five (65) years. These backwages shall be subject to six percent (6%) interest per annum from September 20, 2014 until full satisfaction.[48] Petitioner must also receive the retirement benefits due him in accordance with Article 287[49] of the Labor Code, as amended.[50] Finally, the Court drops Engr. Eduardo Dy and Ermilo Pico as party-respondents in this case for petitioner's failure to allege any fact which would make them solidarily liable with respondent SMI.[51]

ACCORDINGLY, the petition is **GRANTED**. The Decision dated July 13, 2018 and Resolution dated March 6, 2019 of the Court of Appeals in CA-G.R. SP No. 146616 are **REVERSED** and **SET ASIDE**. The Decision of the Labor Arbiter dated June 10, 2015 in NLRC CASE NO. RAB-IV-09-01488-14-L is **REINSTATED** with **MODIFICATION**. Respondent Super Manufacturing, Inc. is **ORDERED** to **PAY** petitioner Guido B. Pulong the following:

1. Backwages computed from September 20, 2014, the time of his illegal dismissal, until his compulsory age of retirement, plus six percent (6%) interest per annum from September 20,2014 until fully paid;

2. Separation pay equivalent to one (1) month salary for every year of service until his compulsory age of retirement;

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[48] G.R. No. 225433, August 28, 2019.

[49] Pursuant to Department of Labor and Employment (DOLE) Advisory No. 1, Series of 2015, Renumbering of the Labor Code of the Philippines, As Amended, Art. 287 has been renumbered to Art. 302.

[50] *Fernandez, Jr. v. Manila Electric Co.*, G.R. No. 226002, June 25, 2018.

[51] *Barroga v. Quezon Colleges of the North*, G.R. No. 235572, December 5, 2018.

3. Retirement benefits equivalent to ½ month salary for every year of service, the ½ month being computed at 22.5 days pursuant to Article 287[52] of the Labor Code, as amended;[53]

4. Ten percent (10%) Attorney's Fees; and

5. Legal interest of six percent (6%) interest per annum for (2), (3), and (4) from the finality of this Decision until fully paid.

The Court **DIRECTS** that any amount which petitioner received from respondent Super Manufacturing, Inc. by virtue of his illegal retirement shall be deducted from the amounts awarded him.

The Court **DIRECTS** the National Labor Relations Commission to facilitate the computation and payment of the total monetary benefits and awards due to the petitioner in accordance with this Decision.

SO ORDERED.

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

Reyes, J. Jr., J., on leave.

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[52] Pursuant to Department of Labor and Employment (DOLE) Advisory No. 1, Series of 2015, Renumbering of the Labor Code of the Philippines, As Amended, Art. 287 has been renumbered to Art. 302.

[53] One-half (½) month salary means 22.5 days: 15 days plus 2.5 days representing one-twelfth (1/12) of the 13th month pay and the remaining 5 days for service incentive leave; see *Elegir v. Philippine Airlines, Inc.*, 691 Phil. 58, 73 (2012).

SECOND DIVISION

[G.R. No. 248639. October 14, 2019]

ROY HUNNOB and SALVADOR GALEON, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

REMEDIAL LAW; COURTS; JURISDICTION; PD 1606 CREATING THE SANDIGANBAYAN PROVIDES THAT THE SANDIGANBAYAN SHALL EXERCISE EXCLUSIVE APPELLATE JURISDICTION OVER FINAL JUDGMENTS, RESOLUTIONS OR ORDERS OF REGIONAL TRIAL COURTS IN CASES INVOLVING VIOLATIONS OF THE ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA NO. 3019). — The Court of Appeals does not have appellate jurisdiction over appeals from final judgments, resolutions or orders of regional trial courts pertaining to violations of RA 3019. The assailed rulings should therefore, be vacated and the case, remanded to the court of origin for referral to the proper forum – the *Sandiganbayan*. Section 4 of Presidential Decree (PD) 1606 provides: Jurisdiction. – The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving; a. **Violations of Republic Act No. 3019**, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense: xxx *Provided*, xxx In cases where none of the accused are occupying positions corresponding to Salary Grade "27" or higher, as prescribe in the said Republic Act No. 6758, or military and PNP officers mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional trial court, metropolitan trial court, municipal trial court, and the municipal circuit trial court, as the case may be, pursuant to their respective jurisdictions as provided in Batas Pamabansa Blg. 129, as amended. The *Sandiganbayan* shall **exercise exclusive appellate jurisdiction over final judgments, resolutions or orders of**

regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided.

APPEARANCES OF COUNSEL

Gacayan Agmata & Associates Law Offices for petitioners.
Office of the Solicitor General for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This Petition for Review on *Certiorari* assails the following issuances of the Court of Appeals in CA-G.R. CR No. 40245 entitled "*People of the Philippines v. Roy Hunnob and Salvador Galeon:*"

1) Decision[1] dated November 22, 2018, affirming petitioners' conviction for violation of Section 3(e)[2] of RA 3019;[3] and

2) Resolution[4] dated July 4, 2019, denying petitioners' motion for reconsideration.

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[1] Penned by Associate Justice Mariflor Punzalan Castillo with the concurrence of Associate Justices Danton Q. Bueser and Pablito A. Perez, all members of the Seventh Division, *Rollo*, pp. 117-132.

[2] 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:

x x x x x x x x x

(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.

[3] Anti-Graft and Corrupt Practices Act.

[4] *Rollo*, pp. 143-144.

The Antecedents

The Charge

Petitioners Roy Hunnob and Salvador Galeon, barangay captain and barangay treasurer, respectively, of Barangay Dulao, Lagawe, Ifugao were indicted for violation of Section 3 (e) of Republic Act No. 3019 (RA 3019), *viz*:

> That on or about the 30th day of July 2007 at Dulao, Lagawe, Ifugao and within the jurisdiction of this Honorable Court, the above-named accused being then barangay officials as above-mentioned, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously cause undue injury to the government and give a private party unwarranted benefits, advantage or preference in the discharge of their official administrative functions through manifest partiality and evident bad faith by facilitating and causing the payment to CAROLINE B. HUNNOB accused ROY HUNNOB'S sister, the amount of Sixty Seven Thousand Two Hundred (₱67,200.00) Pesos for the fictitious delivery of a 25 horsepower speedboat.
>
> CONTRARY TO LAW.[5]

The case was raffled to the Regional Trial Court-Branch 14, Lagawe, Ifugao.

Only petitioner Roy Hunnob got arrested. Petitioner Salvador Galeon was then at large.[6] Trial ensued as against Roy Hunnob.

Proceedings before the Trial Court

Prosecution's Evidence

One of the complainants, Edwin Dulnuan, testified: in 2007, he was a barangay *kagawad* of Barangay Dulao. The barangay received from the Provincial Government of Ifugao a grant of ₱70,000.00 for the purchase of Johnson 25-HP motor engine for speed boat. Roy Hunnob, then the barangay captain, kept the grant a secret from the other barangay officials. He learned

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[5] *Id*. at 68.

[6] *Id*. at 69.

from the barangay treasurer and the vice-governor's men about the grant only on October 25, 2007.[7]

Instead of buying a Johnson 25-HP motor engine, what Roy Hunnob bought was an old Evinrude 25-HP motor engine. Roy Hunnob bought it from his sister, Caroline Hunnob, for ₱67,200.00. He did not sign the documents, such as the invitation to apply for eligibility to bid, minutes of the Barangay Bids and Awards Committee (BBAC), purchase request, local canvass, inspection and acceptance report, disbursement voucher, among others. Later on, the Commission on Audit (COA) disallowed the purchase and the ₱67,200.00 was returned to the barangay's coffers.[8]

COA State Auditor III Juanita Bautista stated: she had in her possession the original documents pertaining to the purchase of the motor engine for the speed boat. When the purchase was disallowed, it was Caroline Hunnob, Roy Hunnob's sister, who returned the amount. Insofar as her office was concerned, the problem had already been resolved.[9]

Barangay *kagawad* Peter Maugao confirmed that Roy Hunnob purchased a motor engine different from what the grant was intended for.[10]

Barangay health worker Mercy Bahiwag denied ever signing the documents which led to the procurement of the wrong motor engine. She was never elected as a barangay *kagawad* nor was she ever a member of Barangay Dulao's BBAC.[11]

Petitioners' Evidence

Roy Hunnob testified: during his term as barangay captain, from 2005 to 2010, the BBAC was formed and it was Ricardo

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[7] *Id*. at 70.

[8] *Id*.

[9] *Id*. at 70-71.

[10] *Id*. at 71.

[11] *Id*.

Gatic who led it. He was not a member of the BBAC and never interfered with its proceedings. He never falsified the signatures of Edwin Dulnuan, Peter Maugao, and Mercy Bahiwag. Their signatures were already on the procurement papers when the same were presented for his signature. He never conspired with Salvador Galeon to declare his sister Caroline Hunnob as the sole eligible supplier for the motor engine.[12]

A few days after Roy Hunnob testified, petitioner Salvador Galeon got arrested. On arraignment, he pleaded not guilty. The prosecution called to the witness stand Edwin Dulnuan, Peter Maugao, Mercy Bahiwag and state auditor Juanita Bautista. The prosecution and the defense both manifested they were adopting the previous testimonies of said witnesses.[13]

Salvador Galeon testified: he was the barangay treasurer of Barangay Dulao in 2007. He did not participate in the procurement process of the motor engine. Nor did he conspire with Roy Hunnob in giving unwarranted benefits and advantage to Caroline Hunnob. He was the one who prepared the check for ₱67,200.00 for Caroline Hunnob but he was not aware of the delivery of the wrong motor engine. His only participation in the transaction was the issuance of the check.[14]

Elmer Bahiwag confirmed that he was a member of the Barangay Council of Dulao from 2004 to 2007. He was also a member of the BBAC. On June 12, 2007 and July 13, 2007, the BBAC held meetings to discuss the purchase of the motor engine. His fellow barangay officials, namely Ricardo Gatic, Toribio Naupoc, Peter Maugao, and Edwin Dulnuan attended the meetings. Both petitioners were not present during the meetings. He was not aware as to what happened to the purchased motor engine because he was no longer in office at the time.[15]

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[12] *Id*. at 72.

[13] *Id*. at 73.

[14] *Id*. at 73-74.

[15] *Id*. at 74.

The Trial Court's Ruling

By Decision[16] dated March 2, 2017, the trial court found both petitioners guilty of violating Section 3(e) of RA 3019. Caroline Hunnob should have been automatically disqualified from bidding because she was petitioner Roy Hunnob's sister. A relative within the third civil degree of the head of the procuring entity is automatically disqualified from participating in a bid, per Republic Act No. 9184 (RA 9184)[17] and its implementing rules. When petitioners resorted to Shopping, an alternative procurement mode, the requirement that there should be three (3) price quotations from bona fide suppliers were not complied with. Instead, only one (1) canvass result was floated and it came from Caroline Hunnob. Petitioners' conspiracy was duly proven by their signatures on all the documents pertaining to the award, purchase, delivery, acceptance, and payment of the motor engine. The trial court directed:

> WHEREFORE, judgment is hereby rendered finding accused Roy Hunnob and Salvador Galeon guilty of the crime of Violation of Section 3(e) of Republic Act 3019 and are hereby sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to nine (9) years and eight (8) months, as maximum, with perpetual disqualification from holding public office.
>
> SO ORDERED.[18]

Proceedings Before the Court of Appeals

On appeal, petitioners faulted the trial court for rendering a verdict of conviction. They argued that the fact alone that it was Roy Hunnob's sister who supplied the motor engine does not suffice to hold them liable for violation of Section 3(e) of RA 3019. There were no other suppliers and the barangay would have been deprived of the chance to own a motor engine if not for Caroline Hunnob. They were not educated enough to

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[16] Penned by Judge Romeo U. Habbiling, *Rollo*, pp. 69-79.

[17] Government Procurement Reform Act.

[18] *Rollo*, p. 79.

know the law. A mistake involving a difficult question of law may be the basis of good faith and excuses a person from liability. Besides, the amount paid to Caroline Hunnob had already been returned to the barangay's coffers, thus, there is no injury to speak of.[19]

On the other hand, the Office of the Solicitor General (OSG), through Assistant Solicitor General Magtanggol Castro and State Solicitor Dino Robert De Leon, submitted that petitioners' failure to comply with the requirements of alternative mode of procurement amounted to evident bad faith. The manifest partiality in favor of Caroline Hunnob was evident as only one (1) canvass was sent out. Lastly, restitution of the amount is not a mode of extinguishing criminal liability.[20]

The Ruling of the Court of Appeals

By its assailed Decision dated November 22, 2018, the Court of Appeals affirmed, *viz*:

> WHEREFORE, premises considered, the instant appeal is **DENIED**. The Decision of the Regional Trial Court of Lagawe, Ifugao, Branch 14, dated 2 March 2017 in Criminal Case No. 1835, is **AFFIRMED**.
>
> SO ORDERED.[21]

Petitioners moved for reconsideration,[22] which the Court of Appeals denied through its assailed Resolution dated July 4, 2019.

The Present Petition

Petitioners now invoke good faith anew to support their continuous pleas for acquittal. They assert that their only intention here was to acquire the needed motor engine for the barangay

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[19] *Id*. at 124-125.

[20] *Id*. at 125.

[21] *Id*. at 131-132.

[22] *Id*. at 133-140.

and it turned out that Caroline Hunnob was the only available supplier therefor.

Threshold Issue

Did the Court of Appeals has jurisdiction to review the trial court's verdict of conviction for violation of Section 3(b) of RA 3019?

Ruling

The Court of Appeals does not have appellate jurisdiction over appeals from final judgments, resolutions or orders of regional trial courts pertaining to violations of RA 3019. The assailed rulings should, therefore, be vacated and the case, remanded to the court of origin for referral to the proper forum — the *Sandiganbayan*.

Section 4 of Presidential Decree (PD) 1606[23] provides:

Jurisdiction. — The *Sandiganbayan* shall exercise exclusive original jurisdiction in all cases involving:

a. **Violations of Republic Act No. 3019**, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

x x x x x x x x x

Provided.

x x x x x x x x x

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[23] REVISING PRESIDENTIAL DECREE NO. 1486 CREATING A SPECIAL COURT TO BE KNOWN AS "SANDIGANBAYAN" AND FOR OTHER PURPOSES, As amended by RA 10660: AN ACT STRENGTHENING FURTHER THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE SANDIGANBAYAN, FURTHER AMENDING PRESIDENTIAL DECREE NO. 1606, AS AMENDED, AND APPROPRIATING FUNDS THEREFOR.

In cases where none of the accused are occupying positions corresponding to Salary Grade "27" or higher, as prescribe in the said Republic Act No. 6758, or military and PNP officers mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional trial court, metropolitan trial court, municipal trial court, and municipal circuit trial court, as the case may be, pursuant to their respective jurisdictions as provided in Batas Pambansa Blg. 129, as amended.

The *Sandiganbayan* shall **exercise exclusive appellate jurisdiction over final judgments, resolutions or orders of regional trial courts** whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided. (Emphases supplied).

Here, petitioners Roy Hunnob and Salvador Galeon were barangay captain and barangay treasurer, respectively. Per Executive Order No. 332, Series of 1996,[24] the Department of Budget and Management (DBM), as administrator of the unified Position Classification and Compensation System, was directed to issue rules and regulations relative to position classification and compensation of barangay personnel. Under DBM Local Budget Circular No. 63[25] dated October 22, 1996, a *punong* barangay (barangay captain) shall not receive honorarium exceeding Salary Grade 14, while other barangay officials, including the barangay treasurer, shall not receive honorarium exceeding Salary Grade 10. Verily, their positions corresponded to Salary Grades below 27. For acts committed in relation to their offices, they were charged with violation of Section 3(e) of RA 3019. The offense carries a penalty of more than six (6) years, thus, placing it within the original jurisdiction of the Regional Trial Court.[26]

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[24] INTEGRATING THE BARANGAY GOVERNMENTS INTO THE REVISED POSITION CLASSIFICATION AND COMPENSATION SYSTEM IN THE GOVERNMENT.

[25] See https://www.dbm.gov.ph/wp-content/uploads/2012/03/LBC-63.pdf (Last accessed: October 11, 2019).

[26] 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

By Decision dated March 2, 2017, the trial court found both petitioners guilty of violating Section 3(e) of RA 3019 and sentenced them to an indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to nine (9) years and eight (8) months, as maximum, with perpetual disqualification from holding public office.

Aggrieved, petitioners sought relief from the verdict of conviction. Under Section 4 of PD 1606, it is the *Sandiganbayan* which has **exclusive** appellate jurisdiction over petitioners' appeal. The case records, however, were erroneously transmitted to the Court of Appeals. The subsequent Decision dated November 22, 2018 and Resolution dated July 4, 2019 of the Court of Appeals were therefore rendered without jurisdiction, hence, void.

Petitioners are not responsible for the error in transmitting the case. For such duty rests on the shoulders of the clerk of court. Rule 122, Section 8 of the Rules of Court commands:

> **Section 8.** *Transmission of papers to appellate court upon appeal.* — Within five (5) days from the filing of the notice of appeal, **the clerk of the court with whom the notice of appeal was filed must transmit to the clerk of court of the appellate court the complete record of the case**, together with said notice. The original and three copies of the transcript of stenographic notes, together with the records, shall also be transmitted to the clerk of the appellate court without undue delay. The other copy of the transcript shall remain in the lower court. (emphasis added)

Thus, petitioners should not be prejudiced by the clerk of court's mistake.

Similarly, in ***Dizon v. People***,[27] the Court ruled that petitioner's appeal from his conviction for the crime of Malversation of

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not less than one year nor more than ten 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.

[27] G.R. No. 227577, January 24, 2018 [Per PERLAS-BERNABE, *J.*, SECOND DIVISION].

Public Funds through Falsification of Public Documents in the trial court fell within the exclusive appellate jurisdiction of the *Sandiganbayan*, but the appeal was erroneously taken to the Court of Appeals. Thus, the Court set the Court of Appeals' dispositions aside and remanded the case to the RTC for transmission of the case records to the *Sandiganbayan*.

Indeed, petitioners here should not be prejudiced by the shortcoming or fault caused by the clerk of court concerned. For what is at stake is no less than the life and liberty of the accused. Hence, on the strength of *Dizon* and in the higher interest of substantial justice, the Court is constrained to order the dispositions of the Court of Appeals vacated and the case remanded to the trial court for transmission of the records to the *Sandiganbayan*.

ACCORDINGLY, the Decision dated November 22, 2018 and Resolution dated July 4, 2019 of the Court of Appeals in CA-G.R. No. 40245 are **VACATED**. The Court of Appeals is directed to immediately **REMAND** the case records to the Regional Trial Court, Branch 14, Lagawe, Ifugao which shall transmit the same to the *Sandiganbayan*, with utmost dispatch.

SO ORDERED.

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

Reyes, J. Jr., J., on leave.

EN BANC

Presidential Electoral Tribunal

[P.E.T. Case No. 005. October 15, 2019]

FERDINAND "BONGBONG" R. MARCOS, JR., *protestant, vs.* **MARIA LEONOR "LENI DAANG MATUWID" G. ROBREDO,** *protestee.*

SYLLABUS

1. POLITICAL LAW; ELECTION CASE; ELECTION PROTEST CHALLENGING THE PROCLAMATION OF INCUMBENT VICE PRESIDENT IN THE MAY 6, 2016 ELECTIONS; PET CASE NO. 5 IS THE FIRST AND ONLY ELECTION PROTEST BEFORE THE TRIBUNAL IN WHICH THE RECOUNT AND REVISION PROCESS OF THE PILOT PROVINCES WERE SUCCESSFULLY CONCLUDED AND THE PROTEST ITSELF RESOLVED ON THE MERITS; THIS RESOLUTION IS DESIGNED TO HEAR THE PARTIES FULLY ON THE VARIOUS LEGAL ISSUES RELATING TO THEIR CONTROVERSY. — Protestant Ferdinand "Bongbong" R. Marcos, Jr. (protestant) is before the Presidential Electoral Tribunal (Tribunal) challenging the election and proclamation of incumbent Vice President Maria Leonor "Leni Daang Matuwid" G. Robredo (protestee) in the May 9, 2016 National and Local Elections. The vice presidential elections in the 2016 National and Local Elections turned out to be a close contest between protestant and protestee. Protestee garnered 14,418,817 votes while protestant came at a close second with 14,155,344 votes. Protestee won by a slim margin of only of 263,473 votes. After the canvassing of results, Congress, sitting as the National Board of Canvassers (NBOC), proclaimed protestee as the duly-elected Vice President of the Republic of the Philippines on May 30, 2016. P.E.T. Case No. 005 is the first and only election protest before the Tribunal in which the recount and revision process of the pilot provinces were successfully concluded and the protest itself resolved on the merits. x x x Judicial notice may be taken that the protest in this case has been the subject of much attention and speculation in the public arena. Even

the Tribunal has not been immune from public vitriol and malicious imputations. The controversy over the results of the 2016 vice presidential elections has caused more social discord than the results of the presidential elections. Over and over again, questions about the accuracy and reliability of the Automated Election System (AES) during the 2016 National and Local Elections were propounded. Protestant and protestee have exchanged countless pleadings, motions, manifestations, and letters before the Tribunal. Each party has made allegations of the commission of electoral frauds irregularities, and anomalies against the other. As well, the parties and their counsels have publicly traded barbs and accusations in the media regarding the protest, despite the Tribunal's warning on violation of the *sub judice* rule. With this Resolution and the Memoranda required of both parties, the Tribunal will chart a way forward after the initial revision and recount, affording the parties the fullest opportunity to make their case consistent with due process of law. This Resolution does not yet resolve the entire case but is merely preliminary and interlocutory in nature. It is designed to hear the parties fully on the various legal issues relating to their controversy. It is not a finding for or against the protestant or the protestee.

2. ID.; ID.; ID.; IN A RESOLUTION, THE TRIBUNAL ISSUED A PRECAUTIONARY PROTECTION ORDER OVER 92,509 CLUSTERED PRECINCTS COVERED BY THE PROTEST. — In a Resolution dated July 12, 2016, the Tribunal issued a Precautionary Protection Order over the 92,509 clustered precincts covered by the Protest. The COMELEC, its agents, representatives, and persons acting in its place, including city/municipal treasurers, election officers, and responsible personnel and custodians, were directed to preserve and safeguard the integrity of all the ballot boxes and their contents, as well as other election documents and paraphernalia in all 92,509 clustered precincts. Finding the Protest to be sufficient in form and in substance, the Tribunal issued Summons to protestee, directing her to file an Answer to the Protest.

3. ID.; ID.; ID.; IN ITS RESOLUTION, THE TRIBUNAL GRANTED THE COMELEC AUTHORITY TO CONDUCT THE STRIPPING AND CLOSURE ACTIVITIES. — The COMELEC informed the Tribunal that they had conducted closure activities over the Broadband Global Area Network (BGAN) Antennas prior

to the issuance of the Precautionary Protection Order. The COMELEC sought authority to conduct closure/stripping activities wherein each Vote Counting Machines (VCM) kit would be opened and tested so that the equipment can be turned over to Smartmatic-TIM, Inc. (Smartmatic), while the consumables, such as SD cards, i-Buttons, thermal paper, and marking pens, which are considered as sold items, shall be turned over to the COMELEC. The Consolidation and Canvass System (CCS) kits, the contents of which are already owned by the COMELEC, would likewise undergo closure/stripping activities. More important, the COMELEC manifested that, in its AES Contract dated August 27, 2015 with Smartmatic, all equipment in the possession of the COMELEC as of December 1, 2016 because of any election contest or audit requirement would be considered sold to the COMELEC pursuant to its option to purchase, and the COMELEC would pay the corresponding price, without prejudice to the COMELEC requiring the protestant to shoulder such costs. Also, the lease contract for the COMELEC's warehouse in Sta. Rosa, Laguna, where the AES equipment were then stored, would be expiring in November 2016. x x x In its Resolution dated November 8, 2016, the Tribunal granted the COMELEC authority to conduct the stripping and closure activities. As guaranteed by the COMELEC, the closure and stripping activities involved only the physical dismantling of the election paraphernalia so that their removable components may be tested, properly accounted for, and those components not purchased by the COMELEC may be completely turned over to Smartmatic. This was also to ensure that the election results data would not be affected by the intended closure and stripping activities. The Tribunal also held that the COMELEC was contractually obligated to return the goods covered by the AES Contract to Smartmatic by December 1, 2016; otherwise, any goods in its possession as of December 1, 2016 would be considered sold to it at the cost of ₱2,017,563,198.44, or a portion thereof. In the same Resolution, the Tribunal allowed the parties to send their representatives to observe the stripping and closure activities.

4. ID.; ID.; ID.; 2010 PRESIDENTIAL ELECTION TRIBUNAL (PET) RULES ON PAYMENT OF THE PROTEST AND COUNTER-PROTEST FEE; IN ITS RESOLUTION, THE TRIBUNAL DEFERRED THE PAYMENT OF THE SECOND INSTALLMENT FOR THE COUNTER-

PROTEST ONLY AFTER THE INITIAL DETERMINATION OF SUBSTANTIAL RECOVERY IN PROTESTANT'S DESIGNATED THREE (3) PILOT PROVINCES PURSUANT TO RULE 65 OF THE 2010 PET RULES. — Rule 33 of the 2010 PET Rules provides that if a protest or counter-protest requires the bringing of ballot boxes and election documents or paraphernalia, a cash deposit must be made with the Tribunal in the amount of ₱500.00 for each of the precincts involved. If the amount of the deposit does not exceed ₱200,000.00, the same shall be paid in full within ten (10) days from the filing of the protest or counter-protest. However, if the deposit exceeds ₱200,000.00, the same shall be paid in such installments as may be required by the Tribunal. x x x On July 13, 2017, protestee filed a motion praying that the payment of the second installment be deferred, to which protestant raised no objection. Thus, in the Resolution dated August 8, 2017, the Tribunal deferred the payment of the second installment for the Counter-Protest only after the initial determination of substantial recovery in protestant's designated three (3) pilot provinces pursuant to Rule 65 of the 2010 PET Rules.

5. ID.; ID.; ID.; IN ITS RESOLUTION, THE TRIBUNAL APPOINTED A PANEL OF HEARING COMMISSIONERS. — In its Resolution dated June 6, 2017, the Tribunal constituted a panel of three (3) Commissioners to aid the Tribunal in the disposition of the Protest and Counter-Protest and to act in behalf of, and under the control and supervision of, the Tribunal. The Tribunal granted the Commissioners such powers as may be inherent, necessary, or incidental to the panel's duty to aid the Tribunal in the disposition of the case.

6. ID.; ID.; ID.; IN ITS RESOLUTION, THE TRIBUNAL SCHEDULED A PRELIMINARY CONFERENCE; PURPOSE OF CONDUCTING A PRELIMINARY CONFERENCE. — [As per the Tribunal's Resolution,] the preliminary conference was [scheduled and] conducted on July 11, 2017. x x x The purposes of conducting a preliminary conference are: (1) to obtain stipulations or admissions of facts and documents to avoid unnecessary proof; (2) to simplify the issues; (3) to limit the number of witnesses; (4) to consider the most expeditious manner of the retrieval of ballot boxes containing the ballots, election returns, certificates of canvass, and other election documents involved in the election protest; and (5) to consider such other

matters that may aid in the prompt disposition of the election protest.

7. ID.; ID.; ID.; IN A RESOLUTION, THE TRIBUNAL DISMISSED THE FIRST CAUSE OF ACTION (ANNULMENT OF PROCLAMATION) OF THE PROTEST RENDERING IT MEANINGLESS AS THE PROTESTANT DID NOT INTEND TO CONDUCT A MANUAL RECOUNT OF THE BALLOTS IN ALL CLUSTERED PRECINCTS THAT FUNCTIONED DURING THE 2016 ELECTIONS. — In the Resolution dated August 29, 2017, the Tribunal dismissed the First Cause of Action of the Protest. The Tribunal found protestant's prayer to annul protestee's proclamation as Vice President meaningless and pointless considering that protestant did not intend to conduct a manual recount of the ballots in all clustered precincts that functioned during the 2016 National and Local Elections. The Tribunal explained that even if protestant succeeds in proving his first cause of action, this would not mean that he has already won the position for Vice President as this could only be determined by a manual recount of all votes in all precincts. Since protestant had clearly stated that he was not praying for such relief, to allow the First Cause of Action to continue would be an exercise in futility and would have no practical effect. ***Thus, the First Cause of Action was dispensed with for judicial economy and for the prompt disposition of the case***.

8. ID.; ID.; ID.; IN DETERMINING THE SUFFICIENCY OF THE ALLEGATIONS OF AN ELECTION PROTEST, WHAT IS MERELY REQUIRED IS A STATEMENT OF THE ULTIMATE FACTS FORMING THE BASIS OF THE PROTEST. — Guided by its previous ruling in *Roxas v. Binay*, the Tribunal emphasized that in determining the sufficiency of the allegations of an election protest, what is merely required is a statement of the ultimate facts forming the basis of the Protest. Based on this yardstick, the Tribunal found the allegations in the Protest sufficient to apprise protestee of the issues that she had to meet, and to inform this Tribunal of the ballot boxes that had to be collected. The Tribunal also stressed that protestee's Motion for Reconsideration essentially restated the arguments contained in her Answer with Counter-Protest, which the Tribunal had duly considered and passed upon in the Resolution dated January 24, 2017.

9. ID.; ID.; ID.; 2010 PET RULES ON THE INITIAL DETERMINATION OF THE GROUNDS FOR THE PROTEST UNDER RULE 65; THE FULL EFFECT OF THE RULE IS YET TO BE DETERMINED BY THE TRIBUNAL BASED ON THE REQUIRED SUBMISSION OF MEMORANDA. — Rule 65 of the 2010 PET Rules pertains to the initial determination of the grounds for the protest. Rule 65 grants the protestant the opportunity to designate three (3) provinces that best exemplify the frauds or irregularities raised in his or her Protest. These provinces constitute the "test cases" by which the Tribunal will determine whether it would proceed with the protest. The full effect of Rule 65, however, is yet to be determined by the Tribunal based on the required submission of Memoranda mentioned in this Resolution. Following Rule 65, the Tribunal found it premature to retrieve the ballot boxes, decrypt and print the ballot images, and conduct a technical examination on voters' signatures from provinces other than those designated to be the pilot provinces. The Tribunal further stressed that given the physical and logistical constraints it was facing, judicial economy required that action on matters other than those pertaining to the pilot provinces be deferred until such time that an initial determination has been made in the Protest.

10. ID.; ID.; ID.; START OF REVISION PROCEEDINGS; OBJECTIVES OF THE PROCESS OF REVISION OF BALLOTS. — On January 16, 2018, the Tribunal issued the PET Revisor's Guide for the Revision of Ballots under the Automated Election System (Revisor's Guide) to govern the conduct of revision in election protests falling within the jurisdiction of the Tribunal under the AES, in lieu of the rules and procedures set out under Rules 38 to 45 (Revision of Votes) of the 2010 PET Rules. The objectives of the process of revision of ballots are: (1) to verify the physical count of the ballots; (2) to recount the votes of the parties; (3) to record the parties' objections and claims thereon; and (4) to accordingly mark such ballots which were objected to and claimed by the parties for purposes of identification during subsequent examination by the Tribunal and for reception of evidence, if any. In other words, the main purpose of the revision proceeding is to conduct a physical recount of the ballots and provide the parties with an opportunity to register their objections and claims thereon,

the validity of which will later be ruled upon by the Tribunal during the appreciation stage.

11. ID.; ID.; ID.; REVISION OF BALLOTS; PROCESS. — Revision of ballots involved the following process: *first*, prior to the actual recount of the votes of the parties, the HRs were required to authenticate the ballots to ensure their genuineness, ensuring that the ballots contained all the security features of the official ballots and using ultraviolet lamps which could detect the hidden security marks; *second*, such HRs segregated the ballots which were read by the VCMs into four (4) categories: (1) Ballots for Protestant; (2) Ballots for Protestee; (3) Ballots for Other Candidates; and (4) Ballots with Stray Votes (ballots with no votes or those with more than one (1) vote for the Vice President position); *third*, the revisors for protestant and protestee registered their respective objections to the Ballots for Protestee and Ballots for Protestant, respectively; *fourth*, both Party Revisors registered their claims on the Ballots for Other Candidates and Ballots with Stray Votes; *fifth*, both Party Revisors registered their claims on ballots that were rejected by the VCMs and were not thus included in the ballot segregation, if any; and *lastly*, each Revision Committee (RC) recorded all relevant data, including the results of their revision, in a Revision Report signed by all three (3) members and to which the claims and objections of the Party Revisors were annexed for subsequent ruling by the Tribunal during the appreciation stage. The revision of ballots for the pilot protested precincts commenced on April 2, 2018 and was concluded on February 4, 2019. Paper ballots and decrypted ballot images were revised in a total of 5,415 clustered precincts.

12. ID.; ID.; ID.; THRESHOLD ISSUES; THE 2010 PET RULES PROVIDES THAT DURING SEGREGATION OF BALLOTS IN THE REVISION PROCESS, A 50% THRESHOLD IS TO BE APPLIED IN DETERMINING A VALID VOTE; THE REVISOR'S GUIDE PROVIDES THAT ANY ISSUE ON WHETHER A MARK OR SHADE IS WITHIN THE THRESHOLD MUST BE RESOLVED BY THE ASSIGNED REVISION SUPERVISOR. — Rule 43(1) of the 2010 PET Rules provides that during segregation of ballots in the revision process, a 50% threshold is to be applied in determining a valid vote: (1) In looking at the shades or marks used to register votes, the RC shall bear in mind that the will of the voters

reflected as votes in the ballots shall as much as possible be given effect, setting aside any technicalities. Furthermore, the votes thereon are presumed to have been made by the voter and shall be considered as such unless reasons exist that will justify their rejection. However, marks or shades which are less than 50% of the oval shall not be considered as valid votes. Any issue as to whether a certain mark or shade is within the threshold shall be determined by feeding the ballot on the PCOS machine, and not by human determination. On the other hand, the Revisor's Guide provides that any issue on whether a mark or shade is within the threshold must be resolved by the assigned Revision Supervisor in the following manner: RULE 62. *Votes of the Parties.* — x x x In examining the shades or marks used to register the votes, the Head Revisor shall bear in mind that the will of the voters reflected as votes in the ballots shall, as much as possible, be given effect, setting aside any technicalities. Furthermore, the votes thereon are presumed to have been made by the voter and shall be considered as such National and Local Elections reasons exist that will justify their rejection. Any issue as to whether a certain mark or shade is within the threshold shall be resolved by the assigned Revision Supervisor. Any objection to the ruling of the Revision Supervisor shall not suspend the revision of a particular ballot box. The ballot in question may be claimed or objected to, as the case may be, by the revisor of the party concerned.

13. ID.; ID.; ID.; ID.; THE TRIBUNAL DECLARED THAT FROM THE SUBMISSIONS OF THE PARTIES AND THE COMELEC, WHAT WAS ADOPTED DURING THE 2016 ELECTIONS WAS A RANGE OF 20% TO 25% SHADING THRESHOLD. — [The] Tribunal declared that from the submissions of the parties and the COMELEC, what was adopted during the 2016 National and Local Elections was a range of 20% to 25% shading threshold for the following reasons: first, no official document predating the 2016 National and Local Elections was submitted to support the claim that the machines were indeed calibrated to observe a 25% threshold; second, in COMELEC Commissioner Luie Tito G. Guia's letter to the Tribunal dated September 6, 2016, it was disclosed that the public was not apprised of a 25% voting threshold as the voters were told to shade the ovals fully; third, no threshold was adopted for the 2016 National and Local Elections prior to COMELEC Resolution No. 16-0600,

except for the 20% threshold for detainee voting under COMELEC Resolution No. 10115 dated May 3, 2016; and finally, the RMA Visual Guidelines states that a valid mark must score higher than a VCM's mark detection threshold of 20%-25%; otherwise, it is considered an invalid mark.

14. ID.; ID.; ID.; ELECTION RETURNS TO BE USED IN THE REVISION OF BALLOTS. — As to what must be used in its revision of ballots, the Tribunal noted that the purpose of the revision process is simply to recount the votes of the parties. This is implemented by mimicking (or verifying/confirming) how the Vote Counting Machines (VCMs) read and counted the votes during the elections. This objective can be achieved by referring to the election returns generated by the VCMs used in the 2016 National and Local Elections; The election return is a document in electronic and printed form directly produced by the VCM showing the date, province, municipality, and precinct in which the election was held, and the votes in figures for each candidate in a clustered precinct where the said VCM was utilized. Hence, in the segregation of ballots, the Tribunal held that its Head Revisors must be guided by the number of votes indicated in the Election Returns. The Tribunal held that, in using the Election Returns and not merely adopting a specific shading threshold, the Tribunal's revision procedure will be more flexible and adaptive to calibrations of the voting or counting machines in the future. The Head Revisors were directed to use the Election Returns which normally would be inside the ballot boxes retrieved. However, in their absence, the Head Revisors were directed to use the certified true copies of Election Returns obtained from COMELEC. As to those ballots already previously revised, the procedure of verifying votes using the Election Returns was to be strictly enforced during the appreciation stage by the Tribunal.

15. ID.; ID.; ID.; PROTESTANT'S MOTION FOR INHIBITION; MERE IMPUTATION OF BIAS WAS NOT SUFFICIENT GROUND FOR INHIBITION; MOTION TO INHIBIT DENIED FOR LACK OF FACTUAL AND LEGAL BASIS. — On August 6, 2018, protestant filed an *Extremely Urgent Motion to Inhibit Associate Justice Alfredo Benjamin S. Caguioa* (Motion to Inhibit) on the ground of evident bias and manifest partiality in favor of protestee. x x x The Tribunal unanimously denied protestant's Motion to Inhibit in its Resolution dated

August 28, 2018 for utter lack of merit, ruling that the grounds cited by protestant did not fall under any of the grounds for inhibition under Section 1, Rule 8 of the Internal Rules of the Supreme Court. Citing *Philippine Commercial International Bank v. Spouses Dy*, the Tribunal held that the mere imputation of bias or partiality was not sufficient ground for inhibition, especially when the charges against Justice Caguioa were without basis and not supported by any evidence. The Tribunal further held that an opinion piece in a news website and an unauthenticated video circulating on social media websites were not credible and admissible supporting evidence, and that these were not even worthy of cognizance. The Tribunal also found that Justice Caguioa had shown impartiality and that the proceedings in the Protest had moved forward with utmost dispatch despite the numerous pleadings filed and incidents brought up by both parties and the COMELEC, as well as the logistical and administrative concerns in relation to the Protest. The Tribunal also emphasized that all of its decisions were arrived at through a majority vote of all the members of the Court sitting *en banc* as the Tribunal, and not decided by the Member-in-Charge alone. Thus, the Tribunal denied protestant's Motion to Inhibit for lack of factual and legal basis.

16. ID.; ID.; ID.; APPRECIATION OF BALLOTS; BALLOT APPRECIATION GUIDELINES WERE USED IN THE APPRECIATION OF THE BALLOTS, SPECIFICALLY IN DETERMINING THE VALIDITY OF THE BALLOTS ON WHETHER THEY CONTAINED VALID VOTES. — After the revision had concluded, the revised ballots were then appreciated. During this process, the Tribunal validates and verifies the physical count of the ballots during the revision stage and rules on the parties' respective claims and objections thereon. For this purpose, the Tribunal approved, on November 6, 2018, the PET Guidelines in the Appreciation of Ballots Under the Automated Election System (Ballot Appreciation Guidelines), which superseded and replaced the Guidelines previously approved by the Tribunal on January 16, 2018. The Ballot Appreciation Guidelines were used in the appreciation of the ballots, specifically in determining the validity of the ballots and whether they contained valid votes. The cardinal objective of ballot appreciation was to discover and give effect to the intent of the voter.

17. ID.; ID.; ID.; ID.; ID.; OBJECTIONS OF THE PARTIES; GROUNDS. — The Tribunal proceeded with the appreciation of the ballots following the Ballot Appreciation Guidelines and taking into consideration the objections and claims of the parties. The Tribunal pored over each ballot from all the clustered precincts involved both to rule on the objections and claims of the parties, and to determine the validity of each ballot and vote, regardless of whether the parties registered an objection or claim. With the votes from revision as starting point, for objections, the Tribunal either sustained an objection, resulting in a deduction of a vote from the party for whom the vote was counted, or rejected an objection, resulting in the retention of the vote for the party for whom the vote was counted. The following are the grounds for objections: Spurious Ballots (SB) x x x B. Substituted Ballots (SuB) x x x C. Shaded by One (SBO) x x x D. Shaded by Two or More (SBT) x x x E. Marked Ballots (MB) x x x F. Pre-shaded Ballots (PSB) x x x G. No stated objection (NSO).

18. ID.; ID.; ID.; ID.; ID.; CLAIMS OF THE PARTIES. — Claims may be made on the following: (1) ballots with votes cast for candidates other than the parties; (2) machine-rejected ballots (ballots rejected by the VCMs); and (3) ballots with stray votes (those with no votes or those with over-votes). The Tribunal may admit or reject a claim. Only when a claim over a ballot is admitted will the party claiming gain one vote in his/her favor. The claims are as follows: Ambiguous Votes (AV) x x x B. Ballots with Over-Votes x x x C. Machine-Rejected Ballots (MRB) x x x D. No Specific Claim (NSC).

19. ID.; ID.; ID.; ID.; ID.; OVERALL RESULT OF REVISION AND APPRECIATION OF BALLOTS. — To determine the effect of the revision and appreciation of the ballots in the 5,415 pilot clustered precincts, the Tribunal uses as its base figure the overall votes received by protestant and protestee in all the clustered precincts which functioned during the 2016 National and Local Elections based on the canvass by the National Board of Canvassers (votes as proclaimed). x x x From these figures, the votes received by the parties in the 5,418 clustered precincts of the three (3) pilot provinces is then to be subtracted as these figures or votes will be replaced by the results of the revision and appreciation of the ballots to determine the effect of the revision and appreciation on the results of the 2016 National

Local Elections. However, as discussed, the paper ballots and ballot images in three (3) of the 5,418 clustered precincts of the pilot provinces were not revised and appreciated as they were unavailable, and were thus excluded from the 5,418 clustered precincts. Given this, the Tribunal was able to revise and appreciate ballots from only 5,415 clustered precincts of the pilot provinces, x x x [B]ased on the final tally after revision and appreciation of the votes in the pilot provinces, protestee Robredo maintained, as in fact she increased, her lead with 14,436,337 votes over protestant Marcos who obtained 14,157,771 votes. After the revision and appreciation, the lead of protestee Robredo increased from 263,473 to 278,566.

20. ID.; ID.; ID.; ID.; BEFORE MAKING A RULING ON THE EFFECTS OF THE RESULT OF THE REVISION AND APPRECIATION OF THE VOTES FOR THE PILOT PROVINCES, THE TRIBUNAL WILL ALLOW THE PARTIES THE OPPORTUNITY TO EXAMINE THE SAID RESULTS AS WELL AS COMMENT SO THAT THEY ARE FULLY AND FAIRLY HEARD ON ALL THE RELATED LEGAL ISSUES. —Before the Tribunal proceeds to make a ruling on the effects of the results of the revision and appreciation of the votes for the pilot provinces on the Protestant's Second Cause of Action as articulated in the Preliminary Conference Order, the Parties will be required to submit their position stating their factual and legal basis. Likewise, the Tribunal deems it essential to meet due process requirements to require protestant and protestee to now provide their position in relation to the Third Cause of Action (Annulment of Election on the ground of terrorism, intimidation and harassment of voters as well as pre-shading of ballots in some provinces of Maguindanao, Lanao del Sur and Basilan) also articulated in the Preliminary Conference Order. x x x This Tribunal, will comply with its constitutionally mandated duty allowing the parties the opportunity to examine the results of the revision and appreciation of the pilot provinces as well as comment so that they are fully and fairly heard on all the related legal issues. Based on the submissions of the parties, the Tribunal can therefore confidently and judiciously deliberate on the proper course of action as clarified by the actual position of the parties on the common issues that we have identified.

CARPIO, *J., dissenting opinion*:

POLITICAL LAW; ELECTION CASES; ELECTION PROTEST CHALLENGING THE PROCLAMATION OF INCUMBENT VICE PRESIDENT IN THE MAY 6, 2016 ELECTIONS; THE FINAL TALLY AFTER THE REVISION AND THE APPRECIATION OF THE VOTES IN THE PILOT PROVINCES RESULTED IN A NET INCREASE OF VOTES IN FAVOR OF THE PROTESTEE; FOR FAILURE OF THE PROTESTANT TO MAKE OUT HIS CASE, NO BASIS EXISTS TO CONTINUE WITH THE PROCEEDINGS IN THE ELECTION CONTEST. — For failure of protestant to make out his case, no basis exists to continue with the proceedings in this election contest. In the present election contest, protestant designated, and the Tribunal approved, Camarines Sur, Iloilo, and Negros Oriental as protestant's pilot provinces in accordance with Rule 65 of the 2010 Rules of the Presidential Electoral Tribunal (2010 PET Rules) x x x The revision of the ballots in these pilot provinces had the following objectives: verify the actual physical count of the ballots; recount the votes of the parties; record the parties' objections and claims thereon; and mark the ballots objected to and/or claimed by the parties in preparation for their examination by the Tribunal and for the reception of the parties' evidence. After the revision, the revised ballots were then subjected to appreciation wherein the Tribunal verified the physical count and ruled on the objections and claims of the parties. The final tally after the revision and the appreciation of the votes in the pilot provinces resulted in a net increase of votes by 15,093 in favor of the protestee. Since the revision results indicate no substantial recovery on the part of protestant, and thus protestant "will most probably fail to make out his case," the dismissal of the election protest, and thus, the discontinuance of any further proceedings, such as the revision of the remaining contested provinces, is proper pursuant to Rule 65 of the 2010 PET Rules.

CAGUIOA, *J., dissenting opinion*:

POLITICAL LAW; ELECTION CASES; ELECTION PROTEST CHALLENGING THE PROCLAMATION OF INCUMBENT VICE PRESIDENT IN THE MAY 6, 2016 ELECTIONS;

2010 PET RULES; RULE 65 ON DISMISSAL OF THE ELECTION PROTEST; APPLICATION PROPER AS PROTESTANT FAILED TO MAKE OUT HIS CASE. — ***Rule 65 is clear.*** It states: **RULE 65.** ***Dismissal; when proper.*** - The Tribunal may require the protestant or counter-protestant to indicate, within a fixed period, the province or provinces numbering not more than three, best exemplifying the frauds or irregularities alleged in his petition; and the revision of ballots and reception of evidence will begin with such provinces. If upon examination of such ballots and proof, and after making reasonable allowances, the Tribunal is convinced that, taking all circumstances into account, the protestant or counter-protestant will most probably fail to make out his case, the protest may forthwith be dismissed, without further consideration of the other provinces mentioned in the protest. The preceding paragraph shall also apply when the election protest involves correction of manifest errors. x x x The Tribunal invested countless number of hours following the mandate of Rule 65. The Tribunal retrieved thousands of ballot boxes from three provinces, revised millions of ballots, and ruled on each and every objection and claim of the parties on these millions of ballots. After all these, the Tribunal eventually arrived at a final tally: protestee Robredo garnered 14,436,325 votes, increasing her lead from 263,473 to 278,555 over protestant Marcos who obtained 14,157,770 votes. x x x The question faced by the Tribunal is simple: after making reasonable allowances, and taking all circumstances into account, will protestant most probably fail to make out his case, following the results of revision and appreciation of the ballots in the 5,415 clustered precincts in his pilot provinces? Undoubtedly, protestant failed to make out his case. x x x Following Rule 65, the Protest should be dismissed and all pending motions of protestant, x x x should be denied.

APPEARANCES OF COUNSEL

G.E. Garcia Law Office for the protestant.
Romulo B. Macalintal for the protestee.

R E S O L U T I O N

***PER CURIAM*:**

Protestant Ferdinand "Bongbong" R. Marcos, Jr. (protestant) is before the Presidential Electoral Tribunal (Tribunal) challenging the election and proclamation of incumbent Vice President Maria Leonor "Leni Daang Matuwid" G. Robredo (protestee) in the May 9, 2016 National and Local Elections.[1]

The vice presidential elections in the 2016 National and Local Elections turned out to be a close contest between protestant and protestee. Protestee garnered 14,418,817 votes while protestant came at a close second with 14,155,344 votes. Protestee won by a slim margin of only 263,473 votes. After the canvassing of results, Congress, sitting as the National Board of Canvassers (NBOC), proclaimed protestee as the duly-elected Vice President of the Republic of the Philippines on May 30, 2016.[2]

P.E.T. Case No. 005 is the first and only election protest before the Tribunal in which the recount and revision process of the pilot provinces were successfully concluded and the protest itself resolved on the merits.

In *Defensor-Santiago v. Ramos*,[3] the late Senator Miriam Defensor-Santiago (Santiago) contested the election of former President Fidel V. Ramos in the 1992 National and Local Elections. The protest was declared moot when Santiago ran for, and was elected, Senator in the 1995 Midterm Elections.

Contesting the results of the 2004 National and Local Elections, the late Ronald Allan Poe *a.k.a.* Fernando Poe, Jr.

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[1] Election Protest, *rollo* (Vols. I-X), pp. 1-16005.

[2] Resolution of Both Houses No. 1, declaring the results of the National Elections held on May 9, 2016, for the Offices of President and Vice President, and proclaiming the duly elected President and Vice President of the Republic of the Philippines, Annex "X" to the Protest, *rollo* (Vol. III), pp. 1315-1317.

[3] P.E.T. Case No. 001 (Resolution), 323 Phil. 665 (1996).

[4] *Poe v. Macapagal-Arroyo*, P.E.T. Case No. 002 (Resolution), 494 Phil.

(Poe) filed an election protest against former President Gloria Macapagal-Arroyo. The case was dismissed after Poe's demise on December 14, 2004. His widow, Jesusa Sonora Poe (Mrs. Poe) filed a motion to intervene and/or substitute the deceased party, but this was denied by the Tribunal, Mrs. Poe not being considered a real party-in-interest in the election protest.[4]

Also in 2004, former Senator Loren B. Legarda (Legarda) initiated the first protest for the position of Vice President before the Tribunal against former Vice President Noli L. De Castro. The Tribunal dismissed the cause of action for revision of ballots when Legarda failed to pay the required additional deposit for the continuation of the revision of the ballots. As well, the Tribunal declared that Legarda had abandoned her protest by reason of her candidacy, election, and assumption as Senator after the 2007 National Local Elections.[5]

Upon the conclusion of the first nationwide elections using the Automated Election System (AES) in 2010, former Senator Manuel A. Roxas (Roxas) contested the election of former Vice President Jejomar C. Binay (Binay). However, both parties filed certificates of candidacy in the 2016 National and Local Elections for the position of President. The case was eventually overtaken by the 2016 National and Local Elections in which protestee Robredo was elected. Thus, Roxas' protest was eventually dismissed for being moot with the expiration of the term of the contested position on June 30, 2016.[6]

Judicial notice may be taken that the protest in this case has been the subject of much attention and speculation in the public arena. Even the Tribunal has not been immune from public vitriol and malicious imputations. The controversy over the results of the 2016 vice presidential elections has caused more social

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137 (2005).

[5] *Legarda v. De Castro,* P.E.T. Case No. 003 (Resolution), 566 Phil. 123 (2008).

[6] *Roxas v. Binay,* P.E.T. No. 004 (Resolution), 793 Phil. 9 (2016).

discord than the results of the presidential elections. Over and over again, questions about the accuracy and reliability of the AES during the 2016 National and Local Elections were propounded. Protestant and protestee have exchanged countless pleadings, motions, manifestations, and letters before the Tribunal. Each party has made allegations of the commission of electoral frauds, irregularities, and anomalies against the other. As well, the parties and their counsels have publicly traded barbs and accusations in the media regarding the protest, despite the Tribunal's warning on violation of the *sub judice* rule.

With this Resolution and the Memoranda required of both parties, the Tribunal will chart a way forward after the initial revision and recount, affording the parties the fullest opportunity to make their case consistent with due process of law. This Resolution does not yet resolve the entire case but is merely preliminary and interlocutory in nature. It is designed to hear the parties fully on the various legal issues relating to their controversy. It is not a finding for or against the protestant or the protestee.

I.

Filing of the Protest

Protestant filed the *Election Protest* (Protest) on June 29, 2016 grounded on two (2) causes of action, namely:

A.
(First Cause of Action)

The proclamation of protestee Robredo as the duly elected [VICE PRESIDENT] is null and void because the [Certificates of Canvass (COCs)] generated by the [Consolidation and Canvass System (CCS)] are not authentic, and may not be used as basis to determine the number of votes that the candidates for [Vice President] received x x x[.]

x x x x x x x x x

B.
(Second Cause of Action)

Massive electoral fraud, anomalies, and irregularities, such as, but not limited to terrorism, violence, force, threats, x x x intimidation,

pre-shading of ballots, vote-buying, substitution of voters, flying voters, pre-loaded SD cards, misreading of ballots, unexplained, irregular and improper rejection of ballots containing votes for protestant Marcos, malfunctioning [Vote Counting Machines (VCMs)], and abnormally high unaccounted votes/undervotes for the position of [Vice President] compromised and corrupted the conduct of the elections and the election results for the position of [Vice President] in the protested precincts.[7]

For his Second Cause of Action, the subject of which covers a total of 39,221 clustered precincts, protestant seeks both the annulment of election results and the revision and recount of ballots. He alleged that out of the 39,221 protested clustered precincts, no actual election took place in the 2,756 clustered precincts in Lanao Del Sur, Maguindanao, and Basilan due to terrorism, force, violence, threats, and intimidation.[8]

Meanwhile, as to the elections in the remaining 36,465 protested clustered precincts in Cebu Province, Leyte, Negros Occidental, Negros Oriental, Masbate, Zamboanga Del Sur, Zamboanga Del Norte, Bukidnon, Iloilo Province, Bohol, Quezon Province, Batangas, Western Samar, Misamis Oriental, Camarines Sur, 2nd District of Northern Samar, Palawan, Albay, Zamboanga Sibugay, Misamis Occidental, Pangasinan, Isabela, Iloilo City, Bacolod City, Cebu City, Lapu-Lapu City, and Zamboanga City, the elections were allegedly attended by violence, intimidation, vote-buying, substitution of voters/ presence of flying voters, misreading of ballots, malfunctioning and tampered Vote Counting Machines (VCMs) and Consolidation and Canvass System (CCS), pre-loaded Secure Digital (SD) cards, "abnormally high" turnout, and unaccounted votes/under-votes were prevalent in the said precincts.[9]

Protestant averred that if not for the attendance of electoral fraud, anomalies, or irregularities in the protested clustered

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[7] *Rollo* (Vol. II). pp. 927-929.

[8] *Id.* at 963-974.

[9] *Id.* at 975-1039.

precincts, he would have received the highest number of votes and emerged as the winning candidate for Vice President in the 2016 National and Local Elections.[10]

Protestant thus prayed that the Protest be given due course.[11] In addition, he sought the issuance of a Precautionary Protection Order over the ballots and other election-related paraphernalia in all the 92,509 clustered precincts that functioned during the 2016 National and Local Elections pursuant to Rule 36 of the 2010 Rules of the Presidential Electoral Tribunal (2010 PET Rules).[12]

On his First Cause of Action, protestant prayed that the Tribunal declare as unauthentic the Certificates of Canvass (COC), on the basis of which protestee was declared the winning candidate for Vice President during the 2016 National and Local Elections. He also prayed that the proclamation of protestee as the duly-elected Vice President of the Philippines be nullified and set aside.[13]

On his Second Cause of Action, protestant prayed that the Tribunal annul the election results for the position of Vice President in the provinces of Maguindanao, Lanao del Sur, and Basilan.[14] As to the 36,465 protested clustered precincts for Cebu Province, Leyte, Negros Occidental, Negros Oriental, Masbate, Zamboanga Del Sur, Zamboanga Del Norte, Bukidnon, Iloilo Province, Bohol, Quezon Province, Batangas, Western Samar, Misamis Oriental, Camarines Sur, 2nd District of Northern Samar, Palawan, Albay, Zamboanga Sibugay, Misamis Occidental, Pangasinan, Isabela, Iloilo City, Bacolod City, Cebu City, Lapu-Lapu City, and Zamboanga City, protestant prayed for the collection, retrieval, transport, and delivery of the ballots

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[10] *Id*. at 1037.

[11] *Id*. at 1038.

[12] *Id*. at 1039-1040.

[13] *Id*. at 1040.

[14] *Id*.

and other election documents, and conduct of manual recount and revision.[15]

Protestant also moved for the conduct of a technical examination and forensic investigation of the paper ballots and/or the ballot images, voter's receipts, election returns, audit logs, transmission logs, the lists of voters, particularly the Election Day Computerized Voter's List (EDCVL), and Voters Registration Records (VRR), the books of voters and other pertinent election documents and/or paraphernalia used in the 2016 National and Local Elections, as well as the automated election equipment and records such as the VCMs, CCS units, main and back-up SD cards, and the other data storage devices containing electronic data and ballot images in the 39,221 protested clustered precincts pursuant to Rules 46 to 51[16] of the 2010 PET Rules.[17]

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[15] *Id*. at 1040-1042.

[16] **RULE 46.** *Motion for technical examination; contents.*— Within five days after completion of the revision of votes, either party may move for a technical examination, specifying:

(a) The nature of the technical examination requested (*e.g.*, the examination of the genuineness of the ballots or election returns, and others);

(b) The documents to be subjected to technical examination;

(c) The objections made in the course of the revision of votes which he intends to substantiate with the results of the technical examination; and

(d) The ballots and election returns covered by such objections. (R43a)

RULE 47. *Technical examination; time limits.*— The Tribunal may grant the motion for technical examination in its discretion and other such conditions as it may impose. If the motion is granted, the Tribunal shall schedule the technical examination, notifying the other parties at least five days in advance. The technical examination shall be completed within the period allowed by the Tribunal. A party may attend the technical examination, either personally or through a representative, but the technical examination shall proceed with or without his attendance, provided due notice has been given to him.

The technical examination shall be conducted at the expense of the movant and under the supervision of the Clerk of the Tribunal or his duly authorized representative. (R44)

RULE 48. *Experts who shall provide.* — The Tribunal shall appoint independent experts necessary for the conduct of a technical examination.

Lastly, protestant prayed that, after due proceedings, he be declared as the duly-elected and rightful Vice President for having obtained the highest number of valid votes cast for the said office during the 2016 National and Local Elections.[18] Protestant paid an initial cash deposit of ₱200,000.00[19] in compliance with Rule 33(c)[20] of the 2010 PET Rules.

In a Resolution dated July 12, 2016, the Tribunal issued a Precautionary Protection Order[21] over the 92,509 clustered precincts covered by the Protest. The COMELEC, its agents,

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The parties may avail themselves of the assistance of their own experts who may observe, but not interfere with, the examination conducted by the experts of the Tribunal. (R45)

RULE 49. *Technical examination not interrupted.* — Once started, the technical examination shall continue every working day until completed or until expiration of the period granted for such purpose. (R46)

RULE 50. *Photographing or electronic copying.* — Upon prior approval of the Tribunal, photographing or electronic copying of ballots, election returns or election documents shall be done within its premises under the supervision of the Clerk of the Tribunal or his duly authorized representative, with the party providing his own photographing or electronic copying equipment. (R47a)

RULE 51. *Scope of technical examination.* — Only the ballots, election returns and other election documents allowed by the Tribunal to be examined shall be subject to such examination.(R48)

[17] *Rollo* (Vol. II), p. 1042.

[18] *Id*. at 1043.

[19] *Id*. at 1049.

[20] **RULE 33**. *Cash deposit.* — In addition to the fees mentioned above, each protestant or counter-protestant shall make a cash deposit with the Tribunal in the following amounts:

x x x x x x x x x

(c) If the amount of the deposit exceeds Two Hundred Thousand Pesos (₱200,000.00), a partial deposit of at least Two Hundred Thousand Pesos (₱200,000.00) shall be made within ten days after the filing of the protest or counter-protest. The balance shall be paid in such installments as may be required by the Tribunal on at least five days advance notice to the party required to make the deposit.

[21] *Rollo* (Vol. XX), pp. 16012-16013.

representatives, and persons acting in its place, including city/municipal treasurers, election officers, and responsible personnel and custodians, were directed to preserve and safeguard the integrity of all the ballot boxes and their contents, as well as other election documents and paraphernalia in all 92,509 clustered precincts.[22] Finding the Protest to be sufficient in form and in substance, the Tribunal issued Summons[23] to protestee, directing her to file an Answer to the Protest.

Protestee's Answer with Counter-Protest

On August 15, 2016, protestee filed a *Verified Answer with Special and Affirmative Defenses and Counter-Protest*[24] (Answer with Counter-Protest), moving for the dismissal of the Protest on the grounds of lack of jurisdiction and insufficiency in form and in substance.

Protestee alleged that the Protest failed to specify the acts or omissions complained of showing the electoral frauds, anomalies, or irregularities in the protested precincts, in accordance with Rule 17[25] of the 2010 PET Rules.[26] Protestee

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[22] *Id*.

[23] *Id*. at 16010-16011.

[24] *Rollo* (Vols. XXI-XXVII), pp. 16155-21525.

[25] **RULE 17**. *Contents of the protest or petition.* — (A) An election protest or petition for *quo warranto* shall commonly state the following facts:

(a) the position involved;

(b) the date of proclamation; and

(c) the number of votes credited to the parties *per* the proclamation.

(B) A *quo warranto* petition shall also state:

(a) the facts giving the petitioner standing to file the petition;

(b) the legal requirements for the office and the disqualifications prescribed by law;

(c) the protestee's ground for ineligibility or the specific acts of disloyalty to the Republic of the Philippines.

(C) An election protest shall also state:

also averred that the Protest had no legal and factual basis. She pointed out that the Protest is in the nature of a pre-proclamation controversy, which should have been initiated before the NBOC and not the Tribunal.[27]

Furthermore, protestee averred that her proclamation as Vice President cannot be annulled based on made-up irregularities during the canvassing and COMELEC's alleged noncompliance with the law on automated elections.[28] Protestee also countered that the annulment of the results in Lanao del Sur, Maguindanao, and Basilan does not have legal and factual basis as the Protest failed to show, much more prove, that the supposed illegality of the ballots affected more than 50% of the votes cast in these provinces. The evidence allegedly consisted mainly of hodgepodge accounts in affidavit form which were hardly credible.[29] On protestant's prayer for recount and revision of ballots, protestee likewise asserted that the same had no legal and factual basis.[30]

For her Counter-Protest, protestee contested the election results in 7,547 clustered precincts in thirteen (13) provinces, namely: Apayao, Mountain Province, Abra, Kalinga, Bataan,

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(a) that the protestant was a candidate who had duly filed a certificate of candidacy and had been voted for the same office.

(b) the total number of precincts of the region, province, or city concerned;

(c) the protested precincts and votes of the parties to the protest in such precincts per the Statement of Votes By Precinct, or if the votes of the parties are not specified, an explanation why the votes are not specified; and

(d) a detailed specification of the acts or omissions complained of showing the electoral frauds, anomalies, or irregularities in the protested precincts. (n)

[26] *Rollo* (Vol. XXI), pp. 16167-16177.

[27] *Id*. at 16177-16186.

[28] *Id*. at 16212-16224.

[29] *Id*. at 16224-16261.

[30] *Id*. at 16261-16406.

Capiz, Aklan, Antique, Sarangani, Sulu, Sultan Kudarat, South Cotabato, and North Cotabato. She alleged that vote-buying, threats, intimidation, substitute voting, and incidence of unaccounted votes occurred in these provinces, which were bailiwicks of protestant. Allegedly, had these electoral frauds and anomalies not been employed by protestant, protestee would have received a higher number of votes.[31]

Thus, protestee prayed that a preliminary hearing be set for her special and affirmative defenses and thereafter, that the Protest be dismissed for lack of jurisdiction and for being insufficient in form and substance. Additionally, she prayed that after due proceedings, her proclamation as the winning candidate for Vice President in the 2016 National and Local Elections be affirmed.[32] She also paid an initial cash deposit to the Tribunal in the amount of ₱200,000.00.[33]

Issues on timeliness and defects in Protestee's Answer with Counter-Protest and Protestant's Answer to the Counter-Protest

On September 9, 2016, protestant filed a *Motion to Strike-Out or Expunge Protestee's Verified Answer dated 12 August 2016 with Manifestation and Answer Ad Cautelam to the Counter-Protest*[34] (Answer to the Counter-Protest), claiming that protestee's Answer with Counter-Protest was belatedly filed. Protestant averred that protestee admitted that she received the Protest on August 2, 2016. Thus, under Rule 24 of the 2010 PET Rules, she had only ten (10) days or until August 12, 2016 to file the pleading. However, the Answer with Counter-Protest was filed only on August 15, 2016, hence three (3) days late.[35]

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[31] *Id*. at 16406-16689.

[32] *Id*. at 16690.

[33] *Rollo* (Vol. XXVIII). p. 21526.

[34] *Id*. at 21698-2l744.

[35] *Id*. at 21698-21699.

Furthermore, in his Answer to the Counter-Protest, protestant denied protestee's allegations of electoral fraud, anomalies, and irregularities in the provinces covered by the Counter-Protest.[36] Protestant also controverted protestee's allegation that the Protest was insufficient in form and in substance. He claimed that he had narrated in detail the electoral fraud, anomalies, and irregularities which pervaded the conduct of elections in the 39,221 protested clustered precincts.[37] Protestant also averred that the Tribunal had already found the Protest to be sufficient in form and in substance in the Summons to protestee.[38] Protestant further claimed that when there is an allegation in an election protest that would require the perusal, examination, or counting of ballots as evidence, it is the ministerial duty of the court to order the opening of the ballot boxes and the examination and counting of ballots therein.[39]

On the issue of jurisdiction, protestant maintained that under the 1987 Constitution, the Tribunal is the sole judge of all contests relating to the election, returns, and qualifications of the President and Vice President.[40]

In turn, on September 7, 2016, protestee urged the Tribunal to expunge protestant's Answer to the Counter-Protest in her *Urgent Ex-Parte Motion to Consider as Waived the Right of Protestant Marcos to file an Answer to the Counter-Protest*,[41] claiming that it was filed beyond the reglementary period. Protestee asserted that protestant filed a Manifestation[42] dated August 24, 2016 that he had not yet received a copy of protestee's Answer with Counter-Protest but had secured a

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[36] *Id*. at 21732-21734.

[37] *Id*. at 21703.

[38] *Id*. at 21701-21702.

[39] *Id*. at 21705-21706.

[40] *Id*. at 21738.

[41] *Id*. at 21688-21697.

[42] *Id*. at 21557-21562.

copy thereof (sans annexes) from the Tribunal on August 16, 2016. Thus, he had only ten (10) days therefrom to file his Answer to the Counter-Protest. However, protestant filed his Answer to the Counter-Protest only on September 9, 2016.

Thereafter, protestee filed another pleading, entitled *Manifestation with Urgent Ex-Parte Motion to Expunge from the Records the Answer Ad Cautelam to the Counter-Protest*[43] on September 19, 2016, reiterating that the Answer to the Counter-Protest was not filed on time. Even if the reglementary period was reckoned from protestant's receipt via registered mail of protestee's Answer with Counter-Protest with annexes, the same was still not filed on time. Protestee alleged that protestant was untruthful in stating that he received the Answer with Counter-Protest on August 30, 2016. Based on the Certification[44] from Ms. Marissa Sable (Ms. Sable), Acting Records Officer of the Philippine Postal Corporation (PhilPost), the actual receipt of the pleading was on August 28, 2016. Thus, the Answer to the Counter-Protest should have been filed on September 7, 2016. Additionally, protestee alleged that the Answer to the Counter-Protest was not verified, as required under Rule 23[45] of the 2010 PET Rules.[46]

Meanwhile, on October 5, 2016, protestee filed a *Comment and Opposition (To the Motion to Strike-Out or Expunge Protestee's Verified Answer dated 12 August 2016)*.[47] Protestee claimed that she had actually received the Summons on August 3, 2016. Through mere inadvertence, the incorrect

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[43] *Id*. at 21769-21777.

[44] *Id*. at 21778.

[45] **RULE 23**. *Answer*. — The answer shall be verified and may set forth special and affirmative defenses. The protestee or respondent may incorporate in his answer a counter-protest or counterclaim which shall be filed with the Clerk of the Tribunal. The answer must be filed within ten days from receipt of summons in eighteen clearly legible copies with proof of service of a copy upon the protestant or petitioner. (R22)

[46] *Rollo* (Vol. XXVIII), pp. 21769-21771.

[47] *Id*. at 21843-21851.

date of August 2, 2016 was indicated in her Answer with Counter-Protest. August 13, 2016, being a Saturday, the Answer with Counter-Protest was timely filed on the next working day, August 15, 2016.[48]

Due to mutual allegations of procedural defects, several other pleadings were filed by the parties in addition to the foregoing. On September 20, 2016, protestant filed a *Manifestation with Motion to Admit Attached Verification*,[49] praying that the Tribunal admit his belated Verification for his Answer to the Counter-Protest.[50]

On September 30, 2016, protestant filed a *Comment/ Opposition [to the Urgent Ex-Parte Motion to Consider as Waived the Right of Protestant Marcos to File an Answer to Counter-Protest and Manifestation with Urgent Ex-Parte Motion to Expunge from the Records the Answer Ad Cautelam to the Counter-Protest]*.[51] He attached to the pleading a Certification,[52] also from PhilPost, that the Answer with Counter-Protest was delivered to protestant's counsel's office on August 30, 2016 and not August 28, 2016.

On October 5, 2016, protestee filed a *Comment and Opposition (to Motion to Admit Attached Verification dated 19 September 2016)*.[53] On November 2, 2016, protestant filed a *Manifestation*,[54] informing the Tribunal that he will no longer file a reply to the pleading.

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[48] *Id*. at 21844-21846.

[49] *Id*. at 21786-21793.

[50] *Id*. at 21788.

[51] *Id*. at 21818-21827.

[52] *Id*. at 21828.

[53] *Id*. at 21854-21867.

[54] *Id*. at 22015-22020.

In its Resolution[55] dated January 24, 2017, the Tribunal held that under Section 4,[56] Article VII of the 1987 Constitution, the Supreme Court (SC), sitting as the Presidential Electoral Tribunal (PET), had exclusive jurisdiction over the Protest. The Tribunal also held that the Protest was sufficient in form and in substance. Protestee's prayer for the setting of a preliminary hearing on her special and affirmative defenses and for the dismissal of the Protest was denied. Likewise, the Tribunal denied protestant's Motion to Strike-Out and forthwith admitted protestee's Answer with Counter-Protest.

In the same Resolution, the Tribunal ordered the PhilPost to clarify the true date of protestant's receipt of protestee's Answer.[57]

On February 27, 2017, Protestee filed a *Motion for Reconsideration Pro Tanto with Prayer to Set for Hearing* of the Tribunal's Resolution[58] dated January 24, 2017, which was opposed by protestant in a *Comment/Opposition*[59] filed on March 27, 2017. Then, on April 11, 2017, protestee filed a *Motion for Leave of Court to File and Admit the Herein Incorporated Reply to Protestant's Comment/Opposition.*[60] These matters were deferred by the Tribunal in its Resolution[61] dated June 6, 2017 for resolution after the preliminary conference.

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[55] *Rollo* (Vol. XXIX), pp. 22459-A to 22459-H.

[56] SEC. 4. x x x

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The Supreme Court, sitting *en banc*, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose.

[57] *Rollo* (Vol. XXIX), p. 22459-F.

[58] *Id*. at 22674-22698.

[59] *Rollo* (Vol. XXX), pp. 22900-22924.

[60] *Id*. at 22990-23006.

[61] *Id*. at 23285-232890.

On March 16, 2017, the Tribunal received the letter-explanation from PhilPost, through Ms. Sable, in compliance with the Resolution dated January 24, 2017. PhilPost explained that the correct date of protestant's receipt of the Answer with Counter-Protest was August 30, 2016. The earlier Certification indicating the date of receipt as August 28, 2016 was erroneous.[62] The Tribunal noted PhilPost's letter in its Resolution[63] dated March 21, 2017.

COMELEC Closure and Stripping Activities

As mentioned above, the Tribunal issued a Precautionary Protection Order directing the preservation and safeguarding of all documents, paraphernalia, automated election equipment and records, and other data storage devices of all 92,509 clustered precincts in the 2016 National and Local Elections.

In reference to the Precautionary Protection Order, the Commission on Elections (COMELEC), through then Commissioner Christian Robert S. Lim, wrote a letter[64] dated August 10, 2016, seeking clarification on whether the election paraphernalia not containing election results data were covered by the Precautionary Protection Order. These election paraphernalia are the Broadband Global Area Network (BGAN) Satellite Antennas, External Back up Batteries, VCM Kits,[65] and Canvassing and CCS Kits.[66]

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[62] *Id*. at 22781-22784.

[63] *Id*. at 22800-22803.

[64] *Rollo* (Vol. XX), pp. 16041-16044.

[65] VCM Kits containing:VCM electric power supply and adaptor;
a) USB Modems and SIM Cards;
b) Headphones;
c) i-Buttons;
d) Unused Thermal Paper Rolls;
e) Battery Cable;
f) Marking Pens; and,
g) Documents inside the Kit (*e.g*., BEI PINs, passwords, FTS ballots)

[66] CCS Kits containing:

The COMELEC informed the Tribunal that they had conducted closure activities over the BGAN Antennas prior to the issuance of the Precautionary Protection Order.[67] The COMELEC sought authority to conduct closure/stripping activities wherein each VCM kit would be opened and tested so that the equipment can be turned over to Smartmatic-TIM, Inc. (Smartmatic), while the consumables, such as SD cards, i-Buttons, thermal paper, and marking pens, which are considered as sold items, shall be turned over to the COMELEC. The CCS kits, the contents of which are already owned by the COMELEC, would likewise undergo closure/stripping activities.[68]

More important, the COMELEC manifested that, in its AES Contract dated August 27, 2015 with Smartmatic, all equipment in the possession of the COMELEC as of December 1, 2016 because of any election contest or audit requirement would be considered sold to the COMELEC pursuant to its option to purchase, and the COMELEC would pay the corresponding price, without prejudice to the COMELEC requiring the protestant to shoulder such costs. Also, the lease contract for the COMELEC's warehouse in Sta. Rosa, Laguna, where the AES equipment were then stored, would be expiring in November 2016.[69]

In his *Comment*,[70] protestant stated that he was willing to waive the coverage of the Precautionary Protection Order with respect to the following items: external back-up batteries, VCM electric power supply and adaptor, headphones, battery cable,

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a) Printer and Toner;

b) Unused Bond Paper;

c) USB Modem and SIM cards;

d) USB Token; and,

e) Documents inside the Kit (*e.g.*, BOC PINs, passwords)

[67] *Rollo* (Vol. XX). p. 16043.

[68] *Id*. at 16042, 16044.

[69] *Id*. at 16043.

[70] *Rollo* (Vol. XXVIII), pp. 21673-21680.

marking pens, printer and toner, since these materials would not be included in his request for technical examination and forensic investigation.[71]

Protestant, however, opposed the closure and stripping activities on the servers, routers, transmission mediums, VCMs, CCS units, SD cards [main, backup and such other Written Once Read Many (WORM) cards], and other automated election paraphernalia containing election results data. According to protestant, he intended to request for the technical examination and forensic investigation of the above automated election equipment, devices and records, which contain evidence of the conduct and the results of the elections, in all 92,509 clustered precincts that functioned during the 2016 National and Local Elections.[72]

With regard to the proposed manual backing-up activities to be undertaken by the Election Records and Statistics Department (ERSD) of the COMELEC, protestant did not interpose any objection thereto as long as all the files contained in the SD cards (main, back up and such other WORM cards) including the ballot images would be included in the back-up copy of the COMELEC.[73]

Protestee, on the other hand, stated in her *Pagsunod sa Utos ng Tribunal na Maghain ng Komento sa Liham ng COMELEC*[74] that she had no objections to the activities to be conducted by the COMELEC, but suggested that all interested parties be informed of the activities to be conducted. The protestee likewise stated that protestant should bear the cost as he initiated the Protest.[75]

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[71] *Id*. at 21674.

[72] *Id*. at 21674-21675.

[73] *Id*. at 21675-21676.

[74] *Id*. at 21573-21578.

[75] *Id*. at 21574-21575.

The COMELEC then filed a *Reply*[76] stating that closure/stripping activities, which involve only the physical dismantling of the 92,509 VCMs, 1,716 CCS laptops, their respective components, and other automated election paraphernalia, was necessary for the COMELEC to comply with its obligations under Articles 6.9 and 6.10 of the AES Contract.[77] Under these provisions, all goods still in the possession of the COMELEC as of December 1, 2016, would be considered sold to it.[78]

In its Resolution[79] dated November 8, 2016, the Tribunal granted the COMELEC authority to conduct the stripping and closure activities. As guaranteed by the COMELEC, the closure and stripping activities involved only the physical dismantling of the election paraphernalia so that their removable components may be tested, properly accounted for, and those components not purchased by the COMELEC may be completely turned over to Smartmatic. This was also to ensure that the election results data would not be affected by the intended closure and stripping activities.[80]

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[76] *Id*. at 21905-21915.

[77] 6.9 All Goods still in the possession of the COMELEC as of 01 December 2016 because of any election contest or audit requirement shall be considered sold to COMELEC pursuant to its option to purchase under this Contract, and the COMELEC shall pay the corresponding price in accordance with the Financial Proposal within ten (10) working days from receipt by COMELEC of the invoice from the PROVIDER covering said Goods, without prejudice to COMELEC requiring the protestant to shoulder the costs.

6.10 After 0l December 2016, any notice, request or order for the custody and use of the Equipment in any election contest or audit requirement shall be addressed and coursed through the COMELEC, without prejudice to the COMELEC requiring the protestant or requesting party to pay to the PROVIDER the cost of transportation and other related expenses. *Id*. at 21907-21908.

[78] *Rollo* (Vol. XXVIII), pp. 21907-21908.

[79] *Id*. at 22121-22130.

[80] *Id*. at 22125-22126.

The Tribunal also held that the COMELEC was contractually obligated to return the goods covered by the AES Contract to Smartmatic by December 1, 2016; otherwise, any goods in its possession as of December 1, 2016 would be considered sold to it at the cost of ₱2,017,563,198.44, or a portion thereof. In the same Resolution, the Tribunal allowed the parties to send their representatives to observe the stripping and closure activities.[81]

Payment of the Protest and Counter-Protest Fee

Rule 33 of the 2010 PET Rules provides that if a protest or counter-protest requires the bringing of ballot boxes and election documents or paraphernalia, a cash deposit must be made with the Tribunal in the amount of ₱500.00 for each of the precincts involved. If the amount of the deposit does not exceed ₱200,000.00, the same shall be paid in full within ten (10) days from the filing of the protest or counter-protest. However, if the deposit exceeds ₱200,000.00, the same shall be paid in such installments as may be required by the Tribunal.

In this case, both the Protest and Counter-Protest required the bringing of ballot boxes and other election paraphernalia. Protestant, in his Protest, assailed the election results of 39,221 clustered precincts — 36,465 of which he prayed for the conduct of manual count and judicial revision, while the remaining 2,756 he prayed for the annulment of election results. Based on the COMELEC data, the 39,221 clustered precincts are composed of 132,446 precincts. On the other hand, protestee, as counter-protestant, assailed the election results in 8,042 clustered precincts, which are composed of 31,278 precincts, also based on the COMELEC data.

Based on the foregoing, and considering the initial deposits made by both protestant and protestee/counter-protestant, the Tribunal, in the Resolution[82] dated March 21, 2017, required

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[81] *Id*.

[82] *Rollo* (Vol. XXX), pp. 22800-22805.

protestant to pay the total cash deposit of ₱66,023,000.00 for the Protest in two (2) installment: ₱36,023,000.00 on or before April 14, 2017, and ₱30,000,000.00 on or before July 14, 2017. Counter-protestant was also required to pay a total cash deposit of ₱l5,439,000.00 for the Counter-Protest in two (2) installments: ₱8,000,000.00 on or before April 14, 2017, and ₱7,439,000.00 on or before July 14, 2017.

In compliance with the foregoing directive, protestant paid the first installment on April 17, 2017[83] and the second installment on July 10, 2017.[84] Protestee/counter-protestant, on the other hand, filed on April 12, 2017 a *Manifestation with Urgent Ex-Parte Omnibus Motion (1) For Clarification; and (2) Reconsideration of the Resolution dated 21 March 2017*,[85] praying, *inter alia*, that the Tribunal clarify its computation of the cash deposit and hold in abeyance the payment of her cash deposit for the 8,042 counter-protested clustered precincts until such time that the recount and revision of the protestant's 36,465 contested clustered precincts have been terminated.

Meanwhile, on April 20, 2017, protestant filed an *Omnibus Motion (i. to Dismiss the Counter-Protest and ii. to Reiterate the Immediate Setting of the Preliminary Conference)*[86] (Omnibus Motion). Protestant claimed that protestee's failure to pay the required deposit within the prescribed period was a ground for the dismissal of the Counter-Protest.

In the Resolution[87] dated April 25, 2017, the Tribunal: (1) denied protestee's Motion for Reconsideration on the Resolution dated March 21, 2017; (2) directed protestee to pay the first installment within a non-extendible period of five (5) days from notice; and (3) deferred action on protestant's Omnibus Motion to dismiss the Counter-Protest while awaiting protestee's Omnibus

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[83] *Id*. at 23056.

[84] *Rollo* (Vol. XXXI), p. 23976.

[85] *Id*. at 23007-23025.

[86] *Id*. at 23079-23086.

[87] *Id*. at 23087-23091.

Motion payment of the first installment as directed by the Tribunal. Further, the Tribunal granted protestant's motion for the setting of the preliminary conference and set the case for preliminary conference on June 21, 2017 at 2:00 p.m. Both parties were then required to file their respective Preliminary Conference Briefs five (5) days prior to the scheduled preliminary conference, pursuant to Rule 29 of the 2010 PET Rules.

In compliance with this Resolution, protestee/counter-protestant paid the first installment on May 2, 2017.[88]

On July 13, 2017, protestee filed a motion praying that the payment of the second installment be deferred,[89] to which protestant raised no objection.[90] Thus, in the Resolution[91] dated August 8, 2017, the Tribunal deferred the payment of the second installment for the Counter-Protest only after the initial determination of substantial recovery in protestant's designated three (3) pilot provinces pursuant to Rule 65 of the 2010 PET Rules.

In relation to protestee's payment of deposit, an *Urgent Motion for Leave to File and Admit Petition in lntervention*[92] (Motion) and *Petition in Intervention*[93] were filed on June 27, 2017 by Zorayda Amelia C. Alonzo, Maria Karina A. Bolasco, Maria Celeste Legaspi Gallardo, Paulynn Paredes Sicam, Corazon Juliano-Soliman, Maria Cristina Lim-Yuson (Zorayda, *et al.)*, as taxpayers and voters in the 2016 National and Local Elections. They wished to submit ₱30,000.00 as payment for protestee's

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[88] *Id*. at 23135-23141.

[89] Protestee's Compliance and Urgent Motion to Defer Payment of Second Installment of Additional Cash Deposit dated July 13, 2017, *id*. at 23999-24010.

[90] Protestant's Comment [to the Compliance and Urgent Motion to Defer Payment of Second Installment of Additional Cash Deposit dated 13 July 2017], *rollo* (Vol. XXXII), pp. 24362-24369.

[91] *Rollo* (Vol. XXXII), pp. 24429-A to 24429-E.

[92] *Rollo* (Vol. XXXI), pp. 23907-23912.

[93] *Id.* at 23913-23928.

Counter-Protest. The Motion and Petition in Intervention were denied by the Court in its Resolution[94] dated July 11, 2017. Zorayda, *et al.* moved for reconsideration,[95] but the Motion was likewise denied by the Tribunal in its Resolution[96] dated November 7, 2017.

Appointment of Panel of Hearing Commissioners

In its Resolution[97] dated June 6, 2017, the Tribunal constituted a panel of three (3) Commissioners to aid the Tribunal in the disposition of the Protest and Counter-Protest and to act in behalf of, and under the control and supervision of, the Tribunal. The Tribunal granted the Commissioners such powers as may be inherent, necessary, or incidental to the panel's duty to aid the Tribunal in the disposition of the case.

The Tribunal appointed Retired Justice Jose C. Vitug as chairperson, and Atty. Angelita C. Imperio and Atty. Irene Ragodon-Guevarra, as members.[98]

Preliminary Conference

In the Resolution dated June 6, 2017, the preliminary conference scheduled on June 21, 2017 at 2:00 p.m. was reset to July 11, 2017 at 2:00 p.m. at the *En Banc* Session Hall. Nonetheless, the parties were still directed to submit their preliminary conference briefs as previously directed by the Tribunal.[99]

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[94] *Id.* at 23978-A to 23978-E.

[95] *Rollo* (Vol. XXXII), pp. 24726-24740.

[96] *Rollo* (Vol. XXXIII), pp. 25351-25354.

[97] *Rollo* (Vol. XXX), pp. 23285-23290.

[98] *Id.* at 23285-23286.

[99] *Id.* at 23289.

On June 16, 2017, the parties filed their respective Preliminary Conference Briefs,[100] which the Tribunal noted in its Resolution [101] dated June 27, 2017.

As scheduled, the preliminary conference was conducted on July 11, 2017. Protestant personally appeared with his counsel Attorneys George M. Garcia (Atty. Garcia), Joan M. Padilla, Pacifico A. Agabin, Jose Amor M. Amorado, and Estelito Mendoza. Protestee, on the other hand, did not appear in person but her counsels Attorneys Romulo B. Macalintal (Atty. Macalintal), Maria Bernadette V. Sardillo, Reagan F. De Guzman and Antonio Carlos B. Bautista appeared with a special power of attorney to represent her and to do whatever acts necessary, required and desirable in defending, suing, filing and prosecuting the case.[102]

To facilitate the conduct of the preliminary conference, the parties were given a preliminary conference guide, which summarized their respective admissions, proposed stipulations, issues, and witnesses.[103] The Tribunal then granted the parties' request to study the guide and submit their comments thereto within five (5) working days from the date of the preliminary conference or until July 18, 2017.[104]

The purposes of conducting a preliminary conference are: (1) to obtain stipulations or admissions of facts and documents to avoid unnecessary proof; (2) to simplify the issues; (3) to limit the number of witnesses; (4) to consider the most expeditious manner of the retrieval of ballot boxes containing the ballots, election returns, certificates of canvass, and other election documents involved in the election protest; and (5) to consider

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[100] Protestee's Preliminary Conference Brief dated June 16, 2017, *rollo* (Vol. XXXI), pp. 23412-23561; Protestant's Preliminary Conference Brief dated June 15, 2017, *id.* at 23563-23811, including Annexes.

[101] *Rollo* (Vol. XXXI), pp. 23864-A to 23864-D.

[102] See TSN, Preliminary Conference Hearing, July 11, 2017, pp. 3-4.

[103] *Id.* at 40-41.

[104] *Id.* at 42.

such other matters that may aid in the prompt disposition of the election protest.[105]

In consideration of these purposes, the Tribunal, with the protestant's agreement, categorized protestant's causes of action into the following:

First Cause of Action - Annulment of Proclamation

The proclamation of protestee Robredo as the duly elected Vice President is null and void because the COCs generated by the CCS are not authentic, and may not be used as basis to determine the number of votes that the candidates for VICE PRESIDENT received.

Second Cause of Action - Revision and Recount

Revision and recount of the paper ballots and/or the ballot images as well as an examination, verification, and analysis of the voter's receipts, election returns, audit logs, transmission logs, the lists of voters, particularly the EDCVL, and VRRs, the books of voters and other pertinent election documents and/or paraphernalia used in the elections, as well as the automated election equipment and records such as the VCMs, CCS units, SD cards (main and backup), and the other data storage devices containing electronic data and ballot images in ALL of the 36,465 protested clustered precincts pursuant to Rules 38 to 45 of the 2010 PET Rules; and

Third Cause of Action - Annulment of Elections

Annulment of election results for the position of Vice President in the provinces of Maguindanao, Lanao del Sur and Basilan, on the ground of terrorism; intimidation and harassment of voters as well as pre-shading of ballots in all of the 2,756 protested clustered precincts that functioned in the aforesaid areas.

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[105] 2010 PET RULES, Rule 29.

The Tribunal also asked clarificatory questions regarding the causes of action in the protest.[106]

In the First Cause of Action, Atty. Garcia, the lead counsel for protestant, clarified that even if protestant would be able to prove his allegations that the COCs and CCS are not authentic, he did not intend to conduct a manual recount of the ballots in all the clustered precincts that functioned during the 2016 National and Local Elections. Atty. Garcia categorically emphasized that protestant's prayer for the collection, revision, and manual recount of ballots was limited to the 39,221 clustered precincts mentioned in the Second and Third Causes of Action. Atty. Garcia also admitted that the First Cause of Action was merely complementary to the Second and Third Causes of Action.[107]

As regards the Second Cause of Action, protestant maintained that he would no longer present any testimonial evidence to prove the material allegations insofar as the 36,465 protested clustered precincts were concerned and would rely only on the results of the revision of the ballots.[108]

Anent the Third Cause of Action, protestant insisted on his prayer for technical examination of the voters' registration record and the EDCVL and stated that he would present testimonial and documentary evidence that would prove that voters in Lanao del Sur, Maguindanao, and Basilan were deprived of their right to vote on election day.[109]

Thereafter, the Tribunal directed the parties to limit the number of witnesses for the Second and Third Causes of Action to three (3) witnesses per clustered precinct.[110] The parties also agreed

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[106] See TSN, Preliminary Conference Hearing, July 11, 2017, pp. 8-17.

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

[108] *Id.* at 43, 46.

[109] *Id.* at 20-21.

[110] *Id.* at 43.

to limit the witnesses for the First Cause of Action to twenty-five (25) for protestant and ten (10) for protestee.[111] In this regard, the Tribunal ordered the parties to submit a new list of witnesses in compliance with the given limits and to specify the applicable precincts per witnesses, within ten (10) days from the date of the preliminary conference or until July 21, 2017.[112] The parties were also informed that the Tribunal would adopt the Judicial Affidavit Rule.[113]

Preliminary Conference Order and Dismissal of the First Cause of Action

In the Resolution[114] dated August 29, 2017, the Tribunal dismissed the First Cause of Action of the Protest. The Tribunal found protestant's prayer to annul protestee's proclamation as Vice President meaningless and pointless considering that protestant did not intend to conduct a manual recount of the ballots in all clustered precincts that functioned during the 2016 National and Local Elections.

The Tribunal explained that even if protestant succeeds in proving his first cause of action, this would not mean that he has already won the position for Vice President as this could only be determined by a manual recount of all votes in all precincts. Since protestant had clearly stated that he was not praying for such relief, to allow the First Cause of Action to continue would be an exercise in futility and would have no practical effect. ***Thus, the First Cause of Action was dispensed with for judicial economy and for the prompt disposition of the case***.[115]

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[111] *Id.* at 50.

[112] See Resolution dated July 11, 2017, p. 3, *rollo* (Vol. XXXII), p. 23978-C.

[113] See TSN, Preliminary Conference Hearing, July 11, 2017, p. 46.

[114] *Rollo* (Vol. XXXII), pp. 24482-24515.

[115] *Id.* at 24483-24484.

In the same Resolution, the Tribunal also issued a Preliminary Conference Order[116] setting forth the parties' respective admissions and stipulations, the issues for the Tribunal's resolution, and the parties' proposed witnesses. ***With the dismissal of the First Cause of Action, the admissions, stipulations, and issues in the Preliminary Conference Order were limited to the Second and Third Causes of Action of the Protest and to the Counter-Protest.***

The Preliminary Conference Order also indicated Camarines Sur, Iloilo, and Negros Oriental as protestant's designated pilot provinces pursuant to Rule 65 of the 2010 PET Rules. As discussed, the revision of ballots was to begin with these three (3) provinces, which shall serve as "test cases" by which the Tribunal will determine whether to proceed with the revision of ballots of the remaining contested clustered precincts.

As regards the parties' witnesses, protestant, in his *Comment [To the Preliminary Conference Guide]*,[117] reserved his right to present additional witnesses for the Third Cause of Action, namely: handwriting, technology, and other technical experts and forensic investigators to testify on the result of the technical examination and forensic investigation of the paper ballots and/or the ballot images, other elections documents, as well as the automated election equipment and records such as the VCMs, CCS units, SD cards (main and back-up), and other data storage devices containing electronic data and ballot images in each of the 2,756 protested clustered precincts of Lanao del Sur, Maguindanao, and Basilan that functioned during the 2016 National and Local Elections. Protestant also reserved the presentation of three (3) registered voters and/or members of the Board of Election Inspectors (BEI) to identify paper ballots and/or ballot images, voter's receipts, and signatures on the lists of voters, particularly the EDCVL, VRRs, and the books

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[116] *Id.* at 24485-24514.

[117] *Id.* at 24324-24341.

of voters used during the 2016 National and Local Elections in the same provinces.[118]

As to the witnesses for the Second Cause of Action, protestant maintained his position that he would no longer present any testimonial evidence to prove the material allegations insofar as the 36,465 protested clustered precincts subject to revision of ballots.[119] Thus, protestant effectively waived his right to present any witnesses for his Second Cause of Action.

In addition, the Tribunal found that protestee complied with the limit on the number of witnesses and the directive to indicate the concerned clustered precinct.[120] Protestant, however, failed to submit his new list of witnesses for the Third Cause of Action. Thus, the Tribunal granted protestant a non-extendible period of five (5) days from notice to comply with the directive; otherwise, protestant's right to name and identify his witness, and to present them during the reception of evidence would be deemed waived.[121]

On September 11, 2017, protestant filed a *Manifestation and Compliance [Re: List of Witnesses for the Third Cause of Action]*[122] and submitted a list of his witnesses for the Third Cause of Action. However, protestant failed to specify the corresponding clustered precinct per witness. Thus, in the Resolution[123] dated September 19, 2017, the Tribunal noted protestant's Manifestation and Compliance but required the protestant to strictly comply with the Resolution dated August 29, 2017 within a final and non-extendible period of five (5) days from notice.

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[118] *Id.* at 24328-24329, 24501-24502.

[119] *Id.* at 24502.

[120] *Id.* at 24501, 24503.

[121] *Id.* at 24502.

[122] *Id.* at 24795-24819.

[123] *Id.* at 24905-24907.

On October 9, 2017, protestant filed anew his *Manifestation and Compliance (Re: List of Witnesses for the Third Cause of Action)*[124] and submitted a revised list of witnesses showing the corresponding clustered precinct per witness, which the Court noted in its Resolution[125] dated November 7, 2017.

Motion for Reconsideration on the sufficiency of the allegations in the Protest

Addressing other pending incidents; the Tribunal, in the same August 29, 2017 Resolution, denied protestee's *Motion for Reconsideration Pro Tanto with Prayer to Set for Hearing* of the Tribunal's Resolution dated January 24, 2017.[126] Protestee had insisted in her motion that the Tribunal erred in finding the Protest sufficient in form and substance.

Guided by its previous ruling in *Roxas v. Binay,*[127] the Tribunal emphasized that in determining the sufficiency of the allegations of an election protest, what is merely required is a statement of the ultimate facts forming the basis of the Protest. Based on this yardstick, the Tribunal found the allegations in the Protest sufficient to apprise protestee of the issues that she had to meet, and to inform this Tribunal of the ballot boxes that had to be collected.[128] The Tribunal also stressed that protestee's Motion for Reconsideration essentially restated the arguments contained in her Answer with Counter-Protest, which the Tribunal had duly considered and passed upon in the Resolution dated January 24, 2017.[129]

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[124] *Rollo* (Vol. XXXIII), pp. 25059-25245.

[125] *Id.* at 25351-25354.

[126] *Rollo* (Vol. XXIX), pp. 22674-22698.

[127] P.E.T. Case No. 004, September 28, 2010 Resolution.

[128] *Rollo* (Vol. XXXII), pp. 24505-24506.

[129] *Id.* at 24506.

Motion for Technical Examination, Retrieval of Ballot Boxes, and Decryption and Printing of Ballot Images

In addition, the Tribunal resolved the following incidents: (1) protestant's *Motion for the Collection and Retrieval of Ballot Boxes and Other Election Documents and Paraphernalia*[130] (Motion for Retrieval); (2) protestant's *Motion for Decryption and Printing of Ballot Images dated June 1, 2017* (Motion for Decryption); and (3) protestant's *Motion for Technical Examination*[131] dated July 10, 2017 (Motion for Technical Examination).

Protestant, in his Motion for Retrieval, sought the collection, retrieval, transport, and delivery of all the ballot boxes and their contents and all other documents or paraphernalia used in the elections, including the automated election equipment and records such as the VCMs, CCS units, SD cards (main and backup), and other data storage devices containing electronic and ballot images, evidencing the conduct and results of the elections in all clustered precincts in the pilot provinces of Camarines Sur, Iloilo, and Negros Oriental, and the provinces of Basilan, Lanao del Sur, Maguindanao, subject of his Third Cause of Action.

Protestee, in her *Comment and Opposition [To the Motion for Retrieval]*[132] dated July 20, 2017, claimed that for logistical and practical reasons, the retrieval should only be limited to the three (3) pilot provinces.

On the other hand, in his Motion for Technical Examination, protestant prayed that the COMELEC handwriting experts conduct a technical examination on the voters' signatures

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[130] *Rollo* (Vol. XXXI), pp. 23979-23983. Denominated as "Manifestation and Compliance with Reiterative Motion to Direct the Collection of Ballot Boxes and Other Election Documents and Paraphernalia for the Pilot Protest" dated July 10, 2017.

[131] *Id.* at 23966-23972.

[132] *Rollo* (Vol. XXXII), pp. 24220-24237.

appearing on the EDCVL and compare them against the voters' signatures appearing on the VRRs in each of the 2,756 clustered precincts of Lanao del Sur, Maguindanao, and Basilan. This would allegedly show massive presence of pre-shaded ballots and substitute voting in these provinces.[133]

Protestee argued in her *Comment and Opposition (To the Motion for Technical Examination dated 10 July 2017)*[134] that protestant was not entitled to the technical examination of the signatures of voters in Lanao del Sur, Maguindanao, and Basilan as these provinces are not among those protestant designated as his pilot provinces. Protestee also argued that the pending incidents and logistical and practical considerations as discussed during the Preliminary Conference warrant the denial of the Motion for Technical Examination.

In his Motion for Decryption, protestant prayed that the Tribunal direct the COMELEC-ERSD to conduct the decryption and printing of the ballot images from the relevant SD cards and/or data storage devices in each of the 36,465 protested clustered precincts. Protestant claimed that the conduct of the decryption and printing of ballot images would not only aid the Tribunal in the prompt disposition of the Protest, but would likewise assist protestant in the preparation for the recount proceedings and the presentation of his evidence for the protest.[135]

In her *Comment and Opposition (To the Motion for Decryption and Printing of Ballot Images dated 01 June 2017)*,[136] protestee asserted that the decryption and printing of ballot images was premature considering that Rule 43(q) of the 2010 PET Rules allows decryption only when the integrity of the ballot box and its contents was compromised or was not preserved.

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[133] *Rollo* (Vol. XXXI), pp. 23966-23967.

[134] *Rollo* (Vol. XXXII), pp. 24238-24264.

[135] *Id.* at 24509.

[136] *Rollo* (Vol. XXXI), pp. 23395-23403.

The Tribunal partially granted the retrieval of the ballot boxes and other election documents, and the decryption of ballot images, only for the pilot provinces of Camarines Sur, Iloilo, and Negros Oriental. It also deferred action on the technical examination of the signature of voters in Lanao del Sur, Maguindanao, and Basilan, following Rule 65 of the 2010 PET Rules.

Rule 65 of the 2010 PET Rules pertains to the initial determination of the grounds for the protest. Rule 65 grants the protestant the opportunity to designate three (3) provinces that best exemplify the frauds or irregularities raised in his or her Protest. These provinces constitute the "test cases" by which the Tribunal will determine whether it would proceed with the protest. The full effect of Rule 65, however, is yet to be determined by the Tribunal based on the required submission of Memoranda mentioned in this Resolution.

Following Rule 65, the Tribunal found it premature to retrieve the ballot boxes, decrypt and print the ballot images, and conduct a technical examination on voters' signatures from provinces other than those designated to be the pilot provinces. The Tribunal further stressed that given the physical and logistical constraints it was facing, judicial economy required that action on matters other than those pertaining to the pilot provinces be deferred until such time that an initial determination has been made in the Protest.

On September 15, 2017, protestant filed a *Partial Motion for Reconsideration [of the Resolution dated August 29, 2017]*[137] (Partial Motion for Reconsideration) praying that the Tribunal immediately direct the conduct of technical examination of the voters' signatures appearing in the EDCVL as against the voters' signatures appearing on the VRRs in each of the 2,756 protested clustered precincts in Lanao del Sur, Maguindanao, and Basilan during the 2016 National and Local Elections. Protestant maintained that the technical examination was limited to the provinces in his Third Cause of

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[137] *Rollo* (Vol. XXXII), pp. 24896-24904.

Action, which was separate and independent from the pilot provinces for revision envisioned by Rule 65.

In her *Comment and Opposition (to the Partial Motion for Reconsideration dated 15 September 2017),*[138] protestee asserted that the technical examination on the three (3) provinces covered by the Third Cause of Action is premature. Prostestee claimed that protestant could not take separately and in piecemeal his causes of action in his Protest. Pursuant to Rule 65, protestant was bound by his choice of the pilot provinces, and to allow protestant to add three (3) more provinces would be a circumvention of the Rules.

In the Resolution[139] ***dated November 7, 2017, the Tribunal denied protestant's Partial Motion for Reconsideration for lack of merit and reiterated its previous ruling to defer the technical examination after the initial determination of the grounds of the Protest pursuant to Rule 65 of the 2010 PET Rules.***

Lifting of the Precautionary Protection Order on the clustered precincts not covered by the Protest and Counter-Protest

As discussed, on July 12, 2016, the Tribunal issued a Precautionary Protection Order mandating the COMELEC and its agents to preserve and safeguard the integrity of all the ballot boxes and their contents in the 92,509 clustered precincts. Subsequently, in a Resolution dated August 29, 2017, the Tribunal resolved to dismiss the First Cause of Action for judicial economy and the prompt resolution of the Protest. Thus, given that the allegations in the Second and Third Causes of Action are specific only to the 39,221 clustered precincts, only the said precincts remain subject of the Protest as a result of the dismissal of the First Cause of Action. In this regard, the Tribunal, in the

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[138] *Rollo* (Vol. XXXIII), pp. 25270-25283.

[139] *Id.* at 25351-25354.

Resolution[140] dated October 10, 2017, lifted the Precautionary Protection Order with respect to the 45,751 clustered precincts not covered by the Second and Third Causes of Action of the Protest and the Counter-Protest as there was no more purpose in further preserving the ballot boxes and other election paraphernalia corresponding to the 45,751 clustered precincts.

Decryption and Printing of Ballot Images, Audit Logs, and Election Returns

In relation to the decryption and printing of ballot images, the Tribunal, in the Resolution dated August 29, 2017, directed the COMELEC to inform the Tribunal of its recommended procedures, logistics, schedule, and cost of the decryption and printing of the ballot images for the pilot provinces of Camarines Sur, Iloilo, and Negros Orienta1.[141]

In compliance thereto, the COMELEC, on September 15, 2017, submitted its *Manifestation/Compliance with Motion*,[142] attaching thereto Resolution No. 10155 on the Guidelines to Decrypt Ballot Images and other/related resolutions, the Order of Payment, and Summary of Supplies.[143]

On October 9, 2017, the COMELEC filed another *Manifestation*[144] requesting that the decryption and printing of the ballot images, election returns, and audit logs for all the protested clustered precincts of the pilot provinces be conducted on October 23, 2017 at 9:00 a.m. at the Project Management Office of the COMELEC until the completion thereof.

In the Resolution[145] dated October 10, 2017, the Tribunal found the COMELEC's Compliance lacking in details, particularly

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[140] *Id.* at 25246-25251.

[141] *Rollo* (Vol. XXXII), p. 24513.

[142] *Id.* at 24853-24861.

[143] *Id.* at 24862-24883.

[144] *Rollo* (Vol. XXXIII), pp. 25046-25051.

[145] *Id.* at 25248-25251.

on the logistics and duration of the decryption and printing activity. Thus, while the Tribunal granted the COMELEC's request to start the decryption and printing of ballot images, audit logs and election returns on October 23, 2017, the COMELEC was directed to provide the Tribunal information on the following matters related to the decryption and printing process:

1. the estimated duration of decryption and printing process per pilot province, and for all three pilot provinces;
2. the number of computers and printers to be used and COMELEC personnel to be assigned to conduct the decryption and printing process;
3. the number of party representatives that may be allowed to witness the decryption and printing process; and
4. other information on the decryption and the printing process that the COMELEC may deem useful to the Tribunal and the parties, including but not limited to the storage of the printed ballot images, audit logs, and election returns.[146]

On October 20, 2017, protestant filed a *Manifestation [Re: Payment of the Costs and Expenses for the Decryption and Printing of Ballot Images],*[147] informing the Tribunal that protestant, on October 18, 2017, paid the COMELEC the costs and expenses for the conduct of the decryption and printing of ballot images, election returns and audit logs for all the protested clustered precincts of the pilot provinces. Protestant also alleged that he also delivered the supplies required by the ERSD for the said activity.

As scheduled, the decryption and printing of the ballot images for the three (3) pilot provinces commenced on October 23, 2017 at 9:00 a.m. Representatives from protestant, protestee and the Tribunal, together with representatives from the COMELEC-ERSD, stood as witnesses in the authentication of the printed ballot images.

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[146] *Id.* at 25250.

[147] *Id.* at 25371-25376.

Meanwhile, on October 24, 2017, protestee filed an *Urgent Ex-parte Motion to be Allowed to Secure Soft Copies of the Ballot Images and Other Reports from the Decrypted Secured Digital Cards*,[148] praying that she be allowed to secure soft copies of the ballot images and other reports from the decrypted SD cards, in lieu of the printed images. The Tribunal granted protestee's request in its Resolution dated November 7, 2017.[149] Protestant filed a motion for reconsideration, but it was denied by the Tribunal in its Resolution[150] dated January 10, 2018.

On October 30, 2017, COMELEC filed its *Compliance*[151] to the October 10, 2017 Resolution attaching a Memorandum dated October 26, 2017 from Dir. Ester L. Villaflor-Roxas of the COMELEC-ERSD addressing the Tribunal's concern as indicated in its Resolution. The said Memorandum stated that only forty (40) clustered precincts could be completed in a day considering that each printed ballot image needs to be authenticated by representatives from the COMELEC, PET, protestant, and protestee. And with a daily output of forty (40) clustered precincts, the decryption, printing, and authentication of the printed ballot images and other files is estimated to be completed within seven (7) months.[152]

On November 21, 2017, protestant filed a *Motion to Turnover to the Protestant the Official, Printed and Authenticated Copies of the Decrypted Ballot Images, Election Returns and Audit Logs*,[153] praying for the Tribunal to turn over to the protestant all the official printed and authenticated copies of the decrypted ballot images, election returns, and audit logs for

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[148] *Id.* at 25325-25332.

[149] *Id.* at 25352.

[150] *Id.* at 25751-25753.

[151] *Id.* at 25333-25345, including Annexes.

[152] *Id.* at 25340.

[153] *Id.* at 25438-25444.

all the protested clustered precincts of the pilot provinces of Camarines Sur, Iloilo, and Negros Oriental. Protestant claimed that he should have custody of the official printed and authenticated copies of the decrypted ballot images, election returns and audit logs because he initiated the decryption and printing thereof and paid the corresponding fee therefor. Protestant further alleged that he would use this to prepare for the presentation of his evidence in this Protest.

In the Resolution dated January 10, 2018, the Tribunal allowed protestant to secure only photocopies or soft copies of the decrypted ballot images, election returns, and other reports for all the protested clustered precincts of the pilot provinces, subject to the payment of incidental costs. The Tribunal held that for the purpose of the conduct of the revision proceedings, the custody of the official, printed, and authenticated copies of the decrypted ballot images, election returns, and audit logs from the protested clustered precincts of the said pilot provinces shall remain with the Tribunal.[154]

On December 3, 2018, COMELEC turned over the custody of the printed ballot images, audit logs, and election returns in all the clustered precincts of the pilot provinces to the Tribunal.

Retrieval of Ballot Boxes from the Pilot Provinces

On August 29, 2017, the Tribunal partially granted protestant's Motion for Retrieval only for the precincts in the pilot provinces. Prior thereto, or on August 8, 2017, the Tribunal resolved to create an exploratory mission/retrieval team composed of nine (9) officials and personnel of the Tribunal to facilitate such retrieval of ballot boxes and election documents from the three (3) pilot protested provinces.[155] The exploratory mission entailed coordinating with concerned officials from COMELEC, the local government units and the Philippine National Police, the PhilPost,

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[154] *Id.* at 25751.

[155] See *rollo* (Vol. XXXII), p. 24429-N; see also Resolution dated December 5, 2017, *id.* at 25671.

and finding suitable transportation procedures and storage places to assure the most efficient, expeditious, and safest way to retrieve and transport the ballot boxes.

In the Tribunal's Resolutions dated December 5, 2017,[156] April 24, 2018,[157] and September 11, 2018,[158] the retrieval team was authorized to undertake retrieval of ballot boxes and other election paraphernalia in the provinces of Camarines Sur, Iloilo, and Negros Oriental, respectively, following exploratory missions conducted in these areas. The retrieval from all three (3) provinces was concluded on September 19, 2018.[159]

Preparation for the Revision of Ballots

During the preliminary conference, the Tribunal informed the parties of the physical and logistical constraints that the PET was facing with respect to the venue of the revision of ballots. Based on the state of physical facilities of the SC at that time, the only venue spacious enough inside the SC to conduct the revision process was the SC gymnasium. To be a proper and suitable venue for the revision process, and accommodate fifty (50) revision tables at most, the SC gymnasium had to be renovated and retrofitted, which took a significant period of time.[160]

In the Resolution[161] dated August 8, 2017, the Tribunal approved the use of the SC gymnasium for revision and the parking space of the SC-Court of Appeals Multi-Purpose Building as storage for the ballot boxes and other election documents.

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[156] *Rollo* (Vol. XXXIII), pp. 25671-25674.

[157] *Rollo* (Vol. XXXIV), pp. 26664-26672.

[158] *Rollo* (Vol. XLI), pp. 32233-32240.

[159] Report dated September 7, 2018.

[160] TSN, Preliminary Conference Hearing, July 11, 2017, pp. 47-48.

[161] *Rollo* (Vol. XXXII), pp. 24429-K to 24429-O.

In addition to renovating the venue for revision, there was also a need to amend the 2010 PET Rules on the composition of the Revision Committee (RC), as well as the qualification and compensation of the members thereof, and the hiring and training of the members of the RC before the start of the revision process.

In this regard, the Tribunal amended Rule 39(b) of the 2010 PET Rules such that each RC would now be composed of a Coordinator who shall be a college graduate, a recorder, and one (1) representative from the protestant and protestee.[162] The Tribunal likewise resolved to amend the compensation of the members of the RCs under Rule 40.[163]

On January 10, 2018, the Tribunal resolved to further amend Rule 39(b) and rename or retitle the position of Coordinator as Head Revisor (HR) and collapse the position of recorder.[164] Hence, the RC became composed of three (3) members: the HR and one representative from each party.

Further, the Tribunal authorized the Acting Administrative Officer of the Tribunal to screen, hire and train applicants for Head Revisor.[165]

Start of the Revision Proceedings

On January 16, 2018, the Tribunal issued the PET Revisor's Guide for the Revision of Ballots under the Automated Election System (Revisor's Guide) to govern the conduct of revision in election protests falling within the jurisdiction of the Tribunal

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[162] See Resolution dated August 8, 2017, *rollo* (Vol. XXXII), p. 24429-L and Resolution dated October 18, 2017, *rollo* (Vol. XXXlll), p. 25313.

[163] *Rollo* (Vol. XXXII), p. 24429-M.

[164] *Rollo* (Vol. XXXIII), p. 25752.

[165] *Rollo* (VoL XXXII), p. 24429-M. See also Resolution dated October 18, 2017, *rollo* (Vol. XXXIII), p. 25313; Resolution dated January 30, 2018, *rollo* (Vol. XXXIV), pp. 25958-25960; Resolution dated February 20, 2018, *id*. at *rollo* (Vol. XXXIV), pp. 26105-26107; and Resolution dated March 20, 2018, *rollo* (Vol. XXXIV), pp. 26218-26222.

under the AES, in lieu of the rules and procedures set out under Rules 38 to 45 (Revision of Votes) of the 2010 PET Rules.

The objectives of the process of revision of ballots are: (I) to verify the physical count of the ballots; (2) to recount the votes of the parties; (3) to record the parties' objections and claims thereon; and (4) to accordingly mark such ballots which were objected to and claimed by the parties for purposes of identification during subsequent examination by the Tribunal and for reception of evidence, if any.[166] In other words, the main purpose of the revision proceeding is to conduct a physical recount of the ballots and provide the parties with an opportunity to register their objections and claims thereon, the validity of which will later be ruled upon by the Tribunal during the appreciation stage.[167] For the present case, the revision process was undertaken by fifty (50) RCs constituted by the Tribunal, each composed of a Head Revisor, and one representative of the protestant and one representative of the protestee (Party Revisors).[168]

In addition, Revision Supervisors, who were lawyers, were designated by the respective offices of the Chairman and Members of the Tribunal to directly oversee the revision process.[169] Each revision day, two (2) Members of the Tribunal were required to assign lawyers from their offices who had previously undergone the necessary training to act as Revision Supervisors. The Revision Supervisors were tasked to, among others, settle issues relating to which shadings or markings were considered votes or non-votes,[170] settle matters and questions referred to them by the HRs,[171] and remove or oust persons

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[166] REVISOR'S GUIDE, Rule 4.

[167] See Resolution dated September 18, 2018, *rollo* (Vol. XLI), p. 32728; see also *rollo* (Vol. XXXIV), p. 26368.

[168] REVISOR'S GUIDE, Rule 6.

[169] *Id.*, Rule 9.

[170] *Id.*, Rule 62.

[171] *Id.*, Rule 48.

from the revision hall for improper conduct tending to delay or disrupt the proceedings or prohibit such persons from participating in subsequent revision proceedings.[172] The Revision Supervisors prepared Incident Reports on matters involving irregularities found on the face of the ballots and election paraphernalia during revision.

The Incident Reports prepared by the Revision Supervisors involving alleged tampered ballots and irregularities on the external condition of the ballot boxes, glaringly different BEI signatures on the ballots, excess ballots, and damaged and wet ballots were referred for appropriate action by the Tribunal to the panel of Commissioners who played key roles in the revision process.

During the revision process, the panel of Commissioners examined the ballots subject of the Incident Reports *vis-a-vis* the relevant election documents pertaining to the subject clustered precincts and undertook the process of bar code matching each and every such ballot in cases where the physical ballots exceeded the number of registered voters in the concerned precincts for the end objective of identifying the excess ballot.

The panel of Commissioners submitted nine (9) memoranda reflecting their findings on the Incident Reports and recommending the continuation of the revision proceedings on the subject ballot boxes using the decrypted images/picture images of the ballots therein for the purpose of determining the validity and authenticity of the votes. The Commissioners likewise recommended directing the Revision Supervisors and HRs that revision proceedings not be suspended in future similar instances and that discrepancies and irregularities simply be recorded in the Revision Reports for consideration by the Tribunal during appreciation proceedings. The City and Municipal Treasurers and the BEI were required to explain the irregularities found on the ballots, ballot boxes, and other election paraphernalia.

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[172] *Id.*, Rule 32.

Revision of ballots involved the following process: *first*, prior to the actual recount of the votes of the parties, the HRs were required to authenticate the ballots to ensure their genuineness, ensuring that the ballots contained all the security features of the official ballots and using ultraviolet lamps which could detect the hidden security marks;[173] *second*, such HRs segregated the ballots which were read by the VCMs into four (4) categories: (1) Ballots for Protestant; (2) Ballots for Protestee; (3) Ballots for Other Candidates; and (4) Ballots with Stray Votes (ballots with no votes or those with more than one (1) vote for the Vice President position);[174] *third*, the revisors for protestant and protestee registered their respective objections to the Ballots for Protestee and Ballots for Protestant, respectively;[175] *fourth*, both Party Revisors registered their claims on the Ballots for Other Candidates and Ballots with Stray Votes;[176] *fifth*, both Party Revisors registered their claims on ballots that were rejected by the VCMs and were not thus included in the ballot segregation, if any;[177] and *lastly*, each RC recorded all relevant data, including the results of their revision, in a Revision Report signed by all three (3) members and to which the claims and objections of the Party Revisors were annexed for subsequent ruling by the Tribunal during the appreciation stage.

The revision of ballots for the pilot protested precincts commenced on April 2, 2018 and was concluded on February 4, 2019. Paper ballots and decrypted ballot images were revised in a total of 5,415 clustered precincts. Three (3) clustered precincts were left unrevised as the paper ballots contained in their ballot boxes were wet, damaged and unreadable, and at the same time, COMELEC failed to provide the Tribunal with their respective decrypted ballot images.

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[173] *Id*., Rule 60.

[174] *Id*., Rule 61.

[175] *Id*., Rule 64.

[176] *Id*., Rules 65 and 66.

[177] *Id*., Rule 67.

Gag Order and Show Cause Order

On February 13, 2018, considering that the revision of ballots was then about to commence, the Tribunal directed the parties to strictly observe the *sub judice* rule.[178] This order was reiterated in the Resolution[179] dated March 20, 2018. However, despite these directives, the parties and their counsel continued to disclose sensitive information on the Protest, as shown in several news reports.

Hence, in the Resolution[180] dated April 10, 2018, the Tribunal, to preserve the sanctity of the proceedings, directed the parties to show cause and explain why they should not be cited in contempt for violating its Resolutions dated February 13, 2018 and March 20, 2018.[181]

The parties filed their respective *Compliances,*[182] both dated April 23, 2018, where they each denied having violated the *sub judice* rule. Protestant, while admitting that he made statements regarding the Protest before the media on April 2, 2018, argued that such statements were limited to his "personal observations" and were not intended to prejudge the issue or influence the Tribunal. He further claimed that it was protestee who violated the *sub judice* rule by issuing misleading pronouncements. On the other hand, protestee claimed that her statements were made in defense of "frivolous media releases" issued by protestant.

On June 26, 2018, the Tribunal found that the parties' continuous public discussion of pending issues tended to sway

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[178] *Rollo* (Vol. XXXIV), p. 26092.

[179] *Id*. at 26218-26222.

[180] *Id*. at 26366-26370.

[181] *Id*. at 26369.

[182] Protestee's Compliance (of the Resolution dated 10 April 2018), *rollo* (Vol. XXXIV), pp. 26636-26651; Protestant's Compliance [to the Show Cause Order as contained in Resolution dated 10 April 2018], *rollo* (Vol. XXXIV), pp. 26652-26663.

public opinion and may potentially destroy the people's confidence in the Tribunal's resolution of the protest. Hence, it found that the parties violated the *sub judice* rule, which restricts comments and disclosures pertaining to judicial proceedings to avoid prejudging the issue, influencing the court, or obstructing the administration of justice.[183]

Accordingly, the Tribunal imposed the penalty of fine of Fifty Thousand Pesos (₱50,000.00) on both parties, and were sternly warned that a repetition of the same or similar acts would be dealt with more severely.[184]

Threshold Issues

Rule 43(1) of the 2010 PET Rules provides that during segregation of ballots in the revision process, a 50% threshold is to be applied in determining a valid vote:

> (1) In looking at the shades or marks used to register votes, the RC shall bear in mind that the will of the voters reflected as votes in the ballots shall as much as possible be given effect, setting aside any technicalities. Furthermore, the votes thereon are presumed to have been made by the voter and shall be considered as such unless reasons exist that will justify their rejection. However, marks or shades which are less than 50% of the oval shall not be considered as valid votes. Any issue as to whether a certain mark or shade is within the threshold shall be determined by feeding the ballot on the PCOS machine, and not by human determination.

On the other hand, the Revisor's Guide provides that any issue on whether a mark or shade is within the threshold must be resolved by the assigned Revision Supervisor in the following manner:

> RULE 62. *Votes of the Parties.*— After the segregation and classification of ballots, the Head Revisor shall count the total number of ballots for the Protestant, Protestee, Other Candidates, and with Stray Votes and record said matter on the appropriate spaces of the Revision Report.

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[183] Resolution dated June 26, 2018, *rollo* (Vol. XXXVI), pp. 27916-27917, citing *Romero II v. Estrada*, 602 Phil. 312, 219 (2009).

[184] *Rollo* (Vol. XXXVI), p. 27917.

In examining the shades or marks used to register the votes, the Head Revisor shall bear in mind that the will of the voters reflected as votes in the ballots shall, as much as possible, be given effect, setting aside any technicalities. Furthermore, the votes thereon are presumed to have been made by the voter and shall be considered as such National and Local Elections reasons exist that will justify their rejection. Any issue as to whether a certain mark or shade is within the threshold shall be resolved by the assigned Revision Supervisor. Any objection to the ruling of the Revision Supervisor shall not suspend the revision of a particular ballot box. The ballot in question may be claimed or objected to, as the case may be, by the revisor of the party concerned.

Challenging the standard used by the RCs in determining valid votes on the ballots during the revision stage, protestee filed an *Urgent Ex-Parte Motion to Direct the Head Revisors to Apply the Correct Threshold Percentage as Set by the Commission on Elections in the Revision, Recount and Re-Appreciation of the Ballots, in Order to Expedite the Proceedings*[185] dated April 5, 2018 *(Ex-Parte* Motion). Protestee claimed that the threshold percentage in determining the validity of votes during the 2016 National and Local Elections was 25% and not 50% and, thus, moved that the Tribunal direct its HRs to use the 25% threshold percentage in determining valid votes. In support of her claim, protestee cited the Random Manual Audit (RMA) Visual Guidelines and RMA Report of the COMELEC.

On April 10, 2018, the Tribunal denied Protestee's *Ex-Parte* Motion, ruling that it did not have any basis to impose the 25% threshold as even the RMA Report— the document presented by protestee to support her claim — indicates the impossibility of using such threshold. Moreover, the Tribunal held that the mention of a threshold in the Revisor's Guide is in reference to the 50% threshold in the 2010 PET Rules. Hence, the Tribunal retained the 50% threshold under the 2010 PET Rules as the basis of the HRs in determining a valid vote.[186]

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[185] *Rollo* (Vol. XXXIV), pp. 26282-26293.

[186] Resolution dated April 10, 2018, *id*. at 26366-26370.

Protestee filed an *Urgent Motion for Reconsideration (of the Resolution dated 10 April 2018) with Reiterative Prayer to Immediately Direct the Head Revisors to Use the Twenty-Five (25%) Threshold Percentage in the Revision, Recount and Re-Appreciation of Ballots*[187] dated April 18, 2018 (Motion for Reconsideration). Protestee, for the first time, furnished the Tribunal a copy of COMELEC *en banc* Resolution No. 16-0600 dated September 6, 2016 wherein the COMELEC allegedly adopted the RMA guidelines as its position on the type of marks or shading that would be read by the VCMs as votes or non-votes for the 2016 National and Local Elections.

On May 28, 2018, protestant filed a *Comment/Opposition*[188] dated May 22, 2018. He argued, among others, that COMELEC Resolution No. 16-0600 did not contain a categorical declaration that the 25% threshold must be applied, even the Senate Electoral Tribunal was then observing the 50% threshold in the segregation of ballots. Protestant likewise argued that protestee failed to timely move for the amendment of the 2010 PET Rules upon the filing of the protest and is, thus, barred by *laches*.

On July 6, 2018, the Office of the Solicitor General (OSG), acting as the People's Tribune, filed a *Manifestation and Motion (in Lieu of Comment)*,[189] stating that the Tribunal correctly upheld the 50% threshold as it had no basis to adopt the 25% threshold. It also posited that the Tribunal, being the sole judge of all contests relating to election, returns, and qualifications of the Vice President, may promulgate rules and regulations on matters falling within its jurisdiction, including the threshold to be used in its recount. It thus prayed that the Tribunal affirm

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[187] *Rollo* (Vol. XXXIV), pp. 26483-26496.

[188] *Rollo* (Vol. XXXV), pp. 27427-27439. Denominated as "Comment/Opposition [To Protestee's Urgent Motion for Reconsideration (of the Resolution dated 10 April 2018) with Reiterative Prayer to Immediately Direct the Head Revisors to Use the Twenty-Five (25%) Percent Threshold Percentage in the Revision, Recount and Re-Appreciation of Ballots]."

[189] *Rollo* (Vol. XXXVI), pp. 28249-28271.

its Resolution dated April 10, 2018 and grant the COMELEC a fresh period to file its own comment.

On July 23, 2018, the COMELEC filed its *Comment*[190] narrating that it calibrated the VCMs for the 2016 National and Local Elections to read marks that cover at least about 25% (when seen by human eyes) of the oval for each candidate as valid votes. All election results were based on this threshold. It alleged that the RMA process, which involved a visual examination of the paper ballots much like a revision of ballots in election protests, used a diagrammatic guide that was consistent with the 25% threshold. According to the COMELEC, the RMA Guide — the guide submitted in evidence by protestee in her *Ex Parte* Motion was adopted and confirmed by the COMELEC *en banc* through its Resolution No. 16-0600 and that the 25% threshold under the RMA Guide was being used in all its protest cases for the 2016 National and Local Elections.

Moreover, the COMELEC stated that while it recognizes the power of the Tribunal to promulgate its own rules for election contests falling within its exclusive constitutional jurisdiction, the COMELEC is endowed with a similar constitutional power to decide all questions affecting elections. It alleged that decisions on election disputes like protests must be based on standards actually used during the conduct of the elections concerned. Hence, the COMELEC submitted that the threshold issue is a question of fact, specifically, a question of what was used to appreciate, count votes, and proclaim winners in the 2016 National and Local Elections.

Acting on protestee's Motion for Reconsideration, the Tribunal, in the Resolution[191] dated September 18, 2018, directed its HRs

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[190] *Rollo* (Vol. XXXVII), pp. 28970-28983. Denominated as "Comment (On the Urgent Motion for Reconsideration [Of the Resolution dated April 10, 2018] With Reiterative Prayer to Immediately Direct the Head Revisors to Use the Twenty-Five [25%] Threshold Percentage in the Revision, Recount and Re-Appreciation of Ballots dated April 18, 2018 filed by Counsel for Protestee Robredo)."

[191] *Rollo* (Vol. XLI), pp. 32728-32748.

to refer to the election returns used during the 2016 National and Local Elections to verify the total number of votes as read and counted by the VCMs and accordingly amended, effective immediately, Rule 62 of the Revisor's Guide to read as follows:

RULE 62. *Votes of the Parties.*— **The segregation and classification of ballots shall be done by referring to the Election Return (ER) generated by the machine used in the elections**. The Head Revisor shall count the total number of ballots for the Protestant, Protestee, Other Candidates, and with Stray Votes and record said matter on the appropriate spaces of the Revision Report.

In examining the shades or marks used to register the votes, the Head Revisor shall bear in mind that the will of the voters reflected as votes in the ballots shall, as much as possible, be given effect, setting aside any technicalities. Furthermore, the votes thereon are presumed to have been made by the voter and shall be considered as such National and Local Election reasons exist that will justify their rejection. **Any issue on the segregation and classification of ballots by the Head Revisor shall be resolved by the assigned Revision Supervisor, based on the guidelines set by the Tribunal** . Any objection to the ruling of the Revision Supervisor shall not suspend the revision of a particular ballot box. The ballot in question may be claimed or objected to, as the case may be, by the revisor of the party concerned.[192]

The Tribunal clarified that, prior to the Motion for Reconsideration of protestee, it was never furnished a copy of COMELEC Resolution No. 16-0600 which appeared to be the only official act of the COMELEC that referred to a 25% threshold. Prior to COMELEC's Comment to protestee's Motion for Reconsideration, it was never informed by the COMELEC that the latter had adopted a 25% threshold in determining valid votes. Before the filing of these pleadings, the Tribunal was merely furnished a copy of the RMA Guide which was not an official act or issuance by the COMELEC *en banc* and could not have constituted a sufficient basis to amend the rules of the Tribunal. The Tribunal likewise emphasized that the parties were apprised of the 50% threshold under the 2010 PET Rules

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[192] *Id.* at 32746.

before the start of the revision proceedings, but neither of them brought COMELEC Resolution No. 16-0600 to the Tribunal's attention.

In any case, the Tribunal declared that from the submissions of the parties and the COMELEC, what was adopted during the 2016 National and Local Elections was a range of 20% to 25% shading threshold for the following reasons: first, no official document predating the 2016 National and Local Elections was submitted to support the claim that the machines were indeed calibrated to observe a 25% threshold; second, in COMELEC Commissioner Luie Tito G. Guia's letter to the Tribunal dated September 6, 2016, it was disclosed that the public was not apprised of a 25% voting threshold as the voters were told to shade the ovals fully; third, no threshold was adopted for the 2016 National and Local Elections prior to COMELEC Resolution No. 16-0600, except for the 20% threshold for detainee voting under COMELEC Resolution No. 10115 dated May 3, 2016; and finally, the RMA Visual Guidelines states that a valid mark must score higher than a VCM's mark detection threshold of 20%-25%; otherwise, it is considered an invalid mark.

As to what must be used in its revision of ballots, the Tribunal noted that the purpose of the revision process is simply to recount the votes of the parties. This is implemented by mimicking (or verifying/confirming) how the VCMs read and counted the votes during the elections. This objective can be achieved by referring to the election returns generated by the VCMs used in the 2016 National and Local Elections. The election return is a document in electronic and printed form directly produced by the VCM showing the date, province, municipality, and precinct in which the election was held, and the votes in figures for each candidate in a clustered precinct where the said VCM was utilized.[193]

Hence, in the segregation of ballots, the Tribunal held that its Head Revisors must be guided by the number of votes indicated

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[193] Republic Act No. 9369, Sec. 2(4), January 23, 2007.

in the Election Returns. The Tribunal held that, in using the Election Returns and not merely adopting a specific shading threshold, the Tribunal's revision procedure will be more flexible and adaptive to calibrations of the voting or counting machines in the future. The Head Revisors were directed to use the Election Returns which normally would be inside the ballot boxes retrieved. However, in their absence, the Head Revisors were directed to use the certified true copies of Election Returns obtained from COMELEC. As to those ballots already previously revised, the procedure of verifying votes using the Election Returns was to be strictly enforced during the appreciation stage by the Tribunal.

Hence, from October 1, 2018 up to the conclusion of the revision process on February 4, 2019, the Head Revisors referred to the Election Returns and segregated the votes of the parties in accordance with the votes reflected therein.

Protestant's Motion for Inhibition

On August 6, 2018, protestant filed an *Extremely Urgent Motion to Inhibit Associate Justice Alfredo Benjamin S. Caguioa*[194] (Motion to Inhibit) on the ground of evident bias and manifest partiality in favor of protestee.

Protestant alleged that the Member-in-Charge, Associate Justice Alfredo Benjamin S. Caguioa (Justice Caguioa), was biased in favor of protestee due to his close ties with former President Benigno Simeon C. Aquino III (former President Aquino) who was a member of the same political party as protestee. Former President Aquino was a classmate of Justice Caguioa and had previously appointed him as Chief Presidential Legal Counsel, Secretary of Justice, and eventually, as Associate Justice of the SC. Protestant asserted that former President Aquino and his family bore a grudge against protestant and had handpicked protestee as the Liberal Party's candidate for Vice President in the 2016 National and Local Elections.

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[194] *Rollo* (Vol. XXXVII), 29286-29304, including Annexes.

Protestant also insinuated that Justice Caguioa's spouse was close to former President Aquino's family and protestee, and campaigned for the latter during the 2016 National and Local Elections. Based on these claims,protestant prayed to recuse Justice Caguioa from participating in any of the proceedings in connection with the Protest.[195]

In support of his Motion to Inhibit, protestant appended an August 4, 2018 column entitled "Questions that need answers" by Len Montaño published on the website www.radyo.inquirer.net, on the alleged conjugal conspiracy video which was supposedly circulating in social media, along with a copy of the said video.

The Tribunal unanimously denied protestant's Motion to Inhibit in its Resolution[196] dated August 28, 2018 for utter lack of merit, ruling that the grounds cited by protestant did not fall under any of the grounds for inhibition under Section 1,[197] Rule 8 of the

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[195] *Id*. at 29292-29296.

[196] *Rollo* (Vol. XL), pp. 31745-31756.

[197] SECTION 1. *Grounds for inhibition*. — A Member of the Court shall inhibit himself or herself from participating in the resolution of the case for any of these and similar reasons:

(a) the Member of the Court was the *ponente* of the decision or participated in the proceedings in the appellate or trial court;

(b) the Member of the Court was counsel, partner or member of a law firm that is or was the counsel in the case subject to Section 3(c) of this rule;

(c) the Member of the Court or his or her spouse, parent or child is pecuniarily interested in the case;

(d) the Member of the Court is related to either party in the case within the sixth degree of consanguinity or affinity, or to an attorney or any member of a law firm who is counsel of record in the case within the fourth degree of consanguinity or affinity;

(e) the Member of the Court was executor, administrator, guardian or trustee in the case; and

(f) the Member of the Court was an official or is the spouse of an official or former official of a government agency or private entity that is a party to the case, and the Justice or his or her spouse has reviewed or acted on any matter relating to the case.

Internal Rules of the Supreme Court. Citing *Philippine Commercial International Bank v. Spouses Dy,*[198] the Tribunal held that the mere imputation of bias or partiality was not sufficient ground for inhibition, especially when the charges against Justice Caguioa were without basis and not supported by any evidence.

The Tribunal further held that an opinion piece in a news website and an unauthenticated video circulating on social media websites were not credible and admissible supporting evidence, and that these were not even worthy of cognizance.

The Tribunal also found that Justice Caguioa had shown impartiality and that the proceedings in the Protest had moved forward with utmost dispatch despite the numerous pleadings filed and incidents brought up by both parties and the COMELEC, as well as the logistical and administrative concerns in relation to the Protest. The Tribunal also emphasized that all of its decisions were arrived at through a majority vote of all the members of the Court sitting *en banc* as the Tribunal, and not decided by the Member-in-Charge alone. Thus, the Tribunal denied protestant's Motion to Inhibit for lack of factual and legal basis.

Appreciation of Ballots

After the revision had concluded, the revised ballots were then appreciated. During this process, the Tribunal validates and verifies the physical count of the ballots during the revision stage and rules on the parties' respective claims and objections thereon.

For this purpose, the Tribunal approved, on November 6, 2018, the PET Guidelines in the Appreciation of Ballots Under the Automated Election System[199] (Ballot Appreciation Guidelines),

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A Member of the Court may in the exercise of his or her sound discretion, inhibit himself or herself for a just or valid reason other than any of those mentioned above.

The inhibiting Member must state the precise reason for the inhibition.

[198] 606 Phil. 615 (2009).

[199] *Rollo* (Vol. XLII), pp. 33578-33595.

which superseded and replaced the Guidelines previously approved by the Tribunal on January 16, 2018.[200] The Ballot Appreciation Guidelines were used in the appreciation of the ballots, specifically in determining the validity of the ballots and whether they contained valid votes. The cardinal objective of ballot appreciation was to discover and give effect to the intent of the voter.[201]

The appreciation of the revised ballots from the pilot provinces started on January 14, 2019 and was completed on August 14, 2019.

Protestant's Omnibus Motion and Protestee's Motion to Resolve

As discussed, the Tribunal resolved to defer action on protestant's Motion for Technical Examination until after its initial determination of the grounds of the Protest under Rule 65 of the 2010 PET Rules. This was reiterated by the Tribunal in its November 7, 2017 Resolution of protestant's Motion for Reconsideration.

Despite the foregoing, protestant filed an *Extremely Urgent Manifestation of Grave Concern with Omnibus Motion*[202] dated December 10, 2018 (Omnibus Motion) where he narrated that an election protest was filed by Abdusakur M. Tan (Tan) against Mujiv Hataman (Hataman) before the COMELEC, docketed as EPC Case No. 2016-37. Protestant averred that Tan informed him that the Voter's Identification Division (VID) of the COMELEC-ERSD conducted a technical examination of the signatures and thumbprints appearing in the VRRs and compared them to those in the EDCVL of 508 established precincts in the provinces of Lanao de Sur, Maguindanao, and Basilan — the same three (3) provinces subject of his Third Cause of Action and Motion for Technical Examination.

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[200] *Rollo* (Vol. XXXIV), pp. 25784-25798.

[201] Ballot Appreciation Guidelines, *rollo* (Vol. XLII), pp. 33578-33579.

[202] *Rollo* (Vol. XLV), pp. 36231-36239.

Allegedly, the technical examination revealed that 40,528 signatures and 3,295 thumbprints in the EDCVL of these precincts did not match the original signatures and thumbprints in their VRRs. Consequently, the VID concluded that the "2016 National, Local and ARMM elections [were] marked with different forms of election fraud such as massive substituted voting."[203] Hence, protestant prayed that the Tribunal issue a *subpoena duces tecum* to the VID to produce and submit the report on the alleged technical examination that it conducted on the 508 established precincts, investigate the BEIs concerned, and immediately direct the VID to conduct a technical examination on EDCVLs and VRRs of the entire 2,756 protested clustered precincts of the three (3) subject provinces.

The Tribunal directed both protestee and the COMELEC to file their respective Comments. Protestee filed a *Counter-Manifestation with Comment and Opposition (On the Extremely Urgent Manifestation of Grave Concern with Omnibus Motion dated 10 December 2018)*[204] dated January 14, 2019, arguing that granting the prayer for technical examination would be tantamount to allowing the protestant to expand his designated pilot provinces in contravention of Rule 65 of the 2010 PET Rules. For its part, the COMELEC filed a *Manifestation (In lieu of a Comment on Protestant Marcos' Extremely Urgent Manifestation of Grave Concern with Omnibus Motion)*[205] dated February 5, 2019 confirming that EPC Case No. 2016-37 was then pending before the COMELEC Second Division, and thus, was covered by the *sub judice* rule which restricts disclosures pertaining to ongoing judicial proceedings.

Protestant filed a *Consolidated Reply with Urgent Motion to Resolve Protestant's Omnibus Motion*[206] dated March 22, 2019, where he countered that protestee's argument was

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[203] *Id*. at 36233. Emphasis and underscoring omitted.

[204] *Rollo* (Vol. XLVI), pp. 36879-36898.

[205] *Rollo* (Vol. XLVII), pp. 37676-37682.

[206] *Id*., no pagination.

misleading, as his Second and Third Causes of Action are separate and independent from one another. Allegedly, his Second Cause of Action was for judicial revision and recount of ballots while his Third Cause of Action was for the annulment of election results in the provinces of Lanao del Sur, Maguindanao and Basilan. Thus, these provinces were excluded from the coverage of the pilot protested provinces mandated by Rule 65 of the 2010 PET Rules.

On the other hand, protestee filed an *Urgent Motion to Immediately Resolve all Pending Incidents*[207] dated June 11, 2019 (Urgent Motion). Protestee prayed that the Tribunal immediately resolve all pending incidents after the revision and recount of the ballots. She presented her own computation of the total national votes for protestant and protestee after "revision, recount, and re-appreciation," claiming that her victory as Vice President had been confirmed. In effect, protestee sought the immediate resolution of the Protest.

In the Resolution[208] ***dated July 2, 2019, the Tribunal again resolved to defer action on protestant's Omnibus Motion until after its initial determination of the grounds for the Protest under Rule 65 of the 2010 PET Rules***. The Tribunal reiterated its prior ruling in its Resolution dated August 29, 2017 that the technical examination of the voter's records in the three (3) subject provinces was premature, as these provinces were not part of the pilot provinces of protestant and that Rule 65 allows the Tribunal to conduct revision of ballots and reception of evidence on these pilot protested precincts.

The Tribunal also found protestee's Urgent Motion premature considering that the Tribunal has yet to complete the appreciation of the revised ballots and ruling on the respective objections and claims made by the parties thereon.

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[207] *Id*., no pagination.

[208] *Id*., no pagination.

II.

Results of the Revision and Appreciation of Ballots in the Pilot Provinces

Revision

Based on the canvass by the National Board of Canvassers[209] during the May 9, 2016 National and Local Elections, and as admitted by both parties,[210] protestant and protestee received the following votes:

Protestee Robredo	14,418,817
Protestant Marcos, Jr.	14,155,344
Margin of votes	(263,473)

Table 1

The table below shows the votes (as declared in provincial COCs) obtained by the parties in each of the pilot provinces[211] handpicked by protestant:

	Robredo	Marcos, Jr.
Camarines Sur	664,190	41,219
Iloilo	573,729	94,411
Negros Oriental	255,598	66,506
Total votes	**1,493,517**	**202,136**

Table 2

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[209] Resolution of Both Houses No. 1, declaring the results of the National Elections held on May 9, 2016, for the Offices of President and Vice President, and proclaiming the duly elected President and Vice-President of the Republic of the Philippines, *supra* note 2.

[210] *Rollo* (Vol. XXXII), p. 24567.

[211] *Id.* at 24517.

The total clustered precincts from the three (3) pilot provinces are as follows:

Camarines Sur	1,816
Iloilo	2,318
Negros Oriental	1,284
Total	**5,418**

Table 3

In the course of the revision, the Tribunal observed that the paper ballots in several clustered precincts were wet and unreadable, or their integrity was compromised such that it rendered revision using paper ballots impossible. For these clustered precincts, the Tribunal directed the use of the decrypted ballot images provided by the COMELEC for purposes of revision. The parties registered their claims and objections thereto in the same manner as they did for paper ballots.

However, as earlier mentioned, for three (3) clustered precincts — specifically Clustered Precinct 34, Barangay Nino Jesus, Bato, Camarines Sur; Clustered Precinct 13, Barangay Haring, Canaman Camarines Sur; and Clustered Precinct 27, Barangay Cubay, San Joaquin, Iloilo—the COMELEC was unable to provide the decrypted ballot images as they were not available. The COMELEC explained that the BEI in said clustered precincts used the "REZERO" command before shutting down the VCMs. Thus, except for the audit logs, all contents of the SD cards were deleted, including the ballot images.[212] Given this, the three (3) clustered precincts were necessarily excluded from the pilot provinces of protestant as the paper ballots and ballot images of said clustered precincts were not available for revision and appreciation. The votes of the parties in the said clustered precincts are as follows:

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[212] *Rollo* (Vol. XLVII), no pagination.

	Robredo	**Marcos, Jr.**
CP 34, Barangay Nino Jesus, Bato, Camarines Sur	251	22
CP 13, Barangay Haring, Canaman Camarines Sur	425	17
CP 27, Barangay Cubay, San Joaquin, Iloilo	183	12
Total	**859**	51

Table 4

The revision for the 5,415[213] clustered precincts in the three (3) pilot provinces then proceeded. The results of the revision and recount proceedings in the 5,415 clustered precincts are as follows:

	Robredo	**Marcos, Jr.**
Camarines Sur	657,991	40,794
Iloilo	562,811	3,245
Negros Oriental	255,576	6,456
Total	**1,476,378**	**200,495**

Table 5

The list of all the clustered precincts that were revised by the Tribunal is attached as **Annex "A".**

Appreciation

The Tribunal proceeded with the appreciation of the ballots following the Ballot Appreciation Guidelines and taking into consideration the objections and claims of the parties.

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[213] 5,418 less 3.

The Tribunal pored over each ballot from all the clustered precincts involved both to rule on the objections and claims of the parties, and to determine the validity of each ballot and vote, regardless of whether the parties registered an objection or claim.

Objections

With the votes from revision as starting point, for objections, the Tribunal either sustained an objection, resulting in a deduction of a vote from the party for whom the vote was counted, or rejected an objection, resulting in the retention of the vote for the party for whom the vote was counted.

The following are the grounds for objections:

A. Spurious Ballots (SB)

Spurious ballots are those ballots which were not issued by the COMELEC as they do not contain the security features, or where the signature of the BEl chairperson is glaringly different compared to the BEl chairperson's signature appearing in the other ballots and other election paraphernalia (SB-BEI).

A ballot is spurious if it lacks any of the security features of the official ballots, which are the timing marks, ultraviolet ink mark, box for signature of the BEI chairperson, ballot lD, precinct in cluster, and the barcode (SB-FAKE).

A BEI chairperson's failure to sign or initial a ballot will, however, not invalidate a ballot, as this would otherwise disenfranchise the voters and place a premium on official ineptness.

B. Substituted Ballots (SuB)

Substituted ballots are ballots where the ballot lD on the paper ballot does not match the precinct-assigned ballot ID.

C. Shaded by One (SBO)

SBO ballots are two (2) or more ballots which were filled in by one (1) person. Evidence *aliunde* must be presented as proof. Absent such evidence, the Tribunal shall admit the ballots.

Evidence *aliunde* is required as it would not be possible to determine whether two (2) or more ballots were filled in by one (1) person just by looking at the ballot. Further, since the ballots are filled in by just shading the corresponding oval, it would be impossible to know just by looking at the ballots if one (1) person shaded two (2) or more ballots.

D. Shaded by Two or More (SBT)

SBT ballots are those which have been filled in by two (2) or more persons. Evidence *aliunde* must also be presented as proof and absent such evidence, the Tribunal shall admit the ballots.

E. Marked Ballots (MB)

Marked ballots are those which are marked by the voter for the purpose of identifying the ballot as one that the voter accomplished. Two (2) elements must concur to invalidate the marked ballot:

(a) The voter must have placed the mark; and

(b) The mark was placed deliberately for the purpose of identifying the voter or the ballot.

A marked ballot is invalidated when the following kinds of markings are made, upon which it is considered a Marked Ballot due to Unnecessary Markings (MB-UM):

(a) Names, signatures, initials of voters; erasures of the candidates' names, written names of candidates, the words "valid" or "rejected" if written by the voter;

(b) Irrelevant or impertinent expressions, comments, epithets prominently written by the voter in order to identify him/her or the ballot; and,

(c) Use of marking which is prominent from a distance.

Further, a ballot may be considered as marked due to over-voting in positions other than the Vice President (MB-OV). It must be shown that the over-voting was done deliberately to mark the ballot.

A ballot may also be considered as marked due to pattern voting (MB-PV). This means that the ballots were marked by several voters in an identical manner for the purpose of identifying themselves or their ballots. This requires the presentation of evidence *aliunde* and in the absence of such evidence, the ballot shall be admitted.

On the other hand, unintentional marks that the voter or some other person made will not invalidate the ballot. These may be any of the following:

(a) Ink smudges;

(b) Ink bled or blots;

(c) Dirt on the face of the ballots which seem unintentional;

(d) Random fingerprints, unless they are clearly made to easily identify the ballot or the voter;

(e) Any other unintentional markings, which are not prominent from a distance; and,

(f) Desistance markings, which may be:

    a. Lines indicative of desistance (LID);

    b. "X" marks or cross marks indicative of desistance (XID);

    c. Erasure indicative of desistance (EID); or

    d. Signs/symbols indicative of desistance (SID).

F. Pre-shaded Ballot (PSB)

Pre-shaded ballots are ballots which have been shaded prior to the conduct of elections. This requires evidence *aliunde;* otherwise, the ballot shall be admitted. Similar to SBO and SBT, it would not be possible to determine the validity of this objection by merely examining the ballots.

G. No stated objection (NSO)

The parties must specify their objections to the ballots. Ballots that have been objected to without specific grounds for objection shall be admitted.

The Tribunal also has the plenary power to deduct a vote from a party even if there is no registered objection to it if, upon its examination of the ballot, there exist grounds for the deduction of such vote from the party.

From the objections that the parties registered, the total votes deducted from the parties are as follows:

	Robredo	**Marcos, Jr.**
Camarines Sur	(358)	(8)
Iloilo	(285)	(34)
Negros Oriental	(205)	(56)
Total votes deducted	(848)	(98)

Table 6

Claims

Claims may be made on the following: (1) ballots with votes cast for candidates other than the parties; (2) machine-rejected ballots (ballots rejected by the VCMs); and (3) ballots with stray votes (those with no votes or those with over-votes). The Tribunal may admit or reject a claim. Only when a claim over a ballot is admitted will the party claiming gain one vote in his/her favor. The claims are as follows:

A. Ambiguous Votes (AV)

Ballots with ambiguous votes are those where the intent of the voter cannot be readily seen upon cursory inspection. This may occur when the voter did not fully shade the oval next to the name of the candidate, or when the voter placed a different mark in the oval (provided that the mark is not meant to identify the ballot). Extreme caution is observed before any ambiguous vote is invalidated and doubts are to be resolved in favor of the validity of the vote.

a. Admitted Ambiguous Vote (AAV)

A claim for ballots with Ambiguous Votes shall be admitted in the following circumstances:

a) the shade made by the voter in the oval next to the name of the claimant is clear and well-defined (Clear Shading Rule); or

b) the shade made by the voter in the oval next to the name of the claimant is not clear or is otherwise ambiguous, but the same is consistent with his/her manner of shading for all the other positions (Uniform Shading Rule); or

c) the voter, instead of shading the oval to indicate his/her vote, made a different mark for the contested position (*e.g.* check(√) mark), but such marking as manner of voting by the voter is consistent for all the other positions in the ballot (Uniform Marking Rule).

b. Rejected Ambiguous Vote (RAV)

A claim for ballots with Ambiguous Votes shall be rejected in the following circumstances:

a) the shade in the oval next to the name of the claimant is not clear or appears to have been made inadvertently and is inconsistent with the manner of shading for the other positions; or

b) the oval next to the name of the claimant contains a mark which is inconsistent with the markings made for other positions; *i.e.*, the voter placed an X mark on the oval for the contested position but placed check marks for the other positions; or

c) the voter placed any other marks which indicate his/her desistance from voting for the claimant; or

d) the voter, instead of shading the oval next to the claimant's name, placed marks outside such oval, unless it falls under the Uniform Marking Rule.

B. Ballots with Over-Votes

Over-votes occur where the voter voted for more than one (1) candidate for the position of Vice President. The vote will *not* be counted for any of the candidates.

a. Admitted Over-Vote (AOV)

However, a claim on an over-vote shall be admitted and counted for the claimant if:

a) there is actually only one (1) vote cast for the contested position as when the oval next to the name of the claimant is clearly shaded (Clear Shading Rule) and the shaded ovals for other candidates have marks indicating desistance; or

b) the shaded ovals for other candidates have marks indicating desistance, while the shading of the oval for the claimant is not clear or is otherwise ambiguous, but the same is consistent with the voter's shadings for all the other elective positions (Uniform Shading Rule); or

c) the shaded ovals for other candidates have marks indicating desistance, while the oval next to the name of the claimant is not shaded but contains marks consistent with the voter's manner of voting for the other positions (Uniform Marking Rule).

b. Rejected Over-Vote (ROV)

A claim on an over-vote shall not be admitted for the claimant in the following instances.

a) where the voter shaded clearly more than one (1) oval in the contested position and there are no marks indicating desistance from voting for any candidate in that position, the vote shall not be counted for either protestant or protestee; or

b) if the shaded ovals for the other candidates have markings indicating desistance but the shading made

by the voter in the oval for the claimant is not clear and not otherwise consistent with his/her manner of voting for the other elective positions; and

c) if the shaded ovals for other candidates have marks indicating desistance and the oval for the claimant contains marks not consistent with the voter's manner of voting for the other elective positions.

C. Machine-Rejected Ballots (MRB)

Machine-Rejected Ballots are ballots which were not read by the machines when fed during the election.

a. Admitted Machine-rejected Ballot (AMRB)

A claim on a vote on a machine-rejected ballot may be admitted in favor of a party if, upon its physical examination, it is found to contain a valid vote for the claimant; provided that the ballot is authentic (contains all the security features of an official ballot), belongs to the contested clustered precinct concerned, and is not otherwise a marked ballot (MB).

b. Rejected Machine-rejected Ballot (RMRB)

A claim on a vote on a machine-rejected ballot may be rejected if the ballot does not contain a vote for the claimant even if the ballot does not suffer from any infirmity, or the ballot contains a vote for the claimant but the ballot suffers from an infirmity.

D. No Specific Claim (NSC)

The parties must specify the grounds for their claims on ambiguous votes, ballots with over-votes and machine-rejected ballots. Otherwise, their claims shall be denied.

Similar to objections, the Tribunal has the plenary power to *motu proprio* add a vote to a party even if a party did not register a claim to it if, upon its examination of the ballot, there exist grounds for the addition of such vote to the party.

From the foregoing, the total votes added to the parties, which correspond to their respective total admitted claims, are as follows:

	Robredo	**Marcos, Jr.**
Camarines Sur	12,004	734
Iloilo	16,825	2,127
Negros Oriental	5,819	1,254
Total votes added	**34,648**	**4,115**

Table 7

The rulings on protestant's objections are marked as **Annex "B"**, on protestee's objections as **Annex "B-1",** on protestant's claims as **"Annex C"**, on protestee's claims as **Annex "C-1"**, on uncontested ballots as **Annex "D"** and on unclaimed ballots as **"Annex D-1"**. These annexes will be maintained at the Tribunal's Revision Hall at the 5th Floor of the SC-CA Gymnasium and are available for the parties to view.

Overall Result of Revision and Appreciation of Ballots

To determine the effect of the revision and appreciation of the ballots in the 5,415 pilot clustered precincts, the Tribunal uses as its base figure the overall votes received by protestant and protestee in all the clustered precincts which functioned during the 2016 National and Local Elections based on the canvass by the National Board of Canvassers (votes as proclaimed). As shown in Table 1, protestee garnered 14,418,817 votes and protestant obtained 14,155,344 votes.

From these figures, the votes received by the parties in the 5,418 clustered precincts of the three (3) pilot provinces is then to be subtracted as these figures or votes will be replaced by the results of the revision and appreciation of the ballots to determine the effect of the revision and appreciation on the results of the 2016 National Local Elections.

However, as discussed above, the paper ballots and ballot images in three (3) of the 5,418 clustered precincts of the pilot provinces were not revised and appreciated as they were unavailable, and were thus excluded from the 5,418 clustered

precincts. Given this, the Tribunal was able to revise and appreciate ballots from only 5,415 clustered precincts of the pilot provinces, and the results of what the parties garnered are in the following table:

	Robredo	**Marcos, Jr.**
Votes in the 5,418 clustered precincts of the three pilot provinces based on the Provincial COCs	1,493,517	202,136
Less: Votes in the three (3) clustered precincts with unavailable paper ballots and ballots images	(859)	(51)
Total votes in the 5,415 clustered precincts	**1,492,658**	**202,085**

Table 8

As mentioned, the votes of the parties in the 5,415 pilot clustered precincts must then be deducted from the votes as proclaimed, and this yields the total votes of the parties in all the clustered precincts other than the 5,415 pilot precincts revised and appreciated (TOTAL A), thus:

	Robredo	**Marcos, Jr.**
Total votes as proclaimed	14,418,817	14,155,344
Less: total votes in the 5,415 pilot clustered precincts	(1,492,658)	(202,085)
Total votes in the clustered precincts other than the 5,415 pilot precincts revised and appreciated (TOTAL A)	**12,926,159**	**13,953,259**

Table 9

On the other hand, the revision and appreciation of ballots in the 5,415 pilot clustered precincts yielded the following results (TOTAL B):

	Robredo	**Marcos, Jr.**
Votes in the 5,415 pilot clustered precincts after revision	1,476,378	200,495
Less: Votes deducted from sustained objections	(848)	(98)
Total Votes in the 5,415 pilot clustered precincts after revision after deducting sustained objections	1,475,530	200,397
Add: Votes added due to admitted claims (ballots with stray votes, ballots with over-votes, and VCM-rejected ballots)	34,648	4,115
Total votes in the 5,415 pilot clustered precincts after revision and appreciation (TOTAL B)	**1,510,178**	**204,512**

Table 10

The sum of TOTAL A and TOTAL B represent the votes of the parties in all the clustered precincts which functioned during the 2016 National and Local Elections, after revision and appreciation of the ballots in the 5,415 clustered precincts in the pilot provinces, thus:

	Robredo	**Marcos, Jr.**
Total votes in the clustered precincts other than the 5,415 pilot clustered precincts	12,926,159	13,953,259

Add: Total votes in the 5,415 pilot clustered precincts after revision and appreciation	1,510,178	204,512
Total votes in all clustered precincts after revision and appreciation of the ballots from the pilot clustered precincts[214]	**14,436,337**	**14,157,771**

Table 11

Thus, based on the final tally after revision and appreciation of the votes in the pilot provinces, protestee Robredo maintained, as in fact she increased, her lead with 14,436,337 votes over protestant Marcos who obtained 14,157,771 votes. After the revision and appreciation, the lead of protestee Robredo increased from 263,473 to 278,566.

Before the Tribunal proceeds to make a ruling on the effects of the results of the revision and appreciation of the votes for the pilot provinces on the Protestant's Second Cause of Action as articulated in the Preliminary Conference Order, the Parties will be required to submit their position stating their factual and legal basis.

Likewise, the Tribunal deems it essential to meet due process requirements to require protestant and protestee to now provide their position in relation to the Third Cause of Action also articulated in the Preliminary Conference Order. The Tribunal notes the pending Motion for Technical Examination[215] dated July 10, 2017 and Extremely Urgent Manifestation of Grave Concern with Omnibus Motion[216] dated December 10, 2018, as well as protestee's Manifestation dated October 14, 2019,

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[214] This includes the votes of the parties in the three (3) clustered precincts of the pilot provinces which were not revised and appreciated.

[215] *Rollo*, Vol. XXXI, pp. 23966-23972.

[216] *Rollo*, Vol. XLV, pp. 36231-36239.

and the earlier deferments made by the Tribunal of the various issues related to the Third Cause of Action.

This controversy has spawned very serious but unfounded and careless speculations on the part of many partisan observers who, on the basis of incomplete information, would rather latch on to their favorite conspiratorial theories rather than critically examine the facts and the law involved in this case. This Tribunal, however, will comply with its constitutionally mandated duty allowing the parties the opportunity to examine the results of the revision and appreciation of the pilot provinces as well as comment so that they are fully and fairly heard on all the related legal issues. Based on the submissions of the parties, the Tribunal can therefore confidently and judiciously deliberate on the proper course of action as clarified by the actual position of the parties on the common issues that we have identified.

WHEREFORE, the parties are directed to submit a **MEMORANDUM** within twenty (20) working days, starting from receipt of a copy of this Resolution containing:

I. Their comments on the report on the revision and appreciation of votes relating to the three pilot provinces, Camarines Sur, Iloilo, and Negros Oriental as it relates to the Second Cause of Action;

II. Their position on the following issues related to the Third Cause of Action:

A) Whether or not the results in the revision and appreciation of votes with respect to the Protestant's second cause of action moots or renders unnecessary the consideration of the Protestant's Third Cause of Action;

B) Whether or not the Presidential Electoral Tribunal has the competence to resolve the Third Cause of Action;

C) Assuming that the Presidential Electoral Tribunal has the competence to resolve the Third Cause of Action which is not mooted by the results of

Tribunal's findings with respect to the second cause of action:

1) What are the filing rules and requirements that a party must observe if he or she seeks the relief of annulment of elections before the Presidential Electoral Tribunal?

2) What is the threshold of evidence that is required to prove failure or annulment of elections?

3) Will evidence other than those listed by the parties during the preliminary conference be considered?

4) What percentage of votes/precincts needs to be proven as having been affected by the grounds for failure or annulment of elections?

5) Will the threshold apply per province or to all three (3) provinces? Can there be failure or annulment in some but not all three (3) provinces?

6) Should a similar pilot testing rule be equally applied in annulment of election cases?

D) Assuming that the Tribunal is convinced that there is basis to find for the Protestant in the Third Cause of Action:

1) Will this mean that the elections for all the elective positions in the ballot be nullified with all its attendant legal consequences?

2) Can our declaration as the Presidential Electoral Tribunal or the Supreme Court be a bar for any question relative to any present and future electoral protest involving the same area and for any position?

3) Will it be necessary to call for special elections for the position of Vice President? If so, who has the competence to call for such elections?

4) Will this mean "recovery" for the Protestant under Rule 65, which will, in turn, mean revision of all his contested precincts nationwide?

5) What will be the effect of our ruling on Protestant's Third Cause of Action on protestee's counter protest?

The voluminous documents mentioned in this Resolution as its Annexes shall be made available to the Parties or their counsels or authorized representatives for their inspection, review or, when practicable and with prior leave, for their photocopying within reasonable business hours at the office of the Tribunal.

SO ORDERED.

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

Carpio and *Caguioa, JJ.,* see dissenting opinions.

Reyes, J. Jr., J., on leave.

DISSENTING OPINION

CARPIO, *J.*:

For failure of protestant to make out his case, no basis exists to continue with the proceedings in this election contest.

In the present election contest, protestant designated, and the Tribunal approved, Camarines Sur, Iloilo, and Negros Oriental as protestant's pilot provinces in accordance with Rule 65 of the 2010 Rules of the Presidential Electoral Tribunal (2010 PET Rules) which provides:

Dismissal; when proper.— **The Tribunal may require the protestant or counter-protestant to indicate**, within a fixed period, the province or **provinces numbering *not more than three*, best exemplifying the frauds or irregularities alleged in his petition**; and the revision of ballots and reception of evidence will begin with such provinces. If upon examination of such ballots and proof, and after making

reasonable allowances, the Tribunal is convinced that, taking all circumstances into account, the protestant or counter-protestant will most probably fail to make out his case, the protest may forthwith be dismissed, without further consideration of the other provinces mentioned in the protest.

The preceding paragraph shall also apply when the election protest involves correction of manifest errors. (Boldfacing and italicization supplied)

The revision of the ballots in these pilot provinces had the following objectives: verify the actual physical count of the ballots; recount the votes of the parties; record the parties' objections and claims thereon; and mark the ballots objected to and/or claimed by the parties in preparation for their examination by the Tribunal and for the reception of the parties' evidence.

After the revision, the revised ballots were then subjected to appreciation wherein the Tribunal verified the physical count and ruled on the objections and claims of the parties.

The final tally after the revision and the appreciation of the votes in the pilot provinces resulted in a *net increase* of votes by 15,093 in favor of the protestee.

Since the revision results indicate no substantial recovery on the part of protestant, and thus protestant "will most probably fail to make out his case," the dismissal of the election protest, and thus, the discontinuance of any further proceedings, such as the revision of the remaining contested provinces, is proper pursuant to Rule 65 ofthe 2010 PET Rules.

The Number of Pilot Provinces Must Be "Not More Than Three"

Rule 65 expressly states that "[t]he Tribunal **may** require the protestant or counter-protestant to indicate, within a fixed period, the province or provinces numbering not more than three, best exemplifying the frauds or irregularities alleged in his petition; and the revision of ballots and reception of evidence will begin with such provinces."

As a general rule, the use of the word "may" in a statute, or in this case Rules of Procedure, denotes that it is directory

in nature. The word "may" is generally permissive only and operates to confer discretion.[1]

The word "may" in Rule 65 refers to the discretion of the Tribunal to dismiss or not the protest, and if the Tribunal does not dismiss the protest, to require the protestant to designate **"not more than three"** pilot provinces, **a mandatory ceiling. The word "may" recognizes that the Tribunal may summarily dismiss the protest, in which event there will be no reason to require the designation of pilot provinces. But if the Tribunal does not dismiss the protest, there will be a need to designate "not more than three" pilot provinces.** The word "may" has never been interpreted to pertain to the number of pilot provinces, which must be "not more than three," a language which is a clear mandatory command that the number of pilot provinces shall not exceed three.

In the case of pilot precincts designated in election contests before the House of Representatives Electoral Tribunal (HRET) and Senate Electoral Tribunal (SET), it has been consistently understood that the pilot precincts shall be not more than or at most 25% of the total number of precincts involved in the protest in accordance with the Rules of Procedure of these electoral tribunals. Rule 40 of the HRET Rules of Procedure provides:

> RULE 40. Post-Revision Determination of the Merit or Legitimacy of Protest Prior to Revision of Counter-Protest; Pilot Precincts; Initial Revision and/or Technical Examination.— Any provision of these Rules to the contrary notwithstanding, as soon as the issues in any contest before the Tribunal have been joined, the protestant and the protestee shall be required to state and designate in the preliminary conference brief, **at most twenty-five (25%) percent of the total number of precincts involved in the protest or counter-protest, as the case may be, which said parties deem as best exemplifying or demonstrating the electoral irregularities or fraud pleaded by them.**

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[1] Agpalo, Ruben E., *Statutory Construction*, 1990 Second Edition, p. 239, citing *Bersabel v. Salvador*, G.R. No. 35910, 21 July 1978, 84 SCRA 176 (1978); *Dizon v. Encarnacion*, 119 Phil. 20 (1983); *Cabaluna v. Ventura*, 47 Phil. 165 (1924); *Castillo v. Sian*, 105 Phil. 622 (1959).

The revision of the ballots or the examination, verification or re-tabulation of election returns and the reception of evidence shall begin only with the designated pilot protested precincts.

The revision of ballots or the examination, verification or re-tabulation of election returns and the reception of evidence in the remaining seventy-five (75%) protested precincts and twenty-five percent (25%) counter-protested precincts shall not commence until the Tribunal shall have determined through appreciation of ballots or election documents and/or reception of evidence, within a period not exceeding ten (10) successive working days, the merit or legitimacy of the protest, relative to the designated pilot protested precincts.

Based on the results of such post-revision determination, the Tribunal may dismiss the protest without further proceedings, if and when no reasonable recovery was established from the pilot protested precincts, or may proceed with the revision of the ballots or the examination, verification or re-tabulation of election returns in the remaining contested precincts.

The foregoing shall likewise apply to the twenty-five percent (25%) of designated pilot counter-protested precincts.

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Similarly, the 2013 Rules of the Senate Electoral Tribunal provide that "[i]n an election protest, the following shall also be considered: x x x [t]he list of **pilot precincts consisting of not more than twenty-five percent (25%) of the total number of contested precincts, which the party deems as best exemplifying or demonstrating the electoral fraud or anomaly pleaded**; x x x."[2]

Clearly, the maximum number of the pilot provinces or precincts, as well as the condition that the pilot provinces or precincts should be those that best exemplify or demonstrate the fraud or irregularities pleaded by protestant, is found in all the rules of the electoral tribunals in our jurisdiction. Since the pilot provinces or precincts best exemplify the fraud or irregularities alleged in the protest, these must necessarily cover

[2] Rule 39(e), 2013 Rules of the Senate Electoral Tribunal.

all causes of action grounded on fraud or irregularities and thus requiring revision and recount of ballots.

There is nothing in the Rules of the PET, or in the SET and HRET, that pilot provinces or precincts may be designated for each cause of action. This is precisely because the number of pilot provinces refers to the entire protest, not to one or two or each cause of action. There is simply no rule or law separating the revision or recount of ballots on the ground of acts of terrorism.

To repeat, upon filing of the election protest, the Tribunal may dismiss the protest summarily if it suffers from any of the defects enumerated in Section 21[3] of the PET Rules. Otherwise, the Tribunal shall require the protestee to file an answer to the protest. After the filing of the last pleading, the Tribunal shall order a preliminary conference. At least five days before the preliminary conference, the parties are required to file their respective preliminary conference briefs, which must contain the list of **"not more than three"** provinces which the parties may designate pursuant to Rule 65.

It is clear from the Rules that the Tribunal may or may not dismiss the protest summarily. If the protest suffers from any of the defects enumerated in Section 21 of the PET Rules, the

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[3] RULE 21. Summary dismissal of election contest.

— An election protest or petition for *quo warranto* may be summarily dismissed by the Tribunal without requiring the protestee or respondent to answer if, *inter alia*:

(a) the protest or petition is insufficient in form and substance;

(b) the protest or petition is filed beyond the periods provided in Rules 15 and 16;

(c) the filing fee is not paid within the periods provided for in these Rules;

(d) the cash deposit or the first Two Hundred Thousand Pesos (₱200,000.00) is not paid within ten days after the filing of the protest; and

(e) the protest or petition or copies and their annexes filed with the Tribunal are not clearly legible.

Tribunal may dismiss the protest. But if the protest does not suffer from any such defects, the Tribunal will not dismiss the protest and the election contest will proceed with the Tribunal requiring the protestee to file an answer. This is the import of the word "may" in Rule 65. **The word "may" in Rule 65, after the word "Tribunal" and before the word "require," refers obviously to the Tribunal's discretion whether or not to dismiss the protest depending on whether or not the protest suffers from any of the defects enumerated in Section 21 of the PET Rules. If it suffers none of such defects**, the designation of **"not more than three"** pilot provinces becomes **mandatory**. The word "may" does not refer to the number of the pilot provinces which in no uncertain terms is limited to a maximum of three pilot provinces best exemplifying the frauds or irregularities protestant alleged in his protest. **In other words, while the dismissal of the protest is discretionary on the part of the Tribunal, as the use of the word "may" clearly signifies, the number of pilot provinces, which should be "not more than three," is mandatory if the protest is allowed to proceed.**

Moreover, should the pilot provinces refer to each cause of action, then the maximum number of pilot provinces will definitely exceed three. This interpretation effectively defeats and contravenes the express language of the Rules setting a maximum of **"not more than three"** pilot provinces. This interpretation will lead to absurdity. If protestant has at least five causes of action, nothing will prevent him from designating at the most 15 pilot provinces. Further, the election contest process starting from the retrieval, collection, revision and appreciation of ballots, pertaining to the first batch of pilot provinces, will be repeated insofar as the additional pilot provinces are concerned. Such construction will not only result to unreasonable delay in the resolution of the election contest, but will also make a mockery of the entire election contest process.

Further, to allow protestant to designate more than three pilot provinces, as he now demands, is to change the Rules in the middle of the proceedings to accommodate him.

A change in the number of pilot provinces cannot also be justified just because the Tribunal, in the present case, has formally changed its Rules to admit ballots with less than 50% shading as valid votes. The amendment of the Rules on shading of ballots has no material effect whatsoever on the validity of the ballots in the appreciation of the ballots. The amendment was simply a formality to conform to the rule that the COMELEC adopted and actually implemented in the 2016 elections.

Rule 43(1) of the 2010 PET Rules reads:

> In looking at the shades or marks used to register votes, the [Revision Committee] shall bear in mind that the will of the voters reflected as votes in the ballots shall as much as possible be given effect, setting aside any technicalities. Furthermore, the votes thereon are presumed to have been made by the voter and shall be considered as such unless reasons exist that will justify their rejection. However, marks or shades which are less than 50% of the oval shall not be considered as valid votes. Any issue as to whether a certain mark or shade is within the threshold shall be determined by feeding the ballot on the PCOS machine, and not by human determination.

In a Resolution dated 18 September 2018, the Tribunal "directed its [Head Revisors] to refer to the Election Returns (ERs) used during the 2016 National and Local Elections to verify the total number of votes as read and counted by the VCMs and accordingly amended, effective immediately, Rule 62 of the Revisor's Guide,"[4] thus:

> RULE 62. Votes of the Parties. — The segregation and classification of ballots shall be done by referring to the Election returns (ER) generated by the machine used in the elections. The Head revisor shall count the total number of ballots for the Protestant, Protestee, Other Candidates, and with Stray Votes record said matter on the appropriate spaces of the Revision Report.
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> In examining the shades or marks used to register the votes, the Head revisor shall bear in mind that the will of the voters reflected as votes in the ballots shall, as much as possible, be given effect, setting aside any technicalities. Furthermore, the votes thereon are

[4] Resolution, p. 35.

presumed to have been made by the voter and shall be considered as such unless reasons exist that will justify their rejection. Any issue on the segregation and classification of ballots by the Head Revisor shall be resolved by the assigned Revision Supervisor, based on the guidelines set by the Tribunal. Any objection to the ruling of the Revision Supervisor shall not suspend the revision of a particular ballot box. The ballot in question may be claimed or objected to, as the case may be, by the revisor of the party concerned.

The Tribunal noted that the objective of the revision process, which is simply to recount the votes of the parties by mimicking (or verifying or confirming) how the vote counting machines read and counted the votes during the elections, can be achieved by referring to the ERs generated by the vote counting machines used in the 2016 elections.[5] The Tribunal held that "in using the Election Returns and not merely adopting a specific shading threshold, the Tribunal's revision procedure will be more flexible and adaptive to calibrations of the voting or counting machines in the future."[6]

Reference to the ERs, as well as admitting ballots with less than 50% or at least 25% shading, during the revision process does not constitute a change in the Rules of Procedure of the Tribunal which infringes on the rights of any of the parties. **In fact, admitting ballots with at least 25% shading is pursuant to COMELEC Resolution No. 16-0600 dated 6 September 2016. In its Comment, the COMELEC stated that "it calibrated the VCMs for the 2016 National and Local Elections to read marks that cover at least about 25% (when seen by human eyes) of the oval for each candidate as valid votes. All election results were based on this threshold."**[7]

Moreover, during the appreciation process, which takes place after the revision process, **the ballots with less than 25% shading or even only a dot or line appearing in the oval**

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[5] *Id*. at 36.

[6] *Id*. at 37.

[7] *Id*. at 35.

as long as the voter's manner of voting is consistent are admitted as valid votes for either party pursuant to the intent rule. This has been the universal rule and practice in the appreciation of ballots in the present case, and in all other previous cases, whether in the COMELEC, SET or HRET. Hence, the amount of shading, whether 100% or 10% as long as the manner of voting is consistent, is immaterial in determining the intent of the voter. It is settled that the cardinal objective in ballot appreciation is to discover and give effect to, rather than frustrate, the intention of the voter.[8] To rule otherwise, that is to reject ballots with less than 25% shading pursuant to the 50% threshold as stated in the PET Rules, will necessarily result to disenfranchisement of the voters.

Therefore, in referring to the ERs and admitting ballots with at least 25% shading, the Tribunal did not introduce a new procedure or change any of its Rules in the middle of the proceedings that prejudiced the rights of any party. The Tribunal merely followed an existing COMELEC rule, which was actually implemented during the 2016 elections. ***More importantly, because of the intent rule, even a dot or a single line in the oval, constituting less than 10 percent shading, will be counted in the appreciation process as a valid vote as long as the voter's manner of voting is consistent.***

Examination of Ballots is Indispensable in Annulment of Election Results

In *Abayon v. House of Representatives Electoral Tribunal*,[9] which involved the jurisdiction of the House of Representatives Electoral Tribunal (HRET) to annul the elections, the Court reversed and set aside the ruling of the HRET in annulling the elections in the contested precincts involved in the case and disregarding the respective number of votes received by Abayon

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[8] *Locsin v. House of Representatives Electoral Tribunal*, 706 Phil. 590, 604 (2013), citing *Torres v. House of Representatives Electoral Tribunal*, 404 Phil. 125, 142 (2001).

[9] 785 Phil. 683 (2016).

and Daza from the precincts. The Court held that there is no clear and convincing evidence to warrant the nullification of the elections. In so ruling, the Court cited the Dissenting Opinion of Justice Diosdado M. Peralta in this HRET case, which stated that "[w]hen a person elected obtained a considerable plurality of votes over his adversary, and the evidence offered to rebut such a result is neither solid nor decisive, it would be imprudent to quash the election, as that would be to oppose without reason the popular will solemnly expressed in suffrage."[10]

In the same Dissenting Opinion of Justice Peralta in *Abayon*, he correctly stated that the best and most conclusive evidence in determining the legality of the ballots are the ballots themselves, thus:

> x x x. How can the Tribunal accurately determine which among the contested ballots ought to be invalidated on the ground of terrorism? Certainly, this Tribunal cannot merely speculate and assume which contested ballots will be nullified due to terrorism as this would result to grave consequences — the disenfranchisement of the voters.
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> Indeed, such uncertainty cannot achieve the purpose of an election protest. It bears stressing that "the purpose of an election protest is to ascertain whether the candidate proclaimed elected by the board of canvassers is really the lawful choice of the electorate. In an election contest where the correctness of the number of votes is involved, the best and most conclusive evidence are the ballots themselves ... The best way, therefore, to test the truthfulness of petitioner's claim is to open the ballot boxes in the protested precincts followed by the examination, revision, recounting and re-appreciation of the official ballots therein contained in accordance with law and pertinent rules on the matter . . ."[11]

It is well-settled that there are two (2) indispensable requisites that must concur in order to justify the nullification of the election:

(1) The illegality of the ballots must affect **more than fifty percent (50%) of the votes cast on the specific precinct**

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[10] *Id.* at 705.

[11] http://hret.gov.ph/file-manager/2013-2016_023_dissenting-com. pdf (visited 14 October 2019).

or precincts sought to be annulled, or in case of the entire municipality, more than fifty percent (50%) of its total precincts and the votes cast therein; and

(2) It is impossible to distinguish with reasonable certainty between the lawful and unlawful ballots. x x x.[12] (Emphasis supplied)

In resolving protestant's claim of terrorism in three provinces, namely, Lanao del Sur, Basilan and Maguindanao, which would possibly warrant the nullification of the elections therein, these two requisites must be clearly shown. In proving terrorism as a ground to nullify the elections, protestant must therefore present the ballots themselves precisely because they are the most conclusive evidence of their legality or illegality. **In other words, protestant's third cause of action, which is the annulment of the election results on the ground of terrorism, *similarly calls for the revision and recount of the ballots.* This means there will be a revision and recount of the ballots to determine if there was illegality of the ballots affecting more than 50% of total votes cast. This is obvious because the Tribunal cannot determine whether the illegality of the ballots affected more than 50% of the votes cast in the specific precinct/s sought to be annulled and the Tribunal likewise cannot distinguish between the lawful and unlawful ballots, without examining the ballots themselves.**

Since protestant's two causes of action are both anchored on the actual revision and recount of the votes cast as appearing in the ballots, protestant should have included in his pilot provinces any of the provinces which he deems best exemplified or demonstrated the acts of terrorism he alleged in his protest. **The provinces subject of an annulment case should form part of the pilot provinces because all these provinces will be subjected to revision and recount of ballots**. Not doing so amounts to a waiver on the part of the protestant to have the

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[12] *Abayon v. House of Representatives Electoral Tribunal*, *supra* note 9, at 705.

ballots from the excluded contested provinces revised and recounted.

To repeat, there is nothing in the Rules that pilot provinces may be designated for each cause of action precisely because the number of pilot provinces, which must be "not more than three," refers to the entire protest.

Notably, protestant himself is very much aware of this established rule. In his *Consolidated Reply with Urgent Motion to Resolve Protestant's Omnibus Motion*, dated 22 March 2019, he claimed that **"his Second Cause of Action is for judicial revision and recount of ballots while his Third Cause of Action is for the annulment of election results in the provinces of Lanao del Sur, Maguindanao and Basilan. Thus, these *provinces were excluded from the coverage of the pilot protested provinces mandated by Rule 65 of the 2010 PET Rules.*"**[13] Protestant himself expressly admitted that the ARMM provinces are not part of the pilot provinces. In other words, protestant knowingly excluded these ARMM provinces from his chosen pilot provinces, which shall serve as "test cases" by which the Tribunal will determine whether or not to proceed with the revision of ballots of the remaining contested provinces.[14] Insofar as protestant is concerned, annulment of election results will not require revision of ballots, and thus he intended to merely present "testimonial and documentary evidence that would prove that voters in Lanao del Sur, Maguindanao and Basilan were deprived of their right to vote on election day."[15]

However, protestant's theory is wrong. To annul the election results, an examination of the contested ballots is indispensable. As stated, two requisites must concur before a nullification of election is declared:

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[13] Resolution, p. 40.

[14] *Id*. at 24.

[15] *Id*. at 19.

(1) The illegality of the ballots must affect **more than fifty percent (50%) of the votes cast on the specific precinct or precincts sought to be annulled, or in case of the entire municipality, more than fifty percent (50%) of its total precincts and the votes cast therein;** and

(2) It is impossible to distinguish with reasonable certainty between the lawful and unlawful ballots. x x x.[16] (Emphasis supplied)

In an election contest where what is involved is the correctness of the number of votes of each candidate, the best and most conclusive evidence are the ballots themselves.[17] The Tribunal cannot determine the legality (or the illegality) of the ballots without examining the ballots themselves. Therefore, contrary to protestant's theory, protestant's third cause of action, which seeks the annulment of election results in Basilan, Lanao del Sur and Maguindanao, undoubtedly requires the revision and recount of ballots. If any or all of these provinces best demonstrate the fraud or irregularities, specifically terrorism, alleged in his petition, protestant should have included the same in his pilot provinces. However, protestant did not do so.

To exclude from the pilot provinces those provinces subject to an annulment case will allow the protestant to exceed the maximum number of pilot provinces prescribed in the Rules. Thus, a protestant will claim terrorism for provinces outside his three pilot provinces. If he makes a substantial recovery from the three pilot provinces, then he will simply manifest that the second phase of the protest can proceed since he has made a substantial recovery. If he fails to make a substantial recovery from the three pilot provinces, then he will demand to revise and recount the ballots from the provinces where he claims terrorism, similar to what protestant Marcos

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[16] *Abayon v. House of Representatives Electoral Tribunal*, *supra* note 9, at 705.

[17] *Abubakar v. House of Representatives Electoral Tribunal*, 546 Phil. 585, 598 (2007), citing *Lerias v. House of Representatives Electoral Tribunal*, G.R. No. 97105, 15 October 1991, 202 SCRA 808.

now demands. The protestant will be playing with the Rules of the Tribunal and in the process will make a mockery of the election contest process. This the Tribunal must definitely not allow.

Rule 65 of the 2010 PET Rules expressly requires protestant to name "**not more than three**" **provinces** that best exemplify the frauds and irregularities alleged in the protest. The Tribunal will be violating its own Rules if it allows a revision and recount of ballots in other provinces in the Autonomous Region in Muslim Mindanao (ARMM), **beyond the maximum three provinces chosen by protestant**.

Finally, for the Tribunal to allow a revision and recount of the protestant's contested precincts in three ARMM provinces, exceeding the maximum three pilot provinces mandatorily prescribed in the 2010 PET Rules, is to change the rules of the PET in the middle of the proceedings just to accommodate protestant after he has failed to show a substantial recovery in the three pilot provinces he himself chose. **The last thing that this Tribunal should do is to change its rules in midstream to accommodate a party who has failed to comply with what Rule 65 of the 2010 PET Rules expressly requires.**

I therefore vote to **DISMISS** the protest and counter-protest in PET Case No. 005.

DISSENTING OPINION

CAGUIOA, *J.*:

I dissent.

The Protest should be dismissed for protestant's failure to make out a case using his pilot provinces. The majority's decision today constitutes a refusal to apply the 2010 Rules of the Presidential Electoral Tribunal (PET Rules) when no reason exists for exempting this Protest.

Rule 65 is clear. It states:

RULE 65. ***Dismissal; when proper***. — The Tribunal may require the protestant or counter-protestant to indicate, within a fixed period, the province or provinces numbering not more than three, best exemplifying the frauds or irregularities alleged in his petition; and the revision of ballots and reception of evidence will begin with such provinces. If upon examination of such ballots and proof, and after making reasonable allowances, the Tribunal is convinced that, taking all circumstances into account, the protestant or counter-protestant will most probably fail to make out his case, the protest may forthwith be dismissed, without further consideration of the other provinces mentioned in the protest.

The preceding paragraph shall also apply when the election protest involves correction of manifest errors. (R63) (Underscoring supplied)

The parties and this Tribunal have operated on the fact that the proceedings after the Preliminary Conference shall be on the initial determination of the grounds of the Protest following Rule 65 of the PET Rules. Thus, as early as the Preliminary Conference Order, the Tribunal already explained the nature of the proceedings under this rule, as follows:

Rule 65 provides the Tribunal with a litmus test for protestant's grounds as raised in his Protest. Thus, protestant is given the opportunity to designate three provinces **which best exemplify** the frauds or irregularities raised in his Protest. These provinces constitute the "test cases" by which the Tribunal will make a determination as to whether it would proceed with the Protest —that is, retrieve and revise the ballots for all the remaining protested clustered precincts —or simply dismiss the Protest for failure of the protestant to make out his case.[1]

The Tribunal invested countless number of hours following the mandate of Rule 65. The Tribunal retrieved thousands of ballot boxes from three provinces, revised millions of ballots, and ruled on each and every objection and claim of the parties on these millions of ballots.[2] After all these, the Tribunal eventually

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[1] *Rollo,* Vol. XXXII, p. 24591.

[2] P.E.T. Case No. 005 is the first and only election protest before the Tribunal in which the recount, revision and appreciation process of the pilot provinces were successfully concluded.

arrived at a final tally: protestee Robredo garnered 14,436,325 votes, increasing her lead from 263,473 to 278,555 over protestant Marcos who obtained 14,157,770 votes.

Despite the clear and unequivocal results of the revision and appreciation shown above, the majority nonetheless refuses to strictly apply Rule 65. Instead, the majority directs the parties to comment on the results, and to submit their respective memoranda on the effect of the results on protestant's second and third causes of action, the Tribunal's jurisdiction over the third cause of action, and assuming it has jurisdiction, the threshold of evidence for the third cause of action, and other issues on how the Tribunal should act on the third cause of action.

The majority puts forward questions the answers to which are already obvious. By this failure to recognize the mandate, public purpose and wisdom of Rule 65's unequivocal directive, all the hard work and effort put into the revision and appreciation for the past three years are wasted.

Rule 65 is plain in its wording and no legal acrobatics are needed to decipher its meaning. It should be simply applied. It speaks of indicating three provinces "best exemplifying" the frauds and irregularities alleged in the Protest, and the revision and appreciation of ballots and/or reception of evidence will begin with such provinces.

The question faced by the Tribunal is simple: after making reasonable allowances, and taking all circumstances into account, will protestant most probably fail to make out his case, following the results of revision and appreciation of the ballots in the 5,415 clustered precincts in his pilot provinces?

Undoubtedly, protestant failed to make out his case. Why not apply Rule 65 now?

Following the language of Rule 65, protestant must show through his three chosen pilot provinces that his Protest has merit. The three pilot provinces must best exemplify the frauds and irregularities alleged in his Protest so that the Tribunal may proceed to the rest of the protested precincts. Should

protestant fail to make out a case, the Tribunal may dismiss the Protest without further consideration of the other provinces mentioned in his Protest.

What is the measure of the merit of the Protest or any election protest, for that matter? Simple: it is a numbers game. It was protestant's burden to demonstrate to the Tribunal through recovery of votes in his chosen pilot provinces that he would most likely overcome protestee's lead. It was incumbent upon protestant to show through the three pilot provinces that the margin between him and protestee had decreased to such an extent that would convince the Tribunal to take a look at the rest of the protested precincts.

Here, the numbers clearly show that instead of narrowing the margin of votes between protestant and protestee, the margin even widened from 263,473 to 278,555.

It is therefore a **disservice to the PET Rules** to refuse to dismiss the Protest despite its clear and unmistakable lack of basis. Because from the results, what else is there to say and comment on? Under the PET Rules, how else is the Tribunal to decide? To my mind, asking the parties to comment on the foregoing clear and unequivocal results is a failure to terminate and dispose the Protest in a just, speedy, and expeditious manner, when a clear ground exists for its dismissal.

As far back as almost 30 years ago, the public interest involved in the speedy termination of an election contest was emphasized in the 1992 PET Rules:

Dismissal

RULE 61. **As public interest demands the speedy termination of the contest, the Tribunal may, after the issues have been joined, require the protestant to indicate, within a fixed period, the province or provinces numbering not more than three best exemplifying the frauds or irregularities alleged in his petition**; and the revision of ballots and reception of evidence will begin with such provinces. If upon examination of such ballots and proof, and after making reasonable allowances, the **Tribunal is convinced that, taking all the circumstances into account, the protestant will most probably**

fail to make out his case, the contest may forthwith be dismissed, without further consideration of the other provinces mentioned in the contest.[3] (Emphasis and underscoring supplied)

In fact, Rule 2 of the 1992 PET Rules stated that "[i]n case of reasonable doubt, these rules shall be liberally construed in order to achieve a just, expeditious and inexpensive determination and disposition of every contest before the Tribunal."[4]

In the 2005 PET Rules, Rule 63 was similarly worded as follows:

Initial Determination of the Grounds for Protest

RULE 63. *Dismissal; When Proper*. — **The Tribunal may require the protestant or counter-protestant to indicate, within a fixed period, the province or provinces numbering not more than three, best exemplifying the frauds or irregularities alleged in his petition**; and the revision of ballots and reception of evidence will begin with such provinces. If upon examination of such ballots and proof, and after making reasonable allowances, **the Tribunal is convinced that, taking all circumstances into account, the protestant or counter-protestant will most probably fail to make out his case, the protest may forthwith be dismissed, without further consideration of the other provinces mentioned in the protest**.

The preceding paragraph shall also apply when the election protest involves correction of manifest errors. (*R61a*)[5] (Emphasis supplied)

Rule 2 of the 2005 PET Rules also stated that "[t]he Rules shall be liberally construed to achieve a just, expeditious and inexpensive determination and disposition of every contest before the Tribunal."[6] This is replicated in Rule 3 of the PET Rules.

Thus, Rule 65 and the construction of the PET Rules implore the Tribunal to achieve a just and expeditious determination

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[3] RULES OF THE THE PRESIDENTIAL ELECTORAL TRIBUNAL, April 18, 1992.

[4] *Id*.

[5] THE 2005 RULES OF THE PRESIDENTIAL ELECTORAL TRIBUNAL, A.M. No. 05-11-06-SC, November 15, 2005.

[6] *Id*.

and disposition of every contest before it. Since the results clearly show protestant's failure to prove his case, why not dismiss the Protest now? Why is there a hesitation to strictly apply Rule 65?

There is an underlying wisdom and public purpose in the requirement of pilot provinces in election protests. The Tribunal is duty bound to abide by it.

The use of pilot provinces is common among electoral tribunals. It is applied in election protests before the lower courts,[7] the

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[7] SECTION 10. *Post-Revision Determination of the Merit or Legitimacy of the Protest Prior to Revision of the Counter-Protest.*— Immediately after the revision or examination of ballots, or the verification or re-tabulation of election returns in all protested precincts, the protestant shall be required to point to a number of precincts, corresponding to twenty percent (20%) of the total of the revised protested precincts, that will best attest to the votes recovered, or that will best exemplify the fraud or irregularities pleaded in the protest. In the meanwhile, the revision or examination of ballots, or the verification or re-tabulation of election returns in the counter-protested precincts, shall be suspended for a period not exceeding fifteen days to allow the court to preliminarily determine, through the appreciation of ballots and other submitted election documents, the merit or legitimacy of the protest based on the chosen twenty percent (20%) of the protested precincts.

Based on the results of this post-revision preliminary determination, the court may dismiss the protest without further proceedings if the validity of the grounds for the protest is not established by the evidence from the chosen twenty percent (20%) of the protested precincts; or proceed with revision or examination of the ballots, or the verification or re-tabulation of election returns in the counter-protested precincts. In the latter case, the protestee shall be required to pay the cash deposit within a non-extendible period of three (3) days from notice.

SECTION 11. *Continuation of Appreciation of Ballots.* — If the court decides not to dismiss the protest after the preliminary examination of the evidence from the chosen twenty percent (20%) of the protested precincts, revision with respect to the remaining precincts shall proceed at the same time that the ballots or election documents from the counter-protested precincts are being revised. After completion of the revision of the protested precincts, the court shall proceed with the appreciation and revision of ballots from the counter-protested precincts. (Rule 10, 2010 RULES OF PROCEDURE IN ELECTION CONTESTS BEFORE THE COURTS INVOLVING ELECTIVE MUNICIPAL OFFICIALS, A.M. No. 10-4-1-SC, April 27, 2010.)

Commission on Elections (COMELEC),[8] the Senate Electoral Tribunal,[9] and the House of Representatives Electoral Tribunal.[10]

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[8] **Section 6.** ***Conduct of the Recount***. — The recount of the votes on the ballots shall be done manually and visually and according to the procedures hereunder:

a) At the preliminary conference, the date, place, the mode of the recount of votes on the ballots from each of the protested precincts and the number of the recount committees shall be set.

(b) The recount of the ballots in the remaining contested precincts shall not commence until the Division concerned shall have made a determination on the merit of the protest based on the results of the recount of the votes on the ballots from the pilot protested precincts and the review of other documentary exhibits which the protestant may submit. The documentary exhibits may be submitted by the protestant within a non-extendible period of ten (10) days from the completion of the recount of the pilot protested precincts.

Based on the above determination, the Division may dismiss the protest, without further proceedings, if no reasonable recovery could be established from the pilot protested precincts. Otherwise, the recount of the ballots in the remaining protested precincts shall proceed. The recount of the pilot counter-protested precincts, if any, and of the remaining counter-protested precincts if substantial recovery is likewise established by the counter protestant, shall then follow. For this purpose, there is substantial recovery when the protestant or counter protestant is able to recover at least 20% of the overall vote lead of the protestee or counter-protestee.

However, the above-mentioned procedure shall not be applicable in case the protestant avails the option of reading/appreciation of the rejected ballots only pertaining to the entire protested or counter-protested precincts under Section 4(e) of Rule 13. (COMELEC Resolution 9720, June 20, 2013.)

[9] **RULE 76.** ***Pilot Precincts; Initial Determination***. — The revision of the ballots or the correction of manifest errors and reception of evidence shall begin with pilot precincts. If after the appreciation of ballots or election documents and/or reception of evidence in the pilot precincts, the Tribunal determines that the officially proclaimed results of the contested election will not be affected, the Tribunal shall dismiss the protest, counter or cross protest without further proceedings. (2013 RULES OF THE SENATE ELECTORAL TRIBUNAL, February 7, 2013.)

[10] RULE 37. *Post-Revision Determination of the Merit or Legitimacy of Protest Prior to Revision of Counter-Protest; Pilot Precincts; Initial Revision.* — Any provision of these Rules to the contrary notwithstanding, as soon

The dismissal of the protest for protestant's failure to make out a case under Rule 65 is not because of convenience. Indeed, given the divisiveness of elections, the purpose of an initial determination is to weed out protests that have no basis, most especially for a protest involving a national position. Given the massive logistical and administrative concerns, as well as the significant government resources and costs involved in an election protest for the national positions of President and Vice President, the Tribunal is only to proceed with the entire protested precincts and/or provinces if protestant is able to show to the Tribunal the need to look into the other provinces. On the other hand, if protestant fails to make out a case, the Tribunal must dismiss the Protest.

This is necessitated also by the fact that the choice of the pilot provinces was protestant's sole unfettered choice. He could have chosen any three provinces in any of his causes of action. In fact, his choice was not limited to three provinces for a particular cause of action. He could have chosen one

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as the issues in any contest before the Tribunal have been joined, the protestant, in case the protest involves more than 50% of the total number of precincts in the district, shall be required to state and designate in writing within a fixed period at most, twenty-five (25%) percent of the total number of precincts involved in the protest which said party deems as best exemplifying or demonstrating the electoral irregularities or fraud pleaded by him; and the revision of the ballots or the examination, verification or re-tabulation of election returns and/or reception of evidence shall begin with such pilot precincts designated. Otherwise, the revision of ballots or the examination, verification or re-tabulation of election returns and/or reception of evidence shall begin with all the protested precincts. The revision of ballots or the examination, verification or re-tabulation of election returns in the counter-protested precincts shall not be commenced until the Tribunal shall have determined through appreciation of ballots or election documents and/or reception of evidence, which reception shall not exceed ten (10) days, the merit or legitimacy of the protest, relative to the pilot protested precincts. Based on the results of such post-revision determination, the Tribunal may dismiss the protest without further proceedings, if and when no reasonable recovery was established from the pilot protested precincts, or proceed with the revision of the ballots or the examination, verification or re-tabulation of election returns in the remaining contested precincts. (2011 RULES OF THE HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL, February 10, 2011.)

province for his second cause of action and two provinces for his third cause of action, or vice versa. He could have, in fact, opted to limit the three provinces to his third cause of action. The permutations are numerous and the decision as to which permutation would best exemplify his cause rested solely on protestant. The only limitation was the number of pilot provinces — **not more than three.** That protestant, the astute politician that he is, and represented by a well-recognized election lawyer, chose three provinces for his second cause of action which were all known bailiwicks of protestee, was his own legal gamble.

This Protest is a thorny and divisive issue that is of paramount importance to the nation, not just to the parties. And this is where the numbers are decisive. Numbers do not hold any feelings or political leanings. Numbers do not lie. They state things simply as they are. And when the numbers reveal a definite conclusion, the Tribunal would do a disservice to the public and to the nation not to heed the conclusion they provide. The majority cannot turn a blind eye to the numbers, when the figures here confirm that protestee indeed won by the slimmest of margins. The numbers also show that even with the provinces that protestant himself chose to be the ones that would best exemplify his Protest, the margin widened.

Again, I raise the question, what else is there to say and comment on? The language and purpose of Rule 65 are clear. The results of the revision and appreciation are likewise clear. Had this case been before any of the electoral tribunals, the protest would have been dismissed. What is stopping the majority from applying Rule 65? Why is this Protest being treated as *sui generis*?

Directing the parties to comment on any matter or to conduct any further proceedings achieves no purpose. These are all an exercise in futility. Following Rule 65, the Protest should be dismissed and all pending motions of protestant, including but not limited to his *Motion for Technical Examination* dated July 10, 2017, *Protestant's Extremely Urgent Manifestation of Grave Concern with Omnibus Motion* dated December 10, 2018, and *Protestant's Extremely Urgent Motion to Set this Election*

Protest for Preliminary Conference dated August 9, 2019 should be denied.

The Protest lives or dies by the results of the determination under Rule 65 of the PET Rules. Protestant is bound by his choice of pilot provinces. The Tribunal cannot accommodate protestant at the expense of violating its own rules. Protestant therefore has only himself to blame as the results of the revision and appreciation of millions of ballots in his three (3) pilot provinces only lead to one conclusion: the dismissal of his Protest.

WHEREFORE, in accordance with Rule 65 of the PET Rules, I vote that the instant Election Protest be **DISMISSED** without further proceedings for lack of merit.

EN BANC

[A.C. No. 7607. October 15, 2019]

ANGEL A. ARDE, *complainant, vs.* **ATTY. EVANGELINE DE SILVA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION; CASE AT BAR. — Rules 16.01 and 16.03, Canon 16 of the Code of Professional Responsibility state: CANON 16 - A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION. Rule 16.01 A lawyer shall account for all money or property collected or received for or from the client. x x x Rule 16.03 -A lawyer shall deliver the funds and property of his client when due or upon

demand. x x x It appears that sometime in 2004, complainant engaged the legal services of respondent to cause the licensing and registration of its products with the BFAD. Respondent, however, breached her client's trust as not only did she fail to fulfill her obligation but she also failed to return the amount entrusted to her even after several demands to do so. This prompted complainant to file the instant disbarment case against her. Despite the many opportunities given to her by the Court and the Investigating Commissioner, respondent, however, made no effort to refute the accusations hurled against her. Her deafening silence, coupled with the fact that she has a pending criminal case for *estafa* for the same offense, which she likewise refused to face and which has resulted in the issuance of a warrant of arrest against her, is indicative of her guilt. In fact, her mere refusal and/or failure to return the money to her client without any justifiable reason is sufficient reason for the Court to find her guilty of misappropriation, which is a violation of the Lawyer's Oath and the Code of Professional Responsibility. x x x [R]espondent's unjustifiable refusal and/or failure to return her client's money constitutes dishonesty, abuse of trust and confidence, and betrayal of her client's interests.

2. ID.; ID.; GROSS MISCONDUCT FOR MISAPPROPRIATING AND/OR FAILING TO RETURN THE MONEY ENTRUSTED BY THE CLIENT FOR BLATANTLY REFUSING TO COMPLY WITH THE COURT'S ORDERS OF SUSPENSION WARRANTS THE PENALTY OF DISBARMENT. — Worth mentioning at this point is the fact that this is not the first time respondent has been found guilty of deceit, grave misconduct, and violating the Lawyer's Oath. Neither is this the first time respondent has refused to comply with the lawful order of the Court requiring her to file an answer or a comment to the charges filed against her. x x x Regrettably, the penalty of suspension imposed upon respondent by the Court in *Emilio Grand*e [*v. Atty. Evangeline de Silva*] did not deter her from committing similar acts of deceit and gross misconduct. Since then and until now, respondent has not reformed or changed her ways. [And] [w]orse, respondent did not even have the decency to obey or follow the suspension order issued by the Court in *Emilio Grande*. Instead, she continued to practice law. x x x Her blatant disregard of the Court's orders, evasive attitude, depraved character, and corrupt behavior should not be

> tolerated, but should be sanctioned in accordance with Rule 138, Section 27 of the Rules of Court, which provides [for] *Disbarment or suspension of attorneys by Supreme Court.* x x x Jurisprudence is replete with cases where the Court did not hesitate to impose the severe penalty of disbarment to those lawyers who abused the trust and confidence reposed upon them by their clients as well as to those who committed unlawful, dishonest, and deceitful conduct. The instant case is no exception. All told, the Court hereby finds respondent guilty of gross misconduct for misappropriating and/or failing to return the money entrusted to her by her client and blatantly refusing to comply with the Court's order of suspension, and hereby imposes upon her the penalty of disbarment.

D E C I S I O N

***PER CURIAM*:**

Before the Court is a Complaint for Disbarment[1] dated August 20, 2007 filed by complainant Natural Formula International, Inc., represented by Angel A. Arde, against respondent Atty. Evangeline de Silva for grave or gross misconduct in the practice of her legal profession and violation of the Supreme Court's directive suspending her from the practice of law pursuant to its July 29, 2003 Decision in *Emilio Grande v. Atty. Evangeline de Silva*,[2] docketed as A.C. No. 4838.

The antecedent facts are as follows:

Complainant alleged that sometime in 2004, it engaged the legal services of respondent to work on the licensing and registration of its products before the Bureau of Food and Drugs (BFAD);[3] that it disbursed to respondent the total amount of three hundred sixty-nine thousand four hundred sixteen pesos and ninety-eight centavos (PhP 369,416.98) for the licensing

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

[2] 455 Phil. 1 (2003).

[3] *Rollo,* p. 1.

and registration of its products as evidenced by vouchers and receipts issued under the name of respondent;[4] that respondent misappropriated, misapplied, and/or converted to her personal interest the said amount as no Certificate of Product Registration was actually processed and issued by the BFAD;[5] that despite repeated demands, respondent failed to return the said amount;[6] that it filed a complaint for *estafa* under paragraph 1(b), Article 315 of the Revised Penal Code (RPC) against respondent before the prosecutor of Malolos City;[7] that in a Resolution dated June 7, 2006, the Office of the Provincial Prosecutor found probable cause to charge respondent with the crime of Other Deceits under Article 318 of the RPC, as amended;[8] and that complainant later found out that when it engaged the services of respondent in 2004, she was actually serving her two-year suspension from the practice of law imposed by the Court in its July 29, 2003 Decision in *Emilio Grande*.[9]

On October 10, 2007, the Court required respondent to file her comment on the complaint within 10 days from notice.[10] However, despite receipt of the notice, respondent failed to file her comment.[11] Accordingly, the instant case was referred to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.

On April 27, 2010, after considering the evidence submitted by complainant against respondent, the Investigating Commissioner found her guilty of violating the Code of Professional Responsibility and the Lawyer's Oath, and thus recommended that she be disbarred and her name be deleted from the Roll of Attorneys.[12]

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[4] *Id*. at 1-2.

[5] *Id*. at 2.

[6] *Id*.

[7] *Id*.

[8] *Id*. at 4.

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

[10] *Id*. at 35.

[11] *Id*. at 40.

[12] *Id*. at 135-143; Report and Recommendation prepared by Commissioner Acerey C. Pacheco.

Finding the recommendation of the Investigating Commissioner fully supported by the evidence on record and the applicable laws and jurisprudence, the IBP Board of Governors unanimously adopted and approved the same in its Resolution No. XX-2013-97 dated September 28, 2013.[13]

The Court's Ruling

The Court affirms the IBP Resolution.

Misappropriation of funds

Rules 16.01 and 16.03, Canon 16 of the Code of Professional Responsibility state:

> CANON 16 - A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.
>
> Rule 16.01 - A lawyer shall account for all money or property collected or received for or from the client.
>
> x x x x x x x x x
>
> Rule 16.03 -A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.

As has often been emphasized, "the relationship between a lawyer and his client is highly fiduciary and ascribes to a lawyer a great degree of fidelity and good faith."[14] Because of the nature of the relationship, lawyers have the duty to account for the money or property they receive for or from their clients.[15] Thus, when they receive money from a client for a particular purpose, they are bound to render an accounting of how the

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[13] *Id.* at 134.

[14] *CF Sharp Crew Management, Inc. v. Torres*, 743 Phil. 614, 619 (2014).

[15] *Id.*

money was spent for the said purpose; and, in case the money was not used for the intended purpose, they must immediately return the money to the client.[16] Failure of a lawyer to return the money entrusted to him/her by his/her client upon demand creates a presumption that he/she has appropriated the same for his/her own use.[17]

In this case, complainant accuses respondent of grave or gross misconduct for allegedly misappropriating the amount of PhP 369,416.98 intended for the licensing and registration of its products with the BFAD. It appears that sometime in 2004, complainant engaged the legal services of respondent to cause the licensing and registration of its products with the BFAD. Respondent, however, breached her client's trust as not only did she fail to fulfill her obligation but she also failed to return the amount entrusted to her even after several demands to do so. This prompted complainant to file the instant disbarment case against her. Despite the many opportunities given to her by the Court and the Investigating Commissioner, respondent, however, made no effort to refute the accusations hurled against her. Her deafening silence, coupled with the fact that she has a pending criminal case for *estafa* for the same offense, which she likewise refused to face and which has resulted in the issuance of a warrant of arrest against her, is indicative of her guilt. In fact, her mere refusal and/or failure to return the money to her client without any justifiable reason is sufficient reason for the Court to find her guilty of misappropriation, which is a violation of the Lawyer's Oath and the Code of Professional Responsibility.

The Court has not been remiss in reminding lawyers that Rule 1.01, Canon I of the Code of Professional Responsibility mandates that "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." Here, respondent's unjustifiable refusal and/or failure to return her client's money constitutes dishonesty, abuse of trust and confidence, and betrayal of her client's interests.

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[16] *Id.* at 620.

[17] *Id.*

Worth mentioning at this point is the fact that this is not the first time respondent has been found guilty of deceit, grave misconduct, and violating the Lawyer's Oath. Neither is this the first time respondent has refused to comply with the lawful order of the Court requiring her to file an answer or a comment to the charges filed against her. As earlier mentioned by complainant, in the case of *Emilio Grande*,[18] respondent was previously suspended from the practice of law for a period of two years for issuing to the complainant in that case a bouncing check as settlement of the civil aspect of the criminal case filed against her client. In that case, respondent also refused to accept the notices served on her by the Court requiring her to comment on the disbarment complaint filed against her. A criminal complaint for *estafa* and violation of *Batas Pambansa Bilang* (BP) 22 was also filed against respondent by the complainant in that case with the Office of the City Prosecutor of Marikina, which led to the filing of an Information for violation of BP 22 against respondent.

Regrettably, the penalty of suspension imposed upon respondent by the Court in *Emilio Grand*e did not deter her from committing similar acts of deceit and gross misconduct. Since then and until now, respondent has not reformed or changed her ways.

Practice of law despite an order of suspension

Worse, respondent did not even have the decency to obey or follow the suspension order issued by the Court in *Emilio Grande*. Instead, she continued to practice law. As aptly pointed out by the Investigating Commissioner, respondent willfully disobeyed a lawful order of the Court when she agreed to give legal service to complainant in 2004 despite the fact that the Court had already promulgated a Decision on July 29, 2003 in *Emilio Grande* suspending her from the practice of law for a period of two years.[19]

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[18] *Supra* note 2.

[19] *Rollo*, p. 140.

Disbarment

Her blatant disregard of the Court's orders, evasive attitude, depraved character, and corrupt behavior should not be tolerated, but should be sanctioned in accordance with Rule 138, Section 27 of the Rules of Court, which provides that:

> Section 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor*. — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority so to do x x x.

Jurisprudence is replete with cases where the Court did not hesitate to impose the severe penalty of disbarment to those lawyers who abused the trust and confidence reposed upon them by their clients as well as to those who committed unlawful, dishonest, and deceitful conduct.[20] The instant case is no exception.

All told, the Court hereby finds respondent guilty of gross misconduct for misappropriating and/or failing to return the money entrusted to her by her client and blatantly refusing to comply with the Court's order of suspension, and hereby imposes upon her the penalty of disbarment.

As the Court has repeatedly stressed:

> [T]he practice of law is a privilege given to lawyers who meet the high standards of legal proficiency and morality, including honesty, integrity and fair dealing. They must perform their fourfold duty to society, the legal profession, the courts and their clients, in accordance with the values and norms of the legal profession as embodied in the Code of Professional Responsibility. Falling short

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[20] *HDI Holdings Philippines, Inc. v. Cruz*, A.C. No. 11724, July 31, 2018.

of this standard, the Court will not hesitate to discipline an erring lawyer by imposing an appropriate penalty based on the exercise of sound judicial discretion in consideration of the surrounding facts.[21]

WHEREFORE, the Court **AFFIRMS** the Resolution No. XX-2013- 97 dated September 28, 2013 of the Integrated Bar of the Philippines. Thus, respondent Atty. Evangeline de Silva is **DISBARRED** and her name is **ORDERED STRICKEN** off the Roll of Attorneys.

Let copies of this Decision be furnished to the Office of the Bar Confidant to be appended to respondent's personal record as an attorney; the Integrated Bar of the Philippines for its information and guidance; and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

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

Reyes, J. Jr., J., on leave.

EN BANC

[A.C. No. 12318. October 15, 2019]
(Formerly CBD Case No. 16-4972)

ATTY. FRANCIS V. GUSTILO, *complainant, vs.* **ATTY. ESTEFANO H. DE LA CRUZ,** *respondent.*

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[21] *Del Mundo v. Atty. Capistrano,* 685 Phil. 687, 693 (2012).

SYLLABUS

1. LEGAL ETHICS; BAR MATTER NO. 1922 DIRECTING ATTORNEYS TO INDICATE THEIR MANDATORY CONTINUING LEGAL EDUCATION (MCLE) CERTIFICATE OF COMPLIANCE; RESPONDENT HAD WILLFULLY CONTRAVENED THE REQUIREMENT BY CONCEALING HIS NON-COMPLIANCE WITH THE USE OF THE FICTITIOUS MCLE COMPLIANCE NUMBER IN HIS PLEADINGS. — Bar Matter No. 1922 (entitled Re: *Recommendation of the Mandatory Continuing Legal Education (MCLE) Board to Indicate in All Pleadings Filed with the Courts the Counsel's MCLE Certificate of Compliance and Certificate of Exemption*), as amended on January 14, 2014, expressly directs attorneys to indicate their MCLE certificate of compliance or certificate of exemption in all the pleadings they file in the courts. The requirement ensures that the practice of the law profession is reserved only for those who have complied with the recognized mechanism for "keep[ing] abreast with law and jurisprudence, maintain[ing] the ethics of the profession, and enhanc[ing] the standards of the practice of law." x x x Under the circumstances, the Investigating Commissioner correctly found the respondent to have acted in manifest bad faith, dishonesty, and deceit. The respondent had willfully contravened the requirement under B.M. No. 1922 by concealing his non-compliance with the use of the fictitious MCLE compliance number in his pleadings in the ejectment case. He had not also met the MCLE requirements corresponding to the second, third, fourth and fifth compliance periods. His actuations were designed to mislead the courts, his client and his colleagues in the profession, as well as all other persons who might have trusted in his representation of his compliance. x x x The respondent was definitely guilty of violating Canon 1, Canon 7 and Canon 10 of the *Code of Professional Responsibility*, which state: CANON 1 — A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes. CANON 7 — A lawyer shall at all times uphold the integrity and dignity of the legal profession, and support the activities of the integrated bar. CANON 10 — A lawyer owes candor, fairness and good faith to the court.

2. ID.; ID.; PENALTY FOR VIOLATION THEREOF. — Pursuant to B.M. No. 1922, as amended, any attorney who fails to indicate in the pleadings filed in court the MCLE certificate of compliance or certificate of exemption may be subject to appropriate penalty and disciplinary action, like a fine of ₱2,000.00 for the first offense, ₱3,000.00 for the second offense, and ₱4,000.00 for the third offense; and, in addition to the fine, he may be listed as a delinquent member of the Integrated Bar, pursuant to Section 2, Rule 13 of B.M. No. 850 and its implementing rules and regulations; and he shall be discharged from the case and the client/s shall be allowed to secure the services of a new attorney with the concomitant right to demand the return of fees already paid to the noncompliant attorney.

3. ID.; ID.; DISBARMENT IMPOSED IN VIEW OF THE SERIOUS AFFRONT THAT THE RESPONDENT DISPLAYED TOWARDS THE SUPREME COURT IN DISREGARDING THE OBJECTIVES OF THE MCLE PROGRAM ADOPTED UNDER BM NO. 1922, AND OF THE CAVALIER FOISTING OF HIS CONCEALMENT ON THE COURTS, HIS CLIENTS AND THE PUBLIC IN GENERAL, INCLUDING HIS COLLEAGUES IN THE INTEGRATED BAR. — The severity of the penalty imposed on non-compliant attorneys depends on the circumstances obtaining in the case. x x x Taking all the circumstances herein into account, the Court declares that the proper penalty to be imposed on the respondent is disbarment, take effect upon notice of this decision. This extreme penalty is fully called for in view of the serious affront that the respondent displayed towards the Supreme Court no less in disregarding the objectives of the MCLE program adopted under B.M. No. 1922, and of the cavalier foisting of his concealment on the courts, his clients and the public in general, including his colleagues in the Integrated Bar. Disbarment is in accord with Section 27, Rule 38 of the *Rules of Court*, which provides: SEC. 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor*. — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court **for any deceit, malpractice, or other gross misconduct in such office, x x x or for any violation of the oath** which he is required to take before admission to practice. x x x The actuations of the respondent deserved to be severely punished in order to foster respect towards the Supreme Court, and to enhance fealty to

the Rule of Law. He made himself totally unworthy of the title of attorney and of the privilege and standing of a member of the law profession in this country. We should be intolerant of his kind, for we have no place for individuals like him who openly abuse the privilege of membership in the law profession for all the devious and dubious reasons. Although they may escape notice at times, we must keep on reminding him and all others similarly disposed that the time for reckoning may be long in coming at times but it will be decisive and unforgiving when it does. This, because all members of the Philippine Bar shall remain as such only when they genuinely and sincerely value good conduct and ethical behavior.

D E C I S I O N

***PER CURIAM*:**

This administrative case stems from the complaint-affidavit filed by Atty. Francis V. Gustilo (complainant) in the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP) seeking to disbar Atty. Estefano H. De La Cruz (respondent) for his non-compliance with the requirements of the Mandatory Continuing Legal Education (MCLE) program, and for knowingly using a false MCLE compliance number in his pleadings.[1]

Antecedents

The respective versions of the parties as summarized by the CBD-IBP are as follows:

STATEMENT OF THE COMPLAINT:

Complainant alleges that Respondent is the lawyer for Spouses Melchor and Malyn Macian, who were the respondents in an ejectment case filed by Complainant's clients. During the trial of the case before the Metropolitan Trial Court in Makati, Respondent allegedly used a non-existent MCLE Compliance number (IV-001565). On appeal of the ejectment case, Respondent allegedly used again a fictitious MCLE Compliance number when he filed a Memorandum of Appeal.

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[1] *Rollo*, pp. 2-5.

Further, Complainant alleges that the Respondent used MCLE Compliance IV Number 001565 and that, in reality, Respondent used the number assigned to Atty. Ariel Osabel Labra who was issued MCLE Compliance No. 0015654.

To prove the charge, Complainant attached a Certification from the MCLE Office certifying that ATTY. ESTEFANO HILVANO DELA CRUZ has no compliance/exemption for the Second Compliance, Third Compliance Period, Fourth Compliance Period, and Fifth Compliance Period. He also attached copies of the pages (showing Respondent's MCLE Compliance number as 001565) of a Manifestation and Compliance and Memorandum on Appeal. Lastly, Complainant attached a copy of a Manifestation and Motion filed by Respondent where Respondent indicated his MCLE Number as 001565.

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RESPONDENT'S DEFENSES:

x x x x x x x x x

Respondent [claimed] that he is possibly exempted from the MCLE requirements. He explains that Section 5 of B.M. No. 850, October 2, 2001, cites the following as exempted from the MCLE requirement: a. The Executive - x x x Chief State IBP Investigating Commissioner, and Assistant Secretaries of the Department of Justice; x xx f. Local Government - Governors and mayor [x] x x" because he served as Assistant City IBP Investigating Commission of the Office of the City IBP Investigating Commissioner for Makati City, National Prosecution Service of the Department of Justice and retired from government service on July 18, 2015, he may file a request for exemption from compliance.[2]

IBP's Report and Recommendation

In his Report and Recommendation,[3] the Investigating Commissioner of the CBD found that the respondent had falsely indicated a non-existent MCLE compliance number on more than one occasion when he filed his pleadings in the ejectment case, thereby committing an evident violation of Canon 1, Canon 7, and Canon 10 of the *Code of Professional Responsibility*;

[2] *Id*. at 139-140.

[3] *Id*. at 138-142.

and recommended his suspension from the practice of law for one year.[4]

The Investigating Commissioner observed that not only did the respondent not disclose the required MCLE information in his pleadings but he also knowingly violated the MCLE requirements by not attending the second to fifth compliance periods, and by indicating a false MCLE compliance number to make it appear that he had been MCLE compliant.[5]

On December 7, 2017, the IBP Board of Governors adopted and approved the Investigating Commissioner's Report and Recommendation.[6]

Issue

Is the respondent guilty of violating Canon 1, Canon 7 and Canon 10 of the *Code of Professional Responsibility* when he: (1) used a non-existent MCLE compliance number in the pleadings that he filed; and (2) failed to submit proof of his compliance for the second, third, fourth and fifth compliance periods?

Ruling of the Court

The Court affirms the findings of the Investigating Commissioner of the CBD as adopted and approved by the IBP Board of Governors, but modifies the recommended penalty.

Bar Matter No. 1922 (entitled Re: *Recommendation of the Mandatory Continuing Legal Education (MCLE) Board to Indicate in All Pleadings Filed with the Courts the Counsel's MCLE Certificate of Compliance and Certificate of Exemption*), as amended on January 14, 2014, expressly directs attorneys to indicate their MCLE certificate of compliance or certificate of exemption in all the pleadings they file in the courts. The requirement ensures that the practice of the law

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[4] *Id*. at 142.

[5] *Id*.

[6] *Id*. at 136.

profession is reserved only for those who have complied with the recognized mechanism for "keep[ing] abreast with law and jurisprudence, maintain[ing] the ethics of the profession, and enhanc[ing] the standards of the practice of law."[7] "This requirement is not a mere frivolity," according to *Intestate Estate of Jose Uy v. Maghari III*:[8]

> x x x To willfully disregard it is, thus, to willfully disregard mechanisms put in place to facilitate integrity, competence, and credibility in legal practice; it is to betray apathy for the ideals of the legal profession and demonstrates how one is wanting of the standards for admission to and continuing inclusion in the bar. Worse, to not only willfully disregard them but to feign compliance only, in truth, to make a mockery of them reveals a dire, wretched, and utter lack of respect for the profession that one brandishes.[9]

Under the circumstances, the Investigating Commissioner correctly found the respondent to have acted in manifest bad faith, dishonesty, and deceit.[10] The respondent had willfully contravened the requirement under B.M. No. 1922 by concealing his non-compliance with the use of the fictitious MCLE compliance number in his pleadings in the ejectment case. He had not also met the MCLE requirements corresponding to the second, third, fourth and fifth compliance periods. His actuations were designed to mislead the courts, his client and his colleagues in the profession, as well as all other persons who might have trusted in his representation of his compliance.[11]

We note that the respondent did not refute the charge against him.[12] Instead, he misrepresented that he would be seeking his

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[7] Section 1, Rule 1, Bar Matter No. 850 (2001).

[8] A.C. No. 10525, September 1, 2015, 768 SCRA 384, 402.

[9] *Id*.

[10] *Mapalad, Sr. v. Echanez*, A.C. No. 10911, June 6, 2017, 826 SCRA 57, 63.

[11] *Intestate Estate of Jose Uy v. Maghari III,* A.C. No. 10525, September 1, 2015, 768 SCRA 384, 409.

[12] *Rollo*, p. 142.

exemption from the requirement based on his having served as Assistant City IBP Investigating Commissioner for Makati City, his having worked in the National Prosecution Service of the Department of Justice, and his having retired from government service on July 18, 2015. At best, his misrepresentations were another occasion for him to mislead, for he did not thereby show any honest effort to explain or to justify his non-compliance and concealment of his deficient status in the MCLE program. To be sure, he did not present any certificate or other acceptable proof to substantiate his proposed exemption.

The respondent was definitely guilty of violating Canon 1, Canon 7 and Canon 10 of the *Code of Professional Responsibility*, which state:

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

CANON 7 — A lawyer shall at all times uphold the integrity and dignity of the legal profession, and support the activities of the integrated bar.

CANON 10 — A lawyer owes candor, fairness and good faith to the court.

Pursuant to B.M. No. 1922, as amended, any attorney who fails to indicate in the pleadings filed in court the MCLE certificate of compliance or certificate of exemption may be subject to appropriate penalty and disciplinary action, like a fine of ₱2,000.00 for the first offense, ₱3,000.00 for the second offense, and ₱4,000.00 for the third offense; and, in addition to the fine, he may be listed as a delinquent member of the Integrated Bar, pursuant to Section 2, Rule 13 of B.M. No. 850 and its implementing rules and regulations; and he shall be discharged from the case and the client/s shall be allowed to secure the services of a new attorney with the concomitant right to demand the return of fees already paid to the noncompliant attorney.

The severity of the penalty imposed on non-compliant attorneys depends on the circumstances obtaining in the case. In *Arnado*

v. Adaza,[13] the respondent attorney was suspended from the practice of law for a period of six months for non-compliance with the MCLE requirements for the first, second, third, and fourth compliance periods. In the cited ruling in *Intestate Estate of Jose Uy v. Maghari III*,[14] the penalty was suspension from the practice of law for two years for deliberately using a false IBP official receipt number, professional tax receipt number, Roll of Attorneys number, and MCLE compliance, and for using another lawyer's details seven times. In *Mapalad, Sr. v. Echanez*,[15] the attorney was disbarred for using a false MCLE compliance number in his pleadings, and for disobeying legal orders, taking into consideration that he had already been sanctioned twice in other cases.

Herein, the IBP Board of Governors recommended the respondent's suspension from the practice of law for one year. Yet, the recommendation was incompatible with the grossness of the respondent's actuations which amounted to dishonesty and deception. He had thereby committed not only a brazen disregard of the clear requirements of B.M. No. 1922 but also deceived the trial court, his client, and the general public, including his professional colleagues, on his status of good standing in the Integrated Bar.

Taking all the circumstances herein into account, the Court declares that the proper penalty to be imposed on the respondent is disbarment, to take effect upon notice of this decision. This extreme penalty is fully called for in view of the serious affront that the respondent displayed towards the Supreme Court no less in disregarding the objectives of the MCLE program adopted under B.M. No. 1922, and of the cavalier foisting of his concealment on the courts, his clients and the public in general, including his colleagues in the Integrated Bar. Disbarment is in accord with Section 27, Rule 38 of the *Rules of Court*, which provides:

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[13] A.C. No. 9834, August 26, 2015, 768 SCRA 172.

[14] *Supra*, note 11.

[15] *Supra*, note 10.

SEC. 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor*. — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court **for any deceit, malpractice, or other gross misconduct in such office, x x x or for any violation of the oath** which he is required to take before admission to practice. x x x (Bold underscoring supplied for emphasis)

The actuations of the respondent deserved to be severely punished in order to foster respect towards the Supreme Court, and to enhance fealty to the Rule of Law. He made himself totally unworthy of the title of attorney and of the privilege and standing of a member of the law profession in this country. We should be intolerant of his kind, for we have no place for individuals like him who openly abuse the privilege of membership in the law profession for all the devious and dubious reasons. Although they may escape notice at times, we must keep on reminding him and all others similarly disposed that the time for reckoning may be long in coming at times but it will be decisive and unforgiving when it does. This, because all members of the Philippine Bar shall remain as such only when they genuinely and sincerely value good conduct and ethical behavior. As we noted in *Barrios v. Martinez*:[16]

> Of all classes and professions, the lawyer is most sacredly bound to uphold the laws. He is their sworn servant; and for him, of all men in the world, to repudiate and override the laws, to trample them underfoot and to ignore the very bands of society, argues recreancy to his position and office and sets a pernicious example to the insubordinate and dangerous elements of the body politic.

WHEREFORE, the Court **FINDS** and **DECLARES** respondent **ATTY. ESTEFANO H. DE LA CRUZ** to have violated Canon 1, Canon 7, and Canon 10 of the *Code of Professional Responsibility* through his unlawful, dishonest, and deceitful conduct; **DISBARS** him effective upon receipt of this decision; and **ORDERS** his name to be stricken off the Roll of Attorneys.

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[16] A.C. No. 4585, November 12, 2004, 442 SCRA 324, 341.

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

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

SO ORDERED.

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

Reyes, J. Jr., J., on leave.

EN BANC

[A.C. No. 12486. October 15, 2019]

ANTONIO X. GENATO, *complainant, vs.* **ATTY. ELIGIO P. MALLARI,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; MANDATE FOR ALL LAWYERS TO OBSERVE THE RULES OF PROCEDURE AND NOT MISUSE THEM TO DEFEAT THE ENDS OF JUSTICE; VIOLATED BY RESPONDENT LAWYER'S ACT OF UNDULY EXTENDING THE PROCEEDINGS IN THE CASES. — Rule 10.03, Canon 10 of the Code of Professional Responsibility mandates all lawyers to observe the rules of procedure and not misuse them to defeat the ends of justice. x x x [M]any legal practitioners use their knowledge of the law to perpetrate misdeeds or to serve their

selfish motives. Respondent was found to be one of these lawyers who has ***repeatedly*** deliberately abused court processes to fulfill his unlawful intentions and to harass fellow lawyers and their clients as well as judges and court employees who do not actuate his bidding. Records reveal that in order to unduly prolong the proceedings in different cases filed against him, respondent had interposed numerous appeals and petitions from issuances rendered by courts in these cases. A template for this kind of practice, G.R. No. 157659 and G.R. No. 157660, respondent deliberately ignored the final and executory decisions therein and disregarded the writs of possession correspondingly issued by the courts. Respondent's dilatory and vexatious tactics were obviously to delay the full enforcement of the courts' decisions that were adverse to him. It is a fundamental rule that it is the ministerial duty of courts of law to issue a writ of possession once the decision in a case becomes final and executory. As it was, however, despite finality, respondent did not recognize these decisions, rendering them inutile. Worse, respondent employed all possible ways to stall the execution of the final and executory decisions. Respondent's act of unduly extending the proceedings in these cases clearly run counter to the objective of the Rules of Court to promote a just, speedy, and inexpensive disposition of every action and proceeding.

2. ID.; IT IS A LAWYER'S BASIC OBLIGATION TO OBSERVE AND MAINTAIN THE RESPECT DUE TO THE COURTS OF JUSTICE AND JUDICIAL OFFICERS; VIOLATED BY PROVOKING A SITTING JUSTICE OF THE COURT OF APPEALS TO A DEBATE. — It is a lawyer's sworn duty to maintain a respectful attitude towards the courts. There is, thus, no rhyme or reason for respondent's reprehensible and arrogant behavior in challenging a Justice of the Court of Appeals to a public debate. Even assuming that the decision rendered by a magistrate is, according to the losing lawyer, erroneous and completely devoid of basis in law, evidence, and jurisprudence, a person, let alone a lawyer, should not act contemptuously by challenging the judge or justice concerned to a public debate that would unavoidably expose him or her and the entire Judiciary which he or she represents, to public ridicule and mockery. A lawyer must foster respect for the courts and its officers. A lawyer must not sow hate or disrespect against the court and its members. He or she must be at the forefront in

upholding its dignity. A lawyer, more than anyone, must know that there are proper venues for grievances against a magistrate or his or her decision or orders, which are sanctioned by law. Debate, a public one at that, is not one of these remedies. By provoking a sitting Justice of the Court of Appeals to a debate, respondent violated his basic obligation under the Rules of Court to *obey the laws of the Philippines, and to observe and maintain the respect due to the courts of justice and judicial officers.* He also transgressed Rule 11.05, Canon 11 of the Code of Professional Responsibility, which provides: 11.05 - A lawyer shall submit grievances against a Judge to the proper authorities only.

3. ID.; LAWYER'S OATH; VIOLATION MANIFESTED IN RESPONDENT LAWYER'S ACTIONS. — Section 27, Rule 138 of the Rules of Court is a standard guideline to determine the weight and repercussions of the acts committed by legal professionals. Not only did respondent commit gross misconduct and willful disobedience to a superior court, his repeated and persistent transgressions of court issuances, abuse of court processes, and disrespect to lawful authority demonstrate a clear violation of the lawyer's oath whereby he imposed upon himself the following duties: *to maintain allegiance to the Republic of the Philippines; to support its Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein; to do no falsehood nor consent to the doing of any in court; to not wittingly or willingly promote or sue any groundless, false or unlawful suit, or give aid or consent to the same; to not delay any man for money or malice, and to conduct himself or herself as a lawyer according to the best of his or her knowledge and discretion, with all good fidelity as well to the court as to his or her clients; and to impose upon himself or herself these voluntary obligations without any mental reservation or purpose of evasion.* Considering respondent's actions *vis-a-vis* these sworn duties, it is clear as day that he committed a violation of his basic oath as a lawyer. His **unfitness** to remain in the legal profession has now become indubitable.

4. ID.; DISBARMENT; RESPONDENT LAWYER'S SERIOUS ADMINISTRATIVE OFFENSES DESERVES THE ULTIMATE PENALTY OF DISBARMENT. — The power to disbar is always exercised with great caution and only for the most imperative

reasons or in cases of clear misconduct affecting the standing and moral character of the lawyer as an officer of the court and member of the bar. x x x [Here,] [w]e have found out that respondent has demonstrated an utter lack of regard for the law, the rules, and the courts by his repeated transgressions, disobedience to court issuances, and arrogant behavior towards not just a sitting Justice of the Court of Appeals but several of them whose names are not recorded here, those other judges and justices who have been the subject of his vituperative style of practicing law. In fact, respondent was previously suspended for employing dilatory tactics in the enforcement of the decision in *Mallari v. GSIS and Provincial Sheriff of Pampanga*. By his actions, respondent had definitely shown to have fallen below the bar set for the legal profession. x x x For respondent's serious administrative offenses, he deserves the ultimate penalty of disbarment. His name should be stricken from the Roll of Attorneys.

D E C I S I O N

PER CURIAM:

PREFATORY

Lawyers are disciplined, as are judges and court personnel, on the totality of the circumstances attendant to the case being heard. In such administrative proceedings, the Court is not limited by rules and principles applied in a mechanical fashion. If justice so demands, we treat the parties' pleadings with due regard to what we really are, a small community where everyone knows or ought to know each one else. A disciplinary case is not accurately described as a straitjacket worn beneath judicial robes. More subtly but poignantly, cases of this type is like asking, "Who has seen the wind?" and answering, "[n]either I nor you, [b]ut when the leaves hang trembling, [t]he wind is passing through."[1]

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[1] Christina Rossetti, "Who Has Seen the Wind?"

THE CASE

Complainant Antonio X. Genato seeks the disbarment of respondent Atty. Eligio Mallari for the latter's deliberate disregard of the *Rules of Court* and jurisprudence, and violation of the *Lawyer's Oath* and *Code of Professional Responsibility* in his conduct and dealings.

THE COMPLAINT

In his undated complaint-affidavit,[2] complainant essentially alleged:

Respondent and his wife claimed to be the owner of a one hundred thirty-three (133) hectare real property located in San Fernando, Pampanga which he allegedly acquired by virtue of a judgment award in a previous case.

Respondent induced complainant to invest ₱18 Million in the property. In turn, respondent would give complainant the exclusive power to sell a portion of the land, about thirty-three (33) hectares, and all proceeds of the sale would go to complainant. The latter, however, discovered that the property actually belonged to the Philippine National Bank (PNB) and had been divided for distribution to land reform beneficiaries.

Complainant filed a criminal complaint for estafa against respondent, docketed I.S. No. XV-03-INV-13D-04135. The criminal complaint was, however, dismissed, and is now pending review with the Department of Justice.

Aside from his own personal experience with respondent, complainant drew attention to cases and instances involving respondent which showcased the latter's propensity to deceive, his unethical behavior, and his abusive use of power as a member of the bar:

1. In "*Eligio P. Mallari v. Government Insurance System (GSIS) and the Provincial Sheriff*," respondent employed dilatory tactics to stop the execution of a

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[2] *Rollo*, pp. 29-30.

final and executory decision involving his debt with GSIS which he had evaded to pay for twenty-four (24) years. In that case, given respondent's atrocious professional behavior, the Court had to order the Committee on Bar Discipline (CBD) to investigate his actuations. Despite the investigation, respondent continued to act with impunity in disregarding and flouting the Court's directives.

2. On October 29, 2012, respondent paid advertisements published in the Philippine Star and the Philippine Daily Inquirer, challenging Court of Appeals' Associate Justice Apolinario D. Bruselas, Jr. to a "public and televised debate" in relation to an issuance in the case entitled "*PNB v. Eligio P. Mallari, et al.*"

3. Respondent employed delaying tactics to prevent the enforcement of a writ of possession issued in the case docketed G.R. No. 157660 entitled "*Eligio P. Mallari v. Banco Filipino Savings and Mortgage Bank.*" Consequently, the Court warned respondent about his unethical conduct.

4. Respondent filed baseless harassment cases against the lawyers of PNB and the Register of Deeds of Pampanga. These cases were dismissed. But respondent continued to file frivolous petitions before the Court purportedly to protect his alleged land ownership when it was too obvious that he merely fabricated a facade for his suspicious title.

The Court takes note of respondent's practice built on harassing and intimidating judges and court personnel, as well as opposing lawyers and their clients, with complaints and frivolous submissions.

RESPONDENT'S COMMENT

In his Verified Answer dated November 25, 2015,[3] respondent denied the charges. He asserted that in all the cases cited by

[3] *Rollo*, p. 235.

complainant, he was only protecting and defending his proprietary rights.

As for the challenge to Associate Justice Bruselas, Jr. to a public and televised debate, he claimed it was his right as an officer of the court to mount such challenge because the latter issued a "VOID" resolution.

Respondent further contended that complainant filed the present disbarment complaint solely to harass and molest him and his wife.

FINDINGS AND RECOMMENDATION OF THE COMMITTEE ON INTEGRITY AND BAR DISCIPLINE

In his Report and Recommendation dated December 4, 2017,[4] Investigating Commissioner Jose Villanueva Cabrera made the following findings:

1. Respondent's published challenge to an Associate Justice of the Court of Appeals to a "public and televised debate" was an utter disregard of Section 20, Rule 138 of the Rules of Court, which reminds respondent as an officer of the court:

    i. To maintain allegiance to the Republic of the Philippines and to support the Constitution and obey the laws of the Philippines;

    ii. To observe and maintain the respect due to the courts of justice and judicial officers.

As a lawyer, respondent was put to task by the Investigating Commissioner to know that Judges and Justices from first level courts, Regional Trial Courts, Sandiganbayan, Court of Tax Appeals, Court of Appeals and the Supreme Court would decide cases based only on law and evidence, and there would be remedies and proper venues to challenge their decisions, resolutions, or orders. According to the Investigating Commissioner, this would not include challenging a Justice to a public and

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[4] *Rollo,* pp. 233-250.

televised debate. Too, the *Lawyer's Oath* emphasized the obligation of members of the bar to "obey the laws as well as the legal orders of the duly constituted authorities." The Investigating Commissioner concluded that respondent violated the following provisions of the Code of Professional Responsibility:

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

> Rule 1.02 - A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system

x x x x x x x x x

Canon 10 — *A lawyer owes candor, fairness and good faith to the courts.*

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

Canon 11 — *A lawyer shall observe and maintain the respect due to the courts and to Judicial officers and should insist on similar conduct by others.*

> Rule 11.05 - A lawyer shall submit grievances against a judge to the proper authorities only."

2. Respondent deliberately disregarded the writ of possession issued in G.R. No. 157660 entitled *Eligio P. Mallari v. Banco Filipino Savings and Mortgage Bank.* The Investigating Commissioner reiterated the long-standing rule that upon the failure of a mortgagor to redeem the property within the prescribed period, a winning bidder becomes the absolute owner of the property and the issuance of a writ of possession in his favour becomes a matter of right. It would, thus, be a court's ministerial duty to issue a writ of possession. The Investigating Commissioner was of the belief that respondent took advantage of his profession as a lawyer to unjustifiably stop the issuance and enforcement of the writ of possession.

3. Respondent violated the Lawyer's Oath and the Code of Professional Responsibility in G.R. No. 157659 entitled "*Eligio P. Mallari v. GSIS and the Provincial Sheriff.*" The Investigating Commissioner found respondent guilty of misconduct for employing dilatory tactics to stall the execution of a final and executory decision. Respondent was said to have resorted to vexatious maneuvers solely to delay the enforcement of a writ of possession. The Investigating Commissioner concluded that respondent deliberately abused court procedures and processes to obstruct the fair and quick administration of justice in favor of the mortgagee and purchaser GSIS,[5] and adjudged respondent to have contravened Rule 10.03, Canon 10 of the Code of Professional Responsibility, by which he was enjoined as a lawyer to "observe the rules of procedures and x x x not [to] misuse them to defeat the ends of justice[.]"[6]

4. On the charge of respondent's filing of whimsical cases against the lawyers of PNB and the Register of Deeds of Pampanga and complainant Genato, the Investigating Commissioner found no basis to support a further investigation of this charge.

The Investigating Commissioner recommended that in view of the nature of respondent's misconduct, and taking into consideration his "advanced age and the excessive and disproportionate passion in defending his own case," respondent should be meted the penalty of suspension from the practice of law for six (6) months.

RECOMMENDATION OF THE IBP BOARD OF GOVERNORS

Under Resolution No. CBD CASE NO. 14-4275, the IBP Board of Governors resolved to adopt the findings of the Investigating Commissioner, with modification:

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[5] *Rollo*, p. 249.

[6] *Ibid*.

RESOLVED to ADOPT the findings of fact and recommendation of the Investigating Commissioner, with modification, to impose upon the respondent the penalties of – i) SUSPENSION FROM THE PRACTICE OF LAW FOR A PERIOD OF SIX (6) MONTHS, and ii) for delaying the implementation of the writ of execution as well as his disrespectful acts towards the trial court an additional SUSPENSION FROM THE PRACTICE OF LAW FOR A PERIOD OF SIX (6) MONTHS, where the penalties shall be served successively.

RULING

We adopt the factual findings and legal conclusion of the IBP Board of Governors but impose a more severe penalty than mere suspension.

A lawyer must obey the law and must not abuse court processes

Rule 10.03, Canon 10 of the Code of Professional Responsibility mandates all lawyers to observe the rules of procedure and not misuse them to defeat the ends of justice. To say that lawyers must at all times uphold and respect the law is to state the obvious, but this statement's profound importance can never be over-stressed. Considering that, of all classes and professions, lawyers are most sacredly bound to uphold the law, it is imperative that they also live by the law.[7]

The lawyer is the nexus of the common people to the law and the rules of procedure. For the lawyer deals directly with clients, and he or she is the one who explains to the latter the legal procedures and remedies available to them. It is imperative, therefore, that a lawyer must not only be knowledgeable of the law and the rules of procedure. He must by himself or herself abide by the law and rules, as well.

Lawyers are officers of the court. They are called upon to assist in the administration of justice. They act as vanguards of our legal system to protect and uphold truth and the rule of

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[7] *Resurreccion v. Sayson*, 360 Phil. 313, 315 (1998).

law. They are expected to act with honesty in all their dealings, especially with the court.[8]

Lamentably, many legal practitioners use their knowledge of the law to perpetrate misdeeds or to serve their selfish motives. Respondent was found to be one of these lawyers who has ***repeatedly*** deliberately abused court processes to fulfill his unlawful intentions and to harass fellow lawyers and their clients as well as judges and court employees who do not actuate his bidding.

Records reveal that in order to unduly prolong the proceedings in different cases filed against him, respondent had interposed numerous appeals and petitions from issuances rendered by courts in these cases. A template for this kind of practice, G.R. No. 157659 and G.R. No. 157660, respondent deliberately ignored the final and executory decisions therein and disregarded the writs of possession correspondingly issued by the courts. Respondent's dilatory and vexatious tactics were obviously to delay the full enforcement of the courts' decisions that were adverse to him. It is a fundamental rule that it is the ministerial duty of courts of law to issue a writ of possession once the decision in a case becomes final and executory. As it was, however, despite finality, respondent did not recognize these decisions, rendering them inutile. Worse, respondent employed all possible ways to stall the execution of the final and executory decisions.

Respondent's act of unduly extending the proceedings in these cases clearly run counter to the objective of the Rules of Court to promote a just, speedy, and inexpensive disposition of every action and proceeding.

In ***Ong v. Grijaldo***,[9] the Court spelled out in no uncertain terms the duty of a lawyer to obey a court issuance:

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[8] *Jimenez v. Francisco*, 749 Phil. 551, 568 (2014).

[9] 450 Phil. 1, 13 (2003).

A resolution of this Court is not to be construed as a mere request, nor should it be complied with partially, inadequately or selectively. Respondent's obstinate refusal to comply therewith not only betrays a recalcitrant flaw in his character; it also underscores his disrespect of our lawful orders which is only too deserving of reproof.

This imperative proceeds from a lawyer's duty as an officer of the court to uphold the law and help in the efficient dispensation of justice. Respondent had miserably failed to discharge this duty.

The Court keenly notes that respondent has **not** disobeyed a lawful court order only on a **single occasion**. On the contrary, he has **repeatedly defied court issuances and abused processes** which should have otherwise been availed of only by litigants with genuine causes. Respondent's circumvention of a lawful court order is aggravated by his use of his knowledge of law as a tool to perpetrate disrespect for court dispositions and his purpose to harass judges, court personnel, lawyers, and adverse parties alike. The misuse and abuse of court procedures by lawyers like respondent is abhorred. In ***Re: Administrative Case No. 44 of the RTC, Branch IV, Tagbilaran City v. Occena***,[10] the Court warned:

x x x a lawyer should not abuse his right of recourse to the courts for the purpose of arguing a cause that had been repeatedly rebuffed. Neither should he use his knowledge of law as an instrument to harass a party nor to misuse judicial process, as the same constitutes serious transgression of the Code of Professional Responsibilities.

For his deliberate disregard of the lawful orders of the court, respondent had transgressed the following Canons of the Code of Professional Responsibility:

Rule 10.03, Canon 10

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

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[10] 433 Phil. 138, 156 (2002).

Rule 12.04, Canon 12

A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse Court processes.

A lawyer must respect the duly constituted authority

It is a lawyer's sworn duty to maintain a respectful attitude towards the courts. There is, thus, no rhyme or reason for respondent's reprehensible and arrogant behavior in challenging a Justice of the Court of Appeals to a public debate. Even assuming that the decision rendered by a magistrate is, according to the losing lawyer, erroneous and completely devoid of basis in law, evidence, and jurisprudence, a person, let alone a lawyer, should not act contemptuously by challenging the judge or justice concerned to a public debate that would unavoidably expose him or her and the entire Judiciary which he or she represents, to public ridicule and mockery.

A lawyer must foster respect for the courts and its officers. A lawyer must not sow hate or disrespect against the court and its members. He or she must be at the forefront in upholding its dignity. A lawyer, more than anyone, must know that there are proper venues for grievances against a magistrate or his or her decision or orders, which are sanctioned by law. Debate, a public one at that, is not one of these remedies.

By provoking a sitting Justice of the Court of Appeals to a debate, respondent violated his basic obligation under the Rules of Court to *obey the laws of the Philippines, and to observe and maintain the respect due to the courts of justice and judicial officers.*[11] He also transgressed Rule 11.05, Canon 11 of the Code of Professional Responsibility, which provides:

11.05 — A lawyer shall submit grievances against a Judge to the proper authorities only.

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[11] Section 20, Rule 138, Revised Rules of Court.

Violation of the Lawyer's Oath

Section 27, Rule 138 of the Rules of Court is a standard guideline to determine the weight and repercussions of the acts committed by legal professionals. Not only did respondent commit gross misconduct and willful disobedience to a superior court, his repeated and persistent transgressions of court issuances, abuse of court processes, and disrespect to lawful authority demonstrate a clear violation of the lawyer's oath whereby he imposed upon himself the following duties: *to maintain allegiance to the Republic of the Philippines; to support its Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein; to do no falsehood nor consent to the doing of any in court; to not wittingly or willingly promote or sue any groundless, false or unlawful suit, or give aid or consent to the same; to not delay any man for money or malice, and to conduct himself or herself as a lawyer according to the best of his or her knowledge and discretion, with all good fidelity as well to the court as to his or her clients; and to impose upon himself or herself these voluntary obligations without any mental reservation or purpose of evasion.*

Considering respondent's actions *vis-á-vis* these sworn duties, it is clear as day that he committed a violation of his basic oath as a lawyer. His **unfitness** to remain in the legal profession has now become indubitable.

Disbarment as last resort

The power to disbar is always exercised with great caution and only for the most imperative reasons or in cases of clear misconduct affecting the standing and moral character of the lawyer as an officer of the court and member of the bar.[12] The Court has to ask itself whenever this remedy is considered — Do the transgressions of the erring lawyer justify his or her

[12] *Madria v. Rivera*, 806 Phil. 774, 785 (2017).

disbarment? What circumstances in the erring lawyer's life can we draw upon to avoid disbarment as an outcome? Would the legal profession be better off without this erring lawyer in the Roll of Attorneys, and would others be deterred from following the erring lawyer's type of practice?

Here, the Court has considered these questions and more. We have found out that respondent has demonstrated an utter lack of regard for the law, the rules, and the courts by his repeated transgressions, disobedience to court issuances, and arrogant behavior towards not just a sitting Justice of the Court of Appeals but several of them whose names are not recorded here, those other judges and justices who have been the subject of his vituperative style of practicing law.

In fact, respondent was previously suspended for employing dilatory tactics in the enforcement of the decision in *Mallari v. GSIS and Provincial Sheriff of Pampanga*. By his actions, respondent had definitely shown to have fallen below the bar set for the legal profession. The Court has repeatedly stressed the importance of integrity and good character as part of a lawyer's equipment in the practice of his profession,[13] because the practice of law is a sacred and noble profession. We do not want this profession to become the subject of ill-will by the public and source of public disrepute.

Being a lawyer is a special privilege bestowed only upon those who are competent intellectually, academically and morally. Indeed, it is a time-honored rule that good character is not only a condition precedent to admission to the practice of law. Its continued possession is also essential for remaining in the legal profession.[14]

To cap it all, respondent has not shown any bit of remorse for his conduct prejudicial to the best interests of the legal

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[13] *Rivera v. Angeles*, 393 Phil. 539, 543 (2000), citing *Fernandez v. Grecia*, 295 Phil. 428, 437 (1993).

[14] *People v. Tuanda*, 260 Phil. 572, 577 (1990); *Leda v. Tabang*, 283 Phil. 316, 323 (1992).

profession. He has not seen the errors of his ways, and this is the most troubling occasion for the present case. He is and has been incapable of reform.

Section 27, Rule 138 of the Rules of Court provides:

> *Sec. 27. Disbarment or suspension of attorneys by Supreme Court; grounds therefore. — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for* ***any deceit, malpractice or other gross misconduct in such office,*** *grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for* ***any violation of the oath*** *which he is required to take before admission to the practice, or for* ***a wilful disobedience of any lawful order of a superior court*** *or for corruptly or wilfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitute malpractice.* (Emphasis supplied)

Time and again, the Court has reminded the bench and bar that the practice of law is not a right but a mere privilege subject to the inherent regulatory power of the court. It is a privilege burdened with conditions. As such, lawyers must comply with the rigid standards which include mental fitness, maintenance of highest level of morality, and full compliance with the rules of the legal profession.[15]

To repeat, respondent has repeatedly and deliberately caused a mockery of the judicial profession by his constant transgressions enough to justify a penalty graver than the six-month suspension recommended by the IBP Board of Governors. For respondent's serious administrative offenses, he deserves the ultimate penalty of disbarment. His name should be stricken from the Roll of Attorneys.

The Court notes that a lawyer need not commit an infraction many times over before the ultimate penalty of disbarment is imposed on him.

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[15] *Tan v. Gumba,* AC No. 9000, January 10, 2018, 850 SCRA 123, 132.

In ***Enriquez v. Atty. Lavadia***,[16] respondent lawyer was disbarred for his first infraction. There, the lawyer was found to have had a propensity for filing motions for extension of time and not filing the required pleading despite the extension given. Atty. Lavadia was disbarred to prevent other unknowing clients from engaging his services and losing their cases due to his nonchalant attitude.

Here, there is more reason to remove respondent from the legal profession for showing a proclivity to disobeying the law and discourtesy and contempt of authority and decency as the practice of law demands.

Embido v. Pe[17] reminds lawyers, thus:

> No lawyer should ever lose sight of the verity that the practice of the legal profession is always a privilege that the Court extends only to the deserving, and that the Court may withdraw or deny the privilege to him who fails to observe and respect the Lawyer's Oath and the canons of ethical conduct in his professional and private capacities. He may be disbarred or suspended from the practice of law not only for acts and omissions of malpractice and for dishonesty in his professional dealings, but also for gross misconduct not directly connected with his professional duties that reveal his unfitness for the office and his unworthiness of the principles that the privilege to practice law confers upon him. Verily, no lawyer is immune from the disciplinary authority of the Court whose duty and obligation are to investigate and punish lawyer misconduct committed either in a professional or private capacity. The test is whether the conduct shows the lawyer to be wanting in moral character, honesty, probity, and good demeanor, and whether the conduct renders the lawyer unworthy to continue as an officer of the Court.

To repeat, the Court looks deeply into the totality of the circumstances of a respondent attendant to a disciplinary case against him or her. We are not blind to both aggravating and mitigating circumstances in choosing the appropriate remedy

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[16] 760 Phil. 1, 13 (2015).

[17] 720 Phil. 1, 10-11 (2013).

for a particular case. Just like when the wind blows, the Court knows one when it feels one.

WHEREFORE, respondent Atty. Eligio Mallari is found **GUILTY** of violation of **Rule 10.03, Canon 10,** Rule 11.05, Canon 11, and **Rule 12.04, Canon 12,** of the Code of Professional Responsibility and the Lawyer's Oath. Respondent is ordered **DISBARRED** from the practice of law. His name is ordered **STRICKEN** from the Roll of Attorneys.

Let copy of this Decision be: (1) entered into the personal records of Atty. Eligio Mallari with the Office of the Bar Confidant; (2) furnished to all chapters of the Integrated Bar of the Philippines; and (3) circulated by the Court Administrator to all the courts in the country for their information and guidance.

This Decision takes effect immediately.

SO ORDERED.

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

Peralta, J., no part, spouse participated in one of the cases.

Reyes, A. Jr., J., no part.

Reyes, J. Jr., J., on leave.

EN BANC

[A.M. No. 19-08-19-CA. October 15, 2019]

RE: REPORT OF ATTY. MARIA CONSUELO AISSA P. WONG-RUSTE, ASSISTANT CLERK OF COURT, COURT OF APPEALS, VISAYAS STATION, CEBU CITY "RE: MISSING ORIGINAL RECORDS OF CA-G.R. CV No. 01293, SOFIA TABUADA, *ET AL. vs.* ELEANOR TABUADA, *ET AL.*"

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CODE OF CONDUCT FOR COURT PERSONNEL (AM NO. 03-06-SC); COURT PERSONNEL SHALL AT ALL TIMES PERFORM OFFICIAL DUTIES PROPERLY AND WITH DILIGENCE; VIOLATED WHEN THE HEAD OF THE ARCHIVES UNIT FAILED TO PROPERLY ACCOUNT FOR THE LOSS OF THE ORIGINAL RECORDS UNDER HIS CUSTODY. — Agura is the Head of the Archives Unit of CA-Visayas and as such, he occupies a highly sensitive position as the designated custodian of all court records elevated to the appellate court in Cebu. His primary task is to safekeep all original records and *rollos* placed under his custody, as well as to monitor and maintain a record of these documents. In addition, under the mantle of the Judicial Records Division is the issuance of certified true copies of documents or exhibits under the custody of his office. Section 1, Canon IV of A.M. No. 03-06-13-SC, otherwise known as the Code of Conduct for Court Personnel, mandates that "[c]ourt personnel shall at all times perform official duties properly and with diligence." Judicial machinery can only function if every employee performs his task with the highest degree of professionalism. All court personnel are obligated to perform their duties properly and with diligence. Any task given to an employee of the judiciary, however menial it may be, must be performed in the most prompt and diligent way.In this case, Agura failed to properly account for the loss of the original records under his custody. As defense, he merely surmised that the records were misplaced or possibly relocated because of inactivity or the absence of requests with respect to access

over it. Aside from its trivial nature, this excuse is not compelling enough to justify failure to perform one's duties properly.

2. ID.; ID.; REVISED UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; SIMPLE NEGLECT OF DUTY; PENALTY; FOR THE COURT OFFICER'S DISREGARD OF HIS DUTY AND CARELESSNESS TO HIS TASK WHICH RESULTED IN THE LOSS OF THE SUBJECT RECORDS, A FINE EQUIVALENT TO THREE MONTHS SALARY WAS IMPOSED. — Indeed, Agura should be held liable for simple neglect of duty which is defined as "the failure to give attention to a task or the disregard of a duty due to carelessness or indifference." Section 46(D) (1), Rule 10 of Civil Service Commission (CSC) Resolution No. 1101502 dated November 8, 2011, otherwise known as the Revised Uniform Rules on Administrative Cases in the Civil Service, classifies simple neglect of duty as a less grave offense punishable by one month and one day to six months suspension, for the first offense. x x x There is no doubt that the loss of the records in this case is by reason of Agura's lack of diligence in the discharge of his tasks. Although Agura is guilty of neglect in the performance of his official duties, he could only be held liable for simple neglect of duty since his omission is not as repulsive or of such nature to be considered brazen, flagrant, and palpable as would amount to a gross neglect of duty. x x x Accordingly, the Court holds that Agura's disregard of his duty as Head of the Archives Unit in CA-Visayas and his carelessness or indifference to his task which resulted in the loss of the subject records herein, merits the imposition of the penalty of suspension from office for three months, without pay, as commensurate thereto. Pursuant to Section 47(1) of the Revised Rules on Administrative Cases in the Civil Service and the submission of Atty. Wong-Ruste that Agura is actually discharging frontline functions and that the personnel complement of the office is insufficient to perform such function, the alternative penalty of fine equivalent to his salary for three months shall be imposed instead.

D E C I S I O N

INTING, *J.*:

This refers to the Report and Recommendation[1] dated June 27, 2019 of Atty. Maria Consuela Aissa P. Wong-Ruste, Assistant Clerk of Court and Investigating Officer, pursuant to an investigation conducted on the Incident Report of Mr. Fernando C. Prieto (Prieto), Chief of the Judicial Records Division, regarding the missing records of CA-G.R. CV No. 01293 entitled "*Sofia Tabuada, et al. v. Eleanor Tabuada, et al.*" (Tabuada case).

The Antecedents

It appears that on September 30, 2009; the Court of Appeals, Visayas Station (CA-Visayas) rendered a Decision penned by Associate Justice Samuel H. Gaerlan with the concurrence of Associate Justice Franchito N. Diamante and Associate Justice Edgardo L. Delos Santos which granted the appeal in the Tabuada case.[2]

On January 9, 2010, at 2:45 p.m., the original records of the Tabuada case were turned over by the Office of the *Ponente* to the Archives Unit of the Judicial Records Section (JRS) of CA-Visayas.[3] Rossie A. Maceda (Maceda), a stenographer detailed in the Archives Unit, who was tasked to receive all pleadings, *rollos*, and original records from different offices, received the original records of the Tabuada case.[4] She listed the received documents then turned them over to Voltaire Matildo (Matildo), Clerk II of the Archives Unit, who was assigned to docket all received original records and *rollos* and to encode them according to their specific locations in the bodega.

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[1] Record, pp. 410-435.

[2] *Id.* at 412; as culled from the Report and Recommendation dated June 27, 2019.

[3] *Id.* at 166; as appearing in the Logbook. However, this was corrected to February 9, 2010 as claimed by Rossie A. Maceda and Voltaire Matildo in their Comment dated July 26, 2016, *id*. at 143-145.

[4] *Id.* at 144.

Afterwhich, Matildo gave the records to Eleazer "Randy" Canoneo (Canoneo), a contractual employee assigned at the Archives Unit, for safekeeping in the bodega.

Canoneo then prepared an index card with the following details[5]:

CASE NO:	01293 CV
PARTIES:	SOFIA TABOADA, ET AL. VS. ELEANOR TABUADA ET AL.
PONENTE:	GAERLAN
SHELF:	15
ROW:	5
COLUMN:	COLUMN Right
REMARKS:	

Subsequently, a Resolution dated March 7, 2011 of CA-Visayas denied the motion for reconsideration filed in the Tabuada case.[6]

Sometime in January 2014, Anthony F. Delima III (Delima), then Court Aid II, who was assigned to assist the Archives Unit in the recording of all the movements of original records and holds office inside the safekeeping area, was instructed by Mario C. Agura (Agura), Head of the Archives Unit, to conduct an inventory of all remanded and elevated original records. It was during the conduct of the inventory that Delima discovered that the original records of the Tabuada case was no longer in its assigned shelf. He then immediately informed Agura about the missing records.[7]

Years later, while the Tabuada case was already pending before this Court, a litigant's representative therein requested for a copy of its original records via phone call made to Ricarose

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[5] *Id.* at 167.

[6] *Id.* at 413.

[7] *Id.* at 170; Explanation Letter of Anthony F. Delima III.

E. Pedaria (Pedaria), then Clerk II of the Archives Unit, sometime in June 2016. Pedaria then relayed the request to Agura, who instructed her to inform the caller to call again. She then wrote the case number in a piece of paper and gave it to Delima for retrieval in the safekeeping area.[8] However, Delima could not locate the records. When the requesting party made a return call and demanded to speak with the head of the office, Pedaria referred her to Abdul M. Amer (Amer), JRS Head. It was then that Pedaria overheard Agura confirming to Delima that the requested records are the ones which they were already trying to locate at the outset.[9]

Amer was able to talk to the requesting party while he was at the Office of the Archives Section of CA-Visayas supervising the inventory of cases. He instructed Delima, who was already a Clerk III of the Archives Unit, to produce a copy of the records of the Tabuada case. After several follow-ups, Amer received an information that there was no favorable action on the request. He then ordered Agura to locate the requested records and to submit his corresponding report.[10]

In compliance therewith, Agura submitted his explanation wherein he alleged that their logbook data revealed that on February 9, 2010, the Archives Unit received the records of the Tabuada case. Agura confirmed that when a litigant requested for a copy of the records thereof, Delima tried to locate them in the bodega; but was surprised that they were no longer there. Agura concluded that the records could have been inadvertently moved or transferred to another location, but undertook to continue efforts to retrieve them.[11]

On April 17, 2018, Prieto directed Agura and other concerned personnel of the Archives Unit to submit their respective

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[8] TSN, December 13, 2018, p. 4.

[9] *Id.* at 10.

[10] Record, p. 98; Inter-Office Memorandum of Abdul M. Amer dated June 15, 2016.

[11] *Id.* at 119; Report of Mario C. Agura dated July 15, 2016.

explanations on the circumstances surrounding the loss of the records in the Tabuada case.[12] Prieto further required Amer, as the Head of the JRS of CA-Visayas, to conduct his own investigation concerning the missing records and to submit his recommendation.[13]

Consequently, Agura submitted his explanation wherein he recalled that after the case records were transferred to the bodega, in Shelf 15, Row 5, Right Column as the assigned locator—there were no recorded transfers or possible transactions that would have resulted to the relocation of the records until the discovery of loss in 2016. He recounted that despite annual inventories conducted by CA-Visayas and Court of Appeals, Manila (CA-Manila), the records could not be located. He further disclosed that he already inquired with the different lower courts as to the possibility of the inadvertent transmittal to them of the missing records, but the efforts proved futile.[14]

In another Explanation[15] dated July 16, 2018, Agura clarified that Canoneo prepared the locator index as the personnel-in-charge with the filing and retrieval of cases, together with Delima. He added that there were no inquiries from litigants nor requests for a copy of the Tabuada case which led him to the conclusion that the records remained in the same location until they were discovered missing. Lastly, he justified that his personal visit to the Regional Trial Court of Iloilo City, which is the court of origin of the Tabuada case, was with the approval of Justice Gabriel Ingles, Justice Marilyn Lagura-Yap, and some Judicial Records Division personnel.

Hence, on September 4, 2018, Prieto filed an Incident Report with the Clerk of Court of CA-Manila[16] which was thereafter

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[12] *Id.* at 116, 125; Inter-Office Memorandum dated April 17, 2018 and May 28, 2018.

[13] *Id.*

[14] Record, pp. 119, 161-164; Report of Mario C. Agura dated June 4, 2018 and Amended Explanation dated June 26, 2018.

[15] *Id.* at 119, 161-164; Explanation dated July 16, 2018.

[16] *Id.* at 342-346.

indorsed to Atty. Ma. Consuela Aissa P. Wong-Ruste (Atty. Wong-Ruste), Assistant Clerk of Court of CA-Visayas, for investigation, report, and recommendation.[17]

The Investigator's Recommendation

In her Report and Recommendation dated June 27, 2019, Atty. Wong-Ruste was convinced that Agura was negligent in failing to institute a secure, efficient, and effective process work flow with respect to the custodianship and safekeeping of original records. It was concluded that, while there was an index card maintained for each original record for the purpose of recording any movement thereof, it was not updated and the pulling out of records could be done by any employee in charge for the remand of original records. Further, the safekeeping area was not even secured and was also made easily accessible, without any logbook with respect to the use of its designated keys. There was also no periodic inventory of original records under the custodianship of the Archives Unit. Worse, there were instances when original *rollos* were remanded to the wrong court.

She also found Agura liable for his failure to immediately report to his supervisor, in the person of Amer, that the original records of the Tabuada case were missing. It was only when his supervisor called his attention as to the missing records when he began to send tracers to the lower courts within the Visayas region. He even failed to monitor the replies to these tracers, if any. This delay, his lack of proper supervision over the JRS, and his indifference to his duty caused the failure to timely reconstitute the missing records.

Thus, Atty. Wong-Ruste recommended that Agura be charged with the less grave offense of simple neglect of duty, with a penalty of one month and one day suspension, or a fine in lieu of suspension since Agura is discharging front line functions, aside from the insufficiency of personnel complement of the Archives Unit in CA-Visayas.

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[17] *Id.* at 341.

The Issue

The essential issue in this case is whether or not Agura should be held administratively liable for simple neglect of duty for the loss of the original records of the Tabuada case.

The Ruling of this Court

This Court finds the Report and Recommendation of the Investigating Officer well-taken, except for the penalty.

Agura is the Head of the Archives Unit of CA-Visayas and as such, he occupies a highly sensitive position as the designated custodian of all court records elevated to the appellate court in Cebu. His primary task is to safekeep all original records and *rollos* placed under his custody, as well as to monitor and maintain a record of these documents. In addition, under the mantle of the Judicial Records Division is the issuance of certified true copies of documents or exhibits under the custody of his office.[18]

Section 1, Canon IV of A.M. No. 03-06-13-SC, otherwise known as the Code of Conduct for Court Personnel, mandates that "[c]ourt personnel shall at all times perform official duties properly and with diligence." Judicial machinery can only function if every employee performs his task with the highest degree of professionalism.[19] All court personnel are obligated to perform their duties properly and with diligence.[20] Any task given to an employee of the judiciary, however menial it may be, must be performed in the most prompt and diligent way.[21]

In this case, Agura failed to properly account for the loss of the original records under his custody. As defense, he merely

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[18] 2002 Revised Manual for Clerks of Court, A.M. No. 02-5-07-SC, May 21, 2002.

[19] A.M. No. 2014-07-SC, July 8, 2015, Re: Report of Atty. Pabello, Chief of Office, Office of Administrative Services-Office of the Court Administrator, 763 Phil. 196, 203.

[20] *Id.*

[21] *Contreras v. Monge*, 617 Phil. 30, 35 (2009).

surmised that the records were misplaced or possibly relocated because of inactivity or the absence of requests with respect to access over it. Aside from its trivial nature, this excuse is not compelling enough to justify failure to perform one's duties properly.

Agura, as head of the Archives Unit, was evidently remiss and negligent in the discharge of his duties. The loss of the original records reflects an inefficient and disorderly system of keeping case records and his lack of close supervision in the performance by his subordinate personnel of their duties. Worse, Agura's failure to take appropriate action within a reasonable period of time after discovery of the missing records in 2016, manifests his carelessness and indifference. As head of the Archives Unit, Agura should have exercised diligence, informed the head of the JRS and the *ponente* about the missing records upon knowledge thereof, and resorted to safety measures to ensure that all original records are accounted for as to avoid similar occurrences in the future.

Neither does the lack of proper orientation and training exculpate Agura from liability. CA-Visayas opened its office to the public in October 2004. Agura assumed office in November 2004 and conceded that he was not oriented about the duties and task of his office as head of the Archives Unit as he merely relied on Lolita Espinosa, who was then the JRS Head. However, it should be noted that, when Agura assumed the position of Archives Unit Head, it was understood that he was willing, ready, and capable to do his job with utmost devotion, professionalism, and efficiency. Hence, his lack of proper training, orientation or the necessary manpower are unavailing defenses.

Indubitably, court records are confidential documents and Agura should have adopted measures to safeguard and ensure their confidentiality and integrity.[22] It is unfortunate that, prior to the loss of the case records and within Agura's watch, the safekeeping area or bodega where the case records were kept

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[22] *OCA v. OIC and Legal Researcher Cinco*, 610 Phil. 40, 45 (2009).

was open and without any partition to separate it from the maintenance personnel.[23] Its keys were merely left hanging near his table for anyone's access.[24] Agura further detailed that a utility personnel named Michael Mendez was even allowed to hold office inside the bodega.[25] On the basis of the foregoing circumstances, Agura positively failed to meet the requirement expected of him as a custodian. The fact that he allowed and tolerated the aforementioned system, which compromised the integrity of the safekeeping area or bodega is a manifestation of his utter lack of diligence and his carelessness in performing his duty as a custodian.

Furthermore, a simple exercise of diligence should have alerted Agura to inform his superiors as to the lack of the necessary personnel. Aside from his failure to acknowledge accountability as custodian of court records, the lack of system in his office was also demonstrated by the practice of allowing contractual employees, Delima and Canoneo, to have access to the safekeeping area as temporary record custodians who were tasked with the highly confidential and sensitive duty of monitoring the movements of the original records, including its pulling out from its assigned shelf. While the office utilizes the use of logbook and index cards to monitor the original records submitted to their office, Agura acknowledged that these were not updated by his personnel. Nonetheless, Agura should not be allowed to pass the blame to his subordinates. Being the administrative officer and having control and supervision over court records, he should have seen to it that his subordinates performed their functions well.[26]

Verily, the transgression committed herein by Agura exhibited a clear disregard of his duty as custodian of the original records of cases transferred to his unit and his indifference in failing

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[23] TSN, November 28, 2018, pp. 19-22.

[24] *Id.* at 22-24.

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

[26] *Rivera v. Buena*, 569 Phil. 551, 558 (2008).

to implement an effective and efficient system in monitoring the movement of original records and *rollos* under his custody. Being the custodian of court records, Agura is expected to discharge his duty of safekeeping them with diligence, efficiency, and professionalism. Consonant to this duty of safekeeping the records of cases is his bounden duty to see to it that these are kept in a secure place.[27] It is his task to plan, coordinate and evaluate work programs for a systematic management of judicial records placed under his custody in the Archives unit. His indifference therefore demonstrates a lack of any sense of accountability in performing the tasks assigned to him.

Indeed, Agura should be held liable for simple neglect of duty which is defined as "the failure to give attention to a task or the disregard of a duty due to carelessness or indifference."[28] Section 46(D) (1), Rule 10 of Civil Service Commission (CSC) Resolution No. 1101502 dated November 8, 2011, otherwise known as the Revised Uniform Rules on Administrative Cases in the Civil Service, classifies simple neglect of duty as a less grave offense punishable by one month and one day to six months suspension, for the first offense.

In *Report on the Audit and Inventory of Cases in the RTC, Br. 11, Balayan, Batangas*,[29] a judge was found liable for the missing records of several cases, as well as delay in the disposition of his cases, and was meted out with a fine of ₱5,000.00. In this case, this Court found that Judge Gorospe has not offered a sufficiently plausible explanation for his apparent mismanagement as there were missing records of some of the cases pending in his *sala*, and the non-availability of the docket book when required for inspection. Also in *Atty. Ala v. Judge Ramos, Jr.*,[30] a judge was fined in the amount of ₱10,000.00 for losing the records of one civil case and thereby unduly delaying the resolution thereof.

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[27] *OCA v. OIC and Legal Researcher Cinco, supra* note 22 at 45.

[28] *Id.* at 47.

[29] 304 Phil. 668 (1994).

[30] 431 Phil. 275 (2002).

In the case of *OCA v. OIC and Legal Researcher Cinco*,[31] where it was discovered that the records of five cases were missing, the Branch Clerk of Court was found guilty of simple neglect of duty and was suspended for one month and one day without pay for her failure to exercise diligence in the discharge of her duty as records custodian. This Court remarked:

> Clerks of court are ranking officers who perform vital functions in the administration of justice. They are the designated custodians of, and have control over, court records. Section 7, Rule 136 of the Rules of Court states that clerks of court shall safely keep all the records, papers, files, and exhibits committed to their charge. The 2002 Revised Manual for Clerks of Court states that the duties of clerks of court include receiving and keeping the necessary papers of cases. In Office of the Court Administrator v. Carriedo, the Court held that clerks of court are duty-bound to safely keep court records and have them readily available upon request. They must be diligent and vigilant in managing the records. In Office of the Court Administrator v. Ramirez, the Court held that clerks of court are liable for the loss of court records.[32] (Underscoring in the original.)

Also, in *Re: Report on the Judicial Audit Conducted in the RTC, Br. 2, Borongan, Eastern Samar*,[33] the clerk in charge of civil cases was found guilty of simple neglect of duty since she was directly accountable for the loss of the records of one civil case, and was meted out with the fine of ₱2,000.00. This Court ratiocinated therein that, "as an officer of the court, she was expected to discharge her duty of ensuring the safekeeping of court records with diligence, efficiency, and professionalism. Consonant with this duty, she should have seen to it that the records were kept in a secure place."[34]

In *Atty. Jacinto v. Judge Layosa*,[35] a judge and her Clerk III were found liable for simple misconduct for the missing records

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[31] 610 Phil. 40 (2009).

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

[33] 535 Phil. 719 (2006).

[34] *Id.* at 728.

[35] 527 Phil. 35 (2006).

of one civil case. This Court discussed that, it is the duty of the judge to closely monitor the flow of cases as well as to direct the personnel, especially those in charge of safekeeping the records to be diligent in the performance of their duties. On the part of the Clerk III, as the clerk in charge of civil cases, this Court elucidated that her duties include conducting periodic docket inventory and ensuring that the records of each case are accounted for. This Court was not convinced that the missing records were kept inside the filing cabinet and that it was handled with due care as it was shown that as the clerk in charge of civil cases, she failed to take appropriate steps and to devise means to keep the records, taking into consideration the defective condition of the filing cabinet. The Judge was fined in the sum of ₱5,000.00, while the clerk was ordered suspended for 21 days without pay.

In the same case, this Court had the occasion to differentiate grave misconduct from simple misconduct stating that a misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be proved by substantial evidence. Otherwise, the misconduct is only simple.[36]

As distinguished from simple neglect of duty, gross neglect of duty is defined, *viz.*:

> [N]egligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property. It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable.[37]

There is no doubt that the loss of the records in this case is by reason of Agura's lack of diligence in the discharge of

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[36] *Id.* at 44.

[37] *Office of the Ombudsman v. Delos Reyes, Jr.*, 745 Phil. 366, 381.

his tasks. Although Agura is guilty of neglect in the performance of his official duties, he could only be held liable for simple neglect of duty since his omission is not as repulsive or of such nature to be considered brazen, flagrant, and palpable as would amount to a gross neglect of duty. It must be considered that he assumed office as head of the Archives Unit in November 2004, merely a month after the CA-Visayas opened its office to the public, and that, since then, this was his first reported offense which involved only one civil case with missing records. There was no indication that Agura's transgression showcased a flagrant disregard of established rule nor was it shown that he had the propensity to ignore the rules. There is also absence of proof that it was motivated by corruption or that Agura intentionally and deliberately caused the loss of the records to secure benefits for himself or for some other person.

Accordingly, the Court holds that Agura's disregard of his duty as Head of the Archives Unit in CA-Visayas and his carelessness or indifference to his task which resulted in the loss of the subject records herein, merits the imposition of the penalty of suspension from office for three months, without pay, as commensurate thereto. Pursuant to Section 47(1) of the Revised Rules on Administrative Cases in the Civil Service and the submission of Atty. Wong-Ruste that Agura is actually discharging frontline functions and that the personnel complement of the office is insufficient to perform such function, the alternative penalty of fine equivalent to his salary for three months shall be imposed instead.

WHEREFORE, Mario C. Agura, Records Officer II of the Archives and Receiving Section of the Court of Appeals, Visayas Station is found **GUILTY** of **SIMPLE NEGLECT OF DUTY** and **METED OUT** the penalty of **FINE** equivalent to his salary for three (3) months, with a stern warning that a repetition of the same or similar acts would warrant a more severe penalty.

SO ORDERED.

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

Reyes, J. Jr., J., on leave.

EN BANC

[A. M. No. 16-03-10-SC. October 15, 2019]

RE: NEWS REPORT OF MR. JOMAR CANLAS IN THE MANILA TIMES ISSUE OF 8 MARCH 2016

SYLLABUS

1. POLITICAL LAW; 1987 PHILIPPINE CONSTITUTION; BILL OF RIGHTS; THE FREEDOM OF SPEECH AND OF THE PRESS IS A PROTECTED CONSTITUTIONAL RIGHT BUT, IT IS NOT ABSOLUTE. — The legitimate exercise of freedom of speech and of the press is a protected Constitutional right. Section 4, Article III of the 1987 Constitution provides: 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. x x x The freedom of speech and of the press, however, is not absolute.

2. ID.; ID.; ID.; ID.; THE PRESS CANNOT JUST THROW ACCUSATIONS WITHOUT VERIFYING THE TRUTHFULNESS OF THEIR REPORTS. — The substantive evil sought to be prevented to warrant the restriction upon freedom of expression or of the press must be serious and the degree of imminence extremely high. In the application of the clear and present danger test in relation to freedom of the press, good faith or absence of intent to harm the courts is a valid defense. Here, Canlas claimed that his article was written with good motives and for justifiable ends. We do not agree. Canlas reported about alleged attempts to buy off the Justices in the Poe cases. The offer was allegedly ₱50 million for each vote to disqualify Poe. Canlas claimed that he tried to get the side of the Justices on the alleged attempts but was unsuccessful. He did not elaborate on his attempts to verify the story. However, he quoted an unnamed Justice who allegedly said that the Court will not bow to any pressure in deciding the case in exchange for money. Canlas claimed that his article painted the Court in a good light as it showed that the Court is incorruptible. We do not find his explanation acceptable. x x x The Court is not immune from criticisms, and it is the duty of the press to expose all

government agencies and officials and to hold them responsible for their actions. However, the press cannot just throw accusations without verifying the truthfulness of their reports. The perfunctory apology of Canlas does not detract from the fact that the article, directly or indirectly, tends to impede, obstruct, or degrade the administration of justice.

D E C I S I O N

CARPIO, *J.*:

On 8 March 2016, The Manila Times published, both on its printed and online publication, an article written by its senior reporter, Jomar Canlas (Canlas). The article reads in full:

JUSTICES OFFERED ₱50-million bribe
To disqualify Poe—sources

Justices of the Supreme Court (SC) were offered ₱50 million each to disqualify Senator Grace Poe from running as a presidential candidate in the May elections, well-placed sources at the High Court said on Monday.

The bribery attempt was disclosed on the eve of an *en banc* session where SC justices were expected to vote on the disqualification case against the senator.

The sources told The Manila Times two attempts were made to buy off the votes of the magistrates, both by persons "very close" to President Benigno Aquino 3rd and Manuel "Mar" Roxas 2nd, the standard bearer of the Liberal Party (LP).

The first to offer, the sources said, came from a female lawyer who is supportive of Roxas' presidential candidacy. The lawyer, a former Malacañang official, now works at a private law office. The sources said the law firm is behind the special operation to disqualify Poe.

"The offer was ₱50 million for each justice who will disqualify Poe," one of the sources said. "The justices refused (the offer)," he added.

The source said the offer was relayed to one of the justices appointed by Aquino.

Another source said that a member of the ruling LP dangled the same offer to a senior justice, who also declined it.

The source said a lawmaker and his "partner," a former businessman close to Aquino and Roxas, were behind the second attempt to bribe the justices.

The Manila Times tried to interview several justices but they refused to discuss the bribery attempt.

But a magistrate who asked not to be identified stressed that the tribunal will not bow to any pressure to decide on the case in exchange for cash.

The bribery offer was compared to what happened during the Senate impeachment trial for Chief Justice Renato Corona, who eventually lost his office.

Senator Jose "Jinggoy" Estrada said there was an offer of ₱50 million for each senator who would convict Corona, who was later impeached.

Justices of the high tribunal will tackle the disqualification case against Poe today, the last day for the magistrates to submit their dissenting or concurring opinions to the draft written by Associate Justice Mariano del Castillo.

If no voting is held today, it is likely to resume on Wednesday during a special en banc session the tribunal has set.

Sources had told *The Manila Times* that del Castillo pushed for the disqualification of Poe because she failed to meet the residency requirement for those presidential candidates.

The justices said the Commission on Elections did not commit grave abuse of discretion when it disqualified Poe, thus, he said the temporary restraining order issued by the SC stopping the poll body from dropping Poe from the list of presidential candidates should be lifted.[1]

In its 15 March 2016 Resolution, the Court, citing that "certain statements and innuendoes in Mr. Jomar Canlas' news report

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[1] The article was published on the front page and on page 2 of The Manila Times and can be accessed at http://www.manilatimes.net/justices-offered-p50-million-bribe/249079/ (visited 30 June 2016).

tend, directly or indirectly, to impede, obstruct, or degrade the administration of justice, within the purview of Section 3(d), Rule 71 of the 1997 Rules on Civil Procedure[,]" directed Canlas to explain, within five days from receipt of the resolution, why no sanction should be imposed on him for indirect contempt of court.

Canlas moved for extensions of time to submit his explanation, which the Court granted. On 22 April 2016, Canlas submitted his explanation, alleging that the disqualification cases against Grace Poe (Poe) have generated national interest and any attempt to bribe Justices to influence their decision is a matter of public interest and is a legitimate subject for any journalist. He added that he was moved by a sense of civic duty, and he was prodded by his responsibility as a newspaperman. Thus, he proceeded "to expose and denounce what he perceived [as] an insidious attempt to sway the justices in their decision over the case."[2] Canlas alleged that he never made any accusation or criticism against the Court or any of the Justices, but he only reported about the failed attempts to bribe certain Justices and how the attempts were rebuffed.

Canlas also stated that he made several attempts to secure an interview with, and get the side of, the Justices but he was unsuccessful. Still, he reported the comment of a Justice who refused to be named that the Court "will not bow to any pressure to decide on the case in exchange for cash."[3] According to him, the article paints an image of the Court that is incorruptible and which cannot be swayed or influenced by anyone even by those in powerful positions. Canlas added that, assuming the article may have unintentionally caused unflattering innuendoes about the Court, for which he "sincerely apologizes," his intention was to let the public know about the failed attempts. His action was done with good motives and for justifiable ends. Canlas alleged that it is important to consider good faith or the lack of it in the disposition of this case.

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[2] *Rollo*, p. 11.

[3] *Id*. at 12.

The legitimate exercise of freedom of speech and of the press is a protected Constitutional right. Section 4, Article III of the 1987 Constitution provides:

> 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.

In *In the Matter of the Allegations Contained in the Columns of Mr. Macasaet Published in Malaya dated September 18, 19, 20 and 21, 2007*,[4] the Court once again recognized the role of the mass media in a democratic government. In that case, the court stated:

> The mass media in a free society uphold the democratic way of life. They provide citizens with relevant information to help them make informed decisions about public issues affecting their lives. Affirming the right of the public to know, they serve as vehicles for the necessary exchange of ideas through fair and open debate. As the fourth Estate in our democracy, they vigorously exercise their independence and vigilantly guard against infringement. Over the year, the Philippine media have earned the reputation of being the "freest and liveliest" in Asia.
>
> Members of the Philippine media have assumed the role of a watchdog and have been protective and assertive of this role. They demand accountability of government officials and agencies. They have been adversarial when they relate with any of the three branches of government. They uphold the citizen's right to know, and make public officials, including judges and justices, responsible for their deeds and misdeeds. Through their watchdog function, the media motivate the public to be vigilant in exercising the citizen's right to an effective, efficient and corrupt-free government.[5]

The freedom of speech and of the press, however, is not absolute. In *Zaldivar v. Sandiganbayan*,[6] this Court ruled:

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[4] 583 Phil. 391 (2008).

[5] *Id*. at 433.

[6] 248 Phil. 542 (1988).

x x x. [F]reedom of speech and of expression, like all constitutional freedoms, is not absolute and that freedom of expression needs on occasion to be adjusted to and accommodated with the requirements of equally important public interest. One of these fundamental public interests is the maintenance of the integrity and orderly functioning of the administration of justice. There is no antimony between free expression and the integrity of the system of administering justice. For the protection and maintenance of freedom of expression itself can be secured only within the context of a functioning and orderly system of dispensing justice, within the context, in other words, of viable independent institutions for delivery of justice which are accepted by the general community.[7]

Once again, we are confronted with the issue of balancing the role of the media *vis-á-vis* judicial independence.

The Court has used two formulas to balance the constitutional guarantee of free speech and of the press and judicial independence. As early as 1957, this Court sustained the view that:

Two theoretical formulas had been devised in the determination of conflicting rights of similar import in an attempt to draw the proper constitutional boundary between freedom of expression and independence of the judiciary. These are the "clear and present danger" rule and the "dangerous tendency" rule. The first, as interpreted in a number of cases, means that the evil consequence of the comment or utterance must be "extremely serious and the degree of imminence extremely high" before the utterance can be punished. The danger to be guarded against is the "substantive evil" sought to be prevented. And this evil is primarily the "disorderly and unfair administration of justice." This test establishes a definite rule in constitutional law. It provides the criterion as to what words may be published. Under this rule, the advocacy of ideas cannot constitutionally be abridged unless there is a clear and present danger that such advocacy will harm the administration of justice.

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Thus, speaking of the extent and scope of the application of this rule, the Supreme Court of the United States said "Clear and present

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[7] *Id*. at 579.

danger of substantive evils as a result of indiscriminate publications regarding judicial proceedings justifies an impairment of the constitutional right of freedom and press only if the evils are extremely serious and the degree of imminence extremely high. x x x. A public utterance or publication is not to be denied the constitutional protection of freedom of speech and press merely because it concerns a judicial proceeding still pending in the courts, upon the theory that in such a case it must necessarily tend to obstruct the orderly and fair administration of justice.["]

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The "dangerous tendency" rule, on the other hand, has been adopted in cases where extreme difficulty is confronted in determining where the freedom of expression ends and the right of courts to protect their independence begins. There must be a remedy to borderline cases and the basic principle of this rule lies in that the freedom of speech and of the press, as well as the right to petition for redress of grievance, while guaranteed by the constitution, are not absolute. They are subject to restrictions and limitations, one of them being the protection of the courts against contempt (Gilbert *vs.* Minnesota, 254 U.S. 325).

This rule may be epitomized as follows: If the words uttered created a dangerous tendency which the state has a right to prevent, then such words are punishable. It is not necessary that some definite or immediate acts of force, violence, or unlawfulness be advocated. It is sufficient that such acts be advocated in general terms. Nor is it necessary that the language used be reasonably calculated to incite persons to acts of force, violence, or unlawfulness. It is sufficient if the natural tendency and probable effect of the utterance be to bring about the substantive evil which the legislative body seeks to prevent. (Gitlow *vs.* New York, 268 U.S. 652)[8]

The substantive evil sought to be prevented to warrant the restriction upon freedom of expression or of the press must be serious and the degree of imminence extremely high.[9] In the

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[8] *Cabansag v. Fernandez*, 102 Phil. 152, 161-163 (1957). See also Dissenting Opinion of Justice Carpio in the Macasaet case, 583 Phil. 391, 473-474 (2008).

[9] *Bridges v. California*, 314 U.S. 252 (1941).

application of the clear and present danger test in relation to freedom of the press, good faith or absence of intent to harm the courts is a valid defense.[10] Here, Canlas claimed that his article was written with good motives and for justifiable ends.

We do not agree. Canlas reported about alleged attempts to buy off the Justices in the Poe cases. The offer was allegedly ₱50 million for each vote to disqualify Poe. Canlas claimed that he tried to get the side of the Justices on the alleged attempts but he was unsuccessful. He did not elaborate on his attempts to verify the story. However, he quoted an unnamed Justice who allegedly said that the Court will not bow to any pressure in deciding the case in exchange for money. Canlas claimed that his article painted the Court in a good light as it showed that the Court is incorruptible. We do not find his explanation acceptable.

First, the Court notes that the statement of the unnamed Justice did not confirm the allegation of bribery; the unnamed Justice only stated that the Court will not allow itself to be pressured by anyone. Second, the legitimacy of the news article is misleading and has not been sufficiently established. Third, a reading of the article shows its intention to sensationalize. The news article reports of grave accusations that were not shown to have been verified. It imputed bribery charges against a female lawyer, who was a former Malacañang lawyer and who supported the candidacy of Mar Roxas; a member of the Liberal Party; and a businessman, who is close to Roxas and President Benigno Aquino III. It gave a false impression against the Justices who did not vote in favor of Poe. It compared the bribery attempts to the one that allegedly occurred during the impeachment of Chief Justice Renato C. Corona. The article, in full, emphasizes the bad that overshadows the short disclaimer that the Justices refused the bribe. Again, because of the close voting in the Poe cases, the article created a doubt in the minds

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[10] Dissenting Opinion of Justice Carpio, in the Macasaet case, 583 Phil. 391, 477 (2008), citing *People v. Godoy*, 312 Phil. 977 (1995).

of the readers, against some of the Justices and in the process, the Court as a whole.

In *In Re Emil P. Jurado*,[11] where Jurado was cited for contempt for publishing serious accusations against members of the Judiciary without ascertaining their veracity, the Court expressed that —

> [F]alse reports about a public official or other person are not shielded from sanction by the cardinal right to free speech enshrined in the Constitution. Even the most liberal view of free speech has never countenanced the publication of falsehoods, specially the persistent and unmitigated dissemination of patent lies. The U.S. Supreme Court, while asserting that "[u]nder the First Amendment there is no such thing as a false idea," and that "[h]owever pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas" (citing a passage from the first Inaugural Address of Thomas Jefferson), nonetheless made the firm announcement that "there is no constitutional value in false statements of facts," and "the erroneous statement of fact is not worthy of constitutional protection [although] x x x nevertheless inevitable in free debate." "Neither the intentional lie nor careless error," it said, "materially advances society's interest in 'unhibited, robust, and wide-pen' debate on public issues. *New York Times Co. v. Sullivan*, 376 US, at 270, 11 L Ed 2d 686, 95 ALR2d 1412. They belong to that category of utterances which 'are no[t] essential part of any exposition of ideas, and are of such slight social value as a step to the truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.' Chaplinsky *v.* New Hampshire, 315 US 568, 572, 86 L Ed 1031,62 S Ct 766 (1942)."[12]

The Court is not immune from criticisms, and it is the duty of the press to expose all government agencies and officials and to hold them responsible for their actions. However, the press cannot just throw accusations without verifying the truthfulness of their reports. The perfunctory apology of Canlas

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[11] 313 Phil. 119 (1995).

[12] *Id.* at 193-194.

does not detract from the fact that the article, directly or indirectly, tends to impede, obstruct, or degrade the administration of justice.

In lieu of a monetary fine on Canlas, we are severely reprimanding him to stress that a person's reputation is priceless, and so are the reputations of the Justices of this Court.

WHEREFORE, the Court finds Jomar Canlas **GUILTY** of Indirect Contempt of Court in accordance with Section 3(d), Rule 71 of the Rules of Court, and hereby **SEVERELY REPRIMANDS** him with a **STERN WARNING** that a repetition of the same or similar act in the future shall merit a more severe sanction.

SO ORDERED.

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

Reyes, J. Jr., J., on leave.

EN BANC

[A.M. No. RTJ-10-2250. October 15, 2019]
(Formerly A.M. No. 08-08-460-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JUDGE OFELIA TUAZON-PINTO, and Officer-in-charge/Legal Researcher RAQUEL L.D. CLARIN, both of the Regional Trial Court, Branch 60, Angeles City,** *respondents.*

SYLLABUS

1. LEGAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW AND PROCEDURE; BLATANT AND UNWARRANTED DISREGARD BY RESPONDENT OF THE LAW AND OTHER RULES RENDERED HER GUILTY OF GROSS IGNORANCE OF THE LAW AND PROCEDURE WHICH WARRANTS THE PENALTY OF DISMISSAL FROM THE SERVICE. — Anent gross ignorance of the law and procedure, the audit report copiously detailed how Judge Pinto had disregarded the law and procedure in handling the cases pending before her *sala*. The observations and findings contained in the audit report stood unrefuted by her. Among her gross errors and blunders were omitting to furnish to the OSG copies of the decisions she had rendered; granting motions to take advance testimonies and depositions even before the records of the cases were transmitted to her *sala*; accepting pretrial briefs on the same days of the holding of the pre-trial conferences, and permitting the lawyers to take part in the pre-trial conferences despite not being authorized to do so through special powers of attorney; acting on and admitting formal offers of exhibits even before the respondents or the State could comment thereon; and not giving notifications to the OSG regarding the progress of proceedings in at least 19 cases. We should observe that any of these gross errors and blunders was sufficient to render her administratively liable for gross ignorance of the law and procedure. The OCA listed other irregularities committed by Judge Pinto[.] x x x Judge Pinto was clearly guilty of gross ignorance of law and procedure. It is not debatable that when the law or rule of procedure is so elementary, not to be aware of it constitutes gross ignorance of the law. This is because a judge is expected to exhibit more than just cursory acquaintance with statutes and procedural rules. Indeed, Judge Pinto was expected to keep abreast of our laws, changes therein, as well as with the latest jurisprudence and rules of procedure, for she owed it to the public to be legally knowledgeable because ignorance of the law and procedure is the mainspring of injustice. By virtue of the delicate position that she occupied in society, she was duty bound to be the embodiment of competence and integrity. Canon 6 of the *New Code of Judicial Conduct for the Philippine Judiciary* states that competence is a prerequisite to the due performance of the judicial office. Judge Pinto's

flagrant disregard of laws and the rules of procedure affected her competency and conduct as a judge in the discharge of her official functions. She thereby ignored that the rules of procedure have been instituted to guarantee the speedy and efficient administration of justice, such that the failure to abide by said rules weakens the wisdom behind them and diminishes respect for the law. According, all judges should ensure strict compliance with the rules of procedure at all times in their respective jurisdictions. The blatant and unwarranted disregard by Judge Pinto of the provisions of A.M. Nos. 02-11-10-SC and other rules rendered her guilty of gross ignorance of the law and procedure. In *Office of the Court Adminstrator v. Castañeda*, the penalty of dismissal from the service was imposed on the respondent judge for the serious disregard of A.M. No. 02-11-10-SC and A.M. No. 02-11-11-SC because the disregard amounted to gross ignorance of the law and procedure.

2. ID.; ID.; ID.; GROSS INEFFICIENCY, ALSO COMMITTED. — Anent the charge of gross inefficiency, Judge Pinto did not refute the audit team's finding that she had allowed respondent Clarin to issue commitment or release orders in some instances. In her partial compliance/explanation, however, she would justify this by insisting on her doing so out of her desire to expedite the proceedings, for in that way the arresting officers and the accused would no longer need to wait for her to be done with her sessions and trials before the release of the accused could be ordered. x x x The task of issuing the commitment or release orders required the exercise of judicial discretion and was not merely clerical or administrative. It pertained to Judge Pinto, and could not be transferred to her subordinate even for a brief moment. As a result, Judge Pinto's failure to adhere to and implement existing laws, policies, and the basic rules of procedure seriously compromised her ability to be an effective magistrate. The convenience of any party cannot ever justify the flagrant disregard of such laws, policies, and the basic rules of procedure.

3. ID.; ID.; ID.; PENALTY; IN VIEW OF PRIOR DISMISSAL FROM THE SERVICE IMPOSED BY THIS COURT IN A PREVIOUS ADMINISTRATIVE CASE, THE COURT DEEMS IT PROPER TO IMPOSE THE PENALTY OF FINE. — The sum of Judge Pinto's lapses and irregularities warranted the imposition of

the supreme penalty of dismissal from the service. However, in *Re: Anonymous Letter dated August 12, 2010, Complaining against Judge Ofelia T. Pinto, Regional Trial Court, Branch 60, Angeles City, Pampanga*, we already imposed on her the supreme penalty of dismissal from service, with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to re-employment in any branch, agency or instrumentality of the government, including government-owned or controlled corporations. Consequently, the penalty of dismissal from service as recommended by the OCA is no longer feasible. Nonetheless, we deem it proper to impose the penalty of fine in the maximum, *i.e.*, ₱40,000.00, to be deducted from her accrued leave credits, if any.

4. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; ISSUANCE OF A RELEASE ORDER IS A JUDICIAL FUNCTION; RESPONDENT, BEING AN OFFICER-IN-CHARGE, EXCEEDED HER AUTHORITY IN ISSUING THE COMMITMENT ORDERS AND THE RELEASE ORDERS, WHICH AMOUNTS TO MISCONDUCT; THAT SHE MERELY CONTINUED THE PRACTICE FOLLOWED PRIOR TO HER DESIGNATION IS NOT AN EXCUSE; PENALTY OF SUSPENSION, IMPOSED. — Based on the judicial audit conducted by the OCA, Clarin miserably failed to meet the standards required of her designation as the Officer-in-Charge. She thereby discharged functions that could not be validly discharged by her, and at the same time did not perform the duties incumbent upon her to do. Her excuse that she had merely continued the practice followed prior to her designation as the Officer-in-Charge did not absolve her. She was all too aware that upon accepting such designation she would be assuming duties and responsibilities that would require utmost efficiency and fidelity on her part. That her predecessor had done the work contrary to the prevailing administrative circulars, issuances and manual of clerks of court at hand did not warrant her disregarding such guidelines. In *Ortiz, Jr. v. De Guzman*, the issuance of a release order was emphasized to be a judicial function, not an administrative one. Hence, a clerk of court is not authorized to order the commitment or the release on bail of persons charged with penal offenses. *Ortiz, Jr.* reminded that respondent had arrogated to himself the authority to exercise judicial discretion and overstepped the boundaries of his

function. Similarly, Clarin exceeded her authority in issuing the commitment orders and release orders. She must be meted the penalty of suspension from the service. As held in *Nones v. Ormita, Clerk of Court II*, a misconduct of the same nature is punished with suspension of three months and one day.

D E C I S I O N

***PER CURIAM*:**

No trial judge is ever justified to disobey for the sake of convenience or expediency the rules of procedure instituted by the Supreme Court to safeguard the right to be heard on the part of any of the parties, including the Government, especially in proceedings held for the annulment of marriage, or declaration of the nullity of a marriage.

The Case

This administrative case arises from the results and findings by the judicial audit conducted in 2008 on the pending cases of the Regional Trial Court (RTC), Branch 60, in Angeles City, presided by former Judge Ofelia Tuazon Pinto. Branch 60 has been designated to take cognizance of family-court cases.

Antecedents

On June 23, 2008, the Judicial Audit Team of the Office of the Court Administrator (OCA) submitted its first partial report[1] indicating many irregularities and procedural lapses committed in relation to proceedings brought for annulment of marriage and in several criminal cases pending before Branch 60.

Among the irregularities and procedural lapses uncovered by the Judicial Audit Team were that several respondents in the proceedings brought for annulment of marriage had invoked the defense of improper venue based on the petitions having been filed in a "friendly court/forum;" that respondent Judge Pinto had inconsistently ruled on the admissibility of the barangay

[1] *Rollo*, pp. 92-207.

certifications submitted as proof of the places of residence of the petitioners concerned; the she had not been consistent in ordering the petitioners to furnish the Office of the Solicitor General (OSG) with copies of the petitions; that she had allowed substituted service of the summons without strictly complying with the requirement to the effect that the sheriffs should resort to several attempts to cause personal service upon the respondents at least thrice on two different dates; that summons by publication had also been ordered without proof showing that the respondents had been served with the copies of the petitions; that she had been overly lenient in allowing the petitioners to avail themselves of the taking of depositions under Rule 23 of the *Rules of Court*, and the depositions had been normally treated as the petitioners' testimonial evidence; that she had also directed the public prosecutor to conduct investigations despite the respondents not having yet filed their answers, or despite the periods for filing the answers not having yet expired; that she had proceeded without pre-trial and without issuing the orders requiring the public prosecutor to investigate and file reports; that there were several cases in which the respondents had not been duly served with copies of the orders or notices of pre-trial conference copies of the pre-trial brief, or notices of hearing; that in some other cases, she had proceeded with the pretrial in the absence of the parties themselves despite their counsels not being armed with special powers of attorney; that some decisions had appeared to have been hastily rendered; and that in all the decided cases, the RTC had simultaneously issued certificates of finality and decrees of absolute nullity of marriage.

Acting on the partial report, the OCA recommended on July 29, 2008 as follows:[2]

1. The designation of the RTC, Branch 60, Angeles City, Pampanga presided over by Judge Ofelia Tuazon[-]Pinto as special court for family court cases, be **REVOKED** effective immediately from receipt of notice;

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[2] *Id.* at 1-20.

2. The designation of Ms. Racquel D.L. Clarin as Officer-In-Charge of the Regional Trial Court, Branch 60, Angeles City, be **REVOKED** immediately from receipt of notice;

3. Judge Ofelia Tuazon[-]Pinto, Regional Trial Court, Branch 60, Angeles City, and Officer-In-Charge Racquel D.L. Clarin, same court, be **PREVENTIVELY SUSPENDED** from office effective immediately from receipt of notice;

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7. Judge Ofelia Tuazon Pinto, Regional Trial Court, Branch 60, Angeles City be **DIRECTED** to: **EXPLAIN** within fifteen (15) days from notice why she should not be administratively dealt with for : **(1) FAILURE** to issue the Commitment Order when the accused was already arrested and detained in the following criminal cases; Nos. 04-619 *(Pp. vs. D. Flores)*, 07-30355 *(Pp. vs. R. Salisi)*, 05-1301 *(Pp. vs. W. Pineda)*, 01-522 to 53 *(Pp. vs. E. Edillor)*, 03-237 to 38 *(Pp. vs. F. Tolentino, et al.)*, 07-2750 *(Pp. vs. R. Marimla)*, 00-212 (*Pp. vs. T. Miranda)*, 06-2535 *(Pp. vs. J. De La Cruz)*, 02-795 (H. Sanchez), 06-2086 *(Pp. vs. N. Cayabyab)*; **(2) ALLOWING** the issuance of Commitment Order by the Officer-In-Charge or Acting Branch Clerk of Court in the following Criminal Cases Nos. 01-326 *(Pp. vs. J. Avaristo)*, 02-725 to 76 *(Pp. vs. C. Marcos)*, 01-805 *(Pp. vs. R. Siron)*, 03-767 *(Pp. vs. Magabilin)*, 01-750 *(Pp. vs. N. Malonzo)*, 02-033 *(Pp. vs. L. Dizon)*, 03-417 *(Pp. vs. J. David)*, and 01-653 *(Pp. vs. A. Panlilio)*; **(3) ALLOWING** the issuance of Release Order by the Officer-In-Charge or Acting Branch Clerk of Court in the following Criminal Cases Nos. 03-860 *(Pp. vs. H. Williams)*, 02-182 *(L. Pineda)*, 01-516 *(Pp. vs. R. Manalang)*, 03-691 *(Pp. vs. B. Edwards)*, 03-698 *(Pp. vs. B. Edwards)*, 04-242 *(Pp. vs. R. Edwards)* 96-540 to [5]42 *(Pp. vs. H. Gill)*, and 98-489 *(Pp. vs. Sical Jr.)*; and **(4) FAILURE** to comply with the pertinent rules under A.M. No. 02-11-10-SC *(Re: Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages)*, and A.M. No. 02-6-02-SC (Re: Rule on Adoption) and other pertinent rules under the Rules of Court, to wit:

   (a) For regularly and consistently issuing an Order directing the petitioner/plaintiff in annulment of marriage

cases or declaration of nullity of marriage cases to furnish the Office of the Solicitor General (OSG) with the copy of the petition 5 days **after** the filing of the petition in the following cases: Civil Case Nos. 13556 *(Reyes vs. Reyes)*,12431 *(Padilla vs. Padilla)*, 13324 *(Masangkay vs. Masangkay)*, 13531 *(Oriel vs. Oriel)*, 13067 *(Honnald vs. Honnald)*, 13074 *(Daclizon vs. Daclizon)*, 13383 *(Regan vs. Regan)*, 13367 *(Simeon vs. Simeon)*, 13137 *(Mallari vs. Mallari)*, 13509 (*Cruz vs. Cruz)*, 11257 *(Calma vs. Calma)*, 13178 *(David vs. David)*, 13246 *(Bonifacio vs. Bonifacio)*, 11405 *(De La Pena vs. De La Pena)*, 13554 *(Azur vs. Azur)*, 13310 *(Ocampo vs. Ocampo)*, 13021 *(De Leon vs. De Leon)*, 13342 *(Aguilar vs. Aguilar)*, 13250 *(Paras vs. Paras)*, 12897 *(Merlin vs. Merlin)*, 12641 *(Magalang vs. Magalang)*, 13150 *(Canlas vs. Canlas)*, 10978 *(Llenary vs. Llenary)*, 13230 *(De Le Blanc vs. De le Blanc)*, 12443 *(Nunga vs. Nunga)*, 13262 *(Del Rosario vs. Del Rosario)*, 12504 *(Quirante vs. Quirante)*, 13053 *(Samson vs. Samson)*, 12776 *(Fausto vs. Fausto)*, 13304 *(Capati vs. Capati)*, 12400 *(Tindle vs. Tindle)*, 11840 *(Mateo vs. Mateo)*, 13437 *(Azuro vs. Azuro)*, 13428 *(Libut vs. Libut)*, 12969 *(De Leon vs. De Leon)*, 12779 *(Manalastas vs. Manalastas)*, 12766 *(Palean vs. Palean)*, 12948 *(Usi vs. Usi)*, 13069 *(Cabrera vs. Cabrera)*, 12749 *(So vs. So)*, 12819 *(Balonza vs. Balonza)*, 13136 *(Sangil vs. Sangil)*, 12708 *(Humphries vs. Humphries)*, 13278 *(Ignacio vs. Ignacio)*, 12998 *(Malig vs. Malig)*, 13321 *(Morales vs. Morales)*, 13544 *(Mallen vs. Mallen)*, 12766 *(Espinosa vs. Espinosa)*, 13500 *(Turia vs. Turia)*, 13507 *(Catacutan vs. Catacutan)*, 13477 *(Patio vs. Patio)*, 12864 *(Cruz vs. Cruz)*, 13107 *(Rodriguez vs. Rodriguez)*, 12534 *(Felix vs. Felix)*, 12867 *(Dizon vs. Dizon)*, 11073 *(Pabustan vs. Pabustan)*, 13116 *(Caasi vs. Caasi)*, 12853 *(Medina vs. Medina)*, 12758 *(Fernandez vs. Fernandez)*, 13086 *(Bonifacio vs. Bonifacio)*, 13568 *(Barco vs. Barco)*, 12784 *(Garcia vs. Garcia)*, 12820 *(De La Cruz vs. De La Cruz)*, 12746 *(Relucio vs. Relucio)*, 13164 *(Cunanan vs. Cunanan)*.

(b) For failure to issue an order within five (5) days from the filing of the petition directing the petitioner/plaintiff

to furnish the OSG with the copy of the petition and proceeded with the trial of the following cases despite the absence of such order: Civil Cases Nos. 13363 *(Bustillos vs. Bustillos)*, 13580 *(Ocampo vs. Ocampo)*, 12954 *(Reyes vs. Reyes)*, 12460 *(Canlas vs. Canlas)*, 13393 *(Siongco vs. Siongco)*, 12682 *(Garcia vs. Garcia)*, 12372 *(Primero vs. Primero)*, 12324 *(Escobar vs. Escobar)*, 13063 *(Pinzon vs. Pinzon)*, 13440 *(Yandell vs. Yandell)*, 13466 *(Yusi vs. Yusi)*, 13141 *(Lagman vs. Lagman)*, 13179 *(Cao vs. Cao)*, 1232 (*Mayon vs. Mayon*), 12579 (*Merza vs. Merza*), 13244 (*Maglanes vs. Maglanes*), 12386 *(Lopez vs. Lopez)*, 12901 *(Carbungco vs. Carbungco)*, 12944 *(Cordero vs. Cordero)*, 13050 *(Pineda vs. Pineda)*, 13555 *(Bundalian vs. Bundalian)*, 13457 *(Dalatre vs. Dalatre)*, 12056 *(Mungcal vs. Mungcal)*, 11348 *(Mangalino vs. Mangalino)*, 13112 *(Dillon vs. Dillon)*, 12536 *(Strammer vs. Strammer)*, 13206 *(Macaspac vs. Macaspac)*, 13329 *(Buenaseda vs. Buenaseda)*, 13468 *(Aquino vs. Aquino)*, 13193 *(Fernandez vs. Fernandez)*, 13523 *(Manuntag vs. Manuntag)*, 12921 *(Magat vs. Magat)*, 13522 *(Lumanlan vs. Lumanlan)*.

(c) For proceeding with the trial in the following cases despite the failure of the petitioner/plaintiff to comply with the order directing the said petitioner/plaintiff to furnish the OSG with the copy of the petition, to wit: Civil Cases Nos. 13563 *(Bondoc vs. Bondoc)*, 13342 *(Aguilar vs. Aguilar)*, 13250 *(Paras vs. Paras)*, 12897 *(Merlin vs. Merlin)*, 12641 *(Maglalang vs. Maglalang)*, 13150 *(Canlas vs. Canlas)*, 13262 *(Del Rosario vs. Del Rosario)*, 13072 *(Thong vs. Thong)*, 11958 *(Deche vs. Deche)*, 12766 *(Palean vs. Palean)*, 12805 *(Sapnu vs. Sapnu)*, 12948 *(Usi vs. Usi)*, 12945 *(Dayrit vs. Dayrit)*, 13069 *(Cabrera vs. Cabrera)*, 12749 *(So vs. So)*, 12819 *(Balonza vs. Balonza)*, 13136 *(Sangil vs. Sangil)*, 13321 *(Morales vs. Morales)*, 13544 *(Mallen vs. Mallen)*, 12766 *(Espinosa vs. Espinosa)*, 13500 *(Turia vs. Turia)*, 13507 *(Catacutan vs. Catacutan)*, 13477 *(Patio vs. Patio)*, 12864 *(Cruz vs. Cruz)*, 13107 *(Rodriguez vs. Rodriguez)*, 12534 *(Felix vs. Felix)*, 12867 *(Dizon vs. Dizon)*, 11073 *(Pabustan vs. Pabustan)*, 13116 *(Caasi*

vs. Caasi), 12853 *(Medina vs. Medina)*, 12758 *(Fernandez vs. Fernandez)*, 13086 *(Bonifacio vs. Bonifacio)*, 13568 *(Barco vs. Barco)*, 12784 *(Garcia vs. Garcia)*, 12820 *(De La Cruz vs. De La Cruz)*, 13377 *(Dogmoc vs. Dogmoc)*, 13463 *(Salonga vs Salonga)*, 12625 *(Lacap vs. Lacap)*, 12173 *(Apostol vs. Apostol)*, 12918 *(Rabe vs. Rabe)*, 12997 *(Mercado vs. Mercado)*, 13164 *(Cunanan vs. Cunanan)*, 13519 *(Ordonez vs. Ordonez)*, 12775 *(Mendoza vs. Mendoza)*.

(d) For allowing the service of summons by substituted service upon the respondent without complying with the mandatory requirements to effect a valid substituted service pursuant to the decision of the Court in the case entitled: "Ma. Imelda M. Manotoc vs. Court of Appeals and AgapitaTrajano, et al.", G.R. No. 130974, 16 August 2006 in the following cases: Civil Cases Nos. 13556 *(Reyes vs. Reyes)*, 13531 *(Oriel vs. Oriel)*, 13448 *(Suba vs. Suba)*, 13067 *(Honnald vs. Honnald)*, 13383 *(Regan vs. Regan)*, 13367 *(Simeon vs. Simeon)*, 13137 *(Mallari vs. Mallari)*, 13509 *(Cruz vs. Cruz)*, 12288 *(Canlas vs. Canlas)*, 13246 *(Bonifacio vs. Bonifacio)*, 13342 *(Aguilar vs. Aguilar)*, 13363 *(Bustillos vs. Bustillos)*, 12954 *(Reyes vs. Reyes)*, 13230 *(De Le Blanc vs. De Le Blanc)*, 13072 *(Thong vs. Thong)*, 12504 *(Quirante vs. Quirante)*, 13304 *(Capati vs. Capati)*, 12842 *(Antonio vs. Antonio)*, 12400 *(Tindle vs. Tindle)*, 13132 *(Pineda vs. Pineda)*, 13381 *(Bautista vs. Bautista)*, 13341 *(Galang vs. Galang)*, 13512 *(Caling vs. Caling)*, 13496 *(Sali vs. Sali)*, 13308 *(Tolentino vs. Tolentino)*, 13535 (*Calooy vs. Calooy)*, 13252 *(Angeles vs. Ronquillo)*, 13401 *(Pecson vs. Pecson)*, 13470 *(Isidro vs. Isidro)*, 13266 *(Lugtu vs. Lugtu)*, 13062 *(Manalili vs. Manalili)*, 13162 *(Joson vs. Joson)*, 12324 *(Escobar vs. Escobar)*, 12642 *(De La Cruz vs. De La Cruz)*, 13360 *(Torno vs. Torno)*, 13496 *(Sali vs. Sali)*, 13263 *(Tuazon vs. Tuazon)*, 13293 *(Libut vs. Libut)*, 13097 *(Pondavilla vs. Pondavilla)*, 13359 *(Dalisay vs. Dalisay*), 13141 *(Lagman vs. Lagman)*, 13457 *(Dalatre vs. Dalatre)*, 13206 *(Macaspac vs. Macaspac)*, 13321 *(Morales vs. Morales)*, 13086 *(Bonifacio vs. Bonifacio)*, 12173 *(Apostol vs. Apostol)*.

(e) For failure to act on the defendant's "Very Urgent Motion Ex-Parte Omnibus Motion" in Civil Case No. 12431 *(Padilla vs Padilla)* specifically questioning the Report dated 02/01/06 of the then Assistant City Prosecutor Lucina A. Dayaon that no collusion exists between the parties when the defendant claimed that *"there was no instance that the defendant was ever invited to air its side and/or participate in any such investigation before the Assistant Public Prosecutor"* despite the issuance of the Order dated 03/27/06 resolving the other issues raised in the said urgent motion.

(f) For failure to act on the Report dated 07/09/07 of the Public Prosecutor in Civil Case Nos. 13563 *(Bondoc vs Bondoc)* stating among others that no collusion exists between the parties when the record of the case revealed that both parties are abroad or out of the country. Hence, there was no instance that parties were summoned to appear during the investigation.

(g) For failure to act on the respondent's allegation in the Answer filed on 08/14/07 in Civil Case No. 13250 *(Paras vs Paras)* that petitioner is not a resident of Sta. Ines, Mabalacat, Pampanga but of No. 23 Sto. Domingo St., Capas, Tarlac and that the OSG was not furnished with the copy of the petition despite the court's order directing the petitioner to furnish said office with the copy of the petition.

(h) For failure to act on the respondent's allegation in the Answer filed on 03/22/06 in Civil Case No. 12443 *(Nunga vs Nunga)* denying both the petitioner's address as well as the respondent's address in the petition states at: *No. 9 Kesington St. Queensborough Subd., City of San Fernando, Pampanga*- which is actually the address of petitioner's parents and is known to be place where petitioner presently resides and that the respondent had long been barred from entering said subdivision upon the instruction of petitioner's parents.

(i) For failure to act on the respondent's allegation in the Answer filed on 10/27/06 in Civil Case No. 13072 *(Thong vs Thong)* that petitioner is not a resident of Angeles City but in Bulacan.

(j) For issuing an order directing the public prosecutor to investigate when the summons was not yet duly served upon the respondent/defendant or when the answer has not yet been filed or submitted in court or the period to file/submit the same has not yet expired in the following cases: Civil Cases Nos. 13556 *(Reyes vs. Reyes)*, 13501 *(Figueroa vs. Figueroa)*, 13563 *(Bondoc vs. Bondoc)*, 13246 *(Bonifacio vs. Bonifacio)*, 13110 *(Ocampo vs. Ocampo)*, 13021 *(De Leon vs. De Leon)*, 12844 *(Peralta vs. Peralta)*, 13580 *(Ocampo vs. Ocampo)*, 13063 *(Pinzon vs. Pinzon)*, 13544 *(Mallen vs. Mallen)*.

(k) For issuing an Order or Notice setting in the court calendar the pre-trial conference when the summons was not yet duly served upon the respondent/defendant in the following cases: Civil Cases Nos.: 13563 *(Bondoc vs. Bondoc)*, 13066 *(Plaza vs. Plaza)*, 12808 *(De Leon vs. De Leon)*.

(l) For issuing an Order or Notice setting in the court calendar the pre-trial conference when the Investigation Report of the Public Prosecutor was not yet filed or submitted in court or no order has yet been issued by the court directing the public prosecutor to investigate in the following cases: Civil Case Nos. 12844 *(Peralta vs. Peralta)*, 12954 *(Reyes vs. Reyes)*, 13072 *(Thong vs. Thong)*, 13066 *(Plaza vs. Plaza)*, 12808 *(De Leon vs. De Leon)*, 13278 *(Ignacio vs. Ignacio)*, 12853 *(Medina vs. Medina)*, 12758 *(Fernandez vs. Fernandez)*, 13463 *(Salonga vs. Salonga)*, 12625 *(Lacap vs. Lacap)*, 12173 *(Apostol vs. Apostol)*, 12918 *(Rabe vs. Rabe)*, 12997 *(Mercado vs. Mercado)*, 12746 *(Relucio vs. Relucio)*, 13164 *(Cunanan vs. Cunanan)*, 13519 *(Ordonez vs. Ordonez)*, 12775 *(Mendoza vs. Mendoza)*, 12921 *(Magat vs. Magat)*, 13510 *(Marcelino vs. Marcelino)*, 13418 *(Rivera vs. Rivera)*, 12373 *(Reyes vs. Reyes)*, 13262 *(Del Rosario vs. Del Rosario)*, 12364 *(Foroozan vs. Gonzales)*, 13482 *(Tiopenco vs. Tiopenco)*.

(m) For issuing an order in Civil Case No. 13556 *(Reyes vs. Reyes)* directing the public prosecutor to investigate to determine whether collusion exists between the parties

and that the evidence is not fabricated after the said case was considered submitted for decision.

(n) For favorably acting or granting the petitioner's motion for deposition or advance taking of the petitioner's testimony: e.1) when the respondent or defendant was not duly served with summons or still in the process of serving summons; and/or e.2) when respondent/ defendant was not duly served with the copy of the motion; and/or e.3) when respondent was not duly notified of the advance taking of the testimony or deposition in the following cases: Civil Case[s] Nos. 13242 *(Barrozo vs. Capunfuerza)*, 13501 *(Figueroa vs. Figueroa)*, 13563 *(Bondoc vs. Bondoc)*, 13108 *(Panlaqui vs. Panlaqui)*, 12844 *(Peralta vs. Peralta)*, 13580 *(Ocampo vs. Ocampo)*, 12954 *(Reyes vs. Reyes)*, 13150 *(Canlas vs. Canlas)*, 13393 *(Siongco vs. Siongco)*, 12364 *(Foroozan vs. Gonzales)*, 13418 *(Manansala vs. Manansala)*, 13381 *(Bautista vs. Bautista)*, 13226 *(Santos vs. Santos)*, 13038 *(Libut vs. Edanol)*, 11976 *(Razon vs. Razon)*, 13496 *(Sali vs. Sali)*, 13470 *(Isidro vs. Isidro)*, 12865 *(Martin vs. Martin)*, 13361 *(Uriza vs. Uriza)*, 13162 *(Joson vs. Joson)*, 13111 *(Murphy vs. Murphy)*, 13428 *(Libut vs. Libut)*, 11965 *(Pangilinan vs. Pangilinan)*, 12259 *(Hernandez vs. Hernandez)*, 13066 *(Plaza vs. Plaza)*, 12808 *(De Leon vs. De Leon)*, 13360 *(Torno vs. Torno)*, 13480 *(Paulino vs. Paulino)*, 13496 *(Sali vs. Sali)*, 13293 *(Libut vs. Libut)*, 12805 *(Sapnu vs. Sapnu)*, 13321 *(Morales vs. Morales)*, 13193 *(Fernandez vs. Fernandez)* 13523 *(Manuntag vs. Manuntag)*, 13116 *(Caasi vs. Caasi)*, 12853 *(Medina vs. Medina)*, 13550 *(Ramos vs. Ramos)*, 13158 *(Aguilar vs. Aguilar)*, 13377 *(Dogmoc vs. Dogmoc)*, 13522 *(Lumanlan vs. Lumanlan)*, 13510 *(Marcelino vs. Marcelino)*, 13386 *(Masamayor vs. Kin Din Tsoi)*.

(o) For acting on the petitioner's motion for advance testimony on 04/18/07 in Civil Cases No. 13522 *(Lumanlan vs. Lumanlan)* when the record of the said case was officially transmitted by the Office of the Clerk of Court to Branch 60 on 04/19/07.

(p) For acting on the petitioner's motion to take advance testimony on 02/19/07 in Civil Cases No. 13386 *(Masamayor vs. Kin Din Tsoi)* when the record of the said case was officially transmitted by the office of the Clerk of Court to Branch 60 on 02/20/07.

(q) For proceeding with the hearing on the establishment of jurisdictional requirements on 03/08/07 in Special Proceedings No. 7672 *(In Re: Petition for Adoption of illegitimate children Sarah Jessica Mamaril, et al.)* when the records revealed that the social worker has not yet filed the Social Case and Study Report.

(r) For proceeding with the hearing on the establishment of jurisdictional requirements on 02/27/06 in Special Proceedings No. 7364 *(In Re: Petition for Adoption of minor Matthew Narsing Arcilla, et al.)* when the records revealed that the social worker has not yet filed the Social Case and Study Report.

(s) For favorably acting or granting the petitioner's motion for deposition or advance taking of the petitioner's testimony: h.1) when the Order of Hearing in adoption cases was not yet published; and/or h.2) when the petitioner has not yet established the jurisdictional requirements under the rules in the following adoption cases: Special Proceedings Nos. SP-7820 *(In Re: Adoption of minors Catherine and Clarissa Menesis),* SP-7717 *(In Re: Petition for Adoption Spouses Valencia, petitioner),* SP-7042 *(In Re: Petition for Adoption Spouses Andrew & Teresa Roberts, petitioners),* SP 7776 *(In Re: Petition for Adoption of minor Camille Keith Sebastian),* SP-7746 *(In Re: Petition for Adoption of Camille Angelica et al.),* SP-7700 *(In Re: Petition for Adoption of John Sairich-Cruz),* SP-7776 *(In Re: Petition for Adoption of Rita Mae Paz),* SP-7786 *(In Re: Petition for Adoption of minors Bart Joseph D. Cayaan, et.al.),* SP-7794 *(In Re: Petition for Adoption of minor Feone Chloe Ochoa)*

(t) For issuing an order favorably acting or granting the petitioner's motion for deposition or advance taking of the petitioner's testimony when there is no proof or record showing that the corresponding written motion

was filed in court by the petitioner in the following cases: Civil Cases Nos. 13554 *(Azur vs. Azur)*, 13171 *(Dumangan vs. Dumangan)*, Special Proceedings Nos. SP-7700 *(In Re: Petition for Adoption of minor John Sairich-Cruz)*, 12808 *(De Leon vs. De Leon)*.

(u) For issuing an order favourably acting or granting the petitioner's motion for deposition or advance taking of the petitioner's testimony when there is no proof or record showing that the petitioner attached/filed/ submitted the copy of the plane ticket or itinerary of travel in court to support the claim regarding the early departure in the country in the following cases: Civil Cases Nos. 13554 *(Azur vs. Azur)*, 13108 *(Panlaqui vs. Panlaqui)*, 12844 *(Peralta vs. Peralta)*, 13342 *(Aguilar vs. Aguilar)*, 13150 *(Canlas vs. Canlas)*, 13393 *(Siongco vs. Siongco)*, 13111 *(Murphy vs. Murphy)*.

(v) For proceeding with the advance taking of the testimony or deposition of the petitioner when there is no proof or record showing that the court issued a written order favorably acting or granting the petitioner's motion for deposition or advance taking of the testimony in the following cases: Civil Case Nos. 13342 *(Aguilar vs Aguilar)*, 12364 *(Foroozan vs. Gonzales)*, Special Proceedings Nos. SP-7717 *(In Re: Petition for Adoption Spouses Valencia, petitioner)*, SP-7776 *(In Re: Petition for Adoption of minor Rita Mae Perez)*.

(w) For proceeding with the pre-trial conference when no proof or record showing that the respondent was duly served/furnished with the copy of the order or notice of pre-trial conference in the following cases: Civil Cases Nos. 13324 *(Masangkay vs. Masangkay)*, 13067 *(Honnald vs. Honnald)*, 13137 *(Mallari vs. Mallari)*, 11257 (*Calma vs. Calma)*, 13178 *(David vs. David)*, 13246 *(Bonifacio vs. Bonifacio)*, 13110 *(Ocampo vs. Ocampo)*, 12844 *(Peralta vs. Peralta)*, 13342 *(Aguilar vs. Aguilar)*, 13363 *(Bustillos vs. Bustillos)*, 12954 *(Reyes vs Reyes)*, 12897 *(Merlin vs. Merlin)*, 12460 *(Canlas vs. Canlas)*, 13150 *(Canlas vs. Canlas)*, 13230 *(De Le Blanc vs. De Le Blanc)*, 12443 *(Nunga vs.*

Nunga), 13262 *(Rosario vs. Rosario)*, 13072 *(Thong vs. Thong)*, 12504 *(Quirante vs. Quirante)*, 13053 *(Samson vs. Samson)*, 12779 *(Manalastas vs. Manalastas)*, 12766 *(Palean vs. Palean)*, 13457 *(Dalatre vs. Dalatre)*, 12056 *(Mungcal vs. Mungcal)*, 13112 *(Dillon vs. Dillon)*, 13069 *(Cabrera vs: Cabrera)*, 12749 *(So vs. So)*, 12819 *(Balonza vs. Balonza)*, 13136 *(Sangil vs. Sangil)*, 13091 *(Lacson vs. Lacson)*, 12708 *(Humphries vs. Humphries)*, 13278 *(Ignacio vs. Ignacio)*, 12998 *(Malig vs. Malig)*, 12766 *(Espinosa vs. Espinosa)*, 13500 *(Turia vs. Turia)*, 13507 *(Catacutan vs. Catacutan)*, 13477 *(Patio vs. Patio)*, 12864 *(Cruz vs. Cruz)*, 13107 *(Rodriguez vs. Rodriguez)*, 12534 *(Felix vs. Felix)*, 13523 *(Manuntag vs. Manuntag)*, 12853 *(Medina vs. Medina)*, 12758 *(Fernandez vs. Fernandez)*, 13086 *(Bonifacio vs. Bonifacio)*, 13568 *(Barco vs. Barco)*, 12784 *(Garcia vs. Garcia)*, 12820 *(De La Cruz vs. De La Cruz)*, 13550 *(Ramos vs. Ramos)*, 13158 *(Aguilar vs. Aguilar)*, 13377 *(Dogmoc vs. Dogmoc)*, 13171 *(Dumangan vs Dumangan)*, 13463 *(Salonga vs. Salonga)*, 12625 *(Lacap vs. Lacap)*, 12918 *(Rabe vs. Rabe)*, 12746 *(Relucio vs. Relucio)*, 13164 *(Cunanan vs. Cunanan)*, 13519 *(Ordonez vs. Ordonez)*, 12775 *(Mendoza vs. Mendoza)*, 12921 *(Magat vs. Magat)*, 13515 *(Chan vs. Chan)*, 13522 *(Lumanlan vs. Lumanlan)*, 13510 *(Marcelino vs. Marcelino)*, 13386 *(LovelleMasamayor vs. Kin Din Tsoi)*, 12373 *(Reyes vs. Reyes)*, 11405 *(De La Pena vs. De La Pena)*.

(x) For proceeding with the pre-trial conference when no proof or record showing that the petitioner personally appeared or that the petitioner's counsel was duly authorized to appear in behalf of the petitioner by special power of attorney (SPA) during the pre-trial conference in the following cases: Civil Case Nos. 13509 *(Cruz vs. Cruz)*, 13363 *(Bustillos vs. Bustillos)*, 13250 *(Paras vs. Paras)*, 12443 *(Nunga vs. Nunga)*, 13386 *(Masamayor vs. Kin Din Tsoi)*.

(y) For failure to issue an order directing the public prosecutor to investigate to determine whether collusion exists between the parties and the evidence is not

fabricated in the following cases: Civil Case Nos. 13108 *(Panlaqui vs. Panlaqui)*, 12460 *(Canlas vs. Canlas)*.

(z) For failure to issue an order anew directing the public prosecutor to investigate after the summons was published in Civil Case No. 11405 *(De La Pena vs. De La Pena*).

(*aa*) For failure to act on the public prosecutors' non-compliance with the court's order to investigate after lapse of considerable period of time in the following cases: Civil Case Nos. 12945 *(Dayrit vs. Dayrit)*, 13244 *(Maglanes vs. Maglanes)*, 13466 *(Yusi vs. Yusi)*, 13141 *(Lagman vs. Lagman)*, 12321 *(Mayon vs. Mayon)*, 12579 *(Merza vs. Merza)*, 12386 *(Lopez vs. Lopez)*, 12901 *(Carbungco vs. Carbungco)*, 12944 *(Cordero vs. Cordero)*, 13050 *(Pineda vs. Pineda)*, 13555 *(Bundalian vs. Bundalian)*, 13457 *(Dalatre vs. Dalatre)*, 12056 *(Mungcal vs. Mungcal)*, 11348 *(Mangalino vs. Mangalino)*, 13112 *(Dillon vs. Dillon)*, 12536 *(Strammer vs. Strammer)*, 13468 *(Aquino vs. Aquino)*, 13136 *(Sangil vs. Sangil)*, 13278 *(Ignacio vs. Ignacio*).

(*bb*) For proceeding with the pre-trial conference when no order or notice setting the pre-trail conference was issued in the following cases: Civil Case Nos. 11257 *(Calma vs. Calma)*, 12460 *(Canlas vs. Canlas)*, 13393 *(Siongco vs. Siongco)*, 13401 *(Pecson vs. Pecson)*, and 12373 *(Reyes vs. Reyes)*.

(*cc*) For proceeding with the pre-trial conference when no proof or record showing that petitioner filed or submitted his/her pre-trial brief in the following cases: Civil Case Nos. 13363 *(Bustillos vs. Bustillos)*, 12443 *(Nunga vs. Nunga)*, 13262 *(Del Rosario vs. Del Rosario)*, and 13053 *(Samson vs. Samson)*.

(*dd*) For proceeding with the trial proper when no proof or record showing that the pre-trial order was issued in the following cases: Civil Case Nos. 13342 *(Aguilar vs. Aguilar)* and 12534 *(Felix vs Felix)*.

(*ee*) For failure to resolve the "Motion for Execution" based on the agreement on the custody and support in Civil Case No. 10764 *(Gonzales vs. Gonzales)*.

(*ff*) For failure to further set in the court calendar Civil Case No. 10764 *(Gonzales vs. Gonzales)* since its last hearing on 04/26/07 or despite the lapse of considerable period of time.

(*gg*) For proceeding with the trial proper in Civil Case No. 13108 *(Panlaqui vs. Panlaqui)* when there is no proof or record showing that the return of the service of summons dated 10/25/06 was filed or submitted in court.

(*hh*) For proceeding with the hearing on the presentation of the testimonial evidence of witness-psychologist on 10/30/06 in Civil Case No. 12808 *(De Leon vs. De Leon)* when the record shows that summons was not yet duly served upon the respondent.

(*ii*) For issuing an Order dated 01/24/08 submitting Civil Case No. 12844 *(Peralta vs. Peralta)* for decision when there is no proof or record showing the: (1) cross-examination of the petitioner; and the (2) presentation of the respondent's evidence.

(*jj*) For failure to act on the petitioner's non-compliance with the Order dated 05/11/07 in Civil Case No. 13580 *(Ocampo vs. Ocampo)* despite the lapse of considerable period of time.

(*kk*) For failure to act on the non-compliance: (1) of the petitioner with the Order dated 01/20/07 directing the publication of the Order of Hearing; (2) of the Social Worker to submit the Home Study Report and Recommendation.

(*ll*) For allowing the marking of exhibits in Civil Case No. 13401*(Pecson vs. Pecson)* by presenting the duplicate copies only and no comparison was made with its original copy particularly the passport of the petitioner which was presented and marked Exhibit "C" and the rest of the other exhibits presented.

(*mm*) For issuing the Order dated 06/07/06 in Civil Case No. 12808 *(De Leon vs. De Leon)* granting the petitioner's

motion for advance taking of the testimony on the same date at 2:00 pm when the petitioner's copy of the motion was not yet filed in court as it was received officially on 06/07/06 at 3:00 P.M.

(*nn*) For issuing the Order dated 09/28/06 in Civil Case No. 12808 *(De Leon vs. De Leon)* stating, among others, that the court "noted" the public prosecutors' Investigation report when there is no proof or record showing that the said report was filed or submitted in court.

(*oo*) For issuing the Order dated 07/23/07 in Civil Case No. 13482 *(Tiopenco vs. Tiopenco)* stating among others that the court "noted" the public prosecutors' Investigation Report when there is no proof or record showing that the said report was filed or submitted in court.

(*pp*) For authorizing the marking of the public prosecutor's Investigation Report as Exhibit "D" in Civil Case No. 13482 *(Tiopenco vs. Tiopenco)* when there is no proof or record showing that the said report was filed or submitted in court.

(*qq*) For failure to direct the petitioner to furnish the respondent with the copy of the formal offer of exhibits/ evidence in the following cases: Civil Cases Nos. 13246 *(Bonifacio vs Bonifacio)*, 11405 *(De La Pena vs. De La Pena)*, 13342 *(Aguilar vs. Aguilar)*, 12954 *(Reyes vs. Reyes)*, 13072 *(Thong vs. Thong)*.

(*rr*) For proceeding with the trial when there is no proof or record showing that respondent was furnished with the copy of the notice of hearing on the presentation of respondent's evidence, to wit: Civil Cases Nos. 11405 *(De La Pena vs De La Pena, Re: Order dated 09/17/ 07)*, 13342 *(Aguilar vs. Aguilar, Re: Order dated 11/ 05/07)*, 13510 *(Marcelino vs. Marcelino, Re: Order dated 08/13/07)*, 12373 *(Reyes vs. Reyes, Re: Order dated 04/17/06, 08/07/06 & 09/17/06*), 13252 *(Angeles vs. Ronquillo, Re: Order dated 04/03/08*, 12786 *(Baluyot vs. Baluyot)*.

(*ss*) For issuing the Order submitting the following cases for decision when there is no proof or record showing that respondent was furnished with the copy of the notice of hearing on the presentation of respondent's evidence, to wit: Civil Case Nos. 13324 *(Masangkay vs. Masangkay, Re; Order dated 02/04/08)*, 1228 *(Canlas vs. Canlas, Re: Order dated 01/24/08)*, 13246 *(Bonifacio vs. Bonifacio, Re: Order dated 06/28/07)*, 13342 *(Aguilar vs. Aguilar, Re: Order dated 03/24/08)*, 13515 *(Chan vs. Chan, Re: Order dated 09/13/07)*, 13386 *(Masamayor vs. Kin Din Tsoi, Re: Order dated 12/13/07)*, 12373 *(Reyes vs. Reyes, Re: Order dated 10/19/06)* 13393 *(Siongco vs. Siongco, Re: Order dated 04/26/07)*, 13336 *(Bautista vs. Bautista, Re: Order dated 03/21/08)*.

(*tt*) For stating in the Decisions of Civil Case Nos. 12499 *(De Leon vs De Leon)* and 13522 *(Lumanlan vs. Lumanlan)* that the City Prosecutor was deputized by the Office of the Solicitor General (OSG) when no proof or record showing that the said office filed a letter deputizing the City Prosecutor to appear in the said case in behalf of the OSG.

(*uu*) For rendering the Decision in Civil Case No. 13363 *(Bustillos vs. Bustillos)* when there is no proof or record showing that: (1) the court set in the court calendar the cross-examination of the petitioner; (2) the petitioner's formal offer of exhibit was resolved; and (3) the presentation of respondent's evidence on 09/06/07 has proceeded as the decision was rendered before the said date on 08/31/07.

(*vv*) For rendering the Decision in Civil Case No. 13230 *(De Le Blanc vs. De Le Blanc)* when there is no proof or record showing that the court set in the court calendar the respondent's presentation of evidence or the respondent was notified of such hearing.

(*ww*) For rendering the Decision in Civil Case No. 13496 *(Sali vs. Sali)* when the petitioner's formal offer of exhibit is still unresolved.

(*xx*) For failure to furnish the OSG and/or the respondent with the copy of the decision in the following cases: Civil Case Nos. 13178 *(David vs. David)*, 11405 *(De la Pena vs. De La Pena)*, 13393 *(Siongco vs. Siongco)*, 12653 *(Ibanez vs. Ibanez)*, 13132 *(Pineda vs. Pineda)*, 11900 *(Santos vs Santos)*, 12324 *(Escobar vs. Escobar)*, 12373 *(Reyes vs. Reyes)*, 13522 *(Lumanlan vs. Lumanlan)*.

(*yy*) For issuing the Decree of Declaration of Absolute Nullity or Anullment of Marriage simultaneously with or on the same day the Certificate of Finality was issued, or before the registration of the Entry of Judgment with the Local Civil Registrar where the marriage was celebrated and the Local Civil Registrar of the place where the Family Court is located in the following cases: Civil Cases Nos. 13246 *(Bonifacio vs. Bonifacio)*, 11405 *(De La Pena vs. De La Pena)*, 13230 *(De Le Blanc vs. De Le Blanc)*, 12443 *(Nunga vs. Nunga)*, 13393 *(Siongco vs. Siongco)*, 13437 *(Azuro vs. Azuro)*, 13062 *(Manalili vs. Manalili)*, 13171 *(Dumangan vs. Dumangan)*, 13522 *(Lumanlan vs. Lumanlan*).

(*zz*) For failure to issue the Order requiring the prevailing party to cause the registration of the Decree of Declaration of Absolute Nullity or Annulment of Marriage in the Local Civil Registrar where the marriage was celebrated and the Local Civil Registrar of the place where the Family Court is located and in the National Census and Statistics Office (NCSO) in the following decided cases: Civil Case Nos. 12443 *(Nunga vs. Nunga)*, 13515 *(Chan vs. Chan)*, 13522 *(Lumanlan vs. Lumanlan)*, Civil Case Nos. 13246 *(Velchez vs. Velchez)*, 11405 *(De La Pena vs De La Pena)*, 13230 *(De Le Blanc vs. De La Blanc)*, 13393 *(Siongco vs. Siongco)*, 13437 *(Azuro vs. Azuro)*, 13062 *(Manalili vs. Manalili)*, 13171 *(Dumangan vs. Dumangan)*, 13522 *(Lumanlan vs. Lumanlan)*.

8. Ms. Racquel Dalida-Clarin, Officer-In-Charge/Legal Researcher, Regional Trial Court, Branch 60, Angeles City, be **DIRECTED** to **EXPLAIN** within fifteen (15) days from

notice why she should not be administratively dealt with for:

(a) Issuing the commitment order without the written authority from the presiding judge in the following cases: Criminal Cases Nos. 01-326 *(Pp. vs. J. Avaristo)*, 02-725 to 76 *(Pp. vs. C. Marcos)*, 01-805 *(Pp. vs. R. Siron)*, 03-767 *(Pp. vs. Magabilin)*, 01-750 *(Pp. vs. N. Malonzo)*, 02-033 *(Pp. vs. L. Dizon)*, 03-417 *(Pp. vs. J. David)*, and 01-653 *(Pp. vs. A. Panlilio)*.

(b) Issuing the Order of Release without the written authority from the presiding judge in the following cases: Criminal Cases Nos. 03-860 *(Pp. vs. H. William)*, 02-182 *(L. Pineda)*, 01-516 *(Pp. vs. R. Manalang)*, 03-691 *(Pp. vs. B. Edwards)*, 03-698 *(Pp. vs. B. Edwards)*, 04-242 *(Pp. vs. B. Edwards)*, 96-540 to 42 *(Pp. vs. H. Gill)*, and 98-489 *(Pp. vs. Sical, Jr.)*

(c) Failure to issue the Certificate of Arraignment in the following cases: Criminal Cases Nos. 03-685 to 87 *(Pp. vs. J. Torres, et al.)*, 00-683 to 84 *(Pp. vs. A. Libu, et al.)*, 00-534 *(Pp. vs. R. Baluyot)*, 01-574 *(Pp. vs. R. Calma)*, 01-855 *(Pp. vs. J. Omerga)*, 06-1780 *(Pp. vs. A. Ledesma)*, 00-732 *(Pp vs De Musa, et al.)*, 06-2591 *(Pp. vs. J. Cunanan)*, 94-851 *(Pp. vs. Marfilla, Jr.)*, 03-861 *(Pp. vs. R. Castro)*, 03-877 *(Pp. vs. R. Ragasa)*, 97-192 *(Pp. vs. Magtoto)*, 97-193 *(Pp. vs. E. Serrano, et al.)*, 03-601 *(Pp. vs. J. Rueda)*, 05-1301 *(Pp. vs. W. Pineda)*, 03-417 *(Pp. vs. J. David)*, 03-834 *(Pp. vs. J. Servano, Jr.)*, 04-045 *(Pp. vs. A. Ubay)*, 01-522 to 53 *(Pp. vs. E. Edillor)*, 07-2810 *(Pp. vs. W. Cayanan)*, and 99-1172 to 73 *(Pp. vs. E. David)*.

(d) Accepting and consequently attaching to the record of the case the pleading/document in the following cases when such pleading/document has "no stamp received": Civil Case Nos. 13501 *(Figueroa vs. Figueroa, Re: Ex-Parte Motion for Leave of Court to take Advance Deposition)*, 13393 *(Siongco vs. Siongco, Re: Motion to Take Deposition of Petitioner*, 13510 *(Marcelino vs. Marcelino, Re: Petioner's Pre-Trial Brief) and the Special Power of Attorney)*, 12865 *(Martin vs Martin, Re: Petitioner's Pre-Trial Brief)*.

(e) Failure to maintain a centralized record book of all incoming documents, communication, pleadings and other documents of similar import.

(f) Failure to maintain a control logbook for all registered mails.

(g) Allowing the late release of the copy of the Order dated 10/01/07 *(re: the Order submitting the case for decision)* in Civil Case No. 13437 *(Azuro vs. Azuro)* on 10/30/07 or after the decision was rendered on 10/10/07.

(h) Allowing the late release of the copy of the Decision dated 10/24/04 in Civil Case No. 10944 *(Lising vs. Lising)* on 03/18/05.

(i) Allowing the late release of the copy of the Notice setting the pre-trial conference (PTC) in Civil Case No. 12590 *(Toledo vs. Toledo)* on 05/17/06 when the said PTC was set in the court calendar on 05/18/06 per Order dated 04/27/06.

(j) Allowing the early release of the copy of the Decision dated 12/05/07 in Civil Case No. 13405 *(Morales vs. Morales)* to the petitioner on 12/07/07 when such decision was officially released on 12/31/07.

(k) Allowing the early release of the copy of the Order dated 01/30/07 in Civil Case No. 13263 *(Tuazon vs. Tuazon)* to the public prosecutor on 02/04/07 when such Order was officially released on 02/07/07.

(l) Allowing the early release of the copy of the Decision dated 01/04/08 in Civil Case No. 13583 *(Atienza vs. Atienza)* to the petitioner and respondent on 11/11/08 and the OSG on 01/21/08 when such decision was officially released on 01/30/08.

(m) Allowing the early release of the copy of the Decision dated 12/27/07 in Civil Case No. 13386 *(Masamayor vs. Kin Din Tsoi)* to the petitioner and the latter's counsel on 01/24/08 when such decision was officially released on 01/30/08.

(n) Allowing the belated preparation of the accompanying Order of the Minutes dated 07/30/07 (re: cross-examination of the petitioner) in Civil Case No. 12896 *(Patriarca vs. Patriarca)* during the audit.

(o) Allowing the release of the copy of the Decision dated 11/19/07 in Civil Case No. 13349 for petitioner and respondent to one and the same person on 11/29/07 as shown by the identical signature appearing in the attached registry return receipt;

(p) Failure to cause the preparation of the accompanying Order of the Minutes dated 12/17/07 in Civil Case No. 13482 *Tiopenco vs. Tiopenco*.

(q) Failure to furnish the respondent with the copy of the order or notice of pre-trial conference in the following cases: Civil Cases Nos. 13324 *(Masangkay vs. Masangkay)*, 13067 *(Honnald vs. Honnald)*, 13137 *(Mallari vs. Mallari*), 11257 *(Calma vs. Calma)*, 13178 *(David vs. David)*, 13246 *(Bonifacio vs. Bonifacio)*, 13110 *(Ocampo vs. Ocampo)*, 12844 *(Peralta vs. Peralta)*, 13342 *(Aguilar vs. Aguilar)*, 13363 *(Bustillos vs. Bustillos)*, 12954 *(Reyes vs. Reyes)*, 12897 *(Merlin vs. Merlin)*, 12460 *(Canlas vs. Canlas)*, 13150 *(Canlas vs. Canlas)*, 13230 *(De Le Blanc vs. De Le Blanc)*, 12443 *(Nunga vs. Nunga)*, 13262 *(Rosario vs. Rosario)*, 13072 *(Thong vs. Thong)*, 12504 *(Quirante vs. Quirante)*, 13053 *(Samson vs. Samson)*, 12779 *(Manalastas vs. Manalastas)*, 12766 *(Palean vs. Palean)*, 13457 *(Dalatre vs. Dalatre)*, 12056 *(Mungcal vs. Mungcal)*, 13112 *(Dillon vs Dillon)*, 13069 *(Cabrera vs. Cabrera)*, 12749 *(So vs. So)*, 12819 *(Balonza vs. Balonza)*, 13136 *(Sangil vs. Sangil*), 13091 *(Lacson vs. Lacson)*, 12708 *(Humphries vs. Humphries)*, 13278 *(Ignacio vs. Ignacio)*, 12998 (*Malig vs. Malig*), l13321 *(Morales vs. Morales)*, 13544 *(Mallen vs. Mallen)*, 12766 *(Espinosa vs. Espinosa)*, 13500 *(Turia vs. Turia)*, 13507 *(Catacutan vs. Catacutan)*, 13477 *(Patio vs. Patio)*, 12864 *(Cruz vs. Cruz)*, 13107 *(Rodriguez vs. Rodriguez)*, 12534 *(Felix vs. Felix)*, 13523 *(Manuntag vs. Manuntag)*, 12853 *(Medina vs. Medina)*, 12758 *(Fernandez vs. Fernandez)*, 13086 *(Bonifacio vs.*

Bonifacio), 13568 *(Barco vs. Barco)*, 12784 *(Garcia vs. Garcia*), 12820 *(De La Cruz vs. De La Cruz)*, 13550 *(Ramos vs. Ramos)*, 13158 *(Aguilar vs. Aguilar)*, 13377 *(Dogmoc vs. Dogmoc)*, 13171 *(Dumangan vs. Dumangan)*, 13463 *(Salonga vs. Salonga)*, 12625 *(Lacap vs. Lacap)*, 12918 *(Rabe vs. Rabe)*, 12746 *(Relucio vs. Relucio)*, 13164 *(Cunanan vs. Cunanan)*, 13519 *(Ordonez vs. Ordonez)*, 12775 *(Mendoza vs. Mendoza)*, 12921 *(Magat vs. Magat)*, 13515 *(Chan vs. Chan)*, 13522 *(Lumanlan vs. Lumanlan)*, 13510 *(Marcelino vs. Marcelino)*, 13386 *(Lovelle Masamayor vs. Kin Din Tsoi)*, 12373 *(Reyes vs. Reyes)*.

(r) Failure to furnish the respondent with the copy of the pre-trial order (PTO) in Civil Cases Nos. 13266 *(Lugtu vs. Lugtu, PTO dated 03/05/07)*, 13510 *(Marcelino vs. Marcelino, PTO dated 06/28/07)*.

(s) Allowing the delay in sending the [N]otices of [H]earing in Civil Case No. 12844 *(Peralta vs. Peralta)* particularly the Notice setting the trial on 01/24/08 which was received by the respondent's lawyer only on 03/27/08.

(t) Allowing the delay in sending the Notices of Hearing to the respondent due to erroneous address in Civil Case No. 13072 *(Thong vs. Thong)*.

(u) Failure to furnish the respondent with the Order or Notice of Hearing setting the presentation of respondent's evidence in the following cases: Civil Case Nos. 13556 *(Reyes vs. Reyes)*, 13324 *(Masangkay vs. Masangkay)*, 12288 *(Canlas vs. Canlas)*, 13246 *(Bonifacio vs. Bonifacio)*.

(v) Failure to furnish the respondent with the copy of the petition and Order (re: Summons by Publication) at the respondent's last known address in Civil Case No. 13417 *(Tonogai vs. Tonogai, Re: Order dated 03/28/07)*, 11965 *(Libut vs. Libut, Re: Order dated 03/14/07)*, 13063 (*Pinzon vs. Pinzon, Re: Order dated 02/05/08)*, 13510 *(Marcelino vs Marcelino)*.

(w) Allowing the belated filing of the Minutes dated 01/10/08 in Civil Case No. 13496 *(Sali vs. Sali)* in the court

record since it appears that it has been "merely inserted" after the decision was rendered in the said case.

(x) Allowing the belated filing of the Order dated 08/08/06 in Civil Case No. 12822 *(Espiritu vs. Espiritu*) in the court record as it was placed in the record after the Order dated 01/17/07 and before the Minutes dated 02/25/07.

(y) For failure to furnish the OSG and/or the respondent with the copy of the decision in the following cases: Civil Case Nos. 13178 *(David vs. David)*, 11405 *(De La Pena vs. De La Pena)*, 13393 *(Siongco vs. Siongco)*, 12653 *(Ibanez vs. Ibanez)*, 13132 *(Pineda vs. Pineda)*, 11900 *(Santos vs. Santos)*, 12324 *(Escobar vs. Escobar)*, 12373 *(Reyes vs. Reyes)*, 13522 *(Lumanlan vs. Lumanlan)*, 12288 *(Canlas vs. Canlas)*.

(z) For failure to furnish the Local Civil Registrar of the place where the marriage was registered with the copy of the decision in the following cases despite the court's directive in the Decision: Civil Case Nos. 12443 *(Nunga vs. Nunga)*, and SP-7680 *(In Re: Petition for Adoption of Minor Camille Keith Sebastian)*, 13470 *(Isidro vs. Isidro)*.

(aa) No Transcript of Stenographic Notes (TSN) was attached to the record of Civil Case No. 13386 *(Masamayor vs. Kin Din Tsoi)*.

(bb) No Transcript of Stenographic Notes (TSN) was attached to the record of Civil Case No. 12373 *(Reyes vs. Reyes)* particularly the petitioner's direct and cross-examination on 03/27/06 and 04/17/06, respectively.

(cc) In all the Minutes of Proceedings/Court Session, she did not affix her signature.

(dd) Failure to cause the pagination and stitching of all court records.

(ee) Failure to cause the chronological arrangement and proper filing of court records according to date or sequence of receipt of records.

(ff) Failure to cause the attachment of registry return receipts/slip in the record of all cases.

(gg) Failure to attach the copy of decided/ terminated cases and complete said list of the said cases in the Monthly Report of Cases for the entire Calendar Year 2007.

(hh) Failure to cause the preparation of the accompanying order on the Minutes of Proceedings/Court Sessions which cancel/postpone/reset the trial or hearing of cases due to the absence of the presiding judge, public prosecutor or one of the parties to the case.[3]

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On September 10, 2008, the Court adopted the recommendations of the OCA, and placed Judge Pinto and respondent Racquel L.D. Clarin under preventive suspension.[4]

On October 22, 2008, the Judicial Audit Team submitted its additional report to include other cases that had undergone similar irregularities.[5]

On October 2008, the OSG submitted its compliance[6] stating that it had been informed and notified by Branch 60 of the family-court cases listed in the September 10, 2008 resolution of the Court, except as to 19 of them that the OSG listed therein.

On December 5, 2008, Clarin filed her partial compliance/ explanation[7] clarifying that her issuance of commitment orders and orders of release without the written authority from Judge Pinto as the Presiding Judge had been the practice of her predecessors; and that she had only followed the practice in the exigency of the service.[8]

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[3] *Id.*

[4] *Id.* at 208-259.

[5] *Id.* at 2783.

[6] *Id.* at 301-305.

[7] *Id.* at 353-367.

[8] *Id.* at 353-354.

Judge Pinto sent her partial compliance/explanation on December 10, 2008,[9] and she stated therein that she did not issue the commitment orders in several criminal cases because the accused thereat had already been arrested and detained;[10] that she had at times allowed Clarin as her Officer-In-Charge to issue the commitment orders for purposes of expediency;[11] that there was no prohibition against any judge issuing any order to furnish the OSG with copies of the petitions for annulment of marriage because the petitioners in such proceedings had the duty to furnish the OSG;[12] that the summonses were properly served upon the respondents or defendants;[13] that her court allowed the taking of the testimonies of the petitioners or plaintiffs in advance for valid reasons subject to their recall as witnesses once their presence was needed;[14] that under the *Rules of Court*, the taking of the early testimony of witnesses through deposition could be allowed for valid reasons and without prejudice to requiring their appearance as witnesses whenever the need therefor should arise or the circumstances warranted;[15] that pre-trial notices were actually sent to the parties, including the respondents and the OSG;[16] that her court directed the public prosecutor to investigate in order to determine whether or not collusion between the parties existed;[17] and that she was not informed beforehand of the audit and the physical inventory of records, and was not furnished with the result and required to explain the lapses.[18]

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[9] *Id.* at 761-812.

[10] *Id.* at 763-764.

[11] *Id.* at 764.

[12] *Id.* at 764-765.

[13] *Id.* at 771-776.

[14] *Id.* at 784.

[15] *Id.* at 786-788.

[16] *Id.* at 788-794.

[17] *Id.* at 795.

[18] *Id.* at 810.

On December 15, 2008, the Court referred this case to the OCA for evaluation, report and recommendation, and for the OCA to submit its report and recommendation within 15 days from receipt of the records.[19]

On January 28, 2009, Judge Pinto submitted her final compliance and explanation,[20] wherein she reiterated the arguments and explanations contained in her partial compliance/ explanation.

In its memorandum dated June 2, 2010,[21] the OCA issued a final evaluation and report, and recommended therein as follows:

1. The matter be **FORMALLY DOCKETED** as an administrative complaint against Judge Ofelia Tuazon-Pinto and Officer-in-Charge/Legal Researcher Raquel D.L. Clarin, both of the Regional Trial Court, Branch 60, Angeles City;

2. **Judge Ofelia Tuazon-Pinto** be **DISMISSED FROM THE SERVICE,** with forfeiture of all retirement benefits, excluding accrued leave benefits, and disqualification from reinstatement or appointment to any public office including government-owned or controlled corporations, for Gross Ignorance of the Law/Procedure and Gross Inefficiency;

3. Officer-in-Charge/Legal Researcher **Raquel D.L. Clarin** be **SUSPENDED for three (3) months and one (1) day**, effective immediately for misconduct with a warning that a repetition of the same or similar act shall be dealt with separately;

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According to the OCA, the lapses discovered by the Judicial Audit Team were not mere "isolated incidents;" that procedural blunders had been committed by the respondents; and that the lapses ranged from the subtle to the most glaring.[22]

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[19] *Id.* at 328-332.

[20] *Id.* at 830-893.

[21] *Id.* at 2782-2799.

[22] *Id.* at 2795.

On October 11, 2010,[23] the Third Division of the Court resolved to formally docket this case as an administrative complaint against Judge Pinto and OIC/Legal Researcher Clarin; and required them to manifest if they were willing to submit the case for decision on the basis of the pleadings and other records already filed.

In their joint manifestation dated November 30, 2010,[24] the respondents manifested that they were submitting the case for decision based on the pleadings and other records on file.

Issue

Are the respondents administratively liable for the irregularities discovered by the Judicial Audit Team?

Ruling of the Court

The Court adopts the findings and recommendations of the OCA.

I
Liability of Judge Ofelia Tuazon Pinto

The judicial audit conducted on Branch 60 uncovered many procedural violations committed by Judge Pinto in cases involving petitions for nullity and annulment of marriages that were in direct contravention of the letter and spirit of the *Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages* (A.M. No. 02-11-10-SC). Accordingly, we entirely agree with the OCA's recommendation that Judge Pinto was guilty of gross ignorance of the law and procedure, and of gross inefficiency.

Anent gross ignorance of the law and procedure, the audit report copiously detailed how Judge Pinto had disregarded the law and procedure in handling the cases pending before her *sala*. The observations and findings contained in the audit report stood unrefuted by her. Among her gross errors and blunders

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[23] *Id.* at 2801.

[24] *Id.* at 2803.

were omitting to furnish to the OSG copies of the decisions she had rendered; granting motions to take advance testimonies and depositions even before the records of the cases were transmitted to her *sala*; accepting pretrial briefs on the same days of the holding of the pre-trial conferences, and permitting the lawyers to take part in the pre-trial conferences despite not being authorized to do so through special powers of attorney; acting on and admitting formal offers of exhibits even before the respondents or the State could comment thereon;[25] and not giving notifications to the OSG regarding the progress of proceedings in at least 19 cases.[26] We should observe that any of these gross errors and blunders was sufficient to render her administratively liable for gross ignorance of the law and procedure.

The OCA listed other irregularities committed by Judge Pinto, namely: (a) the issuance of a certificate of finality without proof that the respondent was already furnished a copy of the decision; (b) the issuance of a copy of the decision despite the fact that the copy of the decision supposedly sent to the respondent had been returned for the reason of "wrong address"; (c) the issuance of an order declaring her decision final and executory despite the fact that a copy of the decision had been returned with the marking "respondent unknown;" (d) the failure to act on the OSG's motion seeking to be furnished with a copy of the decision; (e) her amending in one case of her original decision by inserting a new date and place of the marriage in question, and such amended decision was not furnished to the respondent; (f) her admitting the formal offer of evidence of the petitioner without first giving the respondent and the public prosecutor the opportunity and time to comment thereon; (f) the acceptance of the pre-trial brief of the petitioner on the same day the pretrial conference was held; and (g) the issuance of the summons to the parties on May 8, 2006 although the case was raffled to

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[25] *Id.* at 2796.

[26] *Id.* at 2795.

her *sala* only on May 9, 2006.[27] Such other irregularities, singly or collectively, were themselves gross and blatant violations of the rules of procedure and the basic guidelines for ensuring that proceedings initiated to annul a marriage or declare the nullity of a marriage are insulated from vice and fraud.

Although Judge Pinto sought to justify her having granted motions to take advance testimonies and depositions even before the records of the cases were transmitted to her *sala* by contending that she had seen nothing wrong in so doing if the cases were bound to end up in her *sala* anyway because her court was the only family court in the area,[28] such justification was still unacceptable because her doing so rather evinced her unconcealed partiality that was the very antithesis of her oath to do justice. No judge in her shoes should grant such motions prematurely and rashly because acting thereon before the records have been brought to her official cognizance revealed an injudicious and cavalier attitude towards the judicial functions and office.

Judge Pinto was clearly guilty of gross ignorance of law and procedure. It is not debatable that when the law or rule of procedure is so elementary, not to be aware of it constitutes gross ignorance of the law. This is because a judge is expected to exhibit more than just cursory acquaintance with statutes and procedural rules. Indeed, Judge Pinto was expected to keep abreast of our laws, changes therein, as well as with the latest jurisprudence and rules of procedure, for she owed it to the public to be legally knowledgeable because ignorance of the law and procedure is the mainspring of injustice. By virtue of the delicate position that she occupied in society, she was duty bound to be the embodiment of competence and integrity.[29]

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[27] *Id.* at 2789-2793.

[28] *Id.* at 2796.

[29] *Office of the Court Administrator v. Lerma*, A.M. Nos. RTJ-07-2076, RTJ-07-2077, RTJ-07-2078, RTJ-07-2079 & RTJ-07-2080, October 12, 2010, 632 SCRA 698, 716-717.

Canon 6 of the *New Code of Judicial Conduct for the Philippine Judiciary* states that competence is a prerequisite to the due performance of the judicial office. Judge Pinto's flagrant disregard of laws and the rules of procedure affected her competency and conduct as a judge in the discharge of her official functions. She thereby ignored that the rules of procedure have been instituted to guarantee the speedy and efficient administration of justice, such that the failure to abide by said rules weakens the wisdom behind them and diminishes respect for the law. According, all judges should ensure strict compliance with the rules of procedure at all times in their respective jurisdictions.[30]

The blatant and unwarranted disregard by Judge Pinto of the provisions of A.M. Nos. 02-11-10-SC and other rules rendered her guilty of gross ignorance of the law and procedure.[31] In *Office of the Court Administrator v. Castañeda*,[32] the penalty of dismissal from the service was imposed on the respondent judge for the serious disregard of A.M. No. 02-11-10-SC and A.M. No. 02-11-11-SC because the disregard amounted to gross ignorance of the law and procedure.[33] Citing *Pesayco v. Layague*,[34] the Court pointed out therein that—

> No less than the Code of Judicial Conduct mandates that a judge shall be faithful to the laws and maintain professional competence. Indeed, competence is a mark of a good judge. A judge must be acquainted with legal norms and precepts as well as with procedural rules. When a judge displays an utter lack of familiarity with the rules, he erodes the public's confidence in the competence of our courts. Such is gross ignorance of the law. One who accepts the exalted position of a judge owes the public and the court the duty to be proficient in the law. Unfamiliarity with the Rules of Court is a

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[30] *Office of the Court Administrator v. Reyes*, A.M. No. RTJ-16-2465 (Notice), March 13, 2018.

[32] A.M. No. RTJ-12-2316, October 9, 2012, 682 SCRA 321.

[33] *Id.* at 339-340.

[34] A.M. No. RTJ-04-1889, December 22, 2004, 447 SCRA 450.

sign of incompetence. Basic rules of procedure must be at the palm of a judge's hands.[35]

Anent the charge of gross inefficiency, Judge Pinto did not refute the audit team's finding that she had allowed respondent Clarin to issue commitment or release orders in some instances. In her partial compliance/explanation, however, she would justify this by insisting on her doing so out of her desire to expedite the proceedings, for in that way the arresting officers and the accused would no longer need to wait for her to be done with her sessions and trials before the release of the accused could be ordered.[36]

The justification of Judge Pinto for Clarin's actions on the commitment or release orders was flimsy. No law or rule permitted or authorized Judge Pinto to abdicate her essential judicial responsibilities by delegating them to her clerical subordinate, even if the latter was her designated Officer-in-Charge. The task of issuing the commitment or release orders required the exercise of judicial discretion and was not merely clerical or administrative. It pertained to Judge Pinto, and could not be transferred to her subordinate even for a brief moment. As a result, Judge Pinto's failure to adhere to and implement existing laws, policies, and the basic rules of procedure seriously compromised her ability to be an effective magistrate.[37] The convenience of any party cannot ever justify the flagrant disregard of such laws, policies, and the basic rules of procedure.

The sum of Judge Pinto's lapses and irregularities warranted the imposition of the supreme penalty of dismissal from the service. However, in *Re: Anonymous Letter dated August 12, 2010, Complaining against Judge Ofelia T. Pinto, Regional*

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[35] *Id.* at 459.

[36] *Id.* at 764.

[37] *Office of the Court Administrator v. Yu,* A.M. Nos. MTJ-12-1813, 12-1-09-MeTC, MTJ-13-1836, MTJ-12-1815, OCA IPI Nos. 11-2398-MTJ, 11-2399-MTJ, 11-2378-MTJ, 12-2456-MTJ & A.M. No. MTJ-13-1821, November 22, 2016, 809 SCRA 399, 509.

Trial Court, Branch 60, Angeles City, Pampanga,[38] we already imposed on her the supreme penalty of dismissal from service, with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to re-employment in any branch, agency or instrumentality of the government, including government-owned or controlled corporations.[39] Consequently, the penalty of dismissal from service as recommended by the OCA is no longer feasible. Nonetheless, we deem it proper to impose the penalty of fine in the maximum, *i.e.*, ₱40,000.00, to be deducted from her accrued leave credits, if any.

II
Liability of Officer-in-Charge/
Legal Researcher Raquel D.L. Clarin

As regards the liability of respondent Clarin, the OCA's recommendation is similarly well-taken.

Based on the judicial audit conducted by the OCA, Clarin miserably failed to meet the standards required of her designation as the Officer-in-Charge. She thereby discharged functions that could not be validly discharged by her, and at the same time did not perform the duties incumbent upon her to do. Her excuse that she had merely continued the practice followed prior to her designation as the Officer-in-Charge did not absolve her. She was all too aware that upon accepting such designation she would be assuming duties and responsibilities that would require utmost efficiency and fidelity on her part. That her predecessor had done the work contrary to the prevailing administrative circulars, issuances and manual of clerks of court at hand did not warrant her disregarding such guidelines.

In *Ortiz, Jr. v. De Guzman*,[40] the issuance of a release order was emphasized to be a judicial function, not an administrative one. Hence, a clerk of court is not authorized to order the commitment or the release on bail of persons charged

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[38] A.M. No. RTJ-11-2289, October 2, 2012, 682 SCRA 146.

[39] *Id.* at 152.

[40] A.M. No. P-03-1708 (Resolution), February 16, 2005, 451 SCRA 392.

with penal offenses. *Ortiz, Jr.* reminded that respondent had arrogated to himself the authority to exercise judicial discretion and overstepped the boundaries of his function.[41] Similarly, Clarin exceeded her authority in issuing the commitment orders and release orders. She must be meted the penalty of suspension from the service. As held in *Nones v. Ormita, Clerk of Court II*,[42] a misconduct of the same nature is punished with suspension of three months and one day.

We reiterate that the conduct of all court personnel is circumscribed with the heavy burden of responsibility. Thus, they must be reminded that the Court will not countenance any conduct, act or omission on the part of anyone involved in the administration of justice that violates the norm of public accountability and diminishes the faith of the people in the Judiciary.[43] This Court has always valued high standards in judicial service. Time and time again, this Court has reminded that the behavior of all officials and employees involved in the administration of justice is bounded with a heavy burden of responsibility; hence, their conduct should, at all times, embody propriety, prudence, courtesy and dignity in order to maintain public respect and confidence in the judicial service.[44]

WHEREFORE, the Court **FINDS** and **DECLARES:**

1. **JUDGE OFELIA TUAZON-PINTO,** Presiding Judge, RTC of Angeles City, Branch 60, Angeles City, **GUILTY** of **GROSS IGNORANCE OF THE LAW/PROCEDURE** and **GROSS INEFFICIENCY**, and **PUNISHES** her with a **FINE** in the amount of **₱40,000.00**, to be deducted from her accrued leave benefits, if any; and

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[41] *Id.* at 401.

[42] A.M. No. P-01-1532, 9 October 2002, 390 SCRA 519.

[43] *Office of the Court Administrator v. Buencamino*, A.M. Nos. P-05-2051 & 05-4-118-MeTC, January 21, 2014, 714 SCRA 322, 334-335.

[44] *In re: Partial Report on the Results of the Judicial Audit Conducted in the MTCC, Branch 1, Cebu City*, A.M. No. MTJ-05-1572, January 30, 2008, 543 SCRA 105, 129-130.

2. **MS. RAQUEL D.L. CLARIN,** Officer-in-Charge/Legal Researcher, RTC of Angeles City, Branch 60, Angeles City, **GUILTY** of **MISCONDUCT**, and hereby **SUSPENDS** her from the service for a period of three (3) months and one (1) day, with a warning that a repetition of the same or similar act shall be dealt with severely.

SO ORDERED.

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

Reyes, J. Jr., J., on leave.

EN BANC

[G.R. Nos. 187552-53. October 15, 2019]

SHANGRI-LA PROPERTIES, INC. (now known as SHANG PROPERTIES, INC.), *petitioner, vs.* **BF CORPORATION,** *respondent.*

[G.R. Nos. 187608-09. October 15, 2019]

BF CORPORATION, *petitioner, vs.* **SHANGRI-LA PROPERTIES, INC. (SLPI), now known as EDSA PROPERTIES HOLDINGS, INC.; THE PANEL OF VOLUNTARY ARBITRATORS (ENGR. ELISEO I. EVANGELISTA, MS. ALICIA TIONGSON, and ATTY. MARIO EUGENIO V. LIM), ALFREDO C. RAMOS, RUFO B. COLAYCO, ANTONIO B. OLBES, GERARDO O. LANUZA, JR., MAXIMO G. LICAUCO III, and BENJAMIN C. RAMOS,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW SHALL BE RAISED; EXCEPTIONS; IN CASE AT BAR, THE FACTUAL FINDINGS OF THE COURT OF APPEALS ARE CONTRARY TO THOSE OF THE CONSTRUCTION ARBITRATORS. —** The Court cannot delve into factual questions in this appeal by *certiorari* because Section 1 of Rule 45 of the *Rules of Court* categorically ordains that the petition for review on *certiorari* "shall only raise questions of law which must be distinctly set forth." Factual issues require the calibration of evidence but such task cannot be done herein because the Court is not a trier of facts. Nonetheless, the rule limiting the appeal by petition for review on *certiorari* to the consideration and resolution of legal questions admits of several exceptions, x x x [Thus,]although it is settled that the findings of fact of quasi-judicial bodies that have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect, but also finality, especially when affirmed by the CA, and, in particular reference to this appeal, the factual findings of construction arbitrators are accorded finality and conclusiveness, and should not be reviewable by the Court on appeal, one recognized exception occurs when the findings of the CA are contrary to those of the arbitrators. Herein, the petitions separately raise issues that call for the calibration of evidence and the mathematical re-computation of the monetary awards. Although such issues are factual in nature, the Court has to embark upon a review in view of the contrary findings by the CA and the Arbitral Tribunal, resulting in the variance of their monetary awards. Such review has now to be made in order to settle once and for all the issues between the parties.

2. **CIVIL LAW; SPECIAL CONTRACTS; WORK AND LABOR; ARTICLE 1724 GOVERNS THE RECOVERY OF COSTS FOR ANY ADDITIONAL WORK BECAUSE OF A SUBSEQUENT CHANGE IN THE ORIGINAL PLANS; COMPLIANCE THEREOF. —** Article 1724 governs the recovery of costs for any additional work because of a subsequent change in the original plans. The underlying purpose of the provision is to prevent unnecessary litigation for additional costs incurred by reason of additions or changes in the original plan. The provision

was undoubtedly adopted to serve as a safeguard or as a substantive condition precedent to recovery. As such, added costs can only be allowed upon: (a) the written authority from the developer or project owner ordering or allowing the changes in work; and (b) upon written agreement of the parties on the increase in price or cost due to the change in work or design modification. Compliance with the requisites is a condition precedent for recovery; the absence of one requisite bars the claim for additional costs. Notably, neither the authority for the changes made nor the additional price to be paid therefor may be proved by any evidence other than the written authority and agreement as above-stated. x x x The Arbitral Tribunal considered both the letter dated May 9, 1991 and the specific SLPI-approved variation orders as sufficient compliance with the requisites of Article 1724 of the *Civil Code*. x x x The Court upholds the Arbitral Tribunal.

3. **ID.; DAMAGES; A PARTY CANNOT BE HELD LIABLE FOR DAMAGES IT DID NOT CAUSE. —** We affirm the deletion of the award for the damages caused by nominated sub-contractors, and adopt the CA's rationalization x x x Indeed, it would be wrong and unjust to hold SLPI liable for damages it did not cause. While it was admitted that in previous instances SLPI had acted as an agent in facilitating the collection of claims among the contractors, there was no evidence on record to prove that SLPI had actually collected the damages now being claimed by BFC. Without such proof, to hold SLPI liable was factually unfounded.

4. **CIVIL LAW; SPECIAL CONTRACTS; WORK AND LABOR; COMPLETED ORIGINAL SCOPE OF WORK; NOT NEGATED BY THE LACK OF PROGRESS PAYMENT CERTIFICATES AND THE ABSENCE OF CLAIMED BILLINGS IN THE SUMMARY OF PAYMENTS. —** The Court agrees with the CA that the lack of SLPI-issued Progress Payment Certificates and the absence of BFC's claimed billings in the summary of payments did not negate the fact that BFC had completed the original scope of work. In finding that BFC had completed the original scope of work, the CA duly considered the evidence on record, x x x In addition, as pointed out by BFC, SLPI did not issue any Schedule of Defects to contest the completed works. The Schedule of Defects was expressly provided for and required in the contract. Had SLPI any complaint, or claim for

defects or non-completion of any work, or any other concerns *vis-a-vis* BFC's work, it would have submitted the Schedule of Defects within the period agreed under their contract,

LEONEN, *J., separate concurring opinion*:

REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ARBITRAL AWARDS ISSUED BY THE CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC) ARE FINAL AND INAPPEALABLE, EXCEPT ON QUESTIONS OF LAW. — I maintain that arbitral awards issued by the Construction Industry Arbitration Commission are final and inappealable, except on questions of law. As a general rule, they cannot be appealed on questions of fact. This Court should be restrained in its review and prescribe more restraint on the Court of Appeals in reviewing appeals from such awards. These appeals should be reviewed with the purpose of the Construction Industry Arbitration Commission and the law creating it, Executive Order No. 1008 or the Construction Industry Arbitration Law, in mind. x x x Executive Order No. 1008 is clear that arbitral awards are final and inappealable, except on questions of law.

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

REMEDIAL LAW; CIVIL PROCEDURE; APPEALS FROM QUASI-JUDICIAL AGENCIES TO THE COURT OF APPEALS; APPEALS FROM THE CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC) MAY INCLUDE QUESTIONS OF FACT. — R.A. No. 7902 was enacted amending BP 129 and clearly vesting the CA with exclusive jurisdiction over appeals from decisions of quasi-judicial agencies. Said law specifically granted the CA with the power to resolve *factual issues* raised in cases falling within its appellate jurisdiction, x x x In fact, the subsequent promulgation of the 1997 Rules of Court specifically named the CIAC as one of the quasi-judicial agencies whose decisions or awards may be elevated to the CA for review *via* Rule 43. Moreover, Sections 1 and 3 of said Rule categorically provides that this mode of review may include questions of law, questions of fact, or even a mixture of both, x x x As for the Supreme Court's jurisdiction over appeals from decisions of the CIAC, suffice it to say that while the CA was

vested by R.A. No. 7902 with near-plenary power to consider factual questions in appeals brought under Rule 43, the Supreme Court does not have this power. As made abundantly clear in the *ponencia* and in the case of *Metro Rail Transit Development Corporation v. Gammon Philippines, Inc*., the Supreme Court's power to review decisions of the CA in CIAC cases appealed *via* Rule 43 is limited to questions of law. The rule however is not absolute. Jurisprudence has recognized exceptions to the rule in which the Supreme Court in a petition for review on *certiorari* may delve into the factual findings of the arbitral tribunal. In the case at bar, the conflicting factual findings of the CIAC and the CA necessitated an inquiry into the factual issues in order to arrive at an optimal resolution of the case.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & Delos Angeles Law Offices for Shangri-la Properties, Inc.

Castelo & Associates Law Office for respondent BF Corporation.

D E C I S I O N

BERSAMIN, *C.J.*:

As a rule, the factual findings of the arbitrators of the Construction Industry Arbitration Commission (CIAC), being final and conclusive, are not reviewable by this Court on appeal. But the rule admits of several exceptions, such as when the findings of the Court of Appeals (CA) are contrary to those made by the arbitrators.[1]

The Case

Before the Court are the consolidated appeals of Shangri-la Properties, Inc. (SLPI) and BF Corporation (BFC) to separately

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[1] *Uniwide Sales Realty and Resources Corporation v. Titan-Ikeda Construction and Development Corporation*, G.R. No. 126619, December 20, 2006, 511 SCRA 335, 345.

assail the decision promulgated on August 12, 2008[2] and the resolution promulgated on April 16, 2009,[3] whereby the CA partially modified the award of the Arbitral Tribunal composed of Engr. Eliseo Evangelista, Ms. Alicia Tiongson and Atty. Mario Eugenio Lim (Arbitral Tribunal) in connection with their dispute arising from their construction agreement.

This Court finds no reason to disturb the factual findings of the CIAC arbitrators as affirmed by the CA for being supported by the evidence on record. However, the Court proceeds to review the modifications of the arbitral award made by the CA.

Antecedents

The CA summarized the procedural and factual antecedents, as follows:

> The present controversy originated from the agreement of Shangri-la Properties, Inc. (SLPI) and BF Corporation (BFC) for the execution of the builder's work for Phases I and II, and the Car Parking Structure (Carpark) of the EDSA Plaza Project (Project) in Mandaluyong City, embodied in the parties' contract documents. SLPI was the project owner and BFC was the trade contractor. BFC sued SLPI and the members of the latter's board of directors (Alfredo C. Ramos, Rufo B. Colayco, Antonio B. Olbes, Gerardo O. Lanuza Jr., Maximo G. Licauco III and Benjamin C. Ramos) for the collection of ₱228,630,807.80. The case was docketed as Civil Case No. 63400 in the Regional Trial Court of Pasig City (Branch 157). The proceedings before the trial court was stayed by this court, as affirmed by the Supreme Court, until termination of an arbitration proceeding as required in their contract.
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> BFC filed a request for arbitration with the Construction Industry Arbitration Commission (CIAC), but the same was eventually dismissed, without prejudice, on the ground that the arbitration between BFC and SLPI must be undertaken in accordance with

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[2] *Rollo* (G.R. Nos. 187608-09), pp. 10-40; penned by Associate Justice Marlene Gonzales-Sison, with the concurrence of Associate Justice Juan Q. Enriquez, Jr., and Associate Justice Isaias P. Dicdican.

[3] *Id.* at 41-45.

Republic Act No. 876. Subsequently, the trial court revived the case and directed the parties to proceed with the arbitration proceeding in accordance with R.A. No. 876. Engr. Eliseo Evangelista, Ms. Alicia Tiongson and Atty. Mario Eugenio Lim were tasked to resolve the controversy as members of the Arbitral Tribunal. The issues submitted for the resolution of the Arbitral Tribunal include:

1. *Is Plaintiff [BFC] entitled to its claim for damage and repair? If so, how much?*
    - *1.1 Is the claim for fire damage and repairs of BF Corporation already settled under the Release and Discharge Agreement (Exhibit C-10) dated 23 May 1991?*
    - *1.2 Is the claim for fire damage and repairs of Plaintiff an arbitral issue?*
    - *1.3 Was SLPI actually paid the insurance amount?*
2. *Is Plaintiff entitled to its claim for the following damages?*
    - *2.1 Unpaid Progress Billings? If so, how much?*
    - *2.2 Unpaid Change Orders? If so, how much?*
    - *2.3 Fixed and provisional attendances? If so, how much?*
    - *2.4 Damages by nominated sub-contractors? If so, how much?*
    - *2.5 Retention money? If so, how much?*
    - *2.6 Other damages? If so, how much?*
3. *Is Plaintiff entitled to its claim for legal interest? If so, how much?*
4. *Is Defendant SLPI entitled to its counterclaim for liquidated damages under the Construction Agreements (Exhibits C-13 and C-14)?*
    - *4.1 Did Plaintiff incur delays in completion of works for such projects?*
    - *4.2 Is Plaintiff entitled to time extensions?*

5. Is Defendant SLPI entitled to its counterclaim for other damages in the amount of ₱ 4 million plus legal interest?

6. Are the individual defendants entitled to their counterclaims against Plaintiff? If so, how much?

6.1 Are the individual defendants jointly and severally liable with SLPI for the claims of the Plaintiff?

7. Which among the parties is entitled to attorney's fees and if so, how much?

8. Which among the parties shall bear the cost of arbitration?

After weighing the evidence on hand, the Arbitral Tribunal arrived at its assailed decision and made the following award:

WHEREFORE, in light of the foregoing discussions, judgment is hereby rendered awarding the Parties of their various claims as follows:

AWARD To Plaintiff BF Corporation (BFC):

1. Award in issue no. 2.1 for BFC's unpaid progress billing for Contract Bills and Change Orders ..... ₱11,709,468. 13

2. Award in issue no. 2.2 for accomplished but unpaid Change Orders..... 6,201,278.50

3. Award in issue no. 2.3. for unpaid Fixed and Provisional attendances provided by BFC 4,351, 874.23

4. Award in issue no. 2.4 for damages by SLPI's Nominated sub-contractor 381,000.19

5. Award in issue no. 2.5 for compensatory damages consisting of retention money 10,422,356.21

6. Award in issue no. 3 for legal interest in the amount of 12,382,710.73

7.Arbitration Costs 1,457,290.80

Total ..... ₱46,905,978.79

AWARD to Defendant Shangri-La Properties, Inc. (SLPI):

1. Liquidated damages in Issue no. 4.1 .....₱7,590,000.00

2. Other counterclaims in Issue no. 5 .....540,315.10

3. Arbitration Costs 257,168.96

Total.....*₱8,387,484.06*

NET AWARD TO BFC..... *₱38,518,494.73*

After offsetting the respective awards to the parties, Defendant Shangri-La Properties, Inc. (SLPI) is hereby ordered by this Tribunal to pay Plaintiff BF Corporation (BFC) a net amount of Thirty Eight Million Five Hundred Eighteen Thousand Four Hundred Ninety Four & 73/100 (₱38,518,494.73) Pesos plus legal interest at the rate of Six (6%) Percent per annum beginning from the date of this Decision (July 31, 2007) until Decision becomes final and executory, and the rate to be increased to Twelve (12%) Percent per annum from the date the herein Decision becomes final and executory until fully paid.

SO ORDERED.[4]

Ruling of the Arbitral Tribunal

In the ruling of the Arbitral Tribunal,[5] the varying claims of both parties were partially upheld, with BFC being awarded ₱46,905,978.79 and SLPI ₱8,387,484.06. Offsetting, the Arbitral Tribunal ordered SLPI to pay BFC the final net award of ₱38,518,494.73 plus legal interest.[6]

The Arbitral Tribunal discussed each issue, starting with those on the fire damage and repairs. It denied BFC's claims for fire damage and repairs because the agreement only allowed BFC to recover said claims from fire insurance proceeds. It explained that BFC could not recover upon its claim because there was no clear and convincing proof showing that SLPI had actually collected any insurance proceeds arising from the fire.[7]

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

[5] *Id.* at 352-558.

[6] *Id.* at 557.

[7] *Id.* at 413-414.

As for BFC's claims for unpaid progress billings, the Arbitral Tribunal segregated the claims into two types, namely: of the first type were the billings for the original scope of work under the agreement (contract bills), and of the second were the billings for unpaid variation orders.[8] The Arbitral Tribunal ruled that BFC was entitled to the payment of the contract bills for having completed the original scope of work by finishing construction of Phase I, Phase II, and the Carpark of the Project,[9] but allowed only ₱1,745,116.07 for the contract bills due to the absence of SLPI's conformity and in view of the discrepancies in BFC's computation.[10] As to the second type, the Arbitral Tribunal concluded that SLPI had given the required written authorization for the performance of the works,[11] and alloted ₱9,513,987.91 to BFC;[12] hence, it granted ₱11,709,468.13 for the unpaid progress billings (inclusive of 4% VAT).[13]

For the unpaid change orders not included in the progress billings, the Arbitral Tribunal held that there was written authorization from SLPI;[14] hence, it granted ₱6,201,278.50 to BFC for the change orders shown to have SLPI's written authorization.[15]

The Arbitral Tribunal upheld BFC's claims for fixed and provisional attendances amounting to ₱4,351,874.23 considering that such claims were provided for under the parties' agreement.[16]

The Arbitral Tribunal partially upheld BFC's claim for damages amounting to ₱381,000.19 caused by SLPI's nominated sub-

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[8] *Id*. at 422.

[9] *Id*. at 427.

[10] *Id*. at 428-429.

[11] *Id*. at 433-434.

[12] *Id*. at 443.

[13] *Id*.

[14] *Id*. at. 446.

[15] *Id*. at. 452.

[16] *Id*.

contractors because the parties had agreed that damages caused by nominated sub-contractors would be charged by SLPI to the concerned nominated sub-contractor, and thereafter credited by SLPI to BFC.[17]

As for BFC's claim for retention money, the Arbitral Tribunal awarded ₱10,422,356.21 because the parties' agreement clearly provided for the release of the retention money. Moreover, SLPI admitted that there was basis for the claim and agreed to return said amount to BFC.[18]

On the other hand, SLPI was awarded ₱7,590,000.00 in liquidated damages for the delays incurred in finishing phases I and II of the Project.[19] In addition, SLPI was partially awarded on its other counterclaims worth ₱540,315.10 for costs incurred to correct and/or repair the defective works of BFC.[20]

Finally, the Arbitral Tribunal ruled that both parties were liable for the arbitration costs divided *pro rata*. As such, SLPI was ordered to pay ₱257,168.96 while BFC was ordered to pay ₱1,457,290.80 representing arbitration costs shared in proportion to their respective awards.[21]

Decision of the CA

Dissatisfied, SLPI and BFC separately appealed to the CA (respectively docketed as C.A.-G.R. No. 100179 and C.A.-G.R. No. 100272).

On August 12, 2008, the CA promulgated the assailed decision partially granting the consolidated petitions.[22]

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[17] *Id*. at 459-460; 464.

[18] *Id*. at 468.

[19] *Id*. at 497-498.

[20] *Id*. at 500-501; 532-533.

[21] *Id*. at 556.

[22] *Id*. at 10-40.

The CA affirmed the Arbitral Tribunal's ruling on the following matters, namely: (1) the denial of BFC's reimbursement for fire damage repairs for failure to prove that SLPI received fire insurance proceeds;[23] (2) BFC's award consisting of fixed and provisional attendances;[24] (3) BFC's award of compensatory damages consisting of the retention money;[25] and (4) SLPI's award of other counterclaims.[26]

The CA modified the following awards, as follows: (1) increased BFC's award of unpaid progress billings based on the original scope of work; (2) reduced BFC's award of unpaid progress billings on variation orders; (3) reduced BFC's award for the legal interest due on the works on variation orders and the retention money; (4) modified the arbitration costs to be shouldered equally by SLPI and BFC; (5) deleted BFC's award for damages caused by SLPI's nominal sub-contractors; and (6) reduced SLPI's award of liquidated damages.[27]

The CA disposed thusly:

WHEREFORE, the consolidated petitions are hereby ***PARTIALLY GRANTED***. The 31 July 2007 decision of the Arbitral Tribunal is hereby ***MODIFIED*** as follows:

A. Award to BFC:

1. Unpaid progress billings based on the original scope of work in the amount of **₱24,497,555.91**, as increased accordingly;

2. Unpaid progress billing on the works on variation orders in the amount of **₱325,209.74**, as reduced accordingly;

3. Unpaid fixed and provisional attendances in the amount of **₱4,351,874.23**, as awarded by the Arbitral Tribunal;

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[23] *Id*. at 30.

[24] *Id*. at 34 & 38.

[25] *Id*. at 36 & 38.

[26] *Id*. at 38.

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

4. Compensatory damages consisting of the retention money amounting to **₱10,422,356.21**, as awarded by the Arbitral Tribunal

5. Legal interest due on the unpaid progress billings on the works on variation orders and the retention money, in the amount of **₱9,054,824.31**; and

6. Arbitration costs in the amount of **₱857,229.88**, as reduced accordingly.

The award of ₱,381,000.19 representing damages caused by the other contractors to BFC, is deleted.

B. Award to SLPI:

1. Liquidated damages in the amount of **₱780,000.00**, as reduced accordingly;

2. Other counterclaims in the amount of **₱540,315.10**, as awarded by the Arbitral Tribunal; and

3. Arbitration costs in the amount of **₱857,229.88**, as increased accordingly.

Offsetting the respective awards to BFC and SLPI leaves the amount of Forty Seven Million Three Hundred Thirty One Thousand Five Hundred Five Pesos and Thirty Cents **(₱47,331,505.30)**. **Shangri-la Properties, Inc. (now known as Shang Properties, Inc.) is directed to pay BF Corporation the amount of ₱47,331,505.30 plus legal interest at the rate of six percent (6%) per annum from 31 July 2007** (the date of the decision of the Arbitral Tribunal) **until the finality of this decision and thereafter, at the rate of twelve percent (12%) per annum, until said amount is fully paid.**

The aspects of the decision of the Arbitral Tribunal, not otherwise modified by this decision, are AFFIRMED.

SO ORDERED.[28]

SLPI and BFC both moved for partial reconsideration.

In its resolution of April 16, 2009, the CA partially granted SLPI's motion by reducing BFC's final award upon finding that the unpaid fixed and provisional attendances totalling

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[28] *Id*. at 38-39.

₱4,351,874.23, and the retention money amounting to ₱10,422,356.21 had already been paid by SLPI with interest on October 22, 2007; and denied BFC's motion for lack of merit,[29] ruling thusly:

> ***WHEREFORE***, premises considered, the motion for reconsideration of Shangri-la Properties, Inc. is ***PARTIALLY GRANTED***. Our decision in this case dated 12 August 2008 is ***MODIFIED*** as follows:
>
> 1. The awards for unpaid fixed and provisional attendances amounting of ₱4,351,874.23 and retention money amounting to ₱10,422,356.21 in favor of BFC are deleted considering that said awards have been paid by SLPI with interest on 22 October 2007; and
>
> 2. Offsetting the respective awards in favor of BFC and SLPI, as modified, leaves the amount of Thirty Two Million Five Hundred Fifty Seven Thousand Two Hundred Seventy Four Pesos and Eighty Six Cents (₱32,557,274.86). **SLPI is directed to pays BFC the amount of ₱32,557,274.86 plus legal interest of 6% per annum from 31 July 2007 until the finality of this decision and thereafter, at the rate of 12% per annum, until said amount is fully paid.**
>
> BF Corporation's motion for reconsideration is ***DENIED***, for lack of merit.
>
> **SO ORDERED**.[30]

Hence, both parties now appeal.

Issues

BFC submitted for resolution the following issues, thusly:

I.

THE COURT OF APPEALS GRAVELY ERRED WHEN IT DENIED THE CLAIMS OF BFC FOR VARIATION WORKS IT WAS COMPELLED TO PERFORM UPON THE INSTRUCTIONS OF SLPI.

II.

THE COURT OF APPEALS ERRONEOUSLY DISREGARDED THE AGREEMENT BETWEEN BFC AND SLPI AND SUPPLANTED THE

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[29] *Id*. at 45.

[30] *Id*.

SAME WITH ITS OWN TERMS AND CONDITIONS WHEN IT DENIED BFC REIMBURSEMENT FOR DAMAGES DONE TO ITS WORKS BY THE NOMINATED SUB-CONTRACTORS OF SLPI.

III.

THE COURT OF APPEALS GRAVELY ERRED WHEN IT DENIED BFC'S CLAIM FOR FIRE DAMAGE AND REPAIR WORKS.

IV.

THE COURT OF APPEALS GRAVELY ERRED IN DISREGARDING WELL-ESTABLISHED JURISPRUDENCE WHEN IT HELD THAT FOR PURPOSES OF COMPUTING INTEREST, THE FIXED AND PROVISIONAL ATTENDANCES AS WELL AS THE UNPAID PROGRESS BILLINGS ON THE ORIGINAL SCOPE OF WORK WERE REASONABLY ASCERTAINABLE ONLY FROM THE DATE OF THE ARBITRAL TRIBUNAL'S DECISION DATED 31 JULY 2007.[31]

On the other hand, SLPI insisted that:

I.

THE COURT OF APPEALS ERRED IN AWARDING ₱24,497,555.91 TO BFC FOR "UNPAID PROGRESS BILLINGS BASED ON THE ORIGINAL SCOPE OF WORK" UNDER ISSUE NO. 2.1 DEFINED IN THE TOR (THE ARBITRAL TRIBUNAL AWARDED ₱1,745,166.07 ONLY)

II.

THE COURT OF APPEALS ERRED IN REDUCING THE AWARD FOR LIQUIDATED DAMAGES IN FAVOR OF SLPI FROM ₱7,590,000.00 TO ₱780,000.00 FOR SUCH RULING IS CONTRARY TO EVIDENCE ON RECORD.[32]

Ruling of the Court

The Court partly grants BFC's appeal, but denies SLPI's petition for review on *certiorari* for its lack of merit.

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[31] *Id*. at 80-82.

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

Mathematical computations as well as the propriety of arbitral awards are of the nature of factual questions.[33] Such questions exist when doubts or differences arise as to the truth or falsity of alleged facts; when there is need for the calibration of the evidence, considering mainly the credibility of witnesses and the existence and the relevancy of specific surrounding circumstances, their relation to each other and to the whole, and the probabilities of the situation.[34]

The Court cannot delve into factual questions in this appeal by *certiorari* because Section 1 of Rule 45 of the *Rules of Court* categorically ordains that the petition for review on *certiorari* "shall only raise questions of law which must be distinctly set forth." Factual issues require the calibration of evidence but such task cannot be done herein because the Court is not a trier of facts.[35]

Nonetheless, the rule limiting the appeal by petition for review on *certiorari* to the consideration and resolution of legal questions admits of several exceptions, such as the following instances, namely: (1) when the factual findings of the CA and the trial court are contradictory;(2) when the findings are grounded entirely on speculation, surmises, or conjectures;(3) when the inference made by the CA from its findings of fact is manifestly mistaken, absurd, or impossible;(4) when there is grave abuse of discretion in the appreciation of facts;(5) when the CA, in making its findings, goes beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee;(6) when the judgment of the CA is premised on a misapprehension of facts;(7) when the CA fails to notice certain relevant facts which, if properly considered, will justify a different conclusion;(8) when the findings of fact are themselves conflicting;(9) when

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[33] *Hanjin Heavy Industries and Construction Co., Ltd. v. Dynamic Planners and Construction Corp*., G.R. Nos. 169408 & 170144, April 30, 2008, 553 SCRA 541, 558.

[34] *Id.* at 557.

[35] *DPWH v. Foundation Specialists, Inc.*, G.R. No. 191591, June 17, 2015, 759 SCRA 138, 149.

the findings of fact are conclusions without citation of the specific evidence on which they are based; and(10) when the findings of fact of the CA are premised on the absence of evidence but such findings are contradicted by the evidence on record.[36]

Although it is settled that the findings of fact of quasi-judicial bodies that have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect, but also finality, especially when affirmed by the CA, and, in particular reference to this appeal, the factual findings of construction arbitrators are accorded finality and conclusiveness, and should not be reviewable by the Court on appeal,[37] one recognized exception occurs when the findings of the CA are contrary to those of the arbitrators.[38]

Herein, the petitions separately raise issues that call for the calibration of evidence and the mathematical re-computation of the monetary awards. Although such issues are factual in nature, the Court has to embark upon a review in view of the contrary findings by the CA and the Arbitral Tribunal, resulting in the variance of their monetary awards. Such review has now to be made in order to settle once and for all the issues between the parties.

I.
BFC's claim for variation works

According to BFC, the CA erred in reversing the Arbitral Tribunal's findings with respect to the existence of written instructions from SLPI for the performance of variation works.[39]

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[36] *Hanjin Heavy Industries and Construction Co., Ltd. v. Dynamic Planners and Construction Corp.*, *supra*, note 33, at 557-558, citing *Fuentes v. Court of Appeals*, G.R. No. 109849, February 26, 1997, 268 SCRA 703, 709.

[37] *Shinryo (Philippines) Company, Inc. v. RRN Incorporated*, G.R. No. 172525, October 20, 2010, 634 SCRA 123, 130, citing *Ibex International, Inc. v. GSIS*, G.R. No. 162095, October 12, 2009, 603 SCRA 306, 314.

[38] *Id.* at 131.

[39] *Rollo* (G.R. Nos. 187608-09), pp. 84-85.

In reversing the Arbitral Tribunal, the CA observed that SLPI's letter dated May 9, 1991 could not serve as the written authority issued by SLPI to BFC for the latter to undertake the variation works,[40] *viz.*:

> x x x SLPI, through the subject letter made no instruction to BFC to undertake the works for any variation orders on its own, or without the consent of SLPI. Such interpretation cannot be read from the wordings of the letter. To do so would unnecessarily extend its meaning. The other documents presented by BFC also do not suffice to prove that SLPI gave it the authority to undertake works on the variation orders. Given the foregoing, **we are of the considered view that the subject letter cannot satisfy the first requisite of Article 1724. Absent this requisite, BFC cannot validly recover any of the costs it incurred in performing the works for the variation orders**.[41]

We reinstate the Arbitral Tribunal's granting of BFC's claim for variation works.

The Arbitral Tribunal correctly ruled that BFC had complied with the twin requirements imposed by Article 1724 of the *Civil Code*, which states:

> Art. 1724. The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the landowner, can neither withdraw from the contract nor demand an increase in the price on account of the higher cost of labor or materials, save when there has been a change in the plans and specifications, provided:
>
> (1) Such change has been authorized by the proprietor in writing; and
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> (2) The additional price to be paid to the contractor has been determined in writing by both parties.

Article 1724 governs the recovery of costs for any additional work because of a subsequent change in the original plans. The underlying purpose of the provision is to prevent unnecessary

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[40] *Id*. at 25.

[41] *Id*. at 26-27.

litigation for additional costs incurred by reason of additions or changes in the original plan. The provision was undoubtedly adopted to serve as a safeguard or as a substantive condition precedent to recovery.[42] As such, added costs can only be allowed upon: (a) the written authority from the developer or project owner ordering or allowing the changes in work; and (b) upon written agreement of the parties on the increase in price or cost due to the change in work or design modification. Compliance with the requisites is a condition precedent for recovery; the absence of one requisite bars the claim for additional costs. Notably, neither the authority for the changes made nor the additional price to be paid therefor may be proved by any evidence other than the written authority and agreement as above-stated.[43]

According to the Arbitral Tribunal, SLPI gave written instructions to BFC to accommodate all requests for changes and variations, to wit:

> x x x It is a matter of record that on May 7, 1991, BFC wrote a letter to SLPI that it will no longer accommodate any change or variation orders but if SLPI will insist, BFC will first let SLPI approve the cost and time before implementation. x x x In response, to such letter, SLPI through its Project Manager Kuno Raymond Ginoni sent a letter to BFC ... dated May 9, 1991 advising it of its obligation to "to accommodate all changes and variation orders during the duration of the contract". The same letter states "that any decision by us (SLPI) or the consultants for changes or variation orders are for project enhancement". To the mind of this Tribunal this satisfies the first requirement of Article 1724 as to the required written instruction of SLPI to perform the change/variation orders for the duration of its contract with BFC.[44] x x x

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[42] *Powton Conglomerate, Inc. v. Agcolicol*, G.R. No. 150978, April 3, 2003, 400 SCRA 523, 528-529.

[43] *The President of the Church of Jesus Christ of Latter Day Saints v. BTL Construction Corporation*, G.R. Nos. 176439 and 176718, January 15, 2014, 713 SCRA 455, 466-467.

[44] *Rollo* (G.R. Nos. 187608-09), p. 433.

The letter dated May 9, 1991 adverted to by the Arbitral Tribunal pertinently stated as follows:

Please be advised that under the Condition of Contract Clause 11 ... you are obliged to accommodate all changes and variation orders during the duration of the contract.

We are aware of your schedules and difficulties, but we also believe ... that any decision by us or the consultants for changes or variation orders are for the project enhancement.

As such, your cooperation in this matter is very much appreciated.[45]

The Arbitral Tribunal also considered the specific variation orders that were approved by SLPI, to wit:

The first set of claims under this catergory involve variation orders duly approved and authorized by SLPI in its schedule of variation works paid to BFC (Schedule 3). Notably, these variation orders comply with the twin requirements of Art. 1724 by reason of the fact that SLPI appears to have agreed on the price of BFC for these change orders. Coupled by the written instruction of Project Manager Genoni to approve all variation orders for the enhancement of the EDSA Plaza Project, it behooves SLPI to pay for these works. x x x[46]

The second set of variation orders under this category involve seventeen (17) claims included under Schedule 5 of payments submitted by SLPI. It is clear from this Schedule 5 that all these claims have not been paid by SLPI. x x x A review of the documents in support of these claims show that they bear the signature and express conformity of either one or more of SLPI's officers more particularly Project Manager Rogelio Lombos, President Colayco, and Quality Surveyor Goy Yong Peng as to the cost of the variation works and/or they are covered by specific plans and drawings prepared by SLPI Architect R. Villarosa. It is therefore in light of these facts that this Tribunal Awards the payment for the variation orders listed under this category.[47]

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[45] *Id*. at 26.

[46] *Id*. at 435.

[47] *Id*. at 436-437.

The Arbitral Tribunal considered both the letter dated May 9, 1991 and the specific SLPI-approved variation orders as sufficient compliance with the requisites of Article 1724 of the *Civil Code*. Therein lay the difference between the conflicting results of the Arbitral Tribunal and the CA. In computing the award, the Arbitral Tribunal painstakingly segregated the additional works that were supported by the corresponding SLPI-approved variation orders, and those that were not; and included in the final computation only the approved variation orders but excluded those that did not carry SLPI's approval.[48] On the other hand, the CA limited itself to the insufficiency of the letter dated May 9, 1991, and did not consider the SLPI-approved variation orders for the performance of specific additional works.

The Court upholds the Arbitral Tribunal. In our view, the CA wrongly disregarded the specific variation orders that carried the conformity of SLPI, which, when coupled with the letter dated May 9, 1991, satisfied the requisites under Article 1724. Accordingly, the Court reinstates the Arbitral Tribunal's awards in favor of BFC for variation orders included in progress billings amounting to ₱9,513,987.91[49] and for change orders not included in progress billings amounting to ₱6,201,278.50.[50]

II.
BFC's claim for damages caused by the nominated sub-contractors of SLPI

According to BFC, the CA erroneously reversed the findings of the Arbitral Tribunal when it denied reimbursement for the damages caused by nominated sub-contractors.[51] The CA ruled that it could not award BFC's claim because the damages had been caused by other contractors, not SLPI; and that SLPI had merely agreed to facilitate collection of the reimbursement for the damages.[52]

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[48] *Id*. at 437-438.

[49] *Id*. at 443.

[50] *Id*. at 452.

[51] *Id*. at 132.

[52] *Id*. at 34.

We affirm the deletion of the award of ₱381,000.19 for the damages caused by nominated sub-contractors, and adopt the CA's following rationalization therefor, as follows:

> The Arbitral Tribunal also awarded ₱381,000.19 in favor of BFC resulting from the damages caused to it by the other contractors of SLPI. SLPI argues that it cannot be held liable for damages caused by its contractors because it did not cause them. It only acts like an agent to facilitate the collection of damages caused by one contractor to another. This time, **we agree with SLPI**. There is no dispute that the damages were caused by other contractors of SLPI and not SLPI, and the latter only agreed to facilitate the collection of these damages. Nonetheless, we find no evidence on record showing that SLPI actually collected the damages being claimed by BFC. It may be true that it had done so in the past, but that is not proof that it actually collected BFC's claim against its contractors now. Neither can we make such an inference simply because SLPI has the authority to collect the damages. **Finding no sufficient proof that SLPI collected BFC's claim for damages against the other contractors, it cannot be validly obliged to pay the same**.[53]

Indeed, it would be wrong and unjust to hold SLPI liable for damages it did not cause. While it was admitted that in previous instances SLPI had acted as an agent in facilitating the collection of claims among the contractors,[54] there was no evidence on record to prove that SLPI had actually collected the damages now being claimed by BFC. Without such proof, to hold SLPI liable was factually unfounded.

III.
BFC's claim for fire damage and repair works

The CA agreed with the Arbitral Tribunal's ruling that SLPI was not liable to BFC for the fire damage because BFC adduced no proof showing that SLPI had actually received any fire insurance proceeds.[55]

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[53] *Id*. at 34-35.

[54] *Id*. at 459.

[55] *Rollo* (G.R. Nos. 187552-53), pp. 74-75.

Still, BFC insists that it was entitled to the fire insurance proceeds because it had performed substantial repair works for the damages caused by fire.

BFC's insistence is unwarranted.

The Court finds no reason to disturb the factual findings of the Arbitral Tribunal regarding the claim for fire damage and repair, as affirmed by the CA. As already stated, the findings of fact of quasi-judicial bodies like the Arbitral Tribunal which have acquired expertise owing to their jurisdiction being confined to specific matters are generally accorded not only respect, but also finality, especially when affirmed by the CA.[56]

At any rate, we declare that the rulings on this matter by both the CA and Arbitral Tribunal were duly supported by evidence on record. Based on the records, the parties' contract explicitly provided that damages or losses sustained due to fire would be at the sole risk of BFC; and that BFC would not be entitled to any payment of fire damage repairs except to the proceeds received under an insurance policy, to wit:

> ... Notwithstanding that the insurance described in this clause will be maintained by the Owner the whole of the site, plant, materials and works are at the sole risk of the Contractor, including any and all liabilities to third parties and damage or loss caused by but not limited to the perils of fire ...
>
> In the event of a claim under the policy being accepted, the Contractor shall, with due diligence, restore work damaged, replace or repair any unfixed materials or goods which have been destroyed or injured, remove or dispose of any debris and proceed with the carrying out and completion of the works ... The Contractor shall not be entitled to any payment in respect of the restoration of work damaged, the replacement and repair of any unfixed materials or goods, and the removal and disposal of debris other tha[n] the monies received under the policy.[57]

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[56] *National Transmission Corporation v. Alphaomega Integrated Corporation*, G.R. No. 184295, July 30, 2014, 731 SCRA 299, 310.

[57] *Rollo* (G.R. Nos. 187552-53), Conditions of Contract, pp. 127-128.

IV.
BFC's claim for the re-computation of interest on the fixed and provisional attendances as well as the unpaid progress billings on the original scope of work

The CA affirmed the Arbitral Tribunal's findings on the fixed and provisional attendances, and the unpaid progress billings based on the original scope of work, to wit:

> Here, we agree with the Arbitral Tribunal when it held that the fixed and provisional attendances w[ere] not yet reasonably established at the time the demand was made because there is no showing that SLPI conformed to the amount due; neither is said amount pre-agreed in the contract. We find the same to be true with regard to the unpaid progress billings based on the original scope of work. Thus, said claims remain unliquidated and unknown, until they were definitely ascertained, assessed, and determined by the Arbitral Tribunal and only upon presentation of proof thereon. Accordingly, the legal interest of 6% on these claims shall begin to run from 31 July 2007 or the date of the Arbitral Tribunal's decision.[58]

BFC argues that the CA and the Arbitral Tribunal erred in so ruling; and contends that the CA mistakenly computed interest on said awards only from the time of the Arbitral Tribunal's decision dated July 31, 2007.[59]

The contention cannot be upheld. There is no reason to disturb the findings of the CA and Arbitral Tribunal to the effect that said awards could not be reasonably ascertained at the time of demand considering that it was not established that SLPI had given its conformity to the amounts due.

Nonetheless, considering that the CA adjusted the interest award based on the erroneously reduced amount of ₱325,209.74 for the variation orders,[60] the Court deems it necessary to reinstate

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[58] *Rollo* (G.R. Nos. 187608-09), p. 36.

[59] *Id.* at 149.

[60] *Rollo* (G.R. Nos. 187552-53), p. 81.

the interest award of ₱12,382,710.73 as computed by the Arbitral Tribunal.[61]

V.
SLPI claims that the CA erred in increasing the award for unpaid progress billings based on the original scope of work

In increasing the award for unpaid progress billings based on the original scope of work, the CA held:

> The Arbitral Tribunal awarded BFC the amount of ₱1,745,116.07 based on the value of its present accomplishment without considering the value (sic) its previous work accomplishment. The Arbitral Tribunal reasoned that the billing statements were not approved by SLPI because the same were not confirmed by any Progress Payment Certificates and were not included in the summary of all payments made by SLPI to BFC, a document prepared by SLPI. The Arbitral Tribunal also believed that the manner by which BFC computed its unpaid claims was flawed because of the discrepancies between "*the entry on previous net amount of builders work accomplished for the so-called period in which it was last paid by SLPI (₱83,566,744.97)* based on the Progress Payment certificate No. 10B (Exhibit C-16) ... [and the] net cumulative amout of work paid by SLPI as of the last billing (₱70,964,930.00) ...
>
> **We do not agree.**
>
> The issuance of a Progress Payment Certificate shows the assent of SLPI to the billing statement of BFC but does not show the amount of work actually accomplished by BFC. The fact that no Progress Payment Certificates were issued to confirm the billing statements of BFC does not necessarily mean that the work was not accomplished by BFC. In fact, the Arbitral Tribunal found that BFC completed the construction of project x x x
>
> x x x x x x x x x
>
> We adopt this finding, as it is supported by evidence on record: 1) SLPI's letter dated 28 April 1992, which manifested that it shall begin conducting the final re-measurement of the Project as soon as its As-Built-Drawings are submitted; 2) SLPI's letter[s] dated

[61] *Id.* at 373.

9 October 1991, 18 October 1991, 29 October 1991, 31 October 1991 and 22 November 1991, which confirmed that the punch lists for Level I, II, III and IV and the basement of Phase I and the Carpark ha[ve] been completed and the same may be included in the Practical Completion Certificate; 3) SLPI's letter dated 7 February 1992, which demanded BFC to vacate the carpark citing the completion of the work therein as reason for the demand; 4) the release and discharge of BFC for the execution of the main works done by BFC on the Project. The Arbitral Tribunal even based its award on said documents. Concerning the alluded discrepancy, it is explained by the fact that the total amount billed by BFC was not paid by SLPI. As such, the value of the work accomplished by BFC "**to date**," which is the sum of the values of the work it accomplished in the previous and present periods, and not the value of work accomplished in the present period only, must be considered in determining the amount of unpaid progress billing.

Taking the foregoing into consideration, we find merit in BFC's contention that the amount of unpaid progress billings due to it is the difference between the total amount representing the work it accomplished as billed "**to date**" by it in its Progress Billings/Summary of Work Accomplishment, and the amount paid to it by SLPI in the latter's Progress Payment Certificates. x x x

x x x x x x x x x

Thus, **the amount of unpaid progress billing pertaining to the original scope of works that BFC is entitled to receive from SLPI is ₱24,497,555.91** x x x[62]

SLPI submits that the CA erred in increasing the award for unpaid progress billings for the original scope of work from ₱1,745,166.07 to ₱24,497,555.91;[63] that contrary to the CA's findings, there was no competent proof to the effect that the original scope of works claimed by BFC were actually undertaken and completed.[64]

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[62] *Rollo* (G.R. Nos. 187608-09), pp. 20-23, 68.

[63] *Rollo* (G.R. Nos. 187552-53), p. 30.

[64] *Rollo* (G.R. Nos. 187608-09), p. 39.

The Court upholds the CA.

The CA and the Arbitral Tribunal both found that the original scope of work had been completed and performed by BFC. As such, the completion of such work was a fact conclusively established and no longer reviewable on appeal. At any rate, the CA and Arbitral Tribunal's factual findings on the completion of the project were supported by the evidence on record;[65] hence, such factual findings by construction arbitrators, when affirmed by the CA, are final and conclusive and not reviewable by this Court on appeal.[66]

The only remaining question concerned the computation of the award.

On its part, the Arbitral Tribunal allotted ₱1,745,116.07 because BFC's billings were not confirmed by progress payment certificates, and were not included in the summary of all payments, which were documents prepared and issued by SLPI. Also, there was a flaw in BFC's computation because of the discrepancy between the net amount builders work based on the last Progress Payment Certificate (₱83,566,744.97) and the net cumulative amount of work paid based on the last billing. (₱70,964,930.00).

On the other hand, the CA observed that the lack of the Progress Payment Certificate issued by SLPI did not in any way prove that BFC did not complete the original scope of work; and that the discrepancy between the amounts stated in the last Progress Payment Certificates and those contained in the last billing was logically explained by the fact that the total amount billed by BFC had not been paid by SLPI.

The Court agrees with the CA that the lack of SLPI-issued Progress Payment Certificates and the absence of BFC's claimed billings in the summary of payments did not negate the fact

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

[66] *DPWH v. Foundation Specialists, Inc.*, G.R. No. 191591, June 17, 2015, 759 SCRA 138, 150.

that BFC had completed the original scope of work. In finding that BFC had completed the original scope of work, the CA duly considered the evidence on record, particularly: (*a*) SLPI's letter dated April 28, 1992 referring to the final re-measurement of the Project; (*b*) SLPI's letter dated October 9, 1991, October 18, 1991, October 29, 1991, October 31, 1991 and November 22, 1991, which confirmed that the punch lists for Levels I, II, III and IV and the basement of Phase I and the Carpark had been completed; (*c*) SLPI's letter dated February 7, 1992 demanding that BFC vacate the Carpark because work had been completed; and (*d*) the release and discharge of BFC from the execution of the main works done by BFC on the Project.[67]

In addition, as pointed out by BFC,[68] SLPI did not issue any Schedule of Defects to contest the completed works. The Schedule of Defects was expressly provided for and required in the contract. Had SLPI any complaint, or claim for defects or non-completion of any work, or any other concerns *vis-a-vis* BFC's work, it would have submitted the Schedule of Defects within the period agreed under their contract, which relevantly stipulated as follows:

PRACTICAL COMPLETION AND DEFECTS LIABILITY

(2) Any defects, shrinkages, or other faults which shall appear within the Defects Liability Period stated in the appendix to these Conditions and which are due to materials or workmanship not in accordance with this Contract or to typhoon(s) occurring before Practical Completion of the Works, shall be specified by the Project Manager in a Schedule of Defects which he shall deliver to the Contractor not later than fourteen days after the expiration of the said Defects Liability Period, and within a reasonable time after receipt of such Schedule the defects, shrinkages and other faults therein specified shall be made good by the Contractor and (unless the Project Manager shall otherwise instruct, in which case the Contract Sum shall be adjusted accordingly) entirely at his own cost.[69]

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[67] *Rollo* (G.R. Nos. 187552-53), pp. 66-67.

[68] *Id.* at 581.

[69] *Id.* at 123.

Accordingly, SLPI was liable to pay BFC for the latter's completed works. As concluded by the Arbitral Tribunal and affirmed by the CA, the completion of the works was conclusively established. Thus, the CA's award for unpaid progress billings for the original scope of work amounting to ₱24,497,555.91 was correct and is upheld.

VI.
SLPI's claim for liquidated damages incurred due to delays

SLPI posits that the CA erred in reducing the liquidated damages in its favor from ₱7,590,000.00 to only ₱780,000.00.[70]

We consider the CA's reduction of liquidated damages proper and warranted.

The liquidated damages answer for the delays in the completion of the project suffered by SLPI.[71] Such damages were stipulated in the parties' contract, to wit:

6. Contract Program. The Trade Contractor undertakes to complete the above-mentioned Scope of Work within the following agreed dates:

6.1. Phase I — As represented by the Trade Contractor in its letter of 28 May 1991 and submitted work program (Ref. No. ACP-059-91), copies of which are hereto attached as Annexes "B" and "B-1", the Trade Contractor shall complete the Scope of Work for Phase I of the Project in accordance with the following schedule:

i) Substantial Completion by 15 September 1991;

ii) Overall completion by 30 September 1991.

6.2. Phase II — As represented by the Trade Contractor in its letter of 28 May 1991 and submitted work programs (Ref. No. ACP-060-91), copies of which are hereto attached as Annexes "C", "C-1" and "C-2", the Trade Contractor shall complete the Scope of Work for Phase II of the Project in accordance with the following schedule:

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[70] *Id*. at 44.

[71] *Id*. at 77.

i) From Basement to Level 4 — Overall completion by 15 September 1991;

ii) Level 5 to Level 8 and overall completion (including Carpark) — By 31 October 1991.

The failure by the Trade contractor to complete the Scope of Work by the above stated substantial completion date of 15 September 1991 for Phase I and overall completion date of 15 September 1991 for Phase II (Basement to Level 4) shall entitle the Owner to impose liquidated damages at the following rates, to be deducted from all monies due the Trade Contractor.

6.3. Phase I (Substantial completion date of 15 September 1991) — ONE HUNDRED THIRTY THOUSAND PESOS (₱130,000.00) for each day of delay, counted from 16 September 1991; and

6.4. Phase II ... EIGHTY THOUSAND PESOS (₱80,000.00) for each day of delay counted for 1st November 1991.

6.5. Liquidated damages shall be up to a maximum of Five Per Cent (5%) of the total Contract Price.[72]

On the issue of liquidated damages, the Arbitral Tribunal and the CA separately discussed Phase I and Phase II of the Project. For the Carpark portion, the Arbitral Tribunal noted that the above-quoted provisions of the contract did not include the completion of the Carpark as basis for the imposition of liquidated damages.[73] On its part, the CA held that the parties' contract made no mention of any date of completion or penalty for any delay in the completion of the Carpark.[74] In view of this, the Court shall only proceed to review the computation for the liquidated damages corresponding to Phase I and Phase II of the Project.

For Phase I, the CA and the Arbitral Tribunal agreed that the completion date was November 13, 1991. The CA affirmed the Arbitral Tribunal's declaration that BFC was entitled to a

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[72] *Id*. at 99-100.

[73] *Id*. at 374.

[74] *Id*. at 77.

53-day extension for Phase I, but corrected the Arbitral Tribunal's error in reckoning the last day of the 53-day extended period for completion of Phase I as November 13, 1991, stating thusly:

> The Arbitral Tribunal identified **13 November 1991** as the date of completion of Phase I, supported by the punch lists prepared by SLPI and accomplished by BFC. The period of completing Phase I was extended for a period of 53 days from 15 September 1991. Since BFC and SLPI no longer question this ruling, we shall affirm the same. 53 days from 15 September 1991, however, do not fall on 9 November 1991 but on 7 November 1991. As such, BFC has incurred six (6) days of delay, which is **₱780,000.00** when translated in pesos.[75]

The Court concurs with the CA. Fifty three days from September 15, 1991 was November 7, 1991, not November 9, 1991. Consequently, BFC's delay totaled six days for Phase I, which was equal to ₱780,000.00 in liquidated damages.

For Phase II, the CA likewise affirmed the Arbitral Tribunal's holding that BFC was entitled to the 183-day extension starting from October 31, 1991; hence, the last day for the completion of Phase II was May 1, 1992.[76] The CA disagreed with the Arbitral Tribunal on the completion date of Phase II, with the latter fixing the completion date at July 30, 1992, and the former pegging the completion date on April 30, 1992.

The Court considers the CA to be correct, and adopts the explanation of the CA for its reckoning of the completion date for Phase II, *viz.*:

> For Phase II, the Arbitral Tribunal pinpointed no concrete basis when it concluded that 30 July 1992 is the date of its completion. Conversely, BFC convinced us that the date of completion of Phase II, at the most, must be 30 April 1992. As held above, the final re-measurement of the Project, is one of the conclusive proof of the completion of the project. On 28 April 1992, SLPI already required BFC to submit As-Built Drawings in connection with the final re-

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[75] *Id*. at 77-78.

[76] *Id*. at 78.

measurement of the Project. More so, SLPI's payment of ₱10,000,000.00, the balance of the final settlement for the works done by BFC in the project, was made on **30 April 1992**. Since the payment of the foregoing amount is conditioned on the completion of the Project, it is safe to conclude the full completion of the project on said date. The Arbitral Tribunal determined that the period of completing Phase II was extended for 183 days. Again, since this period of extension was not disputed by BFC or SLPI, we shall affirm the same. 183 days from 31 October 1991 falls on 1 May 1992. Consequently, **BFC cannot be held liable to pay SLPI liquidated damages because it did not incur any delay in completing Phase II of the Project**.[77]

The CA had sufficient factual basis for its reckoning. It cited the letter dated April 27, 1992 by SLPI's project manager requiring BFC to submit as-built drawings for the purpose of the final re-measurement of the entire project,[78] and the parties' agreement (Stipulation 9.3) to the effect that the balance of ₱10,000,000.00 "shall be paid by the owner to BFC upon the completion by BFC of the new scope of work specified in paragraph 8 hereof."[79] As a consequence, the CA correctly stated that BFC had already completed the work on the date the payment was made on April 30, 1992.

VII.
Summary of Claims Offsetting

To summarize:

Award to BFC includes the following:

1. Increase in the award for BFC's unpaid progress billings for contract bills and change orders under Issue No. 2.1 ..... **₱35, 372, 005. 57**[80]

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[77] *Id*. at 78.

[78] *Id*. at 510.

[79] *Id*. at 96.

[80] Sum of the unpaid progress billings for original scope of works (₱24,497,555.91) and variation orders (₱9,513,987.91), inclusive of 4% VAT (₱1,360,461.75).

2. Reinstate the award for accomplished but unpaid change orders in Issue No. 2.2 ..... **₱6,201,278.50**

3. Reinstate the award for legal interest in Issue No. 3 ..... **₱12, 382,710.73**

4. Equal sharing of arbitration costs .....**₱857, 229.88**

Total ..... **₱54,813,224.68**

Award to SLPI includes the following:

1. Affirm the award for liquidated damages in Issue No. 4.1 ..... **₱780,000.00**

2. Affirm the award for other counterclaims in Issue No.5 ..... **₱540,315.10**

3. Equal sharing of arbitration costs.....**₱857,229.88**

Total ..... **₱2,177,544.98**

NET AWARD to BFC..... ₱52,635,679.70

Finally, the imposable interest on the net monetary awards after the finality of this judgment is modified to conform to prevailing jurisprudence,[81] which allows the rate of only 6% *per annum* from the time the awards attain finality until full satisfaction thereof.[82] In addition, the principal amount due, plus the interest of 6% *per annum*, shall further earn interest of 6% *per annum* until full satisfaction.

WHEREFORE, the Court **PARTIALLY GRANTS** the petition for review on *certiorari* in **G.R. Nos. 187608-09**; **DENIES** the petition for review on *certiorari* in **G.R. Nos. 187552-53; AFFIRMS** the decision promulgated by the Court of Appeals on August 12, 2008 subject to the following **MODIFICATION**

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[81] *ACS Development & Property Managers, Inc. v. Montaire Realty and Development Corporation*, G.R. No. 195552, April 18, 2016; *S.C. Megaworld Construction and Development Corporation v. Parada*, G.R. No. 183804, September 11, 2013, 705 SCRA 584, 609.

[82] *Id*.

to the effect that Shangri-La Properties, Inc. shall pay to BF Corporation the net amount of ₱52,635,679.70, plus legal interest of 6% *per annum* reckoned from July 31, 2007, the date of the Arbitral Tribunal's decision, until this decision becomes final and executory; and, thereafter, the principal amount due, plus the interest of 6% *per annum*, shall likewise earn interest of 6% *per annum* until full satisfaction.

Each party shall bear its own costs of suit.

SO ORDERED.

Peralta, Perlas-Bernabe, Gesmundo, Hernando, Carandang, Lazaro-Javier, Inting, and *Zalameda, JJ.*, concur.

Leonen and *Reyes, A. Jr., JJ.*, see separate concurring opinions.

Carpio and *Caguioa, JJ.*, no part.

Reyes, J. Jr., J., on leave.

SEPARATE CONCURRING OPINION

LEONEN, *J.*:

I concur in the result.

Nonetheless, I maintain that arbitral awards issued by the Construction Industry Arbitration Commission are final and inappealable, except on questions of law.[1] As a general rule, they cannot be appealed on questions of fact.

This Court should be restrained in its review and prescribe more restraint on the Court of Appeals in reviewing appeals from such awards. These appeals should be reviewed with the purpose of the Construction Industry Arbitration Commission and the law creating it, Executive Order No. 1008 or the Construction Industry Arbitration Law, in mind.

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[1] Executive Order No. 1008 (1985), Sec. 19, Construction Industry Arbitration Law.

In *Department of Public Works and Highways v. CMC/ Monark/Pacific/Hi-Tri Joint Venture*,[2] this Court laid out the legal framework within which the Construction Industry Arbitration Commission operates:

> CIAC was created under Executive Order No. 1008, or the "Construction Industry Arbitration Law." It was originally under the administrative supervision of the Philippine Domestic Construction Board which, in turn, was an implementing agency of the Construction Industry Authority of the Philippines. The Construction Industry Authority of the Philippines is presently a part of the Department of Trade and Industry as an attached agency.
>
> CIAC's specific purpose is the "early and expeditious settlement of disputes" in the construction industry as a recognition of the industry's role in "the furtherance of national development goals."
>
> Section 4 of the Construction Industry Arbitration Law lays out CIAC's jurisdiction:
>
> > Section 4. Jurisdiction. — The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.
> >
> > The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual time and delays; maintenance and defects; payment, default of employer or contractor and changes in contract cost.
> >
> > Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines.

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[2] 818 Phil. 27 (2017) [Per *J.* Leonen, Third Division].

Republic Act No. 9184 or the "Government Procurement Reform Act," recognized CIAC's competence in arbitrating over contractual disputes within the construction industry:

> Section 59. Arbitration. — Any and all disputes arising from the implementation of a contract covered by this Act shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 876, otherwise known as the "Arbitration Law". *Provided, however, That, disputes that are within the competence of the Construction Industry Arbitration Commission to resolve shall be referred thereto*. The process of arbitration shall be incorporated as a provision in the contract that will be executed pursuant to the provisions of this Act: Provided, That by mutual agreement, the parties may agree in writing to resort to alternative modes of dispute resolution. . . .

CIAC's authority to arbitrate construction disputes was then incorporated into the general statutory framework on alternative dispute resolution through Republic Act No. 9285, the "Alternative Dispute Resolution Act of 2004." Section 34 of Republic Act No. 9285 specifically referred to the Construction Industry Arbitration Law, while Section 35 confirmed CIAC's jurisdiction:

> CHAPTER 6 — ARBITRATION OF CONSTRUCTION DISPUTES
>
> Section 34. Arbitration of Construction Disputes: Governing Law. — The arbitration of construction disputes shall be governed by Executive Order No. 1008, otherwise known as the Constitution Industry Arbitration Law.
>
> Section 35. Coverage of the Law. — Construction disputes which fall within the original and exclusive jurisdiction of the Construction Industry Arbitration Commission (the "Commission") shall include those between or among parties to, or who are otherwise bound by, an arbitration agreement, directly or by reference whether such parties are project owner, contractor, subcontractor, quantity surveyor, bondsman or issuer of an insurance policy in a construction project.
>
> The Commission shall continue to exercise original and exclusive jurisdiction over construction disputes although the

arbitration is "commercial" pursuant to Section 21 of this Act.[3] (Citations omitted)

Executive Order No. 1008 is clear that arbitral awards are final and inappealable, except on questions of law.[4]

Nonetheless, this Court has held that the Court of Appeals may review questions of fact in appeals from the Construction Industry Arbitration Commission's arbitral awards.

Explaining this reasoning in *Metro Construction, Inc. v. Chatham Properties, Inc.*,[5] this Court invoked Supreme Court Circular No. 1-91 in relation to Republic Act No. 7902, amending Batas Pambansa Blg. 129:

On 27 February 1991, this Court issued Circular No. 1-91, which prescribes the Rules Governing Appeals to the Court of Appeals from Final Orders or Decisions of the Court of Tax Appeals and Quasi-Judicial Agencies. Pertinent portions thereof read as follows:

1. *Scope[.]* — These rules shall apply to appeals from final orders or decisions of the Court of Tax Appeals. They shall also apply to appeals from final orders or decisions of any quasi-judicial agency from which an appeal is now allowed by statute to the Court of Appeals or the Supreme Court. Among these agencies are the Securities and Exchange Commission, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Secretary of Agrarian Reform and Special Agrarian Courts under R.A. No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission and Philippine Atomic Energy Commission.

2. *Cases not Covered*. — These rules shall not apply to decisions and interlocutory orders of the National Labor

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[3] *Id.* at 51-53.

[4] Executive Order No. 1008 (1985), Sec. 19.

[5] 418 Phil. 176 (2001) [Per *C.J.* Davide, Jr., First Division].

Relations Commission or the Secretary of Labor and Employment under the Labor Code of the Philippines, the Central Board of Assessment Appeals, and other quasi-judicial agencies from which no appeal to the courts is prescribed or allowed by statute.

3. *Who may appeal and where to appeal*. — The appeal of a party affected by a final order, decision, or judgment of the Court of Tax Appeals or a quasi-judicial agency shall be taken to the Court of Appeals within the period and in the manner herein provided, whether the appeal involves questions of fact or of law or mixed questions of fact and law. From final judgments or decisions of the Court of Appeals, the aggrieved party may appeal by *certiorari* to the Supreme Court as provided in Rule 45 of the Rules of Court.

Subsequently, on 23 February 1995, R.A. No. 7902 was enacted. It expanded the jurisdiction of the Court of Appeals and amended for that purpose Section 9 of B.P. Blg. 129, otherwise known as the Judiciary Reorganization Act of 1980.

Section 9(3) thereof reads:

SECTION 9. *Jurisdiction*. — The Court of Appeals shall exercise:

. . . . . .

(3) Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions, including the Securities and Exchange Commission, the Social Security Commission, the Employees Compensation Commission and the Civil Service Commission, 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.

The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling

within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings. . . .

Then this Court issued Administrative Circular No. 1-95, which revised Circular No. 1-91. Relevant portions of the former reads as follows:

1. *Scope*. — These rules shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of any quasi-judicial agency from which an appeal is authorized to be taken to the Court of Appeals or the Supreme Court. Among these agencies are the Securities and Exchange Commission, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunication Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, and Construction Industry Arbitration Commission.

SECTION 2. *Cases Not Covered*. — These rules shall not apply to judgments or final orders issued under the Labor Code of the Philippines, Central Board of Assessment Appeals, and by other quasi-judicial agencies from which no appeal to the court is prescribed or allowed.

SECTION 3. *Where to Appeal*. — An appeal under these rules may be taken to the Court of Appeals within the period and in the manner herein provided, whether the appeal involves questions of fact, of law, or mixed questions of fact and law.

Thereafter, this Court promulgated the 1997 Rules on Civil Procedure. Sections 1, 2 and 3 of Rule 43 thereof provides:

SECTION 1. *Scope*. — This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land

> Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law.
>
> SECTION 2. *Cases Not Covered*. — This Rule shall not apply to judgments or final orders issued under the Labor Code of the Philippines.
>
> SECTION 3. *Where to Appeal*. — An appeal under this Rule may be taken to the Court of Appeals within the period and in the manner herein provided, whether the appeal involves question of fact, of law, or mixed questions of fact and law.

Through Circular No. 1-91, the Supreme Court intended to establish a uniform procedure for the review of the final orders or decisions of the Court of Tax Appeals and other quasi-judicial agencies provided that an appeal therefrom is then allowed under existing statutes to either the Court of Appeals or the Supreme Court. The Circular designated the Court of Appeals as the reviewing body to resolve questions of fact or of law or mixed questions of fact and law.

It is clear that Circular No. 1-91 covers the CIAC. In the first place, it is a quasi-judicial agency. A quasi-judicial agency or body has been defined as an organ of government other than a court and other than a legislature, which affects the rights of private parties through either adjudication or rule-making. The very definition of an administrative agency includes its being vested with quasi-judicial powers. The ever increasing variety of powers and functions given to administrative agencies recognizes the need for the active intervention of administrative agencies in matters calling for technical knowledge and speed in countless controversies which cannot possibly be handled by regular courts. The CIAC's primary function is that of a quasi-judicial agency, which is to adjudicate claims and/or determine rights in accordance with procedures set forth in E.O. No. 1008.

In the second place, the language of Section 1 of Circular No. 1-91 emphasizes the obvious inclusion of the CIAC even if it is not named

in the enumeration of quasi-judicial agencies. The introductory words "[a]mong these agencies are" preceding the enumeration of specific quasi-judicial agencies only highlight the fact that the list is not exclusive or conclusive. Further, the overture stresses and acknowledges the existence of other quasi-judicial agencies not included in the enumeration but should be deemed included. In addition, the CIAC is obviously excluded in the catalogue of cases not covered by the Circular and mentioned in Section 2 thereof for the reason that at the time the Circular took effect, E.O. No. 1008 allows appeals to the Supreme Court on questions of law.

In sum, under Circular No. 1-91, appeals from the arbitral awards of the CIAC may be brought to the Court of Appeals, and not to the Supreme Court alone. The grounds for the appeal are likewise broadened to include appeals on questions of facts and appeals involving mixed questions of fact and law.

The jurisdiction of the Court of Appeals over appeals from final orders or decisions of the CIAC is further fortified by the amendments to B.P. Blg. 129, as introduced by R.A. No. 7902. With the amendments, the Court of Appeals is vested with 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 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."

While, again, the CIAC was not specifically named in said provision, its inclusion therein is irrefutable. The CIAC was not expressly covered in the exclusion. Further, it is a quasi-judicial agency or instrumentality.[6] (Citations omitted)

This Court reasoned that although the Construction Industry Arbitration Commission was not specifically named among the quasi-judicial agencies covered by Section 9 of Batas Pambansa Blg. 129, as amended by Republic Act No. 7902, it was also not specifically excluded from its coverage. Thus, when Republic Act No. 7902 amended Batas Pambansa Blg. 129 so that appeals

[6] *Id*. at 199-204.

from "awards, judgments, final orders or resolutions of any quasi-judicial agency from which an appeal is authorized" could be filed before the Court of Appeals, this meant that the Construction Industry Arbitration Commission's arbitral awards could be appealed before the Court of Appeals on questions of fact.

The ruling in *Metro Construction* was reiterated in *Summa Kumagai, Inc.-Kumagai Gumi Company, Ltd. Joint Venture v. Romago, Inc.*,[7] where this Court stated:

> As to the judgment of the Court of Appeals increasing the award in favor of Romago, the Court affirms the same. SK-KG questions the power and authority of the Court of Appeals to reverse the ruling of CIAC, on the ground that CIAC is specialized body with the special knowledge, experience and capability to hear and determine promptly disputes on technical matters or essentially factual matters. However, although CIAC findings are entitled to respect, the Court of Appeals is not always bound thereby. The Court of Appeals necessarily has the power to affirm, modify or reverse the findings of fact of the CIAC if the evidence so warrants; otherwise, appeals would be inutile. In *Metro Construction, Inc. v. Chatham Properties, Inc.*, we held that review of the CIAC award may involve either questions of fact or of law, or of both fact and law.[8] (Citation omitted)

This reasoning has often been cited to support the position that the Court of Appeals may review questions of fact in appeals from the Construction Industry Arbitration Commission's arbitral awards.

I disagree with the correctness of the reasoning repeatedly used to arrive at this conclusion. This Court should return to a more restrictive review of these arbitral awards, as is what the law provides. To reiterate, Section 19 of Executive Order No. 1008 provides:

> SECTION 19. Finality of Awards. — The arbitral award shall be binding upon the parties. It shall be final and inappealable except on questions of law which shall be appealable to the Supreme Court.

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[7] 602 Phil. 945 (2009) [Per *J.* Chico-Nazario, Third Division].

[8] *Id.* at 960.

The Construction Industry Arbitration Law has not been amended to expand the grounds for appealing the Construction Industry Arbitration Commission's arbitral awards.

In *Metro Construction,* however, this Court effectively held that Section 19 of Executive Order No. 1008, which states that the Construction Industry Arbitration Commission's arbitral awards are "inappealable except on questions of law"[9] has been amended by law to expand the range of questions that may be raised on appeal. This was based, in part, on the reasoning that exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders, or awards of quasi-judicial agencies was conferred on the Court of Appeals, which has been vested with the power to perform acts necessary to resolve factual issues raised on appeal.

In support of this interpretation of Batas Pambansa Blg. 129, this Court reasoned that the proscription against fact-based appeals makes sense only if the law proscribes direct appeals to this Court, and that there is no basis to maintain the same limitation when the awards are appealable to the Court of Appeals.

I agree that Republic Act No. 7902 has the effect of amending Section 19 of Executive Order No. 1008, placing appeals from the Construction Industry Arbitration Commission under the jurisdiction of the Court of Appeals. However, I disagree with the extent of how such amendment and legislative intent have been interpreted.

Republic Act No. 7902 amends Section 19 of the Construction Industry Arbitration Law only by making arbitral awards appealable to the Court of Appeals instead of this Court. In other words, I submit that, as amended by Batas Pambansa Blg. 129, Section 19 effectively reads:

> SECTION 19. Finality of Awards. — The arbitral award shall be binding upon the parties. It shall be final and inappealable except on questions of law which shall be appealable to the ***Court of Appeals***. (Emphasis supplied)

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[9] Executive Order No. 1008 (1985), Sec. 19.

The law did not expand the grounds for appealing the Construction Industry Arbitration Commission's arbitral awards to include questions of fact. It did not amend the provision that these arbitral awards are, as a general rule, final, inappealable, and binding upon the parties. It only vested the Court of Appeals, instead of this Court, with the jurisdiction to review questions of law on appeal.

Thus, although the Rules of Court includes decisions of the Construction Industry Arbitration Commission among those that may be appealed via petitions for review under Rule 43, this inclusion should pertain to a standardization of procedure and not an expansion of the grounds available for appealing arbitral awards. As pointed out in *CE Construction Corporation v. Araneta Center, Inc*:[10]

> Rule 43 of the 1997 Rules of Civil Procedure a standardizes appeals from quasi-judicial agencies. Rule 43, Section 1 explicitly lists CIAC as among the quasi judicial agencies covered by Rule 43. Section 3 indicates that appeals through Petitions for Review under Rule 43 are to "be taken to the Court of Appeals . . . whether the appeal involves questions of fact, of law, or mixed questions of fact and law."
>
> This is not to say that factual findings of CIAC arbitral tribunals may now be assailed before the Court of Appeals. Section 3's statement "whether the appeal involves questions of fact, of law, or mixed questions of fact and law" merely recognizes variances in the disparate modes of appeal that Rule 43 standardizes: there were those that enabled questions of fact; there were those that enabled questions of law, and there were those that enabled mixed questions fact and law. Rule 43 emphasizes that though there may have been variances, all appeals under its scope are to be brought before the Court of Appeals. However, in keeping with the Construction Industry Arbitration Law, any appeal from CIAC arbitral tribunals must remain limited to questions of law.[11] (Citations omitted)

Absent a statutory provision expanding the grounds for appealing the Construction Industry Arbitration Commission's

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[10] 816 Phil. 221 (2017) [Per *J.* Leonen, Second Division].

[11] *Id.* at 258-259.

arbitral awards, this Court is duty bound to follow the clear text of the Construction Industry Arbitration Law: such arbitral awards are final and inappealable, except on questions of law.

This deference to the Construction Industry Arbitration Commission's factual determinations is grounded on several reasons.

First, this deference is aligned with the State's policy of ensuring expeditious resolution of disputes in the construction industry.

The Construction Industry Arbitration Law was passed in recognition of the vital role that the construction industry plays in the nation's growth and achievement of its goals. Its whereas clause notes, among others, that the construction industry employs a large segment of the country's labor force, and is a top contributor to its gross national product. Because of this special role, Executive Order No. 1008 recognizes that problems connected with the construction industry may hinder the nation's growth. Thus, it declared that the State's policy is "to encourage the early and expeditious settlement of disputes in the Philippine construction industry."[12]

Despite best efforts to reduce the time needed to resolve cases, the court system generally does not promote the early and expeditious settlement of disputes. Having a decision reviewed first by the Court of Appeals, and then by this Court, can already add more than a year to the settlement of any dispute. This process takes even longer when the issues to be resolved on review include questions of fact.

The compelling reasons for encouraging the referral of disputes to arbitration and other forms of alternative dispute resolution was restated in Republic Act No. 9285, or the Alternative Dispute Resolution Act of 2004. Its Section 2 provides:

SECTION 2. *Declaration of Policy*. — It is hereby declared the policy of the State to actively promote party autonomy in the resolution of disputes or the freedom of the parties to make their own arrangements to resolve their disputes. Towards this end, the State

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[12] Executive Order No. 1008 (1985), Sec. 2.

shall encourage and actively promote the use of Alternative Dispute Resolution (ADR) as an important means to achieve speedy and impartial justice and declog court dockets. As such, the State shall provide means for the use of ADR as an efficient tool and an alternative procedure for the resolution of appropriate cases. Likewise, the State shall enlist active private sector participation in the settlement of disputes through ADR. This Act shall be without prejudice to the adoption by the Supreme Court of any ADR system, such as mediation, conciliation, arbitration, or any combination thereof as a means of achieving speedy and efficient means of resolving cases pending before all courts in the Philippines which shall be governed by such rules as the Supreme Court may approve from the time to time.

As recognized in Republic Act No. 9285, referring disputes to alternative modes of dispute resolution such as arbitration is a means of achieving speedy and impartial justice and unclogging court dockets. Moreover, it is in recognition of the policy of promoting party autonomy in making appropriate arrangements to resolve disputes, where letting them do so is not contrary to public policy.

Second, the Construction Industry Arbitration Commission was specifically created and designed to resolve these disputes. In *CE Construction Corporation*, this Court stressed that the majority of the arbitrators accredited by the Construction Industry Arbitration Commission are experts from construction-related professions or engaged in related fields. Apart from them, there are also technical experts who aid in dispute resolution. This Court stated:

> Consistent with CIAC's technical expertise is the primacy and deference accorded to its decisions. There is only a very narrow room for assailing its rulings.
>
> Section 19 of the Construction Industry Arbitration Law establishes that CIAC arbitral awards may not be assailed, except on pure questions of law:
>
> > Section 19. Finality of Awards. — The arbitral award shall be binding upon the parties. It shall be final and inappealable except on questions of law which shall be appealable to the Supreme Court.

. . . . . .

Hi-Precision Steel Center, Inc. v. Lim Kim Steel Builders, Inc. explained the wisdom underlying the limitation of appeals to pure questions of law:

> Section 19 makes it crystal clear that questions of fact cannot be raised in proceedings before the Supreme Court — which is not a trier of facts — in respect of an arbitral award rendered under the aegis of the CIAC. Consideration of the animating purpose of voluntary arbitration in general, and arbitration under the aegis of the CIAC in particular, requires us to apply rigorously the above principle embodied in Section 19 that the Arbitral Tribunal's findings of fact shall be final and unappealable.
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> Voluntary arbitration involves the reference of a dispute to an impartial body, the members of which are chosen by the parties themselves, which parties freely consent in advance to abide by the arbitral award issued after proceedings where both parties had the opportunity to be heard. The basic objective is to provide a speedy and inexpensive method of settling disputes by allowing the parties to avoid the formalities, delay, expense and aggravation which commonly accompany ordinary litigation, especially litigation which goes through the entire hierarchy of courts. [The Construction Industry Arbitration Law] created an arbitration facility to which the construction industry in the Philippines can have recourse. The [Construction Industry Arbitration Law] was enacted to encourage the early and expeditious settlement of disputes in the construction industry, a public policy the implementation of which is necessary and important for the realization of national development goals.

Consistent with this restrictive approach, this Court is duty-bound to be extremely watchful and to ensure that an appeal does not become an ingenious means for undermining the integrity of arbitration or for conveniently setting aside the conclusions arbitral processes make. An appeal is not an artifice for the parties to undermine the process they voluntarily elected to engage in. To prevent this Court from being a party to such perversion, this Court's primordial inclination must be to uphold the factual findings of arbitral tribunals:

> Aware of the objective of voluntary arbitration in the labor field, in the construction industry, and in any other area for

> that matter, the Court will not assist one or the other or even both parties in any effort to subvert or defeat that objective for their private purposes. *The Court will not review the factual findings of an arbitral tribunal upon the artful allegation that such body had "misapprehended the facts" and will not pass upon issues which are, at bottom, issues of fact, no matter how cleverly disguised they might be as "legal questions."* The parties here had recourse to arbitration and chose the arbitrators themselves; they must have had confidence in such arbitrators. *The Court will not, therefore, permit the parties to relitigate before it the issues of facts previously presented and argued before the Arbitral Tribunal*, save only where a very clear showing is made that, in reaching its factual conclusions, the Arbitral Tribunal committed an error so egregious and hurtful to one party as to constitute a grave abuse of discretion resulting in lack or loss of jurisdiction. Prototypical examples would be factual conclusions of the Tribunal which resulted in deprivation of one or the other party of a fair opportunity to present its position before the Arbitral Tribunal, and an award obtained through fraud or the corruption of arbitrators. *Any other, more relaxed, rule would result in setting at naught the basic objective of a voluntary arbitration and would reduce arbitration to a largely inutile institution*.[13] (Emphasis in the original, citations omitted)

Emphasizing the restrictive nature of any review of the Construction Industry Arbitration Commission's decisions, this Court stated that even the exceptional grounds available for revisiting the factual findings of lower courts or tribunals in petitions for review are not available on appeal from such decisions:

> Thus, even as exceptions to the highly restrictive nature of appeals may be contemplated, these exceptions are only on the narrowest of grounds. Factual findings of CIAC arbitral tribunals may be revisited not merely because arbitral tribunals may have erred, not even on the already exceptional grounds traditionally available in Rule 45 Petitions. Rather, factual findings may be reviewed only in cases where

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[13] *CE Construction Corporation v. Araneta Center, Inc.*, 816 Phil. 221, 257-260 (2017) [Per *J.* Leonen, Second Division].

the CIAC arbitral tribunals conducted their affairs in a haphazard, immodest manner that the most basic integrity of the arbitral process was imperiled. In *Spouses David v. Construction Industry and Arbitration Commission*:

> We reiterate the rule that factual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal, except when the petitioner proves affirmatively that: (1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or of any of them; (3) the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.[14] (Citations omitted)

In modifying the arbitral award in this case, however, the Court of Appeals engaged in a comprehensive review without duly considering the context of the Construction Industry Arbitration Law.

All of the Court of Appeals' modifications entailed an evaluation of the evidence presented by the parties, based on questions of fact.

As a general rule, if the issues raised are purely factual, the courts should defer to the Construction Industry Arbitration's findings. In *CE Construction Corporation*:

> In appraising the CIAC Arbitral Tribunal's awards, it is not the province of the present Rule 45 Petition to supplant this Court's wisdom for the inherent technical competence of and the insights drawn by the CIAC Arbitral Tribunal throughout the protracted proceedings before it. The CIAC Arbitral Tribunal perused each of

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[14] *Id*. at 260-262.

the parties' voluminous pieces of evidence. Its members personally heard, observed, tested, and propounded questions to each of the witnesses. Having been constituted solely and precisely for the purpose of resolving the dispute between ACI and CECON for 19 months, the CIAC Arbitral Tribunal devoted itself to no other task than resolving that controversy. This Court has the benefit neither of the CIAC Arbitral Tribunal's technical competence nor of its irreplaceable experience of hearing the case, scrutinizing every piece of evidence, and probing the witnesses.

True, the inhibition that impels this Court admits of exceptions enabling it to embark on its own factual inquiry. Yet, none of these exceptions, which are all anchored on considerations of the CIAC Arbitral Tribunal's integrity and not merely on mistake, doubt, or conflict, is availing.

This Court finds no basis for casting aspersions on the integrity of the CIAC Arbitral Tribunal. There does not appear to have been an undisclosed disqualification for any of its three (3) members or proof of any prejudicial misdemeanor. There is nothing to sustain an allegation that the parties' voluntarily selected arbitrators were corrupt, fraudulent, manifestly partial, or otherwise abusive. From all indications, it appears that the CIAC Arbitral Tribunal extended every possible opportunity for each of the parties to not only plead their case but also to arrive at a mutually beneficial settlement. This Court has ruled, precisely, that the arbitrators acted in keeping with their lawful competencies. This enabled them to come up with an otherwise definite and reliable award on the controversy before it.

Inventive, hair-splitting recitals of the supposed imperfections in the CIAC Arbitral Tribunal's execution of its tasks will not compel this Court to supplant itself as a fact-finding, technical expert.

ACI's refutations on each of the specific items claimed by CECON and its counterclaims of sums call for the point by point appraisal of work, progress, defects and rectifications, and delays and their causes. They are, in truth, invitations for this Court to engage in its own audit of works and corresponding financial consequences. In the alternative, its refutations insist on the application of rates, schedules, and other stipulations in the same tender documents, copies of which ACI never adduced and the efficacy of which this Court has previously discussed to be, at best, doubtful.

This Court now rectifies the error made by the Court of Appeals. By this rectification, this Court does not open the doors to an inordinate and overzealous display of this Court's authority as a final arbiter.

Without a showing of any of the exceptional circumstances justifying factual review, it is neither this Court's business nor in this Court's competence to pontificate on technical matters. These include things such as fluctuations in prices of materials from 2002 to 2004, the architectural and engineering consequences — with their ensuing financial effects — of shifting from reinforced concrete to structural steel, the feasibility of rectification works for defective installations and fixtures, the viability of a given schedule of rates as against another, the audit of changes for every schematic drawing as revised by construction drawings, the proper mechanism for examining discolored and mismatched tiles, the minutiae of installing G.I. sheets and sealing cracks with epoxy sealants, or even unpaid sums for garbage collection.

The CIAC Arbitral Tribunal acted in keeping with the law, its competence, and the adduced evidence; thus, this Court upholds and reinstates the CIAC Arbitral Tribunal's monetary awards.[15] (Citation omitted)

In this case, the Court of Appeals' modification of the Construction Industry Arbitration Commission's arbitral award was based on neither a legal question nor any exceptional ground requiring it to look into factual issues.

Nonetheless, since both parties, Shangri-La Properties, Inc. and BF Corporation, raised factual issues in their respective appeals, I concur with this Court that they are estopped from questioning the Court of Appeals' authority to review factual issues in this case.

ACCORDINGLY, I concur with the *ponencia*.

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[15] *Id*. at 283-284.

CONCURRING OPINION

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

I concur with the exhaustive and lucidly written *ponencia* of Chief Justice Lucas P. Bersamin. I write solely to express my views regarding the scope of review of Construction Industry Arbitration Commission (CIAC) decisions by the Court of Appeals (CA) and the Supreme Court.

The *ponencia* upholds the comprehensive scope of review by the CA in appeals from decisions of the CIAC, which includes not only the power to resolve questions of law but also the power to inquire into and resolve questions of fact. On the other hand, the Separate Opinion, utilizing a diversified approach to appeals under Rule 43, takes the view that appeals from CIAC decisions can only cover questions of law.

While I commend the scholarly analysis undertaken in the Separate Opinion, I am convinced that the conclusions therein are somewhat blunted by the omission to apply Republic Act (R.A.) No. 7902, entitled *"An Act Expanding the Jurisdiction of the Court of Appeals, Amending for the purpose Section Nine of Batas Pambansa (BP) Blg. 129, as amended, Known as the Judiciary Reorganization Act of 1980,"* in its entirety. In this regard, I write this opinion to address the same.

Executive Order (E.O.) No. 1008,[1] otherwise known as the *Construction Industry Arbitration Law*, was enacted on February 4, 1985. It vests upon the CIAC original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines. Initially, pursuant to Section 19[2] of the said law, decisions of

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[1] Creating an Arbitration Machinery in the Construction Industry of the Philippines.

[2] Sec. 19. Finality of Awards. The arbitral award shall be binding upon the parties. It shall be final and inappealable except on questions of law which shall be appealable to the Supreme Court.

the CIAC were *unappealable*, except to the Supreme Court on *pure questions of law*.[3]

Thereafter, R.A. No. 7902 was enacted amending BP 129 and clearly vesting the CA with exclusive jurisdiction over appeals from decisions of quasi-judicial agencies. Said law specifically granted the CA with the power to resolve *factual issues* raised in cases falling within its appellate jurisdiction, *viz*.:

SECTION 1. Section 9 of Batas Pambansa Blg. 129, as amended, known as the Judiciary Reorganization Act of 1980, is hereby further amended to read as follows:

"Sec. 9. Jurisdiction. — The Court of Appeals shall exercise:

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"(3) **Exclusive appellate jurisdiction** over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and **quasi-judicial agencies**, instrumentalities, boards or commissions, including the Securities and Exchange Commission, the Social Security Commission, the Employees Compensation Commission and the Civil Service Commission, 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.

"The Court of Appeals shall have the **power** to try cases and conduct hearings, receive evidence and perform any and all acts necessary **to resolve factual issues raised in cases falling within its** original and **appellate jurisdiction**, including the power to grant and conduct new trials or further proceedings. Trials or hearings in the Court of Appeals must be continuous and must be completed within three (3) months, unless extended by the Chief Justice." (Emphasis supplied)

In fact, the subsequent promulgation of the 1997 Rules of Court specifically named the CIAC as one of the quasi-judicial agencies whose decisions or awards may be elevated to the

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[3] *F.F. Cruz & Co., Inc., v. HR Construction Corp*., 684 Phil. 330, 344 (2012).

CA for review *via* Rule 43.[4] Moreover, Sections 1 and 3 of said Rule categorically provides that this mode of review may include questions of law, questions of fact, or even a mixture of both, *viz.*:

> SECTION 1. *Scope*. — This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and **from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are** the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Invention Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, **Construction Industry Arbitration Commission**, and voluntary arbitrators authorized by law. (Emphasis supplied)
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> x x x x x x x x x
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> SECTION 3. *Where to Appeal*. — An appeal under this Rule may be taken to the **Court of Appeals** within the period and in the manner herein provided, **whether the appeal involves questions of fact, of law, or mixed questions of fact and law**. (Emphasis supplied)

Metro Construction Inc. v. Chatham Properties, Inc.,[5] later on reiterated this expanded scope of review of the CA and discussed how the manner of appeal from decisions and awards of CIAC was effectively modified through the introduction of changes in the relevant laws, *viz.*:

> In sum, under Circular No. 1-91, appeals from the arbitral awards of the CIAC may be brought to the Court of Appeals, and not to the Supreme Court alone. **The grounds for the appeal are likewise**

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[4] *Metro Construction, Inc. v. Chatham Properties, Inc.*, 418 Phil. 176, 204-205 (2001).

[5] *Id.*

broadened to include appeals on questions of facts and appeals involving mixed questions of fact and law.

The jurisdiction of the Court of Appeals over appeals from final orders or decisions of the CIAC is further fortified by the amendments to B.P. Blg. 129, as introduced by R.A. No. 7902. With the amendments, the Court of Appeals is vested with 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 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."

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There is no controversy on the principle that the right to appeal is statutory. **However, the mode or manner by which this right may be exercised is a question of procedure which may be altered and modified provided that vested rights are not impaired.** The Supreme Court is bestowed by the Constitution with the power and prerogative, *inter alia*, to promulgate rules concerning pleadings, practice and procedure in all courts, as well as to review rules of procedure of special courts and quasi-judicial bodies, which, however, shall remain in force until disapproved by the Supreme Court. This power is constitutionally enshrined to enhance the independence of the Supreme Court.

The right to appeal from judgments, awards, or final orders of the CIAC is granted in E.O. No. 1008. The procedure for the exercise or application of this right was initially outlined in E.O. No. 1008. While R.A. No. 7902 and circulars subsequently issued by the Supreme Court and its amendments to the 1997 Rules on Procedure effectively modified the manner by which the right to appeal ought to be exercised, nothing in these changes impaired vested rights. **The new rules do not take away the right to appeal allowed in E.O. No. 1008. They only prescribe a new procedure to enforce the right. No litigant has a vested right in a particular remedy, which may be changed by substitution without impairing vested rights; hence, he can have none in rules of procedure which relate to remedy**.[6] (Citations omitted and emphasis supplied)

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[6] *Id*. at 203-206.

These changes and its effects were succinctly explained by the Court in the recent case of *J Plus Asia Dev't. Corp. v. Utility Assurance Corp*.[7] as follows:

> Executive Order (EO) No. 1008 vests upon the CIAC original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. By express provision of Section 19 thereof, the arbitral award of the CIAC is final and unappealable, except, on questions of law, which are appealable to the Supreme Court. **With the amendments introduced by R.A. No. 7902 and promulgation of the 1997 Rules of Civil Procedure, as amended, the CIAC was included in the enumeration of quasi-judicial agencies whose decisions or awards may be appealed to the CA in a petition for review under Rule 43. Such review of the CIAC award may involve either questions of fact, of law, or of fact and law**.[8] (Emphasis supplied)

Instead of traversing the statutory mandate of R.A. No. 7902, the Separate Opinion takes an approach which effectively emasculates Rule 43, *viz.*:

> Rule 43 of the 1997 Rules of Civil Procedure standardizes appeals from quasi-judicial agencies. Rule 43, Section 1 explicitly lists CIAC as among the quasi-judicial agencies covered by Rule 43. Section 3 indicates that appeals through Petitions for Review under Rule 43 are to "be taken to the Court of Appeals .... Whether the appeal involves questions of fact, of law, or mixed questions of fact and law."
>
> This is not to say that factual findings of CIAC arbitral tribunals may now be assailed before the Court of Appeals. Section 3's statement "whether the appeal involves questions of fact, of law, or mixed questions of fact and law" merely recognizes variances in the disparate modes of appeal that Rule 43 standardizes: there were those that enabled questions of fact; there were those that enables questions of law, and there those that enabled mixed questions of fact and law. Rule 43 emphasizes that though there may have been variances,

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[7] 712 Phil. 587 (2013).

[8] *Id*. at 601.

all appeals under its scope are to be brought before the Court of Appeals. However, in keeping with the Construction Industry Arbitration Law any appeal from CIAC arbitral tribunals must remain limited to questions of law.[9]

The assertion that "*Section 3 of Rule 43 merely recognizes variances in the disparate modes of appeal that Rule 43 standardizes*" strikes me as an unrequited transmutation of the plain meaning of the phrase "*whether the appeal involves questions of fact, of law, or mixed questions of fact and law*," as it appears in Rule 43, Section 3. What has been up to now a straightforward statement on the possible grounds for appeal under Rule 43 has been transformed into "variances in the disparate modes of appeal" a conclusion that I find baseless and therefore, objectionable.

It is a basic rule of statutory construction that where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[10] A close reading of Rule 43 should clearly and plainly show that there is no word or phrase therein that would support the existence of "disparate modes of appeal." I submit that Rule 43 contemplates only one single mode of appeal, *i.e.*, an appeal by petition for review.

The Separate Opinion propounds a *diversified approach* to the scope of review of decisions of quasi-judicial agencies under Rule 43. It proposes that the enabling statute of each agency primarily determines which parts of their decisions may be reviewed on appeal: there are statutes that only enable review of factual questions; there are statutes that only enable review of questions of law; and there are statutes that enable review of mixed questions of fact and law. Under this approach, Rule 43 merely operates as a funnel into which all appeals from the decisions of the wide array of quasi-judicial agencies flow into, always subject to the prescription of the scope of review granted

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[9] Separate Opinion of Justice Leonen, pp. 14-15.

[10] *Phil. Amusement and Gaming Corp. (PAGCOR) v. Phil. Gaming Jurisdiction Inc. (PEJI), et al.*, 604 Phil. 547, 553 (2009).

by the agencies' enabling statutes. As applied to the CIAC, this means that, in keeping with the enabling statute of the CIAC (specifically, Section 19 of E.O. No. 1008), any appeal from the CIAC must remain limited to questions of law.

There are two faults in this approach. First, it overlooks R.A. No. 7902 and the *Metro Construction* ruling. It must be noted that R.A. No. 7902 is a substantive law which explicitly *expands the jurisdiction* of the CA and vests it with "the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its x x x appellate jurisdiction." As such, it modified Rule 43 and any such change made by R.A. No. 7902 must be read into Rule 43 as an integral part thereof. Indeed, the phrase in Section 19 of E.O. No. 1008 that an arbitral award shall be appealable to the Supreme Court on questions of law is incompatible with the provision in R.A. No. 7902 that the CA has the power to resolve factual issues raised in appeals from decisions of quasi-judicial agencies. In turn, *Metro Construction* explains that, although the right to appeal has not been taken away, the manner of exercising such a right had been effectively modified, *i.e.*, the appeal is no longer taken to the Supreme Court, but to the CA, and that the grounds for appeal are not limited to questions of law, but may also involve questions of fact and mixed questions of law and fact. Clearly, Rule 43 should not be read as a mere procedural conduit through which Section 19 of E.O. No. 1008 must flow. I submit that the correct view is that Rule 43 must be read together with R.A. No. 7902, which modified Section 19 of E.O. No. 1008, as held by this Court in the *Metro Construction* line of cases.

The plain meaning of Rule 43, as modified by R.A. No. 7902, cannot be explained away by mere invocation of distinctions between general and special laws. As mentioned earlier, R.A. No. 7902 is a jurisdictional statute which provides for an expanded definition of the CA's judicial power. Furthermore, the rule *generalia specialibus non derogant* is subject to a very important qualification. The rule does not apply if the legislature's intent

to repeal or alter is manifest.[11] It is axiomatic that a later law prevails over a prior statute,[12] more so when the later law expressly provides for the repeal or amendment of prior inconsistent statutes and rules, as Section 2[13] of R.A. No. 7902 does.

The second fault in the diversified approach to appeals under Rule 43 is that it places too much emphasis on expediency. The function of an appeal is to review errors of judgment committed by the court or tribunal with jurisdiction over the subject matter and the parties; or any such error committed by the court or tribunal in the exercise of jurisdiction amounting to nothing more than an error of judgment.[14] While the CIAC was indeed formed to expedite the resolution of construction industry disputes, it must not be forgotten that the overriding concern in the resolution of cases is the dispensation of justice. Thus, I submit that the CA must likewise be allowed to fully exercise its vested statutory powers to review cases appealed to it; and this power includes the discretion to review factual questions. Such review serves not to undermine, but rather, to enhance, the integrity of arbitration, by ensuring an opportunity for an impartial review of the factual findings of the arbitral tribunal. Justice contemplates not only the speedy disposition of cases but also the accurate and fair adjudication thereof.

Given the foregoing, I agree with the *ponencia's* ruling that given the prevailing laws and jurisprudence surrounding the scope of review of the CA over decisions and awards rendered by the CIAC, to confine the former's review exclusively to legal issues would only create confusion and irreconcilable conflict.[15]

As for the Supreme Court's jurisdiction over appeals from decisions of the CIAC, suffice it to say that while the CA was

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[11] *Valera v. Tuason, Jr.*, 80 Phil. 823, 827-828 (1948).

[12] *Daud v. Collector of Customs of the Port of Zamboanga City*, 160-A Phil. 798, 802-803 (1975).

[13] Section 2. All provisions of laws and rules inconsistent with the provisions of this Act are hereby repealed or amended accordingly.

[14] *Silverio v. CA*, 225 Phil. 459, 473 (1986).

[15] *Ponencia*, p. 27.

vested by R.A. No. 7902 with near-plenary power to consider factual questions in appeals brought under Rule 43, the Supreme Court does not have this power. As made abundantly clear in the *ponencia* and in the case of *Metro Rail Transit Development Corporation v. Gammon Philippines, Inc.*,[16] the Supreme Court's power to review decisions of the CA in CIAC cases appealed *via* Rule 43 is limited to questions of law. The rule however is not absolute. Jurisprudence has recognized exceptions to the rule in which the Supreme Court in a petition for review on *certiorari* may delve into the factual findings of the arbitral tribunal.[17] In the case at bar, the conflicting factual findings of the CIAC and the CA necessitated an inquiry into the factual issues in order to arrive at an optimal resolution of the case.

I conclude by reiterating that there is no need to take a restrictive or liberal construction of E.O. No. 1008 and R.A. No. 7902. All that is needed is to apply the plain meaning of said statutes and read them together. In the first place, those laws do not suffer from any ambiguity that would require interpretation, strict or liberal.

IN VIEW OF THE FOREGOING, I concur in the *ponencia*.

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[16] G.R. No. 200401, January 17, 2018, 851 SCRA 378.

[17] *Werr Corp. International v. Highlands Prime, Inc.*, 805 Phil. 415 (2017) lays down the following exceptions: (1) the award was procured by corruption, fraud, or other undue means; (2) there was evident partiality or corruption of the arbitrators or any of them; (3) the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under Section 10 of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final, and definite award upon the subject matter submitted to them was not made; (6) when there is a very clear showing of grave abuse of discretion resulting in lack or loss of jurisdiction as when a party was deprived of a fair opportunity to present its position before the arbitral tribunal or when an award is obtained through fraud or the corruption of arbitrators; (7) when the findings of the CA are contrary to those of the CIAC; or (8) when a party is deprived of administrative due process. See also *Metro Rail Transit Development Corp. v. Gammon Philippines, Inc.*, *id.* at 403-407, citing *CE Construction Corporation v. Araneta Center, Inc.*, 816 Phil. 221, 252 (2017).

EN BANC

[G.R. No. 203754. October 15, 2019]

FILM DEVELOPMENT COUNCIL OF THE PHILIPPINES, *petitioner, vs.* **COLON HERITAGE REALTY CORPORATION, Operator of Oriente Group of Theaters, represented by ISIDORO A. CANIZARES,** *respondent.*

[G.R. No. 204418. October 15, 2019]

FILM DEVELOPMENT COUNCIL OF THE PHILIPPINES, *petitioner, vs.* **CITY OF CEBU and SM PRIME HOLDINGS, INC.,** *respondents.*

SYLLABUS

1. POLITICAL LAW; STATUTORY CONSTRUCTION; LAW DECLARED AS UNCONSTITUTIONAL AND THE DOCTRINE OF OPERATIVE FACT; IN APPLYING THE DOCTRINE, COURTS OUGHT TO EXAMINE WITH PARTICULARITY THE EFFECTS OF THE ALREADY ACCOMPLISHED ACTS ARISING FROM THE UNCONSTITUTIONAL STATUTE, AND DETERMINE, ON THE BASIS OF EQUITY AND FAIR PLAY, IF SUCH EFFECTS SHOULD BE ALLOWED TO STAND. — The operative fact doctrine recognizes the existence and validity of a legal provision prior to its being declared as unconstitutional and hence, legitimizes otherwise invalid acts done pursuant thereto because of considerations of practicality and fairness. In this regard, certain acts done pursuant to a legal provision which was just recently declared as unconstitutional by the Court cannot be anymore undone because not only would it be highly impractical to do so, but more so, unfair to those who have relied on the said legal provision prior to the time it was struck down. However, in the fairly recent case of *Mandanas v. Ochoa, Jr.*, citing *Araullo v. Aquino III*, the Court stated that the doctrine of operative fact "applies only to cases where extraordinary circumstances exist, and only when the extraordinary circumstances have met the stringent conditions that will permit its application." The doctrine of operative fact "nullifies the effects of an unconstitutional law or an executive act by recognizing that the existence of a statute prior to a

determination of unconstitutionality is an operative fact and may have consequences that cannot always be ignored. It applies when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law." x x x Therefore, **in applying the doctrine of operative fact, courts ought to examine with particularity the effects of the already accomplished acts arising from the unconstitutional statute, and determine, on the basis of equity and fair play, if such effects should be allowed to stand.** It should not operate to give any unwarranted advantage to parties, but merely seeks to protect those who, in good faith, relied on the invalid law.

2. ID.; ID.; ID.; ID.; CASE AT BAR. — In the Main Decision, the Court, in applying the doctrine of operative fact, held that FDCP and the producers of graded films need not return the amounts already received from LGUs because they merely complied with the provisions of RA 9167 which were in effect at that time. Clearly, this disposition squarely hews with the practicality and fairness thrust of the operative fact doctrine because, as observed by the Court, to command the return of the amounts received pursuant to Sections 13 and 14 of RA 9167 which were then existing "would certainly impose a heavy, and possibly crippling, financial burden upon them who merely, and presumably in good faith, complied with the legislative fiat subject of this case." Accordingly, contrary to Cebu City's position, the Court's holding on this score must stand. Similarly, the same rationale must apply to the Court's directive ordering cinema proprietors and operators to remit to FDCP any amusement taxes they have retained prior to Sections 13 and 14 of RA 9167 being declared unconstitutional. x x x The operative fact doctrine equally applies to the **non-remittance** by said proprietors since the law produced legal effects prior to the declaration of the nullity of [Sections] 13 and 14 [of RA 9167] in these instant petitions."

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Tequillo Suson Manuales & Associates for respondent in G.R. No. 203754.

Josefina Wan-Remollo for respondent SM Prime Holding, Inc.

Cebu City Legal Office for respondent City of Cebu.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

For resolution are: *(a)* the motion for reconsideration[1] filed by petitioner Film Development Council of the Philippines (FDCP); *(b)* the motion for partial reconsideration[2] filed by respondent Colon Heritage Realty Corporation (CHRC); and *(c)* the motion for partial reconsideration[3] filed by respondent City of Cebu (Cebu City), all relative to the Court's Decision[4] dated June 16, 2015 (Main Decision). In the Main Decision, the Court affirmed with modification the Judgment[5] of the Regional Trial Court (RTC) of Cebu City, Branch 5 in Civil Case No. CEB-35601 dated September 25, 2012, and the Decision[6] of the RTC of Cebu City, Branch 14 in Civil Case No. CEB-35529 dated October 24, 2012, and thereby, declared Sections 13 and 14 of Republic Act No. (RA) 9167[7] invalid and unconstitutional.

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[1] Dated August 5, 2015. *Rollo* (G.R. No. 203754), pp. 287-299.

[2] Captioned as "Manifestation (with a Motion for Partial Reconsideration or Motion to Remand Trial Proceedings to determine Respondent's Full Payment and Compliance with the Decision)" dated August 24, 2015; *id*. at 300-306.

[3] Captioned as "Motion for Partial Reconsideration (To the Decision of this Honorable Court promulgated on June 16, 2015) for Respondent City of Cebu" dated September 16, 2015; *id*. at 314-334.

[4] *Id*. at 255-281. See *FDCP v. CHRC*, 760 Phil. 519 (2015).

[5] *Rollo* (G.R. No. 203754), pp. 48-53. Penned by Judge Douglas A.C. Marigomen.

[6] *Rollo* (G.R. No. 204418), pp. 58-70. Penned by Presiding Judge Raphael B. Yrastorza, Sr.

[7] Entitled "AN ACT CREATING THE FILM DEVELOPMENT COUNCIL OF THE PHILIPPINES, DEFINING ITS POWERS AND FUNCTIONS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

The Facts

Sometime in 1993, respondent Cebu City passed City Ordinance No. LXIX, otherwise known as the "Revised Omnibus Tax Ordinance of the City of Cebu."[8] Sections 42[9] and 43,[10] Chapter XI of the Ordinance required proprietors, lessees or operators of theaters, cinemas, concert halls, circuses, boxing stadia, and other places of amusement to pay amusement tax equivalent to thirty percent (30%) of the gross receipts of the admission fees to the Office of the City Treasurer of Cebu City.

On June 7, 2002, Congress passed RA 9167, creating petitioner FDCP. Sections 13[11] and 14[12] thereof provide that **the amusement**

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[8] See *rollo* (G.R. No. 204418), p. 21.

[9] Section 42. Rate of Tax. — There shall be paid to the Office of the City Treasurer by the proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses, boxing stadia and other places of amusement, an amusement tax at the rate of thirty percent (30%) of the gross receipts from admission fees.

To note, the rate was later reduced to ten percent (10%) pursuant to an amendatory ordinance. (See *rollo* [G.R. No. 203754], p. 257.)

[10] Section 43. Manner of Payment. — In the case of theaters or cinemas, the tax shall first be deducted and withheld by their proprietors, lessees, or operators and paid to the city treasurer before the gross receipts are divided between said proprietor, lessees, operators, and the distributors of the cinematographic films. (See *id*.)

[11] Section 13. *Privileges of Graded Films.* — Films which have obtained an "A" or "B" grading from the Council pursuant to Sections 11 and 12 of this Act shall be entitled to the following privileges:

a. Amusement tax reward. — A grade "A" or "B" film shall entitle its producer to an incentive equivalent to the amusement tax imposed and collected on the graded films by cities and municipalities in Metro Manila and other highly urbanized and independent component cities in the Philippines pursuant to Sections 140 and 151 of Republic Act No. 7160 at the following rates:
   1. For grade "A" films — 100% of the amusement tax collected on such films; and
   2. For grade "B" films — 65% of the amusement tax collected on such films. The remaining thirty-five (35%) shall accrue to the funds of the Council.

[12] Section 14. *Amusement Tax Deduction and Remittances.* — All revenue from the amusement tax on the graded film which may otherwise accrue to the

tax on certain graded films which would otherwise accrue to the cities and municipalities in Metropolitan Manila and highly urbanized and independent component cities in the Philippines during the period the graded film is exhibited, **should be deducted and withheld by the proprietors, operators or lessees of theaters or cinemas and remitted to the FDCP**, which shall reward the same to the producers of the graded films.

According to FDCP, since the effectivity of RA 9167, all cities and municipalities in Metro Manila, as well as highly urbanized and independent component cities, have complied with the mandate of the said law, with the sole exception of Cebu City[13] which adamantly insisted on its entitlement to the amusement taxes and hence, prompted cinema proprietors and operators within the city to remit the same to it.[14] Consequently, FDCP sent demand letters for unpaid amusement taxes with surcharge to these proprietors and operators, including respondents CHRC and SM Prime Holdings, Inc. (SMPHI).[15]

As a result of the demand letters, Cebu City filed a Petition for Declaratory Relief[16] before the RTC of Cebu City, Branch 14,

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cities and municipalities in Metropolitan Manila and highly urbanized and independent component cities in the Philippines pursuant to Section 140 of Republic Act No. 7160 during the period the graded film is exhibited, shall be deducted and withheld by the proprietors, operators or lessees of theaters or cinemas and remitted within thirty (30) days from the termination of the exhibition to the Council which shall reward the corresponding amusement tax to the producers of the graded film within fifteen (15) days from receipt thereof.

Proprietors, operators and lessees of theaters or cinemas who fail to remit the amusement tax proceeds within the prescribed period shall be liable to a surcharge equivalent to five percent (5%) of the amount due for each month of delinquency which shall be paid to the Council.

[13] See *rollo* (G.R. No. 203754), pp. 8 and 258.

[14] See *id*. at 258-259.

[15] See *id*. at 258. In the proceedings before the trial court, SMPHI entered as Intervenor in Civil Case No. CEB-33529 (see *rollo* [G.R. No. 204418] p. 58).

[16] Under Rule 63 With Application for a Writ of Preliminary Injunction dated May 18, 2009. *Rollo* (G.R. No. 204418), pp. 71-88. It appears from

docketed as Civil Case No. CEB-35529, and respondent CHRC filed a similar petition[17] before the RTC of Cebu City, Branch 5, docketed as Civil Case No. CEB-35601. Both petitions sought to declare Sections 13 and 14 of RA 9167 invalid and unconstitutional. On August 13, 2010, SMPHI moved to intervene[18] in Civil Case No. CEB-35529.

On September 25, 2012, the RTC of Cebu City, Branch 5 issued a Judgment[19] in Civil Case No. CEB-35601 which declared Sections 13 and 14 of RA 9167 as invalid and unconstitutional.[20] On October 24, 2012, the RTC of Cebu City, Branch 14 rendered a similar Decision[21] in Civil Case No. CEB-35529 also ruling against the constitutionality of Sections 13 and 14 of RA 9167.[22]

Aggrieved, FDCP filed two (2) separate petitions for review on *certiorari*[23] before the Court, presenting the singular issue as to whether or not the RTCs of Cebu City gravely erred in declaring Sections 13 and 14 of RA 9167 unconstitutional. The petitions were later consolidated in the Court's Resolution[24] dated March 4, 2013.

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the records that the said petition was erroneously docketed as "Civil Case No. CEB-85529" (see *id.* at 71).

[17] For Declaratory Relief, Prohibition, & Permanent Injunction with Prayer for a Temporary Restraining Order and a Writ of Preliminary Injunction dated June 2, 2009. *Rollo* (G.R. No. 203754), pp. 54-69.

[18] See Motion for Leave to File and Admit Attached Comment-In-Intervention dated August 13, 2010; *rollo* (G.R. No. 204418), pp. 153-160.

[19] *Rollo* (G.R. No. 203754), pp. 48-53.

[20] *Id.* at 52.

[21] *Rollo* (G.R. No. 204418), pp. 58-70.

[22] *Id.* at 69.

[23] *Rollo* (G.R. No. 203754), pp. 2-45; and *rollo* (G.R. No. 204418), pp. 13-55.

[24] *Id.* at 335-336. See also Court's Resolution dated April 11, 2013; *rollo* (G.R. No. 203754), pp. 210-211.

The Proceedings and Issues Before the Court

On June 16, 2015, the Court rendered the Main Decision[25] in this case, affirming the assailed RTC Decisions and thereby, declaring Sections 13 and 14 of RA 9167 invalid and unconstitutional. It ruled that these provisions violated the principle of local fiscal autonomy because they authorized FDCP to earmark, and hence, effectively confiscate the amusement taxes which should have otherwise inured to the benefit of the local government units (LGUs).[26] In this relation, the Court further found that the grant of amusement tax reward does not partake the nature of a tax exemption since the burden and incidence of the tax still fall on the cinema proprietors.[27]

However, as a matter of equity and fair play, the Court applied the doctrine of operative fact and rendered, among others, the following dispositions which are subject of the present motions:

Disposition 1: FDCP and the producers of graded films need not return the amounts already received from LGUs because they merely complied with the provisions of RA 9167 which were in effect at that time;[28]

Disposition 2: Any amounts retained by cinema proprietors and operators due to FDCP at that time should be remitted to the latter since Sections 13 and 14 of RA 9167 produced legal effects prior to their being declared unconstitutional;[29] in this regard, Cebu City was ordered to turn over to FDCP the amount of ₱76,836,807.08, which represented the amount that should have been remitted by SMPHI to FDCP at that time;[30] and

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[25] See *FDCP v. CHRC, supra* note 4.

[26] See *id*. at 541-548.

[27] See *id*. at 548-549.

[28] See *id*. at 552-555.

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

[30] See *id*. at 557.

Disposition 3: Cinema proprietors and operators within Cebu City should not be held liable for any surcharge since they did not know whether or not it was proper for them to remit the amusement taxes to either FDCP or Cebu City at that time.[31]

Dissatisfied, FDCP, CHRC, and Cebu City filed their respective motions for reconsideration[32] before the Court. The issues in the motions are summarized as follows:

(a) In reference to the Court's **Disposition 3 above, FDCP**, in its motion, seeks the imposition of surcharges to the delinquent taxpayers who failed to remit the proper taxes at the time Sections 13 and 14 of RA 9167 were not yet declared unconstitutional. In this accord, FDCP argues that in applying the operative fact doctrine, "all parts of the questioned provisions including the payment of surcharges should be given effect prior to [their] being declared unconstitutional."[33]

(b) For its part, **CHRC**, in reference to the Court's **Disposition 2 above**, admits, in its motion, that it did not "withhold" the remittance of amusement taxes on graded films to FDCP. However, it claims that notwithstanding the effectivity of Sections 13 and 14 of RA 9167 at that time, it had already "paid and remitted **all** due taxes to the right authority: the City of Cebu."[34] Hence, it should not remit any more taxes in favor of FDCP because to do so would amount to double taxation. In this regard, CHRC prays that it be declared relieved from any obligation to remit amusement taxes to FDCP. In the alternative, CHRC manifests that it is willing to go through a factual determination before the trial court to prove that it had indeed fully paid and fully remitted said taxes to Cebu City and as such, fully complied with its tax obligations under the law; hence, it asks the Court to remand the case for such purpose.[35]

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[31] See *id*. at 557-558.

[32] *Rollo* (G.R. No. 203754), pp. 287-299, 300-306, and 314-334.

[33] *Id*. at 290.

[34] *Id*. at 301; emphasis supplied.

[35] See *id*. at 302.

(c) And lastly, **Cebu City,** in reference to the Court's **Dispositions 1 and 2 above,** argues, in its motion, against the application of the operative fact doctrine in the present case. Accordingly, it claims that Sections 13 and 14 of RA 9167 should not have produced any legal effects in favor of FDCP because they have been declared unconstitutional and hence, null and void.[36] In any event, Cebu City posits that, assuming that the operative fact doctrine is applicable, it should not be asked to remit the ₱76,836,807.08 it received from SMPHI to FDCP as it would be violative of equity and fair play.[37] It reasons that it had already utilized the same for public services, and to order it to pay the same would involve disbursement of public funds which must be met with the proper procedural requirements.[38]

The Court's Ruling

At the center of all three (3) motions is the proper application of the doctrine of operative fact in relation to the Court's declaration of Sections 13 and 14 of RA 9167 as unconstitutional. In the Main Decision, the Court observed that:

> It is a well-settled rule that an unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is inoperative as if it has not been passed at all. Applying this principle, the logical conclusion would be to order the return of all the amounts remitted to FDCP and given to the producers of graded films, by all of the covered cities, which actually amounts to hundreds of millions, if not billions. In fact, just for Cebu City, the aggregate deficiency claimed by FDCP is ONE HUNDRED [FIFTY-NINE] MILLION THREE HUNDRED [SEVENTY-SEVEN] THOUSAND NINE HUNDRED EIGHTY-EIGHT PESOS AND [FIFTY-FOUR] CENTAVOS (₱159,377,988.54). Again, this amount represents the unpaid amounts to FDCP by eight cinema operators or proprietors in only one covered city.

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[36] See *id*. at 323-326.

[37] See *id*. at 326.

[38] See *id*. at 326-331.

An exception to the above rule, however, is the doctrine of operative fact, which applies as a matter of equity and fair play. This doctrine nullifies the effects of an unconstitutional law or an executive act by recognizing that the existence of a statute prior to a determination of unconstitutionality is an operative fact and may have consequences that cannot always be ignored. **It applies when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law**.[39] (Emphases supplied)

In *Commissioner of Internal Revenue v. San Roque Power Corporation*,[40] citing *Serrano de Agbayani v. Philippine National Bank*,[41] the Court had the opportunity to extensively discuss the operative fact doctrine, explaining the "realistic" consequences whenever an act of Congress is declared as unconstitutional by the proper court. Furthermore, the operative fact doctrine has been discussed within the context of fair play such that "[i]t would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to [its] adjudication [by the Court as unconstitutional],"[42] *viz.*:

The decision now on appeal reflects the orthodox view that an unconstitutional act, for that matter an executive order or a municipal ordinance likewise suffering from that infirmity, cannot be the source of any legal rights or duties. Nor can it justify any official act taken under it. Its repugnancy to the fundamental law once judicially declared results in its being to all intents and purposes a mere scrap of paper. As the new Civil Code puts it: "When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws of the Constitution." It is understandable why it should be so,

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[39] *FDCP v. CHRC, supra* note 4, at 552-553.

[40] 719 Phil. 137 (2013).

[41] 148 Phil. 443 (1971).

[42] *Commissioner of Internal Revenue (CIR) v. San Roque Power Corporation, supra* note 40, at 158, citing *Serrano de Agbayani v. Philippine National Bank, id.* at 448.

the Constitution being supreme and paramount. Any legislative or executive act contrary to its terms cannot survive.

Such a view has support in logic and possesses the merit of simplicity. **It may not however be sufficiently realistic. It does not admit of doubt that prior to the declaration of nullity such challenged legislative or executive act must have been in force and had to be complied with.** This is so as until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect. Parties may have acted under it and may have changed their positions. What could be more fitting than that in a subsequent litigation regard be had to what has been done while such legislative or executive act was in operation and presumed to be valid in all respects. **It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with.** This is merely to reflect awareness that precisely because the judiciary is the governmental organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. **It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication.**

In the language of an American Supreme Court decision: "**The actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored.** The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, with respect to particular relations, individual and corporate, and particular conduct, private and official." x x x.

x x x x x x x x x[43] (Emphases supplied)

The operative fact doctrine recognizes the existence and validity of a legal provision prior to its being declared as unconstitutional and hence, legitimizes otherwise invalid acts done pursuant thereto because of considerations of practicality and fairness. In this regard, certain acts done pursuant to a legal provision which was just

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[43] *CIR v. San Roque Power Corporation, id.* at 157-158, citing *Serrano de Agbayani v. Philippine National Bank, id.* at 447-448.

recently declared as unconstitutional by the Court cannot be anymore undone because not only would it be highly impractical to do so, but more so, unfair to those who have relied on the said legal provision prior to the time it was struck down.

However, in the fairly recent case of *Mandanas v. Ochoa, Jr.*,[44] citing *Araullo v. Aquino III*,[45] the Court stated that the doctrine of operative fact "applies only to cases where extraordinary circumstances exist, and only when the extraordinary circumstances have met the stringent conditions that will permit its application."[46] The doctrine of operative fact "nullifies the effects of an unconstitutional law or an executive act by recognizing that the existence of a statute prior to a determination of unconstitutionality is an operative fact and may have consequences that cannot always be ignored. It applies when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law."[47] To reiterate the Court's pronouncement, "[i]t would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication."[48]

Therefore, **in applying the doctrine of operative fact, courts ought to examine with particularity the effects of the already accomplished acts arising from the unconstitutional statute, and determine, on the basis of equity and fair play, if such effects should be allowed to stand**.[49] It should not operate to give any unwarranted advantage to parties, but merely seeks to protect those who, in good faith, relied on the invalid law.

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[44] See G.R. Nos. 199802 and 208488, July 3, 2018.

[45] 737 Phil. 457 (2014).

[46] See *Mandanas v. Ochoa, Jr.*, *supra* note 44, citing *Araullo v. Aquino III*, *id*. at 621.

[47] See *Mandanas v. Ochoa, Jr.*, *id*.

[48] *CIR v. San Roque Power Corporation, supra* note 40, at 158, citing *Serrano de Agbayani v. Philippine National Bank*, *supra* note 41, at 448.

[49] See *The Municipality of Malabang v. Benito*, 137 Phil. 358, (1969), citing *Chicot County Drainage District v. Baxter State Bank*, 308 U.S. 371, 374 (1940).

In the Main Decision, the Court, in applying the doctrine of operative fact, held that FDCP and the producers of graded films need not return the amounts already received from LGUs because they merely complied with the provisions of RA 9167 which were in effect at that time[50] (Disposition 1 above). Clearly, this disposition squarely hews with the practicality and fairness thrust of the operative fact doctrine because, as observed by the Court, to command the return of the amounts received pursuant to Sections 13 and 14 of RA 9167 which were then existing "would certainly impose a heavy, and possibly crippling, financial burden upon them who merely, and presumably in good faith, complied with the legislative fiat subject of this case."[51] Accordingly, contrary to Cebu City's position,[52] the Court's holding on this score must stand.

Similarly, the same rationale must apply to the Court's directive ordering cinema proprietors and operators to remit to FDCP any amusement taxes they have retained prior to Sections 13 and 14 of RA 9167 being declared unconstitutional. As enunciated in the Main Decision, prior to the striking down of the said provisions, FDCP has a right to receive the amusement taxes withheld by the cinema proprietors and operators during such time.[53] This right to receive the amusement taxes accrued the moment the taxes were deemed payable under the provisions of the Omnibus Tax Ordinance of Cebu City. Taxes, once due, must be paid without delay to the taxing authority; as the Court has repeatedly stated, "taxes are the lifeblood of Government and their **prompt** and **certain** availability is an **[imperious] need**."[54] This flows from the truism that **"[w]ithout taxes, the government would be paralyzed for lack of the motive power to activate and operate it.** Hence, despite the natural reluctance to surrender part of one's hard-earned income to

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[50] See *FDCP v. CHRC, supra* note 4, at 555-556.

[51] *Id.* at 555.

[52] See motion for partial reconsideration of Cebu City; *rollo* (G.R. No. 203754), pp. 323-331.

[53] *FDCP v. CHRC, supra* note 4, at 555.

[54] *CIR v. Pineda,* 128 Phil. 146, 150 (1967); emphases supplied.

the taxing authorities, every person who is able to must contribute his share in the running of the government."[55] Consequently, the prompt payment of taxes to the then recognized rightful authority, which in this case is FDCP, cannot be left to the whims of taxpayers. To rule otherwise would be to acquiesce to the norm allowing taxpayers to reject payment of taxes under the supposition that the law imposing the same is illegal or unconstitutional. This would unduly hamper government operations. As the Court held in the Main Decision, **"[o]beisance to the rule of law must always be protected and preserved at all times and the unjustified refusal of said proprietors cannot be tolerated.** The operative fact doctrine equally applies to the **non-remittance** by said proprietors since the law produced legal effects prior to the declaration of the nullity of [Sections] 13 and 14 [of RA 9167] in these instant petitions."[56]

Accordingly, Cebu City's motion seeking the non-application of the operative fact doctrine in favor of FDCP to retain the subject amusement taxes it had withheld, as well as to collect payments accruing to it **during the covered period within which Sections 13 and 14 of RA 9167 had yet to be declared unconstitutional, *i.e.*, from the effectivity of RA 9167 up until the finality of the Main Decision,**[57] is denied. In this regard, the Court's directive (Disposition 2 above) to Cebu City to turn over to FDCP the amount of ₱76,836,807.08, which represented the amount that should have been remitted by SMPHI to FDCP at that time, remains. To be sure, the operative fact doctrine cannot be used to give any unwarranted advantage to parties, but merely seeks to protect those who, in good faith, relied on the invalid law. Consequently, Cebu City cannot be allowed to retain the amusement taxes it received during the period when Sections 13 and 14 of RA 9167 were operative. The Court cannot condone Cebu City's apparent disregard for what was, at that time, a valid legislative mandate, regardless

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[55] *CIR v. Algue, Inc.*, 241 Phil. 829, 836 (1988); emphasis supplied.

[56] *FDCP v. CHRC, supra* note 4, at 555; emphases supplied.

[57] See *rollo* (G.R. No. 203754), pp. 323-326.

of the fact that its position on the unconstitutionality of said provisions is ultimately correct. Respect for a presumably valid tax provision prior to its being declared unconstitutional must be observed; otherwise, not only would unscrupulous taxpayers be emboldened to undercut the ability of the State to timely collect taxes needed for important public services based on theoretical suppositions anent their legal status, it would likewise run afoul of the principle of separation of powers which accords laws enacted by Congress the presumption of constitutionality up until they are declared otherwise by the Court.

However, in relation to CHRC's motion, the Court clarifies that cinema proprietors and operators who had already remitted the withheld amusement taxes to LGUs (such as Cebu City) for the covered period, should no longer have to pay the same amount to FDCP, **provided that they are able to prove the fact of due payment.** As such, they need not make another remittance for the same tax liability to FDCP. This must necessarily so since the obligation under the law, *i.e.*, the Local Government Code, and the corresponding provision in Cebu City's Ordinance No. LXIX, is singular: the payment of amusement taxes for the covered period. Otherwise, to have these cinema proprietors and operators once more pay FDCP the same amount of taxes they had paid to the LGUs would, as CHRC points out, clearly amount to double taxation.[58]

Accordingly, the Court grants CHRC's motion insofar as it seeks the remand of the case to the trial court, with the participation of Cebu City, in order to determine the fact of payment of amusement taxes to the latter during the covered period within which Sections 13 and 14 of RA 9167 were yet to be declared unconstitutional. Should it be determined that it did indeed pay the correct taxes to Cebu City, the said LGU must remit to FDCP these amusement taxes accruing to the latter during the covered period. On the other hand, should CHRC fail to prove payment, any deficiency must be paid by it to FDCP, without prejudice to any valid defenses, if any.

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[58] See *id*. at 303.

And finally, in response to FDCP's motion, the Court's holding regarding the unconstitutionality of Sections 13 and 14 of RA 9167, as well as the non-payment of surcharges, remains. On the constitutionality issue, FDCP's arguments in its motion are a mere rehash of its position in the main and hence, cannot be sustained. Meanwhile, anent the payment of surcharges, it must be borne in mind that surcharges are generally paid when the taxpayer is in bad faith.[59] This situation, because of the confusion as regards the proper payee of taxes, does not obtain in this case. Accordingly, the motion of FDCP is denied for these reasons.

WHEREFORE, the motion for reconsideration dated August 5, 2015 of petitioner Film Development Council of the Philippines and the motion for partial reconsideration dated September 16, 2015 of respondent City of Cebu are **DENIED with FINALITY** for lack of merit.

On the other hand, the Manifestation (with a Motion for Partial Reconsideration or Motion to Remand Trial Proceedings to determine Respondent's Full Payment and Compliance with the Decision) dated August 24, 2015 of respondent Colon Heritage Realty Corporation (CHRC) is **PARTLY GRANTED**. Accordingly, Civil Case No. CEB-35601 is hereby **REMANDED** to the Regional Trial Court of Cebu City, Branch 5 to determine whether the amusement taxes for the covered period have been paid by CHRC in accordance with this Resolution.

SO ORDERED.

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

Reyes, J. Jr., J., on leave.

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[59] It is settled that surcharges, in the context of tax laws, is in the nature of a penalty which may be mitigated or dispensed with by the taxpayer's "good faith and honest belief that [it] is not subject to tax xxx." See *CIR v. St. Luke's Medical Center, Inc.*, 695 Phil. 867, 895 (2012). See also *Quimpo v. Mendoza*, 194 Phil. 66 (1981); *Imus Electric Co., Inc. v. Court of Tax Appeals*, 125 Phil. 1024 (1967); and *Gutierrez v. Court of Tax Appeals*, 101 Phil. 713 (1957).

EN BANC

[G.R. No. 211559. October 15, 2019]

ERIC F. ACOSTA and NATHANIEL G. DELA PAZ, *petitioners, vs.* **HON. PAQUITO N. OCHOA, in his capacity as Executive Secretary, HON. MANUEL A. ROXAS III, in his capacity as Secretary of the Interior and Local Government, POLICE DIRECTOR GENERAL ALAN LM. PURISIMA, in his capacity as Director General, Philippine National Police, POLICE CHIEF SUPERINTENDENT MELITO M. MABILIN, in his capacity as Director, Civil Security Group, Philippine National Police, and POLICE CHIEF SUPERINTENDENT LOUIE T. OPPUS, in his capacity as Chief, Firearms and Explosives Office, Philippine National Police,** *respondents.*

[G.R. No. 211567. October 15, 2019]

PROGUN (PEACEFUL RESPONSBILE OWNERS OF GUNS), INC., *petitioner, vs.* **THE PHILIPPINE NATIONAL POLICE,** *respondent.*

[G.R. No. 212570. October 15, 2019]

GUNS AND AMMO DEALERS ASSOCIATION OF THE PHILIPPINES, INC., *petitioner, vs.* **THE PHILIPPINE NATIONAL POLICE, PNP FIREARMS AND EXPLOSIVES OFFICE, and PNP CIVIL SECURITY GROUP,** *respondents.*

[G.R. No. 215634. October 15, 2019]

PROGUN (PEACEFUL RESPONSIBLE OWNERS OF GUNS), INC., *petitioner, vs.* **THE PHILIPPINE NATIONAL POLICE,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; ACTUAL CASE OR CONTROVERSY REQUIREMENT; THERE IS AN ACTUAL CASE OR CONTROVERSY IF IT INVOLVES A CONFLICT OF LEGAL RIGHTS, AN ASSERTION OF OPPOSITE LEGAL CLAIMS SUSCEPTIBLE OF JUDICIAL RESOLUTION; THE ISSUE PRESENTED SHOULD BE DEFINITE AND CONCRETE, TOUCHING ON THE LEGAL RELATIONS OF PARTIES HAVING ADVERSE LEGAL INTEREST; A PETITION WHICH RAISES NO ACTUAL FACTS IS DISMISSIBLE FOR FAILURE TO PRESENT AN ACTUAL CASE OR CONTROVERSY.— Acosta and Dela Paz, petitioners in G.R. No. 211559, did not allege actual facts in their Petition. As such, they failed to bring an actual case or controversy before this Court. Article VIII. Section 1 of the Constitution requires an actual case or controversy for this Court's exercise of its power of judicial review x x x. There is an actual case or controversy if it involves "a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution[.]" The issue presented should be "definite and concrete, touching on the legal relations of parties having adverse legal interests." Such is necessary for this Court to avoid giving advisory opinions, using its limited resources to resolve hypothetical cases or conjectural issues instead of properly devoting time to the more pressing and important cases for its resolution. Actual facts, as opposed to hypothetical ones, must exist for there to be an actual case or controversy. x x x. Petitioners Acosta and Dela Paz assail the constitutionality of Republic Act No. 10591 because it allegedly violated their right to bear arms, their right to property, and even the right to presumption of innocence by disqualifying from holding a firearm license those who have committed a crime involving a firearm. However, they did not show that their firearm licenses were revoked because of any of the provisions of the law or its Implementing Rules and Regulations. Petitioners Acosta and Dela Paz also raise the issue of the omission of engineers from Section 7.3 of the Implementing Rules and Regulations as professionals who may apply for a permit to carry firearms outside of residence, contrary to Section 7 of Republic Act No. 10591. They also assail Section 7.9 of the Implementing Rules

and Regulations, which allegedly adversely affect members of a law enforcement agency such as the Armed Forces of the Philippines and the Philippine National Police. Yet, they made no allegation that they are engineers, or that when they applied for a permit to carry a firearm outside of residence, they were denied because of Section 7.3. Likewise, they did not allege that they are members of a law enforcement agency. Thus, petitioners Acosta and Dela Paz raised no actual facts in their Petition. Their Petition in G.R. No. 211559, therefore, is dismissible for their failure to present an actual case or controversy.

2. ID.; ID.; ID.; ID.; LEGAL STANDING REQUIREMENT; LEGAL STANDING IS THE RIGHT OF APPEARANCE IN A COURT OF JUSTICE ON A GIVEN QUESTION, WHICH ENSURES THAT THE PARTY BRINGING THE CASE HAS A "PERSONAL AND SUBSTANTIAL INTEREST IN ITS OUTCOME", NOT A "MERE EXPECTANCY OR A FUTURE, CONTINGENT, SUBORDINATE, OR CONSEQUENTIAL INTEREST," SUCH THAT HE/SHE HAS SUSTAINED, OR WILL SUSTAIN, DIRECT INJURY AS A RESULT OF ITS ENFORCEMENT; EXCEPTIONS TO THE RULE ON LEGAL STANDING.— Petitioners Acosta, Dela Paz, and PROGUN, however, have legal standing to file the present suit. An aspect of justiciability, legal standing is the "right of appearance in a court of justice on a given question." It ensures that the party bringing the case has a "personal and substantial interest in [its outcome] such that he [or she] has sustained, or will sustain, direct injury as a result of its enforcement[.]" What is essential is *direct injury*, as this guarantees a "personal stake in the outcome of the controversy" which, in turn, assures "that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions." The concept of legal standing is similar to the concept of "interest" in private suits: it refers to "a present substantial interest," not a "mere expectancy or a future, contingent, subordinate, or consequential interest." Thus, under the Rules of Court, actions must be prosecuted or defended in the name of the real party-in-interest. The exceptions to the rule on legal standing were summarized in *Funa v. Villar*. In that case, this Court enumerated four (4) types of "non-traditional suitors" who, though not having been directly injured by the assailed governmental act, were nonetheless allowed

to file the petition because they raised issues of critical significance: 1.) For *taxpayers*, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional; 2.) For *voters*, there must be a showing of obvious interest in the validity of the election law in question; 3.) For *concerned citizens*, there must be a showing that the issues raised are of transcendental importance which must be settled early; and 4.) For *legislators*, there must be a claim that the official action complained of infringes their prerogatives as legislators.

3. ID.; ID.; ID.; ID.; EXCEPTION TO THE DIRECT INJURY RULE; CONCEPT OF THIRD-PARTY STANDING; A LITIGANT MAY FILE A CASE ON BEHALF OF THIRD PARTIES WHEN: (1) 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; (2) THE LITIGANT MUST HAVE A CLOSE RELATION TO THE THIRD PARTY; AND (3) THERE MUST EXIST SOME HINDRANCE TO THE THIRD PARTY'S ABILITY TO PROTECT HIS OR HER OWN INTERESTS.— Through *White Light Corporation v. City of Manila*, the concept of third-party standing was introduced in our jurisdiction as another exception to the direct injury rule. Under this concept, a litigant may file a case on behalf of third parties when the following criteria concur: (1) "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"; (2) "the litigant must have a close relation to the third party"; and (3) "there must exist some hindrance to the third party's ability to protect his or her own interests."

4. ID.; ID.; ID.; ID.; CONCEPT OF THIRD-PARTY STANDING; ASSOCIATIONS MAY SUE ON BEHALF OF THEIR MEMBERS, BUT THE SAME MUST SUFFICIENTLY ESTABLISH WHO THEIR MEMBERS ARE, THAT THEIR MEMBERS AUTHORIZED THE ASSOCIATIONS TO SUE ON THEIR BEHALF, AND THAT THE MEMBERS WOULD BE DIRECTLY INJURED BY THE CHALLENGED GOVERNMENTAL ACTS; FACTORS TO CONSIDER. — Associations may likewise sue on behalf of their members, as they are but a "medium through which their] individual members

seek to make more effective the expression of their voices and the redress of their grievances." However, if they are to do so, associations "must sufficiently [establish] who their members [are], that their members authorized the associations to sue on their behalf, and that the members would be directly injured by the challenged governmental acts." This Court, in *The Provincial Bus Operators Association of the Philippines,* summarized the factors to be considered in granting standing to associations and corporations suing on behalf of its members: The liberality of this Court to grant standing for associations or corporations whose members are those who suffer direct and substantial injury depends on a few factors. In all these cases, there must be an actual controversy. Furthermore, there should also be a clear and convincing demonstration of special reasons why the truly injured parties may not be able to sue. Alternatively, there must be a similarly clear and convincing demonstration that the representation of the association is more efficient for the petitioners to bring. They must further show that it is more efficient for this Court to hear only one voice from the association. In other words, the association should show special reasons for bringing the action themselves rather than as a class suit, allowed when the subject matter of the controversy is one of common or general interest to many persons. In a class suit, a number of the members of the class are permitted to sue and to defend for the benefit of all the members so long as they are sufficiently numerous and representative of the class to which they belong. x x x. In addition to an actual controversy, special reasons to represent, and disincentives for the injured party to bring the suit themselves, there must be a showing of the transcendent nature of the right involved. Only constitutional rights shared by many and requiring a grounded level of urgency can be transcendent…. x x x.

5. ID.; ID.; ID.; ID.; INDIVIDUAL FIREARM LICENSE HOLDERS HAVE LEGAL STANDING TO QUESTION THE INSPECTION OF THEIR HOUSE FOR FIREARM REGISTRATION; THE PEACEFUL RESPONSIBLE OWNERS OF GUNS (PROGUN), INC. IS CLOTHED WITH LEGAL STANDING TO BRING ON BEHALF OF ITS INDIVIDUAL MEMBERS A SUIT TO QUESTION A POSSIBLE VIOLATION OF THEIR CONSTITUTIONAL RIGHT TO UNREASONABLE

SEARCHES; GUNS AND AMMO DEALERS AND PROGUN LACK LEGAL STANDING TO ASSAIL THE PHILIPPINE NATIONAL POLICE'S REFUSAL TO DECENTRALIZE ITS OFFICES AND ITS OVERREGULATION OF GUN-RELATED ESTABLISHMENTS.— x x x [A]costa and Dela Paz assail the omission of engineers from Section 7.3 of the Implementing Rules and Regulations; yet , they never alleged that they are engineers, the persons supposedly injured by Section 7.3 Neither did they allege that they were members of the Philippine National Police, the Armed Forces of the Philippines, or any law enforcement agency allegedly injured by Section 7.9 of the Implementing Rules. However, as individual firearms license holders, petitioners Acosta and Dela Paz are the ones who stand to suffer direct injury should the inspection of their house be required for firearm registration. As for the Petition in G.R. No. 211567, this Court finds petitioner PROGUN sufficiently clothed with legal standing to bring on behalf of its individual members a suit to question a possible violation of their constitutional right to unreasonable searches. The same cannot be said for petitioners Guns and Ammo Dealers and PROGUN in G.R. No. 215634. x x x [T]hey assail respondent Philippine National Police's refusal to decentralize its offices and its overregulation of gun-related establishments, as these acts supposedly harm their business interests. Yet, there is no showing of any hindrance to their members' ability to protect their own business interests. For these reasons, the Petitions in G.R. 212570 and G.R. No. 215634 are dismissible for lack of legal standing on the part of petitioners Guns and Ammo Dealers and PROGUN.

6. REMEDIAL LAW; COURTS; HIERARCHY OF COURTS DOCTRINE; RECOURSE MUST FIRST BE SOUGHT FROM LOWER COURTS SHARING CONCURRENT JURISDICTION WITH A HIGHER COURT; ACTIONS FOR *CERTIORARI,* PROHIBITION, AND *MANDAMUS* ASSAILING THE CONSTITUTIONALITY OF REPUBLIC ACT NO. 10591 AND THE 2013 IMPLEMENTING RULES AND REGULATIONS, SHOULD BE BROUGHT BEFORE A REGIONAL TRIAL COURT, NOT DIRECTLY BEFORE THE SUPREME COURT.— Petitioners directly sought recourse from this Court, in violation of the doctrine of hierarchy of courts. Under this doctrine, recourse must first be sought from lower courts sharing

concurrent jurisdiction with a higher court. This is "to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner." Continued this Court in *The Diocese of Bacolod v. Commission on Elections*: Trial courts do not only determine the facts from the evaluation of the evidence presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. x x x. Here, to assail the constitutionality of some of the provisions of Republic Act No. 10591 and their corresponding provisions in the 2013 Implementing Rules and Regulations, petitioners filed actions for *certiorari*, prohibition, and *mandamus*—actions that could have been brought before a regional trial court. In *Ynot v. Intermediate Appellate Court*, this Court interpreted the constitutional provision on its jurisdiction to "'review, revise, reverse, modify or affirm on appeal or *certiorari*, as the law or rules of court may provide,' final judgments and orders of lower courts in, among others, all cases involving the constitutionality of certain measures." This, according to this Court, "simply means that the resolution of such cases may be made in the first instance by these lower courts."

7. ID.; ID.; ID.; THE COURT SETS ASIDE THE RULE ON HIERARCHY OF COURTS AND PROCEEDS WITH THE JUDICIAL DETERMINATION OF CASES OF NATIONAL INTEREST AND OF SERIOUS IMPLICATIONS.— [T]his Court shall proceed to resolve the merits of the case as it has done in *Chavez v. Romulo*, a case likewise involving the right to bear arms. It stated: On the alleged breach of the doctrine of hierarchy of courts, suffice it to say that the doctrine is not an iron-clad dictum. In several instances where this Court was confronted with cases of national interest and of serious implications, it never hesitated to set aside the rule and proceed with the judicial determination of the cases. The case at bar is of similar import as it involves the citizens' right to bear arms.

8. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; TO VALIDLY EXERCISE THEIR QUASI-LEGISLATIVE POWERS, ADMINISTRATIVE AGENCIES MUST COMPLY WITH THE "COMPLETENESS TEST" WHICH REQUIRES THAT THE LAW TO BE IMPLEMENTED BE COMPLETE AND SHOULD SET FORTH THEREIN THE POLICY TO BE EXECUTED, CARRIED OUT OR

IMPLEMENTED BY THE DELEGATE, AND THE "SUFFICIENT STANDARD TEST" WHICH REQUIRES THAT THE LAW TO BE IMPLEMENTED MUST SPECIFY THE LIMITS OF THE DELEGATE'S AUTHORITY, ANNOUNCE THE LEGISLATIVE POLICY, AND IDENTIFY THE CONDITIONS UNDER WHICH IT IS TO BE IMPLEMENTED. — Under Republic Act No. 10591, the authority to issue firearms licenses and permits to carry them outside of residence remains with the Philippine National Police. Section 44 specifically authorized the Chief of the Philippine National Police to promulgate the necessary rules and regulations to effectively implement the law. x x x. Still, to validly exercise their quasi-legislative powers, administrative agencies must comply with two (2) tests: (1) the completeness test; and (2) the sufficient standard test. The completeness test requires that the law to be implemented be "complete [and should set forth] therein the policy to be executed, carried out or implemented by the delegate." On the other hand, the sufficient standard test requires that the law to be implemented contain "adequate guidelines ... to map out the boundaries of the delegate's authority[.]" "To be sufficient, the standard must specify the limits of the delegate's authority, announce the legislative policy[,] and identify the conditions under which it is to be implemented." Furthermore, the Administrative Code requires that administrative agencies file with the University of the Philippines Law Center the rules they adopt, which will then be effective 15 days after filing.

9. ID.; THE COMPREHENSIVE FIREARMS AND AMMUNITION REGULATION ACT (REPUBLIC ACT NO. 10591) AND THE 2013 IMPLEMENTING RULES AND REGULATIONS (IRR); THE 2013 IMPLEMENTING RULES AND REGULATIONS OF RA NO. 10591 IS NOT IN THE NATURE OF AN *EX POST FACTO* LAW; NO ONE BECAME AN INSTANT CRIMINAL UNDER THE LAW.— Petitioner PROGUN argues that the Implementing Rules and Regulations is an *ex post facto* law—a law that makes criminal an act done before its passage but innocent at the time of its commission — the enactment of which is prohibited in Article III, Section 22 of the Constitution. x x x. There is no such retroactive application mandated in the Implementing Rules and Regulations. On the contrary, firearm licenses to possess Class-A light weapons issued before the passage of Republic Act No. 10591 are still recognized both

under Republic Act No. 10591 and its Implementing Rules x x x. If the Implementing Rules and Regulations were indeed in the nature of an *ex post facto* law, then private individuals who possess Class-A light weapons under the old law must be expressly punished under the new law because the new law only allows them to own and possess small arms. Yet, as expressly provided in the law, existing license holders of Class-A light weapons may renew their licenses under the new law and Implementing Rules. As to petitioner PROGUN's claim that in 2014, the Philippine National Police "suddenly declared all existing firearms licenses as vacated" and required all to renew and re-apply for a new license under the new law under the pain of prosecution for illegal possession of firearms, this claim is unsubstantiated. No one became an "instant criminal" under the new law.

10. ID.; ID.; REPUBLIC ACT NO. 10591 SETS FORTH A SUFFICIENT STANDARD IN THE OWNERSHIP, POSSESSION AND DEALING IN FIREARMS; PROVISIONS IN THE IMPLEMENTING RULES AND REGULATIONS TO REGULATE THE ACTIVITIES OF GUN CLUBS, SPORTS SHOOTERS, RELOADERS, GUNSMITHING, COMPETITIONS, AND INDENTORS ARE NOT MORE RESTRICTIVE THAN THE LAW.— [P]etitioner PROGUN in G.R. No. 215634 argues that the Implementing Rules and Regulations has gone overboard and prescribed additional and more restrictive regulations for gun clubs, sports shooters, reloaders, gunsmithing, competitions, indentors, among others, "none of which is provided for by any reasonable standard" in Republic Act No. 10591. However, it did not demonstrate how these regulations were "more restrictive" as compared with the law. On the contrary, Republic Act No. 10591 sets forth a sufficient standard found in Section 2. It lays down the State policy to "maintain peace and order and protect the people against violence" by providing "a *comprehensive* law regulating the ownership, possession, carrying, manufacture, dealing in and importation of firearms, ammunition, or parts thereof[.]" As such, the Chief of the Philippine National Police incorporated provisions in the Implementing Rules and Regulations to regulate the activities of gun clubs, sports shooters, reloaders, gunsmithing, competitions, and indentors, which are related to the ownership, possession, and dealing in firearms.

11. ID.; ID.; FEES AND LICENSES CHARGED UNDER THE IMPLEMENTING RULES AND REGULATIONS ARE NOT UNREASONABLE.— Petitioner PROGUN likewise claims that the Implementing Rules and Regulations exacts numerous new fees and licenses such as sports shooters licenses, collectors licenses, license to purchase barrel and cylinder parts, among others, which are allegedly not required by law. To this, it can be said that Republic Act No. 10591 explicitly states that "reasonable licensing fees" may be provided in the Implementing Rules. Except for petitioner PROGUN's assertion that the fees charged are numerous, there is no showing how these fees imposed were unreasonable.

12. ID.; ID.; NO ADDITIONAL PENAL PROVISIONS RELATING TO FIREARMS USE IN THE IMPLEMENTING RULES AND REGULATIONS.— As to PROGUN's claim that penal provisions were added in the Implementing Rules, this is easily belied by a side-by-side comparison of the provisions of Republic Act No. 10591 and the Implementing Rules and Regulations x x x. When it comes to the penal provisions, the text of the Implementing Rules and Regulations is almost a carbon copy of the law from which it is based. If there is any discrepancy, it is in item (g), where the Implementing Rules omitted the acquisition or possession of ammunition for a Class-A light weapon as a punishable act. Still, contrary to PROGUN's claim, the Philippine National Police placed no additional penal provisions relating to firearms use in the Implementing Rules.

13. ID.; ID.; THE IMPLEMENTING RULES AND REGULATIONS WAS PROMULGATED AFTER THE CONDUCT OF PUBLIC CONSULTATIONS.— Petitioner PROGUN also argues that the Implementing Rules and Regulations was allegedly drafted without the required consultation with the concerned sectors of society. This issue, however, is a factual question not proper in the present Petitions. In any case, this Court is inclined to believe respondent Philippine National Police's assertion that the meetings on the drafting of the Implementing Rules were well-attended by groups of gun dealers, private security agencies, and groups of gunsmiths and gun repair and customizing shops. This was evidenced by the Attendance Sheets and Minutes of the Stakeholders Hearing and Consultation attached to respondent Philippine National Police's Comment.

The public hearing on August 15, 2013 was even attended by petitioner PROGUN, disproving its claim that no public consultations and hearings were conducted in the drafting of the Implementing Rules. The Implementing Rules was, therefore, promulgated after the conduct of public consultations, in compliance with Section 44 of Republic Act No. 10591.

14. ID.; ID.; THE BEARING OF ARMS IS NOT A CONSTITUTIONAL RIGHT, BUT A MERE STATUTORY PRIVILEGE, GRANTED AND HEAVILY REGULATED BY THE STATE; THUS, THERE COULD NOT HAVE BEEN A DEPRIVATION OF A PERSON'S RIGHT TO DUE PROCESS IN REQUIRING A LICENSE FOR THE POSSESSION OF FIREARMS.— Petitioners mainly assail the constitutionality of Republic Act No. 10591 and its Implementing Rules and Regulations on the ground that they violate their "right to bear arms." The history of our laws, however, reveals that we Filipinos have never had such constitutional right. The bearing of arms in our jurisdiction was, and still is, a mere statutory privilege, heavily regulated by the State. None of our Constitutions ever provided the right to bear arms. x x x. This Court interpreted this omission to mean that in the Philippines, "no private person [was] bound to keep arms." The bearing of arms was considered a mere option, and a citizen then desiring to obtain a firearm "must do so upon such terms as the Government sees fit to impose[.]" In 1908, this Court in *The Government of the Philippine Islands v. Amechazurra* stated: [N]o private person is bound to keep arms. Whether he does or not is entirely optional with himself, but if, for his own convenience or pleasure, he desires to possess arms, he must do so upon such terms as the Government sees fit to impose, for the right to keep and bear arms is not secured to him by law. The Govermnent can impose upon him such terms as it appear. If he is not satisfied with the terms imposed, he should decline to accept them, but, if for the purpose of securing possession of the arms he does agree to such conditions, he must fulfill them. At present, the bearing of arms remains a "mere statutory privilege, not a constitutional right." In the 2004 case of *Chavez*, decided during the effectivity of the present Constitution, this Court characterized the keeping and bearing of arms as a "mere statutory creation." From our first firearms law, Act No. 1780 (1907), to Act No. 2711 (1917), then Presidential

Decree No. 1866 (1983), and finally, under the current Republic Act No. 10591, any person desiring to keep and bear arms must obtain a license from the State to avail of the privilege. x x x. With the bearing of arms being a mere privilege granted by the State, there could not have been a deprivation of petitioners' right to due process in requiring a license for the possession of firearms. Article III, Section 1 of the Constitution is clear that only life, liberty, or property is protected by the due process clause.

15. ID.; ID.; THERE IS NO VESTED RIGHT IN THE CONTINUED OWNERSHIP AND POSSESSION OF FIREARMS; THE LICENSE TO POSSESS A FIREARM IS "NEITHER A PROPERTY NOR A PROPERTY RIGHT"; AS A MERE "PERMIT OR PRIVILEGE TO DO WHAT OTHERWISE WOULD BE UNLAWFUL," IT DOES NOT ACT AS A CONTRACT BETWEEN THE AUTHORITY GRANTING IT AND THE PERSON TO WHOM IT IS GRANTED.— It is settled that the license to possess a firearm is not property. In *Chavez*, then Chief of Police Hermogenes E. Ebdane, Jr., taking cue from a speech delivered by then President Gloria Macapagal Arroyo, issued the Philippine National Police Guidelines suspending the issuance of permits to carry firearms outside of residence "to avert the rising crime incidents." Francisco I. Chavez (Chavez), a licensed gun owner with a permit to carry a firearm outside of residence, petitioned this Court to void the Guidelines for allegedly violating his right to due process. He argued that "the ownership and carrying of firearms are constitutionally protected property rights which cannot be taken away without due process of law and without just cause." This Court disagreed with Chavez, ruling that there is no vested right in the continued ownership and possession of firearms. Like any other license, the license to possess a firearm is "neither a property nor a property right." As a mere "permit or privilege to do what otherwise would be unlawful," it does not act as "a contract between the authority granting it and the person to whom it is granted[.]" Being in the nature of a license, the permit to carry firearm outside residence is neither a property nor a property right. A grantee of the permit does "not have a property interest in obtaining a license to carry a firearm[.] x x x. x x x. *Chavez* remains a binding precedent because, like Presidential Decree No. 1866, which was effective during the

promulgation of *Chavez*, the assailed Republic Act No. 10591 still requires a license for ownership and possession of firearms.

16. ID.; ID.; ID.; THE RIGHT TO SELF-DEFENSE, IF IT IS TO BE DONE THROUGH THE USE OF FIREARMS, IS GRANTED TO CITIZENS WHO HAVE SATISFIED THE QUALIFICATIONS FOR OBTAINING A LICENSE TO OWN AND POSSESS FIREARMS UNDER THE LAW.— [R]epublic Act No. 10591 did not elevate the status of the right to bear arms from a privilege to a full-fledged statutory right. A close examination of the declared State policy in Republic Act No. 10591 reveals that the right to bear arms remains a mere privilege: x x x Section 2 recognizes that the right to self-defense is provided as a justifying circumstance under the Revised Penal Code. However, this right to self-defense, if it is to be done through the use of firearms, is granted to "qualified citizens": those who have satisfied the qualifications for obtaining a license to own and possess firearms under Republic Act No. 10591. Therefore, even with the new law, the exercise of the right to use a firearm, even for self-defense, is still subject to State regulation.

17. ID.; ID.; REPUBLIC ACT NO. 10591 WHICH REGULATES THE USE OF FIREARMS, IS A VALID POLICE POWER MEASURE, AS THE MAINTENANCE OF PEACE AND ORDER AND THE PROTECTION OF THE PEOPLE FROM VIOLENCE ARE NOT ONLY FOR THE GOOD OF THE GENERAL PUBLIC, BUT ARE FUNDAMENTAL DUTIES OF THE STATE, AND THE MEANS EMPLOYED TO FULFILL THESE DUTIES, BY REQUIRING A LICENSE FOR THE OWNERSHIP AND POSSESSION OF FIREARMS AND A PERMIT TO CARRY THE WEAPON OUTSIDE OF RESIDENCE, ARE REASONABLY NECESSARY.— Assuming, for the sake of argument, that the right to possess a firearm were considered a property right, it is doctrine that property rights are always subject to the State's police power, defined as the "authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare." x x x. In *Chavez*, this Court reiterated that "laws regulating the acquisition or possession of guns have frequently been upheld as reasonable exercise of the police power." This Court likewise discussed the test to determine the validity of a police power measure: (1) "[t]he interests of the public generally, as distinguished from those of a particular class, require the exercise

of the police power" and (2) "[t]he means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals." Applying this test, this Court found that the Philippine National Police Guidelines, which suspended the issuance of permits to carry firearms outside of residence, was a valid police power measure. It held that the interest of the general public was satisfied, since the Guidelines was issued in response to the rise in high-profile crimes. As to the means employed to retain peace and order in society, this Court stated that the revocation of all permits to carry firearms outside of residence would make it difficult for criminals to commit gun violence and victimize others. This Court, thus, deemed the regulation reasonable x x x. Like the assailed Guidelines in *Chavez*, Republic Act No. 10591, which regulates the use of firearms, is a valid police power measure. The maintenance of peace and order and the protection of people from violence are not only for the good of the general public; they are fundamental duties of the State, the fulfillment of which strengthens its legitimacy. The means employed to fulfill these State duties—requiring a license for the ownership and possession of firearms and a permit to carry the weapon outside of residence—are reasonably necessary.

18. ID.; ID.; SECTION 4(g) OF R.A. NO. 10591 AND SECTION 4.4 (a) OF THE IRR WHICH PROHIBIT CONVICTS AND THOSE CURRENTLY ACCUSED IN A PENDING CRIMINAL CASE PUNISHED WITH IMPRISONMENT FOR MORE THAN TWO YEARS FROM APPLYING FOR A FIREARM LICENSE, ARE REASONABLE MEASURES SINCE A *PRIMA FACIE* FINDING OF AN APPLICANT'S GUILT INDICATES HIS/HER PROPENSITY TO VIOLATE THE LAW, AND ARE NOT VIOLATIVE OF THE CONSTITUTIONAL GUARANTEE TO PRESUMPTION OF INNOCENCE.— The x x x provisions assailed by petitioners are consistent with these general interests of maintaining peace and order and protecting the people from violence. Section 4(g) of Republic Act No. 10591 and its corresponding provision in the Implementing Rules and Regulations, Section 4.4(a), both require that an applicant for a firearm license has not been convicted or is currently an accused in a pending criminal case punished with imprisonment for more than two (2) years x x x. Contrary to petitioners Acosta and Dela Paz's argument, these provisions do not violate the

constitutional guarantee to presumption of innocence. Congress restricted the privilege to apply for a firearm from convicts and those currently accused in a pending criminal case punished with imprisonment for more than two (2) years, since a *prima facie* finding of an applicant's guilt indicates his or her propensity to violate the law. If Republic Act No. 10591 is to function as a preventive measure against gun violence, then it is prudent to prohibit those who, during the preliminary investigation stage, were found probably guilty of an offense. Besides, the acquittal or permanent dismissal of the criminal case re-qualifies an applicant to acquire a license. Thus, the restriction is but a reasonable measure in line with the State policy in Republic Act No. 10591.

19. ID.; ID.; SECTION 7.11.2 (b) OF THE IMPLEMENTING RULES AND REGULATIONS WHICH REQUIRES THAT FIREARMS BE SECURED IN THE COMPARTMENT OF VEHICLES OR MOTORCYCLES, IS CONSISTENT WITH THE PROHIBITION ON DISPLAYING THE FIREARM, AND PREVENTS FIREARMS OWNERS FROM IMPULSIVELY USING THEIR FIREARMS IN CASES OF ALTERCATION, AND SECTION 7.12 (b) WHICH REQUIRES THAT FIREARMS NOT BE BROUGHT INSIDE PLACES OF WORSHIP, PUBLIC DRINKING, AND AMUSEMENT, AND ALL OTHER COMMERCIAL PUBLIC ESTABLISHMENTS IS A REASONABLE MEASURE TO PREVENT MASS SHOOTINGS.— Even Section 7.11.2(b) of the Implementing Rules and Regulations, which requires that firearms be secured in the compartment of vehicles or motorcycles, and Section 7.12(b), which requires that firearms not be brought inside places of worship, public drinking, and amusement, and all other commercial or public establishments, are reasonably related to the purpose of the law: x x x. Keeping the firearm secured in the compartment of a vehicle or motorcycle is consistent with the prohibition on displaying the firearm. It also prevents firearms owners from impulsively using their firearms in cases of altercation. Since places of worship, public drinking, and amusement, and all other commercial or public establishments are usually flocked with people, the prohibition on bringing the firearm to these public places is a reasonable measure to prevent mass shootings.

20. ID.; ID.; SECTION 10 OF R.A. NO. 10591 AND ITS IMPLEMENTING RULES AND REGULATIONS WHICH PROVIDE THAT ONLY SMALL ARMS MAY BE REGISTERED IN THE NAME OF PRIVATE INDIVIDUALS OR ENTITIES AND OWNERSHIP OF LIGHT WEAPONS IS ONLY ALLOWED FOR MEMBERS OF THE ARMED FORCES OF THE PHILIPPINES, THE PHILIPPINE NATIONAL POLICE, AND OTHER LAW ENFORCEMENT AGENCIES, ARE A VALID EXERCISE OF POLICE POWER AS PRIVATE INDIVIDUALS OR ENTITIES' USE OF SMALL FIREARM TO DEFEND ONESELF IS REASONABLY NECESSARY TO REPEL THE UNLAWFUL AGGRESSION, WHILE THE USE OF LIGHT WEAPONS BY THE LAW ENFORCEMENT AGENCIES IS NECESSARY IN THE FULFILLMENT OF THEIR DUTIES TO MAINTAIN PEACE AND ORDER AND PROTECT THE PUBLIC.— Still related to the purpose of maintaining peace and order and preventing gun violence is Section 10 of Republic Act No. 10591 and its corresponding provision in the Implementing Rules and Regulations. Both prohibit the registration of Class-A light weapons to private individuals x x x. As can be gleaned from both provisions, only small arms—those primarily designed for individual use, to be fired from the hand or shoulder —may be registered in the name of private individuals or entities. In contrast, the ownership of Class-A light weapons—"self-loading pistols, rifles, carbines, submachine guns, assault rifles and light machine guns not exceeding caliber 7.62MM which have fully automatic mode"—is only allowed for members of the Armed Forces of the Philippines, the Philippine National Police, and other law enforcement agencies. The reason is not hard to see. Unlike small arms, which are incapable of fully automatic bursts of discharge, Class-A light weapons are self-loading, entirely capable of inflicting multiple injuries on others. Thus, consistent with its declared policy in Republic Act No. 10591, the State balanced its interests to, on the one hand, keep violence at a minimum, and on the other, grant the right of the people to self-defense. The use of a small arm to defend oneself is, for the State, that which is reasonably necessary to repel the unlawful aggression. As for the members of the Armed Forces of the Philippines, the Philippine National Police, and other law enforcement agencies, their duties to maintain peace and order

and protect the public allow for the use of Class-A light weapons.

21. ID.; ID.; SECTION 26 OF R.A. 10591 AND ITS IMPLEMENTING RULES AND REGULATIONS WHICH PROHIBIT THE TRANSFER OF FIREARMS OWNERSHIP THROUGH SUCCESSION ARE VALID EXERCISES OF POLICE POWER, AS THE QUALIFICATIONS FOR ACQUIRING A FIREARM LICENSE ARE HIGHLY PERSONAL TO THE LICENSEE, AND MAY NOT BE POSSESSED BY HIS OR HER RELATIVE OR NEXT OF KIN.— [T]he prohibition on the transfer of firearms ownership through succession is a valid exercise of police power. x x x. The qualifications for acquiring a firearm license under Section 4 of the law are highly personal to the licensee. These qualifications may not be possessed by his or her relative or next of kin. It is, therefore, only correct that the rights to own and possess a firearm are non-transferrable by succession. At any rate, should he or she be interested, the deceased's relative or next of kin may apply for a license to own and possess the deceased's registered firearm under Section 26 of Republic Act No. 10591.

22. ID.; ID.; ID.; SECTION 39 OF R.A. NO. 10591 AND ITS IMPLEMENTING RULES AND REGULATIONS; THE AUTOMATIC REVOCATION OF LICENSE IF THE REGISTERED FIREARM IS USED FOR THE COMMISSION OF A CRIME IS JUSTIFIED, FOR THE STATE CAN REVOKE THE LICENSE WITHOUT VIOLATING THE DUE PROCESS CLAUSE WHERE IT FINDS THAT BEARING ARMS WOULD BE CONTRARY TO ITS LEGITIMATE INTERESTS.—As to the automatic revocation of license if the registered firearm is used for the commission of a crime, Section 39(a) of Republic Act No. 10591 and its corresponding provision in the Implementing Rules and Regulations state x x x. The commission of the crime indicates the licensee's propensity for violence, which is contrary to the declared State policy of maintaining peace and order and protecting the people from violence. In such a case, the revocation of the license would be justified. To reiterate, ownership and possession of firearms is not a property right, but a mere privilege. Should the State find that bearing arms would be contrary to its legitimate interests, it can revoke the license without violating the due process clause.

23. ID.; ID.; ID.; SECTION 9 OF R.A. NO. 10591 WHICH MANDATES APPLICANTS FOR TYPES 3 TO 5 FIREARMS LICENSES TO COMPLY WITH THE REQUIREMENT OF INSPECTION OF THE FIREARMS AT THE RESIDENCE INDICATED AT THE APPLICATION CANNOT BE CONSIDERED A REASONABLE SEARCH, AS THERE IS A LEGITIMATE, ALMOST ABSOLUTE, EXPECTATION OF PRIVACY IN ONE'S RESIDENCE; THE PRESENCE OF THE EXPECTATION OF PRIVACY AND SOCIETY'S PERCEPTION OF IT AS REASONABLE RENDER THE STATE'S INTRUSION A "SEARCH", WHICH REQUIRES A SEARCH WARRANT.— Perhaps the most contentious provision in Republic Act No. 10591 is Section 9, which mandates applicants for Types 3 to 5 licenses to comply with "inspection … requirements." x x x. The Philippine National Police, in the *pro forma* Individual Application for New Firearm Registration, included a paragraph indicating the Consent of Voluntary Presentation for Inspection, to be signed by the applicant. It provides that the applicant agrees to voluntarily consent to the inspection of the firearm at the residence indicated in the application. x x x. The present Constitution provides the prohibition on unreasonable searches and seizures in Article III, Section 2: x x x. What constitutes a "reasonable search" depends on whether a person has an "expectation of privacy, which society regards as reasonable[.]" The presence of this expectation of privacy *and* society's perception of it as reasonable render the State's intrusion a "search" within the meaning of Article III, Section 2, and which intrusion thus requires a search warrant. x x x. A reduced expectation of privacy is the reason why the inspection of persons and their effects under routine inspections, such as those done in airports, seaports, bus terminals, malls, and similar public places, does not require a search warrant. These routine inspections are considered reasonable searches, clearly done to ensure public safety. A reasonable search, however, is different from a warrantless search. While a reasonable search arises from a reduced expectation of privacy, a warrantless search, which is presumed unreasonable, dispenses with a search warrant for practical reasons. This is why a search incidental to a lawful arrest, search of evidence in plain view, consented search, and extensive search of moving private vehicle do not require a search warrant. From all these, this Court holds that the inspection requirement under Republic Act No. 10591, as

interpreted by the Philippine National Police in the Implementing Rules, *cannot* be considered a reasonable search. There is a legitimate, almost absolute, expectation of privacy in one's residence.

24. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES; THE RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES MAY BE WAIVED IF IT CAN BE SHOWN THAT THE CONSENT WAS UNEQUIVOCAL, SPECIFIC, AND INTELLIGENTLY GIVEN, UNCONTAMINATED BY ANY DURESS OR COERCION; PARAMETERS FOR GIVING A VALID CONSENT TO SEARCH ONE'S HOME, DISCUSSED.— [T]he right against unreasonable searches and seizures may be waived if it can be shown that the consent was "unequivocal, specific, and intelligently given, uncontaminated by any duress or coercion." In *Caballes v. Court of Appeals*, this Court discussed the parameters for giving a valid consent to search one's home: Doubtless, the constitutional immunity against unreasonable searches and seizures is a personal right which may be waived. The consent must be voluntary in order to validate an otherwise illegal detention and search, *i.e.*, the consent is unequivocal, specific, and intelligently given, uncontaminated by any duress or coercion. Hence, consent to a search is not to be lightly inferred, but must be shown by clear and convincing evidence. The question whether a consent to a search was in fact voluntary is a question of fact to be determined from the totality of all the circumstances. Relevant to this determination are the following characteristics of the person giving consent and the environment in which consent is given: (1) the age of the defendant; (2) whether he was in a public or secluded location; (3) whether he objected to the search or passively looked on; (4) the education and intelligence of the defendant; (5) the presence of coercive police procedures; (6) the defendant's belief that no incriminating evidence will be found; (7) the nature of the police questioning; (8) the environment in which the questioning took place; and (9) the possibly vulnerable subjective state of the person consenting. It is the State which has the burden of proving, by clear and positive testimony, that the necessary consent was obtained and that it was freely and voluntarily given.

25. ID.; REPUBLIC ACT NO. 10591; SECTION 9 THEREOF; APPLICANT'S SIGNING OF THE CONSENT OF VOLUNTARY PRESENTATION FOR INSPECTION IN THE *PRO FORMA* INDIVIDUAL APPLICATION FOR NEW FIREARM REGISTRATION DOES NOT RESULT IN A TRUE AND VALID CONSENTED SEARCH, AS THE LAW IS SILENT AS TO THE PARAMETERS OF THE INSPECTION SUCH AS THE SCOPE, FREQUENCY, AND EXECUTION OF THE INSPECTION, WHICH RENDERS APPLICANTS FOR FIREARMS LICENSES INCAPABLE OF INTELLIGENTLY WAIVING THEIR RIGHT TO THE UNREASONABLE SEARCH OF THEIR HOME.— In requiring a waiver in the *pro forma* Individual Application for New Firearm Registration, the Philippine National Police appears to recognize the inviolability of the home. Nevertheless, signing the Consent of Voluntary Presentation for Inspection does *not* result in a true and valid consented search. Section 9 of Republic Act No. 10591 provides that applicants for Types 3 to 5 licenses "must comply with the inspection ... requirements." However, the law is silent as to the scope, frequency, and execution of the inspection. This means that the Chief of the Philippine National Police is presumed to fill in these details in the Implementing Rules and Regulations. However, even the Implementing Rules is completely silent as to the parameters of the inspection. This renders applicants for firearms licenses incapable of intelligently waiving their right to the unreasonable search of their homes.

26. ID.; ID.; SECTION 9 OF R.A. NO. 10591 AND ITS IMPLEMENTING RULES AND REGULATIONS WHICH AUTHORIZE WARRANTLESS INSPECTION OF HOUSES ARE UNCONSTITUTIONAL FOR BEING VIOLATIVE OF THE PROHIBITION ON UNREASONABLE SEARCHES AND SEIZURES; FOR WAIVER OF THE RIGHT AGAINST UNREASONABLE SEARCHES TO BE VALID, THE PROVISION ALLOWING FOR THE INSPECTION MUST BE AS INFORMATIVE AS TO DETAIL ITS SCOPE AND EXTENT; OTHERWISE, GOVERNMENT OFFICIALS ARE GIVEN UNBRIDLED DISCRETION AND POWER.— [T]his Court finds that Section 9 of Republic Act No. 10591 and its corresponding provision in the Implementing Rules are unconstitutional for being violative of Article III, Section 2 of the Constitution. Section 9 authorizes warrantless inspections

of houses which, x x x are unreasonable and, therefore, require a search warrant. Furthermore, Section 9 miserably failed to provide the scope and extent of the inspections, making them overbroad. While the State has heavy regulated the use of and dealing in firearms to maintain peace and order, this does not excuse the utter lack of standards for the conduct of inspection. What this does is give unbridled discretion and power to government officials, the very discretion that Article III, Section 2 guards against. True, the standard of reasonableness can be found in the law and its Implementing Rules and Regulations. However, "reasonable" as a standard for inspection is not enough. For the waiver of the right against unreasonable searches to be valid, the provision allowing for the inspection must be as informative as to detail its scope and extent. Therefore, signing the Consent of Voluntary Presentation for Inspection in the *pro forma* Individual Application for New Firearm Registration cannot be considered a valid waiver of the right against unreasonable searches under Article III, Section 2 of the Constitution. The applicant cannot intelligently consent to the warrantless inspection allowed in Republic Act No. 10591 because of the utter lack of parameters on how the inspection shall be conducted.

27. ID.; ID.; ID.; THE INSPECTION OF THE FIREARMS AT THE APPLICANT'S RESIDENCE MAY ONLY BE DONE WITH A SEARCH WARRANT.— This Court notes that the Implementing Rules and Regulations has since been amended in 2018, with its Section 9.3 now providing the scope of the inspection relating to applications for Types 3-5 licenses x x x. To this Court, the inspection contemplated in Section 9.3 of the 2018 Implementing Rules, though it now provides the scope and extent of the inspection, may only be done with a search warrant as required in Article III, Section 2 of the Constitution. Considering that the inspection is done before a license is issued, there is no compelling urgency to immediately conduct the inspection. A search warrant must first be obtained from a judge to determine probable cause for its issuance.

28. ID.; ID.; SECTION 4.10 OF THE IMPLEMENTING RULES WHICH REQUIRES A PERSON INTENDING TO APPLY AS A SPORTS SHOOTER TO SUBMIT A CERTIFICATION FROM THE PRESIDENT OF A RECOGNIZED GUN CLUB OR SPORTS SHOOTING ASSOCIATION THAT HE OR SHE IS

JOINING THE COMPETITION IS NOT VIOLATIVE OF THE CONSTITUTIONAL RIGHT OF FREEDOM OF ASSOCIATION.— This Court does not find Section 4.10 of the Implementing Rules violative of Article III, Section 8 of the Constitution on the freedom of association x x x. It has been held that Article III, Section 8 not only guarantees the freedom to associate; it also protects the freedom *not* to associate. The provision is not basis to compel others to form or join an association. Reading Section 4.10, this Court finds that nothing in it compels a sports shooter applicant to join a gun club or sports shooting association. All that Section 4.10 provides is that a person intending to apply as a sports shooter must submit a certification from the president of a recognized gun club or sports shooting association that he or she is joining the competition. The reason is that shooting competitions are usually sponsored by gun clubs and sports associations which, in turn, must be duly registered with and accredited in good standing by the Firearms and Explosive Office of the Philippine National Police. This certification ensures that the extra ammunition is indeed granted to legitimate sports shooters, which is remarkably more than that allowed to an ordinary owner of a firearm. Thus, Section 4.10 does not violate Article III, Section 8 of the Constitution.

REYES, A. JR., ***J., separate concurring and dissenting opinion*****:**

1. REMEDIAL LAW; RULES OF PROCEDURE; WHERE CONSTITUTIONAL RIGHTS ARE INVOLVED, VIOLATIONS OF PROCEDURAL TECHNICALITIES MAY BE SET ASIDE BY THE COURT IN ITS DISCRETION IN THE INTEREST OF SUBSTANTIAL JUSTICE.— x x x. In spite of the x x x lapses, x x x the Petitions were not outrightly denied on [the] procedural grounds; x x x. x x x [S]ince constitutional rights are involved, technicalities should not impede the resolution of the present consolidated petitions. Indeed, the petitioners' violations are mere procedural technicalities which the Court may set aside in its discretion in the interest of substantial justice. In *Chavez v. Hon. Romulo*, the Court was confronted with a petition that also sought to enjoin the implementation of guidelines regarding the carrying of firearms outside residence. Despite procedural barriers, the Court treated the matter as one of national interest and of serious implication, and as such, entertained the

petitioner despite the attendant procedural infirmities. There is no reason why the present case should be dealt with differently.

2. POLITICAL LAW;COMPREHENSIVE FIREARMS AND AMMUNITION REGULATION ACT (REPUBLIC ACT NO. 10591) AND THE 2013 IMPLEMENTING RULES AND REGULATIONS (IRR); INSPECTION REQUIREMENTS; THE INSPECTION UNDER R.A. NO. 10591 AND ITS IRR MUST BE STRUCK DOWN FOR FAILURE TO LIMIT THE FREQUENCY OF INSPECTION; AN INSPECTION PRIOR TO THE ISSUANCE OF TYPES 3 TO 5 LICENSES MUST BE ALLOWED AS AN ADJUNCT OF ADMINISTRATIVE SEARCH, BUT THE INSPECTION MUST BE LIMITED ONLY TO ONE INSTANCE, THAT IS PRIOR TO THE ISSUANCE OF THE LICENSE; THE RIGHT TO PRIVACY DOES NOT BAR ALL INCURSIONS INTO INDIVIDUAL PRIVACY, BUT THE INTRUSIONS INTO THE RIGHT MUST BE ACCOMPANIED BY PROPER SAFEGUARDS AND WELL-DEFINED STANDARDS TO PREVENT UNCONSTITUTIONAL INVASIONS.— There is no fundamental right to bear arms in the Philippines, thus, the State may regulate gun ownership through the exercise of its police power. x x x. [R]equiring Types 3 to 5 license applicants to sign the *pro forma* "Consent of Voluntary Presentation for Inspection" violates Article III, Section 2 of the 1987 Constitution, but, primarily because there are no sufficient safeguards to carry out the inspection. In *Ople v. Torres*, the Court held that "the right to privacy does not bar all incursions into individual privacy." However, "intrusions into the right must be accompanied by proper safeguards and well-defined standards to prevent unconstitutional invasions. We reiterate that any law or order that invades individual privacy will be subjected by this Court to strict scrutiny." x x x Based on Section 9 of R.A. No. 10591, Types 3 to 5 licenses allow a citizen to own and possess at least six registered firearms. In view of the gravity, responsibility, and possible repercussions of owning and possessing at least six firearms in one's residence x x x the State must still be given an opportunity to ensure compliance with the vault and safety requirements under R.A. No. 10951, and the only way to confirm compliance is through the conduct of an initial, one-time inspection, complemented by a subsequent inspection in case of compelling urgency, as

the *ponencia* suggests. In *People of the Philippines v. O'Cochlain*, the Court noted that administrative searches are allowed in certain situations where special needs arise and securing a prior search warrant is rendered impracticable x x x. From this vantage ground, an inspection prior to the issuance of Types 3 to 5 licenses must be allowed as an adjunct of administrative search, owing to the weight of responsibility involved in gun ownership, which from its nature, necessitates a stricter regulatory scheme. Nevertheless, inspection under R.A. No. 10591 and its IRR must be struck down for failure to limit the frequency of inspection. While Section 9.3 of the 2018 Revised IRR provides for more guidelines, x x x the inspection must be subjected to further and more stringent standards, such as limiting the inspection only to one instance—prior to the issuance of the license. This is to ensure that the applicant has complied with the safety measures and vault requirements under the law.

3. ID.; ID.; SECTION 7.12(b) OF THE IRR OF R.A. NO. 10591 PROHIBITS THE BRINGING OF FIREARMS INSIDE PLACES OF WORSHIP, PUBLIC DRINKING, AMUSEMENT PLACES, AND ALL OTHER COMMERCIAL OR PUBLIC ESTABLISHMENTS; THE BLANKET PROHIBITION ON CARRYING FIREARMS INSIDE ALL COMMERCIAL OR PUBLIC ESTABLISHMENTS RENDERS NUGATORY THE PERMIT TO CARRY FIREARMS OUTSIDE OF RESIDENCE (PTCFOR) SECURED BY THE OWNERS OF THESE COMMERCIAL ESTABLISHMENTS AND IS UNDULY RESTRICTIVE ON THE PART OF THE BUSINESSMEN,WHO BY THE NATURE OF THEIR BUSINESS OR UNDERTAKING, ARE EXPOSED TO THE HIGH RISK OF BEING TARGET OF CRIMINAL ELEMENTS.— For the purpose of maintaining public peace and order, Section 7.11.2(b) of the IRR of R.A. No. 10591 commands that firearms be secured inside a vehicle or motorcycle compartment, and Section 7.12(b) of the IRR of R.A. No. 10591 prohibits the bringing of firearms inside places of worship, public drinking, amusement places, and all other commercial or public establishments. x x x. However, x x x an exemption must be made for commercial establishment owners who own licensed firearms. The blanket prohibition on carrying firearms inside all commercial or public establishments poses an issue insofar as it renders nugatory the PTCFOR secured

by the owners of these commercial establishments. While x x x maintaining public peace and order is important, enjoining even the commercial establishment owners themselves from bringing their firearms inside their place of business serves no viable purpose. Some commercial establishment owners such as small-scale business owners or sole proprietors cannot afford to engage the services of private security. With the prohibition, they are left with little to no means of protecting themselves or their clients against unlawful elements who may enter their establishments and commit violence. Verily, it is a declared State policy under Section 2 of R.A. No. 10951 that "the State recognizes the right of its qualified citizens to self-defense through, when it is the reasonable means to repel the unlawful aggression under the circumstances, the use of firearms." Prohibiting even these owners from bringing their firearms to their place of business does not support this declared State policy and contradicts the purpose for which establishment owners' PTCFOR was secured. This prohibition also runs counter to Section 7 of R.A. No. 10591, which recognizes businessmen, who by the nature of their business or undertaking, are exposed to high risk of being target of criminal elements. Thus, x x, this all-out prohibition in Section 7.12(b) of the IRR is unduly restrictive on their part.

4. ID.; ID.; ID.; SECTION 4.10 (b) OF THE IRR WHICH REQUIRES A SPORTS SHOOTER APPLICANT TO SUBMIT A CERTIFICATION FROM THE PRESIDENT OF A RECOGNIZED GUN CLUB OR SPORTS SHOOTING ASSOCIATION THAT HE/SHE IS JOINING THE COMPETITION IS UNCONSTITUTIONAL AS IT COMPELS A SPORTS SHOOTER APPLICANT TO JOIN THE GUN CLUB TO WHICH SUCH PRESIDENT BELONGS, WHICH IS VIOLATIVE OF THE SPORTS SHOOTERS' RIGHT TO FREEDOM OF ASSOCIATION; THE CONSTITUTIONALLY GUARANTEED RIGHT TO FORM AN ASSOCIATION DOES NOT INCLUDE THE RIGHT TO COMPEL OTHERS TO FORM OR JOIN ONE.—x x x**.** x x x [T]he requirement of a submitting a certification from the President of a recognized gun club tacitly compels a sports shooter applicant to join the gun club to which such President belongs, for it is reasonable to believe that no President of a gun club would issue a certification to non-members. Thus, this requirement under Section 4.10(b) is violative of the sports shooters' right to freedom of association.

> Section 8, Article III of the 1987 Constitution guarantees the right of people to join or form associations: Section 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged. However, "[t]he constitutionally guaranteed freedom of association includes the freedom *not* to associate." "It should be noted that the provision guarantees the right to form an association. It does not include the right to compel others to form or join one."

APPEARANCES OF COUNSEL

Moreno & Associates for petitioners in G.R. No. 211559.

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The Solicitor General for respondents.

D E C I S I O N

LEONEN, *J.*:

There is no constitutional right to bear arms. Neither is the ownership or possession of a firearm a property right. Persons intending to use a firearm can only either accept or decline the government's terms for its use.

The grant of license, however, is without prejudice to the inviolability of the home. The right of the people against unreasonable searches and seizures remains paramount, and the government, in the guise of regulation, cannot conduct inspections of applicants for firearm licenses unless armed with a search warrant.

This Court resolves the consolidated Petitions assailing the constitutionality of certain provisions of Republic Act No. 10591, or the Comprehensive Firearms and Ammunition Regulation Act, and their corresponding provisions in the 2013 Implementing Rules and Regulations for allegedly violating petitioners' right to bear arms, right to property, and right to privacy.

Republic Act No. 10591, enacted on May 29, 2013, currently regulates the ownership, possession, carrying, manufacture, dealing in, and importation of firearms and ammunition in the country. It was enacted with the view of maintaining peace and order and protecting the people from violence.[1] Its Implementing Rules and Regulations was promulgated on December 7, 2013 pursuant to the rule-making power granted to the Chief of the Philippine National Police.[2]

After the Implementing Rules and Regulations had become effective, the Philippine National Police centralized all firearms licensing applications and renewals at its headquarters at Camp Crame, Quezon City. The *pro forma* application form for firearm registration, to be accomplished and signed by the applicant, contained a paragraph on the "Consent of Voluntary Presentation for Inspection":

CONSENT OF VOLUNTARY PRESENTATION FOR INSPECTION

I hereby undertake to renew the registration of my firearm/s on or before the expiration of the same; that, pursuant to the provisions

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[1] Republic Act No. 10591 (2013), Sec. 2 provides:

SECTION 2. *Declaration of State Policy*. — It is the policy of the State to maintain peace and order and protect the people against violence. The State also recognizes the right of its qualified citizens to self-defense through, when it is the reasonable means to repel the unlawful aggression under the circumstances, the use of firearms. Towards this end, the State shall provide for a comprehensive law regulating the ownership, possession, carrying, manufacture, dealing in and importation of firearms, ammunition, or parts thereof, in order to provide legal support to law enforcement agencies in their campaign against crime, stop the proliferation of illegal firearms or weapons and the illegal manufacture of firearms or weapons, ammunition and parts thereof.

[2] Republic Act No. 10591 (2013), Sec. 44 provides:

SECTION 44. *Implementing Rules and Regulations*. — Within one hundred twenty (120) days from the effectivity of this Act, the Chief of the PNP, after public hearings and consultation with concerned sectors of society, shall formulate the necessary rules and regulations for the effective implementation of this Act to be published in at least two (2) national newspapers of general circulation.

of Republic Act No. 10591, I voluntarily give my consent and authorize the PNP to inspect my firearm/s described above at my residence/ address as indicated in my application and, to confiscate or forfeit the same in favor of the government for failure to renew my firearm/ s registration within six (6) months before the date of its expiration.[3]

If the application is approved, the firearm license card is delivered through Werfast Documentary Agency, a courier service, instead of having it picked up at Camp Crame or in the regional offices of the Philippine National Police.[4]

On March 25, 2014, licensed firearm owners Eric F. Acosta (Acosta) and Nathaniel G. Dela Paz (Dela Paz) filed before this Court a Petition for Prohibition,[5] assailing the constitutionality of the following provisions of law and acts:

a) Sections 4(g),[6] 10,[7] 26,[8] and 39 (a),[9] all of Republic Act No. 10591;

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[3] Available at PNP Firearms and Explosives Office,<pnpfeo.net/repository/ category/12juridical?download=60:fa-registration-of-juridical> (last visited on October 14, 2019).

[4] *Rollo* (G.R. No. 211559), p. 850, Memorandum for petitioner PROGUN in G.R. No. 211567, and 781, Consolidated Memorandum for respondents.

[5] *Id*. at 3-96.

[6] Republic Act No. 10591 (2013), Sec. 4(g) partly provides:

SECTION 4. *Standards and Requisites for Issuance of and Obtaining a License to Own and Possess Firearms*. — In order to qualify and acquire a license to own and possess a firearm or firearms and ammunition, the applicant must be a Filipino citizen, at least twenty-one (21) years old and has gainful work, occupation or business or has filed an Income Tax Return (ITR) for the preceding year as proof of income, profession, business or occupation.

In addition, the applicant shall submit the following certification issued by appropriate authorities attesting the following:

. . . . . .

(g) The applicant has not been convicted or is currently an accused in a pending criminal case before any court of law for a crime that is punishable with a penalty of more than two (2) years.

[7] Republic Act No. 10591 (2013), Sec. 10 provides:

SECTION 10. *Firearms That May Be Registered*. — Only small arms may be registered by licensed citizens or licensed juridical entities for

b) Sections 4.4(a),[10] 4.10(b),[11] 7.3,[12] 7.9,[13] 7.11.2(b),[14]

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ownership, possession and concealed carry. A light weapon shall be lawfully acquired or possessed exclusively by the AFP, the PNP and other law enforcement agencies authorized by the President in the performance of their duties: *Provided*, That private individuals who already have licenses to possess Class-A light weapons upon the effectivity of this Act shall not be deprived of the privilege to continue possessing the same and renewing the licenses therefor, for the sole reason that these firearms are Class "A" light weapons, and shall be required to comply with other applicable provisions of this Act.

[8] Republic Act No. 10591 (2013), Sec. 26 provides:

SECTION 26. *Death or Disability of Licensee*. — Upon the death or legal disability of the holder of a firearm license, it shall be the duty of his/her next of kin, nearest relative, legal representative, or other person who shall knowingly come into possession of such firearm or ammunition, to deliver the same to the FEO of the PNP or Police Regional Office, and such firearm or ammunition shall be retained by the police custodian pending the issuance of a license and its registration in accordance with this Act. The failure to deliver the firearm or ammunition within six (6) months after the death or legal disability of the licensee shall render the possessor liable for illegal possession of the firearm.

[9] Republic Act No. 10591 (2013), Sec. 39 (a) provides:

SECTION 39. *Grounds for Revocation, Cancellation or Suspension of License or Permit*. — The Chief of the PNP or his/her authorized representative may revoke, cancel or suspend a license or permit on the following grounds:

(a) Commission of a crime or offense involving the firearm, ammunition, of major parts thereof[.]

[10] Implementing Rules and Regulations of Republic Act No. 10591 (2013), Sec. 4.4(a) provides:

SECTION 4. *Standards and Requisites for Issuance of and Obtaining a License to Own and Possess Firearms*. —

4.4 The written application to own and possess firearm/s shall be filed at the FEO, in three (3) legible copies duly notarized, and must be accompanied by the original copy of the following requirements:

a) Clearances issued by the Regional Trial Court (RTC) and Municipal/Metropolitan Trial Court (MTC) that has jurisdiction over the place where the applicant resides and/or the Sandiganbayan as the case may be, showing that he/she has not been convicted by final judgment of a crime involving moral turpitude or that he/she has not been convicted or is currently an accused in any pending criminal case before any court of law for a crime that is punishable with a penalty of more than two (2) years[.]

7.12(b),[15] 10.3,[16] 26.3,[17] 26.4,[18] and 39(1)(a)[19] of the 2013 Implementing Rules and Regulations; and

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[11] Implementing Rules and Regulations of Republic Act No. 10591 (2013), Sec. 4.10 provides:

SECTION 4. *Standards and Requisites for Issuance of and Obtaining a License to Own and Possess Firearms*. —

. . . . . .

4.10 A qualified applicant shall submit the following requirements to apply as a sports shooter:

a) A copy of the License to Own and Possess Firearms;

b) Certification from the President of a recognized Gun Club or Sports Shooting Association; and

c) Written Authority or Consent from Parents/Guardian (for minors).

[12] Implementing Rules and Regulations of Republic Act No. 10591 (2013), Sec. 7.3 provides:

SECTION 7. *Carrying of Firearms Outside of Residence or Place of Business*. —

. . . . . .

7.3 For purposes of this Act, the following professionals are considered to be in imminent danger due to the nature of their profession, occupation or business and hence are not required to submit threat assessment certificates:

a) Members of the Philippine Bar;

b) Certified Public Accountants;

c) Accredited media practitioners from recognized media institutions; Cashiers and bank tellers;

d) Priests, Ministers, Rabbi, Imams;

e) Physicians and nurses; and

f) Businessmen, who by the nature of their business or undertaking duly recognized or regulated by law, are exposed to high risk of being targets of criminal elements.

[13] Implementing Rules and Regulations of Republic Act No. 10591 (2013), Sec. 7.9 provides:

SECTION 7. *Carrying of Firearms Outside of Residence or Place of Business*. —

. . . . . .

7.9 Members of the PNP, AFP and other Law Enforcement Agencies must apply for a PTCFOR-LEA, in order to be authorized to carry the corresponding government-issued firearm outside of residence:

a) The Police Regional Director or his equivalent in the AFP and other law enforcement agencies, shall endorse to the Chief, PNP all application for PTCFOR-LEA;

c) The requirement of signing the Consent of Voluntary Presentation for Inspection in the *pro forma* application form for firearm registration, for violating Article III,

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b) The application must be accompanied by the latest appointment order of the personnel applying for PTCFOR-LEA and a certificate of non-pending case duly issued for the purpose;

c) The PTCFOR-LEA shall be issued only by the Chief, PNP through PTCFOR-Secretariat and shall be valid only for one (1) year;

d) The fees to be charged in the filing of application for PTCFOR-LEA shall only be in such minimal amount corresponding to the actual administrative cost necessary for the issuance of the permit, as may be determined by the PNP; and

e) The PTCFOR-LEA should always be accompanied by the corresponding Memorandum Receipt/Acknowledgment Receipt of Equipment (MR/ARE)[.]

[14] Implementing Rules and Regulations of Republic Act No. 10591 (2013), Sec. 7.11.2 provides:

SECTION 7. *Carrying of Firearms Outside of Residence or Place of Business*. —

. . . . . .

7.11 The following guidelines regarding the manner of carrying firearms shall be observed:

. . . . . .

7.11.2 For All Other Persons: (including members of the PNP, AFP and other LEAs in civilian attire)

a) Display of firearms is prohibited. The firearms must always be concealed; Violation of this provision shall be subject for immediate revocation of the License to Own and Possess Firearms and Firearm Registration.

b) *The firearm must be secured inside a vehicle or a motor cycle compartment*[.] (Emphasis supplied)

[15] Implementing Rules and Regulations of Republic Act No. 10591 (2013), Sec. 7.12(b) provides:

SECTION 7. *Carrying of Firearms Outside of Residence or Place of Business*. —

. . . . . .

7.12 The following other restriction shall likewise be observed:

a) PTCFOR-LEA is non-transferable.

b) *The firearm shall not be brought inside places of worship, public drinking and amusement places and all other commercial or public establishment.* (Emphasis supplied)

c) The PTCFOR-LEA must be carried together with the valid MR/ARE, or MO/LO as the case may be.

Section 2[20] of the Constitution on the right against unreasonable searches and seizures.[21]

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d) Expired, revoked, cancelled, or nullified License to Own and Possess Firearm and firearm registration will automatically invalidate the corresponding PTCFOR-LEA.

[16] Implementing Rules and Regulations of Republic Act No. 10591 (2013), Sec. 10.3 provides:

SECTION 10. *Firearms That May Be Registered*.—

. . . . . .

10.3 Private individuals who are already licensed holders for Class-A light weapons as herein defined upon the effectivity of this IRR shall not be deprived of the lawful possession thereof, provided that they renew their licenses and firearm registration and they continue to possess the standard requirements mentioned in paragraphs 4.1 and 4.4, in this IRR.

[17] Implementing Rules and Regulations of Republic Act No. 10591 (2013), Sec. 26.3 provides:

SECTION 26. *Death or Disability of the Licensee*. —

. . . . . .

26.3 When a licensed citizen with registered firearm dies or become legally disabled, his/her next of kin, nearest relative, legal representative, or any other person who shall knowingly come into possession of the registered firearm shall cause the delivery of the same to the FEO or Police Regional Office or through the nearest police station which has jurisdiction over the licensee and/or the registered firearm.

[18] Implementing Rules and Regulations of Republic Act No. 10591 (2013), Sec. 26.4 provides:

SECTION 26. *Death or Disability of the Licensee*. —

. . . . . .

26.4 In case of death or legal disability of the licensee, the next of kin, nearest relative, legal representative or any other person who shall knowingly come into possession of the registered firearm shall register the firearm/s provided he/she meets the standard requirements and qualifications in accordance with RA 10591 and its IRR.

[19] Implementing Rules and Regulations of Republic Act No. 10591 (2013), Sec. 39(1)(a) provides:

SECTION 39. *Grounds for Revocation, Cancellation or Suspension of License or Permit*. —

39.1 The Chief, PNP or his/her authorized representative may revoke, cancel or suspend a license or permit on the following grounds:

a) Commission of a crime or offense involving the firearm, ammunition or major parts or pendency of a criminal case involving the firearm, ammunition or major parts thereof[.]

Acosta and Dela Paz's Petition was docketed as G.R. No. 211559.

On the same day, Peaceful Responsible Owners of Guns, Inc. (PROGUN), a registered nonstock, nonprofit corporation that aims to represent the interests of legitimate and licensed gun owners in the Philippines,[22] filed its own Petition for *Certiorari*, Prohibition, and *Mandamus*[23] with prayer for the issuance of a temporary restraining order and/or a writ of preliminary injunction. PROGUN questions the following:

a) the centralization of all firearms licensing, renewal, and testing at the Philippine National Police Headquarters at Camp Crame, Quezon City, to the detriment of those who would be coming from places far from Metro Manila;

b) the requirement for applicants for a firearm license to waive their right to privacy and allow the police to enter their dwellings, in violation of Article III, Section 2 of the Constitution on the right against unreasonable searches and seizure; and

c) the outsourcing of the delivery of firearm license to a courier service, depriving the licensee of the right to use the firearm within the period from approval of the application to the actual date of delivery of the license card.[24]

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[20] CONST., Art. III, Sec. 2 provides:

SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

[21] *Rollo* (G.R. No. 211559), pp. 88-89.

[22] *Rollo* (G.R. No. 211567), p. 5.

[23] *Id*. at 3-22.

[24] *Id*. at 10, 12-13, and 15.

PROGUN's Petition was docketed as G.R. No. 211567.

Acting on PROGUN's prayer, this Court issued a Temporary Restraining Order[25] on April 8, 2014, restraining the Philippine National Police, until further orders from this Court, from doing the following: (a) centralizing all firearms applications and renewals at the Philippine National Police Headquarters at Camp Crame, Quezon City; (b) utilizing any courier services for delivering firearms license cards; and (c) implementing and enforcing the "waiver and consent" requirement for licensing and registration of firearms.

Further, the Philippine National Police was ordered to continue accepting, processing, and approving applications for and renewals of firearms licenses at its regional offices, and to reinstate and reopen the satellite offices of its Civil Security Group and Firearms and Explosives, Security Agencies and Guards Section, as well as the previously accredited testing centers for drug, neuro-psych, and medical clinics in all regions for firearms licensing requirements. Finally, this Court allowed the release of approved license cards via pick-up.[26]

This Court likewise ordered the consolidation of G.R. Nos. 211559 and 211567 in its April 22, 2014 Resolution.[27]

On June 6, 2014, Guns and Ammo Dealers Association of the Philippines (Guns and Ammo Dealers), allegedly "an umbrella organization of about 50 members who are authorized firearms dealers in the Philippines[,]"[28] filed its Petition for *Mandamus* and *Certiorari*[29] with prayer for the issuance of a temporary restraining order and/or a writ of preliminary injunction. The following are its grounds for filing the Petition:

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[25] *Id*. at 150-154.

[26] *Id*. at 153-154.

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

[28] *Rollo* (G.R. No. 212570), p. 3.

[29] *Id*. at 3-17.

a) The Philippine National Police's refusal or failure to establish regional and provincial offices where individual applicants may obtain the requirements for firearm licenses allegedly deprive Guns and Ammo Dealers' members of the profits from their firearm businesses, as they have no licensed customers to sell their firearms to. Many of the employees of gun dealers were likewise laid off due to losses from zero sales.

b) The Philippine National Police's refusal to accept and act on any firearm license application since January 2014 constitutes grave abuse of discretion.[30]

c) The centralization of firearms licensing in Camp Crame, Quezon City harms individual applicants from the provinces and in violation of their right to due process of law.[31]

Guns and Ammo Dealers' Petition was docketed as G.R. No. 212570. It was consolidated with G.R. Nos. 211559 and 211567 through this Court's June 25, 2014 Resolution.[32]

On July 3, 2014, PROGUN filed a Verified Petition for Contempt[33] alleging that the Philippine National Police violated this Court's April 8, 2014 Temporary Restraining Order. According to it, the Philippine National Police continued to require applicants to sign the Consent of Voluntary Presentation for Inspection in the *pro forma* application form for firearm registration even after the Temporary Restraining Order had been issued. Moreover, the Philippine National Police opened only some but not all of its regional offices and accredited testing centers, with the remaining 90% of applicants from the provinces still being required to file their applications at Camp Crame, Quezon City.[34]

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

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

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

[33] *Rollo* (G.R. No. 211567), pp. 200-211.

[34] *Id*. at 203.

In its Comment[35] to the Verified Petition for Contempt, the Philippine National Police alleged at the outset that it had already ceased from engaging the services of Werfast Documentary Agency as a courier service for delivering firearm license cards.[36] As to the Consent of Voluntary Presentation for Inspection, the Philippine National Police admitted that the paragraph still appeared in the *pro forma* application form for firearm registration, but asserted that it has stopped implementing warrantless inspections based on the waiver. It had also commenced the printing of new *pro forma* applications without the Consent of Voluntary Presentation for Inspection. Lastly, the Philippine National Police denied that it refused to open its regional offices. To support its claim, it attached Memoranda showing that it has already reverted to its decentralized system of accepting applications for and renewals of firearm licenses.[37]

In its Reply,[38] PROGUN maintained that the reprinted forms attached by the Philippine National Police in its Comment were the Individual Application for License to Own and Possess Firearm, which is different from what PROGUN was assailing: the Individual Application for New Firearm Registration Form.[39] PROGUN also insisted that the Philippine National Police still refused to accept applications for and renewals of firearm licenses in its regional offices, calling the Memoranda annexed to the Comment as "self-serving[.]"[40]

In the meantime, on December 23, 2014, PROGUN filed another Petition for *Certiorari*, Prohibition, and *Mandamus*,[41] still with a prayer for temporary restraining order and/or a writ

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[35] *Id*. at 303-309.

[36] *Id*. at 305.

[37] *Id*. at 305-306.

[38] *Id*. at 374-379.

[39] *Id*. at 374-375.

[40] *Id*. at 375.

[41] *Rollo* (G.R. No. 215634), pp. 3-20.

of preliminary injunction. Docketed as G.R. No. 215634, the Petition was brought on the following grounds:

a) The declaration that the firearm licenses issued under the old law are deemed vacated, and the requirement for all existing firearm holders to reapply for a new firearm license under Republic Act No. 10591 renders the latter an *ex post facto* law. The new law penalizes those who were validly holding licenses under the old law.

b) Exceeding its rule-making power, the Philippine National Police overregulated the firearm-related activities of gun clubs, sports shooters, reloaders, gunsmithing, competitions, and indentors. It also imposed numerous fees which are not authorized under Republic Act No. 10591.

c) The Philippine National Police added penal provisions in the Implementing Rules and Regulations, exercising a power exclusively vested in Congress.

d) The Philippine National Police drafted the Implementing Rules and Regulations without the required public consultation, in violation of Section 44 of Republic Act No. 10591.[42]

Per this Court's January 13, 2015 Resolution,[43] G.R. No. 215634 was consolidated with G.R. Nos. 211559, 211567, and 212570.

With all the Comments[44] and Replies[45] in and considering the allegations, issues, and arguments adduced in the submissions

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

[43] *Id.* at 72.

[44] *Rollo* (G.R. No. 211559), pp. 219-266; *Rollo* (G.R. No. 211567), pp. 239-293; *Rollo* (G.R. No. 212570), pp. 81-96; and *Rollo* (G.R. No. 215634), pp. 125-151.

[45] *Rollo* (G.R. No. 211559), pp. 279-285; *Rollo* (G.R. No. 211567), pp. 335-371; *Rollo* (G.R. No. 212570), pp. 172-181.

of the parties, this Court gave due course to the Petitions in its February 7, 2017 Resolution,[46] and required the parties to file memoranda.

The first to file was Guns and Ammo Dealers, which filed its Memorandum[47] on April 25, 2017. The Philippine National Police and the rest of the respondents, represented by the Office of the Solicitor General, filed their Consolidated Memorandum[48] on May 8, 2017. Acosta and Dela Paz filed theirs[49] on June 2, 2017, followed last by PROGUN, which filed its Memoranda in G.R. No. 211567[50] and G.R. 215634[51] on June 23, 2017.

Based on the submissions of the parties, the issues for this Court's resolution are the following:

First, whether or not an actual case or controversy exists warranting this Court's exercise of its power of judicial review under Article VIII, Section 1 of the Constitution;

Second, whether or not petitioners have legal standing to file their respective Petitions;

Third, whether or not petitioners' direct recourse to this Court was proper in light of the doctrine of hierarchy of courts;

Fourth, whether or not the 2013 Implementing Rules and Regulations of Republic Act No. 10591 is in the nature of an *ex post facto* law by deeming as vacated all firearm licenses issued under the old law, and compelling the re-application under the new law under pain of prosecution for illegal possession of firearms;

Fifth, whether or not the Chief of the Philippine National Police made additional and more restrictive regulations for gun

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[46] *Rollo* (G.R. No. 211559), pp. 633-635.

[47] *Id*. at 665-678, filed via registered mail.

[48] *Id*. at 713-787, filed via registered mail.

[49] *Id*. at 797-828.

[50] *Id*. at 848-867.

[51] *Id*. at 830-847.

clubs, sports shooters, reloaders, gunsmithing, competitions, and indentors, thereby exceeding its rule-making power granted in Section 44 of Republic Act No. 10591;

Sixth, whether or not the licensing fees charged under the Implementing Rules and Regulations are too numerous and, therefore, unreasonable;

Seventh, whether or not the Chief of the Philippine National Police added penal provisions in the Implementing Rules and Regulations, thereby invalidly exercising a power exclusively vested in Congress;

Eighth, whether or not the Implementing Rules and Regulations was drafted with the required consultation with the concerned sectors of society;

Ninth, whether or not the Philippine National Police exceeded its authority by centralizing firearms license applications and renewals at its headquarters at Camp Crame, Quezon City and outsourcing the delivery of firearms license cards to a courier service;

Tenth, whether or not Section 7.3 of the Implementing Rules and Regulations is void for omitting engineers as persons who may apply for a permit to carry firearm outside of residence and, therefore, contrary to Section 7 of Republic Act No. 10591;

Eleventh, whether or not the requirement of a license to own and operate a firearm is a violation of petitioners' right to bear arms;

Twelfth, whether or not the requirement of a license to own and operate a firearm is a valid exercise of police power and, therefore, not violative of the right to due process;

Thirteenth, whether or not signing the Consent of Voluntary Presentation for Inspection violates Article III, Section 2 of the Constitution on the protection against unreasonable searches and seizures;

Fourteenth, whether or not requiring a certification from the president of a recognized gun club or sports shooting association

in order to obtain a firearm license violates Article III, Section 8 of the Constitution on the freedom of association; and

Finally, whether or not respondents are guilty of contempt of court.

In the main, petitioners argue that Republic Act No. 10591 and its Implementing Rules and Regulations unduly restrict their right to bear arms, their right to property, and their right to privacy. The government, through the Philippine National Police, counters that the keeping and bearing of arms is a mere privilege, not a right. Thus, whoever seeks to obtain a firearm license has to either accept or decline the government's terms for the use and possession of a firearm.

The Petitions are partly granted. Section 9.3 of the 2013 Implementing Rules and Regulations of Republic Act No. 10591 is unconstitutional. It is declared void for violating Article III, Section 2 of the Constitution on the right against unreasonable searches and seizures. Signing the Consent of Voluntary Presentation for Inspection appearing in the *pro forma* application form for firearm registration is likewise declared void and of no force and effect.

As for the rest of the assailed provisions of Republic Act No. 10591 and the 2013 Implementing Rules and Regulations, petitioners miserably failed to make a case for their unconstitutionality.

I

Acosta and Dela Paz, petitioners in G.R. No. 211559, did not allege actual facts in their Petition. As such, they failed to bring an actual case or controversy before this Court.

Article VIII, Section 1 of the Constitution requires an actual case or controversy for this Court's exercise of its power of judicial review:

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

There is an actual case or controversy if it involves "a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution[.]"[52] The issues presented should be "definite and concrete, touching on the legal relations of parties having adverse legal interests."[53] Such is necessary for this Court to avoid giving advisory opinions, using its limited resources to resolve hypothetical cases or conjectural issues instead of properly devoting time to the more pressing and important cases for its resolution.

Actual facts, as opposed to hypothetical ones, must exist for there to be an actual case or controversy. In *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*,[54] the Petitions were dismissed for lack of actual facts. In that case, the petitioners assailed the constitutionality of Republic Act No. 9372, or the Human Security Act, alleging that they were subjected to "close security surveillance by state security forces"[55] and were branded as "enemies of the [S]tate"[56] on the basis of the law. This Court held that there were no actual facts for it to decide the consolidated cases as the allegations were unsubstantiated and, therefore, not "anchored on real events[.]"[57]

When this Court dismissed the *Southern Hemisphere* petitions, petitions for declaratory relief assailing the constitutionality of the Human Security Act were pending before the Regional

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[52] *Information Technology Foundation of the Philippines v. Commission on Elections*, 499 Phil. 281, 304 (2005)[Per *C.J.* Panganiban, *En Banc*].

[53] *Id.* at 304-305.

[54] 646 Phil. 452 (2010)[Per *J.* Carpio Morales, *En Banc*].

[55] *Id.* at 473.

[56] *Id.*

[57] *Id.* at 483.

Trial Court of Quezon City. The Republic of the Philippines, who was the respondent in the declaratory relief cases, filed a motion to dismiss before the trial court. The motion, however, was denied, leading the Republic of the Philippines to file a petition for *certiorari* before this Court. In granting the writ of *certiorari*, this Court in *Republic v. Roque*[58] stated that the petitions for declaratory relief did not properly allege a "state of facts indicating imminent and inevitable litigation":[59]

> Pertinently, a justiciable controversy refers to an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory. Corollary thereto, by "ripening seeds" it is meant, not that sufficient accrued facts may be dispensed with, but that a dispute may be tried at its inception before it has accumulated the asperity, distemper, animosity, passion, and violence of a full blown battle that looms ahead. The concept describes a state of facts indicating imminent and inevitable litigation provided that the issue is not settled and stabilized by tranquilizing declaration.
>
> A perusal of private respondents' petition for declaratory relief would show that they have failed to demonstrate how they are left to sustain or are in immediate danger to sustain some direct injury as a result of the enforcement of the assailed provisions of RA 9372. Not far removed from the factual milieu in the *Southern Hemisphere* cases, private respondents only assert general interests as citizens, and taxpayers and infractions which the government could prospectively commit if the enforcement of the said law would remain [untrammeled]. As their petition would disclose, private respondents' fear of prosecution was solely based on remarks of certain government officials which were addressed to the general public. They, however, failed to show how these remarks tended towards any prosecutorial or goverrnmental action geared towards the implementation of RA 9372 against them. In other words, there was no particular, real or imminent threat to any of them.[60] (Emphasis supplied, citations omitted)

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[58] 718 Phil. 294 (2013)[Per *J.* Perlas-Bernabe, *En Banc*].

[59] *Id.* at 305.

[60] *Id.* at 305-306.

Recently, in *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*,[61] this Court dismissed the petition filed by associations of provincial bus operators assailing the constitutionality of Department Order No. 118-12, which mandated the part-fixed-part-performance-based compensation system for bus drivers and conductors. The petitioners alleged, first, that the compensation scheme "may [result] in [the] diminution of the income of ... bus drivers and conductors."[62] It also claimed that the compensation scheme was "unfit to the nature of operation of public transport system or business."[63]

In dismissing the Petition, this Court found the petitioners' allegations unsubstantiated and bare, with no actual facts to support them. Reiterating that actual facts must support petitions brought under the expanded jurisdiction of this Court in Article VIII, Section 1 of the Constitution, this Court stated:

> Even the expanded jurisdiction of this Court under Article VIII, Section 1 does not provide license to provide advisory opinions. An advisory opinion is one where the factual setting is conjectural or hypothetical. In such cases, the conflict will not have sufficient concreteness or adversariness so as to constrain the discretion of this Court. After all, legal arguments from concretely lived facts are chosen narrowly by the parties. Those who bring theoretical cases will have no such limits. They can argue up to the level of absurdity. They will bind the future parties who may have more motives to choose specific legal arguments. In other words, for there to be a real conflict between the parties, *there must exist actual facts from which courts can properly determine whether there has been a breach of constitutional text*.[64] (Emphasis in the original, citation omitted)

Like the petitions in *Southern Hemisphere*, *Roque*, and *The Provincial Bus Operators Association of the Philippines*,

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[61] G.R. No. 202275, July 17, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64411>[Per *J.* Leonen, *En Banc*]

[62] *Id*.

[63] *Id*.

[64] *Id*.

the Petition in G.R. No. 211559 alleges no actual facts from which this Court can intelligently adjudicate the issues raised in it. Petitioners Acosta and Dela Paz assail the constitutionality of Republic Act No. 10591 because it allegedly violated their right to bear arms, their right to property, and even the right to presumption of innocence by disqualifying from holding a firearm license those who have committed a crime involving a firearm.[65] However, they did not show that their firearm licenses were revoked because of any of the provisions of the law or its Implementing Rules and Regulations.

Petitioners Acosta and Dela Paz also raise the issue of the omission of engineers from Section 7.3[66] of the Implementing Rules and Regulations as professionals who may apply for a permit to carry firearms outside of residence, contrary to Section 7[67] of

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[65] *Rollo* (G.R. No. 211559), pp. 47-64, Petition for Prohibition, and 811-813, Memorandum of petitioners Acosta and Dela Paz.

[66] Implementing Rules and Regulations of Republic Act No. 10591 (2013), Sec. 7.3 provides:

SECTION 7. *Carrying of Firearms Outside of Residence or Place of Business*. —

. . . . . .

7.3 For purposes of this Act, the following professionals are considered to be in imminent danger due to the nature of their profession, occupation or business and hence are not required to submit threat assessment certificates:

a) Members of the Philippine Bar;

b) Certified Public Accountants;

c) Accredited media practitioners from recognized media institutions; Cashiers and bank tellers;

d) Priests, Ministers, Rabbi, Imams;

e) Physicians and nurses; and

f) Businessmen, who by the nature of their business or undertaking duly recognized or regulated by law, are exposed to high risk of being targets of criminal elements.

[67] Republic Act No. 10591 (2013), Sec. 7 provides:

SECTION 7. *Carrying of Firearms Outside of Residence or Place of Business*. — A permit to carry firearms outside of residence shall be issued by the Chief of the PNP or his/her duly authorized representative to any

Republic Act No. 10591. They also assail Section 7.9[68] of the Implementing Rules and Regulations, which allegedly adversely

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qualified person whose life is under actual threat or his/her life is in imminent danger due to the nature of his/her profession, occupation or business.

It shall be the burden of the applicant to prove that his/her life is under actual threat by submitting a threat assessment certificate from the PNP.

For purposes of this Act, the following professionals are considered to be in imminent danger due to the nature of their profession, occupation or business:

(a) Members of the Philippine Bar;
(b) Certified Public Accountants;
(c) Accredited Media Practitioners;
(d) Cashiers, Bank Tellers;
(e) Priests, Ministers, Rabbi, Imams;
(f) Physicians and Nurses;
(g) Engineers; and
(h) Businessmen, who by the nature of their business or undertaking, are exposed to high risk of being targets of criminal elements.

[68] Implementing Rules and Regulations of Republic Act No. 10591 (2013), Sec. 7.9 provides:

SECTION 7. *Carrying of Firearms Outside of Residence or Place of Business*. —

. . . . . .

7.9 Members of the PNP, AFP and other Law Enforcement Agencies must apply for a PTCFOR-LEA, in order to be authorized to carry the corresponding government-issued firearm outside of residence:

a) The Police Regional Director or his equivalent in the AFP and other law enforcement agencies, shall endorse to the Chief, PNP all application for PTCFOR-LEA;

b) The application must be accompanied by the latest appointment order of the personnel applying for PTCFOR-LEA and a certificate of non-pending case duly issued for the purpose;

c) The PTCFOR-LEA shall be issued only by the Chief, PNP through PTCFOR-Secretariat and shall be valid only for one (1) year;

d) The fees to be charged in the filing of application for PTCFOR-LEA shall only be in such minimal amount corresponding to the actual administrative cost necessary for the issuance of the permit, as may be determined by the PNP; and

e) The PTCFOR-LEA should always be accompanied by the corresponding Memorandum Receipt/Acknowledgment Receipt of Equipment (MR/ARE)[.]

affect members of a law enforcement agency such as the Armed Forces of the Philippines and the Philippine National Police. Yet, they made no allegation that they are engineers, or that when they applied for a permit to carry a firearm outside of residence, they were denied because of Section 7.3. Likewise, they did not allege that they are members of a law enforcement agency.

Thus, petitioners Acosta and Dela Paz raised no actual facts in their Petition. Their Petition in G.R. No. 211559, therefore, is dismissible for their failure to present an actual case or controversy.

II

Petitioners Acosta, Dela Paz, and PROGUN, however, have legal standing to file the present suit.

An aspect of justiciability, legal standing is the "right of appearance in a court of justice on a given question."[69] It ensures that the party bringing the case has a "personal and substantial interest in [its outcome] such that he [or she] has sustained, or will sustain, direct injury as a result of its enforcement[.]"[70] What is essential is *direct injury*, as this guarantees a "personal stake in the outcome of the controversy"[71] which, in turn, assures "that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions."[72]

The concept of legal standing is similar to the concept of "interest" in private suits: it refers to "a present substantial interest,"[73]

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[69] *Advocates for Truth in Lending, Inc. v. Bangko Sentral Monetary Board*, 701 Phil. 483, 493 (2013) [Per *J.* Reyes, *En Banc*].

[70] *Francisco, Jr. v. The House of Representatives*, 460 Phil. 830, 893 (2003) [Per *J.* Carpio Morales, *En Banc*].

[71] *Association of Flood Victims v. Commission on Elections*, 740 Phil. 472, 481 (2014) [Per Acting *C.J.* Carpio, *En Banc*].

[72] *Id*.

[73] *Galicto v. Aquino III*, 683 Phil. 141, 171 (2012) [Per *J.* Brion, *En Banc*].

not a "mere expectancy or a future, contingent, subordinate, or consequential interest."[74] Thus, under the Rules of Court, actions must be prosecuted or defended in the name of the real party-in-interest.[75]

The exceptions to the rule on legal standing were summarized in *Funa v. Villar*.[76] In that case, this Court enumerated four (4) types of "non-traditional suitors" who, though not having been directly injured by the assailed governmental act, were nonetheless allowed to file the petition because they raised issues of critical significance:

> 1.) For *taxpayers*, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;
>
> 2.) For *voters*, there must be a showing of obvious interest in the validity of the election law in question;
>
> 3.) For *concerned citizens*, there must be a showing that the issues raised are of transcendental importance which must be settled early; and
>
> 4.) For *legislators*, there must be a claim that the official action complained of infringes their prerogatives as legislators.[77] (Emphasis in the original)

Through *White Light Corporation v. City of Manila*,[78] the concept of third-party standing was introduced in our jurisdiction as another exception to the direct injury rule. Under this concept, a litigant may file a case on behalf of third parties when the following criteria concur: (1) "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";[79] (2) "the

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[74] *Id*.

[75] RULES OF COURT, Rule 3, Sec. 2.

[76] 686 Phil. 571 (2012) [Per *J.* Velasco, Jr., *En Banc*].

[77] *Id.* at 586.

[78] 596 Phil. 444 (2009) [Per *J.* Tinga, *En Banc*].

[79] *Id.* at 456.

litigant must have a close relation to the third party";[80] and (3) "there must exist some hindrance to the third party's ability to protect his or her own interests."[81]

In *White Light*, this Court allowed hotel and motel operators to sue on behalf of its patrons to assail the constitutionality of Manila City Ordinance No. 7774 prohibiting hotels and motels in Manila from charging wash-up rates. This Court stated that not only were the business interests of hotel and motel operators affected by the Ordinance, but the constitutional rights of their patrons were violated through its enactment.

Associations may likewise sue on behalf of their members, as they are but a "medium through which [their] individual members seek to make more effective the expression of their voices and the redress of their grievances."[82] However, if they are to do so, associations "must sufficiently [establish] who their members [are], that their members authorized the associations to sue on their behalf, and that the members would be directly injured by the challenged governmental acts."[83]

This Court, in *The Provincial Bus Operators Association of the Philippines*, summarized the factors to be considered in granting standing to associations and corporations suing on behalf of its members:

> The liberality of this Court to grant standing for associations or corporations whose members are those who suffer direct and substantial injury depends on a few factors.
>
> In all these cases, there must be an actual controversy. Furthermore, there should also be a clear and convincing demonstration of special reasons why the truly injured parties may not be able to sue.

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[80] *Id*.

[81] *Id*.

[82] *Executive Secretary v. Court of Appeals*, 473 Phil. 27, 51 (2004) [Per *J.* Callejo, Second Divion].

[83] *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018,< //http://elibrary.judiciary.gov.ph/thebookself/showdocs/1/64411> [Per *J.* Leonen, *En Banc*].

Alternatively, there must be a similarly clear and convincing demonstration that the representation of the association is more efficient for the petitioners to bring. They must further show that it is more efficient for this Court to hear only one voice from the association. In other words, the association should show special reasons for bringing the action themselves rather than as a class suit, allowed when the subject matter of the controversy is one of common or general interest to many persons. In a class suit, a number of the members of the class are permitted to sue and to defend for the benefit of all the members so long as they are sufficiently numerous and representative of the class to which they belong.

In some circumstances similar to those in *White Light*, the third parties represented by the petitioner would have special and legitimate reasons why they may not bring the action themselves. Understandably, the cost to patrons in the *White Light* case to bring the action themselves — *i.e.*, the amount they would pay for the lease of the motels — will be too small compared with the cost of the suit. But viewed in another way, whoever among the patrons files the case even for its transcendental interest endows benefits on a substantial number of interested parties without recovering their costs. This is the free rider problem in economics. It is a negative externality which operates as a disincentive to sue and assert a transcendental right.

In addition to an actual controversy, special reasons to represent, and disincentives for the injured party to bring the suit themselves, there must be a showing of the transcendent nature of the right involved.

Only constitutional rights shared by many and requiring a grounded level of urgency can be transcendent....

This Court is not a forum to appeal political and policy choices made by the Executive, Legislative, and other constitutional agencies and organs. This Court dilutes its role in a democracy if it is asked to substitute its political wisdom for the wisdom of accountable and representative bodies where there is no unmistakable democratic deficit. It cannot lose this place in the constitutional order. Petitioners' invocation of our jurisdiction and the justiciability of their claims must be presented with rigor. Transcendental interest is not a talisman to blur the lines of authority drawn by our most fundamental law.[84] (Citation omitted)

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[84] *Id*.

As discussed, petitioners Acosta and Dela Paz assail the omission of engineers from Section 7.3[85] of the Implementing Rules and Regulations;[86] yet, they never alleged that they are

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[85] Implementing Rules and Regulations of Republic Act No. 10591 (2013), Sec. 7.3 provides:

SECTION 7. *Carrying of Firearms Outside of Residence or Place of Business*. —

. . . . . .

7.3 For purposes of this Act, the following professionals are considered to be in imminent danger due to the nature of their profession, occupation or business and hence are not required to submit threat assessment certificates:

a) Members of the Philippine Bar;

b) Certified Public Accountants;

c) Accredited media practitioners from recognized media institutions; Cashiers and bank tellers;

d) Priests, Ministers, Rabbi, Imams;

e) Physicians and nurses; and

f) Businessmen, who by the nature of their business or undertaking duly recognized or regulated by law, are exposed to high risk of being targets of criminal elements.

[86] Republic Act No. 10591 (2013), Sec. 7 provides:

SECTION 7. *Carrying of Firearms Outside of Residence or Place of Business*. — A permit to carry firearms outside of residence shall be issued by the Chief of the PNP or his/her duly authorized representative to any qualified person whose life is under actual threat or his/her life is in imminent danger due to the nature of his/her profession, occupation or business.

It shall be the burden of the applicant to prove that his/her life is under actual threat by submitting a threat assessment certificate from the PNP.

For purposes of this Act, the following professionals are considered to be in imminent danger due to the nature of their profession, occupation or business:

(a) Members of the Philippine Bar;
(b) Certified Public Accountants;
(c) Accredited Media Practitioners;
(d) Cashiers, Bank Tellers;
(e) Priests, Ministers, Rabbi, Imams;
(f) Physicians and Nurses;
(g) Engineers; and
(h) Businessmen, who by the nature of their business or undertaking, are exposed to high risk of being targets of criminal elements.

engineers, the persons supposedly injured by Section 7.3. Neither did they allege that they were members of the Philippine National Police, the Armed Forces of the Philippines, or any law enforcement agency allegedly injured by Section 7.9 of the Implementing Rules.

However, as individual firearms license holders, petitioners Acosta and Dela Paz are the ones who stand to suffer direct injury should the inspection of their houses be required for firearm registration.

As for the Petition in G.R. No. 211567, this Court finds petitioner PROGUN sufficiently clothed with legal standing to bring on behalf of its individual members a suit to question a possible violation of their constitutional right to unreasonable searches.

The same cannot be said for petitioners Guns and Ammo Dealers and PROGUN in G.R. No. 215634. To recall, they assail respondent Philippine National Police's refusal to decentralize its offices and its overregulation of gun-related establishments, as these acts supposedly harm their business interests. Yet, there is no showing of any hindrance to their members' ability to protect their own business interests.

For these reasons, the Petitions in G.R. 212570 and G.R. No. 215634 are dismissible for lack of legal standing on the part of petitioners Guns and Ammo Dealers and PROGUN.

III

Petitioners directly sought recourse from this Court, in violation of the doctrine of hierarchy of courts.

Under this doctrine, recourse must first be sought from lower courts sharing concurrent jurisdiction with a higher court.[87] This is "to ensure that every level of the judiciary performs its designated roles in an effective and efficient

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[87] See *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64411> [Per *J.*, Leonen, *En Banc]*

manner."[88] Continued this Court in *The Diocese of Bacolod v. Commission on Elections*:[89]

> Trial courts do not only determine the facts from the evaluation of the evidence presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized into regions and then into branches. Their writs generally reach within those territorial boundaries. Necessarily, they mostly perform the all-important task of inferring the facts from the evidence as these are physically presented before them. In many instances, the facts occur within their territorial jurisdiction, which properly present the 'actual case' that makes ripe a determination of the constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where resort to courts at their level would not be practical considering their decisions could still be appealed before the higher courts, such as the Court of Appeals.
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> The Court of Appeals is primarily designated as an appellate court that reviews the determination of facts and law made by the trial courts. It is collegiate in nature. This nature ensures more standpoints in the review of the actions of the trial court. But the Court of Appeals also has original jurisdiction over most special civil actions. Unlike the trial courts, its writs can have a nationwide scope. It is competent to determine facts and, ideally, should act on constitutional issues that may not necessarily be novel unless there are factual questions to determine.
>
> This court, on the other hand, leads the judiciary by breaking new ground or further reiterating — in the light of new circumstances or in the light of some confusions of bench or bar — existing precedents. Rather than a court of first instance or as a repetition of the actions of the Court of Appeals, this court promulgates these doctrinal devices in order that it truly performs that role.[90] (Citation omitted)

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[88] *The Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 329 (2015) [Per *J.* Leonen, *En Banc*].

[89] 751 Phil. 301 (2015) [Per *J.* Leonen, *En Banc*].

[90] *Id.* at 329-330.

In *Gios-Samar, Inc. v. Department of Transportation and Communications*,[91] this Court extensively discussed the evolution of this Court's original and concurrent jurisdiction which eventually led to the development of the doctrine of hierarchy of courts. This Court then determined that the doctrine is, ultimately, a "constitutional filtering mechanism designed to enable the Court to focus on the more fundamental and essential tasks assigned to it by the highest law of the land":

> Strict adherence to the doctrine of hierarchy of courts is an effective mechanism to filter the cases which reach the Court. As of December 31, 2016, 6,526 new cases were filed to the Court. Together with the reinstated/revived/reopened cases, the Court has a total of 14,491 cases in its docket. Of the new cases, 300 are raffled to the Court En Banc and 6,226 to the three Divisions of the Court. The Court En Banc disposed of 105 cases by decision or signed resolution, while the Divisions of the Court disposed of a total of 923 by decision or signed resolution.
>
> These, clearly, are staggering numbers. The Constitution provides that the Court has original jurisdiction over five extraordinary writs and by our rule-making power, we created four more writs which can be filed directly before us. There is also the matter of appeals brought to us from the decisions of lower courts. Considering the immense backlog facing the court, this begs the question: *What is really the Court's work? What sort of cases deserves the Court's attention and time?*
>
> We restate the words of Justice Jose P. Laurel in *Angara* that the Supreme Court is the final arbiter of the Constitution. Hence, direct recourse to us should be allowed only when the issue involved is one of law. However, and as former Associate Justice Vicente V. Mendoza reminds, the Court may still choose to avoid passing upon constitutional questions which are confessedly within its jurisdiction if there is some other ground on which its decision may be based. The so-called "seven pillars of limitations of judicial review" or the "rules of avoidance" enunciated by US Supreme Court Justice Brandeis in his concurring opinion in *Ashwander v. Tennessee Valley Authority* teaches that:

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[91] G.R. No. 217158, March 12, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64970> [Per *J.* Jardeleza, *En Banc*].

1. The Court will not pass upon the constitutionality of legislation in a friendly, non-adversary proceeding, declining because to decide such questions "is legitimate only in the last resort, and as a necessity in the determination of real, earnest and vital controversy between individuals. It never was the thought that, by means of a friendly suit, a party beaten in the legislature could transfer to the courts an inquiry as to the constitutionality of the legislative act."

2. The Court will not "anticipate a question of constitutional law in advance of the necessity of deciding it." "It is not the habit of the Court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case."

3. The Court will not "formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied."

4. The Court will not pass upon a constitutional question, although properly presented by the record, if there is also present some other ground upon which the case may be disposed of. This rule has found most varied application. Thus, if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter. Appeals from the highest court of a state challenging its decision of a question under the Federal Constitution are frequently dismissed because the judgment can be sustained on an independent state ground.

5. The Court will not pass upon the validity of a statute upon complaint of one who fails to show that he is injured by its operation. Among the many applications of this rule, none is more striking than the denial of the right of challenge to one who lacks a personal or property right. Thus, the challenge by a public official interested only in the performance of his official duty will not be entertained. In *Fairchild v. Hughes*, the Court affirmed the dismissal of a suit brought by a citizen who sought to have the Nineteenth Amendment declared unconstitutional. In *Massachusetts v. Mellon*, the challenge of the federal Maternity Act was not entertained although made by the Commonwealth on behalf of all its citizens.

6. The Court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits.

7. "When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided." ...

Meanwhile, in *Francisco, Jr. v. Nagmamalasakit na mga Mananganggol ng mga Manggagawang Pilipino, Inc.*, the Court summarized the foregoing "pillars" into six categories and adopted "parallel guidelines" in the exercise of its power of judicial review, to wit:

The foregoing "pillars" of limitation of judicial review, summarized in *Ashwander v. Tennessee Valley Authority* from different decisions of the United States Supreme Court, can be encapsulated into the following categories:

1. that there be absolute necessity of deciding a case
2. that rules of constitutional law shall be formulated only as required by the facts of the case
3. that judgment may not be sustained on some other ground
4. that there be actual injury sustained by the party by reason of the operation of the statute
5. that the parties are not in estoppel
6. that the Court upholds the presumption of constitutionality.

As stated previously, parallel guidelines have been adopted by this Court in the exercise of judicial review:

1. actual case or controversy calling for the exercise of judicial power;

2. the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement;

3. the question of constitutionality must be raised at the earliest possible opportunity;

4. the issue of constitutionality must be the very *lis mota* of the case.

Thus, the exercise of our power of judicial review is subject to these four requisites and the further requirement that we can only resolve pure questions of law. These limitations, when properly and strictly observed, should aid in the decongestion of the Court's workload.[92] (Citations omitted)

Here, to assail the constitutionality of some of the provisions of Republic Act No. 10591 and their corresponding provisions in the 2013 Implementing Rules and Regulations, petitioners filed actions for *certiorari*, prohibition, and *mandamus*—actions that could have been brought before a regional trial court.[93]

In *Ynot v. Intermediate Appellate Court*,[94] this Court interpreted the constitutional provision on its jurisdiction to "'review, revise, reverse, modify or affirm on appeal or *certiorari*, as the law or rules of court may provide,' final judgments and orders of lower courts in, among others, all cases involving the constitutionality of certain measures."[95] This, according to this Court, "simply means that the resolution of such cases may be made in the first instance by these lower courts."[96]

In any case, this Court shall proceed to resolve the merits of the case as it has done in *Chavez v. Romulo*,[97] a case likewise involving the right to bear arms. It stated:

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[92] *Id*.

[93] *Batas Pambansa Blg*. 129 (1981), Sec. 21 provides:

SECTION 21. Original jurisdiction in other cases. — Regional Trial Courts shall exercise original jurisdiction:

(1) In the issuance of writs of *certiorari*, prohibition, *mandamus*, *quo warranto, habeas corpus* and injunction which may be enforced in any part of their respective regions[.]

[94] 232 Phil. 615 (1987) [Per *J*. Cruz, *En Banc*].

[95] *Id.* at 621.

[96] *Id*.

[97] 475 Phil. 486 (2004)[Per *J*. Sandoval-Gutierrez, *En Banc*].

On the alleged breach of the doctrine of hierarchy of courts, suffice it to say that the doctrine is not an iron-clad dictum. In several instances where this Court was confronted with cases of national interest and of serious implications, it never hesitated to set aside the rule and proceed with the judicial determination of the cases. The case at bar is of similar import as it involves the citizens' right to bear arms.[98] (Citation omitted)

IV

As an exception to the non-delegation of legislative power, Congress has historically delegated to the chief of the police force the power to approve or disapprove applications for license to possess or deal with firearms. Under Republic Act No. 6975, or the Department of the Interior and Local Government Act of 1990, the authority to issue licenses for the possession of firearms and explosives is now exclusively granted to the Philippine National Police.[99] This was extensively discussed in *Chavez*:

It is true that under our constitutional system, the powers of government are distributed among three coordinate and substantially independent departments: the legislative, the executive and the judiciary. Each has exclusive cognizance of the matters within its jurisdiction and is supreme within its own sphere.

Pertinently, the power to make laws—the legislative power—is vested in Congress. Congress may not escape its duties and responsibilities by delegating that power to any other body or authority. Any attempt to abdicate the power is unconstitutional and void, on the principle that "*delegata potestas non potest delegari*" — "delegated power may not be delegated."

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[98] *Id*. at 498-499.

[99] Republic Act No. 6975 (1990), Sec. 24(f) provides:

SECTION 24. *Powers and Functions*. — The PNP shall have the following powers and functions:

. . . . . .

(f) Issue licenses for the possession of firearms and explosives in accordance with law[.]

The rule which forbids the delegation of legislative power, however, is not absolute and inflexible. It admits of exceptions. An exception sanctioned by immemorial practice permits the legislative body to delegate its licensing power to certain persons, municipal corporations, towns, boards, councils, commissions, commissioners, auditors, bureaus and directors. Such licensing power includes the power to promulgate necessary rules and regulations.

The evolution of our laws on firearms shows that since the early days of our Republic, the legislature's tendency was always towards the delegation of power. Act No. 1780, delegated upon the Governor-General (now the President) the authority (*1*) to approve or disapprove applications of any person for a license to deal in firearms or to possess the same for personal protection, hunting and other lawful purposes; and (*2*) to revoke such license any time. Further, it authorized him to issue regulations which he may deem necessary for the proper enforcement of the Act. With the enactment of Act No. 2711, the "Revised Administrative Code of 1917," the laws on firearms were integrated. The Act retained the authority of the Governor General provided in Act No. 1780. Subsequently, the growing complexity in the Office of the Governor-General resulted in the delegation of his authority to the Chief of the Constabulary. On January 21, 1919, Acting Governor-General Charles E. Yeater issued Executive Order No. 8 authorizing and directing the Chief of Constabulary to act on his behalf *in approving and disapproving applications for personal, special and hunting licenses*. This was followed by Executive Order No. 61 designating the Philippine Constabulary (PC) as the government custodian of all firearms, ammunitions and explosives. Executive Order No. 215, issued by President Diosdado Macapagal on December 3, 1965, granted the Chief of the Constabulary, not only the authority to approve or disapprove applications for personal, special and hunting license, but also *the authority to revoke the same*. With the foregoing developments, it is accurate to say that the Chief of the Constabulary had exercised the authority for a long time. In fact, subsequent issuances such as Sections 2 and 3 of the Implementing Rules and Regulations of Presidential Decree No. 1866 perpetuate such authority of the Chief of the Constabulary. Section 2 specifically provides that any person or entity desiring to possess any firearm "*shall first secure the necessary permit/license/authority from the Chief of the Constabulary*." With regard to the issuance of PTCFOR, Section 3 imparts: "*The Chief of Constabulary may, in meritorious cases as determined by him and under such conditions*

as he may impose, authorize lawful holders of firearms to carry them outside of residence." These provisions are issued pursuant to the general power granted by P.D. No. 1866 *empowering him to promulgate rules and regulations for the effective implementation of the decree*. At this juncture, it bears emphasis that P.D. No. 1866 is the chief law governing possession of firearms in the Philippines and that it was issued by President Ferdinand E. Marcos in the exercise of his legislative power.

. . . . . .

By virtue of Republic Act No. 6975, the Philippine National Police (PNP) absorbed the Philippine Constabulary (PC). Consequently, the PNP Chief succeeded the Chief of the Constabulary and, therefore, assumed the latter's licensing authority. *Section 24 thereof specifies, as one of PNP's powers, the issuance of licenses for the possession of firearms and explosives in accordance with law*. This is in conjunction with the PNP Chiefs "power to issue detailed implementing policies and instructions" on such "matters as may be necessary to effectively carry out the functions, powers and duties" of the PNP.[100] (Emphasis in the original, citations omitted)

Under Republic Act No. 10591, the authority to issue firearms licenses and permits to carry them outside of residence remains with the Philippine National Police. Section 44 specifically authorized the Chief of the Philippine National Police to promulgate the necessary rules and regulations to effectively implement the law:

SECTION 44. *Implementing Rules and Regulations*. — Within one hundred twenty (120) days from the effectivity of this Act, the Chief of the PNP, after public hearings and consultation with concerned sectors of society, shall formulate the necessary rules and regulations for the effective implementation of this Act to be published in at least two (2) national newspapers of general circulation.

Still, to validly exercise their quasi-legislative powers, administrative agencies must comply with two (2) tests: (1) the completeness test; and (2) the sufficient standard test.

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[100] *Chavez v. Romulo*, 475 Phil. 486, 499-505 (2004) [Per *J.* Sandoval-Gutierrez, *En Banc*].

The completeness test requires that the law to be implemented be "complete [and should set forth] therein the policy to be executed, carried out or implemented by the delegate."[101] On the other hand, the sufficient standard test requires that the law to be implemented contain "adequate guidelines ... to map out the boundaries of the delegate's authority[.]"[102] "To be sufficient, the standard must specify the limits of the delegate's authority, announce the legislative policy[,] and identify the conditions under which it is to be implemented."[103] Furthermore, the Administrative Code requires that administrative agencies file with the University of the Philippines Law Center the rules they adopt, which will then be effective 15 days after filing.[104]

Since Congress expressly granted the Chief of the Philippine National Police the power to issue rules and regulations to implement Republic Act No. 10591, the fundamental issue to be resolved by this Court is whether the Chief of Police validly exercised this quasi-legislative power in light of the completeness and sufficient standard tests.

IV(A)

Petitioner PROGUN argues that the Implementing Rules and Regulations is an *ex post facto* law — a law that makes criminal an act done before its passage but innocent at the time of its commission[105] the enactment of which is prohibited in Article III, Section 22 of the Constitution.[106] According to petitioner PROGUN, the Philippine National Police deemed vacated all

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[101] *ABAKADA GURO Party List v. Purisima*, 584 Phil. 246, 272 (2008) [Per *J.* Corona, *En Banc*].

[102] *Id*.

[103] *Id*.

[104] ADM. CODE, Book VII, Ch. 2, Sec. 3.

[105] *United States v. Conde*, 42 Phil. 766, 770 (1922)[Per *J.* Johnson, First Division].

[106] CONST., Art. VIII, Sec. 22 provides:

SECTION 22. No *ex post facto law* or bill of attainder shall be enacted.

firearm licenses issued under the old law, forcing existing license holders to re-apply under the new law under pain of being charged for illegal possession of firearms. It asserts that the Implementing Rules and Regulations made the new law and its requirements for acquiring a firearm license retroactively apply to existing licensed firearm holders. This supposedly meant that firearm holders who could legally own and possess firearms under the old law become "instant criminals"[107] under the new law.

There is no such retroactive application mandated in the Implementing Rules and Regulations. On the contrary, firearm licenses to possess Class-A light weapons issued before the passage of Republic Act No. 10591 are still recognized both under Republic Act No. 10591 and its Implementing Rules:

Republic Act No. 10591	**Implementing Rules (2013)**
SECTION 10. *Firearms That May Be Registered.* — Only small arms may be registered by licensed citizens or licensed juridical entities for ownership, possession and concealed carry. A light weapon shall be lawfully acquired or possessed exclusively by the AFP, the PNP and other law enforcement agencies authorized by the President in the performance of their duties: *Provided, That private individuals who already have licenses to possess Class-A light weapons upon the effectiviy of this Act shall not be deprived of the privilege to continue possessing the same and*	SECTION 10. *Firearms That May Be Registered.* — 10.1 Only small arms as defined in this IRR may be registered by licensed citizens or licensed juridical entities for ownership, possession and concealed carry. 10.2 A light weapon as defined in this IRR shall be lawfully acquired or possessed exclusively the AFP, the PNP and other law enforcement agencies authorized for such purpose by the President or by law that Congress may pass after the effectivity of this IRR. 10.3 *Private individuals who are already licensed holders for*

[107] *Rollo* (G.R. No. 211559), p. 831, Memorandum of petitioner PROGUN in G.R. No. 215634.

renewing the licenses therefor, for the sole reason that these firearms are Class "A" light weapons, and shall be required to comply with other applicable provisions of this Act. (Emphasis supplied)	*Class-A light weapons as herein defined upon the effectivity of this IRR shall not be deprived of the lawful possession thereof, provided that they renew their licenses and firearm registration and they continue to possess the standard requirements mentioned in paragraphs 4.1 and 4. 4, in this IRR.* (Emphasis supplied)

If the Implementing Rules and Regulations were indeed in the nature of an *ex post facto* law, then private individuals who possess Class-A light weapons under the old law must be expressly punished under the new law because the new law only allows them to own and possess small arms. Yet, as expressly provided in the law, existing license holders of Class-A light weapons may renew their licenses under the new law and Implementing Rules.

As to petitioner PROGUN's claim that in 2014, the Philippine National Police "suddenly declared all existing firearms licenses as vacated"[108] and required all to renew and re-apply for a new license under the new law under the pain of prosecution for illegal possession of firearms, this claim is unsubstantiated. No one became an "instant criminal" under the new law.

IV(B)

Next, petitioner PROGUN in G.R. No. 215634 argues that the Implementing Rules and Regulations has gone overboard and prescribed additional and more restrictive regulations for gun clubs, sports shooters, reloaders, gunsmithing, competitions, indentors, among others, "none of which is provided for by any reasonable standard"[109] in Republic Act No. 10591. However,

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[108] *Id*. at 834.

[109] *Id*. at 838.

it did not demonstrate how these regulations were "more restrictive" as compared with the law.

On the contrary, Republic Act No. 10591 sets forth a sufficient standard found in Section 2.[110] It lays down the State policy to "maintain peace and order and protect the people against violence" by providing "a *comprehensive* law regulating the ownership, possession, carrying, manufacture, dealing in and importation of firearms, ammunition, or parts thereof[.]" As such, the Chief of the Philippine National Police incorporated provisions in the Implementing Rules and Regulations to regulate the activities of gun clubs, sports shooters, reloaders, gunsmithing, competitions, and indentors, which are related to the ownership, possession, and dealing in firearms.

This Court agrees with respondents Executive Secretary and Philippine National Police when they argued that:

> ... The constant and multifarious problems arising from firearms -related activities that the legislature may not have anticipated, demands that the[Philippine National Police] be allowed reasonable elbow-room in crafting the [Implementing Rules and Regulations], as well as ample latitude in determining the most effective and efficient measures to regulate such activities. Since statutes are usually couched in general terms, after expressing the policy, purposes, objectives, remedies, and sanctions intended by the legislature, the details and the manner of carrying out their policies are often best left to the administrative agency entrusted with its enforcement.[111] (Citation omitted)

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[110] Republic Act No. 10591 (2013), Sec. 2 provides:

SECTION 2. *Declaration of State Policy*. It is the policy of the State to maintain peace and order and protect the people against violence. The State also recognizes the right of its qualified citizens to self-defense through, when it is the reasonable means to repel the unlawful aggression under the circumstances, the use of firearms. Towards this end, the State shall provide for a comprehensive law regulating the ownership, possession, carrying, manufacture, dealing in and importation of firearms, ammunition, or parts thereof, in order to provide legal support to law enforcement agencies in their campaign against crime, stop the proliferation of illegal firearms or weapons and the illegal manufacture of firearms or weapons, ammunition and parts thereof.

[111] *Rollo* (G.R. No. 211559), p. 769, Consolidated Memorandum of respondents.

IV(C)

Petitioner PROGUN likewise claims that the Implementing Rules and Regulations exacts numerous new fees and licenses such as sports shooters licenses, collectors licenses, license to purchase barrel and cylinder parts, among others, which are allegedly not required by law.[112] To this, it can be said that Republic Act No. 10591 explicitly states that "reasonable licensing fees"[113] may be provided in the Implementing Rules. Except for petitioner PROGUN's assertion that the fees charged are numerous, there is no showing how these fees imposed were unreasonable.

IV (D)

As to PROGUN's claim that penal provisions were added in the Implementing Rules, this is easily belied by a side-by-side comparison of the provisions of Republic Act No. 10591 and the Implementing Rules and Regulations:

Republic Act No. 10591	**Implementing Rules (2013)**
ARTICLE V PENAL PROVISIONS	RULE V *Penal Provisions*
SECTION 28. *Unlawful Acquisition, or Possession of Firearms and Ammunition.* — The unlawful acquisition, possession of firearms and ammunition shall be penalized as follows:	SECTION 28. *Unlawful Acquisition or Possession of Firearms and Ammunition.* — The unlawful acquisition, possession of firearms and ammunition shall be penalized as follows:
a) The penalty of *prision mayor* in its medium period shall be imposed upon any person who shall unlawfully acquire or possess a small arm;	a) The penalty of *prision mayor* in its medium period shall be imposed upon any person who shall unlawfully acquire or possess a small arm;

[112] *Id*. at 838, Memorandum of petitioner PROGUN in G.R. No. 215634.

[113] Republic Act No. 10591 (2013), Secs. 4 and 11.

(b) The penalty of *reclusion temporal* to *reclusion perpetua* shall be imposed if three (3) or more small arms or Class-A light weapons are unlawfully acquired or possessed by any person;	b) The penalty of *reclusion temporal* to *reclusion perpetua* shall be imposed if three (3) or more small arms or Class-A light weapons are unlawfully acquired or possessed by any person;
(c) The penalty of *prision mayor* in its maximum period shall be imposed upon any person who shall unlawfully acquire or possess a Class-A light weapon;	c) The penalty of *prision mayor* in its maximum period shall be imposed upon any person who shall unlawfully acquire or possess a Class-A light weapon;
(d) The penalty of *reclusion perpetua* shall be imposed upon any person who shall unlawfully acquire or possess a Class-B light weapon;	d) The penalty of *reclusion perpetua* shall be imposed upon any person who shall unlawfully acquire or possess a Class-B light weapon;
(e) The penalty of one (1) degree higher than that provided in paragraphs (a) to (c) in this section shall be imposed upon any person who shall unlawfully possess any firearm under any or combination of the following conditions: (1) Loaded with ammunition or inserted with a loaded magazine; (2) Fitted or mounted with laser or any gadget used to guide the shooter to hit the target such as thermal weapon sight (TWS) and the like; (3) Fitted or mounted with sniper scopes, firearm muffler or firearm silencer; (4) Accompanied with an extra barrel; and (5) Converted to be capable of firing full automatic bursts.	e) The penalty of one (1) degree higher than that provided in paragraphs a) to (c) in this section shall be imposed upon any person who shall unlawfully possess any firearm under any or combination of the following conditions: 1) Loaded with ammunition or inserted with a loaded magazine; 2) Fitted or mounted with laser or any gadget used to guide the shooter to hit the target such as thermal weapon sight (TWS) and the like; 3) Fitted or mounted with sniper scopes, firearm muffler or firearm silencer;

(f) The penalty of *prision mayor* in its minimum period shall be imposed upon any person who shall unlawfully acquire or possess a major part of a small arm; (g) The penalty of *prision mayor* in its minimum period shall be imposed upon any person who shall unlawfully acquire or possess ammunition for a ***small arm or Class-A light weapon***. If the violation of this paragraph is committed by the same person charged with the unlawful acquisition or possession of a small arm, the former violation shall be absorbed by the latter; (h) The penalty of *prision mayor* in its medium period shall be imposed upon any person who shall unlawfully acquire or possess a major part of a Class-A light weapon; (i) The penalty of *prision mayor* in its medium period shall be imposed upon any person who shall unlawfully acquire or possess ammunition for a Class-A light weapon. If the violation of this paragraph is committed by the same person charged with the unlawful acquisition or possession of a Class-A light weapon, the former violation shall be absorbed by the latter; (j) The penalty of *prision mayor* in its maximum period shall be imposed upon any person who	4) Accompanied with an extra barrel; 5) Converted to be capable of firing full automatic bursts. f) The penalty of *prision mayor* in its minimum period shall be imposed upon any person who shall unlawfully acquire or possess a major part of a small arm; g) The penalty of *prision mayor* in its minimum period shall be imposed upon any person who shall unlawfully acquire or possess ammunition for ***a small arm***. If the violation of this paragraph is committed by the same person charged with the unlawful acquisition or possession of a small arm, the former violation shall be absorbed by the latter; h) The penalty of *prision mayor* in its medium period shall be imposed upon any person who shall unlawfully acquire or possess a major part of a Class-A light weapon; i) The penalty of *prision mayor* in its medium period shall be imposed upon any person who shall unlawfully acquire or possess ammunition for a Class-A light weapon. If the violation of this paragraph is committed by the same person charged with the unlawful acquisition or possession of a Class-A light weapon, the former violation

shall unlawfully acquire or possess a major part of a Class-B light weapon; and (k) The penalty of *prision mayor* in its maximum period shall be imposed upon any person who shall unlawfully acquire or possess ammunition for a Class-B light weapon. If the violation of this paragraph is committed by the same person charged with the unlawful acquisition or possession of a Class-B light weapon, the former violation shall be absorbed by the latter.	shall be absorbed by the latter; j) The penalty of *prision mayor* in its maximum period shall be imposed upon any person who shall unlawfully acquire or possess a major part of a Class-B light weapon; and k) The penalty of *prision mayor* in its maximum period shall be imposed upon any person who shall unlawfully acquire or possess ammunition for a Class-B light weapon. If the violation of this paragraph is committed by the same person charged with the unlawful acquisition or possession of a Class-B light weapon, the former violation shall be absorbed by the latter. (Emphasis supplied)

When it comes to the penal provisions, the text of the Implementing Rules and Regulations is almost a carbon copy of the law from which it is based. If there is any discrepancy, it is in item (g), where the Implementing Rules omitted the acquisition or possession of ammunition for a Class-A light weapon as a punishable act. Still, contrary to PROGUN's claim, the Philippine National Police placed no additional penal provisions relating to firearms use in the Implementing Rules.

IV(E)

Petitioner PROGUN also argues that the Implementing Rules and Regulations was allegedly drafted without the required consultation with the concerned sectors of society. This issue, however, is a factual question not proper in the present Petitions.

In any case, this Court is inclined to believe respondent Philippine National Police's assertion that the meetings on the drafting of the Implementing Rules were well-attended by groups of gun dealers, private security agencies, and groups of gunsmiths

and gun repair and customizing shops. This was evidenced by the Attendance Sheets[114] and Minutes of the Stakeholders Hearing and Consultation[115] attached to respondent Philippine National Police's Comment. The public hearing on August 15, 2013 was even attended by petitioner PROGUN,[116] disproving its claim that no public consultations and hearings were conducted in the drafting of the Implementing Rules. The Implementing Rules was, therefore, promulgated after the conduct of public consultations, in compliance with Section 44 of Republic Act No. 10591.

IV(F)

Petitioner PROGUN in G.R. No. 211567 claims that the Philippine National Police gravely abused its discretion in centralizing the applications for and renewals of firearms licenses and permits at the headquarters of the Philippine National Police at Camp Crame, Quezon City, to the detriment of those living far from Metro Manila.

To this, it must be noted that the processing of firearm license applications and renewals has already been decentralized to the Philippine National Police's regional and other satellite offices.[117] Therefore, the issue of whether the centralization was grave abuse of discretion on the part of the Chief of the Philippine National Police has already been rendered moot. It need not be discussed.

The same can be said on the outsourcing of the firearm license delivery to a courier service. The outsourcing having already been discontinued,[118] the issue is rendered moot.

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[114] *Rollo* (G.R. No. 215634), pp. 158-175. See also *id*. at 180-207 and 224-225.

[115] *Id*. at 176-179. See also *id*. at 208-223 and 226-231.

[116] *Id*. at 180 and 190.

[117] *Rollo* (G.R. No. 211559), p. 736, Consolidated Memorandum of respondents.

[118] *Id*. at 781, Consolidated Memorandum of respondents.

IV(G)

Meanwhile, petitioners Acosta and Dela Paz question the omission of engineers from Section 7.3[119] of the Implementing Rules and Regulations, which lists persons who may apply for a permit to carry firearm outside of residence.

It appears that the omission was inadvertent. At any rate, engineers may still apply for a permit to carry on the basis of Section 7[120]

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[119] Implementing Rules and Regulations of Republic Act No. 10591 (2013), Sec. 7.3 provides:

SECTION 7. *Carrying of Firearms Outside of Residence or Place of Business*. —

. . . . . .

7.3 For purposes of this Act, the following professionals are considered to be in imminent danger due to the nature of their profession, occupation or business and hence are not required to submit threat assessment certificates:

a) Members of the Philippine Bar;

b) Certified Public Accountants;

c) Accredited media practitioners from recognized media institutions; Cashiers and bank tellers;

d) Priests, Ministers, Rabbi, Imams;

e) Physicians and nurses; and

f) Businessmen, who by the nature of their business or undertaking duly recognized or regulated by law, are exposed to high risk of being targets of criminal elements.

[120] Republic Act No. 10591 (2013), Sec. 7 provides:

SECTION 7. *Carrying of Firearms Outside of Residence or Place of Business*. — A permit to carry firearms outside of residence shall be issued by the Chief of the PNP or his/her duly authorized representative to any qualified person whose life is under actual threat or his/her life is in imminent danger due to the nature of his/her profession, occupation or business.

It shall be the burden of the applicant to prove that his/her life is under actual threat by submitting a threat assessment certificate from the PNP.

For purposes of this Act, the following professionals are considered to be in imminent danger due to the nature of their profession, occupation or business:

(a) Members of the Philippine Bar;

(b) Certified Public Accountants;

(c) Accredited Media Practitioners;

of Republic Act No. 10591. After all, the provisions of a statute cannot be amended by an implementing rule.[121]

IV(H)

In assailing Section 7.9 of the Implementing Rules and Regulations, petitioners Acosta and Dela Paz claims that the provision requires members of the Philippine National Police, Armed Forces of the Philippines, and other law enforcement agencies to apply for a permit to carry firearm outside of residence. This, they assert, violates Section 6 of Republic Act No. 10591.

Section 6 states that firearms issued to members of the Armed Forces of the Philippines, Coast Guard, and other law enforcement agencies shall only be reported to, not registered with, the Firearms and Explosives Office of the Philippine National Police:

> SECTION 6. *Ownership of Firearms by the National Government.* — All firearms owned by the National Government shall be registered with the FEO of the PNP in the name of the Republic of the Philippines. Such registration shall be exempt from all duties and taxes that may otherwise be levied on other authorized owners of firearms. For reason of national security, firearms of the Armed Forces of the Philippines (AFP), Coast Guard and other law enforcement agencies shall only be reported to the FEO of the PNP.

Section 7.9 of the Implementing Rules and Regulations does not violate Section 6 of Republic Act No. 10591. Consistent with Section 6 of the law, the requirements under Section 7.9 do not entail a disclosure by the applicant of the details of the government-issued firearm assigned to him or her:

(d) Cashiers, Bank Tellers;

(e) Priests, Ministers, Rabbi, Imams;

(f) Physicians and Nurses;

(g) Engineers; and

(h) Businessmen, who by the nature of their business or undertaking, are exposed to high risk of being targets of criminal elements.

[121] See *Grande v. Antonio*, 727 Phil. 448, 458 (2014) [Per *J.* Velasco, Jr., *En Banc*].

SECTION 7. *Carrying of Firearms Outside of Residence or Place of Business.—*

. . . . . .

7.9 Members of the PNP, AFP and other Law Enforcement Agencies must apply for a PTCFOR-LEA, in order to be authorized to carry the corresponding government-issued firearm outside of residence:

a) The Police Regional Director or his equivalent in the AFP and other law enforcement agencies, shall endorse to the Chief, PNP all application for PTCFOR-LEA;

b) The application must be accompanied by the latest appointment order of the personnel applying for PTCFOR-LEA and a certificate of non-pending case duly issued for the purpose;

c) The PTCFOR-LEA shall be issued only by the Chief, PNP through PTCFOR-Secretariat and shall be valid only for *one (1) year*;

d) The fees to be charged in the filing of application for PTCFOR-LEA shall only be in such minimal amount corresponding to the actual administrative cost necessary for the issuance of the permit, as may be determined by the PNP; and

e) The PTCFOR-LEA should always be accompanied by the corresponding Memorandum Receipt/ Acknowledgment Receipt of Equipment (MR/ARE)[.]

V

Petitioners mainly assail the constitutionality of Republic Act No. 10591 and its Implementing Rules and Regulations on the ground that they violate their "right to bear arms." The history of our laws, however, reveals that we Filipinos have never had such constitutional right. The bearing of arms in our jurisdiction was, and still is, a mere statutory privilege, heavily regulated by the State.

None of our Constitutions ever provided the right to bear arms. Notably missing in the Philippine Bill of 1902, enacted

by the United States Congress to serve as the organic law of the Insular Government of the Philippine Islands, was a provision similar to the Second Amendment of the United States Constitution. The Second Amendment on the right of the people of the United States to keep and bear arms provides:

> A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

This Court interpreted this omission to mean that in the Philippines, "no private person [was] bound to keep arms."[122] The bearing of arms was considered a mere option, and a citizen then desiring to obtain a firearm "must do so upon such terms as the Government sees fit to impose[.]"[123] In 1908, this Court in *The Government of the Philippine Islands v. Amechazurra*[124] stated:

> [N]o private person is bound to keep arms. Whether he does or not is entirely optional with himself, but if, for his own convenience or pleasure, he desires to possess arms, he must do so upon such terms as the Government sees fit to impose, for the right to keep and bear arms is not secured to him by law. The Government can impose upon him such terms as it appear. If he is not satisfied with the terms imposed, he should decline to accept them, but, if for the purpose of securing possession of the arms he does agree to such conditions, he must fulfill them.[125]

At present, the bearing of arms remains a "mere statutory privilege, not a constitutional right."[126] In the 2004 case of *Chavez*, decided during the effectivity of the present Constitution, this Court characterized the keeping and bearing of arms as a "mere

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[122] *The Government of the Philippine Islands v. Amechazurra*, 10 Phil. 637, 639 (1908) [Per *J.* Willard, First Division].

[123] *Id*.

[124] 10 Phil. 637 (1908) [Per *J.* Willard, First Division].

[125] *Id*. at 639.

[126] *Chavez v. Romulo*, 475 Phil. 486, 510 (2004) [Per *J.* Sandoval-Gutierrez, *En Banc*].

statutory creation."[127] From our first firearms law, Act No. 1780 (1907),[128] to Act No. 2711 (1917),[129] then Presidential Decree No. 1866 (1983),[130] and finally, under the current Republic Act

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[127] *Id*.

[128] Act No. 1780 (1907), Sec. 9 provided:

SECTION 9. Any person desiring to possess one or more firearm for personal protection, or for use in hunting or other lawful purposes only, and ammunition therefor, shall make application for a license to possess such firearm or firearms or ammunition as hereinafter provided. Upon making such application, and before receiving the license, the applicant shall make a cash deposit in the postal savings bank in the sum of one hundred pesos for each firearm for which the license is to be issued, or in lieu thereof he may give a bond in such form as the Governor-General may prescribe, payable to the Government of the Philippine Islands, in the sum of two hundred pesos for each such firearm: PROVIDED, HOWEVER, That persons who are actually members of gun clubs, duly formed and organized at the time of the passage of this Act, who at such time have a license to possess firearms, shall not be required to make the deposit or give the bond prescribed by this section, and the bond duly executed by such persons in accordance with existing law shall continue to be security for the safekeeping of such arms.

[129] Act No. 2711 (1907), Sec. 887 provided:

SECTION 887. *License required for individual keeping arms for personal use — Security to be given*. — Any person desiring to possess one or more firearms for personal protection or for use in hunting or other lawful purposes only, and ammunition thereof, shall make application for a license to possess such firearm or firearms or ammunition as hereinafter provided. Upon making such application, and before receiving the license, the applicant shall, for the purpose of security, deposit a United States or Philippine Government bond, or make a cash deposit in the Postal Savings Bank in the sum of forty pesos for each firearm for which the license is to be issued, and shall indorse the certificate of deposit therefor to the Philippine Treasurer, such deposit to bear no interest, or shall give a personal or property bond signed by two persons or by a surety company, in such form as the President may prescribe, payable to the Government of the Philippines, in the sum of one hundred pesos for each such firearm: *Provided, however*, That the existing bonds upon the approval of this Act shall continue as they are or, at the option of the interested party, the same can be renewed in accordance with the provisions hereof: *Provided, further*, That *bonafide* and active members of duly organized gun clubs and accredited by the Chief of Staff of the Philippine Army shall not be required to make the deposit or give the bond prescribed in this section.

[130] Presidential Decree No. 1866 (1983), Sec. 1 provided:

No. 10591, any person desiring to keep and bear arms must obtain a license from the State to avail of the privilege.

The following are the pertinent provisions of Republic Act No. 10591 governing the ownership and possession of firearms and their registration and licensing for use:

ARTICLE II

Ownership and Possession of Firearms

SECTION 4. *Standards and Requisites for Issuance of and Obtaining a License to Own and Possess Firearms*. — In order to qualify and acquire a license to own and possess a firearm or firearms and ammunition, the applicant must be a Filipino citizen, at least twenty-one (21) years old and has gainful work, occupation or business or has filed an Income Tax Return (ITR) for the preceding year as proof of income, profession, business or occupation.

In addition, the applicant shall submit the following certification issued by appropriate authorities attesting the following:

SECTION 1. *Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms of Ammunition*. — The penalty of *reclusion temporal* in its maximum period to *reclusion perpetua* shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any firearm, part of firearm, ammunition or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition.

If homicide or murder is committed with the use of an unlicensed firearm, the penalty of death shall be imposed.

If the violation of this Section is in furtherance of, or incident to, or in connection with the crimes of rebellion, insurrection or subversion, the penalty of death shall be imposed.

The penalty of *reclusion temporal* in its maximum period to *reclusion perpetua* shall be imposed upon the owner, president, manager, director or other responsible officer of any public or private firm, company, corporation or entity, who shall willfully or knowingly allow any of the firearms owned by such firm, company, corporation or entity to be used by any person or persons found guilty of violating the provisions of the preceding paragraphs.

The penalty of *prision mayor* shall be imposed upon any person who shall carry any licensed firearm outside his residence without legal authority therefor.

(a) The applicant has not been convicted of any crime involving moral turpitude;

(b) The applicant has passed the psychiatric test administered by a PNP-accredited psychologist or psychiatrist;

(c) The applicant has passed the drug test conducted by an accredited and authorized drug testing laboratory or clinic;

(d) The applicant has passed a gun safety seminar which is administered by the PNP or a registered and authorized gun club;

(e) The applicant has filed in writing the application to possess a registered firearm which shall state the personal circumstances of the applicant;

(f) The applicant must present a police clearance from the city or municipality police office; and

(g) The applicant has not been convicted or is currently an accused in a pending criminal case before any court of law for a crime that is punishable with a penalty of more than two (2) years.

For purposes of this Act, an acquittal or permanent dismissal of a criminal case before the courts of law shall qualify the accused thereof to qualify and acquire a license.

The applicant shall pay the reasonable licensing fees as may be provided in the implementing rules and regulations of this Act.

An applicant who intends to possess a firearm owned by a juridical entity shall submit his/her duty detail order to the FEO of the PNP.

. . . . . .

SECTION 7. *Carrying of Firearms Outside of Residence or Place of Business*. — A permit to carry firearms outside of residence shall be issued by the Chief of the PNP or his/her duly authorized representative to any qualified person whose life is under actual threat or his/her life is in imminent danger due to the nature of his/her profession, occupation or business.

It shall be the burden of the applicant to prove that his/her life is under actual threat by submitting a threat assessment certificate from the PNP.

For purposes of this Act, the following professionals are considered to be in imminent danger due to the nature of their profession, occupation or business:

(a) Members of the Philippine Bar;

(b) Certified Public Accountants;

(c) Accredited Media Practitioners;

(d) Cashiers, Bank Tellers;

(e) Priests, Ministers, Rabbi, Imams;

(f) Physicians and Nurses;

(g) Engineers; and

(h) Businessmen, who by the nature of their business or undertaking, are exposed to high risk of being targets of criminal elements.

ARTICLE III
Registration and Licensing

. . . . . .

SECTION 9. *Licenses Issued to Individuals*. — Subject to the requirements set forth in this Act and payment of required fees to be determined by the Chief of the PNP, a qualified individual may be issued the appropriate license under the following categories:

Type 1 license — allows a citizen to own and possess a maximum of two (2) registered firearms;

Type 2 license — allows a citizen to own and possess a maximum of five (5) registered firearms;

Type 3 license — allows a citizen to own and possess a maximum of ten (10) registered firearms;

Type 4 license — allows a citizen to own and possess a maximum of fifteen (15) registered firearms; and

Type 5 license — allows a citizen, who is a certified gun collector, to own and possess more than fifteen (15) registered firearms.

For Types 1 to 5 licenses, a vault or a container secured by lock and key or other security measures for the safekeeping of firearms shall be required.

For Types 3 to 5 licenses, the citizen must comply with the inspection and bond requirements.

VI

With the bearing of arms being a mere privilege granted by the State, there could not have been a deprivation of petitioners' right to due process in requiring a license for the possession of firearms. Article III, Section 1 of the Constitution is clear that only life, liberty, or property is protected by the due process clause:

ARTICLE III

Bill of Rights

SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

It is settled that the license to possess a firearm is not property. In *Chavez*, then Chief of Police Hermogenes E. Ebdane, Jr., taking cue from a speech delivered by then President Gloria Macapagal Arroyo, issued the Philippine National Police Guidelines suspending the issuance of permits to carry firearms outside of residence "to avert the rising crime incidents."[131] Francisco I. Chavez (Chavez), a licensed gun owner with a permit to carry a firearm outside of residence, petitioned this Court to void the Guidelines for allegedly violating his right to due process. He argued that "the ownership and carrying of firearms are constitutionally protected property rights which cannot be taken away without due process of law and without just cause."[132]

This Court disagreed with Chavez, ruling that there is no vested right in the continued ownership and possession of firearms. Like any other license, the license to possess a firearm is "neither

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[131] *Chavez v. Romulo*, 475 Phil. 486, 491 (2004) [Per *J*. Sandoval-Gutierrez, *En Banc*].

[132] *Id*. at 497.

a property nor a property right."[133] As a mere "permit or privilege to do what otherwise would be unlawful,"[134] it does not act as "a contract between the authority granting it and the person to whom it is granted[.]"[135]

Being in the nature of a license, the permit to carry firearm outside residence is neither a property nor a property right. A grantee of the permit does "not have a property interest in obtaining a license to carry a firearm[.]"[136] Citing *Erdelyi v. O'Brien*,[137] decided by the United States Court of Appeals Ninth Circuit, this Court held that the "[p]roperty interests protected by the Due Process Clause ... do not arise whenever a person has only 'an abstract need or desire for,' or 'unilateral expectation of a benefit."[138] True property rights "arise from 'legitimate claims of entitlement ... defined by existing rules or understanding that stem from an independent source, such as ... law[.]"[139] Chavez's petition was, therefore, dismissed.

Nevertheless, petitioner PROGUN in G.R. No. 215634 contends that *Chavez* is inapplicable for bearing a factual milieu different from the present consolidated cases. According to it, *Chavez* involved the suspension of the issuance of permits to carry a firearm outside of residence during the election gun ban, while the present case allegedly involved criminalizing what was previously the lawful activity of keeping firearms within one's residence.[140] Furthermore, *Chavez* was promulgated in 2004, when Presidential Decree No. 1866 was still in effect,

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[133] *Id*. at 512.

[134] *Id*.

[135] *Id*.

[136] *Id*.

[137] 680 F 2d 61 (1982).

[138] *Chavez v. Romulo*, 475 Phil. 486, 512 (2004) [Per *J*. Sandoval-Gutierrez, *En Banc*] citing *Erdelyi v. O'Brien*, 680 F 2d 61 (1982).

[139] *Id*.

[140] *Rollo* (G.R. No. 211559), p. 836, Memorandum of petitioner PROGUN in G.R. No. 215634.

while the present case involves the new firearms law, Republic Act No. 10591.[141] Lastly, *Chavez* was promulgated when bearing arms was a mere statutory privilege. The cases before this Court now, petitioner PROGUN argues, are different because Republic Act No. 10591 allegedly expressly recognized the right to bear arms as a statutory right.[142]

Notwithstanding petitioner PROGUN's claims, *Chavez* is applicable here. The suspension of the issuance of permits to carry firearms outside of residence was not made during the election gun ban. Instead, what triggered the suspension was the reported rise in high-profile crimes in 2003, including the killing of former New People's Army leader Rolly Kintanar.

Chavez remains a binding precedent because, like Presidential Decree No. 1866, which was effective during the promulgation of *Chavez*, the assailed Republic Act No. 10591 still requires a license for ownership and possession of firearms.

Further, Republic Act No. 10591 did not elevate the status of the right to bear arms from a privilege to a full-fledged statutory right. A close examination of the declared State policy in Republic Act No. 10591 reveals that the right to bear arms remains a mere privilege:

ARTICLE I

Title, Declaration of Policy and Definition of Terms

SECTION 2. *Declaration of State Policy*. — It is the policy of the State to maintain peace and order and protect the people against violence. The State also recognizes *the right of its qualified citizens to self-defense through, when it is the reasonable means to repel the unlawful aggression under the circumstances, the use of firearms*. Towards this end, the State shall provide for a comprehensive law regulating the ownership, possession, carrying, manufacture, dealing in and importation of firearms, ammunition, or parts thereof, in order to provide legal support to law enforcement agencies in their campaign against crime, stop the proliferation of illegal firearms or weapons

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[141] *Id.* at 836-837.

[142] *Id.* at 837.

and the illegal manufacture of firearms or weapons, ammunition and parts thereof. (Emphasis supplied)

Section 2 recognizes that the right to self-defense is provided as a justifying circumstance under the Revised Penal Code.[143] However, this right to self-defense, if it is to be done through the use of firearms, is granted to "qualified citizens": those who have satisfied the qualifications for obtaining a license to own and possess firearms under Republic Act No. 10591. Therefore, even with the new law, the exercise of the right to use a firearm, even for self-defense, is still subject to State regulation.

Assuming, for the sake of argument, that the right to possess a firearm were considered a property right, it is doctrine that property rights are always subject to the State's police power, defined as the "authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare."[144]

As early as 1914, this Court has held that the use of deadly weapons such as a firearm is subject to police power. In *United States v. Villareal*,[145] the appellant was convicted of carrying a concealed deadly weapon penalized under Act No. 1780.[146] On appeal before this Court, the appellant argued that prohibiting the keeping and use of firearms without a license was violative

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[143] REV. PEN. CODE, Art. 11(1) provides:

ARTICLE 11. Justifying Circumstances. — The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

[144] *Philippine Association of Service Exporters, Inc. v. Drilon*, 246 Phil. 393, 398 (1988) [Per *J.* Sarmiento, *En Banc*].

[145] 28 Phil. 390 (1914) [Per *J.* Carson, *En Banc*].

[146] Also Known as An Act to Regulate the Importation, Acquisition, Possession, Use, and Transfer of Firearms, and to Prohibit the Possession of Same Except in Compliance with the Provisions of this Act (1907).

of the due process clause then under Section 5 of the Philippine Bill of 1902.

In denying the appeal, this Court conceded that "it is beyond the power of a legislature or municipal body to prohibit entirely the keeping and use of military arms[.]"[147] Still, the State "may, in the exercise of its police powers, for the purpose of suppressing crime and lawlessness, lawfully regulate the use of such weapons[.]"[148] This Court's discussion in *Villareal* included the historical justification for regulating the bearing of arms, beginning with the Statute of Northampton of 1328. Also discussed were the fundamental reasons, reasons that still hold today, for the regulation of firearms "to increase the security of life and limb"[149] and "to suppress crime and lawlessness":[150]

> Counsel's contention seems to be based on those provisions of the Philippine Bill of Rights which prohibit the enactment of a law depriving any person of life, liberty, or property without due process of law, or denying to any person the equal protection of the laws. He insists that restrictions placed on the carrying of deadly weapons have the effect of depriving the owner of the free use and enjoyment of his property, and that the granting of licenses to some persons to carry firearms and the denial of that right to others is a denial to the latter of the equal protection of the laws.
>
> Both the statute in question and the provision of the Philippine Bill of Rights with which it is claimed it is in conflict were enacted under American sovereignty, and both are to be construed more especially in the light of American authority and precedent. The earliest English statute (St. 2 Edw. III, c. 3) regulating the bearing of arms, enacted in the year 1328 A. D., was but an affirmation of the common law offense of going around with unusual and dangerous weapons to the terror of the people. Many statutes have been enacted since that time in England and the United States, regulating the carrying

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[147] *United States v. Villareal*, 28 Phil. 390, 391 (1914) [Per *J.* Carson, *En Banc*].

[148] *Id*.

[149] *Id*. at 393.

[150] *Id*.

and the use of weapons, and these have, as a rule, been held to be constitutional, especially when the prohibitions have been directed to the wearing or carrying of deadly weapons in a concealed manner. (See 48 Cent. Digest, tit. Weapons, and, many cases there cited.)

There can be no real question as to the police power of the state to regulate the use of deadly weapons for the purpose of suppressing or restraining crime and lawlessness. Undoubtedly there are many deadly weapons, such as knives, bolos, krises and the like which every citizen has a right to own and to use in the various activities of human life. But the right to own and to, use such weapons does not carry with it the right to use them to the injury of his neighbor or so as to endanger the peace and welfare of the community. "It is a settled principle, growing out of the nature of well-ordered civil society, that every holder of property, however absolute and unqualified may be his title, holds it under his implied liability that his use of it may be so regulated that it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community." [*(*]*Com. vs. Alger, 7 Cush. (Mass.), 53, 84.) Provided the means adopted are reasonably necessary for the accomplishment of the end in view, not unduly oppressive upon individuals, and in the interest of the public generally rather than of a particular class, the legislature may adopt such regulations as it deems proper restricting, limiting, and regulating the use of private property in the exercise of its police power. (U. S. vs. Toribio, 15 Phil. Rep., 85.)*

We think there can be no question as to the reasonableness of a statutory regulation prohibiting the carrying of concealed weapons as a police measure well calculated to restrict the too frequent resort to such weapons in moments of anger and excitement. We do not doubt that the strict enforcement of such a regulation would tend to increase the security of life and limb, and to suppress crime and lawlessness, in any community wherein the practice of carrying concealed weapons prevails, and this without being unduly oppressive upon the individual owners of these weapons. It follows that its enactment by the legislature is a proper and legitimate exercise of the police power of the state.[151] (Emphasis in the original)

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[151] *Id.* at 391-393.

In *Chavez*, this Court reiterated that "laws regulating the acquisition or possession of guns have frequently been upheld as reasonable exercise of the police power."[152]

This Court likewise discussed the test to determine the validity of a police power measure: (1) "[t]he interests of the public generally, as distinguished from those of a particular class, require the exercise of the police power";[153] and (2) "[t]he means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals."[154]

Applying this test, this Court found that the Philippine National Police Guidelines, which suspended the issuance of permits to carry firearms outside of residence, was a valid police power measure. It held that the interest of the general public was satisfied, since the Guidelines was issued in response to the rise in high-profile crimes. As to the means employed to retain peace and order in society, this Court stated that the revocation of all permits to carry firearms outside of residence would make it difficult for criminals to commit gun violence and victimize others. This Court, thus, deemed the regulation reasonable:

> It is apparent from the assailed Guidelines that the basis for its issuance was the need for peace and order in the society. Owing to the proliferation of crimes, particularly those committed by the New People's Army (NPA), which tends to disturb the peace of the community, President Arroyo deemed it best to impose a nationwide gun ban. Undeniably, the motivating factor in the issuance of the assailed Guidelines is the interest of the public in general.
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> The only question that can then arise is whether the means employed are appropriate and reasonably necessary for the accomplishment of the purpose and are not unduly oppressive. In the instant case, the assailed Guidelines do not entirely prohibit possession of firearms. What they proscribe is merely the carrying

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[152] *Chavez v. Romulo*, 475 Phil. 486, 516 (2004) [Per *J*. Sandoval-Gutierrez, *En Banc*].

[153] *Id*. at 515.

[154] *Id*.

of firearms outside of residence. However, those who wish to carry their firearms outside of their residences may re-apply for a new PTCFOR. This we believe is a reasonable regulation. If the carrying of firearms is regulated, necessarily, crime incidents will be curtailed. Criminals carry their weapon to hunt for their victims; they do not wait in the comfort of their homes. With the revocation of all PTCFOR, it would be difficult for criminals to roam around with their guns. On the other hand, it would be easier for the PNP to apprehend them.

Notably, laws regulating the acquisition or possession of guns have frequently been upheld as reasonable exercise of the police power. In *State vs. Reams*, it was held that the legislature may regulate the right to bear arms in a manner conducive to the public peace. With the promotion of public peace as its objective and the revocation of all PTCFOR as the means, we are convinced that the issuance of the assailed Guidelines constitutes a reasonable exercise of police power.[155] (Citations omitted)

Like the assailed Guidelines in *Chavez*, Republic Act No. 10591, which regulates the use of firearms, is a valid police power measure. The maintenance of peace and order and the protection of people from violence are not only for the good of the general public; they are fundamental duties of the State, the fulfillment of which strengthens its legitimacy. The means employed to fulfill these State duties—requiring a license for the ownership and possession of firearms and a permit to carry the weapon outside of residence—are reasonably necessary. As discussed, licenses to operate firearms have been required under the old firearms laws. For Congress, stricter gun laws are effective in reducing gun-related violence.

The following provisions assailed by petitioners are consistent with these general interests of maintaining peace and order and protecting the people from violence. Section 4(g) of Republic Act No. 10591 and its corresponding provision in the Implementing Rules and Regulations, Section 4.4(a), both require that an applicant for a firearm license has not been convicted or is currently an accused in a pending criminal case punished with imprisonment for more than two (2) years:

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[155] *Id.* at 515-516.

Republic Act No. 10591	**Implementing Rules (2013)**
SECTION 4. *Standards and Requisites for Issuance of and Obtaining a License to Own and Possess Firearms*. — In order to qualify and acquire a license to own and possess a firearm or firearms and ammunition, the applicant must be a Filipino citizen, at least twenty-one (21) years old and has gainful work, occupation or business or has filed an Income Tax Return (ITR) for the preceding year as proof of income, profession, business or occupation. In addition, the applicant shall submit the following certification issued by appropriate authorities attesting the following: ... ... (g) The applicant has not been convicted or is currently an accused in a pending criminal case before any court of law for a crime that is punishable with a penalty of more than two (2) years. For purposes of this Act, an acquittal or permanent dismissal of a criminal case before the courts of law shall qualify the accused thereof to qualify and acquire a license.	SECTION 4. *Standards Requisites for Issuance of and Obtaining a License to Own and Possess Firearms*. — .... 4.4 The written application to own and possess firearm/s shall be filed at the FEO, in three (3) legible copies duly notarized, and must be accompanied by the original copy of the following requirements: a) Clearances issued by the Regional Trial Court (RTC) and Municipal/Metropolitan Trial Court (MTC) that has jurisdiction over the place where the applicant resides and/or the Sandiganbayan as the case may be, showing that he/she has not been convicted by final judgment of a crime involving moral turpitude or that he/she has not been convicted or is currently an accused in any pending criminal case before any court of law for a crime that is punishable with a penalty of more than two (2) years[.]

Contrary to petitioners Acosta and Dela Paz's argument, these provisions do not violate the constitutional guarantee to

presumption of innocence.[156] Congress restricted the privilege to apply for a firearm from convicts and those currently accused in a pending criminal case punished with imprisonment for more than two (2) years, since a *prima facie* finding of an applicant's guilt indicates his or her propensity to violate the law. If Republic Act No. 10591 is to function as a preventive measure against gun violence, then it is prudent to prohibit those who, during the preliminary investigation stage, were found probably guilty of an offense. Besides, the acquittal or permanent dismissal of the criminal case re-qualifies an applicant to acquire a license.[157]

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[156] CONST., Art. III, Sec. 14(2) provides:

SECTION 14....

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

[157] Republic Act No. 10591 (2013), Sec. 4 provides:

SECTION 4. *Standards and Requisites for Issuance of and Obtaining a License to Own and Possess Firearms*. — In order to qualify and acquire a license to own and possess a firearm or firearms and ammunition, the applicant must be a Filipino citizen, at least twenty-one (21) years old and has gainful work, occupation or business or has filed an Income Tax Return (ITR) for the preceding year as proof of income, profession, business or occupation.

In addition, the applicant shall submit the following certification issued by appropriate authorities attesting the following:

(a) The applicant has not been convicted of any crime involving moral turpitude;

(b) The applicant has passed the psychiatric test administered by a PNP-accredited psychologist or psychiatrist;

(c) The applicant has passed the drug test conducted by an accredited and authorized drug testing laboratory or clinic;

(d) The applicant has passed a gun safety seminar which is administered by the PNP or a registered and authorized gun club;

Thus, the restriction is but a reasonable measure in line with the State policy in Republic Act No. 10591.

Even Section 7.11.2(b) of the Implementing Rules and Regulations, which requires that firearms be secured in the compartment of vehicles or motorcycles, and Section 7.12(b), which requires that firearms not be brought inside places of worship, public drinking, and amusement, and all other commercial or public establishments, are reasonably related to the purpose of the law:

> SECTION 7. *Carrying of Firearms Outside of Residence or Place of Business....*
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> . . . .
>
> 7.11 The following guidelines regarding the manner of carrying firearms shall be observed:
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> . . . .
>
> 7.11.2 *For All Other Persons* (including members of the PNP, AFP and other LEAs in civilian attire)
>
> . . . .
>
> b) The firearm must be secured inside a vehicle or a motor cycle compartment.
>
> 7.12 The following other restriction shall likewise be observed:
>
> . . . .

(e) The applicant has filed in writing the application to possess a registered firearm which shall state the personal circumstances of the applicant;

(f) The applicant must present a police clearance from the city or municipality police office; and

(g) The applicant has not been convicted or is currently an accused in a pending criminal case before any court of law for a crime that is punishable with a penalty of more than two (2) years.

For purposes of this Act, an acquittal or permanent dismissal of a criminal case before the courts of law shall qualify the accused thereof to qualify and acquire a license.

b) The firearm shall not be brought inside places of worship, public drinking and amusement places and all other commercial or public establishment.

Keeping the firearm secured in the compartment of a vehicle or motorcycle is consistent with the prohibition on displaying the firearm.[158] It also prevents firearms owners from impulsively using their firearms in cases of altercation.

Since places of worship, public drinking, and amusement, and all other commercial or public establishments are usually flocked with people, the prohibition on bringing the firearm to these public places is a reasonable measure to prevent mass shootings.

Still related to the purpose of maintaining peace and order and preventing gun violence is Section 10 of Republic Act No. 10591 and its corresponding provision in the Implementing Rules and Regulations. Both prohibit the registration of Class-A light weapons to private individuals:

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[158] Implementing Rules and Regulations of Republic Act No. 10159 (2013), Sec. 7.11.2 provides:

SECTION 7. *Carrying of Firearms Outside of Residence or Place of Business*. —

. . . . . .

7.11 The following guidelines regarding the manner of carrying firearms shall be observed:

. . . . . .

7.11.2 *For All Other Persons*: (including members of the PNP, AFP and other LEAs in civilian attire)

a) Display of firearms is prohibited. The firearms must always be concealed; Violation of this provision shall be subject for immediate revocation of the License to Own and Possess Firearms and Firearm Registration.

b) The firearm must be secured inside a vehicle or a motorcycle compartment.

Republic Act No. 10591	Implementing Rules (2013)
SECTION 10. *Firearms That May Be Registered*. — Only small arms may be registered by licensed citizens or licensed juridical entities for ownership, possession and concealed carry. A light weapon shall be lawfully acquired or possessed exclusively by the AFP, the PNP and other law enforcement agencies authorized by the President in the performance of their duties: *Provided*, That private individuals who already have licenses to possess Class-A light weapons upon the effectivity of this Act shall not be deprived of the privilege to continue possessing the same and renewing the licenses therefor, for the sole reason that these firearms are Class "A" light weapons, and shall be required to comply with other applicable provisions of this Act.	SECTION 10. *Firearms That May Be Registered*. — 10.1 Only small arms as defined in this IRR may be registered by licensed citizens or licensed juridical entities for ownership, possession and concealed carry. 10.2 A light weapon as defined in this IRR shall be lawfully acquired or possessed exclusively by the AFP, the PNP and other law enforcement agencies authorized for such purpose by the President or by law that Congress may pass after the effectivity of this IRR. 10.3 Private individuals who are already licensed holders for Class-A light weapons as herein defined upon the effectivity of this IRR shall not be deprived of the lawful possession thereof, provided that they renew their licenses and firearm registration and they continue to possess the standard requirements mentioned in paragraphs 4.1 and 4.4, in this IRR.

As can be gleaned from both provisions, only small arms—those primarily designed for individual use, to be fired from the hand or shoulder[159]—may be registered in the name of private individuals or entities. In contrast, the ownership of Class-A light weapons—"self-loading pistols, rifles, carbines, submachine guns, assault rifles and light machine guns not exceeding caliber

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[159] Implementing Rules and Regulations of Republic Act No. 10591 (2013), Sec. 3(3.62).

7.62MM which have fully automatic mode"[160] — is only allowed for members of the Armed Forces of the Philippines, the Philippine National Police, and other law enforcement agencies.

The reason is not hard to see. Unlike small arms, which are incapable of fully automatic bursts of discharge,[161] Class-A light weapons are self-loading, entirely capable of inflicting multiple injuries on others. Thus, consistent with its declared policy in Republic Act No. 10591, the State balanced its interests to, on the one hand, keep violence at a minimum, and on the other, grant the right of the people to self-defense.

The use of a small arm to defend oneself is, for the State, that which is reasonably necessary to repel the unlawful aggression. As for the members of the Armed Forces of the Philippines, the Philippine National Police, and other law enforcement agencies, their duties to maintain peace and order and protect the public allow for the use of Class-A light weapons. This Court agrees with respondents when they argued that:

> ... Section 10 of RA 10591 is a legitimate exercise of police power by the State. In the wrong hands, Class-A Light Weapons, with their capability to inflict multiple injuries to a large number of people at a rate several times faster than small arms, are highly destructive instruments and pose serious threats to public safety. Thus, the limitation imposed by Section 10 of RA 10591 on the ownership and possession of Class-A Light weapons is a valid restraint on property rights aimed at fostering the common good.[162]

Likewise, the prohibition on the transfer of firearms ownership through succession is a valid exercise of police power. Section 26 of Republic Act No. 10591 and its equivalent provision in the Implementing Rules and Regulations state:

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[160] Implementing Rules and Regulations of Republic Act No. 10591 (2013), Sec. 3(3.47).

[161] Implementing Rules and Regulations of Republic Act No. 10591 (2013), Sec. 3(3.62).

[162] *Rollo* (G.R. No. 211559), p. 755, Consolidated Memorandum of respondents.

Republic Act No. 10591	Implementing Rules (2013)
SECTION 26. *Death or Disability of Licensee*. — Upon the death or legal disability of the holder of a firearm license, it shall be the duty of his/her next of kin, nearest relative, legal representative, or other person who shall knowingly come into possession of such firearm or ammunition, to deliver the same to the FEO of the PNP or Police Regional Office, and such firearm or ammunition shall be retained by the police custodian pending the issuance of a license and its registration in accordance with this Act. The failure to deliver the firearm or ammunition within six (6) months after the death or legal disability of the licensee shall render the possessor liable for illegal possession of the firearm.	SECTION 26. *Death or Disability of the Licensee*. — ... ... 26.3 When a licensed citizen with registered firearm dies or become legally disabled, his/her next of kin, nearest relative, legal representative, or any other person who shall knowingly come into possession of the registered firearm shall cause the delivery of the same to the FEO or Police Regional Office or through the nearest police station which has jurisdiction over the licensee and/or the registered firearm. 26.4 In case of death or legal disability of the licensee, the next of kin, nearest relative, legal representative or any other person who shall knowingly come into possession of the registered firearm shall register the firearm/s provided he/she meets the standard requirements and qualifications in accordance with RA 10591 and its IRR.

The qualifications for acquiring a firearm license under Section 4 of the law are highly personal to the licensee. These qualifications may not be possessed by his or her relative or next of kin. It is, therefore, only correct that the rights to own and possess a firearm are non-transferrable by succession. At any rate, should he or she be interested, the deceased's relative or next of kin may apply for a license to own and possess the deceased's registered firearm under Section 26 of Republic Act No. 10591. As argued by respondents:

. . . Article 776 of the Civil Code specifically provides that inheritance includes all the property, rights and obligations of a person which are not extinguished by his death. Thus, what the heirs can only inherit are the rights which are not extinguished by the decedent's death. Since the license to own and possess a firearm is only a privilege and is strictly personal to the firearm license holder, it is therefore not transmissible to the heirs of the former. In addition, they cannot interpret said provision so as to include practically everything owned by the decedent. Common sense dictates that things, articles, and belongings which are highly regulated and are prohibited by law such as contraband and drugs or those that have been already removed from private ownership, like Class-A light weapons, cannot be transmitted to the heirs by operation of law. If their interpretation is to be accepted, then a ridiculous situation would arise wherein the heirs, without intending to violate the applicable law, would be indiscriminately subjected to criminal prosecution for illegal possession of a firearm.[163]

As to the automatic revocation of license if the registered firearm is used for the commission of a crime, Section 39(a) of Republic Act No. 10591 and its corresponding provision in the Implementing Rules and Regulations state:

Republic Act No. 10591	**Implementing Rules (2013)**
SECTION 39. *Grounds for Revocation, Cancellation or Suspension of License or Permit.*—	SECTION 39. *Grounds for Revocation, Cancellation or Suspension of License or Permit.*—
The Chief of the PNP or his/her authorized representative may revoke, cancel or suspend a license or permit on the following grounds:	39.1 The Chief, PNP or his/her authorized representative may revoke, cancel or suspend a license or permit on the following grounds:
(a) Commission of a crime or offense involving the firearm, ammunition, of major parts thereof[.]	a) Commission of a crime or offense involving the firearm, ammunition or major parts or pendency of a criminal case involving the firearm, ammunition or major parts thereof[.]

[163] *Id*. at 756.

The commission of the crime indicates the licensee's propensity for violence, which is contrary to the declared State policy of maintaining peace and order and protecting the people from violence. In such a case, the revocation of the license would be justified.

To reiterate, ownership and possession of firearms is not a property right, but a mere privilege. Should the State find that bearing arms would be contrary to its legitimate interests, it can revoke the license without violating the due process clause.

VII

Perhaps the most contentious provision in Republic Act No. 10591 is Section 9, which mandates applicants for Types 3 to 5 licenses to comply with "inspection... requirements." The law and the corresponding provision in the Implementing Rules state:

Republic Act No. 10591	**Implementing Rules (2013)**
SECTION 9. *Licenses Issued to Individuals*. — Subject to the requirements set forth in this Act and payment of required fees to be determined by the Chief of the PNP, a qualified individual may be issued the appropriate license under the following categories: Type 1 license — allows a citizen to own and possess a maximum of two (2) registered firearms; Type 2 license — allows a citizen to own and possess a maximum of five (5) registered firearms; Type 3 license — allows a citizen to own and possess a maximum of ten (10) registered firearms;	SECTION 9. *Licenses Issued to Individuals*.— ... ... 9.6 For Types 3 to 5 licenses, the licensed citizen must comply with the inspection requirements of the PNP. Failure on their part to comply with any of the requirements herein mentioned is a ground for the cancellation of license and/or registration.

Type 4 license — allows a citizen to own and possess a maximum of fifteen (15) registered firearms; and Type 5 license — allows a citizen, who is a certified gun collector, to own and possess more than fifteen (15) registered firearms. For Types 1 to 5 licenses, a vault or a container secured by lock and key or other security measures for the safekeeping of firearms shall be required. *For Types 3 to 5 licenses, the citizen must comply with the inspection and bond requirements.* (Emphasis supplied)	

The Philippine National Police, in the *pro forma* Individual Application for New Firearm Registration, included a paragraph indicating the Consent of Voluntary Presentation for Inspection, to be signed by the applicant. It provides that the applicant agrees to voluntarily consent to the inspection of the firearm at the residence indicated in the application:

CONSENT OF VOLUNTARY PRESENTATION
FOR INSPECTION

I hereby undertake to renew the registration of my firearm/s on or before the expiration of the same; that, pursuant to the provisions of Republic Act No. 10591, *I voluntarily give my consent and authorize the PNP to inspect my firearm/s described above at my residence/ address as indicated in my application* and, to confiscate or forfeit the same in favor of the government for failure to renew my firearm/ s registration/s within six (6) months before the date of its expiration. (Emphasis supplied)

In petitioners' view, this inspection is an unreasonable search prohibited in Article III, Section 2 of the Constitution and a violation of their right to privacy. Further, signing the Consent of Voluntary Presentation for Inspection would allegedly be

an invalid waiver, as it is not given "freely, voluntarily, and knowingly"[164] by the applicant who would just sign it, lest the application not be approved.

This Court agrees with petitioners.

The Fourth Amendment on the right against unreasonable searches and seizures was added to the United States Constitution in response to the rampant abuse by customs officers of "writs of assistance" during the colonial period in America.[165] Writs of assistance allowed customs officers to brazenly enter and ransack buildings in search of allegedly smuggled goods, to the detriment of the owners of the building.[166] The Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

When the Americans arrived, Section 5 of the Philippine Bill of 1902 became effective here, generically providing that "the right to be secure against unreasonable searches and seizures shall not be violated." The Philippine Autonomy Act, or the Jones Law of 1916, similarly provided in its Section 3 that "the right to be secured against unreasonable searches and seizures shall not be violated."

As for the 1935 Constitution, the provision against unreasonable searches and seizures was worded quite similarly with the Fourth Amendment. But it was added that probable cause shall be determined by the judge:

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[164] *Id*. at 857, Memorandum of petitioner PROGUN in G.R. No. 211567.

[165] LEONARD W. LEVY, *ORIGINS OF THE BILL OF RIGHTS*, 150-179 (2000).

[166] *Id*.

ARTICLE III
Bill of Rights

SECTION 1. . . .

. . . . . .

(3) The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized.

With the enactment of the 1973 Constitution, the right against unreasonable searches and seizures was expanded to cover all such search and seizure "of whatever nature and for any purpose[.]" Its Article IV, Section 3 stated:

ARTICLE IV
Bill of Rights

. . . . . .

SECTION 3. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall not be violated, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized.

The present Constitution provides the prohibition on unreasonable searches and seizures in Article III, Section 2:

ARTICLE III
Bill of Rights

. . . . . .

SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable,

and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

In the recent case of *Saluday v. People*,[167] this Court interpreted the text of Article III, Section 2 such that it only operates against "unreasonable" searches and seizures; thus, when the search is "reasonable," the requirement of a search warrant under this provision does not apply.

What constitutes a "reasonable search" depends on whether a person has an "expectation of privacy, which society regards as reasonable[.]"[168] The presence of this expectation of privacy *and* society's perception of it as reasonable render the State's intrusion a "search" within the meaning of Article III, Section 2, and which intrusion thus requires a search warrant. In *Saluday*, this Court expounded on the requirement of legitimate expectation of privacy, which originated from *Katz v. United States*:[169]

> Indeed, the constitutional guarantee is not a blanket prohibition. Rather, it operates against "unreasonable" searches and seizures only. Conversely, **when a search is "reasonable," Section 2, Article III of the Constitution does not apply**. As to what qualifies as a reasonable search, the pronouncements of the U.S. Supreme Court, which are doctrinal in this jurisdiction, may shed light on the matter.
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> In the seminal case of *Katz v. United States*, the U.S. Supreme Court held that the electronic surveillance of a phone conversation without a warrant violated the Fourth Amendment. According to the U.S. Supreme Court, what the Fourth Amendment protects are people, not places such that what a person knowingly exposes to the public, even in his or her own home or office, is not a subject of Fourth Amendment protection in much the same way that what he or she seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected, thus:

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[167] G.R. No. 215305, April 3, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63922> [Per Acting *C.J.* Carpio, *En Banc*].

[168] *Id*.

[169] 389 U.S. 347 (1967).

> Because of the misleading way the issues have been formulated, the parties have attached great significance to the characterization of the telephone booth from which the petitioner placed his calls. The petitioner has strenuously argued that the booth was a "constitutionally protected area." The Government has maintained with equal vigor that it was not. But this effort to decide whether or not a given "area," viewed in the abstract, is "constitutionally protected" deflects attention from the problem presented by this case. For the Fourth Amendment protects people, not places. **What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.** *See Lewis v. United States*, 385 U.S. 206, 210; *United States v. Lee*, 274 U.S. 559, 563. But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected. *See Rio's v. United States*, 364 U.S. 253; *Ex parte Jackson*, 96 U.S. 727, 733....

Further, Justice John Harlan laid down in his concurring opinion the two-part test that would trigger the application of the Fourth Amendment. *First*, a person exhibited an actual (subjective) expectation of privacy. *Second*, the expectation is one that society is prepared to recognize as reasonable (objective).

The prohibition of unreasonable search and seizure ultimately stems from a person's right to privacy. Hence, only when the State intrudes into a person's expectation of privacy, which society regards as reasonable, is the Fourth Amendment triggered. Conversely, where a person does not have an expectation of privacy or one's expectation of privacy is not reasonable to society, the alleged State intrusion is not a "search" within the protection of the Fourth Amendment.[170] (Emphasis in the original, citations omitted)

A reduced expectation of privacy is the reason why the inspection of persons and their effects under routine inspections, such as those done in airports, seaports, bus terminals, malls, and similar public places, does not require a search warrant.[171]

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[170] G.R. No. 215305, April 3, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63922>[Per *C.J.* Carpio, *En Banc*].

[171] *Id*.

These routine inspections are considered reasonable searches, clearly done to ensure public safety.

A reasonable search, however, is different from a warrantless search. While a reasonable search arises from a reduced expectation of privacy, a warrantless search, which is presumed unreasonable, dispenses with a search warrant for practical reasons. This is why a search incidental to a lawful arrest, search of evidence in plain view, consented search, and extensive search of moving private vehicle do not require a search warrant.[172]

From all these, this Court holds that the inspection requirement under Republic Act No. 10591, as interpreted by the Philippine National Police in the Implementing Rules, *cannot* be considered a reasonable search. There is a legitimate, almost absolute, expectation of privacy in one's residence.

Indeed, the oft-cited remark of William Pitt, an English statesman and later on Prime Minister of England, rings true up to this day despite having been made more than three (3) centuries ago:

> The poorest man may, in his cottage, bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter, but the King of England may not enter; all his force dare not cross the threshold of the ruined tenement.[173]

Article 10 of the Malolos Constitution of 1899 even provided that, save for some exceptions, "[n]o one shall enter the dwelling house of any Filipino or a foreigner residing in the Philippines without his consent":

> ARTICLE 10. No one shall enter the dwelling house of any Filipino or a foreigner residing in the Philippines without his consent, except in urgent cases of fire, inundation, earthquake or other similar danger, or by reason of unlawful aggression from within, or in order to assist a person therein who cries for help.

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[172] *Id*.

[173] Speech in opposition to Excise Bill on perry and cider (1763).

Outside of these cases, the entry into the dwelling house of any Filipino or foreigner resident in the Philippines or the search of his papers and effects can only be decreed by a competent court and executed only in the daytime.

The search of papers and effects shall be made always in the presence of the person searched or of a member of his family and, in their absence, of two witnesses resident of the same place.

However, when a criminal caught *in fraganti* should take refuge in his dwelling house, the authorities in pursuit may enter into it, only for the purpose of making an arrest.

If the criminal should take refuge in the dwelling house of a foreigner, the consent of the latter must first be obtained.

The 1904 case of *United States v. Arceo*[174] echoes the principle of "inviolability of the dwelling":

The inviolability of the house is one of the most fundamental of all the individual rights declared and recognized in the political codes of civilized nations. No one can enter into the home of another without the consent of its owners or occupants.

The privacy of the home — the place of abode, the place where a man with his family may dwell in peace and enjoy the companionship of his wife and children unmolested by anyone, even the king, except in the rare cases — has always been regarded by civilized nations as one of the most sacred personal rights to which men are entitled. Both the common and the civil law guaranteed to man the right of absolute protection to the privacy of his home. The king was powerful; he was clothed with majesty; his will was the law, but, with few exceptions, the humblest citizen or subject might shut the door of his humble cottage in the face of the monarch and defend his intrusion into that privacy which was regarded as sacred as any of the kingly prerogatives. The poorest and most humble citizen or subject may, in his cottage, no matter how frail or humble it is, bid defiance to all the powers of the state; the wind, the storm and the sunshine alike may enter through its weather-beaten parts, but the king may not enter against its owner's will; none of the forces dare to cross the threshold even the humblest tenement without its owner's consent.

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[174] 3 Phil. 381 (1904) [Per *J.* Johnson, *En Banc*].

"A man's house is his castle," has become a maxim among the civilized peoples of the earth. His protection therein has become a matter of constitutional protection in England, America, and Spain, as well as in other countries.[175]

Still, the right against unreasonable searches and seizures may be waived if it can be shown that the consent was "unequivocal, specific, and intelligently given, uncontaminated by any duress or coercion."[176] In *Caballes v. Court of Appeals*,[177] this Court discussed the parameters for giving a valid consent to search one's home:

> Doubtless, the constitutional immunity against unreasonable searches and seizures is a personal right which may be waived. The consent must be voluntary in order to validate an otherwise illegal detention and search, *i.e.*, the consent is unequivocal, specific, and intelligently given, uncontaminated by any duress or coercion. Hence, consent to a search is not to be lightly inferred, but must be shown by clear and convincing evidence. The question whether a consent to a search was in fact voluntary is a question of fact to be determined from the totality of all the circumstances. Relevant to this determination are the following characteristics of the person giving consent and the environment in which consent is given: (1) the age of the defendant; (2) whether he was in a public or secluded location; (3) whether he objected to the search or passively looked on; (4) the education and intelligence of the defendant; (5) the presence of coercive police procedures; (6) the defendant's belief that no incriminating evidence will be found; (7) the nature of the police questioning; (8) the environment in which the questioning took place; and (9) the possibly vulnerable subjective state of the person consenting. It is the State which has the burden of proving, by clear and positive testimony, that the necessary consent was obtained and that it was freely and voluntarily given.[178] (Citations omitted)

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[175] *Id*. at 384.

[176] *Caballes v. Court of Appeals*, 424 Phil. 263, 286 (2002) [Per J. Puno, *En Banc*].

[177] 424 Phil. 263 (2002) [Per J. Puno, *En Banc*].

[178] *Id*. at 286.

In requiring a waiver in the *pro forma* Individual Application for New Firearm Registration, the Philippine National Police appears to recognize the inviolability of the home. Nevertheless, signing the Consent of Voluntary Presentation for Inspection does *not* result in a true and valid consented search.

Section 9 of Republic Act No. 10591 provides that applicants for Types 3 to 5 licenses "must comply with the inspection ... requirements." However, the law is silent as to the scope, frequency, and execution of the inspection. This means that the Chief of the Philippine National Police is presumed to fill in these details in the Implementing Rules and Regulations. However, even the Implementing Rules is completely silent as to the parameters of the inspection. This renders applicants for firearms licenses incapable of intelligently waiving their right to the unreasonable search of their homes.

Even in other jurisdictions, broad and sweeping administrative searches are not acceptable.[179] In *Frank v. Maryland*,[180] the United States Supreme Court upheld the validity of a warrantless inspection of a house allegedly infested by rats. This led to the conviction of its owner who, for refusing entry to the inspector, was found to have violated Baltimore's Health Code.

In *Frank*, the United States Supreme Court recognized the necessity of warrantless inspections to ensure compliance with laws. It noted that "[i]nspection[s] without a warrant, as an adjunct to a regulatory scheme for the general welfare of the community and not as a means of enforcing the criminal law,"[181] are valid, having "antecedents deep in ... history."[182] As to a

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[179] In *People v. Marti*, 271 Phil. 51 (1991)[Per J. Bidin, Third Division] and *Saluday v. People*, G.R. No. 215305, April 3, 2018, <http://elibrary.judiciary.gov. ph/thebookshelf/showdocs/1/63922> [Per Acting *C.J.* Carpio, *En Banc*], this Court held that American jurisprudence on the Fourth Amendment are doctrinal in our jurisdiction. However, I am of the contrary view and maintain that these cases are merely persuasive.

[180] 359 U.S. 360 (1959).

[181] *Id.* at 367.

[182] *Id.*

possible violation of the right to privacy, the United States High Court stated that warrantless inspections "only... touch, at most, upon the periphery of the important interests safeguarded by the Fourteenth Amendment's protection against official intrusion":[183]

> The attempted inspection of appellant's home is merely to determine whether conditions exist which the Baltimore Health Code proscribes. If they do, appellant is notified to remedy the infringing conditions. No evidence for criminal prosecution is sought to be seized. Appellant is simply directed to do what he could have been ordered to do without any inspection, and what he cannot properly resist, namely, act in a manner consistent with the maintenance of minimum community standards of health and wellbeing, including his own. Appellant's resistance can only be based not on admissible self-protection, but on a rarely voiced denial of any official justification for seeking to enter his home. The constitutional "liberty" that is asserted is the absolute right to refuse consent for an inspection designed and pursued solely for the protection of the community's health, even when the inspection is conducted with due regard for every convenience of time and place.
>
> The power of inspection granted by the Baltimore City Code is strictly limited, more exacting than the analogous provisions of many other municipal codes. Valid grounds for suspicion of the existence of a nuisance must exist. Certainly the presence of a pile of filth in the back yard combined with the rundown condition of the house gave adequate grounds for such suspicion. The inspection must be made in the daytime. Here was no midnight knock on the door, but an orderly visit in the middle of the afternoon with no suggestion that the hour was inconvenient. Moreover, the inspector has no power to force entry and did not attempt it. A fine is imposed for resistance, but officials are not authorized to break past the unwilling occupant.
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> Thus, not only does the inspection touch, at most, upon the periphery of the important interests safeguarded by the Fourteenth Amendment's protection against official intrusion, but it is hedged about with safeguards designed to make the least possible demand on the individual occupant, and to cause only the slightest restriction

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[183] *Id*.

on his claims of privacy. Such a demand must be assessed in the light of the needs which have produced it.[184]

Frank was overturned in *Camara v. Municipal Court*.[185] In the latter case, a municipal health inspector entered an apartment building to determine compliance with the San Francisco Housing Code. During the inspection, the building manager informed the inspector that Ronald Camara (Camara), the person leasing the building's ground floor, used part of the property as his residence. The inspector, claiming that the ground floor could not be used as a residence based on the building's occupancy permit, demanded entry to the property. Camara refused the inspector entry as no search warrant was presented.

When the inspector returned two (2) days later, still unarmed with a warrant, Camara again refused him entry. A citation to appear before the district attorney's office and the return of two (2) more inspectors after, Camara still did not let the inspectors into the leased property for lack of a search warrant. Camara was eventually charged with a criminal complaint for violating the municipal code for refusing to permit a lawful inspection.

In *Camara*, the United States Supreme Court conceded that the "translation of the abstract prohibition against 'unreasonable searches and seizures' into workable guidelines for the decision of particular cases is a difficult task which has for many years divided the members of [its] Court."[186] Still, "except in certain carefully defined classes of cases,"[187] the United States Supreme Court reiterated that "a search of private property without proper consent is 'unreasonable' unless it has been authorized by a valid search warrant."[188]

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

[185] 387 U.S. 523 (1967).

[186] *Id*. at 528.

[187] *Id*.

[188] *Id*. at 528-529.

In overturning *Frank*; the United States Supreme Court recognized in *Camara* that routine inspections are "less hostile"[189] than a search in relation to a criminal investigation. However, this does not mean that "the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior"[190] or that the privacy interests involved during an inspection are merely "periphera1."[191] For one, "criminal entry under the guise of official sanction is a serious threat to personal and family security."[192] Furthermore, in an inspection, the house occupant has no way of knowing its scope and limits, unlike in a search done through the "warrant machinery contemplated by the Fourth Amendment."[193] Lastly, refusal to grant entry to an inspector may lead to prosecution:

> To the *Frank* majority, municipal fire, health, and housing inspection programs "touch at most upon the periphery of the important interests safeguarded by the Fourteenth Amendment's protection against official intrusion," because the inspections are merely to determine whether physical conditions exist which do not comply with minimum standards prescribed in local regulatory ordinances. Since the inspector does not ask that the property owner open his doors to a search for "evidence of criminal action" which may be used to secure the owner's criminal conviction, historic interests of "self-protection" jointly protected by the Fourth and Fifth Amendments are said not to be involved, but only the less intense "right to be secure from intrusion into personal privacy."
>
> We may agree that a routine inspection of the physical condition of private property is a less hostile intrusion than the typical policeman's search for the fruits and instrumentalities of crime. For this reason alone, *Frank* differed from the great bulk of Fourth Amendment cases which have been considered by this Court. But we cannot agree that the Fourth Amendment interests at stake in

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[189] *Id*. at 530.

[190] *Id*.

[191] *Id*.

[192] *Id*. at 531.

[193] *Id*. at 532.

these inspection cases are merely "peripheral." It is surely anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior. For instance, even the most law-abiding citizen has a very tangible interest in limiting the circumstances under which the sanctity of his home may be broken by official authority, for the possibility of criminal entry under the guise of official sanction is a serious threat to personal and family security. And even accepting *Frank's* rather remarkable premise, inspections of the kind we are here considering do, in fact, jeopardize "self-protection" interests of the property owner. Like most regulatory laws, fire, health, and housing codes are enforced by criminal processes. In some cities, discovery of a violation by the inspector leads to a criminal complaint. Even in cities where discovery of a violation produces only an administrative compliance order, refusal to comply is a criminal offense, and the fact of compliance is verified by a second inspection, again without a warrant. Finally, as this case demonstrates, refusal to permit an inspection is itself a crime, punishable by fine or even by jail sentence.

The *Frank* majority suggested, and appellee reasserts, two other justifications for permitting administrative health and safety inspections without a warrant. First, it is argued that these inspections are "designed to make the least possible demand on the individual occupant." The ordinances authorizing inspections are hedged with safeguards, and at any rate the inspector's particular decision to enter must comply with the constitutional standard of reasonableness even if he may enter without a warrant. In addition, the argument proceeds, the warrant process could not function effectively in this field. The decision to inspect an entire municipal area is based upon legislative or administrative assessment of broad factors such as the area's age and condition. Unless the magistrate is to review such policy matters, he must issue a "rubber stamp" warrant which provides no protection at all to the property owner.

In our opinion, these arguments unduly discount the purposes behind the warrant machinery contemplated by the Fourth Amendment. Under the present system, when the inspector demands entry, the occupant has no way of knowing whether enforcement of the municipal code involved requires inspection of his premises, no way of knowing the lawful limits of the inspector's power to search, and no way of knowing whether the inspector himself is acting under proper authorization. These are questions which may be reviewed

by a neutral magistrate without any reassessment of the basic agency decision to canvass an area. Yet only by refusing entry and risking a criminal conviction can the occupant at present challenge the inspector's decision to search. And even if the occupant possesses sufficient fortitude to take this risk, as appellant did here, he may never learn any more about the reason for the inspection than that the law generally allows housing inspectors to gain entry. The practical effect of this system is to leave the occupant subject to the discretion of the official in the field. This is precisely the discretion to invade private property which we have consistently circumscribed by a requirement that a disinterested party warrant the need to search. We simply cannot say that the protections provided by the warrant procedure are not needed in this context; broad statutory safeguards are no substitute for individualized review, particularly when those safeguards may only be invoked at the risk of a criminal penalty.[194] (Citations omitted)

The United States Supreme Court further clarified in *Camara* that there is no question as to the reasonableness of administrative inspections or whether they are done for the common good. The question, rather, should be whether such inspection should be made with a warrant:

The final justification suggested for warrantless administrative searches is that the public interest demands such a rule: it is vigorously argued that the health and safety of entire urban populations is dependent upon enforcement of minimum fire, housing, and sanitation standards, and that the only effective means of enforcing such codes is by routine systematized inspection of all physical structures. Of course, in applying any reasonableness standard, including one of constitutional dimension, an argument that the public interest demands a particular rule must receive careful consideration. But we think this argument misses the mark. The question is not, at this stage, at least, whether these inspections may be made, but whether they may be made without a warrant. For example, to say that gambling raids may not be made at the discretion of the police without a warrant is not necessarily to say that gambling raids may never be made. In assessing whether the public interest demands creation of a general exception to the Fourth Amendment's

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[194] *Id.* at 530-533.

warrant requirement, the question is not whether the public interest justifies the type of search in question, but whether the authority to search should be evidenced by a warrant, which in turn depends in part upon whether the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search. It has nowhere been urged that fire, health, and housing code inspection programs could not achieve their goals within the confines of a reasonable search warrant requirement. Thus, we do not find the public need argument dispositive.[195] (Citation omitted)

It was held in *Camara* that a warrantless inspection of a home is deemed reasonable if it involves an emergency situation concerning health and safety. For instance, the seizure of unwholesome food, compulsory smallpox vaccination, health quarantine, and summary destruction of tubercular cattle were found as proper subjects of prompt inspections. However, if "there is no compelling urgency to inspect at a particular time or on a particular day[,]"[196] a warrant should "be sought only after entry is refused unless there has been a citizen complaint or there is other satisfactory reason for securing immediate entry."[197] Ultimately, the judgment of conviction against Camara was vacated since there was no emergency situation and, therefore, no compelling urgency to enter the property he was renting.

The United States Supreme Court has given the same protection to owners of private commercial establishments.

In *See v. City of Seattle*,[198] See, the owner of a locked commercial warehouse, was convicted under the City of Seattle's Fire Code for refusing entry to an inspector. The legal basis cited for the inspection provided:

INSPECTION OF BUILDING AND PREMISES. It shall be the duty of the Fire Chief to inspect and he may enter all buildings and premises, except the interiors of dwellings, as often as may be necessary for

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[195] *Id*. at 533.

[196] *Id*. at 539.

[197] *Id*. at 539-540.

[198] 387 U.S. 541 (1967).

the purpose of ascertaining and causing to be corrected any conditions liable to cause fire, or any violations of the provisions of this Title, and of any other ordinance concerning fire hazards.[199]

See challenged the constitutionality of the provision for allegedly violating the Fourth Amendment and in light of the *Camara* ruling. See argued,[200] and the United States Supreme Court agreed, that there is "no justification for so relaxing Fourth Amendment safeguards where the official inspection is intended to aid enforcement of laws prescribing minimum physical standards for commercial premises."[201] It stated:

> As we explained in *Camara*, a search of private houses is presumptively unreasonable if conducted without a warrant. The businessman, like the occupant of a residence, has a constitutional right to go about his business free from unreasonable official entries upon his private commercial property. The businessman, too, has that right placed in jeopardy if the decision to enter and inspect for violation of regulatory laws can be made and enforced by the inspector in the field without official authority evidenced by a warrant.[202]

The United States Supreme Court in *See* found administrative inspections of business premises akin to administrative agency subpoenas for inspection of corporate books or records. According to it, the subpoena should "be sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome."[203] Further, it clarified that it did "not in any way imply that business premises may not reasonably be inspected in many more situations than private homes, nor[did it] question such accepted regulatory techniques as licensing programs which require inspections prior to operating a business or marketing a product."[204] Should the constitutionality of such

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[199] *Id*.

[200] *Id*. at 542.

[201] *Id*. at 543.

[202] *Id*.

[203] *Id*. at 544.

[204] *Id*. at 546.

programs be challenged, the United States High Court held that the issue should be resolved "on a case-by-case basis under the general Fourth Amendment standard of reasonableness."[205]

Exceptions were carved out in *Colonnade Catering Corporation v. United States*[206] and *United States v. Biswell*.[207]

Colonnade involved a catering firm that unknowingly had an Internal Revenue Service agent as a guest in one (1) of its parties. While at the party, the federal agent noticed that liquor was being served and noted a possible violation of the excise tax law. Later, federal agents arrived at the party and, without the manager's consent, inspected Colonnade's cellar. They then asked that the locked liquor room be opened, to which the manager replied that only Colonnade's president, a certain Rozzo, may unlock the liquor room. When Rozzo arrived, he asked for a search warrant from the federal agents, but they insisted that they did not need any. Rozzo continued to refuse the inspection until one (1) of the agents eventually broke the lock and entered the liquor room, seizing bottles of liquor suspected of being refilled against the law.

In upholding the warrantless inspection of the liquor room, the United States Supreme Court held that "the long history of the regulation of the liquor industry"[208] justified the inspection. It emphasized the governmental interest in the payment of excisable or dutiable articles such as liquor, holding that Congress "has broad power to design such powers of inspection under the liquor laws as it deems necessary to meet the evils at hand."[209] However, "where Congress has authorized inspection but made no rules governing the procedure that inspectors must follow, the Fourth Amendment and its various restrictive rules apply."[210]

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[205] *Id*.

[206] 397 U.S. 72 (1969).

[207] 406 U.S. 311 (1972).

[208] *Colonnade Catering Corporation v. United States*, 397 U.S. 72, 75 (1970).

[209] *Id*. at 76.

[210] *Id*. at 77.

In *Biswell*, meanwhile, a federal treasury agent sought to inspect, without a warrant, a locked gun storeroom owned by Biswell. As basis, the agent cited provisions of the Gun Control Act of 1968, which authorized during business hours entry to "the premises (including places of storage) of any firearms or ammunition ... dealer ... for the purpose of inspecting or examining (1) any records or documents required to be kept ... and (2) any firearms or ammunition kept or stored by such ... dealer... at such premises."[211]

Biswell had intentionally asked for a search warrant but, having been informed of the relevant provisions of the Gun Control Act, unlocked the storeroom and allowed the agent to enter and inspect it. The agent seized two (2) rifles, which Biswell was not licensed to possess. He was subsequently charged with and convicted of dealing in firearms without paying the required occupational tax.

In ruling on the case, the United States Supreme Court held that the agent's warrantless inspection of Biswell's armory did not violate the Fourth Amendment. The search was not accompanied by unauthorized force. Biswell, having been apprised of the law, submitted to lawful authority and allowed the inspection.[212]

While not deeply rooted in history like inspections under the liquor laws, the United States Supreme Court held in *Biswell* that inspections under firearms laws should be allowed "to prevent violent crime and to assist the States in regulating the firearms traffic within their borders."[213] It noted that there are large interests at stake, and that "inspection is a crucial part of the regulatory scheme, since it assures that weapons are distributed through regular channels and in a traceable manner, and makes possible the prevention of sales to undesirable customers and the detection of the origin of particular firearms."[214]

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[211] 406 U.S. 311 (1972).

[212] *Id*. at 315.

[213] *Id*.

[214] *Id*. at 315-316.

As such, in *Biswell*, the United States Supreme Court deemed warrantless inspections of gun stores "reasonable official conduct under the Fourth Amendment."[215] It pronounced:

> [I]f inspection is to be effective and serve as a credible deterrent, unannounced, even frequent, inspections are essential. In this context, the prerequisite of a warrant could easily frustrate inspection, and, if the necessary flexibility as to time, scope, and frequency is to be preserved, the protections afforded by a warrant would be negligible.[216]

As to possible violations of the right to privacy that warrantless inspections under the Gun Control Act entail, the United States High Court stated that "[w]hen a dealer chooses to engage in this pervasively regulated business and to accept a federal license, he [or she] does so with the knowledge that his [or her] business records, firearms, and ammunition will be subject to effective inspection."[217]

After *Colonnade* and *Biswell*, the *Camara* rule-that inspections of private commercial premises require a warrant-was upheld in *Marshall v. Barlow's, Inc.*[218] In that case, an inspector from the Occupational Safety and Health Administration sought entry to a company's work area to inspect for safety hazards and possible violations of the Occupational Safety and Health Act. Ferrol Barlow (Barlow), the company president, refused admission to the inspector, who had no search warrant. Three (3) months later, the Secretary of Labor petitioned the District Court to compel Barlow to admit the inspector. The requested order was granted. However, despite the order, Barlow refused entry to the inspector and subsequently filed an action for injunction before the District Court. Citing *Camara* and *See*, the District Court granted injunction against searches and seizure under the Occupational Safety and Health Act. The Secretary of Labor appealed the injunction to the United States Supreme Court.

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[215] *Id*. at 316.

[216] *Id*.

[217] *Id*.

[218] 436 U.S. 307 (1978).

Affirming the injunction, the United States High Court reiterated the rulings in *Camara* and *See* that warrantless inspections of dwellings and business premises are unreasonable, thus requiring a search warrant.[219] The exception is only for "closely regulated"[220] industries "long subject to close supervision and inspection,"[221] as held in *Colonnade*. There being no showing that Barlow's line of business had long been subjected to close supervision and inspection, the inspection provision under the Occupational Safety and Health Act was declared unconstitutional.

In *Donovan v. Dewey*,[222] the United States Supreme Court upheld the constitutionality of Section 103(a) of the Federal Mine Safety and Health Act of 1977, which allowed the warrantless inspection of underground mines at least four (4) times a year and surface mines at least twice a year. Under the same provision, follow-up inspections are undertaken to determine whether the discovered violations have been rectified.

In upholding the constitutionality of warrantless inspections of mines, the United States Supreme Court stated that they do not violate the Fourth Amendment. First, it found that there is a substantial governmental interest in improving the health and safety conditions of the States' underground and surface mines.[223] It declared that mining has had a "notorious history of serious accidents and unhealthful working conditions,"[224] such that its regulation has been "sufficiently pervasive and defined that the owner of such a facility cannot help but be aware that he 'will be subject to effective inspection.'"[225] Second, the law specifically provided "the standards with which a mine operator

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[219] *Id*. at 312.

[220] *Id*. at 313.

[221] *Id*.

[222] 452 U.S. 594 (1981).

[223] *Id*. at 602.

[224] *Id*. at 603.

[225] *Id*.

is required to comply[.]"[226] Third, the Mine Safety and Health Act provided remedies available for possible violations of privacy such as the prohibition on forcible entries.

Adding that a provision to conduct the inspection "at . . . reasonable times, and within reasonable limits and in a reasonable manner"[227] is not sufficient, the United States High Court noted that the scope and limits of the inspection must be provided in the law. Ultimately, Section 103(a) of the Federal Mine Safety and Health Act of 1977 was upheld constitutional.

Going back to the case at hand, this Court finds that Section 9 of Republic Act No. 10591 and its corresponding provision in the Implementing Rules are unconstitutional for being violative of Article III, Section 2 of the Constitution.

Section 9 authorizes warrantless inspections of houses which, as has been extensively discussed, are unreasonable and, therefore, require a search warrant. Furthermore, Section 9 miserably failed to provide the scope and extent of the inspections, making them overbroad. While the State has heavy regulated the use of and dealing in firearms to maintain peace and order, this does not excuse the utter lack of standards for the conduct of inspection. What this does is give unbridled discretion and power to government officials, the very discretion that Article III, Section 2 guards against.

True, the standard of reasonableness can be found in the law and its Implementing Rules and Regulations. However, "reasonable" as a standard for inspection is not enough. For the waiver of the right against unreasonable searches to be valid, the provision allowing for the inspection must be as informative as to detail its scope and extent.

Therefore, signing the Consent of Voluntary Presentation for Inspection in the *pro forma* Individual Application for New Firearm Registration cannot be considered a valid waiver of the right against unreasonable searches under Article III, Section 2 of

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[226] *Id*. at 604.

[227] *Id*. at 601.

the Constitution. The applicant cannot intelligently consent to the warrantless inspection allowed in Republic Act No. 10591 because of the utter lack of parameters on how the inspection shall be conducted.

This Court notes that the Implementing Rules and Regulations has since been amended in 2018, with its Section 9.3 now providing the scope of the inspection relating to applications for Types 3-5 licenses:

Implementing Rules(2013)	**Implementing Rules (2018)**
SECTION 9. *Licenses Issued to Individuals*. — ... ... 9.6 For Types 3 to 5 licenses, the licensed citizen must comply with the inspection requirements of the PNP. Failure on their part to comply with any of the requirements herein mentioned is a ground for the cancellation of license and/or registration.	SECTION 9. *Licenses Issued to Individuals*. — ... ... 9.3 For Types 3 to 5 licenses, licensed citizens must comply with the inspection requirements of the PNP before the issuance of license. Failure on their part to comply with any of the requirements herein mentioned is a ground for the denial of license. The inspection shall be limited to visual, announced seven days prior, and conducted during office hours (8:00 AM to 5:00 PM) in the presence of the licensed citizen or his authorized representative and must be limited to the compliance on vault requirement. The Inspection Team shall be covered with a Letter Order issued by the Director, CSG.

To this Court, the inspection contemplated in Section 9.3 of the 2018 Implementing Rules, though it now provides the scope and extent of the inspection, may only be done with a search warrant as required in Article III, Section 2 of the Constitution. Considering that the inspection is done before a license is issued, there is no compelling urgency to immediately conduct the

inspection. A search warrant must first be obtained from a judge to determine probable cause for its issuance.

VIII

Petitioner PROGUN in G.R. No. 211559 claims that Section 4.10 of the 2013 Implementing Rules and Regulations violates the right to freedom of association. It theorizes that by requiring a certification from the president of a recognized gun club or sports shooting association in order to obtain a firearms license, Section 4.10 compels the applicant to join a gun club or sports shooting association against his or her will. Section 4.10 of the 2013 Implementing Rules provides:

> SECTION 4. *Standards and Requisites for Issuance and Obtaining a License to Own and Possess Firearms.—*
>
> . . . . . .
>
> 4.10 A qualified applicant shall submit the following requirements to apply as a sports shooter:
>
> a) A copy of the License to Own and Possess Firearms;
>
> b) Certification from the President of a recognized Gun Club or Sports Shooting Association; and
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> c) Written Authority or Consent from Parents/Guardian (for minors).

This Court does not find Section 4.10 of the Implementing Rules violative of Article III, Section 8 of the Constitution on the freedom of association, which provides:

> SECTION 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.

It has been held that Article III, Section 8 not only guarantees the freedom to associate; it also protects the freedom *not* to associate. The provision is not basis to compel others to form or join an association.[228]

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[228] *Sta. Clara Homeowners' Association v. Spouses Gaston*, 425 Phil. 221, 235 (2002) [Per *J.* Panganiban, Third Division].

Reading Section 4.10, this Court finds that nothing in it compels a sports shooter applicant to join a gun club or sports shooting association. All that Section 4.10 provides is that a person intending to apply as a sports shooter must submit a certification from the president of a recognized gun club or sports shooting association that he or she is joining the competition. The reason is that shooting competitions are usually sponsored by gun clubs and sports associations which, in turn, must be duly registered with and accredited in good standing by the Firearms and Explosive Office of the Philippine National Police.[229] This certification ensures that the extra ammunition is indeed granted to legitimate sports shooters,[230] which is remarkably more than that allowed to an ordinary owner of a firearm.

Thus, Section 4.10 does not violate Article III, Section 8 of the Constitution.

IX

Finally, this Court dismisses petitioner PROGUN's Verified Petition for Contempt brought under Rule 71, Section 3[231] of

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[229] Republic Act No. 10591 (2013), Sec. 3(o).

[230] Implementing Rules and Regulations of Republic Act No. 10591 (2013), Sec. 12 provides:

SECTION 12. *License to Possess Firearms Necessarily Includes Possession of Ammunition*.—

12.1 The license to individual or juridical entity for the ownership and possession of registered firearms necessarily includes the license to possess ammunition appropriate to the registered firearm which shall not exceed fifty (50) rounds per firearm at any given time.

12.2 A licensed citizen shall secure first a sports shooter's license before he/she be allowed to possess ammunition more than the prescribed quantity. Only licensed sports shooter shall be allowed to possess ammunition of more than fifty (50) rounds but not more than one thousand (1000) rounds for each of the registered firearm. However, in meritorious cases, a licensed sports shooter may request for approval from the Chief, PNP through the FEO to carry more than the allowed quantity which is subject to additional fees.

[231] RULES OF COURT, Rule 71, Sec. 3 provides:

the Rules of Court. It appears that the Philippine National Police has complied with our directives in the April 8, 2014 Temporary Restraining Order.[232]

WHEREFORE, the Petitions in G.R. Nos. 212570 and 215634 are **DISMISSED**.

As for the Petitions in G.R. Nos. 211559 and 211567, they are **PARTLY GRANTED**. Section 9.3 of the 2013 Implementing Rules and Regulations of Republic Act No. 10591 is declared **UNCONSTITUTIONAL** for being contrary to Article III, Section 2 of the Constitution. The Philippine National Police is **PROHIBITED** from requiring individual applicants—either for a license to own and possess firearm or for a new firearm registration—to sign the Consent of Voluntary Presentation for Inspection, or otherwise requiring inspection of their houses as a requirement for a license to own and possess firearm unless, armed with a search warrant.

This Court's April 8, 2014 Temporary Restraining Order is made **PERMANENT**.

Finally, petitioner Peaceful Responsible Owners of Guns, Inc.'s Verified Petition for Contempt is **DISMISSED** for lack of merit.

SO ORDERED.

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

SECTION 3. *Indirect contempt to be punished after charge and hearing.*— After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as maybe fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:

. . . . . .

(b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court[.]

[232] *Rollo* (G.R. No. 211567), pp. 306-307, Comment on the Verified Petition for Contempt.

Reyes, A. Jr., J., see separate and concurring opinion.

Reyes, J. Jr., J., on leave.

SEPARATE CONCURRING AND DISSENTING OPINION

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

The preservation of peace and order is a forefront duty of the State, however, no matter how noble the ends sought to be achieved may be, the State may not unnecessarily intrude upon the constitutional rights of its people.

As a brief background, the petitioners assail the constitutionality of some provisions of Republic Act (R.A.) No. 10591 otherwise known as, "An Act Providing for a Comprehensive Law on Firearms and Ammunition and Providing Penalties for Violations thereof" and its Implementing Rules and Regulations (IRR) for allegedly infringing upon their right to bear arms, right to property and right to privacy.

Precedence of National Interest over Rule on Technicalities

At the outset, the *ponencia* notes the absence of the requisites for a valid exercise of the Court's power of judicial review, particularly:

First, there is no actual case or controversy that is ripe for the Court's resolution. The petitioners in G.R. No. 211559 do not allege facts that will confirm the existence of an actual case or controversy to warrant the Court's exercise of its judicial power. As discussed in the *ponencia*, an actual case or controversy is necessary for the Court to avoid using its time and limited resources in resolving mere hypothetical cases or conjectural issues.

Next, the petitioners do not have legal standing to file the present suit. Petitioners Eric F. Acosta and Nathaniel G. Dela Paz did not allege that they are engineers, but they raise as issue

the omission of engineers in Section 7.3[1] of the IRR of R.A. No. 10591 as professionals who are not required to submit threat assessment certificates in applying for a Permit to Carry Firearms Outside of Residence (PTCFOR). There is also no showing that the petitioners PROGUN and Guns and Ammo Dealers Association of the Philippines were authorized by their members to sue on their behalf. Thus, the absence of legal standing on the part of the petitioners to file the present suit.

Lastly, the *ponencia* observes that the petitioners violated the doctrine of hierarchy of courts when they directly sought recourse from the Court.

In spite of the foregoing lapses, I find it striking that the Petitions were not outrightly denied on these procedural grounds; in fact, the *ponencia* extensively discussed the issues raised by the petitioners. I wish to emphasize that since constitutional rights are involved, technicalities should not impede the resolution of the present consolidated petitions. Indeed, the petitioners' violations are mere procedural technicalities which the Court may set aside in its discretion in the interest of substantial justice. In *Chavez v. Hon. Romulo*,[2] the Court was confronted with a petition that also sought to enjoin the implementation of guidelines regarding the carrying of firearms outside residence. Despite procedural barriers, the Court treated the matter as

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[1] 7.3 For purposes of this Act, the following professionals are considered to be in imminent danger due to the nature of their profession, occupation or business and hence are not required to submit threat assessment certificates:

a) Members of the Philippine Bar;

b) Certified Public Accountants;

c) Accredited media practitioners from recognized media institutions; Cashiers and bank tellers;

d) Priests, Ministers, Rabbi, Imams;

e) Physicians and Nurses; and

f) Businessmen, who by the nature of their business or undertaking duly recognized or regulated by law, are exposed to high risk of being targets of criminal elements.

[2] 475 Phil. 486 (2004).

one of national interest and of serious implication,[3] and as such, entertained the petition despite the attendant procedural infirmities. There is no reason why the present case should be dealt with differently.

Now, with respect to the substantive issues.

Invalidity of the Inspection Requirement

There is no fundamental right to bear arms in the Philippines, thus, the State may regulate gun ownership through the exercise of its police power. In line with this, I stand with the *ponencia* in declaring Section 9.6[4] of the IRR of R.A. No. 10591 which was promulgated in 2013 unconstitutional, albeit for a different reason.

I agree that requiring Types 3 to 5 license applicants to sign the *pro forma* "Consent of Voluntary Presentation for Inspection" violates Article III, Section 2 of the 1987 Constitution,[5] but, primarily because there are no sufficient safeguards to carry out the inspection. In *Ople v. Torres*,[6] the Court held that "the right to privacy does not bar all incursions into individual privacy."[7] However, "intrusions into the right must be accompanied by proper safeguards and well-defined standards to prevent unconstitutional invasions. We reiterate that any law

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[3] *Id*. at 499.

[4] 9.6 For Types 3 to 5 licenses, the licensed citizen must comply with the inspection requirements of the PNP. Failure on their part to comply with any of the requirements herein mentioned is a ground for the cancellation of license and/or registration.

[5] Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

[6] 354 Phil. 948 (1998).

[7] *Id*. at 985.

or order that invades individual privacy will be subjected by this Court to strict scrutiny."[8]

The *ponencia* rules that even though Section 9.3[9] of the 2018 Revised IRR of R.A. No. 10591 now provides for the scope and extent of the inspection, a search warrant must be first obtained considering that there is no compelling urgency to immediately conduct the inspection.

Based on Section 9[10] of R.A. No. 10591, Types 3 to 5 licenses allow a citizen to own and possess at least six registered firearms.

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[8] *Id*.

[9] 9.3. For Types 3 to 5 licenses, licensed citizens must comply with the inspection requirements of the PNP before the issuance of license. Failure on their part to comply with any of the requirements herein mentioned is a ground for the denial of license. The inspection shall be limited to visual, announced seven days prior, and conducted during office hours (8:00 AM to 5:00 PM) in the presence of the licensed citizen or his authorized representative and must be limited to the compliance on vault requirement. The Inspection Team shall be covered with a Letter Order issued by the Director, CSG.

[10] Section 9. *Licenses Issued to Individuals*. — Subject to the requirements set forth in this Act and payment of required fees to be determined by the Chief of the PNP, a qualified individual may be issued the appropriate license under the following categories;

Type 1 license — allows a citizen to own and possess a maximum of two (2) registered firearms;

Type 2 license — allows a citizen to own and possess a maximum of five (5) registered firearms;

Type 3 license — allows a citizen to own and possess a maximum of ten (10) registered firearms;

Type 4 license — allows a citizen to own and possess a maximum of fifteen (15) registered firearms; and

Type 5 license — allows a citizen, who is a certified gun collector, to own and possess more than fifteen (15) registered firearms.

For Types 1 to 5 licenses, a vault or a container secured by lock and key or other security measures for the safekeeping of firearms shall be required.

For Types 3 to 5 licenses, the citizen must comply with the inspection and bond requirements.

In view of the gravity, responsibility, and possible repercussions of owning and possessing at least six firearms in one's residence, I am of the opinion that the State must still be given an opportunity to ensure compliance with the vault and safety requirements under R.A. No. 10951, and the only way to confirm compliance is through the conduct of an initial, one-time inspection, complemented by a subsequent inspection in case of compelling urgency, as the *ponencia* suggests.

In *People of the Philippines v. O'Cochlain*,[11] the Court noted that administrative searches are allowed in certain situations where special needs arise and securing a prior search warrant is rendered impracticable, *viz*.:

> US courts have permitted exceptions to the Fourth Amendment when "special needs, beyond the normal need for law enforcement, make the warrant and probable cause requirement impracticable" such as work-related searches of government employees' desks and offices, warrantless searches conducted by school officials of a student's property, government investigators conducting searches pursuant to a regulatory scheme when the searches meet "reasonable legislative or administrative standards," and a State's operation of a probation system. The Fourth Amendment permits the warrantless search of "closely regulated" businesses; "special needs" cases such as schools, employment, and probation; and "checkpoint" searches such as airport screenings under the administrative search doctrine.[12] (Citation omitted)

From this vantage ground, an inspection prior to the issuance of Types 3 to 5 licenses must be allowed as an adjunct of administrative search, owing to the weight of responsibility involved in gun ownership, which from its nature, necessitates a stricter regulatory scheme.

Nevertheless, inspection under R.A. No. 10591 and its IRR must be struck down for failure to limit the frequency of inspection. While Section 9.3 of the 2018 Revised IRR provides for more guidelines, my view is that the inspection must be subjected to

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[11] G.R. No. 229071, December 10, 2018.

[12] *Id*.

further and more stringent standards, such as limiting the inspection only to one instance — prior to the issuance of the license. This is to ensure that the applicant has complied with the safety measures and vault requirements under the law.

Exception to Prohibition on Bringing Firearms inside Commercial Establishments

For the purpose of maintaining public peace and order, Section 7.11.2(b)[13] of the IRR of R.A. No. 10591 commands that firearms be secured inside a vehicle or motorcycle compartment, and Section 7.12(b)[14] of the IRR of R.A. No. 10591 prohibits the bringing of firearms inside places of worship, public drinking, amusement places, and all other commercial or public establishments.

The *ponencia* holds the view that keeping a firearm secured in a motor vehicle compartment or motorcycle prevents the firearm owner from impulsively using the firearm in case of altercation. Meanwhile, the restriction on bringing a firearm to commercial or public places is a reasonable measure to prevent mass shootings.

I agree.

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[13] 7.11 The following guidelines regarding the manner of carrying firearms shall be observed:

x x x x x x x x x

7.11.2 For All Other Persons: (including members of the PNP, AFP and other LEAs in civilian attire)

x x x x x x x x x

b) The firearm must be secured inside a vehicle or a motorcycle compartment.

[14] 7.12 The following other restriction shall likewise be observed:

x x x x x x x x x

b) The firearm shall not be brought inside places of worship, public drinking and amusement places and all other commercial or public establishment.

However, it is my opinion that an exemption must be made for commercial establishment owners who own licensed firearms. The blanket prohibition on carrying firearms inside all commercial or public establishments poses an issue insofar as it renders nugatory the PTCFOR secured by the owners of these commercial establishments.

While I agree that maintaining public peace and order is important, enjoining even the commercial establishment owners themselves from bringing their firearms inside their place of business serves no viable purpose. Some commercial establishment owners such as small-scale business owners or sole proprietors cannot afford to engage the services of private security. With the prohibition, they are left with little to no means of protecting themselves or their clients against unlawful elements who may enter their establishments and commit violence. Verily, it is a declared State policy under Section 2 of R.A. No. 10951 that "the State recognizes the right of its qualified citizens to self-defense through, when it is the reasonable means to repel the unlawful aggression under the circumstances, the use of firearms." Prohibiting even these owners from bringing their firearm to their place of business does not support this declared State policy and contradicts the purpose for which establishment owners' PTCFOR was secured.

This prohibition also runs counter to Section 7[15] of R.A. No. 10591, which recognizes businessmen, who by the nature

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[15] Section 7. *Carrying of Firearms Outside of Residence or Place of Business*. — A permit to carry firearms outside of residence shall be issued by the Chief of the PNP or his/her duly authorized representative to any qualified person whose life is under actual threat or his/her life is in imminent danger due to the nature of his/her profession, occupation or business.

It shall be the burden of the applicant to prove that his/her life is under actual threat by submitting a threat assessment certificate from the PNP.

For purposes of this Act, the following professionals are considered to be in imminent danger due to the nature of their profession, occupation or business:

x x x x x x x x x

of their business or undertaking, are exposed to high risk of being target of criminal elements. Thus, in my view, this all-out prohibition in Section 7.12(b) of the IRR is unduly restrictive on their part.

Certification as Implicit Compulsion to Join Gun Clubs

Anent the requirement for sports shooters to get a certification from the president of a recognized gun club under Section 4.10[16] of the IRR, the *ponencia* espouses that there is nothing in Section 4.10 that compels a sports shooter applicant to join a gun club or shooting association.

According to the *ponencia*, all that Section 4.10 provides is that a person intending to apply as a sports shooter must submit a certification from the President of a recognized gun club or sports shooting association that he or she is joining the competition.

Again, I depart from the *ponencia's* ruling in this regard.

To my mind, the requirement of submitting a certification from the President of a recognized gun club tacitly compels a sports shooter applicant to join the gun club to which such President belongs, for it is reasonable to believe that no President of a gun club would issue a certification to non-members. Thus, this requirement under Section 4.10(b) is violative of the sports shooters' right to freedom of association.

Section 8, Article III of the 1987 Constitution guarantees the right of people to join or form associations:

(h) Businessmen, who by the nature of their business or undertaking, are exposed to high risk of being targets of criminal elements.

[16] 4.10 A qualified applicant shall submit the following requirements to apply as a sports shooter:

a) A copy of the License to Own and Possess Firearms;

b) Certification from the President of a recognized Gun Club or Sports Shooting Association; and

c) Written Authority or Consent from Parents/Guardian (for minors).

Section 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.

However, "[t]he constitutionally guaranteed freedom of association includes the freedom *not* to associate."[17] "It should be noted that the provision guarantees the right to form an association. It does not include the right to compel others to form or join one."[18]

In view of the foregoing, I vote to **DECLARE** Section 4.10(b) of the Implementing Rules and Regulations **UNCONSTITUTIONAL** for violating Section 8, Article III of the 1987 Constitution.

Nonetheless, I **CONCUR** with the majority in its other dispositions.

EN BANC

[G.R. No. 218388. October 15, 2019]

MANILA INTERNATIONAL AIRPORT AUTHORITY, *petitioner, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT (COA); DEFERENCE IS GIVEN TO THE DECISIONS AND RESOLUTIONS OF THE COA AND THE COURT MAY ONLY INTERVENE TO CORRECT AN

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[17] *Sta. Clara Homeowners' Association v. Sps. Gaston*, 425 Phil. 221, 235 (2002).

[18] *Id*.

ASSAILED DECISION OR RESOLUTION WHEN THE COA, IN THE EXERCISE OF ITS AUTHORITY, ACTED WITHOUT OR IN EXCESS OF JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION.— Generally, deference is given by the Court to the decisions and resolutions of the COA as a matter of general policy, not only on the basis of the doctrine of separation of powers but also in recognition of the COA's expertise on the laws it was entrusted to enforce. The Court also acknowledges the role that the COA assumes as guardian of public funds and properties pursuant to the 1987 Constitution under which the COA has been granted exclusive authority to disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties. The Court may only intervene to correct an assailed decision or resolution when the COA, in the exercise of its authority, acted without or in excess of jurisdiction, or with grave abuse of discretion.

2. ID.; PUBLIC INTERNATIONAL LAW; EXECUTIVE AGREEMENTS; A LOAN AGREEMENT IN CONJUNCTION WITH THE EXCHANGE OF NOTES BETWEEN THE PHILIPPINE GOVERNMENT AND A FOREIGN GOVERNMENT IS AN EXECUTIVE AGREEMENT, AND SHOULD BE GOVERNED BY INTERNATIONAL LAW.— Pursuant to the pronouncement in *Abaya v. Ebdane*, x x x a loan agreement executed in conjunction with the Exchange of Notes between the Philippine Government and a foreign government is an executive agreement, and should be governed by international law. This pronouncement has been consistently applied in succeeding rulings, including those in *DBM Procurement Service v. Kolonwel Trading, Land Bank of the Philippines v. Atlanta Industries, Inc.*, and *Mitsubishi Corporation-Manila Branch v. Commissioner of Internal Revenue*. Consequently, we see no justification to treat Loan Agreement No. PH-136 differently, particularly as its pre-ambular paragraph expressly made reference to the Exchange of Notes between the Philippines and Japan on August 16, 1993 x x x. We point out that Loan Agreement No. PH-136, which financed the NAIA Terminal 2 Development Projects, stemmed from the August 16, 1993 Exchange of Notes whereby the Government of Japan agreed to extend loans in favor of the Philippines to promote economic development and stability. Thusly, the loan agreement was the

adjunct of the Exchange of Notes and should thus be treated as an executive agreement. In other words, international law should apply in the implementation and construction of the terms and conditions of Loan Agreement No. PH-136. Accordingly, the Philippine Government was bound to faithfully comply with the provisions of the loan agreements in accordance with the doctrine of *pacta sunt servanda*. Needless to indicate, the doctrine has been incorporated in the 1987 Constitution pursuant to Section 2 of its Article II x x x. Logically, the Agreement for Consulting Services (ACS) executed by and between the petitioner and the ADP-JAC Consortium, being a mere accessory of Loan Agreement No. PH-136, should likewise be treated as an executive agreement, and construed and interpreted in accordance with the doctrine of *pacta sunt servanda*. x x x A similar treatment should be extended to the three Supplemental Agreements entered into by the petitioner and the ADP-JAC Consortium. Accordingly, the COA could not validly insist that the NEDA Guidelines, particularly that on applying a 5% interest on contingency, should find application because the contracting parties did not stipulate on the applicable law. The pronouncement in *Abaya v. Ebdane* x x x and its progeny that international law applies in interpreting and implementing contracts executed in conjunction with executive agreements was controlling. No express stipulation by the contracting parties to that effect was necessary.

3. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; PARTIES TO CONTRACTS; THE PARTIES HAVE THE RIGHT TO ALTER ANY TERM OF AN EXISTING CONTRACT BY ENTERING INTO A SUBSEQUENT AGREEMENT, AND THE CONTRACT, AS MODIFIED, BECOMES A NEW CONTRACT BETWEEN THE PARTIES, AND THE MEANING TO BE GIVEN THE SUBSEQUENT AGREEMENTS DEPENDS ON THE INTENTION OF THE PARTIES.— Properly viewed, the petitioner and the ADP-JAC Consortium, by executing the supplemental agreements, intended to modify the original consultancy services agreement with respect to the estimated man-months in order to complete the project, and to institute the necessary adjustments in the total cost of services. This is the only conclusion to be arrived at in view of the parties' choice of the word "*revised*" in Clause 2.03 found in each of the supplemental agreements in their reference to the estimated

total number of man-months corresponding to the delays incurred in the completion of the project. We reiterate the wise rule that the contemporaneous and subsequent acts of the parties should be considered in determining their intention. In revising the estimated man-months and total cost of services as contained in the supplemental agreements, therefore, the petitioner and the ADP-JAC Consortium intended to charge all additional man-months to the total cost of services, not against the contingency. Hence, only the extra man-months in excess of what had been finally agreed upon, and the unforeseen expeditures incurred by the parties in connection with the project should be charged against the contingency. In this regard, we remind that parties to a contract are not forever locked unto its terms, but have the right to amend their covenant by mutual consent. Thus, the parties to an existing contract may, by mutual assent, modify it, provided the modification does not contravene the law or public policy. We do not find anything irregular and unlawful in the manner that the petitioner and the ADP-JAC Consortium executed the supplemental agreements. For this purpose, we should uphold the right of the parties to alter any term of an existing contract by entering into a subsequent agreement, and the contract, as a modified, becomes a new contract between the parties, and the meaning to be given the subsequent agreements depends on the intention of the parties.

4. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; MEANS SUCH CAPRICIOUS AND WHIMSICAL EXERCISE OF JUDGMENT AS IS EQUIVALENT TO LACK OF JURISDICTION.— By going against the intention of the parties as to how the cost of man-months should be charged against, as well as the manner of charging items against contingency, and thus affirming the NDs, the COA contravened the Constitution and international law, and thereby gravely abused its discretion amounting to lack or excess of jurisdiction. 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 where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation

of law. The burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. Mere abuse of discretion is not enough; it must be grave.

LEONEN, *J., separate opinion*:

1. POLITICAL LAW; PUBLIC INTERNATIONAL LAW; INTERNATIONAL LAW ENTERS THE SPHERE OF PHILIPPINE DOMESTIC LAW BY INCORPORATION AND TRANSFORMATION.— International law enters the sphere of Philippine domestic law because the 1987 Constitution provides two (2) ways by which the Philippines will be bound by it: (1) incorporation; and (2) transformation. Incorporation of international law is provided under Article II, Section 2 of the Constitution, which explicitly states that generally accepted principles of international law are binding in the Philippines x x x. Transformation of international law is found in Article VII, Section 21 of the Constitution, which describes the process by which international agreements or treaties become part of the law of the land x x x.

2. ID.; ID.; TREATIES AND INTERNATIONAL AGREEMENTS; REQUIRE SENATE CONCURRENCE TO BECOME BINDING AS LAW BUT ONE OF THE EXCEPTIONS THERETO IS AN EXECUTIVE AGREEMENT.— The transformation method was discussed in *David v. Senate Electoral Tribunal* x x x. Senate concurrence is necessary before treaties and international agreements become binding as law. This is emphasized in the history of Article VII, 21 of the Constitution, as discussed in my separate concurring opinion in *Intellectual Property Association of the Philippines v. Ochoa* x x x. Senate concurrence is required to maintain a healthy system of checks and balances, such that power is shared by the executive and legislative branches x x x. I likewise discussed that international agreements require Senate concurrence, especially if they involve political issues or national policies of a more permanent character x x x. Nonetheless, there are exceptions to the requirement of Senate concurrence, one (1) of which is an executive agreement. Executive agreements are "international agreements that pertain to mere adjustment of detail that carry out well-entrenched

national policies and traditions in line with the functions of the Executive. It includes enforcement of existing and valid treaties where the provisions are clear. It involves arrangements that are of a temporary nature." They do not amend existing treaties, statutes, or the Constitution.

3. ID.; ID.; PRINCIPLE OF *PACTA SUNT SERVANDA*; PROVIDES THAT INTERNATIONAL AGREEMENTS MUST BE PERFORMED IN GOOD FAITH, AND A STATE IS EXPECTED TO MAKE THE NECESSARY MODIFICATIONS IN ITS LAWS TO ENSURE THAT ITS VALID INTERNATIONAL OBLIGATIONS ARE FULFILLED.—The Philippine government is duty bound to abide by its international engagements in good faith, regardless of whether the engagement is characterized as incorporated or transformed international law or whether it takes the form of an international executive agreement. This is the principle of *pacta sunt servanda. Pacta sunt servanda,* among "the oldest and most fundamental rules in international law[,]" means that "international agreements must be performed in good faith [.]" A state is expected to make the necessary modifications in its laws to ensure that its valid international obligations are fulfilled. x x x I agree that Loan Agreement No. PH-136 is an executive agreement. The circumstances by which it was executed are the same as those for the loan agreement in *Abaya v. Ebdane, Jr.*, which this Court classified as an executive agreement. x x x Japan's Overseas Economic Cooperation Fund and the Philippine Government entered into Loan Agreement No. PH-136 in light of the governments' Exchange of Notes concerning Japanese loans to promote the economic development and stabilization efforts of the Philippines. Thus, I agree that the Philippine Government is bound to comply with its stipulations in Loan Agreement No. PH-136, in accordance with the doctrine of *pacta sunt servanda*.

4. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; OBLIGATIONS ARISING FROM CONTRACTS HAVE THE FORCE OF LAW BETWEEN THE CONTRACTING PARTIES AND SHOULD BE COMPLIED WITH IN GOOD FAITH.— I differ as to the characterization of the added costs under the Supplementary Agreements. *Pacta sunt servanda* cannot simply be applied to these agreements at the expense of the express provisions in the Consultancy Agreement. The Consultancy Agreement expressly states that it will be governed by Philippine

law x x x. Unlike Loan Agreement No. PH-136, the Consultancy Agreement explicitly contains provisions for delays, extensions, and added costs of the consulting services. It provides that: (1) consulting services for additional work may be extended through supplemental agreements; (2) the Consultancy Agreement governs the terms and conditions of the additional services and payment to the Consultant for additional man-months under supplemental agreements; and (3) *such payments shall be chargeable against contingencies*. x x x The Consultancy Agreement also expressly provides what are chargeable to the contingency amount x x x. The contingency amount also covers additional costs incurred from possible extensions caused by delays due to circumstances beyond the Consultant's control x x x. The Consultancy Agreement also provides for change in the services, which shall be subject to terms and conditions mutually accepted by petitioner and the Consultant x x x. Under Article 1159 of the Civil Code, "[o]bligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith." Furthermore, under Article 1370, "[i]f the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control." In this case, nothing in the Supplementary Agreements states that the added costs will be charged to the original costs of the contract. Neither were express amendments made to the Consultancy Agreement's provisions on extensions, delays, and contingencies. It is clear, therefore, that the express provisions of the Consultancy Agreement govern the agreement of the parties. Consequently, per the Consultancy Agreement, the added costs under the Supplementary Agreements ought to be charged to the contingency fund.

5. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; NATIONAL ECONOMIC DEVELOPMENT AUTHORITY (NEDA); NEDA GUIDELINES FOR THE PROCUREMENT OF CONSULTANCY SERVICES FOR GOVERNMENT PROJECTS; CONTINGENCY LIMIT; THE FIVE PERCENT CONTINGENCY CEILING CANNOT BE INTERPRETED TO APPLY IN CASE AT BAR.— [T]he Consultancy Agreement does not provide a five percent (5%) limit as to the amount that can be charged against the contingency fund. x x x The five percent (5%) limit on

contingency is provided only in Section 6.10 of the NEDA Guidelines x x x. It is, thus, critical to determine whether this restriction in the NEDA Guidelines applies to the Consultancy Agreement. x x x The Consultancy Agreement in this case involves the hiring of consultants for the NAIA Terminal 2 Development Project. It is financed by the loan from the Overseas Economic Cooperation Fund of Japan under Loan Agreement No. PH-136. Thus, the NEDA Guidelines cannot negate any commitments under Loan Agreement No. PH-136 with respect to the selection of consultants. Thus, I affirm that the Consultancy Agreement is a conjunct of, or has a joint and simultaneous occurrence with, Loan Agreement No. PH-136. It is not completely unrelated to or independent of the other. x x x The Consultancy Agreement arose from the commitments under Loan Agreement No. PH-136 as to the selection of consultants. Included in these commitments is the procurement procedure under Loan Agreement No. PH-136, which states that the employment of consultants shall be in accordance with the 1987 Guidelines for the Employment of Consultants by OECF Borrowers. x x x According to respondent Commission on Audit, the 1987 Guidelines for the Employment of Consultants by OECF Borrowers simply provided that the consultancy contract should include an amount set aside for contingencies, such as unforeseen work and rising costs x x x. From this alone, however, it cannot be interpreted that the five percent (5%) contingency ceiling under the NEDA Guidelines applies. I note that respondent also stated that under the Terms of Reference, the parties agreed to be bound by the NEDA Guidelines x x x. However, the parties presented no copies of the Terms of Reference, the NEDA Guidelines, or the Overseas Economic Cooperation Fund Guidelines in any of its pleadings before this Court. The case records must first be elevated and fully examined to intelligently rule on the matter, considering the large amounts involved in this case.

APPEARANCES OF COUNSEL

The Solicitor General for respondent.

D E C I S I O N

BERSAMIN, *C.J.*:

A loan agreement executed in conjunction with an exchange of notes between the Republic of the Philippines and a foreign government shall be governed by international law, with the rule on *pacta sunt servanda* as the guiding principle. Any subsequent agreement adjunct to the loan agreement shall be similarly governed.

The Case

We consider and resolve the petition for *certiorari* brought to nullify and set aside Decision No. 2012-268 dated December 28, 2012[1] and Resolution dated January 26, 2015,[2] both issued in COA CP Case No. 2011-294, whereby respondent Commission on Audit (COA) affirmed Decision No. 2008-067 dated November 21, 2008 of the Legal and Adjudication Office (LAO)-Corporate[3] upholding Notice of Disallowance (ND) No. (FMT) 99-00-04 dated November 24, 1999[4] and Notice of Disallowance (ND) No. (FMT) 2008-018 dated November 21, 2008.[5]

Antecedents

The COA summarized the factual and procedural antecedents as follows:

As narrated in the assailed decision, the MIAA and the Aeroports de Paris-Japan Airport Consultants, Inc. Consortium (Consultant for brevity) entered into an Agreement for Consulting Services (Agreement for, brevity) for the NAIA Terminal 2 Development Project on April 15, 1994. The Agreement, covering 795 man-months of

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[1] *Rollo* (Vol. 1), pp. 36-41, issued by Chairperson Ma. Gracia M. Pulido Tan, Commissioner Juanito G. Espino, Jr. and Commissioner Heidi L. Mendoza.

[2] *Id.* at 43.

[3] *Id.* at 44-58.

[4] *Id.* at 59.

[5] *Id.* at 60-65.

consulting services, commenced on July 1, 1994. It originally assumed a total duration of 53 months that included a 14-month post construction services up to November 30, 1998. The construction of the Project was originally estimated to take 26 months from August 1, 1995 to September 30, 1997, followed by a 12-month defect liability period.

However, the duration of the services was extended and the number of man-months increased, due to a prolonged process of pre-qualification, bidding and awarding stages, delayed Department of Environment and Natural Resources approval and Contractor's site possession, as well as numerous additional construction works.

The total duration of the consulting services was, thus, extended from 53 to 69 months or a total of 1,083.81 man-months. The extension was covered by three (3) Supplementary Agreements (SAs) entered into by the MIAA and the Consultant.

On November 24, 1999, the then Corporate Auditor of MIAA issued ND No. (FMT) 99-00-04 finding the Agreement's remuneration cost of ₱41,784,850.00 (excluding expatriates) excessive because it was 19.80% above the corresponding COA estimated remuneration cost of ₱34,876,915.00. Then General Manager Antonio P. Gana of MIAA in his undated letter to COA, requested reconsideration of the ND based on the following grounds:

1. That the cost of Consulting Services was obtained after detailed negotiations, embodied in an Agreement and the same was approved by the Office of the Government Corporate Counsel (OGCC) and concurred in by Japan Bank of International Cooperation (JBIC); and

2. That under Section 9.3 of the NEDA Guidelines, the ceiling for contingency can be negated by any existing and future commitments with respect to the selection of consultants financed partly or wholly with funds from international financial institutions. Thus, considering that the consulting services were 100% funded by JBIC and in view of other previous JBIC projects, the 10% contingency was accepted by MIAA and the OGCC and concurred in by the JBIC; that the provision of the Overseas Economic Cooperation Fund (OECF) Loan Agreement should govern the expenditure of contingency and that the contingency is not a committed payment to the consultant upon execution

> of the Agreement, but may be used wholly or partially, or not at all depending on the circumstances.

Consequently, the MIAA Corporate Auditor referred, through the former Director of the then Corporate Audit Office (CAO) II, this Commission, the above request to the COA Technical Services Office (TSO), for further evaluation.

In the meantime, on January 25, 2000, MIAA and the Consultant entered into a fourth SA for the extension of another 8 months, for a total of 77 months or up to November 30, 2000. The corresponding number of professional man-months increased to 1,221.65.

The COA-TSO, in response to the request for reconsideration, conducted a re-evaluation of the Agreement and thereafter reversed its earlier stand on the excessive remuneration cost, but as regards to the issue of the contingency, the COA-TSO requested the then MIAA Corporate Auditor to validate the payments charged to contingency.

Thereafter, on August 17, 2000, the then MIAA Corporate Auditor lifted and settled the disallowed amount of ₱6,907,935.00 after the same was found reasonable based on the COA-TSO Re-evaluation Report dated June 29, 2000.

On October 18, 2001, the then MIAA Corporate Auditor re-submitted the request for reconsideration, together with the COA-TSO validation and opined that the sum of payments charged to contingency was within the ceiling equivalent to 5% of the amount of the contract as prescribed under the NEDA Guidelines. He stressed that of ¥1,493,497,905.00 and ₱113,061,248.01 actually paid by MIAA to the Consultant, ¥36,349,705.00 and ₱2,752,610.77 representing 2.49% and 2.495%, respectively, or a total of 4.985% of the contract cost was charged to contingency. Moreover, the then MIAA Corporate Auditor averred that all four SAs entered into by MIAA and the Consultant were reviewed and found in order as to their technical aspects by the COA-TSO.

Thereafter, pursuant to COA Memorandum No. 2002-039 dated July 11, 2002, the former Assistant Director of then Cluster IV-Industrial and Area Development and Regulatory, Corporate Government Sector (CGS), this Commission, forwarded the instant request to COA LAO-Corporate for appropriate action.

On November 21, 2008, COA LAO-Corporate issued the assailed decision denying the remaining disallowance of ¥53,697,150.00 foreign portion and ₱3,215,267.50 local portion under ND No. (FMT) 99-00-04 dated November 24, 1999.

It likewise issued the ND No. 2008-018 dated November 21, 2008 for the additional disallowance of ¥344,425,855.00 and ₱42,325,363.04 as mentioned in the decision.[6]

To assail the NDs, the petitioner appealed to the COA by petition for review, which ultimately denied the appeal upon the following ratiocination, *viz*.:

> The exemption mentioned in Section 9.3 of the NEDA Guidelines is only in respect to the selection of consultants and does not include exemption from the 5% ceiling on contingency. Also, a careful reading of Section 6.10 of the NEDA Guidelines would show that the 5% ceiling of contingency was written in a mandatory manner by the use of the verb "shall," to wit:
>
> 6.10 Contingency
>
> 6.10.1 Payments in respect of costs which would exceed the estimates set forth in Section 6.1 may be chargeable to the contingency amounts in the respective estimates only if such costs are approved by the agency concerned prior to its being incurred and provided, further, that they shall be used only in line with the unit rates and costs specified in the contract and in strict compliance with the project needs. **Contingency amount shall not exceed 5% of the amount of the contract.** (emphasis added)
>
> It should be noted that the contingency amount is included in the contract cost for the purpose of facilitating the availability of funds for future requirements during the lifetime of the contract (e.g. per Section 2.04 of the Agreement, for performance of additional work to be covered by an SA). For such budgetary purposes, the NEDA Guidelines provide a ceiling of 5% of the Cost of Services.
>
> It is shown that the total actual amount charged to the contingency and paid to the Consultant exceeded the 5% ceiling, thus:

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[6] *Id*. at 36-38.

Actual amounts disbursed for SA 1 to SA 4 and charged to contingency	Contingency amount per Agreement	5% Contingency limit per NEDA Guidelines	Excess amount disbursed
¥451,820,155.00	¥107,394,300.00	¥53,697,150.00	¥398,123,005.00
₱48,755,898.04	–₱6,430,535.00	₱3,215,267.50	45,540,630.54

Petitioner's claim that the actual disbursements from the contingency amount were only ¥36,349,705.00 and ₱2,752,610.77 which are 2.49% and 2.495% of the Revised Cost of Services in Yen and Pesos, respectively, does not appear factual since he did not include the portion of the cost of the SA Nos. 1 to 4. It was made to appear that the remuneration cost and reimbursement cost for the extension were part of the original Cost of Services instead of the amount being charged to contingencies as provided for in Section 2.04 of the original Agreement for Consulting Services of the parties. Section 2.04 states that:

Extension of Services Under Supplemental Agreement

The Services of Consultant may be extended for the performance of additional work as provided for in Sections 7.05 and 7.07 hereof. For each extension of the Services, a supplemental agreement shall be executed stipulating the scope and remuneration for the extended services.

The terms and conditions of the additional services under the supplemental agreement shall be also governed by this Agreement. **Remuneration to Consultant for the additional man-months shall be chargeable against Contingencies** and shall be governed by the provisions of the Agreement. (emphasis added)

After having ruled that the Agreement is not exempted from the 5% ceiling on contingency prescribed by the NEDA Guidelines, and that in fact the amount expended out of the contingency exceeded the 5% ceiling in the amount already disallowed, there is no reason to overturn the assailed decision.

RULING:

IN VIEW OF THE FOREGOING, the petition for review is hereby **DENIED**. Accordingly, COA LAO-Corporate Decision No. 2008-067 dated November 21, 2008 is hereby **SUSTAINED**. Consequently, ND

Nos. (FMT) 99-00-04 and 2008-018, dated November 24, 1999 and November 21, 2008, respectively are hereby **AFFIRMED**.[7]

The petitioner moved for reconsideration, but the COA denied the motion for reconsideration on January 26, 2015.[8]

Issues

The petitioner now submits the following grounds in support of its petition for *certiorari*, namely:

1) Respondent Commission on Audit acted with grave abuse of discretion amounting to lack or excess of jurisdiction in sustaining COA-LAO Corporate Decision No. 2008-067 dated November 21, 2008, thereby affirming ND Nos. (FMT) 99-00-04 and 2008-018 dated November 24, 1999 and November 21, 2008 respectively.[9]

2) Respondent Commission on Audit failed to establish the direct participation of the persons held liable in the disallowance, as well as their evident malice and bad faith in relation to the disallowed transaction.[10]

The petitioner argues that the COA gravely abused its discretion in sustaining Decision No. 2008-067;[11] that the Agreement for Consulting Services was financed by Loan Agreement No. PH-136 executed by and between the Government of the Philippines and the Overseas Economic Cooperation Fund (OECF), the implementing agency for loan aid of the Japanese Government;[12] that the loan agreement was equivalent to an executive agreement based on the ruling in *Abaya v. Ebdane* (G.R. No. 167919, February 14, 2007, 515 SCRA 720); hat as an executive agreement, the loan

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[7] *Id*. at 39-41.

[8] *Id*. at 43.

[9] *Id*. at 12.

[10] *Id*. at 19.

[11] *Rollo* (Vol. II), pp. 476-489.

[12] *Id*. at 445.

agreement should control the determination of payments charged to contingency;[13] that the 5% ceiling for payments charged to contingency under the NEDA[14] Guidelines did not apply because the normal practice of international financial institutions was to provide a 10% contingency;[15] that the COA adjudged the officers personally liable for the disallowance without supplying any reasons for holding them personally liable;[16] and that the additional works and expenditures were incurred in good faith and utilized for legitimate purposes.[17]

The COA counters that the NEDA guidelines providing for the 5% contingency applied in the absence of any provision in the agreement that the Philippine laws should not apply;[18] that the loan agreement involved herein did not mention of international laws, regulations or practices with respect to the payments of the consultants;[19] that the exemption under Section 9.3 of the NEDA Guidelines pertained only to the selection of consultants and did not include exemption from the 5% ceiling on contingency;[20] and that the petitioner's officials were held accountable for the government funds and property as the heads of agencies.[21]

Ruling of the Court

We find merit in the petition for *certiorari*.

Generally, deference is given by the Court to the decisions and resolutions of the COA as a matter of general policy, not

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[13] *Id.* at 448.

[14] National Economic Development Authority.

[15] *Rollo* (Vol. II), pp. 448-449.

[16] *Id.* at 451-461.

[17] *Id.* at 461-462.

[18] *Id.* at 634.

[19] *Id.* at 634-635.

[20] *Id.* at 639.

[21] *Id.* at 643-645.

only on the basis of the doctrine of separation of powers but also in recognition of the COA's expertise on the laws it was entrusted to enforce. The Court also acknowledges the role that the COA assumes as guardian of public funds and properties pursuant to the 1987 Constitution under which the COA has been granted exclusive authority to disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties.[22] The Court may only intervene to correct an assailed decision or resolution when the COA, in the exercise of its authority, acted without or in excess of jurisdiction, or with grave abuse of discretion.[23]

Upon review of the records, we find and hold that the COA gravely abused its discretion in affirming and issuing the questioned NDs.

We expound.

This case involved six instruments, namely: (1) the Exchange of Notes dated August 16, 1993 entered into by and between the Government of the Philippines and the Government of Japan;[24] (2) the Loan Agreement No. PH-136 executed by and between the Government of the Philippines and the OECF;[25] (3) the Agreement for Consulting Services entered into by and between the petitioner and the ADP-JAC Consortium dated April 15, 1994; (4) the Supplemental Agreement No. 1 (December 1995)

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[22] See Section 2 (2), Article IX, 1987 Constitution, which pertinently states:

x x x x x x x x x

2. The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties.

[23] See *Miralles v. Commission on Audit*, G.R. No. 210571, September 19, 2017, 840 SCRA 108, 117.

[24] See page 1 of Loan Agreement No. PH-136 (*rollo* [Vol. I], p. 105).

[25] *Rollo* (Vol. I), pp. 103-138.

executed by and between the petitioner and the ADP-JAC Consortium;[26] (5) the Supplemental Agreement No. 2 (June 1998) entered into by and between the petitioner and the ADP-JAC Consortium;[27] and (6) the Supplemental Agreement No. 3 (September 1999) concluded by and between the petitioner and the ADP-JAC Consortium.[28]

The petitioner submits that following our ruling in *Abaya v. Ebdane, supra*, Loan Agreement No. PH-136 should be treated as an executive agreement, and, as such, the parties' intention as to how the payments would be charged to contingency should govern. On its part, the COA insists that the loan agreement did not carry any stipulation referencing the provisions to international law; hence, domestic law, particularly the NEDA Guidelines, should apply as to the 5% ceiling on contingency.

The submission of the petitioner is upheld.

Pursuant to the pronouncement in *Abaya v. Ebdane, supra*, a loan agreement executed in conjunction with the Exchange of Notes between the Philippine Government and a foreign government is an executive agreement, and should be governed by international law. This pronouncement has been consistently applied in succeeding rulings, including those in *DBM Procurement Service v. Kolonwel Trading*,[29] *Land Bank of the Philippines v. Atlanta Industries, Inc.*,[30] and *Mitsubishi Corporation-Manila Branch v. Commissioner of Internal Revenue*.[31]

Consequently, we see no justification to treat Loan Agreement No. PH-136 differently, particularly as its pre-ambular paragraph

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[26] *Id*. at 144-164.

[27] *Id*. at 165-181.

[28] *Id*. at 182-188.

[29] G.R. Nos. 175608, 175616 and 175659, June 8, 2007, 524 SCRA 591.

[30] G.R. No. 193796, July 2, 2014, 729 SCRA 12.

[31] G.R. No. 175772, June 5, 2017, 825 SCRA 332.

expressly made reference to the Exchange of Notes between the Philippines and Japan on August 16, 1993, to wit:

> Loan Agreement No. PH-136, dated August 19, 1993, between THE OVERSEAS ECONOMIC COOPERATION FUND and THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES
>
> In the light of the contents of the Exchange of Notes between the Government of Japan and the Government of the Republic of the Philippines dated August 16, 1993, concerning Japanese loans to be extended with a view to promoting the economic development and stabilization efforts of the Republic of the Philippines,
>
> THE OVERSEAS ECONOMIC COOPERATION FUND (hereinafter referred to as "the Fund") and THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES (hereinafter referred to as "the Borrower") herewith conclude the following Loan Agreement (hereinafter referred to as "the Loan Agreement", which includes all agreements supplemental hereto).[32]

We point out that Loan Agreement No. PH-136, which financed the NAIA Terminal 2 Development Project, stemmed from the August 16, 1993 Exchange of Notes whereby the Government of Japan agreed to extend loans in favor of the Philippines to promote economic development and stability. Thusly, the loan agreement was the adjunct of the Exchange of Notes and should thus be treated as an executive agreement. In other words, international law should apply in the implementation and construction of the terms and conditions of Loan Agreement No. PH-136. Accordingly, the Philippine Government was bound to faithfully comply with the provisions of the loan agreements in accordance with the doctrine of *pacta sunt servanda*. Needless to indicate, the doctrine has been incorporated in the 1987 Constitution pursuant to Section 2 of its Article II, which declares:

> Sec. 2. The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law

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[32] See page 1 of Loan Agreement No. PH-136 (*Rollo* [Vol. I], p. 105).

as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

Logically, the Agreement for Consulting Services (ACS) executed by and between the petitioner and the ADP-JAC Consortium, being a mere accessory of Loan Agreement No. PH-136, should likewise be treated as an executive agreement, and construed and interpreted in accordance with the doctrine of *pacta sunt servanda*. The Court elucidated on the nature of the intimate relationship between the principal loan agreement and the accessory agreement in *Land Bank of the Philippines v. Atlanta Industries, Inc.*,[33] opining:

> As may be palpably observed, the terms and conditions of Loan Agreement No. 4833-PH, being a project-based and government-guaranteed loan facility, were **incorporated and made part of the SLA** that was subsequently entered into by Land Bank with the City Government of Iligan. Consequently, this means that the SLA cannot be treated as an independent and unrelated contract but as a conjunct of, or having a joint and simultaneous occurrence with, Loan Agreement No. 4833-PH. **Its nature and consideration, being a mere accessory contract of Loan Agreement No. 4833-PH, are thus the same as that of its principal contract from which it receives life and without which it cannot exist as an independent contract.** Indeed, the accessory follows the principal; and, concomitantly, accessory contracts should not be read independently of the main contract. Hence, as Land Bank correctly puts it, the SLA has attained indivisibility with the Loan Agreement and the Guarantee Agreement through the incorporation of each other's terms and conditions such that the character of one has likewise become the character of the other.[34]

A similar treatment should be extended to the three Supplemental Agreements entered into by the petitioner and the ADP-JAC Consortium.

Accordingly, the COA could not validly insist that the NEDA Guidelines, particularly that on applying a 5% interest on

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[33] *Supra* note 30.

[34] *Id.* at 31-32.

contingency, should find application because the contracting parties did not stipulate on the applicable law. The pronouncement in *Abaya v. Ebdane, supra*, and its progeny that international law applies in interpreting and implementing contracts executed in conjunction with executive agreements was controlling. No express stipulation by the contracting parties to that effect was necessary.

Having settled the issue of the governing law in interpreting and implementing the agreements, we next determine whether or not the COA properly disallowed the amounts disbursed for the additional man-months for the consulting services as provided in the supplemental agreements.

Let us first review the background on how the supplemental agreements came about, and look at the significance of each in the completion of the NAIA Terminal 2 Development Project.

The petitioner and ADP-JAC Consortium executed the ACS for the NAIA Terminal 2 Development Project on April 15, 1994. The ACS pertinently stipulated as follows:

Article II

SERVICES

x x x x x x x x x

2.03 Estimated Man-Months

Notwithstanding any contrary provision herein, the parties hereto agree that Consultant shall perform the Services in accordance with the Work Plan contained in Annex C attached hereto and made an integral part hereof. For the performance of its obligation under this Agreement, Consultant shall render **a total of seven hundred and ninety five (795) man-months of services in the Philippines**, x x x x.

x x x x x x x x x

x x x x x x x x x

2.04 Extension of Services Under Supplemental Agreement

The Services of Consultant may be extended for the performance of additional work as provided in Sections 7.05 and 7.07 hereof.

For each such extension of the Services, a supplement agreement shall be executed stipulating the scope and remuneration for the extended services.

The terms and conditions of the additional services under the supplemental agreement shall also be governed by this Agreement. Remuneration to Consultant for the additional man-months shall be chargeable against Contingencies and shall be governed by the provisions of the Agreement.[35]

ARTICLE IV

PAYMENTS TO CONSULTANT

x x x x x x x x x

4.02. Ceiling Amount

Except as may otherwise be agreed upon under Section 7.05 - Changes, and subject to Section 4.05 - Use of Contingency, and notwithstanding any other provision of this Agreement, payments due to Consultant under this Agreement shall not exceed Japanese Yen ONE BILLION ONE HUNDRED EIGHTY ONE MILLION THREE HUNDRED THIRTY-SEVEN THOUSAND THREE HUNDRED (¥1,181,337.300) and Philippine Pesos ONE HUNDRED SEVEN MILLION THREE HUNDRED FORTY-TWO THOUSAND NINE HUNDRED SIX (₱107,342,906).

The above ceiling amounts of payment shall comprise Japanese Yen ONE BILLION FORTY-ONE MILLION SIX HUNDRED SEVENTY-SEVEN THOUSAND SEVEN HUNDRED FIFTY (¥1,041,677,750) and Philippine Pesos SIXTY FOUR MILLION THREE HUNDRED FIVE THOUSAND THREE HUNDRED FIFTY (₱64,305,350) as Total Cost of Services; x x x x; Japanese Yen ONE HUNDRED SEVEN MILLION THREE HUNDRED NINETY FOUR THOUSAND THREE HUNDRED (¥107,394,300) and Philippine Pesos SIX MILLION FOUR HUNDRED THIRTY THOUSAND FIVE HUNDRED THIRTY FIVE (₱6,430,535) set aside for Contingencies; x x x.

x x x x x x x x x

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[35] *Rollo* (Vol. I), pp. 73-74.

x x x x x x x x x

4.05 Use of Contingency Amount

Payments in respect of costs which exceeds the estimates set forth in Annex D hereof may be chargeable to the Congency amounts in the respective estimates, provided that such costs are approved by MIAA and concurred by OECF prior to their being incurred, and provided further that they shall be paid only at the unit rates and costs specified in Annex D of the Agreement or such as amended and in strict compliance with the Project needs.[36]

x x x x x x x x x

ARTICLE VII

GENERAL CONDITIONS

7.01 Laws of the Republic of the Philippines

The governing law of this Agreement shall be the laws of the Republic of the Philippines. Consultant and its Staff shall conform to all applicable laws of the Republic and shall take prompt corrective action with regard to any violation called to their attention.[37]

x x x x x x x x x

7.07 Delay in Services

In the event that Consultant encounters delay in obtaining the required services or facilities under this Agreement, it shall promptly notify MIAA of such delay and may request an appropriate extension for completion of the Services.

In the event of delay caused by circumstances beyond the control of Consultant, an extension shall be granted by MIAA subject to the concurrence by OECF, and any additional costs incurred during the extension shall be expended out of the Contingency in accord with the procedures stipulated under Section 4.04 - Use of Contingency Amount.[38]

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[36] *Id*. at 78-79.

[37] *Id*. at 93.

[38] *Id*. at 95.

x x x x x x x x x

Owing to delays occasioned during the prequalification and bidding stages,[39] the parties entered into Supplemental Agreement No. 1, the relevant portions of which follow:

SUPPLEMENTARY AGREEMENT NO. 1
BETWEEN
MANILA INTERNATIONAL AIRPORT AUTHORITY
AND
ADP-JAC CONSORTIUM

x x x x x x x x x

WHEREAS, an Agreement for Consulting Services for the Terminal 2 Development Project of Ninoy Aquino International Airport, hereinafter referred to as the Project, was executed on 15 April 1994 at Manila, Philippines, by and between MIAA and the Consultant, said agreement hereinafter referred to as the Original Agreement;

x x x x x x x x x

WHEREAS, the Consultancy Agreement allows, in its Clause 2.04, that Services of Consultant not covered under the Agreement to be extended through Supplementary Agreement.

WHEREAS, MIAA and the Consultant agreed on the extension of the period of the Consultants Services and the associated additional cost during the extended Pre-Construction period.

NOW, THEREFORE, for and in consideration of the foregoing premises and mutual covenants and undertakings hereinafter provided, the parties have agreed as follows:

ARTICLE II - SERVICES

Clause 2.03 - Estimated Man-Months

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[39] *Id*. at 145-147; see 5th to 17th Whereas clauses of Supplemental Agreement No. 1.

The revised total of man-months shall be 807.99 as specified in Attachment A.

x x x x x x x x x

ARTICLE IV - PAYMENT TO CONSULTANT

x x x x x x x x x

Clause 4.02 - Ceiling Amount

The ceiling Amount shall remain unchanged but the amounts comprising the Ceiling Amount shall be charged as follows:

Total cost of services:

Japanese Yen — One Billion, Seventy-Eight Million, Five Hundred and Twenty-Six Thousand and Fifty (¥1,078,526,050)

Philippine Peso — Sixty-Six Million, Three Hundred and Thirty-Two Thousand, Seven Hundred and Sixty-Five (₱66,332,765)

x x x x x x x x x

Contingency

Japanese Yen — Seventy Million, Five Hundred and Forty-Six Thousand (¥70,546,000)

Philippine Peso — Four Million, Four Hundred and Three Thousand, One Hundred and Twenty (₱4,403,120)[40]

x x x x x x x x x

The project still experienced additional delays from the belated issuance by the Department of Environment and Natural Resources (DENR) of tree cutting certificates and additional tree balling requirements, among others.[41] As a result, the parties had to execute Supplemental Agreement No. 2 in order to revise the man-months, as well as to adjust the total cost of services for the consulting services, *viz*.:

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[40] *Id*. at 148-149.

[41] *Id*. at 166.

ARTICLE II - SERVICES

Clause 2.03 - Estimated Man-Months

The revised total of man-months shall be 893.23 as specified in Attachment A.

x x x x x x x x x

ARTICLE IV - PAYMENT TO CONSULTANT

x x x x x x x x x

Clause 4.02 — Ceiling Amount

The ceiling Amount shall become:

Japanese Yen — One Billion, Three Hundred and Five Million, Seven Hundred and Seventy-nine Thousand Two Hundred (¥1,305,779,200)

Philippine Peso — Eighty-four Million, Eight Hundred and Seventy Thousand, Five Hundred and Eighty-nine and Thirty-one centavo (₱84,870,589.31)

The above ceiling amounts of payment shall comprise Japanese Yen One Billion One Hundred Eighty-seven Million, Seventy-two Thousand (¥1,187,072,000) and Philippine Pesos Seventy Million, One Hundred and Forty Thousand, Nine Hundred and Eighty-two and Ninety Centavos (₱70,140,982.90) as Total Cost of Services; Japanese Yen One Hundred and Eighteen Million, Seven Hundred and Seven Thousand, Two Hundred (¥118,707,200) and Philippine Peso Seven Million, Fourteen Thousand and Ninety-eight and Twenty-nine centavos (₱7,014,098.29) set aside for Physical Contingency;[42] x x x.

x x x x x x x x x

In view of the prior delays and extensions, the parties entered into Supplemental Agreement No. 3 to revise further the man-months and total cost of services, thusly:

ARTICLE II - SERVICES

Clause 2.03 — Estimated Man-Months

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[42] *Id.* at 167.

The revised total of man-months shall be 1083.81 as specified in Attachment A.

x x x x x x x x x

ARTICLE IV - PAYMENT TO CONSULTANT

x x x x x x x x x

Clause 4.02 — Ceiling Amount

The Ceiling Amount shall become:

Japanese Yen — One Billion, Three Hundred Seventy-Seven Million, Sixty Five Thousand Four Hundred Sixty Three (¥1,377,065,463)

Philippine Peso - One Hundred One Million, Nine Hundred Thirty-Eight Thousand, Seven Hundred Thirteen and Eight Six centavos (₱101,938,713.86)

The above ceiling amounts shall comprise Japanese Yen One Billion Three Hundred Forty Three Million Four Hundred Seventy Eight Thousand Five Hundred (¥1,343,478,500) and Philippine Pesos Ninety Million Four Hundred Eleven Thousand Two Hundred Seventy Six and Fifteen Centavos (₱90,411,276,15) as Total Cost of Services; Japanese Yen Thirty three Million, Five Hundred Eighty Six Thousand Nine Hundred Sixty Three (¥33,586,963) and Philippine Peso Two Million Two Hundred Sixty Thousand Two Hundred Eighty One and Ninety Centavos (₱2,260,281.90) set aside for Contingency;[43] x x x.

It appears, however, that in disallowing the disbursements for the additional man-months, the COA charged the disallowance against the contingency,[44] and thus concluded that the same

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[43] *Rollo* (Vol. I), p. 186. It appears also that because of the previous extensions that affected the commencement of the later stages in the project, the parties also signed Supplemental Agreement No. 4 and agreed to cover the extension of another eight months for a total of 77 months or 1,221.65 man-months.

[44] The COA arrived at the amount by extracting the difference between the actual payments made by the petitioner to ADP-JAC Consortium of ¥1.49 billion and ₱113 million and the ¥1.04 billion and ₱64 million original

exceeded the 5% ceiling (or ¥53 million and ₱3.2 million[45]) fixed under the NEDA Guidelines by ¥398 million and ₱45.5 million. Considering that ND No. (FMT) 99-00-44 only disallowed ¥53 million and ₱3.2 million, the COA ordered an additional disallowance of ¥344 million and ₱42 million to be charged against the liable officials of the petitioner.[46]

The Court finds the action of the COA not only erroneous but also in contravention of the doctrine of *pacta sunt servanda* and, most importantly, contrary to the intention of the parties in entering into the supplemental agreements.

To reiterate, the applicable law in interpreting and construing the agreements should be the canons of international law, particularly the doctrine of *pacta sunt servanda*. Yet, in affirming the NDs, the COA proposed that the Government negate its accession to the executive agreements without any valid justification. Obviously, this approach should not be adopted. In *Agustin v. Edu*,[47] we stressed that "[i]t is not for this country

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cost of services. The process arrived at ¥451 million and ₱48 million as actual additional total costs of services charged to contingency.

[45] 5% of the amount of the contract pursuant to Section 6.10 of the NEDA Guidelines.

[46] Amount of disallowance based on COA's framework:

Actual total cost of services paid	1,493,497,905.00	113,061,248.04
Less: Original total cost of services	(1,041,677,750.00)	(64,305,350.00)
Actual additional total cost of services charged to "Contingency"	451,820,155.00	48,755,898.04
Less: Contingency ceiling per NEDA Guidelines	(53,697,150.00)	(3,215,267.50)
Amount charged in [excess of] the NEDA ceiling	398,123,005.00	45,540,630.54
Less: Amount disallowed under ND No. FMT 99-00-44	(53,697,150.00)	(3,215,267.50)
Additional disallowance	344,425,855.00	42,325,363.04

[47] G.R. No. L-49112, February 2, 1979, 88 SCRA 195.

to repudiate a commitment to which it had pledged its word. The concept of *pacta sunt servanda* stands in the way of such an attitude, which is, moreover, at war with the principle of international morality."

Properly viewed, the petitioner and the ADP-JAC Consortium, by executing the supplemental agreements, intended to modify the original consultancy services agreement with respect to the estimated man-months in order to complete the project, and to institute the necessary adjustments in the total cost of services.[48] This is the only conclusion to be arrived at in view of the parties' choice of the word "*revised*" in Clause 2.03 found in each of the supplemental agreements[49] in their reference to the estimated total number of man-months corresponding to the delays incurred in the completion of the project. We reiterate the wise rule that the contemporaneous and subsequent acts of the parties should be considered in determining their intention.[50]

In revising the estimated man-months and total cost of services as contained in the supplemental agreements, therefore, the petitioner and the ADP-JAC Consortium intended to charge all additional man-months to the total cost of services, not against the contingency. Hence, only the extra man-months in excess of what had been finally agreed upon, and the unforeseen expenditures incurred by the parties in connection with the project should be charged against the contingency. In this regard, we remind that parties to a contract are not forever locked unto its terms, but have the right to amend their covenant by mutual consent. Thus, the parties to an existing contract may, by mutual

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[48] Based on Supplemental No. 4, the total cost of services from the original ¥1.04 billion and ₱64 million contained in the ACS increased to ¥1.46 billion and ₱ll0.3 million (See LAO Corporate Decision No. 2008-067, *Rollo* (Vol. I), p. 48.

[49] *Rollo*, p. 148. Supplemental Agreement No. 1. Clause 2.03 — Estimated Man-Months

The **revised** total man-months shall be 807.99 as specified in Attachment A.

[50] Article 1371, *Civil Code*.

assent, modify it, provided the modification does not contravene the law or public policy.[51]

We do not find anything irregular and unlawful in the manner that the petitioner and the ADP-JAC Consortium executed the supplemental agreements. For this purpose, we should uphold the right of the parties to alter any term of an existing contract by entering into a subsequent agreement, and the contract, as modified, becomes a new contract between the parties, and the meaning to be given the subsequent agreements depends on the intention of the parties.[52]

By going against the intention of the parties as to how the cost of man-months should be charged against, as well as the manner of charging items against contingency, and thus affirming the NDs, the COA contravened the Constitution and international law, and thereby gravely abused its discretion amounting to lack or excess of jurisdiction. 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 where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[53] The burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. Mere abuse of discretion is not enough; it must be grave.[54]

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[51] Am Jur 2d - Contracts § 496.

[52] *Alarmax Distributors, Inc. v. New Canaan Alarm Co., Inc.*, 141 Conn. App. 319, 61 A.3d 1142, 80 U.C.C. Rep. Serv. 2d 258 (2013).

[53] *United Coconut Planters Bank v. Looyuko*, G.R. No. 156337, September 28, 2007, 534 SCRA 322, 331.

[54] *Tan v. Antazo*, G.R. No. 187208, February 23, 2011, 644 SCRA 337, 342.

WHEREFORE, the Court GRANTS the petition for *certiorari*; and **REVERSES** and **SETS ASIDE** Decision No. 2012-268 dated December 28, 2012 and the Resolution dated January 26, 2015 by the Commission on Audit in COA CP Case No. 2011-294.

SO ORDERED.

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

Leonen, J., see separate opinion.

Reyes, J. Jr., J., on leave.

SEPARATE OPINION

LEONEN, *J.*:

In this Petition for *Certiorari*[1] under Rule 64 of the Rules of Court, the Manila International Airport Authority questions the Commission on Audit's ruling that disallowed added costs incurred in connection with an agreement for consultancy services for the Ninoy Aquino International Airport (NAIA) Terminal 2 Development Project.

On August 16, 1993, the Government of the Philippines and the Government of Japan entered into an Exchange of Notes, which led to the execution of Loan Agreement No. PH-136.[2] Under this agreement, the Overseas Economic Cooperation Fund, the Japanese Government's implementing agency for loan aid, loaned amounts to the Philippine Government for the purchase of necessary and eligible goods and services to implement the NAIA Terminal 2 Development Project.[3]

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[1] *Rollo*, pp. 438-467.

[2] *Ponencia*, p. 7.

[3] *Id.* at 6-7.

Among the service contracts entered into under Loan Agreement No. PH-136 was an agreement for consulting services (Consultancy Agreement) between the Manila International Airport Authority and the Aeroports de Paris-Japan Airport Consultants, Inc. Consortium (the Consultant).[4] The Consultancy Agreement covered 795 man-months[5] of consulting services with the total costs of around ¥1.04 billion and ₱64 million.[6]

Due to delays in the project, the Manila International Airport Authority and the Consultant extended the Consultancy Agreement four (4) times through Supplementary Agreements,[7] increasing the total man-months to 1,221.65 and the total costs of services to around ¥1.46 billion and ₱110.3 million.[8]

Later, the Commission on Audit issued Notices of Disallowance, finding that because of the added costs under the four (4) Supplementary Agreements, the total amount paid to the Consultant exceeded the five percent (5%) ceiling contingency limit provided under the National Economic and Development Authority Guidelines for the Procurement of Consultancy Services for Government Projects (NEDA Guidelines).[9]

The breakdown is as follows:

	Japanese Yen (¥)	**Philippine Peso (₱)**
Actual amounts disbursed for Supplementary Agreements 1-4 and charged to contingency	451,820,155.00	48,755,898.04

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[4] *Id*. at 2. The contract was executed on April 15, 1994.

[5] Under the Agreement for Consulting Services, a man-month of service means "services rendered by one person for a period of one (1) calendar month consisting of an average of 176 working hours." See *rollo*, p. 74.

[6] *Ponencia*, p. 11.

[7] *Rollo*, pp. 37-38.

[8] *Ponencia*, pp. 2-3 and 15, and *rollo*, p. 48.

[9] *Id*. at 4-5. See also *rollo*, p. 44 for NEDA Guidelines' full name.

Contingency amount per Agreement	107,394,300.00	6,430,535.00
5% Contingency limit per NEDA Guidelines	53,697,150.00	3,215,267.50
Excess amount disbursed	398,123,005.00	45,540,630.54[10]

Before this Court, petitioner Manila International Airport Authority argues that the five percent (5%) ceiling for contingency payments under the NEDA Guidelines does not apply. It maintains that as an executive agreement, Loan Agreement No. PH-136 controls the determination of payments charged to contingency. Besides, it adds, it is normal practice for international financial institutions to provide a 10% contingency for services.[11]

The primary issue in this case is whether or not the added costs under the four (4) Supplementary Agreements should be charged as contingencies that are subject to the five percent (5%) ceiling under the NEDA Guidelines.

The *ponencia* ruled in petitioner's favor, finding that Loan Agreement No. PH-136 governs the payments, with the Consultancy Agreement and the Supplementary Agreements as mere accessory contracts.[12] It ruled that since Loan Agreement No. PH-136 is an executive agreement governed by international law, the Philippine Government cannot negate its concession to it without valid justification. Thus, applying the NEDA Guidelines instead of Loan Agreement No. PH-136 will be contrary to the doctrine of *pacta sunt servanda* and the intention of the parties.[13]

The *ponencia* also noted that parties have a right to amend their contract by mutual consent—as in this case, where two (2) parties entered into the Supplementary Agreements to modify

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[10] See *rollo*, p. 40.

[11] *Ponencia*, p. 6.

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

[13] *Id.* at 16.

the original Consultancy Agreement, such that the added costs of services are charged to the total cost of services, not to the contingency.[14] The *ponencia* maintained that the contingency fund is to be used only for the man-months in excess of what was agreed upon and unforeseen expenditures.[15]

I agree that Loan Agreement No. PH-136 is an executive agreement subject to the doctrine of *pacta sunt servanda*. However, I differ as to the characterization of the added costs provided in the Supplementary Agreements.

International law enters the sphere of Philippine domestic law because the 1987 Constitution provides two (2) ways by which the Philippines will be bound by it: (1) incorporation; and (2) transformation.[16]

Incorporation of international law is provided under Article II, Section 2 of the Constitution, which explicitly states that generally accepted principles of international law are binding in the Philippines:[17]

> SECTION 2. The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

Transformation of international law is found in Article VII, Section 21 of the Constitution, which describes the process by which international agreements or treaties become part of the law of the land:[18]

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

[15] *Id*. at 17.

[16] See *David v. Senate Electoral Tribunal*, 795 Phil. 529 (2016) [Per *J*. Leonen, *En Banc*].

[17] See *Tañada v. Angara*, 338 Phil. 546 (1997) [Per *J*. Panganiban, *En Banc*].

[18] See *David v. Senate Electoral Tribunal*, 795 Phil. 529 (2016) [Per *J*. Leonen, *En Banc*].

SECTION 21. No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate.

The transformation method was discussed in *David v. Senate Electoral Tribunal*:[19]

Treaties are "international agreement[s] concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation." Under Article VII, Section 21 of the 1987 Constitution, treaties require concurrence by the Senate before they become binding:

> SECTION 21. No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate.

The Senate's ratification of a treaty makes it legally effective and binding by transformation. It then has the force and effect of a statute enacted by Congress. In *Pharmaceutical and Health Care Association of the Philippines v. Duque III, et al.*:

> Under the 1987 Constitution, international law can become part of the sphere of domestic law either by transformation or incorporation. *The transformation method requires that an international law be transformed into a domestic law through a constitutional mechanism such as local legislation.* The incorporation method applies when, by mere constitutional declaration, international law is deemed to have the force of domestic law.
>
> *Treaties become part of the law of the land through transformation pursuant to Article VII, Section 21 of the Constitution. . . . Thus, treaties or conventional international law must go through a process prescribed by the Constitution for it to be transformed into municipal law that can be applied to domestic conflicts. . . .*

Following ratification by the Senate, no further action, legislative or otherwise, is necessary. Thereafter, the whole of government —

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[19] *Id*.

including the judiciary — is duty-bound to abide by the treaty, consistent with the maxim *pacta sunt servanda*.[20] (Emphasis in the original)

Senate concurrence is necessary before treaties and international agreements become binding as law. This is emphasized in the history of Article VII, 21 of the Constitution, as discussed in my separate concurring opinion in *Intellectual Property Association of the Philippines v. Ochoa*:[21]

Tracing the history of Article VII, Section 21 of the Constitution reveals, through the "[c]hanges or retention of language and syntax[,]" its congealed meaning. The pertinent constitutional provision has evolved into its current broad formulation to ensure that the power to enter into a binding international agreement is not concentrated on a single government department.

The 1935 Constitution recognized the President's power to enter into treaties. The exercise of this power was already limited by the requirement of legislative concurrence only with treaties, thus:

ARTICLE VII

EXECUTIVE DEPARTMENT

SECTION 11. . . .

. . . . . .

(7) The president shall have the power, with the concurrence of a majority of all the Members of the National Assembly ***to make treaties***, and with the consent of the Commission on Appointments, he shall appoint ambassadors, other public ministers, and consuls. He shall receive ambassadors and other ministers duly accredited to the Government of the Philippines.

. . .

The 1973 Constitution also requires legislative concurrence for the validity and effectiveness of a treaty, thus:

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[20] *Id*. at 614-615 citing *Pharmaceutical and Health Care Association of the Philippines v. Duque III*, 561 Phil. 386 (2007) [Per *J*. Austria-Martinez, *En Banc*].

[21] 790 Phil. 276 (2016) [Per *J*. Bersamin, *En Banc*].

ARTICLE VIII
THE NATIONAL ASSEMBLY

SECTION 14. (1) Except as otherwise provided in this Constitution, ***no treaty*** shall be valid and effective unless concurred in by a majority of all the Members of the National Assembly. . . .

The concurrence of the Batasang Pambansa was duly limited to treaties.

However, the first clause of this provision, "[e]xcept as otherwise provided[,]" leaves room for the exception to the requirement of legislative concurrence. Under Article XIV, Section 15 of the 1973 Constitution, requirements of national welfare and interest allow the President to enter into not only treaties but also international agreements without legislative concurrence, thus:

ARTICLE XIV

THE NATIONAL ECONOMY AND THE PATRIMONY

OF THE NATION

. . . . . .

SECTION 15. Any provision of paragraph one, Section fourteen, Article Eight and of this Article notwithstanding, the Prime Minister may enter into international treaties or agreements as the national welfare and interest may require.

This Court, in the recent case of *Saguisag v. Executive Secretary*, characterized this exception as having "left a large margin of discretion that the President could use to bypass the Legislature altogether." This Court noted this as "a departure from the 1935 Constitution, which explicitly gave the President the power to enter into treaties only with the concurrence of the [National Assembly]."

As in the 1935 Constitution, this exception is no longer present in the current formulation of the provision. The power and responsibility to enter into treaties is now shared by the executive and legislative departments. Furthermore, the role of the legislative department is expanded to cover not only treaties but international agreements in general as well[.][22] (Emphasis in the original, citations omitted)

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[22] *Id*. at 343-345.

Senate concurrence is required to maintain a healthy system of checks and balances, such that the power is shared by the executive and legislative branches:

> In discussing the power of the Senate to concur with treaties entered into by the President, this Court in *Bayan v. Zamora* remarked on the significance of this legislative power:
>
> > For the role of the Senate in relation to treaties is essentially legislative in character; the Senate, as an independent body possessed of its own erudite mind, has the prerogative to either accept or reject the proposed agreement, and whatever action it takes in the exercise of its wide latitude of discretion, pertains to the wisdom rather than the legality of the act. *In this sense, the Senate partakes a principal, yet delicate, role in keeping the principles of* ***separation of powers*** *and of* ***checks and balances*** *alive and vigilantly ensures that these cherished rudiments remain true to their form in a democratic government such as ours. The Constitution thus animates, through this treaty-concurring power of the Senate, a healthy system of checks and balances indispensable toward our nation's pursuit of political maturity and growth.* True enough, rudimentary is the principle that matters pertaining to the wisdom of a legislative act are beyond the ambit and province of the courts to inquire.[23] (Emphasis in the original)

I likewise discussed that international agreements require Senate concurrence, especially if they involve political issues or national policies of a more permanent character:

> Therefore, having an option does not necessarily mean absolute discretion on the choice of international agreement. *There are certain national interest issues and policies covered by all sorts of international agreements, which may not be dealt with by the President alone. An interpretation that the executive has unlimited discretion to determine if an agreement requires senate concurrence not only runs counter to the principle of checks and balances; it may also render the constitutional requirement of senate concurrence meaningless[.]*
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> . . . . . .

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[23] *Id.* at 345.

Article VII, Section 21 does not limit the requirement of senate concurrence to treaties alone. It may cover other international agreements, including those classified as executive agreements, if: (1) they are more permanent in nature; (2) their purposes go beyond the executive function of carrying out national policies and traditions; and (3) they amend existing treaties or statutes.

As long as the subject matter of the agreement covers political issues and national policies of a more permanent character, the international agreement must be concurred in by the Senate.[24] (Emphasis supplied)

Nonetheless, there are exceptions to the requirement of Senate concurrence, one (1) of which is an executive agreement.

Executive agreements are "international agreements that pertain to mere adjustments of detail that carry out well-entrenched national policies and traditions in line with the functions of the Executive. It includes enforcement of existing and valid treaties where the provisions are clear. It involves arrangements that are of a temporary nature."[25] They do not amend existing treaties, statutes, or the Constitution.

In my opinion in *Saguisag v. Ochoa, Jr.*,[26] I differentiated an executive agreement from a treaty:[27]

[Article VII, Section 21 of the Constitution] covers both "*treaty and international agreement*." Treaties are traditionally understood

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[24] *Id*. at 345-346.

[25] *J*. Leonen, Dissenting Opinion in *Saguisag v. Ochoa, Jr.*, 777 Phil. 280, 648 (2016) [Per *C.J.* Sereno, *En Banc*].

[26] 777 Phil. 280 (2016) [Per *C.J.* Sereno, *En Banc*].

[27] *Id*. at 648. In this case, this Court ruled that the Enhanced Defense Cooperation Agreement, signed by the Secretary of Defense and the Ambassador of the United States, was an executive agreement not subject to the concurrence of the Senate. I dissented and opined that it is a *"formal and official memorial of the results of the negotiations"* between the Republic of the Philippines and the United States of America as concerning the allowance of United States military bases, troops, or facilities in the Philippines, "which is **NOT EFFECTIVE** until it complies with the requisites of Article XVIII, Section 25 of the 1987 Philippine Constitution, namely:

as international agreements entered into between states or by states with international organizations with international legal personalities. The deliberate inclusion of the term "international agreement" is the subject of a number of academic discussions pertaining to foreign relations and international law. Its addition cannot be mere surplus. Certainly, Senate concurrence should cover more than treaties.

That the President may enter into international agreements as chief architect of the Philippines' foreign policy has long been acknowledged. However, whether an international agreement is to be regarded as a treaty or as an executive agreement depends on the subject matter covered by and the temporal nature of the agreement. *Commissioner of Customs v. Eastern Sea Trading* differentiated international agreements that require Senate concurrence from those that do not:

> International agreements involving political issues or changes of national policy and those involving international arrangements of a permanent character usually take the form of treaties. But international agreements embodying *adjustments of detail* carrying out well-established national policies and traditions and those involving arrangements of a more or less *temporary* nature usually take the form of executive agreements. . . .

Indeed, the distinction made in *Commissioner of Customs* in terms of international agreements must be clarified depending on whether it is viewed from an international law or domestic law perspective. Dean Merlin M. Magallona summarizes the differences between the two perspectives:

> *From the standpoint of Philippine constitutional law, a treaty is to be distinguished from an executive agreement*, as the Supreme Court has done in *Commissioner of Customs v.*

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(1) that the agreement must be in the form of a treaty; (2) that the treaty must be duly concurred in by the Philippine Senate and, when so required by Congress, ratified by a majority of votes cast by the people in a national referendum; and (3) that the agreement is either (a) recognized as a treaty or (b) accepted or acknowledged as a treaty by the United States before it becomes valid, binding, and effective." See 777 Phil. 280, 699 (2016) [Per *C.J.* Sereno, *En Banc*].

> *Eastern Sea Trading* where it declares that "the concurrence of [the Senate] is required by our fundamental law in the making of 'treaties' . . . which are, however, distinct and different from 'executive agreements,' which may be validly entered into without such concurrence."
>
> *Thus, the distinction rests on the application of Senate concurrence as a constitutional requirement.*
>
> *However, from the standpoint of international law, no such distinction is drawn.* Note that for purposes of the Vienna Convention on the Law of Treaties, in Article 2(1)(a) the term "treaty" is understood as "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation." . . . The Philippines is a party to the Convention which is already in force. In the use of the term "treaty," Article 2(1)(a) of the Vienna Convention on the Law of Treaties between States and International Organizations, which is not yet in force, the designation or appellation of the agreement also carries no legal significance. Provided the instruments possess the elements of an agreement under international law, they are to be taken equally as "treaty" without regard to the descriptive names by which they are designated, such as "protocol," "charter," "covenant," "exchange of notes," "*modus vivendi*," "convention," or "executive agreement." . . .

Under Article 2 (2) of the Vienna Convention on the Law of Treaties, in relation to Article 2 (1) (a), the designation and treatment given to an international agreement is subject to the treatment given by the internal law of the state party. Paragraph 2 of Article 2 specifically safeguards the states' usage of the terms "treaty" and "international agreement" under their internal laws.

Within the context of our Constitution, the requirement for Senate concurrence in Article VII, Section 21 of the Constitution connotes a special field of state policies, interests, and issues relating to foreign relations that the Executive cannot validly cover in an executive agreement:

> As stated above, an executive agreement is outside the coverage of Article VII, Section 21 of the Constitution and hence not subject to Senate concurrence. However, the demarcation line between a treaty and an executive agreement as to the subject-matter or content of their coverage is ill-defined. The courts have not provided reliable guidelines as to the scope of executive-agreement authority in relation to treaty-making power.
>
> *If executive-agreement authority is un-contained, and if what may be the proper subject-matter of a treaty may also be included within the scope of executive-agreement power, the constitutional requirement of Senate concurrence could be rendered meaningless. The requirement could be circumvented by an expedient resort to executive agreement.*
>
> *The definite provision for Senate concurrence in the Constitution indomitably signifies that there must be a regime of national interests, policies and problems which the Executive branch of the government cannot deal with in terms of foreign relations except through treaties concurred in by the Senate under Article VII, Section 21 of the Constitution. The problem is how to define that regime, i.e., that which is outside the scope of executive-agreement power of the President and which exclusively belongs to treaty-making as subject to Senate concurrence. . . .*

Thus, Article VII, Section 21 may cover some but not all types of executive agreements. Definitely, the determination of its coverage does not depend on the nomenclature assigned by the President.

Executive agreements are international agreements that pertain to mere adjustments of detail that carry out well-entrenched national policies and traditions in line with the functions of the Executive. It includes enforcement of existing and valid treaties where the provisions are clear. It involves arrangements that are of a temporary nature. More importantly, it does not amend existing treaties, statutes, or the Constitution.

In contrast, international agreements that are considered ***treaties*** under our Constitution involve key political issues or changes of national policy. These agreements are of a permanent character. It

requires concurrence by at least two-thirds of all the members of the Senate.[28] (Emphasis in the original, citations omitted)

The Philippine government is duty bound to abide by its international engagements in good faith, regardless of whether the engagement is characterized as incorporated or transformed international law or whether it takes the form of an international executive agreement. This is the principle of *pacta sunt servanda*.

Pacta sunt servanda, among "the oldest and most fundamental rules in international law[,]"[29] means that "international agreements must be performed in good faith[.]"[30] A state is expected to make the necessary modifications in its laws to ensure that its valid international obligations are fulfilled. In *Tañada v. Angara*:[31]

> This Court notes and appreciates the ferocity and passion by which petitioners stressed their arguments on this issue. However, while sovereignty has traditionally been deemed absolute and all-encompassing on the domestic level, it is however subject to restrictions and limitations voltuntarily agreed to by the Philippines, expressly or impliedly, as a member of the family of nations. Unquestionably, the Constitution did not envision a hermit-type isolation of the country from the rest of the world. In its Declaration of Principles and State Policies, the Constitution "adopts the generally accepted principles of international law as part of the law of the land, and adheres to the policy of peace, equality, justice, freedom, cooperation and amity, with all nations." By the doctrine of incorporation, the country is bound by generally accepted principles of international law, which are considered to be automatically part of our own laws. One of the oldest and most fundamental rules in international law is *pacta sunt servanda*—international agreements must be performed in good faith. "A treaty engagement is not a mere moral obligation but creates a legally binding obligation on the parties

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[28] *Id*. at 643-648.

[29] *Tañada v. Angara*, 338 Phil. 546, 592 (1997) [Per *J*. Panganiban, *En Banc*].

[30] *Id*.

[31] 338 Phil. 546 (1997) [Per *J*. Panganiban, *En Banc*].

. . . A state which has contracted valid international obligations is bound to make in its legislations such modifications as may be necessary to ensure the fulfillment of the obligations undertaken."

By their inherent nature, treaties really limit or restrict the absoluteness of sovereignty. By their voluntary act, nations may surrender some aspects of their state power in exchange for greater benefits granted by or derived from a convention or pact. After all, states, like individuals, live with coequals, and in pursuit of mutually covenanted objectives and benefits, they also commonly agree to limit the exercise of their otherwise absolute rights. Thus, treaties have been used to record agreements between States concerning such widely diverse matters as, for example, the lease of naval bases, the sale or cession of territory, the termination of war, the regulation of conduct of hostilities, the formation of alliances, *the regulation of commercial relations*, the settling of claims, the laying down of rules governing conduct in peace and the establishment of international organizations. The sovereignty of a state therefore cannot in fact and in reality be considered absolute. Certain restrictions enter into the picture: (1) limitations imposed by the very nature of membership in the family of nations and (2) limitations imposed by treaty stipulations. As aptly put by John F. Kennedy, "Today, no nation can build its destiny alone. The age of self-sufficient nationalism is over. The age of interdependence is here."[32] (Emphasis in the original, citations omitted)

I agree that Loan Agreement No. PH-136 is an executive agreement. The circumstances by which it was executed are the same as those for the loan agreement in *Abaya v. Ebdane, Jr.*,[33] which this Court classified as an executive agreement. It held:

The petitioners' arguments fail to persuade. The Court holds that Loan Agreement No. PH-P204 taken in conjunction with the Exchange of Notes dated December 27, 1999 between the Japanese Government and the Philippine Government is an executive agreement.

To recall, Loan Agreement No. PH-P204 was executed by and between the JBIC and the Philippine Government pursuant to the

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[32] *Id*. at 591-593.

[33] 544 Phil. 645 (2007) [Per *J*. Callejo, Sr., Third Division].

Exchange of Notes executed by and between Mr. Yoshihisa Ara, Ambassador Extraordinary and Plenipotentiary of Japan to the Philippines, and then Foreign Affairs Secretary Siazon, in behalf of their respective governments. The Exchange of Notes expressed that the two governments have reached an understanding concerning Japanese loans to be extended to the Philippines and that these loans were aimed at promoting our country's economic stabilization and development efforts.

. . . Under the circumstances, the JBIC may well be considered an adjunct of the Japanese Government. Further, Loan Agreement No. PH- P204 is indubitably an integral part of the Exchange of Notes. It forms part of the Exchange of Notes such that it cannot be properly taken independent thereof.

In this connection, it is well to understand the definition of an "exchange of notes" under international law. The term is defined in the United Nations Treaty Collection in this wise:

> An "exchange of notes" is a record of a routine agreement that has many similarities with the private law contract. The agreement consists of the exchange of two documents, each of the parties being in the possession of the one signed by the representative of the other. Under the usual procedure, the accepting State repeats the text of the offering State to record its assent. The signatories of the letters may be government Ministers, diplomats or departmental heads. The technique of exchange of notes is frequently resorted to, either because of its speedy procedure, or, sometimes, to avoid the process of legislative approval.

It is stated that "treaties, agreements, conventions, charters, protocols, declarations, memoranda of understanding, modus vivendi and *exchange of notes*" all refer to "international instruments binding at international law." It is further explained that —

> Although these instruments differ from each other by title, they all have common features and international law has applied basically the same rules to all these instruments. These rules are the result of long practice among the States, which have accepted them as binding norms in their mutual relations. Therefore, they are regarded as international customary law. Since there was a general desire to codify these customary rules, two international conventions were negotiated. The 1969 Vienna

> Convention on the Law of Treaties ("1969 Vienna Convention"), which entered into force on 27 January 1980, contains rules for treaties concluded between States. The 1986 Vienna Convention on the Law of Treaties between States and International Organizations ("1986 Vienna Convention"), which has still not entered into force, added rules for treaties with international organizations as parties. Both the 1969 Vienna Convention and the 1986 Vienna Convention do not distinguish between the different designations of these instruments. Instead, their rules apply to all of those instruments as long as they meet the common requirements.

Significantly, an exchange of notes is considered a form of an executive agreement, which becomes binding through executive action without the need of a vote by the Senate or Congress. The following disquisition by Francis B. Sayre, former United States High Commissioner to the Philippines, entitled "The Constitutionality of Trade Agreement Acts," quoted in *Commissioner of Customs v. Eastern Sea Trading*, is apropos:

> Agreements concluded by the President which fall short of treaties are commonly referred to as executive agreements and are no less common in our scheme of government than are the more formal instruments — treaties and conventions. **They sometimes take the form of exchange of notes and at other times that of more formal documents denominated "agreements" or "protocols".** The point where ordinary correspondence between this and other governments ends and agreements — whether denominated executive agreements or **exchange of notes** or otherwise — begin, may sometimes be difficult of ready ascertainment. It would be useless to undertake to discuss here the large variety of executive agreements as such, concluded from time to time. Hundreds of executive agreements, other than those entered into under the trade-agreements act, have been negotiated with foreign governments.[34]
> (Emphasis in the original, citations omitted)

The same circumstances are present in this case. Japan's Overseas Economic Cooperation Fund and the Philippine Government entered into Loan Agreement No. PH-136 in light

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[34] *Id*. at 689-692.

of the governments' Exchange of Notes concerning Japanese loans to promote the economic development and stabilization efforts of the Philippines.[35]

Thus, I agree that the Philippine Government is bound to comply with its stipulations in Loan Agreement No. PH-136, in accordance with the doctrine of *pacta sunt servanda*.

However, I differ as to the characterization of the added costs under the Supplementary Agreements. *Pacta sunt servanda* cannot simply be applied to these agreements at the expense of the express provisions in the Consultancy Agreement.

The Consultancy Agreement expressly states that it will be governed by Philippine law:

> 7.01 Laws of the Republic of the Philippines
>
> The governing law of this Agreement shall be the laws of the Republic of the Philippines. Consultant and its Staff shall conform to all applicable laws of the Republic and shall take prompt corrective action with regard to any violation called to their attention.[36]

Unlike Loan Agreement No. PH-136, the Consultancy Agreement explicitly contains provisions for delays, extensions, and added costs of the consulting services. It provides that: (1) consulting services for additional work may be extended through supplemental agreements; (2) the Consultancy Agreement governs the terms and conditions of the additional services and payment to the Consultant for additional man-months under supplemental agreements; and (3) *such payments shall be chargeable against contingencies*. The pertinent provision states:

> 2.04 Extension of Services under Supplemental Agreement
>
> The Services of Consultant may be extended for the performance of additional work as provided for in Sections 7.05 and 7.07 hereof. For each such extension of the Services,

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[35] *Rollo*, p. 106.

[36] *Id*. at 93.

> a supplemental agreement shall be executed stipulating the scope and renumeration for the extended services.
>
> The terms and conditions of the additional services under the supplemental agreement shall be also governed by this Agreement. Remuneration to Consultant for the additional man-months shall be chargeable against Contingencies and shall be governed by the provisions of the Agreement.[37]

The Consultancy Agreement also expressly provides what are chargeable to the contingency amount:

> 4.05 Use of Contingency Amount
>
> Payments in respect of costs which exceeds the estimates set forth in Annex D hereof may be chargeable to the Contingency amounts in the respective estimates, provided that such costs are approved by MIAA and concurred by OECF prior to their being incurred, and provided further that they shall be paid only at the unit rates and costs specified in Annex D of the Agreement or such as amended and in strict compliance with the Project needs.[38]

The contingency amount also covers additional costs incurred from possible extensions caused by delays due to circumstances beyond the Consultant's control:

> 7.07 Delay in Services
>
> In the event that Consultant encounters delay in obtaining the required services or facilities under this Agreement, it shall promptly notify MIAA of such delay and may request an appropriate extension for completion of the Services.
>
> In the event of delay caused by circumstances beyond the control of Consultant, an extension shall be granted by MIAA subject to the concurrence by OECF, and any additional cost incurred by such extension shall be expended out of the Contingency in accordance with the procedures stipulated under Section 4.05 — Use of Contingency Amount.[39]

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[37] *Id*. at 74.

[38] *Id*. at 79.

[39] *Id*. at 95.

The Consultancy Agreement also provides for change in the services, which shall be subject to terms and conditions mutually accepted by petitioner and the Consultant:

> 7.05 Changes
>
> MIAA may at any time, by written notice to Consultant, and subject to the concurrence of OECF where appropriate, issue additional instructions, require extra work or services, changes or alterations in the work, or direct the omission of works of Services covered by this Agreement. Any such change in the Services shall be subject to terms and conditions mutually acceptable to MIAA and Consultant.[40]

Under Article 1159 of the Civil Code, "[o]bligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith." Furthermore, under Article 1370, "[i]f the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control."

In this case, nothing in the Supplementary Agreements states that the added costs will be charged to the original costs of the contract. Neither were express amendments made to the Consultancy Agreement's provisions on extensions, delays, and contingencies.

It is clear, therefore, that the express provisions of the Consultancy Agreement govern the agreement of the parties. Consequently, per the Consultancy Agreement, the added costs under the Supplementary Agreements ought to be charged to the contingency fund.

Nonetheless, the Consultancy Agreement does not provide a five percent (5%) limit as to the amount that can be charged against the contingency fund. To reiterate, the provision states:

> 4.05 Use of Contingency Amount
>
> Payments in respect of costs which exceeds the estimates set forth in Annex D hereof may be chargeable to the

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[40] *Id*. at 94.

> Contingency amounts in the respective estimates, provided that such costs are approved by MIAA and concurred by OECF prior to their being incurred, and provided further that they shall be paid only at the unit rates and costs specified in Annex D of the Agreement or such as amended and in strict compliance with the Project needs.[41]

The five percent (5%) limit on contingency is provided only in Section 6.10 of the NEDA Guidelines:

> 6.10.1 Payments in respect of costs which would exceed the estimates set forth in Section 6.1 may be chargeable to the contingency amounts in the respective estimates only if such costs are approved by the agency concerned prior to its being incurred and provided, further, that they shall be used only in line with the unit rates and costs specified in the contract and in strict compliance with the project needs. Contingency amount shall not exceed 5% of the amount of the contract.[42]

It is, thus, critical to determine whether this restriction in the NEDA Guidelines applies to the Consultancy Agreement.

Section 9.3 of the NEDA Guidelines states:

> The above notwithstanding, these IRR shall not negate any existing and future commitments with respect to the selection of Consultants financed partly or wholly with funds from international financial institutions, as well as from bilateral and other similar sources as stipulated in the corresponding agreements with such institutions/sources.[43]

The Consultancy Agreement in this case involves the hiring of consultants for the NAIA Terminal 2 Development Project. It is financed by the loan from the Overseas Economic Cooperation Fund of Japan under Loan Agreement No. PH-136. Thus, the NEDA Guidelines cannot negate any commitments under Loan Agreement No. PH-136 with respect to the selection of consultants.

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[41] *Rollo*, p. 79.

[42] *Id*. at 40.

[43] *Id*. at 39.

Thus, I affirm that the Consultancy Agreement is a conjunct of, or has a joint and simultaneous occurrence with, Loan Agreement No. PH-136. It is not completely unrelated to or independent of the other. The whereas clauses of the Consultancy Agreement state:

WHEREAS, MIAA desires to implement the Terminal 2 Development Project of Ninoy Aquino International Airport, hereinafter referred to as the "Project":

WHEREAS, the Overseas Economic Cooperation Fund (OECF) of Japan has extended a loan (OECF Loan Agreement No. PH-136) to MIAA for the purpose;

WHEREAS, [Aeroports de Paris] has successfully completed the engineering design of the Terminal 2 under the French loan assistance program;

WHEREAS, the implementation of the Project requires competent consulting services for additional study, assistance in bidding, construction management and post construction services;

WHEREAS, [Aeroports de Paris] and [Japan Airports Consultants, Inc.] are willing to work together as an ad hoc association named ADP-JAC CONSORTIUM, and jointly represent that they are qualified, desirous and willing to render such consulting services;

WHEREAS, both [Aeroports de Paris] and [Japan Airports Consultants, Inc.]declare that they shall be jointly and severally responsible for the services of the Project and that [Aeroports de Paris] shall act as a leader of Consultant; and further that, as such leader, shall be solely and fully responsible for any document which [Aeroports de Paris] previously made and submitted to MIAA prior to the formation of the consortium and which is related to the detailed architectural and engineering design contract for NAIA Terminal 2;

WHEREAS, MIAA has agreed to engage Consultant for the consulting services for the Project and *OECF has concurred with such intention of MIAA*;

WHEREAS, Consultant represents that it has made arrangements to associate itself, in undertaking the Services covered under this Agreement, with four (4) local firms acting as local sub-consultants[.][44] (Emphasis supplied)

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[44] *Id*. at 70-71.

The Consultancy Agreement arose from the commitments under Loan Agreement No. PH-136 as to the selection of consultants. Included in these commitments is the procurement procedure under Loan Agreement No. PH-136, which states that the employment of consultants shall be in accordance with the 1987 Guidelines for the Employment of Consultants by OECF Borrowers.[45] The procedure provides:

> Procurement Procedure
>
> Section 1. Guidelines to be used for procurement under the Loan
>
> . . . . . .
>
> (2) Employment of consultants to be financed out of the proceeds of the Loan shall be in accordance with Guidelines for the Employment of Consultants by OECF Borrowers dated November, 1987[.][46]

According to respondent Commission on Audit, the 1987 Guidelines for the Employment of Consultants by OECF Borrowers simply provided that the consultancy contract should include an amount set aside for contingencies, such as unforeseen work and rising costs:

> Similarly, the JBIC (formerly [Overseas Economic Cooperation Fund]) Guidelines on the hiring of consultants contains no provision negating or exempting the process of selection and hiring of consultant in the case at bar from the ceiling for contingency prescribed under the NEDA Guidelines. *Section 4.07(5) of the Consultant Guidelines relative to contingency merely stipulates that the contract should normally include an amount set aside for contingencies, such as work not foreseen and rising costs, which the consultant may not use, however, without the written approval of the Borrower.*[47] (Emphasis supplied)

From this alone, however, it cannot be interpreted that the five percent (5%) contingency ceiling under the NEDA Guidelines applies.

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[45] *Id.* at 116.

[46] *Id.*

[47] *Id.* at 52. The COA-LAO Decision dated November 2, 2008 was penned by Director IV Janet D. Nacion of the COA Legal & Adjudication Office-Corporate.

I note that respondent also stated that under the Terms of Reference, the parties agreed to be bound by the NEDA Guidelines:

> Likewise, it bears stressing that the TOR, an integral part of the Agreement, stipulates under Item I.2 thereof, the adoption of the OECF as well as NEDA Guidelines in the procurement of consultants in the instant case; made no mention that the ceiling for contingency prescribed under the NEDA Guidelines shall not be applied.[48]

Indeed, under Article 1.01 of the Consultancy Agreement, the parties agreed that the Terms of Reference is an integral part of the Consultancy Agreement:

> 1.01 Agreement — means this contract for consulting services for the Project between MIAA and ADP and JAC working together, including Annexes A, B, C and D as listed hereunder and forming an integral part hereof:
>
> Annex A Terms of Reference
> Annex B Consortium Documentation
> Annex C Technical Description
> Annex D Agreed Cost Breakdown[49]

However, the parties presented no copies of the Terms of Reference, the NEDA Guidelines, or the Overseas Economic Cooperation Fund Guidelines[50] in any of its pleadings before this Court. The case records must first be elevated and fully examined to intelligently rule on the matter, considering the large amounts involved in this case.

ACCORDINGLY, I **CONCUR** that the Philippine Government is bound to comply with Loan Agreement No. PH-136, in accordance with the doctrine of *pacta sunt servanda*. However, I opine that the added costs under the Supplementary Agreements ought to be charged to the contingency fund. As to the limit that may be charged to contingency, I vote to **ELEVATE** the records of this case before it is resolved.

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[48] *Id*.

[49] *Id*. at 71.

[50] This possibly refers to the 1987 Guidelines for the Employment of Consultants by OECF Borrowers.

EN BANC

[G.R. No. 227635. October 15, 2019]

LEILA M. DE LIMA, *petitioner, vs.* **PRESIDENT RODRIGO R. DUTERTE,** *respondent.*

SYLLABUS

1. POLITICAL LAW; THE PHILIPPINE CONSTITUTION; EXECUTIVE DEPARTMENT; THE PRESIDENT IS IMMUNE FROM SUIT DURING HIS TENURE; THE IMMUNITY APPLIES WHETHER OR NOT THE ACTS SUBJECT MATTER OF THE SUIT ARE PART OF HIS DUTIES AND FUNCTIONS AS PRESIDENT. — The concept of presidential immunity is not explicitly spelled out in the 1987 Constitution. However, the Court has affirmed that there is no need to expressly provide for it either in the Constitution or in law. x x x While the concept of immunity from suit originated elsewhere, the ratification of the 1981 constitutional amendments and the 1987 Constitution made our version of presidential immunity unique. Section 15, Article VII of the 1973 Constitution, as amended, provided for immunity at two distinct points in time: the first sentence of the provision related to immunity during the tenure of the President, and the second provided for immunity thereafter. At this juncture, we need only concern ourselves with immunity during the President's tenure, as this case involves the incumbent President. As the framers of our Constitution understood it, which view has been upheld by relevant jurisprudence, the President is immune from suit *during his tenure.* x x x The immunity makes no distinction with regard to the subject matter of the suit; it applies whether or not the acts subject matter of the suit are part of his duties and functions as President. Furthermore, no balancing of interest has ever been applied to Presidential immunity under our jurisprudence. We are not prepared or willing to recognize such a test without constitutional, statutory, or jurisprudential basis. x x x Indeed, the Constitution provides remedies for violations committed by the Chief Executive except an ordinary suit before the courts. The Chief Executive must first be allowed to end his tenure (not his term) either through resignation or removal by impeachment.

2. ID.; ID.; ID.; ID.; THE PRESIDENT NEED NOT RESPOND TO EACH AND EVERY COMPLAINT BROUGHT AGAINST HIM AND AVAIL HIMSELF OF THE PRESIDENTIAL IMMUNITY. –– With regard to the submission that the President must first invoke the privilege of immunity before the same may be applied by the courts, x x x [I]f this Court were to first require the President to respond to each and every complaint brought against him, and then to avail himself of presidential immunity on a case to case basis, then the rationale for the privilege – protecting the President from harassment, hindrance or distraction in the discharge of his duties – would very well be defeated. It takes little imagination to foresee the possibility of the President being deluged with lawsuits, baseless or otherwise, should the President still need to invoke his immunity personally before a court may dismiss the case against him.

3. ID.; ID.; ID.; ID.; IF THE ACTS COMPLAINED OF ARE NOT RELATED TO THE OFFICIAL FUNCTIONS OF THE PRESIDENT, THEN THE OFFICE OF THE SOLICITOR GENERAL (OSG) CANNOT REPRESENT HIM. –––– Sen. De Lima posits that her petition for *habeas data* will not distract the President inasmuch as the case can be handled by the OSG. But this is inconsistent with her argument that the attacks of the President are purely personal. It is further relevant to remind that the OSG is mandated to appear as counsel for the Government as well as its various agencies and instrumentalities whenever the services of a lawyer is necessary; thus, a public official may be represented by the OSG when the proceedings arise from acts done in his or her official capacity. The OSG is not allowed to serve as the personal counsel for government officials. If Sen. De Lima's position that the acts complained of are not related to the official functions of the President, then it also necessarily follows that the OSG can no longer continue to represent him.

LEONEN*, J., separate concurring opinion*:

1. POLITICAL LAW; THE PHILIPPINE CONSTITUTION; EXECUTIVE DEPARTMENT; PRESIDENTIAL IMMUNITY FROM SUIT DURING INCUMBENCY ONLY EXTENDS TO CIVIL, CRIMINAL AND ADMINISTRATIVE LIABILITY; WHILE THE PRESIDENT CANNOT INVOKE IMMUNITY

FROM SUIT IN A PETITION FOR A WRIT OF *HABEAS DATA*, THE PROPER RESPONDENT IS THE EXECUTIVE SECRETARY. — Presidential immunity from suit only extends to civil, criminal, and administrative liability. A proceeding for the issuance of a writ of *habeas data*, as in this case, does not determine any such liability. The Rule on the Writ of *Habeas Data* only requires courts to ascertain the accountability and responsibility of the public official or employee. Thus, the President cannot invoke immunity from suit in a petition for such writ. However, the proper respondent in a *habeas data* case for pronouncements made by the President in his official capacity is the Executive Secretary, following the ruling in *Aguinaldo v. Aquino III*. This is in accord with the doctrine that the president should not be impleaded in any suit during his or her incumbency, as recently reiterated in *Kilusang Mayo Uno v. Aquino III*. x x x After his or her incumbency, however, the president should no longer be able to plead immunity for *any* case that may be filed against him or her.

2. REMEDIAL LAW; RULE ON THE WRIT OF *HABEAS DATA*; THE WRIT OF *HABEAS DATA*, DISCUSSED. — The writ of *habeas data* "seeks to protect a person's right to control information regarding oneself, particularly in instances in which such information is being collected through unlawful means in order to achieve unlawful ends." However, it is not issued merely because one has unauthorized access to another person's information; rather, it requires a violation or a threatened violation of that person's right to life, liberty, and security: x x x This Court has stated that "the proceedings for the issuance of the writ of *habeas data* does not entail any finding of criminal, civil[,] or administrative culpability." x x x For this petition, the only reliefs that may be granted are the following: (1) to enjoin the act complained of; (2) to grant access to the database or information; or (3) to order the deletion, destruction, or rectification of the erroneous data or information. In a proceeding for a writ of *habeas data*, courts only determine the respondent's *accountability* in the gathering, collecting, or storing of data or information regarding the person, family, home, and correspondence of the aggrieved party. Any civil, criminal, or administrative liability may only be imposed in a separate action. x x x While any aggrieved party may file a petition for a writ of *habeas data*, the respondent need not

even be ordered to file a verified return if the judge determines that, "on its face," the petition fails to substantiate the [requirements under Section 6] x x x The filing of the petition is meant to provide aggrieved parties "rapid judicial relief[.]" Hence, the proceedings are summary in nature and must be resolved by the parties within a span of days[.]

REYES, A. JR., *J., separate concurring opinion*:

1. POLITICAL LAW; THE PHILIPPINE CONSTITUTION; EXECUTIVE DEPARTMENT; AN INCUMBENT PRESIDENT IS ABSOLUTELY IMMUNE FROM ANY SUIT, LEGAL PROCEEDING OR JUDICIAL PROCESS DURING HIS TENURE; THE PRESIDENTIAL IMMUNITY EXTENDS EVEN TO THE ISSUANCE OF THE PREROGATIVE WRIT OF *HABEAS DATA*. — No less than the Constitution guarantees the President, as head of the executive department, immunity from suit during his period of incumbency. Jurisprudence on the subject matter later clarified that presidential immunity covers any suit, legal proceeding or judicial process. The nature and scope of the immunity of the President during his tenure is absolute. After his tenure, such immunity will only extend to official acts done by him during his tenure. x x x It is my submission that Presidential immunity extends even to the issuance of the prerogative **writ of *habeas data.***

2. ID.; ID.; ID.; ID.; THE PRESIDENT HAS THE RIGHT TO EXERCISE FREEDOM OF EXPRESSION. — [I]t is well to remind petitioner that one of the cherished liberties enshrined and protected by the Constitution is the freedom of expression which covers the right to freedom of speech. In *Chavez v. Gonzales, et al.*, the Court held that the scope of this freedom is so broad and covers myriad matters of public interest or concern and should not be confined solely to the expression of conventional ideas, x x x The President, being a citizen of this country, is also entitled to the free exercise of this right more so when the exercise of the same is in aid of or in furtherance of justice and directed against improper conduct of public officials who, at all times, must uphold public interest over personal interest. A remark made in a fit of anger and as an expression of one's frustration over the conduct of another falls within the ambit of freedom of expression and does not

> automatically make one legally accountable lest we deprive the speaker of his right to speak. x x x [E]lection to public office by the President is not tantamount to the relinquishment of his right to speak his mind or to express himself. As correctly pointed out by the Solicitor General, the statements made were in relation to petitioner's qualifications to hold public office and her perceived involvement in illegal drugs. Clearly, these are matters of public concern subject to public scrutiny- even scrutiny by the President himself.

APPEARANCES OF COUNSEL

Sanidad Law Office for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

BERSAMIN, *C.J.*:

By petition for the issuance of a writ of *habeas data* petitioner Senator Leila M. de Lima (Sen. De Lima) seeks to enjoin respondent Rodrigo Roa Duterte, the incumbent Chief Executive of the Philippines, from committing acts allegedly violative of her right to life, liberty and security.

At the core of the controversy is the inquiry on the application, scope and extent of the principle of presidential immunity from suit. The question concerns the immunity of the President from suit while he remains in office.

Yet, prior to the consideration and resolution of the controversy, a preliminary matter of substance must be considered and resolved. May the petition prosper because the incumbent President of the Philippines has been named herein as the sole respondent?

Antecedents

On May 9, 2016, Davao City Mayor Rodrigo Roa Duterte was elected as the 16th President of the Philippines. A key agenda of the Duterte Administration was the relentless national

crackdown on illegal drugs. This prompted several human rights advocates to heavily criticize the strategies and devices forthwith adopted by law enforcement agencies in pursuing the crackdown. Among the vocal critics of the crackdown was Sen. De Lima.

On August 2, 2016, Sen. de Lima delivered a privilege speech on the floor of the Senate calling a stop to the alleged extrajudicial killings committed in the course of the crackdown, and urging her colleagues in the Senate to conduct investigations of the alleged victims.[1]

In response, President Duterte issued a number of public statements against Sen. De Lima, including denunciations of her corruption and immorality. The statements prompted her to initiate this petition for the issuance of a writ of *habeas data* against President Duterte.

In her petition, Sen. De Lima adverted to several public statements that allegedly threatened her right to life, liberty and security, namely:

a. The August 11, 2016 public statement of President Duterte threatening to destroy Sen. De Lima. The statement reads: "I know I'm the favorite whipping boy of the NGOs and the human rights stalwarts. But I have a special *ano kaya no.* She is a government official. One day soon I will – *bitiwan ko yan* in public and I will have to destroy her in public."[2] Incidentally, in the same event, President Duterte insinuated that with the help of another country, he was keeping surveillance of her. *"Akala nila na hindi rin ako nakikinig sa kanila.* So while all the time they were also listening to what I've done, I've also been busy, and with the help of another country, listening to them;"[3]

b. The statement uttered in a briefing at the NAIA Terminal 3, Pasay City in August 17, 2016 wherein President Duterte named Sen. De Lima as the government official he referred

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[1] *Rollo,* pp. 6; 47-49.

[2] *Id.* at 6.

[3] *Id.*

to earlier and at the same time accused her of living an immoral life by having a romantic affair with her driver, a married man, and of being involved in illegal drugs. "There's one crusading lady, whose even herself led a very immoral life, taking his (sic) driver as her lover... Paramour *niya ang driver nya naging hooked rin sa drugs because of the close association.* You know, when you are an immoral, dirty woman, the driver was married. So you live with the driver, its concubinage."[4]

c. The statements that described her as an immoral woman;[5] that publicized her intimate and personal life,[6] starting from her new boyfriend to her sexual escapades;[7] that told of her being involved in illegal drugs as well as in activities that included her construction of a house for her driver/lover with financing from drug-money;[8] and

d. The statements that threatened her *("De Lima, you are finished")*[9] and demeaned her womanhood and humanity.[10] "If I were De Lima, ladies and gentlemen, I'll hang myself. Your life has been, *hindi lang* life, the innermost of your

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[4] *Id*. at 7, Media Briefing at the Ninoy Aquino International Airport (NAIA) Terminal 3 in Pasay City last August 17, 2016.

[5] *Id*. at 7-10.

[6] *Id*. at 6-7.

[7] *Id*. at 11. In his September 22, 2016 speech, President Duterte was quoted to have said: "*Ngayon hanggang ngayon kita mo.* De Lima, she was seven years chairman of the Human Rights. *Binibira niya ako, hindi pina-file ang kaso.* As Secretary of Justice, she was building a name at my expense *para ma-popular.* So what now? *Tignan mo,* she was not only screwing her driver, she was screwing the nation... *Yan yung pinaka sinasabi ko kay* De Lima "you better hang yourself" *kasi nandito na sa mga kamay ko yung – sinabit na nila, tiningnan ko na.* So all the while, because of her propensity for sex – *ayon... Ngayon lang ako nakakita ng babae na lumabas sa buong* social media *nakangiti parang buang. ... kung nanay ko 'yan barilin ko.*

[8] *Id*. at 8.

[9] *Id*. at 9.

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

[11] *Id*. at 10.

> core as a female is being serialized everyday. *Dapat kang mag-resign.* You resign.[11] and "De Lima better hang yourself ... *Hindi ka na nahiya sa sarili mo.* Any other woman would have slashed her throat. You? *Baka akala mo artista ka. Mga artistang x-rated paglabas sa, pagkatapos ng shooting, nakangiti ...*".[12]

Sen. De Lima traces this personal presidential animosity towards her to the time when she first encountered President Duterte while he was still the City Mayor of Davao and she the Chairperson of the Commission on Human Rights investigating the existence of the so-called "Davao Death Squad".[13]

Sen. De Lima concludes that taking all the public statements of the President into consideration the issuance of the writ of *habeas data* is warranted because there was a violation of her rights to privacy, life, liberty, and security, and there is a continuous threat to violate her said rights in view of President Duterte's declaration that he had been "listening to them, with the help of another country."[14]

Also, the petition argues that President Duterte is not entitled to immunity from suit, especially from the petition for the issuance of the writ of *habeas data* because his actions and statements were unlawful or made outside of his official conduct; that based on the pronouncements in *Rodriguez v. Macapagal-Arroyo*[15] and *Clinton v. Jones*,[16] the immunity of the President from suit covers only the official acts of the Chief Executive; that his statements constituted violations of various laws, particularly Republic Act No. 6713,[17] and Republic Act No. 9710,[18] and,

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

[13] *Id*. at 8.

[14] *Id*. at. 6.

[15] G.R. No. 191805, November 15, 2011, 660 SCRA 84.

[16] 520 U.S. 681 (1997).

[17] *Code of Conduct and Ethical Standards for Public Officials and Employees.*

[18] *Magna Carta of Women.*

as such, were not to be considered the official acts of the President worthy of protection by presidential immunity from suit; and that because the *habeas data* proceeding does not involve the determination of civil or criminal liability, his acts and statements should not be considered as warranting the protective shield of presidential immunity from suit.

Sen. De Lima seeks the following reliefs:

WHEREFORE, the petitioner respectfully prays the Honorable Court that judgment be rendered:

[1] Granting a Writ of Habeas Data —

a. Enjoining respondent and any of his representatives, agents, assigns, officers, or employees from collecting information about petitioner's private life outside the realm of legitimate public concern;

b. Disclosing to the petitioner the name of the foreign country who, according to respondent, "helped him" listen in on petitioner, the manner and means by which he listened in on petitioner, and the sources of his information or where the data about petitioner's private life and alleged private affairs came from;

c. Ordering the deletion, destruction or rectification of such data or information; and

d. Enjoining the respondent from making public statements that (i) malign her as a woman and degrade her dignity as a human being; (ii) sexually discriminate against her; (iii) describe or publicize her alleged sexual conduct; (iv) constitute psychological violence against her; and (v) otherwise violate her rights or are contrary to law, good morals, good customs, public policy, and/or public interest; and

[2] Conceding unto petitioner such further and other reliefs this Honorable Court may deem just and equitable in the premises.[19]

An important constitutional hurdle must first be surmounted before the Court considers taking full cognizance of the petition

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[19] *Id*. at 21.

for the issuance of a writ of *habeas data.* Is the President entitled to immunity from suit warranting the immediate dismissal of the petition considering that he is the sole respondent in this action?

In the resolution promulgated on November 8, 2016, the Court has directed Sen. De Lima and the Office of the Solicitor General (OSG) to present their respective sides on the issue of whether or not President Duterte is immune from this particular suit.[20]

In compliance, Sen. De Lima insists in her memorandum that the President is not immune from this particular suit because his actions and statements were clearly made outside of his office as Chief Executive as to constitute unofficial conduct not covered by presidential immunity; that to consider and determine the issue of whether or not the President is immune from suit is premature considering that President Duterte has yet to invoke the same in his verified return; that until and unless President Duterte invokes the immunity himself, the issue may not even be considered; that the immunity of the President does not automatically attach every time he is sued; that in the United States of America (USA), proper balancing of interest – on the one hand, the private interest to be served, and, on the other, the danger of intrusion unto the authority and function of the Executive Branch – must first be made; that allowing the petition will not violate the principle of separation of powers; that on the basis of the pronouncement in *Clinton*, the doctrine of separation of powers does not require the courts to stay all private actions against the President until he leaves office; that the reason behind the immunity is not present in this case; that suing the President herein will not degrade the office of the President nor cause harassment or distraction; and that she is an aggrieved party by virtue of the President's actions, and thus deserves a judicial remedy.

On its part, the OSG seeks the immediate dismissal of the suit. It submits that the immunity of the sitting President is

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[20] *Id.* at 105.

absolute, and it extends to all suits including petitions for the writ of *amparo* and writ of *habeas data;* that despite the non-inclusion of presidential immunity in Section 17, Article VII of the 1973 Constitution from the 1987 Constitution, the framers intended such immunity to attach to the incumbent President; that the present suit is the distraction that the immunity seeks to prevent because it will surely distract the President from discharging his duties as the Chief Executive; that based on the ruling in *David v. Macapagal-Arroyo*,[21] the President is immune from any civil or criminal case during his tenure and the only way to make him accountable to the people is through impeachment; that such absolute immunity established by jurisprudence is based on public policy considerations, and Sen. De Lima has not provided compelling reasons to warrant the reversal or modification of the doctrine; and that, accordingly, the doctrine of *stare decisis* must be respected.

The OSG argues that even assuming that the immunity only covers official acts of the President, the statements made were still covered because they were made pursuant to the exercise of his power to faithfully execute the laws under Section 17, Article VII of the Constitution; that the President's statements revolved around the involvement of Sen. De Lima in the illegal drugs trade; that any mention of her relationship with Ronnie Dayan was incidental because their romantic relationship was intertwined with the relationship as principal and accomplice in her involvement in the illegal drugs trade; that the statements of the President were made while the House of Representatives was conducting an investigation regarding the illegal drug trade in the National Penitentiary wherein Sen. De Lima was implicated; and that the petition should be dismissed because it was erroneously filed with this Court following Section 3 of the *Rule on the Writ of Habeas Data* (A.M. No. 08-1-16-SC) due to the petition not involving public data files of government offices.

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[21] G.R. No. 171396, May 3, 2006, 489 SCRA 160.

On November 29, 2016,[22] the Court required Sen. De Lima and the OSG to traverse each other's submissions in their respective memoranda.

In her compliance, Sen. De Lima points out that the doctrine of presidential immunity from suit is not absolute, but entertains exceptions; that under *Clinton,* the immunity only covers the official acts of the President; that the judicial pronouncements on the absoluteness of the doctrine were doubtful because the only rulings cited in support of absoluteness *(Forbes v. Chuoco Tiaco*[23] and *Nixon v. Fitzgerald*[24]*)*, being issued prior to the promulgation of the 1987 Constitution, were inconclusive as to whether or not the immunity of the incumbent President was absolute.

Sen. De Lima downplays the effects of the petition, and states that her suit will not distract President Duterte from the discharge of his duties as the Chief Executive considering that he has the OSG to handle the suit in his behalf; that the statements in question were not made in the performance of his duties, but were personal attacks rooted in their past encounters as the Chairperson of the Commission on Human Rights and as Mayor of the City of Davao; and that her immediate resort to the Court was proper because the President has been collecting data on her, and the data thus collected are being stored in his office.

The OSG counters that the doctrine of presidential immunity absolutely applied; that Sen. De Lima improperly invokes the jurisprudence of the USA to support her stance despite such jurisprudence being non-binding in this jurisdiction; and that although *Estrada v. Desierto*[25] cited *Clinton* and *Fitzgerald*, the Court did so only for the limited purpose of determining the suability of the non-sitting President, which was the issue

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[22] *Rollo,* p. 178.

[23] 16 Phil. 534 (1910).

[24] 457 U.S. 731 (1982).

[25] G.R. Nos. 146710-15, March 2, 2001, 353 SCRA 452.

presented and considered in *Estrada,* not the suability of the incumbent President as presented herein.

According to the OSG, the Court has been clear in *Lozada v. Macapagal Arroyo*[26] about the immunity automatically attaching to the office, and about not needing the President to invoke the immunity in order to enjoy the same. The OSG assures that any suit, including this one, necessarily distracts the President from discharging his duties considering that he is the *sole* embodiment of the Executive Branch, unlike the Judiciary and the Congress that are either collegial bodies or comprised by several individuals.

Anent the need for proper balancing before the immunity attaches, the OSG posits that national interest – the fight against illegal drugs – prevails over the supposed incessant intrusions on the rights of Sen. De Lima; that the statements of the President were made in furtherance of his constitutional duty to faithfully execute the laws; and that the Court must respect established precedents to the effect that absolute immunity pertains to the Chief Executive if no compelling arguments are submitted to the contrary.

Issue

May the incumbent Chief Executive be haled to court even for the limited purpose under the *Rules on the Writ of Habeas Data?*

Sen. De Lima reiterates, citing *Clinton,* that the President's immunity from suit should not shield him from being haled to court because his statements and actions, being clearly unofficial acts, are outside the ambit of the immunity. In turn, the OSG counters, also citing *Clinton* as well as *Fitzgerald,* that the immunity must be extended to the President.

Ruling of the Court

The petition must be dismissed even without the President invoking the privilege of immunity from suit.

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[26] G.R. Nos. 184379-80, April 24, 2012, 670 SCRA 545.

A careful study of the development of the doctrine of Presidential immunity from suit shows that the presidential immunity from suit as recognized and applied in the USA differs from the doctrine recognized in this jurisdiction.

I
Origins and Development of Presidential Immunity from suit

The concept of executive immunity from suit for the Chief Executive can be traced as far back as the days of Imperial Rome. Justinian I noted in his *Corpus Juris Civilis* that Roman law recognized two principles connected with the development of what we now know as executive immunity from suits – *princeps legibus solutus est* (the emperor is not bound by statute); and *quad principii placuit legis habet* (what pleases the prince is law). These two principles remained dormant until their revival in feudal Europe, particularly in England.[27]

In *The Origins of Accountability: Everything I know about Sovereigns' Immunity, I learned from King Henry III,*[28] Professor Guy Seidman observes that the concepts under Roman Law, Church law, traditional-customary-tribal laws, and laws of the feudal system fused together to form the principle that has been traditionally recognized[29] as the origin of the present day's concept on executive immunity from suit – the principle that is expressed in the maxim *"the king can do no wrong."* He explains the development of the maxim *"the king can do no wrong"* in England in this manner:

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[27] Seidman, Guy I., *The Origins of Accountability: Everything I Know about the Sovereigns' Immunity, I Learned from King Henry III,* Saint Louis University Law Journal, Vol. 49, No. 2, Winter 2004/2005.

[28] *Id*.

[29] See also *Estrada v. Desierto,* G.R. Nos. 146710-15, March 2, 2001, 353 SCRA 452; and Agabin, P., *Presidential Immunity And All The Kings Men: The Law Of Privilege As A Defense To Actions For Damages,* 62 Phil. L.J. 113 (1987).

The maxim has actually stood for four different propositions at various points in English legal history. The first is that the King is literally above the law and cannot do wrong by definition; this understanding of the maxim reached its zenith in the 7th century under the banner of the "divine right of Kings". A second meaning is that even if the King's actions are not lawful by definition, there is no remedy for royal wrong doing through ordinary legal channels; one might term this a "procedural" or "remedial" understanding of the maxim. A third meaning, which actually represents the true historical origin of the maxim, is that the King has no power or capacity to do wrong; this was literally the case with Henry III, who assumed the Kingship while in his minority. A fourth meaning is precisely the opposite of the first: it means that the King is eminently *capable* of doing wrong but cannot do so *lawfully*. One can meaningfully combine this understanding with the second "procedural', understanding to yield a legal regime in which royal acts can meaningfully be described as unlawful but are not subject to remedies by the ordinary law courts. In such a scheme, however, subordinates who follow the King's orders may act at their peril.[30]

Although the maxim clothed the King with immunity, equitable remedies remained available,[31] such as the development of the doctrine of ministerial accountability[32] and impeachment. Due to increasing demands for the accountability of government officials and to the eventual removal of the King's participation from political and state affairs, the immunity once enjoyed by the monarchs started to wane.

II
American Development of the Concept of Presidential Immunity

The American Founding Fathers were well aware of the doctrine of *"the king can do no wrong."* Citing Blackstone's

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[30] Seidman, op. cit., *supra* note 27, at 5.

[31] *Id*. at 44; 54.

[32] *Id*. at 54. As Seidman puts it. "if the King is in error, the guilt lies only with the Minister who ought to have enlightened him, and this minister even if approved by the King, deserves the impeachment formerly reserved for traitors."

Commentaries on the Laws of England (Blackstone's *Commentaries)*, Prof. Seidman has summarized the pre-American Revolution understanding of the maxim, and points to how Blackstone's *Commentaries* influenced American legal thought, thus:

> All of this background information was available to the Founding Fathers. Blackstone's *Commentaries* summarized and explained the legal doctrines concerning government accountability. The *Commentaries* make several substantive references to the doctrine 'that the king can do no wrong'. Blackstone begins his comprehensive discussion of the King's Prerogative explaining that 'one of the principal bulwarks of civil liberty' was the limitation of the king's prerogative.
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> What is an English subject to do "in case the crown should invade their rights, either by private injuries or public oppressions?" The English common law, suggests Blackstone, provides remedies in both cases. As for private injuries his answer is double: ***first,*** there [sic] is a remedy is the petition of right, and while it is only as 'a matter of grace' that the king provides the compensation requested, he is mostly to permit this charity; ***second,*** Blackstone cites **Locke** to the effect that the King is unlikely to inflict much damage **personally,** and immunizing him is a fair price to pay for the benefits of the regime.
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> As for 'public oppression': in most cases the answer is clear – "a king cannot misuse his power, without advice of evil counsellors, and the assistance of wicked ministers, these men may be examined and punished." Such persons could be indicted or impeached by Parliament 'that no man shall dare to assist the crown in contradiction to the laws of the land. But it is at the same time a maxim in those laws, that the king himself can do no wrong' because simply stated, there is no redress against the king. The results are less clear in the most severe cases 'as tend to dissolve the constitution, and subvert the fundamentals of government,' where the branches of government are in clear dispute.
>
> Speaking specifically of the king[']s ***political capacity*** Blackstone famously stated that the law *ascribes* to the king 'absolute perfection'—

The king can do no wrong. Which ancient and fundamental maxim is not to be understood, as if everything transacted by the government was of course just and lawful, but means only two things.

First, that whatever is exceptionable in the conduct of public affairs is not be imputed to the king, nor is her answerable for it personally to his people: for this doctrine would totally destroy the constitutional independence of the crown which is necessary for the balance of power ... in our compounded constitution. And secondly, it means that the prerogative of the crown extends not to do any injury it is created for the benefit of the people, and therefore cannot be exerted to their prejudice.

The king, moreover, is not only incapable of doing wrong, but ever of thinking wrong: he can never mean to do an improper thing: in him is no folly or weakness." [Citations Omitted]

The language may seem archaic, the terms technical, and the fictions it described mystical. Yet the *Commentaries* represented the better part of the Founding Generations' legal education and they were quite fluent in *Blackstonian*.[33]

Thus, American law followed this concept of '*the king can do no wrong'* as well as other common law doctrines of England until the former began to develop independently after the revolution of 1776.[34] Common law concepts, including the principle that '*the king can do no wrong,'* carved out a legal path and conception different from their English roots considering that the USA had an elected President instead of a hereditary King to control the reigns of governmental power. As such, the immunity given — be it to the President or to the lowest government official – rested no longer on established English political theory based on the Common Law but rather on public

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[33] *Id*. at 96-98.

[34] Biegon, B., *Presidential Immunity in Civil Actions: An Analysis Based upon Text, History and Blackstone's Commentaries.* Virginia Law Review, Vol. 82, No. 4 (May 1996), p. 679.

policy considerations.[35] Some of the public policy considerations in upholding official immunity of public officials are: (a) the absolute immunity of judges being necessary to ensure judicial independence *(Bradley v. Fisher);*[36] and (b) policy considerations enunciated in *Bradley* for judges being equally applicable to executive officials because the civil liability would cripple the proper administration of public affairs *(Spalding v. Vilas).*[37]

The interesting and yet sporadic concern is how to hale the President of the USA to court either as a witness or as a party litigant; or, is it even possible at all to hale him to court? In either instance, American jurisprudence has provided answers based on established policy considerations.

Insofar as the susceptibility of the American President to be served with judicial processes is concerned, American jurisprudence has been clear that the President can be served with processes. As early as 1807, in *United States v. Burr*,[38] the US Supreme Court, through Chief Justice John Marshall, issued a subpoena *duces tecum* against then President Thomas Jefferson in order to obtain documents and letters necessary for the treason trial of respondent Aaron Burr. In issuing the subpoena, the US Supreme Court acknowledged that:

> [i]f upon any principle, the president could be construed to stand exempt from the general provisions of the constitution, it would be because his duties as chief magistrate demand whole time for national objects. But it is apparent that this demand is not unremitting; and if it should exist at the time when his attendance on a court is required, it would be shown on the return of the subpoena, and would rather

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[35] Stein, T., *Nixon v. Fitzgerald: Presidential Immunity as a Constitutional Imperative.* Catholic University of Law Review, Vol. 32, Issue 3, Spring 1983. 32 Cath U.L. Rev. 759 (1983).

[36] 80 U.S. (13 Wall.) 335 (1871).

[37] 161 U.S. 483 (1896).

[38] 25 F. Cas. 30 (C.C.D. Va. 1807) (No. 14,692d) cited in Biegon, B., *Presidential Immunity in Civil Actions: An Analysis Based upon Text, History and Blackstone's Commentaries.* Virginia Law Review, Vol. 82, No. 4 (May 1996).

constitute a reason for not obeying the process of the court than a reason against its being issued ... It cannot be denied that to issue a subpoena: to a person filling the exalted position of the chief magistrate is a duty which would be dispensed with more cheerfully than it would be performed; but a duty, the court can have no choice in the case ... The guard furnished to this high officer, to protect him from being harassed by vexatious and unnecessary subpoena, is to be looked for in the conduct of a court after those subpoenas have issued; not in any circumstance which is to precede their being issued.[39]

Aside from President Jefferson, other Presidents (President James Monroe, President Gerald Ford and President Ronald Reagan) were at the receiving end of judicial process. Of particular significance is *United States v. Nixon*[40] wherein the U.S. Supreme Court ordered President Richard Nixon to surrender certain recordings of White House conversations relevant to the criminal prosecution in relation to what is now known as the Watergate Scandal. The U.S. Supreme Court ruled that the President's general interest in confidentiality could not defeat the request for the subpoena.

While sufficient judicial precedents as regards Presidential susceptibility to receive judicial processes existed, there is a dearth of jurisprudential precedents on the possibility of suing the incumbent U.S. President.

Relevant to this discussion are the different types of immunity granted to officials like the President. Immunity can be classified either by (a) extent, *i.e.*, absolute or qualified; or (b) duration, *i.e.*, permanent or temporary.

Absolute immunity is granted to a government official who has proven that his actions fell within the scope of his duties, and that his actions are discretionary rather than ministerial, that is to say, that the conduct or the action performed must not involve insignificant or routinely office work but rather the

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[39] Biegon, B., *supra*, note 34, at 708-709.

[40] 418 U.S. 683 (1974).

challenged action must involve personal judgment.[41] Further, in *Butz v. Economou*,[42] the US Supreme Court held that absolute immunity can only be invoked if it is demonstrated that absolute immunity is essential for the conduct of the public business. In other words, absolute immunity attaches to the function instead of the office.

Qualified immunity was initially given to a government official who was able to prove that at the time of the commission of the act complained of, he possessed a good faith belief that his actions were lawful. This was known to be the subjective element.[43] The US Supreme Court enhanced the criteria on when to invoke qualified immunity. In *Wood v. Strickland*,[44] the US Supreme Court ruled that aside from the aforementioned subjective test, it is also important to show if the public official should have known that his act constituted a violation of the rights of the claimant. If the government official should have known that his acts violated the claimant's rights, then immunity is not granted to the government official; otherwise, the government official is entitled to qualified immunity.[45] This is referred to as the objective test. This two-tiered test to determine the need to grant qualified immunity was modified in *Harlow v. Fitzgerald*,[46] where the US Supreme Court removed the subjective test reasoning that inquiring into the subjective motivation of government officials would be "disruptive of effective government." *Harlow* now requires a two-step analysis in the determination of whether or not a government official is entitled to qualified immunity; *first*, as a threshold matter, the

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[41] Orenstein, A., *Presidential Immunity from Civil Liability, Nixon v. Fitzgerald.* Cornell Law Review, Vol. 68, Issue 2, Article 7, January 1983 68 Cornell L. Rev. 236 (1983), pp. 23-238; citing *Spalding v. Vilas,* 161 U.S. 483 (1896) and *Barr v. Matteo,* 360 U.S. 564 (1959).

[42] 438 U.S. 478 (1978).

[43] Orenstein, *supra* at 240.

[44] 420 U.S. 308. (1975).

[45] Orenstein, *supra* at 241.

[46] 102 S. Ct. 2727 (1982).

court must determine if the statutory or constitutional right asserted by the plaintiff was clear at the time of the alleged wrongful action; and, *second*, the court must determine whether the official should reasonably have known the action was contrary to law.[47]

The second classification of immunity is based on duration, which may be permanent or temporary. This classification was brought about by footnote 31 in *Nixon v. Fitzgerald*,[48] where the U.S. Supreme Court recognized that executive immunity could be derived from Article 1, Section 6 of the US Constitution.[49] Temporary immunity or congressional immunity from arrest provides temporary immunity to legislators from litigating even private suits while "at Session" of Congress as public officers, while permanent immunity or the immunity for speech or debate provides immunity from liability in law suits that arise out of the performance of public duties of democratic deliberation.[50]

Under these concepts, the U.S. Supreme Court has ruled on two cases wherein presidential immunity was invoked as a defense to defeat a claim. In *Nixon v. Fitzgerald, supra*, the respondent filed a complaint for damages against former President Nixon due to the fact that he had been removed from office by the President as a retaliation for giving damning testimony in Congress. Nixon invoked presidential immunity, but his invocation was ignored by the District Court and the Court of Appeals which held that Nixon was not entitled to absolute immunity. The US Supreme Court ruled, however,

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[47] Stein, *supra* at 766.

[48] 457 U.S. 731, 750 (1982).

[49] "The Senators and Representatives... shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place."

[50] Amar, A. R., & Katyal, N.K., *Executive Privileges and Immunities: The Nixon and Clinton Cases.* Harvard Law Review, Vol. 108, No. 3 (January 1995), p. 708.

that Nixon was entitled to absolute immunity from liability for damages predicated on his official acts. Justifying its ruling, the US Supreme Court ruled that the determination of the immunity of particular officials was guided by the Constitution, federal statutes, history and public policy; and that the absolute immunity of the President was a "functionally mandated incident of his unique office, rooted in constitutional tradition of separation of powers and supported by the National's history;" it extended the scope of the President's immunity to the "outer perimeter" of his duties of office. Lastly, it noted that there were sufficient safeguards to ensure that misconduct would be checked, and the President remained accountable to the people through impeachment, Congressional oversight and the Press.

While *Nixon* provided absolute immunity to the President, the US Supreme Court, in *Clinton v. Jones, supra*, ruled that presidential immunity only covered official acts of the President. In *Clinton*, the respondent filed a complaint for damages against the incumbent President based on the sexual advances committed prior to his becoming President and while he was the governor of Arkansas. The President moved to dismiss the case on the basis of presidential immunity. The District Court denied the motion to dismiss but deferred the trial of the case until after the President's term. The Eighth Circuit Court affirmed the denial of the dismissal but modified the District Court's ruling to temporarily bar trial until the end of the President's term. The US Supreme Court sustained the lower courts and allowed the suit to proceed noting that the concept of presidential immunity covered only official acts, not unofficial conduct.

III

Philippine Concept of Presidential Immunity

The concept of executive immunity was first tackled in 1910 by the Philippine Supreme Court in *Forbes v. Chuoco Tiaco*.[51] The country was then still under American occupation. *Chuoco Tiaco* was a Chinese national deported from the Philippines in

[51] 16 Phil. 534 (1910).

1909 on orders of then Governor-General W. Cameron Forbes. In 1910, he returned to the Philippines and filed a suit in the Court of First Instance of Manila against Governor-General Forbes and other government agents, seeking thereby a preliminary injunction to prevent them from deporting him again, and demanding damages. Among the issues resolved was the question of whether or not the trial court could assume jurisdiction of cases relating to the exercise of powers by the Chief Executive of the land.

Posing the question as whether or not the courts would ever intervene or assume jurisdiction in any case brought against the Chief Executive as the head of government, the Court observed that although the subject had often been discussed before courts of other jurisdictions and by various commentators, there had been no consensus reached thereon. It considered to be settled that the courts would not interfere where the Chief Executive exercised inherent, political, or discretionary duties, such as the power to deport or expel undesirable aliens; and declared that the courts would not intervene for the purpose of controlling such power, nor for the purpose of inquiring whether or not the Chief Executive was liable for damages in the exercise thereof.

But while the case law cited in *Forbes* depended on principles of executive immunity prevailing in foreign jurisdictions, the Philippine concept of presidential immunity diverged in 1981, and the variation became concrete through the 1973 Constitution, under whose Article VII the following provision was written, *viz.*:

> Section 15. The President shall be immune from suit during his tenure. Thereafter, no suit whatsoever shall lie for official acts done by him or by others pursuant to his specific orders during his tenure.

In 1986, during the interval between the 1973 Constitution and the 1987 Constitution, the Court maintained the concept of presidential immunity. In *In Re: Saturnino V. Bermudez*,[52]

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[52] G.R. No. 76180, October 24, 1986, 145 SCRA 160.

an original action for declaratory relief, the Court was asked to interpret the 1986 Draft Constitution. The petition therein claimed that it was unclear if the transitory provisions on the terms of the incumbent President and Vice-President referred to the tandem of Corazon C. Aquino and Salvador Laurel, or to Ferdinand E. Marcos and Arturo Tolentino. The Court reaffirmed the legitimacy of the government of President Aquino, and ruled that the petition amounted to a suit brought against her. In a sweeping but nonetheless unequivocal manner, the Court declared that "incumbent presidents are immune from suit or from being brought to court during the period of their incumbency and tenure."[53]

The period of 2000-2001 was tumultuous for the Office of the President. Public disapproval of President Joseph Estrada reached fever pitch, leading to his forced departure from the Presidency. Following his departure, he faced multiple criminal complaints before the Office of the Ombudsman, including charges of bribery, graft and corruption, and plunder. The former President filed a petition for prohibition with the Court *(Estrada v. Desierto*[54]) seeking to enjoin the Ombudsman from proceeding with the criminal complaints against him. Among the former President's defenses against the multiple cases was his claim of presidential immunity from criminal prosecution. The Court came to the conclusion that President Estrada had resigned from his post as the Chief Executive. The narrow issue coming before the Court related to the scope of immunity that he could claim as a *non-sitting* President, the Court concluded that President Estrada, being already a *former* President, no longer enjoyed immunity from suit.

In 2006, President Macapagal-Arroyo issued Presidential Proclamation No. 1017 and General Order No. 5 declaring a state of national emergency, and called out the Armed Forces of the Philippines in her capacity as Commander-in-Chief to

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[53] *Id.* at 162.

[54] G.R. Nos. 146710-15, March 2, 2001, 353 SCRA 452.

maintain law and order throughout the country and to suppress acts of lawless violence, insurrection or rebellion. Several petitions were filed, and were consolidated *(David v. Macapagal-Arroyo*[55]*)* disputing the factual bases for the orders, and challenging their constitutionality. Three of the petitions impleaded President Arroyo herself as a respondent.

In threshing out the procedural issues, the Court ruled on the legal standing of the petitioners in each case, and later on pronounced that it was not proper to implead the President as a respondent, to wit:

> x x x Settled is the doctrine that the President, during his tenure of office or actual incumbency, may not be sued in any civil or criminal case, and there is no need to provide for it in the Constitution or law. It will degrade the dignity of the high office of the President, the head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the constitution necessarily impairs the operation of the Government. However, this does not mean that the President is not accountable to anyone. Like any other official, he remains accountable to the people but he may be removed from office only in the mode provided by law and that is by impeachment.[56]

In *Rubrico v. Macapagal-Arroyo*,[57] petitioner Lourdes Rubrico alleged that she had been abducted, detained, and interrogated by armed men belonging to the Armed Forces of the Philippines. Even after her release, Lourdes and her family continued to be harassed and threatened. She brought a petition for the issuance of the writ of *amparo* seeking to proceed against named military and police personnel and the Office of

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[55] G.R. No. 171396, May 3, 2006, 489 SCRA 160.

[56] *Id*. at 224-225.

[57] G.R. No. 183871, February 18, 2010, 613 SCRA 233.

the Ombudsman. The petition impleaded President Gloria Macapagal-Arroyo as respondent.

In the proceedings before the Court of Appeals (CA), to which the hearing was meanwhile assigned, the CA dropped President Arroyo as a respondent. Among the issues later elevated to this Court was the propriety of dropping the President as a party respondent. The petitioners specifically claimed that the immunity enjoyed by the Chief Executive under the 1935 Constitution and 1973 Constitution had been removed by its non-inclusion the 1987 Constitution.

The Court upheld the exclusion of President Arroyo as a respondent, maintaining that presidential immunity from suit remained under our system of government, despite not being expressly reserved in the 1987 Constitution, and declared that the President could not be sued during her tenure. In addition, the decision pointed out that the petition did not allege specific presidential acts or omissions that had violated or threatened to violate petitioners' protected rights.

Presidential immunity in *amparo* proceedings was again taken up in *Balao v. Macapagal-Arroyo*.[58] James Balao had been allegedly taken by unidentified armed men, believed to be members of the military. The petitioners filed a petition for the issuance of the writ of *amparo* in the Regional Trial Court (RTC) in Benguet. The respondents argued in the RTC for the dropping of President Arroyo from the case on the basis of her presidential immunity. The RTC rejected the arguments explaining that presidential immunity was not applicable in *amparo* proceedings which were not nagging, vexing or annoying to the respondent. In fact, the petition would aid the President in discharging her constitutional duty to make sure that the laws on human rights were being observed.

Although the pleadings did not tackle the issue of presidential immunity, the Court ruled that the RTC had erred in holding that such immunity could not be invoked in *amparo* proceedings.

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[58] G.R. No. 186050, December 13, 2011, 662 SCRA 312.

It pointed out that President Arroyo, as the Chief Executive, was enjoying immunity from suit when the petition for a writ of *amparo* was filed; that the petition was bereft of any allegation of specific acts or omissions that had violated or threatened to violate protected rights; and that President Arroyo should be dropped as a party-respondent from the petition for writ of *amparo*.

IV
Current State of the Concept of Presidential Immunity

The concept of presidential immunity is not explicitly spelled out in the 1987 Constitution. However, the Court has affirmed that there is no need to expressly provide for it either in the Constitution or in law.[59] Furthermore, the reason for the omission from the actual text of the 1987 Constitution has been clarified by this exchange on the floor of the 1986 Constitutional Commission:

MR. SUAREZ: Thank you.

The last question is with reference to the Committee's omitting in the draft proposal the immunity suit provision for the President. I agree with Commissioner Nolledo that the Committee did very well in striking out this second sentence, at the very least, of the original provision on immunity from suit under the 1973 Constitution. But would the Committee members not agree to a restoration of at least the first sentence that the President shall be immune from suit during his tenure, considering that if we do not provide him that kind of immunity he might be spending all of his time facing litigations, as the President-in-exile in Hawaii is now facing litigations almost daily?

FR. BERNAS: The reason for the omission is that we consider it understood in present jurisprudence that during his tenure he is immune from suit.

MR. SUAREZ: So, there is no need to express it here.

FR. BERNAS: There is no need. It was that way before. The only innovation made by the 1973 Constitution was to make that explicit and do add other things.

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[59] *David v. Macapagal-Arroyo, supra*, at 224.

MR. SUAREZ: On that understanding, I will not press for any more query, Madam President.[60]

The existence of the immunity under the 1987 Constitution was directly challenged in *Rubrico v. Macapagal-Arroyo*,[61] but the Court steadfastly held that Presidential immunity from suit remained preserved in our current system.

While the concept of immunity from suit originated elsewhere, the ratification of the 1981 constitutional amendments and the 1987 Constitution made our version of presidential immunity unique. Section 15, Article VII of the 1973 Constitution, as amended, provided for immunity at two distinct points in time: the first sentence of the provision related to immunity during the tenure of the President, and the second provided for immunity thereafter. At this juncture, we need only concern ourselves with immunity during the President's tenure, as this case involves the incumbent President. As the framers of our Constitution understood it, which view has been upheld by relevant jurisprudence, the President is immune from suit *during his tenure*.

Unlike its American counterpart, the concept of presidential immunity under our governmental and constitutional system does not distinguish whether or not the suit pertains to an official act of the President. Neither does immunity hinge on the nature of the suit. The lack of distinctions prevents us from making any distinctions. We should still be guided by our precedents.

Accordingly, the concept is clear and allows no qualifications or restrictions that the President cannot be sued while holding such office.

V
Applicability of Presidential Immunity to a Proceeding for the issuance of the Writ of *Habeas Data*

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[60] Records of the Constitutional Commission of 1986, Vol. II, Records, p. 423, July 29, 1986 (R.C.C. No. 42).

[61] *Supra* note 57.

Sen. De Lima maintains that presidential immunity does not lie because President Duterte's attacks against her are not part of his official duties and functions; that before presidential immunity applies, there must first be a balancing of interest; and that the balancing favors her because her right to be protected from harassment far outweighs the dangers of intrusion on the Office of Chief Executive.

Sen. De Lima wants us to apply principles established by the US Supreme Court in the celebrated cases of *Nixon* and *Clinton, supra*. Such decisions, though persuasive, are not binding as case law for us. As earlier asserted, the Philippine concept of Presidential immunity from suit diverged from its foreign roots, from the time of the amendment of the 1973 Constitution. Presidential immunity in this jurisdiction attaches during the entire tenure of the President. The immunity makes no distinction with regard to the subject matter of the suit; it applies whether or not the acts subject matter of the suit are part of his duties and functions as President. Furthermore, no balancing of interest has ever been applied to Presidential immunity under our jurisprudence. We are not prepared or willing to recognize such a test without constitutional, statutory, or jurisprudential basis.

Both Sen. De Lima and the OSG disagree on whether or not the statements of the President regarding her have been part of the discharge of the President's official duties, but our declaration herein that immunity applies regardless of the personal or official nature of the acts complained of have rendered their disagreement moot and academic.

Sen. De Lima argues that the rationale for Presidential immunity does not apply in her case because the proceedings for the writ of *habeas data* do not involve the determination of administrative, civil, or criminal liabilities. Again, we remind that immunity does not hinge on the nature of the suit. In short, presidential immunity is not intended to immunize the President from liability or accountability.

The rationale for the grant of immunity is stated in *Soliven v. Makasiar,*[62] thus:

> The rationale for the grant to the President of the privilege of immunity from suit is to assure the exercise of Presidential duties and functions free from any hindrance of distraction, considering that being the Chief Executive of the Government is a job that, aside from requiring all of the office-holder's time, also demands undivided attention.[63]

The rationale has been expanded in *David v. Macapagal-Arroyo:*

> x x x It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of the Government. However, this does not mean that the President is not accountable to anyone. Like any other official, he remains accountable to the people but he may be removed from office only in the mode provided by law and that is by impeachment.[64]

With regard to the submission that the President must first invoke the privilege of immunity before the same may be applied by the courts, Sen. De Lima quotes from *Soliven* where the Court said that "this privilege of immunity from suit, pertains to the President by virtue of the office and may be invoked only by the holder of the office; not by any other person in the President's behalf."[65] But that passage in *Soliven* was made

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[62] *Soliven v. Makasiar,* G.R. Nos. 82585, 82827, 83979, November 14, 1988, 167 SCRA 393.

[63] *Id.* at 399.

[64] *David v. Macapagal-Arroyo, supra* note 59, at 224-225.

[65] *Soliven v. Makasiar, supra* note 62, at 399.

only to point out that it was the President who had gone to court as the complainant, and the Court still stressed that the accused therein could not raise the presidential privilege as a defense against the President's complaint. At any rate, if this Court were to first require the President to respond to each and every complaint brought against him, and then to avail himself of presidential immunity on a case to case basis, then the rationale for the privilege – protecting the President from harassment, hindrance or distraction in the discharge of his duties – would very well be defeated. It takes little imagination to foresee the possibility of the President being deluged with lawsuits, baseless or otherwise, should the President still need to invoke his immunity personally before a court may dismiss the case against him.

Sen. De Lima posits that her petition for *habeas data* will not distract the President inasmuch as the case can be handled by the OSG. But this is inconsistent with her argument that the attacks of the President are purely personal. It is further relevant to remind that the OSG is mandated to appear as counsel for the Government as well as its various agencies and instrumentalities whenever the services of a lawyer is necessary; thus, a public official may be represented by the OSG when the proceedings arise from acts done in his or her official capacity.[66] The OSG is not allowed to serve as the personal counsel for government officials. If Sen. De Lima's position that the acts complained of are not related to the official functions of the President, then it also necessarily follows that the OSG can no longer continue to represent him.

Besides, any litigation, whether big or small, naturally serves as a distraction to a party-litigant. Even while represented by counsel, a litigant is still responsible for certain facets of the case, like presenting evidence and disputing claims, and cannot simply leave the course and conduct of the proceedings entirely to the discretion of his or her chosen counsel.

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[66] *Pascual v. Beltran,* G.R. No. 129318, October 27, 2006, 505 SCRA 545, 558-559.

Sen. De Lima hinges her allegations of violations of her rights on the *Magna Carta of Women*, as well as on Republic Act No. 6713. Although she claims that her present recourse does not seek to hold the President administratively, civilly, or criminally liable, it will be impossible for the Court to enable her cause of action to be established without first determining whether or not said laws, which carry penal sanctions, had been violated. Any ruling on her petition will necessarily entail a judgment on whether or not the President violated said laws.

Finally, Sen. De Lima asserts that for every right violated, there must be a remedy. No one can dispute the validity of her assertion. We agree with her, but at the same time we must remind her that this ruling will not deny her any available remedy. Indeed, the Constitution provides remedies for violations committed by the Chief Executive except an ordinary suit before the courts. The Chief Executive must first be allowed to end his tenure (not his term) either through resignation or removal by impeachment. Being a Member of Congress, the petitioner is well aware of this, and she cannot sincerely claim that she is bereft of any remedy.

WHEREFORE, the Court **DISMISSES** the petition for the writ of *habeas data* on the ground that respondent Rodrigo Roa Duterte as the incumbent President of the Philippines is immune from suit during his incumbency.

SO ORDERED.

Carpio, Peralta, Perlas-Bernabe, Gesmundo, Hernando, Carandang, Lazaro-Javier, Inting, and *Zalameda, JJ.,* concur.

Leonen and *Reyes, A. Jr., JJ.,* see separate concurring opinions.

Caguioa, J., joins the separate opinion of *J.* Leonen.

Reyes, J. Jr., J., on leave.

SEPARATE CONCURRING OPINION

LEONEN, *J.*:

Presidential immunity from suit only extends to civil, criminal, and administrative liability. A proceeding for the issuance of a writ of *habeas data,* as in this case, does not determine any such liability. The Rule on the Writ of *Habeas Data*[1] only requires courts to ascertain the accountability and responsibility of the public official or employee. Thus, the President cannot invoke immunity from suit in a petition for such writ.

However, the proper respondent in a *habeas data* case for pronouncements made by the President in his official capacity is the Executive Secretary, following the ruling in *Aguinaldo v. Aquino III.*[2] This is in accord with the doctrine that the president should not be impleaded in any suit during his or her incumbency, as recently reiterated in *Kilusang Mayo Uno v. Aquino III.*[3]

In *Aguinaldo,* this Court held:

> [T]he Court finds it proper to drop President Aquino as respondent taking into account that when this Petition was filed on May 17, 2016, he was still then the incumbent President who enjoyed immunity from suit. The presidential immunity from suit remains preserved in the system of government of this country, even though not expressly reserved in the 1987 Constitution. The President is granted the privilege of immunity from suit "to assure the exercise of Presidential duties and functions free from any hindrance or distraction, considering that being the Chief Executive of the Government is a job that, aside from requiring all of the office-holder's time, also demands undivided attention." It is sufficient that former Executive Secretary Ochoa is named as respondent herein as he was then the

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[1] A.M. No. 08-1-16-SC (2008).

[2] 801 Phil. 492 (2016) [Per *J.* Leonardo-De Castro, *En Banc*].

[3] G.R. No. 210500, April 2, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65208> [Per *J.* Leonen, *En Banc*].

head of the [Office of the President] and was in-charge of releasing presidential appointments, including those to the Judiciary.[4]

Senator Leila M. De Lima (Senator De Lima) filed the Petition for the issuance of a writ of *habeas data* against President Rodrigo R. Duterte (President Duterte), seeking to enjoin him from committing acts that have allegedly violated her right to life, liberty, and security.[5]

Senator De Lima alleged that President Duterte issued a number of public statements against her after she had criticized him in a Senate privilege speech denouncing the alleged extrajudicial killings under the administration's policy against drugs.[6] She listed the following statements:

a. The August 11, 2016 public statement of President Duterte threatening to destroy Senator De Lima. The statement reads: "I know I'm the favorite whipping boy of the NGOs and the human rights stalwarts. But I have a special *ano kaya no.* She is a government official. One day soon I will: – *bitiwan ko yan* in public and I will have to destroy her in public." Incidentally, in the same event, President Duterte insinuated that with the help of another country, he was keeping surveillance of her. *"Akala nila na hindi rin ako nakikinig sa kanila.* So while all the time they were also listening to what I've done, I've also been busy, and with the help of another country, listening to them;"

b. The statement uttered in a briefing at the NAIA Terminal 3, Pasay City in August 17, 2016 wherein President Duterte named Sen. De Lima as the government official he referred to earlier and at the same time accused her of living an immoral life by having a romantic affair with her driver, a married man, and of being involved in illegal drugs. "There's one crusading lady, whose even herself led a very immoral

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[4] *Id.* at 521 citing *Lozada, Jr. v. Macapagal-Arroyo,* 686 Phil. 536, 552 (2012) [Per *J.* Sereno, *En Banc*]; *Soliven v. Makasiar,* 249 Phil. 394, 400 (1988) [*Per Curiam*, *En Banc*]; and *Kilosbayan Foundation v. Ermita,* 553 Phil. 331 (2007) [Per *J.* Azcuna, *En Banc*].

[5] *Ponencia,* p. 1.

[6] *Id.* at 2.

life, taking his (sic) driver as her lover... Paramour *niya ang driver nya naging hooked rin sa drugs because of the close association.* You know, when you are an immoral, dirty woman, the driver was married. So you live with the driver, it[']s concubinage."

c. The statements that described her as an immoral woman; that publicized her intimate and personal life, starting from her new boyfriend to her sexual escapades; that told of her being involved in illegal drugs as well as in activities that included her construction of a house for her driver/lover with financing from drug-money; and

d. The statements that threatened her *("De Lima, you are finished")* and demeaned her womanhood and humanity. "If I were De Lima, ladies and gentlemen, I'll hang myself. Your life has been, *hindi lang* life, the innermost of your core as a female is being serialized everyday. *Dapat kang mag-resign.* You resign. and "De Lima better hang yourself... *Hindi ka na nahiya sa sarili mo.* Any other woman would have slashed her throat. You? *Baka akala mo artista ka. Mga artistang x-rated paglabas sa, pagkatapos ng shooting, nakangiti...".*[7]

Senator De Lima alleged that these public statements violate her right to privacy, life, liberty, and security, and were, thus, reasonable grounds to warrant the issuance of a writ of *habeas data*.[8] Accordingly, she sought the following reliefs:

WHEREFORE, the petitioner respectfully prays the Honorable Court that judgment be rendered:

[1] Granting a Writ of *Habeas Data* —

a. Enjoining respondent and any of his representatives, agents, assigns, officers, or employees from collecting information about petitioner's private life outside the realm of legitimate public concern;

b. Disclosing to the petitioner the name of the foreign country who, according to respondent, "helped him" listen in on petitioner, the manner and means by which he listened in

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[7] *Id*. at 2-3.

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

on petitioner, and the sources of his information or where the data about petitioner's private life and alleged private affairs came from;

c. Ordering the deletion, destruction or rectification of such data or information; and

d. Enjoining the respondent from making public statements that (i) malign her as a woman and degrade her dignity as a human being; (ii) sexually discriminate against her; (iii) describe or publicize her alleged sexual conduct; (iv) constitute psychological violence against her; and (v) otherwise violate her rights or are contrary to law, good morals, good customs, public policy, and/or public interest; and

[2] Conceding unto petitioner such further and other reliefs this Honorable Court may deem just and equitable in the premises.[9]

In a November 8, 2016 Resolution, this Court directed Senator De Lima and the Office of the Solicitor General to present their arguments on whether the President is immune from suit.[10] The parties were subsequently directed to traverse each other's submissions in their respective memoranda.[11]

Now, this Court, in its Resolution promulgated on October 15, 2019, resolves to dismiss[12] the Petition without giving due course or passing on the merits on the basis that President Duterte is absolutely immune from any suit during his incumbency.

I agree that a president enjoys immunity from suit during his or her incumbency. However, pronouncements made in his or her official capacity may still be the subject of suit, as long as the respondent in the case is the executive secretary, not the president. After his or her incumbency, however, the president should no longer be able to plead immunity for *any* case that may be filed against him or her.

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

[10] *Id.* at 5.

[11] *Id.* at 6.

[12] *Id.* at 22.

I

The concept of presidential immunity from suit was originally founded on the idea that the "King can do no wrong."[13] This idea was espoused at a time of absolute monarchies in medieval England as a recognition of the King's full sovereignty over his subjects.[14]

The legal concept eventually found its way to the United States, where the rationale for its continued usage, despite the abolition of absolute monarchies, was formulated in *United States v. Burr.*[15] In *Burr*, the United States Supreme Court, headed by Chief Justice John Marshall, was confronted with the issue of whether President Thomas Jefferson could be subpoenaed to produce certain documents to aid in the treason case against Vice President Aaron Burr. In issuing the subpoena, the Supreme Court cautioned that while the President can be compelled to produce documents, these documents must first be determined as relevant. This was to avoid the President from being "harassed by vexatious and unnecessary subpoenas":

> [T]he guard, furnished to [the President] to protect him from being harassed by vexatious and unnecessary subpoenas, is to be looked for in the conduct of a [district] court after those subpoenas have issued; not in any circumstance which is to precede their being issued.[16]

In this jurisdiction, the concept of presidential immunity was introduced in *Forbes v. Chuoco Tiaco.*[17] Chuoco Tiaco, a Chinese national, filed a case against the Governor-General of

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[13] *See* Footnote 105 of *Estrada v. Desierto,* 406 Phil. 1, 71-72 (2001) [Per *J*. Puno, *En Banc*] citing R.J. Gray, *Private Wrongs of Public Servants*, 47 CAL. L. REV. 303 (1959).

[14] *Id*.

[15] 25 Fed. Cas. 55 (1807).

[16] *United States v. Nixon,* 418 U.S. 683 (1974) citing *United States v. Burr,* 25 Fed. Cas. 55 (1807).

[17] 16 Phil. 534 (1910) [Per *J*. Johnson, *En Banc*].

the Philippine Islands protesting his deportation to China. This Court, through Justice Elias Finley Johnson, noted:

> In this court there was no pretension by the attorney for the defendant (plaintiff below) that the action was not against the Governor-General as *Governor-General*, and the others as well, in their official capacity. In fact, when an inquiry was made of the attorney for the defense concerning his theory, his reply was simply that the acts of the Governor-General, being illegal, were not performed in his official capacity.[18] (Emphasis in the original)

In resolving the issue of whether the courts could intervene in an action for damages against an official considered the "chief executive authority" of the Philippine Islands, this Court held:

> It may be argued, however, that the present action is one to recover damages against the Governor and the others mentioned in the cause, for the illegal acts performed by them, and not an action for the purpose of in any way controlling or restraining or interfering with their political or discretionary duties. No one can be held legally responsible in damages or otherwise for doing in a legal manner what he had authority, under the law, to do. Therefore, if the Governor-General had authority, under the law, to deport or expel the defendants, and the circumstances justifying the deportation and the method of carrying it out are left to him, then he can not be held liable in damages for the exercise of this power. Moreover, if the courts are without authority to interfere in any manner, for the purpose of controlling or interfering with the exercise of the political powers vested in the chief executive authority of the Government, then it must follow that the courts can not intervene for the purpose of declaring that he is liable in damages for the exercise of this authority....
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> If it be true that the Government of the Philippine Islands is a government invested with "all the military, civil, and judicial powers necessary to govern the Philippine Islands until otherwise provided by Congress" and that the Governor-General is invested with certain important political duties and powers, in the exercise of which he

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[18] *Id*. at 557-558.

may use his own discretion, and is accountable only to his superiors in his political character and to his own conscience, and the judicial department of the Government is without authority to interfere in the control of such powers, for any purpose, then it must follow that the courts can not take jurisdiction in any case against him which has for its purpose the declaration that such acts are illegal and that he is, in consequence, liable for damages. To allow such an action would, in the most effective way possible, subject the executive and political departments of the Government to the absolute control of the judiciary. *Of course, it will be observed that we are here treating only with the political and purely executive duties in dealing with the political rights of aliens. The conclusions herein reached should not be extended to cases where vested rights are involved. That question must be left for future consideration.*[19] (Emphasis in the original)

Even after *Forbes,* there was no statute enacted that granted presidents immunity from suit. Presidential immunity in this jurisdiction has always been a creation of jurisprudential pronouncements. Not even the 1935 Constitution provided such privilege. The immunity, however, was understood to be *absolute:*

In the Philippines, though, we sought to do the Americans one better by enlarging and fortifying the absolute immunity concept. First, we extended it to shield the President not only from civil claims but also from criminal cases and other claims. Second, we enlarged its scope so that it would cover even acts of the President outside the scope of official duties. And third, we broadened its coverage so as to include not only the President but also other persons, be they government officials or private individuals, who acted upon orders of the President. It can be said that at that point most of us were suffering from AIDS (or absolute immunity defense syndrome).[20]

It was not until the 1973 Constitution that the privilege became part of the fundamental law:

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[19] *Id.* at 578-580.

[20] *Estrada v. Desierto,* 406 Phil. 1, 73 (2001) [Per *J.* Puno, *En Banc*] citing Pacifico A. Agabin, *Presidential Immunity And All the King's Men: The Law Of Privilege As A Defense To Actions For Damages,* 62 PHIL. L.J. 113 (1987).

SECTION 15. The President shall be immune from suit during his tenure. Thereafter, no suit whatsoever shall lie for official acts done by him or by others pursuant to his specific orders during his tenure.

The immunities herein provided shall apply to the incumbent President referred to in Article XVII of this Constitution.[21]

It is easy, in hindsight, to surmise why such a provision exists in the 1973 Constitution. Then President Ferdinand E. Marcos, foreseeing the problems that may arise from his dictatorial regime, introduced a constitutional provision that explicitly granted him impunity for all the illegal acts he had committed or was about to commit.

Thus, the framers of the 1987 Constitution were careful not to retain the same provision, deeming it prudent to revert to how the privilege was understood in jurisprudence:

"Mr. Suarez. Thank you.

The last question is with reference to the committee's omitting in the draft proposal the immunity provision for the President. I agree with Commissioner Nolledo that the Committee did very well in striking out this second sentence, at the very least, of the original provision on immunity from suit under the 1973 Constitution. But would the Committee members not agree to a restoration of at least the first sentence that the President shall be immune from suit during his tenure, considering that if we do not provide him that kind of an immunity, he might be spending all his time facing litigations, as the President-in-exile in Hawaii is now facing litigations almost daily?

Fr. Bernas. The reason for the omission is that we consider it understood in present jurisprudence that during his tenure he is immune from suit.

Mr. Suarez. So there is no need to express it here.

Fr. Bernas. There is no need. It was that way before. The only innovation made by the 1973 Constitution was to make that explicit and to add other things.

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[21] CONST. (1973), Art. VII, Sec. 15.

Mr. Suarez. On that understanding, I will not press for any more query, Madam President.

I thank the Commissioner for the clarification."[22]

Despite the absence of an express provision in the present Constitution, this Court continued to recognize that the privilege exists. Thus, in *Saturnino v. Bermudez*,[23] promulgated after the People Power Revolution, this Court held that "incumbent Presidents are immune from suit or from being brought to court during the period of their incumbency and tenure."[24] In *Soliven v. Judge Makasiar*,[25] this Court further stated:

> The rationale for the grant to the President of the privilege of immunity from suit is to assure the exercise of Presidential duties and functions free from any hindrance or distraction, considering that being the Chief Executive of the Government is a job that, aside from requiring all of the office-holder's time, also demands undivided attention.[26]

The deletion of the provision from the current Constitution, however, had a broader effect: presidential immunity from suit would no longer be as absolute as it was previously understood. In *Estrada v. Desierto*,[27] this Court had the opportunity to discuss the exact scope of the privilege. After then President Joseph Estrada (President Estrada) was ousted from office in 2001, then Ombudsman Aniano Desierto filed several cases for bribery, graft, and corruption against him. President Estrada sought before this Court the dismissal of those cases since he enjoyed immunity from all kinds of suits.

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[22] *Estrada v. Desierto*, 406 Phil. 1, 73-74 (2001) [Per J. Puno, *En Banc*] citing Records of the Constitutional Commission of 1986, Vol. II, Records, p. 423, July 29, 1986.

[23] 229 Phil. 185 (1986) [*Per Curiam, En Banc*].

[24] *Id.* at 187.

[25] 249 Phil. 394 (1988) [*Per Curiam, En Banc*].

[26] *Id.* at 400.

[27] 406 Phil. 1 (2001) [Per J. Puno, *En Banc*].

This Court, however, held that the presidential immunity from criminal and civil liability is only applicable during incumbency:

We now come to the scope of immunity that can be claimed by petitioner as a non-sitting President. The cases filed against petitioner Estrada are *criminal in character. They involve plunder, bribery and graft and corruption.* By no stretch of the imagination can these crimes, especially plunder which carries the death penalty, be covered by the allege *(sic)* mantle of immunity of a non-sitting president. Petitioner cannot cite any decision of this Court licensing the President to commit criminal acts and wrapping him with post-tenure immunity from liability. *It will be anomalous to hold that immunity is an inoculation from liability for unlawful acts and omissions.* The rule is that unlawful acts of public officials are not acts of the State and the officer who acts illegally is not acting as such but stands in the same footing as any other trespasser.

Indeed, a critical reading of current literature on executive immunity will reveal a *judicial disinclination to expand the privilege* especially *when it impedes the search for truth or impairs the vindication of a right.* In the 1974 case of *US v. Nixon,* US President Richard Nixon, *a sitting President,* was subpoenaed to produce certain recordings and documents relating to his conversations with aids and advisers. Seven advisers of President Nixon's associates were facing charges of conspiracy to obstruct justice and other offenses which were committed in a burglary of the Democratic National Headquarters in Washington's Watergate Hotel during the 1972 presidential campaign. President Nixon himself was named an unindicted co-conspirator. President Nixon moved to quash the subpoena on the ground, among others, that the President was not subject to judicial process and that he should first be impeached and removed from office before he could be made amenable to judicial proceedings. The claim was rejected by the US Supreme Court. It concluded that "when the ground for asserting privilege as to subpoenaed materials sought for use in a criminal trial is based only on the generalized interest in confidentiality, it cannot prevail over the fundamental demands of due process of law in the fair administration of criminal justice." In the *1982 case of Nixon v. Fitzgerald,* the US Supreme Court further held that the immunity of the President from *civil damages covers only "official acts."* Recently, the US Supreme Court had the occasion to reiterate this doctrine in the case of *Clinton v. Jones* where it held that the US President's immunity from suits for money damages arising out of their official acts is inapplicable to unofficial conduct.

There are more reasons not to be sympathetic to appeals to stretch the scope of executive immunity in our jurisdiction. One of the great themes of the 1987 Constitution is that a *public office is a public trust.* It declared as a state policy that "(t)he State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption." It ordained that "(p)ublic officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives." It set the rule that "(t)he right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches or estoppel." It maintained the Sandiganbayan as an anti-graft court. It created the office of the Ombudsman and endowed it with enormous powers, among which is to "(i)nvestigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient." The Office of the Ombudsman was also given fiscal autonomy. *These constitutional policies will be devalued if we sustain petitioner's claim that a non-sitting president enjoys immunity from suit for criminal acts committed during his incumbency.*[28] (Emphasis in the original)

Estrada, thus, clarifies that presidential immunity is not *absolute* immunity from *all* types of suit. It simply cloths the president with immunity from civil, criminal, and administrative liability during his or her incumbency or tenure in office. Liability, therefore, is not absolved. It is merely held in abeyance until the president's end of incumbency.

David v. Macapagal-Arroyo,[29] meanwhile, provides the rationale for granting such immunity during the president's tenure:

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[28] *Id*. at 75-78 citing *Wallace v. Board of Education,* 280 Ala. 635, 197 So 2d 428 (1967); *U.S. v. Nixon,* 418 U.S. 683, 94 S. Ct. 3090, 41 L ed. 1039 (1974); *Nixon v. Fitzgerald,* 457 U.S. 731, 73 L ed. 349, 102 S Ct. 2690 (1982); *Clinton v. Jones*, 520 U.S. 681 (1997); CONST., Art. XI, Sec. 1; CONST., Art. II, Sec. 27; CONST., Art. XI, Sec. 15; CONST., Art. XI, Sec. 4; CONST., Art. XI, Sec. 13(1); and CONST., Art. XI, Sec. 14.

[29] 522 Phil. 705 (2006) [Per *J.* Sandoval-Gutierrez, *En Banc*].

Settled is the doctrine that the President, during his tenure of office or actual incumbency, may not be sued in any civil or criminal case, and there is no need to provide for it in the Constitution or law. It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of the Government. However, this does not mean that the President is not accountable to anyone. Like any other official, he remains accountable to the people but he may be removed from office only in the mode provided by law and that is by impeachment.[30] (Citations omitted)

From these cases, the following principles are established:

First, any person may file a civil, criminal, or administrative suit against the president after his or her tenure for any offense committed during his or her incumbency;

Second, the president's immunity from suit only covers official acts during his or her tenure; and

Third, presidential immunity from suit is granted during incumbency for two (2) reasons only: (1) to prevent the degradation of dignity of the office; and (2) to prevent the impairment of government operations. It is never granted to shield the president from any wrongdoing.

II

Section 1 of the Rule on the Writ of *Habeas Data* provides:

SECTION 1. *Habeas Data.* — The writ of *habeas data* is a remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in

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[30] *Id.* at 763-764.

the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party.

In *Manila Electric Company v. Lim*,[31] this Court further explains:

> The *habeas data* rule, in general, is designed to protect by means of judicial complaint the image, privacy, honor, information, and freedom of information of an individual. It is meant to provide a forum to enforce one's right to the truth and to informational privacy, thus safeguarding the constitutional guarantees of a person's right to life, liberty and security against abuse in this age of information technology.
>
> It bears reiteration that like the writ of amparo, *habeas data* was conceived as a response, given the lack, of effective and available remedies, to address the extraordinary rise in the number of killings and enforced disappearances. Its intent is to address violations of or threats to the rights to life, liberty or security as a remedy independently from those provided under prevailing Rules.[32]

The writ of *habeas data* "seeks to protect a person's right to control information regarding oneself, particularly in instances in which such information is being collected through unlawful means in order to achieve unlawful ends."[33] However, it is not issued merely because one has unauthorized access to another person's information; rather, it requires a violation or a threatened violation of that person's right to life, liberty, and security:

> In developing the writ of *habeas data*, the Court aimed to protect an individual's right to informational privacy, among others. A comparative law scholar has, in fact, defined *habeas data* as "a procedure designed to safeguard individual freedom from abuse in the information age." The writ, however, will not issue on the basis

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[31] 646 Phil. 497 (2010) [Per *J.* Carpio Morales, *En Banc*].

[32] *Id*. at 503-504 citing *Tapuz v. Del Rosario*, 577 Phil. 636 (2008) [Per *J.* Brion, *En Banc*].

[33] *Gamboa v. Chan*, 691 Phil. 602, 616 (2012) [Per *J.* Sereno, *En Banc*] citing *Roxas v. Macapagal-Arroyo*, 644 Phil. 480 (2010) [Per *J.* Perez, *En Banc*].

merely of an alleged unauthorized access to information about a person. Availment of the writ requires the existence of a nexus between the right to privacy on the one hand, and the right to life, liberty or security on the other. Thus, the existence of a person's right to informational privacy and a showing, at least by substantial evidence, of an actual or threatened violation of the right to privacy in life, liberty or security of the victim are indispensable before the privilege of the writ may be extended.[34]

This Court has stated that "the proceedings for the issuance of the writ of *habeas data* does not entail any finding of criminal, civil[,] or administrative culpability."[35] In *In Re: Rodriguez v. Macapagal-Arroyo*:[36]

> It bears stressing that since there is no determination of administrative, civil or criminal liability in amparo and *habeas data* proceedings, courts can only go as far as ascertaining responsibility or accountability for the enforced disappearance or extrajudicial killing. As we held in *Razon v. Tagitis:*
>
> > It does not determine guilt nor pinpoint criminal culpability for the disappearance; rather, it determines responsibility, or at least accountability, for the enforced disappearance for purposes of imposing the appropriate remedies to address the disappearance. ***Responsibility*** refers to the extent the actors have been established by substantial evidence to have ***participated*** in whatever way, by action or omission, in an enforced disappearance, as a measure of the remedies this Court shall craft, among them, the directive to file the appropriate

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[34] *Vivares v. St. Theresa's College*, 744 Phil. 451, 463 (2014) [Per *J.* Velasco, Jr., Third Division] citing Andres Guadamuz, *Habeas Data and the European Data Protection Directive*, THE JOURNAL OF INFORMATION, LAW AND TECHNOLOGY (2001), as cited in former Chief Justice Reynato S. Puno's speech, The Common Right to Privacy (2008); *Gamboa v. Chan,* 691 Phil. 602 (2012) [Per *J.* Sereno, *En Banc*]; and *Roxas v. Macapagal-Arroyo,* 644 Phil. 480 (2010) [Per *J.* Perez, *En Banc*].

[35] *In Re: Rodriguez v. Macapagal-Arroyo,* 676 Phil. 84, 103 (2011) [Per *J.* Sereno, *En Banc*].

[36] 676 Phil. 84 (2011) [Per *J.* Sereno, *En Banc*].

> criminal and civil cases against the responsible parties in the proper courts. ***Accountability***, on the other hand, refers to the measure of remedies that should be addressed to those who exhibited ***involvement in the enforced disappearance without bringing the level of their complicity to the level of responsibility*** defined above; or who are ***imputed with knowledge*** relating to the enforced disappearance and who carry the burden of disclosure; or those who ***carry, but have failed to discharge, the burden of extraordinary diligence in the investigation*** of the enforced disappearance. In all these cases, the issuance of the Writ of Amparo is justified by our primary goal of addressing the disappearance, so that the life of the victim is preserved and his liberty and security are restored.[37] (Emphasis in the original)

Aggrieved parties in a petition for a writ of *habeas data* are not precluded from filing civil, criminal, or administrative cases, or from filing a separate criminal action.[38] For this petition, the only reliefs that may be granted are the following: (1) to enjoin the act complained of; (2) to grant access to the database

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[37] *Id*. at 105-106 citing *Razon v. Tagitis*, 621 Phil. 536 (2009) [Per *J*. Brion, *En Banc*].

[38] RULE ON THE WRIT OF *HABEAS DATA*, Secs. 20-22 provide: SECTION 20. *Institution of Separate Actions.* — The filing of a petition for the writ of *habeas data* shall not preclude the filing of separate criminal, civil or administrative actions.

SECTION 21. *Consolidation.* — When a criminal action is filed subsequent to the filing of a petition for the writ, the latter shall be consolidated with the criminal action.

When a criminal action and a separate civil action are filed subsequent to a petition for a writ of *habeas data*, the petition shall be consolidated with the criminal action.

After consolidation, the procedure under this Rule shall continue to govern the disposition of the reliefs in the petition. SECTION 22. *Effect of Filing of a Criminal Action.* — When a criminal action has been commenced, no separate petition for the writ shall be filed. The reliefs under the writ shall be available to an aggrieved party by motion in the criminal case.

The procedure under this Rule shall govern the disposition of the reliefs available under the writ of *habeas data*.

or information; or (3) to order the deletion, destruction, or rectification of the erroneous data or information.[39]

In a proceeding for a writ of *habeas data*, courts only determine the respondent's *accountability* in the gathering, collecting, or storing of data or information regarding the person, family, home, and correspondence of the aggrieved party. Any civil, criminal, or administrative liability may only be imposed in a separate action.

Presidential immunity from suit only applies in cases where civil, criminal, or administrative liability is imposed. This Court explains in *David:*

> It will degrade the dignity of the high office of the President, the Head of State, if he [or she] can be dragged into court litigations while serving as such. Furthermore, it is important that he [or she] be freed from any form of harassment, hindrance or distraction to enable him [or her] to fully attend to the performance of his [or her] official duties and functions.[40]

Indeed, if it were otherwise, there would no stopping citizens from filing cases of unjust vexation every time they disagree with the president's policies.

Petitions for writs of amparo and *habeas data* are not to be treated within the same sphere as civil, criminal, and administrative cases. In *Secretary of National Defense v. Manalo:*[41]

> The remedy provides rapid judicial relief as it partakes of a summary proceeding that requires only substantial evidence to make the appropriate reliefs available to the petitioner; it is not an action to determine criminal guilt requiring proof beyond reasonable doubt, or liability for damages requiring preponderance of evidence, or

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[39] See *In Re: Rodriguez v. Macapagal-Arroyo*, 676 Phil. 84 (2011) [Per *J.* Sereno, *En Banc*].

[40] *David v. Macapagal-Arroyo*, 522 Phil. 705, 764 (2006) [Per *J.* Sandoval-Gutierrez, *En Banc*].

[41] 589 Phil. 1 (2008) [Per *C.J.* Puno, *En Banc*].

administrative responsibility requiring substantial evidence that will require full and exhaustive proceedings.[42]

While any aggrieved party may file a petition for a writ of *habeas data*, the respondent need not even be ordered to file a verified return if the judge determines that, "on its face,"[43] the petition fails to substantiate the following:

> SECTION 6. *Petition.* — A verified written petition for a writ of habeas data should contain:
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> (a) The personal circumstances of the petitioner and the respondent;
>
> (b) The manner the right to privacy is violated or threatened and how it affects the right to life, liberty or security of the aggrieved party;
>
> (c) The actions and recourses taken by the petitioner to secure the data or information;
>
> (d) The location of the files, registers or databases, the government office, and the person in charge, in possession or in control of the data or information, if known;
>
> (e) The reliefs prayed for, which may include the updating, rectification, suppression or destruction of the database or information or files kept by the respondent.
>
> In case of threats, the relief may include a prayer for an order enjoining the act complained of; and
>
> (f) Such other relevant reliefs as are just and equitable.[44]

The filing of the petition is meant to provide aggrieved parties "rapid judicial relief[.]"[45] Hence, the proceedings are summary

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[42] *Id*. at 41 citing Deliberations of the Committee on the Revision of the Rules of Court, August 10, 2007; August 24, 2007; August 31, 2007; and September 20, 2008.

[43] RULE ON THE WRIT OF *HABEAS DATA*, Sec. 7.

[44] RULE ON THE WRIT OF *HABEAS DATA*, Sec. 6.

[45] *Secretary of Defense v. Manalo*, 589 Phil. 1, 41 (2008) [Per *C.J.* Puno, *En Banc*].

in nature and must be resolved by the parties within a span of days:

SECTION 15. *Summary Hearing.* —The hearing on the petition shall be summary. However, the court, justice or judge may call for a preliminary conference to simplify the issues and determine the possibility of obtaining stipulations and admissions from the parties.

SECTION 16. *Judgment.* — The court shall render judgment within ten (10) days from the time the petition is submitted for decision. If the allegations in the petition are proven by substantial evidence, the court shall enjoin the act complained of, or order the deletion, destruction, or rectification of the erroneous data or information and grant other relevant reliefs as may be just and equitable; otherwise, the privilege of the writ shall be denied.

Upon its finality, the judgment shall be enforced by the sheriff or any lawful officer as may be designated by the court, justice or judge within five (5) work days.

SECTION 17. *Return of Service.* — The officer who executed the final judgment shall, within three (3) days from its enforcement, make a verified return to the court. The return shall contain a full statement of the proceedings under the writ and a complete inventory of the database or information, or documents and articles inspected, updated, rectified, or deleted, with copies served on the petitioner and the respondent.

The officer shall state in the return how the judgment was enforced and complied with by the respondent, as well as all objections of the parties regarding the manner and regularity of the service of the writ.

SECTION 18. *Hearing on Officer's Return.* — The court shall set the return for hearing with due notice to the parties and act accordingly.

SECTION 19. *Appeal.* — Any party may appeal from the judgment or final order to the Supreme Court under Rule 45. The appeal may raise questions of fact or law or both.

The period of appeal shall be five (5) work days from the date of notice of the judgment or final order.

The appeal shall be given the same priority as *habeas corpus* and amparo cases.[46]

Estrada teaches that presidential immunity from suit does not absolve civil, criminal, and administrative liability. It merely holds it in abeyance until the president's end of incumbency. Petitions for a writ of *habeas data*, and petitions for a writ of amparo for that matter, are time-sensitive. Courts must act on them immediately to prevent further violations or threatened violation to the aggrieved party's life, liberty, or security. Aggrieved parties should not have to wait until the president ends his or her tenure before filing the petition.

However, in two (2) separate cases cited by the *ponencia*,[47] this Court appears to have inaccurately stated that presidential immunity may be invoked in petitions for a writ of amparo if the petition was filed during the president's incumbency.

In *Rubrico v. Macapagal-Arroyo*,[48] a petition for a writ of amparo was filed before this Court against then President Gloria Macapagal-Arroyo (President Macapagal-Arroyo) in 2007, or during her incumbency. The petitioners argued that the President did not enjoy immunity from suit since the privilege under the 1973 Constitution had since been removed from the current Constitution.

This Court, however, stated that the privilege remained despite not being explicitly stated in the Constitution:

> Petitioners first take issue on the President's purported lack of immunity from suit during her term of office. The 1987 Constitution, so they claim, has removed such immunity heretofore enjoyed by the chief executive under the 1935 and 1973 Constitutions.
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> Petitioners are mistaken. The presidential immunity from suit remains preserved under our system of government, albeit not expressly reserved in the present constitution. Addressing a concern of his

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[46] RULE ON THE WRIT OF *AMPARO*, Secs. 15-19.

[47] *Ponencia*, pp. 16-17.

[48] 627 Phil. 37 (2010) [Per *J.* Velasco, Jr., *En Banc*].

co-members in the 1986 Constitutional Commission on the absence of an express provision on the matter, Fr. Joaquin Bernas, S.J. observed that it was already understood in jurisprudence that the President may not be sued during his or her tenure. The Court subsequently made it abundantly clear in *David v. Macapagal-Arroyo*, a case likewise resolved under the umbrella of the 1987 Constitution, that indeed the President enjoys immunity during her incumbency, and why this must be so:

> Settled is the doctrine that the President, during his tenure of office or actual incumbency, may not be sued in any civil or criminal case, and there is no need to provide for it in the Constitution or law. It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of the Government....

And lest it be overlooked, the petition is simply bereft of any allegation as to what specific presidential act or omission violated or threatened to violate petitioners' protected rights.[49]

While this Court cites the doctrine in *Rubrico*, it never actually stated that the President may invoke immunity in a petition for a writ of amparo. It only held that the privilege of presidential immunity exists despite the absence of a constitutional provision. Moreover, the case was dismissed simply because the Petition did not allege any specific presidential act or omission that violated or threatened to violate the petitioners' rights.

The issue was further muddled in *Balao v. Macapagal-Arroyo*.[50] Like *Rubrico*, a petition for a writ of amparo was

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[49] *Id.* at 62-63 citing *David v. Macapagal-Arroyo*, 522 Phil. 705, 763-764 (2006) [Per *J.* Sandoval-Gutierrez, *En Banc*].

[50] 678 Phil. 532 (2011) [Per *J.* Villarama, Jr., *En Banc*].

filed against then President Macapagal-Arroyo in 2009, during her incumbency. The trial court, where the petition was first filed, denied the prayer to drop President Macapagal-Arroyo as party respondent:

> In denying respondents' prayer that President Arroyo be dropped as party-respondent, the RTC held that a petition for a writ of amparo is not "by any stretch of imagination a niggling[,] vexing or annoying court case" from which she should be shielded. The RTC ruled that said petition is nothing more than a tool to aid the president to guarantee that laws on human rights are devotedly and staunchly carried out. It added that those who complain against naming the president as party-respondent are only those who "either do not understand what the Writ of Amparo is all about or who do not want to aid Her Excellency in her duty to supervise and control the machinery of government."[51] (Citations omitted)

The case was eventually appealed to this Court and resolved after President Macapagal-Arroyo's tenure. On the issue of immunity, this Court stated:

> As to the matter of dropping President Arroyo as party-respondent, though not raised in the petitions, we hold that the trial court clearly erred in holding that presidential immunity cannot be properly invoked in an amparo proceeding. As president, then President Arroyo was enjoying immunity from suit when the petition for a writ of amparo was filed. Moreover, the petition is bereft of any allegation as to what specific presidential act or omission violated or threatened to violate petitioners' protected rights.[52] (Citation omitted)

The dissenting opinion in *Balao*, however, pointed out that the petition should not be dismissed simply because it was filed during the President's incumbency:

> In the present case, the filing of the Petitions during the incumbency of former President Arroyo should not be a reason for according her presidential immunity. Thus, it would be legally imprecise to dismiss the present case as against former President Arroyo on

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[51] *Id.* at 557.

[52] *Id.* at 570.

account of presidential immunity from suit. Rather, the dismissal should be on a finding that petitioners in G.R. No. 186050 failed to make allegations or adduce evidence to show her responsibility or accountability for violation of or threat to Balao's right to life, liberty and security.[53]

It is not impossible that the president, as the head of State, has unimpeded access to data and information on all citizens. But the entity that holds access to this data or information is not the president, in his or her *personal* capacity, but the *Office* of the President. Thus, respondents in the petition for the writ of *habeas data* may plead the defenses of national security, state secrets, or privileged communication.[54] While the president is the titular head of the Office, there are several employees that must assist him or her in its operations. Thus, it is the executive secretary, as the head of the Office of the President, that is named the party respondent in petitions assailing the president's official acts.[55]

It would, thus, be erroneous to assume that a petition for a writ of *habeas data* against the president would hamper the operations of the Office. The president is not asked to personally appear before the courts to defend his or her case. The president is not required to produce his or her personal computers for the courts to access the database or information. Instead, the Office of the Solicitor General appears on the president's behalf, as it does on behalf of any of the president's alter egos, including the executive secretary. Any of the other tasks required in the verified return may be gathered by the Office of the President on the president's behalf.

The ultimate purpose of providing the president with immunity from suit is to prevent him or her from being distracted from accomplishing his or her presidential duties, which "demand

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[53] *J.* Sereno, Dissenting Opinion in *Batao v. Macapagal-Arroyo,* 678 Phil. 532, 587 (2011) [Per *J.* Villarama, Jr., *En Banc*].

[54] RULE ON THE WRIT OF *HABEAS DATA,* Sec. 10.

[55] See *Aguinaldo v. Aquino III,* 801 Phil. 492 (2016) [Per *J.* Leonardo-De Castro, *En Banc*].

undivided attention."[56] But the filing of a *meritorious* petition for a writ of *habeas data* will not vex, distract, or harass the president. On the contrary, it is solid proof that our democratic institutions remain strong and the people remain sovereign.

III

The invocation of presidential immunity from suit must be balanced with legitimate State interests. In *Estrada,* this Court observed that "a critical reading of current literature on executive immunity will reveal a judicial disinclination to expand the privilege especially when it impedes the search for truth or impairs the vindication of a right."[57] Indeed, the Constitution declares as its principles and State policies:

ARTICLE II
Declaration of Principles and State Policies

SECTION 1. The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.

. . . . . .

SECTION 27. The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption.[58]

Ours is a Constitution that demands accountability from its public officers. It declares that public office is a public trust:

ARTICLE XI
Accountability of Public Officers

SECTION 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

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[56] *Soliven v. Makasiar,* 249 Phil. 394, 400 (1988) [*Per Curiam, En Banc*].

[57] *Estrada v. Desierto,* 406 Phil. 1, 76 (2001) [Per *J.* Puno, *En Banc*].

[58] CONST., Art. II, Secs. 1 and 27.

Public officers, from the president to the everyday utility worker, are accountable to the people *at all times.* Expanding the privilege of presidential immunity to include those petitions requiring immediate relief and involving serious violations of fundamental rights runs counter to these constitutional mandates.

Presidents are not infallible. Our history has taught us this. By promulgating the Rule on the Writ of Amparo and the Rule on the Writ of *Habeas Data,* this Court has taken it upon itself to provide the citizens with the shield against possible abuses by State agents, including the president.

While the president remains immune from suit during incumbency, petitions for a writ of amparo or *habeas data* may still be filed against his or her official acts, as long as the executive secretary, or the relevant officers, are named as party respondents. The Petition's automatic dismissal on the ground of immunity, without any other means of redress, demeans the values enshrined in our Constitution. It sets a dangerous precedent that the president is untouchable and cannot be held accountable for extrajudicial killings and enforced disappearances committed during his or her incumbency.

ACCORDINGLY, I concur with the dismissal of the Petition, without prejudice to the filing of the proper case against the proper officials.

SEPARATE CONCURRING OPINION

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

In the main, the Court is tasked to resolve the issue of whether the respondent, an incumbent President of the Philippines, may be the subject of a Petition for the issuance of a writ of *habeas data.*

Petitioner submits that the instant case is beyond the ambit of presidential immunity on two points: *first*, as it involves the actions and statements made by the respondent not in pursuance of his functions as Chief Executive; and *second,* because a petition for the issuance of a writ of *habeas data* does not involve the determination of administrative, civil, or criminal

liability but only seeks to enjoin respondent from committing the act or acts complained of.

I disagree on both points.

On the first, I join the opinion of Chief Justice Lucas P. Bersamin, that the concept of presidential immunity is absolute and all-encompassing during the period of incumbency of the President. Simply, presidential immunity extends even to petitions for the issuance of the special prerogative writs of *amparo* and *habeas data*, brought before the court during the President's tenure.

Then, even assuming that the instant petition for the issuance of *habeas data* may be entertained by the Court, the same should still be dismissed on account of substantial and procedural deficiencies.

An incumbent President is absolutely immune from any suit, legal proceeding or judicial process during his tenure.

No less than the Constitution guarantees the President, as head of the executive department, immunity from suit during his period of incumbency. Jurisprudence on the subject matter later clarified that presidential immunity covers any suit, legal proceeding or judicial process.

The nature and scope of the immunity of the President during his tenure is absolute. After his tenure, such immunity will only extend to official acts done by him during his tenure. The rationale for this is simple, as elucidated by the Court in *Prof. David v. Pres. Macapagal-Arroyo:*[1]

> Settled is the doctrine that the President, during his tenure of office or actual incumbency, may not be sued in any civil or criminal case, and there is no need to provide for it in the Constitution or law. It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as

[1] 522 Phil. 705 (2006).

such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of the Government.[2]

It is my submission that Presidential immunity extends even to the issuance of the prerogative **writ of *habeas data.* While the Court has yet to rule on this particular issue, analogous cases supports the foregoing conclusion.**

In the case of *In the Matter of the Petition for the Writ of Amparo and Habeas Data in Favor of Rodriguez,*[3] which involved the filing of a petition for the issuance of a writ of *amparo* and *habeas data* in favor of Noriel H. Rodriguez (Rodriguez), former President Gloria Macapagal-Arroyo (President Arroyo) was named as one of therein respondents. The Court of Appeals (CA), in its Decision[4] dated April 12, 2010, found therein respondents — with the exception of Calog, Palacpac or Harry — to be accountable for the violations of Rodriguez's right to life, liberty and security. The CA, however, dismissed the petition with respect to former President Arroyo on account of her presidential immunity from suit; explaining that, at the time of the filing of the petition and promulgation of the CA decision, she was the incumbent president of the Philippines.

When the case was elevated to this Court through a Petition for Partial Review on *Certiorari,* the case, docketed as G.R. No. 191805[5] was brought before the Court *En Banc,* which ruled in this wise:

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[2] *Id*. at 795.

[3] 676 Phil. 84 (2011).

[4] Penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Normandie B. Pizarro and Florito S. Macalino; *rollo* (G.R. No. 191805), pp. 29-74.

[5] *In the Matter of the Petition for the Writ of Amparo and Habeas Data in Favor of Rodriguez, supra* note 3.

It bears stressing that since there is no determination of administrative, civil or criminal liability in amparo and habeas data proceedings, courts can only go as far as ascertaining responsibility or accountability for the enforced disappearance or extrajudicial killing. As we held in *Razon v. Tagitis:*

> It does not determine guilt nor pinpoint criminal culpability for the disappearance; rather, it determines responsibility, or at least accountability, for the enforced disappearance for purposes of imposing the appropriate remedies to address the disappearance. *Responsibility* refers to the extent the actors have been established by substantial evidence to have *participated* in whatever way, by action or omission, in an enforced disappearance, as a measure of the remedies this Court shall craft, among them, the directive to file the appropriate criminal and civil cases against the responsible parties in the proper courts. *Accountability,* on the other hand, refers to the measure of remedies that should be addressed to those who exhibited *involvement in the enforced disappearance without bringing the level of their complicity to the level of responsibility defined above; or who are imputed with knowledge* relating to the enforced disappearance and who carry the burden of disclosure; or those who *carry, but have failed to discharge, the burden of extraordinary diligence in the investigation* of the enforced disappearance. In all these cases, the issuance of the Writ of *Amparo* is justified by our primary goal of addressing the disappearance, so that the life of the victim is preserved and his liberty and security are restored.

Thus, in the case at bar, the Court of Appeals, in its Decision found respondents in G.R. No. 191805 — with the exception of Calog, Palacpac or Harry – to be accountable for the violations of Rodriguez's right to life, liberty and security committed by the 17th Infantry Battalion, 5th Infantry Division of the Philippine Army. **The Court of Appeals dismissed the petition with respect to former President Arroyo on account of her presidential immunity from suit. Rodriguez contends, though, that she should remain a respondent in this case to enable the courts to determine whether she is responsible or accountable therefor. In this regard, it must be clarified that the Court of Appeals' rationale for dropping her from the list of respondents no longer**

stands since her presidential immunity is limited only to her incumbency.[6] (Citations omitted, emphasis and underscoring ours)

Confronted with the issue of whether or not then respondent former President Arroyo should remain as one of the respondents in the case for writ of *amparo*, the Court in effect agreed with the CA when the latter dismissed the petition with respect to former President Arroyo on account of her presidential immunity from *any and all* suit during her incumbency. This was likewise bolstered by the Court's clarificatory statement that the CA's rationale for dropping President Arroyo from the list of respondents no longer stood since at that time, President Arroyo was no longer the President of the Philippines.

Having thus settled that herein respondent Rodrigo Roa Duterte, as the incumbent President of the Philippines, is immune from all suit during his tenure, and as such may not be haled before the Court even for the limited purpose of a writ of *habeas data*, in view of the attendant circumstances, I believe that it is equally important to revisit A.M. No. 08-1-16-SC, or the Rule on the Writ of *Habeas Data*, so as to prevent erroneous filing of the same in the future.

In this regard, I submit that the even setting the concept of presidential immunity aside, the petition must still be denied.

Petitioner filed the present petition before this Court alleging that the respondent has been gathering **private and personal information** about her, intruding into her **private life,** and publicizing her **private affairs** outside the realm of legitimate public concern in violation of her right to privacy in life, liberty and security. According to petitioner, the repeated crude and personal attacks on her by the respondent should be viewed as a continuing threat to her life, liberty and privacy that can be prevented and protected should the present petition for the issuance of a writ of *habeas data* be granted.

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[6] *Id*. at 105-106.

The petition for the issuance of a Writ of Habeas Data has been improperly lodged directly before this Court.

The 2nd paragraph of Section 3 of A.M. No. 08-1-16-SC expressly provides that the petition may only be filed directly with the Supreme Court, the CA or the *Sandiganbayan* if the action concerns **public data files** of government offices. In all other cases, it must be filed with the Regional Trial Court (RTC), *viz.:*

> **SEC. 3. Where to File. —** The petition may be filed with the Regional Trial Court where the petitioner or respondent resides, or that which has jurisdiction over the place where the data or information is gathered, collected or stored, at the option of the petitioner.
>
> **The petition may also be filed with the Supreme Court or the Court of Appeals or the Sandiganbayan when the action concerns public data files of government offices**. (Emphasis ours)

Clearly, as worded, the option of filing directly with the Supreme Court cannot be exercised when the data or pieces of information gathered, collected, or stored deal with matters that are private in nature, as in the case at bar. In such event, the law requires that the petition be filed before the RTC where the petitioner or respondent resides, or that which has jurisdiction over the place where the data or information is gathered, collected or stored, at the option of the petitioner.

Moreover, although the Court has original and concurrent jurisdiction with the CA and the *Sandiganbayan* in the issuance of a Writ of *Habeas Data,* strict adherence to the doctrine of hierarchy of courts must still be observed. This doctrine was exhaustively discussed in the case of *GIOS-SAMAR, Inc. v. Department of Transportation and Communications and Civil Aviation Authority of the Philippines*,[7] whereby it was defined as a "filtering mechanism" designed to enable the Court to focus on the more fundamental and essential tasks assigned to it by the highest law of the land, *viz.*:

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[7] G.R. No. 217158, March 12, 2019.

In fine, while this Court has original and concurrent jurisdiction with the RTC and the CA in the issuance of writs of certiorari, prohibition, mandamus, quo warranto, and habeas corpus (extraordinary writs), direct recourse to this Court is proper only to seek resolution of questions of law. Save for the single specific instance provided by the Constitution under Section 18, Article VII, cases the resolution of which depends on the determination of questions of fact cannot be brought directly before the Court because we are not a trier of facts. We are not equipped, either by structure or rule, to receive and evaluate evidence in the first instance; these are the primary functions of the lower courts or regulatory agencies. This is the raison d'etre behind the doctrine of hierarchy of courts. It operates as a constitutional filtering mechanism designed to enable this Court to focus on the more fundamental tasks assigned to it by the Constitution. It is a brightline rule which cannot be brushed aside by an invocation of the transcendental importance or constitutional dimension of the issue or cause raised.[8]

In the said case, the Court opined that the doctrine of hierarchy of courts serves as a guide to litigants as to the proper venue of appeals and/or the appropriate forum for the issuance of extraordinary writs and that failure to observe compliance may cause the dismissal of their petitions, *viz.:*

Thus, although this Court, the CA, and the RTC have concurrent original jurisdiction over petitions for *certiorari,* prohibition, *mandamus, quo warranto,* and *habeas corpus,* parties are directed, as a rule, to file their petitions before the lower-ranked court. Failure to comply is sufficient cause for the dismissal of the petition.[9]

Here, petitioner herself submits, the allegations centered on private and personal information which the respondent has allegedly been gathering to humiliate and attack her. There is, thus, merit to the contention of the Office of the Solicitor General that the present petition was erroneously filed before this Court.

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[8] *Id.*

[9] *Id.*

The allegations in the petition are not supported by substantial evidence.

Assuming for the sake of argument that the petition was properly lodged before the Court, the petition must still be dismissed for failure to substantiate the petition through the required quantum of proof for the issuance of a writ of *habeas data*.

Section 1 of the Rule on the Writ of *Habeas Data* explicitly provides:

> **Section 1.** *Habeas Data.*— The writ of habeas data is a remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party.

Therefore, in order for a petition for the issuance of the writ of *habeas data* to prosper, the following elements must be present: *first,* that a person has right to informational privacy;[10] *second,* that there is a violation or a threat to violate such right which affects a person's right to life, liberty and security; *third,* that the act is done through unlawful means in order to achieve unlawful ends; *fourth,* that the act is committed by a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information; *fifth,* that the information gathered, collected or stored pertained to the person, family, home and correspondence of the aggrieved party; and *sixth,* that the petition was lodged before the proper court.[11]

Jurisprudence clarified that a writ of *habeas data* will not issue "on the basis merely of an alleged unauthorized access

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[10] *Vivares, et al. v. St. Theresa's College, et al.,* 744 Phil. 451, 463 (2014).

[11] *The Rule on the Writ of Habeas Data,* A.M. No. 08-1-16-SC, January 22, 2008.

to information about a person."[12] The petitioner must show an actionable entitlement to informational privacy by establishing a nexus between the right of privacy on the one hand, and the right to life, liberty, or security on the other. The privilege of the writ may be extended only upon proof, by substantial evidence, of the "manner" or "means" in which the right to privacy is violated or threatened.[13]

In the case of *Dr. Lee v. P/Supt. Ilagan*,[14] the Court made the following discussion as regards sufficiency of a petition for the issuance of the Writ of *Habeas Data*, to wit:

> Thus, in order to support a petition for the issuance of such writ, Section 6 of the *Habeas Data* Rule essentially requires that the petition sufficiently alleges, among others, "**[t]he manner the right to privacy is violated or threatened and how it affects the right to life, liberty or security of the aggrieved party."** In other words, the petition must adequately show that **there exists a nexus between the right to privacy on the one hand, and the right to life, liberty or security on the other. Corollarily, the allegations in the petition must be supported by substantial evidence** showing an actual or threatened violation of the right to privacy in life, liberty or security of the victim. In this relation, it bears pointing out that the writ of *habeas data* will not issue to protect purely property or commercial concerns nor when the grounds invoked in support of the petitions therefor are vague and doubtful.[15] (Emphasis and underlining supplied)

As to what constitutes substantial evidence for the purpose of determining the sufficiency of the allegations in the petition, the Court, in *Miro v. Vda. de Erederos, et al.*,[16] defined it as more than a mere scintilla or modicum of evidence, *viz.:*

> Substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate

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[12] *Vivares, et al. v. St. Theresa's College, et al., supra* note 10.

[13] *Id*.

[14] 745 Phil. 196 (2014).

[15] *Id.* at 201.

[16] 721 Phil. 772 (2013).

to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.[17]

A thorough review of the petition reveals nothing more but bare assertions that there has been a violation of her rights. There was no showing that she was in the first place, entitled to informational privacy as to matters subject of the petition, and of how the same poses an imminent and continuing threat to her life, liberty and security sufficient, identifying in this regard the particular unlawful means utilized by the respondent. The petition contains vague assertions and nothing more, this falls short of the required quantum of proof.

I find it apropos to highlight the Court's discussion *In the Matter of the Petition for the Writ of Amparo and Habeas Data in Favor of Rodriguez*[18] where it was clarified that a petition for the issuance of the writ of *habeas data* need not only state that there was a violation or a continuing threat to violate a person's right to privacy in life, liberty or security but, more importantly, must allege and prove through substantial evidence that the information regarding the person, family, home and correspondence of the aggrieved party is being gathered or collected by the respondent through unlawful means in order to achieve unlawful ends, to wit:

> At the outset, it must be emphasized that the writs of *amparo* and *habeas data* were promulgated to ensure the protection of the people's rights to life, liberty and security. The rules on these writs were issued in light of the alarming prevalence of extrajudicial killings and enforced disappearances. The Rule on the Writ of *Amparo* took effect on 24 October 2007, and the Rule on the Writ of *Habeas Data* on 2 February 2008.
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> x x x x x x x x x
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> Meanwhile, the writ of habeas data provides a judicial remedy to protect a person's right to control information regarding oneself,

[17] *Id*. at 787.

[18] *Supra* note 3.

particularly in instances where such information is being collected **through unlawful means in order to achieve unlawful ends.** As an independent and summary remedy to protect the right to privacy — especially the right to informational privacy — the proceedings for the issuance of the writ of habeas data does not entail any finding of criminal, civil or administrative culpability. If the allegations in the petition are proven through **substantial evidence,** then the Court may (a) grant access to the database or information; (b) enjoin the act complained of; or (c) in case the database or information contains erroneous data or information, order its deletion, destruction or rectification.[19] (Emphasis ours and citations omitted)

Here, the allegations made by petitioner fell short of the required quantum of proof necessary for the issuance of the writ of *habeas data.* As correctly pointed out by the Office of the Solicitor General in its Memorandum[20] dated November 21, 2016, the petitioner *failed* to identify any unlawful means through which private information about her life, liberty, and security were obtained. A general allegation or sweeping accusation, unsupported by substantial evidence, deserves scant or no consideration at all. The reliance of petitioner on statements uttered by the respondent in the course of the on-going probe on her perceived involvement in illegal drugs trade and her inappropriate conduct as a public official is insufficient to warrant the issuance of the writ.

The petitioner must be reminded that the burden of proof fell on her shoulders which obviously she could not bear to carry. Allegations are not evidence and without evidence, bare allegations do not prove facts.[21] The writ will not issue on the basis merely of an alleged unauthorized access to information about a person. Necessarily, the present petition must fail.

The President has the right to exercise Freedom of Expression.

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[19] *Id*. at 102-103.

[20] *Rollo,* pp. 121-152.

[21] *Sabellina v. Buray, et al.,* 768 Phil. 224, 238 (2015).

Finally, it is well to remind petitioner that one of the cherished liberties enshrined and protected by the Constitution is the freedom of expression which covers the right to freedom of speech. In *Chavez v. Gonzales, et al.*,[22] the Court held that the scope of this freedom is so broad and covers myriad matters of public interest or concern and should not be confined solely to the expression of conventional ideas, *viz.:*

> The scope of freedom of expression is so broad that it extends protection to nearly all forms of communication. It protects speech, print and assembly regarding secular as well as political causes, and is not confined to any particular field of human interest. The protection covers myriad matters of public interest or concern embracing all issues, about which information is needed or appropriate, so as to enable members of society to cope with the exigencies of their period. The constitutional protection assures the broadest possible exercise of free speech and free press for religious, political, economic, scientific, news, or informational ends, inasmuch as the Constitution's basic guarantee of freedom to advocate ideas is not confined to the expression of ideas that are conventional or shared by a majority.[23]

The President, being a citizen of this country, is also entitled to the free exercise of this right more so when the exercise of the same is in aid of or in furtherance of justice and directed against improper conduct of public officials who, at all times, must uphold public interest over personal interest.

A remark made in a fit of anger and as an expression of one's frustration over the conduct of another falls within the ambit of freedom of expression and does not automatically make one legally accountable lest we deprive the speaker of his right to speak.

In the case of *Davao City Water District v. Aranjuez, et al.*,[24] the Court held that the constitutional right to freedom of

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[22] 569 Phil. 155 (2008).

[23] *Id.* at 198.

[24] 760 Phil. 254 (2015).

expression is not relinquished by those who enter government service solely on account of their employment in the public sector, *viz.:*

> It is correct to conclude that those who enter government service are subjected to a different degree of limitation on their freedom to speak their mind; however, it is not tantamount to the relinquishment of their constitutional right of expression otherwise enjoyed by citizens just by reason of their employment. Unarguably, a citizen who accepts public employment "must accept certain limitations on his or her freedom." But there are some rights and freedoms so fundamental to liberty that they cannot be bargained away in a contract for public employment. It is the Court's responsibility to ensure that citizens are not deprived of these fundamental rights by virtue of working for the government.[25]

In the same vein, election to public office by the President is not tantamount to the relinquishment of his right to speak his mind or to express himself. As correctly pointed out by the Solicitor General, the statements made were in relation to petitioner's qualifications to hold public office and her perceived involvement in illegal drugs. Clearly, these are matters of public concern subject to public scrutiny — even scrutiny by the President himself.

Public office destines one to live a very public life and with that level of exposure, public scrutiny is inevitable.

Accordingly, I vote to **DISMISS** the petition.

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[25] *Id.* at 279.

EN BANC

[G.R. No. 242257. October 15, 2019]

IN THE MATTER OF PETITION FOR WRIT OF AMPARO OF VIVIAN A. SANCHEZ. VIVIAN A. SANCHEZ, *petitioner, vs.* **PSUPT. MARC ANTHONY D. DARROCA, Chief of Police, San Jose Municipal Police Station; PSSUPT. LEO IRWIN D. AGPANGAN, Provincial Director, PNP-Antique; PCSUPT. JOHN C. BULALACAO, Regional Director, PNP-Region VI, and MEMBERS OF THE PNP UNDER THEIR AUTHORITY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; THE RULE ON THE WRIT OF *AMPARO* (A.M. NO. 07-9-12-SC); WRIT OF AMPARO; NATURE OF THE REMEDY, EXPLAINED. — The Rule on the Writ of *Amparo* was issued by this Court as an exercise of its power to "promulgate rules concerning the protection and enforcement of constitutional rights[.]" Section 1 defines a petition for a writ of amparo as "a remedy available to any person whose right to life, liberty[,] and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity." The writ of *amparo* is, thus, an equitable and extraordinary remedy primarily meant to address concerns such as, but not limited to, extrajudicial killings and enforced disappearances, or threats thereof. x x x The proceedings for the issuance of writs of *amparo* are extraordinary. They are significant not only in terms of final relief. In determining whether the petition must be granted, judges act as impartial inquisitors seeking to assure themselves that there is no actual or future threat to the life or liberty of petitioners. In a way, courts hearing writs of amparo assist in ferreting out the truth by providing an antidote to the naturally intimidating atmosphere of police investigations, especially involving communist and other rebels against the government. The Rule on the Writ of Amparo was crafted in an era when extrajudicial killings and involuntary disappearances were on

the rise allegedly due to the government's efforts to defeat an insurgency. The Rule was, in part, this Court's statement that the insurgents' narrative that fundamental rights were not durable and universal at all times was false. It was an affirmation of the belief that, perhaps unlike the rebels, our Constitution protected civility and human rights, and that this protection was what differentiated the government from the insurgents. It was, and still is, a rule that underscores our humanity and our civility.

2. ID.; ID.; ID.; THE TOTALITY OF THE CIRCUMSTANCES IN THE PRESENT CASE SHOWS THAT PETITIONER AND HER CHILDREN WERE THE SUBJECT OF SURVEILLANCE BECAUSE OF THEIR RELATIONSHIP WITH A SUSPECTED MEMBER OF THE NEW PEOPLE'S ARMY, CREATING A REAL THREAT TO THEIR LIFE, LIBERTY, OR SECURITY. — The totality of petitioner's evidence undoubtedly showed that she became a person of interest after she had first visited the funeral home, where her photo was taken. P02 De la Cruz tried to downplay the situation by claiming that petitioner's photo was not "posted" in the police station, but she likewise did not deny telling petitioner that she saw petitioner's photo at the police station. Whether petitioner's photo was actually posted and distributed at the police station or was just taken for future reference, the taking of the photo bolsters petitioner's claims that she was being monitored by the police. Respondents try to paint petitioner's claims as the ramblings of a paranoid and overly suspicious person, but even her daughter confirmed the numerous times the police drove by their house and being tailed whenever they set foot outside their house. This shows that petitioner was not merely imagining the threats against her and her family. The totality of obtaining circumstances likewise shows that petitioner and her children were the subject of surveillance because of their relationship with a suspected member of the New People's Army, creating a real threat to their life, liberty, or security. Being Labinghisa's widow, despite being separated in fact from him for more than a decade, puts her at a precarious position in light of the current administration's aggressive efforts to stamp out the communist struggle in the country, which is seen as the "scourge of society[.]" Her apprehension at being targeted as a suspected member of the New People's Army was, thus, palpable and

understandable, causing her to "act suspiciously" as claimed by respondents, who subjected her to threats and accusations.

3. ID.; ID.; ID.; WHATEVER INFORMATION RESPONDENTS MAY HOPE TO EXTRACT FROM PETITIONER AND HER CHILDREN ARE PROTECTED BY THE RULE ON MARITAL AND FILIAL PRIVILEGES; NONE OF THE EXCEPTIONS TO MARITAL PRIVILEGE EXIST IN CASE AT BAR; THAT PETITIONER IS SEPARATED IN FACT FROM HER HUSBAND IS NOT TANTAMOUNT TO STRAINED RELATIONS THAT WOULD SUFFICE AS AN EXCEPTION. — [P]etitioner's relationship with her husband insulates her from any inquiries regarding Labinghisa's purported membership in the New People's Army. Whatever information respondents may hope to extract from her or her children are protected by spousal and filial privileges, which continue to exist even after Labinghisa's death. x x x Marriage is an inviolable social institution and the foundation of the family which, in turn, is the foundation of the nation. In recognition of the significance of marriage to Philippine society, testimonial privilege and communication privilege have been granted to spouses. This is to preserve their harmonious relationship and to prevent any party, including a spouse, to take advantage of the free communication between the spouses or of information learned within the union. x x x [T]he overriding consideration in the State's support of marriage is the recognition of its status as an inviolable social institution, with the State implicitly acknowledging the importance of unfettered communication between the spouses. The family and its members likewise enjoy a similar privilege. No one can be compelled to testify against his or her direct descendants or direct ascendants. Nonetheless, exceptions do exist to the general rule of marital privilege or disqualification. Among these is when a spouse commits an offense that "directly attacks, or directly and vitally impairs, the conjugal relation[.]" This Court expounded in *Francisco* that when there is no more spousal harmony to be preserved because of strained domestic relations, the identity of interests and the danger of perjury disappear, and the law's aim of protecting the security of private life also ceases to exist. None of the exceptions to marital privilege exist here. Petitioner admits to being separated in fact from Labinghisa for more than a decade. Yet, this does not suffice as an exception, as separation

is not tantamount to strained marital relations. Further, neither spouse committed an offense that impaired their conjugal union. Labinghisa's supposed membership in the New People's Army is not an offense envisioned by jurisprudence which would create an exception to the general rule of marital disqualification. Wives and children are not ordinary witnesses, as evidenced by the privileges they enjoy against State incursion into their relationships. Hence, respondents' surveillance of petitioner and her children as witting or unwitting witnesses against her husband or his activities is correctible by a writ of amparo.

4. ID.; ID.; ID.; RESPONDENTS' ACT OF TAKING PETITIONER'S PHOTO WITHOUT HER CONSENT AND THEN DISPLAYING IT AT THE POLICE STATION CONSTITUTES A VIOLATION OF PETITIONER'S RIGHT TO PRIVACY. — Similar to marital privilege, the right to privacy is also a basic, fundamental right. x x x This is why respondent Police Superintendent Darroca's lack of contrition over his police officers' act of taking petitioner's photo without her permission—and then placing it on display at the police station—is disturbing. It appears as though he sees nothing wrong in flagrantly and inexcusably violating petitioner's right to privacy.

5. ID.; ID.; ID.; THE REGIONAL TRIAL COURT FAILED OR REFUSED TO SEE THAT RESPONDENTS' ACTIONS COMPLAINED OF WERE ACTUAL OR IMMIMENT THREATS AGAINST PETITIONER AND HER CHILDREN; WHERE PETITIONER'S FEAR OVER THE THREAT TO HER SECURITY WAS SUPPORTED BY SUBSTANTIAL EVIDENCE AND FURTHER CORROBORATED BY HER DAUGHTER'S TESTIMONY OF CONSTANT POLICE DRIVE-BYS AND THE TAILINGS DONE BY AN UNMARKED VEHICLE, THEY DESERVE THE PROTECTION OF A WRIT OF *AMPARO*. — In inferring conclusions involving power deficits in relationships, judges must be careful not to be gender-blind. In denying the Petition for the writ of *amparo*, the Regional Trial Court echoed respondents' statement that the taking of petitioner's photo and the threats of obstruction of justice thrown at her were part of "the conduct of a logical investigation." It could not see, or it refused to see that these actions, together with the surveillance done, were actual or imminent threats against petitioner and her children. In rendering judgment, judges must

not impose a standpoint viewed from their implicit status in society. They must look beyond their status as well-connected people who can assert themselves against men in uniform and who have no filial relation to one tagged as a communist. By advertently or inadvertently ignoring petitioner's not so unique predicament as the spouse of a labeled communist, the Regional Trial Court created standards that would deny protection to those who need it most. Petitioner's apprehension over the threat to her security was duly supported by substantial evidence. It was further corroborated by her daughter who also witnessed the constant police drive-bys and the tailings done by an unmarked vehicle. Thus, petitioner and her children deserve the protection of a writ of amparo.

6. ID.; ID.; GENERAL DENIAL IS PROSCRIBED UNDER THE RULE; RESPONDENTS' FAILURE TO OBSERVE THE EXTRAORDINARY DILIGENCE REQUIRED OF THEM HINTS AT A MOTIVE AGAINST PETITIONER AND HER FAMILY. — In his Affidavit attached to the Verified Return, respondent Police Superintendent Darroca denied putting petitioner and her children under surveillance or ordering his officers to follow them[.] x x x However, his denial is not the lawful defense required in a Verified Return, but a merely general denial, which is proscribed in Section 9 of the Rule on the Writ of *Amparo*. Further, he failed to show that he observed extraordinary diligence in performing his duty, as required by Section 17 of the Rule on the Writ of *Amparo*[.] x x x Petitioner and her daughter categorically stated that police cars have driven by their house with alarming regularity after petitioner had identified her husband's body. To this, respondent Police Superintendent Darroca only issued a blanket denial that he did not direct his officers to tail or monitor petitioner and her family. He did not present affidavits from his police officers to support his claim. Further, petitioner's report of being tailed by a vehicle only merited a perfunctory request from the police to the Land Transportation Office. The police, which had better resources to perform the investigation, should have done more to follow up her request. Their failure to exert the extraordinary diligence expected of them hints at a motive against petitioner and her family.

HERNANDO*, J., dissenting opinion*:

1. REMEDIAL LAW; THE RULE ON THE WRIT OF *AMPARO* (A.M. NO. 07-9-12-SC); PETITION FOR A WRIT OF *AMPARO*; NATURE OF THE REMEDY AND THE APPLICABLE QUANTUM OF PROOF, EXPLAINED. — The Rule on the Writ of *Amparo* also provides that for the Court to render judgment granting the privilege of the writ, the petitioner must be able to discharge the burden of proving the allegations in the petition by the standard of proof required, that is, substantial evidence. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. In a petition for writ of *amparo*, the Court is allowed a certain degree of leniency or flexibility in the application of the evidentiary rules by adopting the totality of evidence standard. The Court explained in *Razon, Jr. v. Tagitis* that evidentiary difficulties had compelled it to adopt standards appropriate and responsive to the circumstances, without transgressing the due process requirements that underlie every proceeding. It determined that the fair and proper rule was to consider all the pieces of evidence adduced in their totality, and to consider any evidence otherwise inadmissible under usual rules to be admissible, if it is consistent with the admissible evidence adduced. In other words, the rules are reduced to the most basic test of reason — *i.e.*, to the relevance of the evidence to the issue at hand, and its consistency with all other pieces of adduced evidence. Thus, even hearsay testimony or circumstantial evidence can be admitted and appreciated if it satisfies this basic minimum test. Yet the Court also issued a *caveat* in *Bautista v. Dannug-Salucon* that such use of the standard does not unquestioningly authorize the automatic admissibility of hearsay or circumstantial evidence in all *amparo* proceedings. The matter of the admissibility of evidence should still depend on the facts and circumstances peculiar to each case.

2. ID.; ID.; ID.; PETITIONER FAILED TO PROFFER THE REQUIRED SUBSTANTIAL EVIDENCE TO PROVE HER ENTITLEMENT TO A WRIT; THE INSTANT CASE DOES NOT INVOLVE EXTRALEGAL KILLING. — Judging by the foregoing quantum of proof applicable particularly to a petition for a writ of *amparo*, it is my view that Sanchez failed to present substantial evidence to prove her entitlement to such a writ. After a judicious review

of the records, I find no established violation or threat to the life, liberty, or security of Sanchez or her children by any of the respondents. Neither did Sanchez show proof that the respondents committed any unlawful act or omission as to justify her plea for a writ of *amparo*. x x x [T]he writ of amparo specifically covers cases of extralegal killings and enforced disappearances, or threats thereof. *Extralegal killings* are described as killings committed without due process of law, *i.e.*, without legal safeguards or judicial proceedings. At the outset, Sanchez filed the Petition for Writ of *Amparo* before the RTC with herself as the aggrieved party and not her deceased husband, Labinghisa. Hence, it is not for the Court herein to look into the circumstances of Labinghisa's death during the alleged PNP-NPA encounter. There is also, notably, no allegation here at all that Labinghisa's death was an extralegal killing. As for Sanchez, the Court fails to perceive any actual, imminent, or continuing threat on her life and/or that of her children. By her own narrative, the only express threat made against her was that she would be prosecuted for obstruction of justice if she would refuse to answer the questions of the police officers at St. Peter's during her second visit on August 17, 2018. This hardly puts her in danger of extrajudicial killing. Even assuming that the alleged surveillance and monitoring conducted on Sanchez and her children were true, the Court still cannot make a deduction simply based thereon that they are under threat of extralegal killing. Corollarily, Sanchez failed to establish that the surveillance and monitoring allegedly conducted on her and her children amounted to unlawful acts as to fall under the protective mantle of the writ of *amparo*.

3. ID.; ID.; ID.; NEITHER WAS PETITIONER ABLE TO ESTABLISH THAT SHE HAD BEEN THE VICTIM OF FORCED DISAPPEARANCE OR IS UNDER THREAT THEREOF; MERE APPREHENSIONS DO NOT QUALIFY AS A THREAT THAT WILL JUSTIFY ISSUANCE OF THE WRIT; PETITIONER FAILED TO DISCHARGE THE BURDEN OF PROOF FOR THE GRANT OF A WRIT OF *AMPARO* IN HER FAVOR. — Neither was Sanchez able to satisfactorily prove that she had been the victim of enforced disappearance or is under threat thereof[.] x x x Sanchez did not allege, much less prove, that she had been arrested, detained, or abducted by any of the respondents or people acting under their authority. There is likewise absolute

lack of allegations and proof of government participation in such arrest, detention, or abduction. While Sanchez might have been interrogated by police officers during her second visit to St. Peter's on August 17, 2018, she was still able to eventually leave and go home that same day. There appears to be no other instance when Sanchez or her daughters had been actually deprived of their liberty. Even until the hearing of her petition, Sanchez apparently could still freely travel from one place to another. Sanchez's basic allegation was only that she and her daughters were afraid to leave their house and engage in their daily activities because of the purported surveillance and monitoring. Yet, their mere apprehensions, without any other substantiating evidence, do not qualify as a threat that will justify issuance of the writ. x x x Even applying the minimum of the totality of evidence standard, which would have allowed the admission and appreciation of hearsay and circumstantial evidence, Sanchez still failed to discharge the burden of proof necessary for the grant of a writ of *amparo* in her favor. There is just a dearth of evidence adduced by Sanchez, hence, falling short of substantial evidence necessary to establish any actual violation or threat to her right to life, liberty, or security. Her apprehensions did not rise to the level that must be necessarily protected by a writ of *amparo*. Otherwise stated, mere acts of surveillance or monitoring, as part of legitimate police operations, could not and should not be characterized as acts indicative of or preparatory to extrajudicial killings or enforced disappearances falling under the protective mantle of a writ of *amparo*. At most, these are indications of instinctive fear, trauma even, naturally brought out by her connections with a person slain by the police authorities. On its lonesome, this fear does not impel the issuance of the writ of *amparo*. The writ cannot be issued on mere inferences or deductions.

4. ID.; ID.; ID.; RESPONDENT EXERCISED THE REQUIRED EXTRAORDINARY DILIGENCE IN THE PERFORMANCE OF THEIR DUTY AND PROVED THE SAME.— Extraordinary diligence as required and contemplated in this provision is more than the diligence expected of a good father of a family. x x x Respondents exercised this extraordinary diligence in the performance of their duty and proved the same. The averments in their Verified Return and attached Affidavits, bolstered by PSupt. Darroca's testimony in open court, that they had

expended and would continue to expend extraordinary diligence in acting on Sanchez's allegations, are adequate defenses. They had respectively issued the orders to their subordinates to validate if there was any threat against Sanchez and not to deliberately and intentionally come within one kilometer radius of Sanchez and her children pursuant to the TPO issued by the RTC. PSSupt. Agpangan further ordered the Police Chief of the Hamtic MPS to validate the alleged visit of its police intelligence personnel and the passing-by of its police patrol car at Sanchez's house, as well as the Officer-in-Charge of the San Jose MPS to verify with the Land Transportation Office the ownership of the tinted car with plate number ALL 5385, which purportedly followed Sanchez and her children around. To this effect, a Vehicle Verification Request to the Land Transportation Office was likewise submitted by the defense before the RTC to prove that respondents attempted to trace the said tinted vehicle alleged to have tailed Sanchez and her children outside their home. It bears reiterating that P02 De la Cruz's corroborative statements in open court confirmed that Sanchez was in fact not under any surveillance and that there was no clear evidence that the police was plotting against her life, liberty, or security.

5. ID.; ID.; ID.; MARITAL PRIVILEGE RULE IS INAPPLICABLE IN THE PRESENT CASE; THERE WAS NO SHOWING THAT PETITIONER AND HER CHILDREN WERE BEING FORCED TO TESTIFY AGAINST THE FORMER'S SPOUSE; MERE IDENTIFICATION AS ONE'S SPOUSE CANNOT BE CONSIDERED AS EQUIVALENT TO ADVERSE TESTIMONY. — It is also necessary to state that the evidentiary rules on privileged communication will not insulate Sanchez or her children from any inquiries regarding Labinghisa's purported membership in the NPA. x x x [T]here there was no indication in the records that Sanchez or any of her children were being made to testify against Labinghisa. It is a long stretch to claim that respondents' alleged surveillance of Sanchez and her children is tantamount to making them act as witnesses against Labinghisa, which is a State incursion into their privileged wife-husband and children-father relationships and thus correctible by a writ of *amparo*. Also, the marital privilege rule is inapplicable in the case at hand. As already mentioned, there was never an instance that Sanchez or any of her children were being forced

to testify against Labinghisa or against each other. In any case, and in view of Labinghisa's demise, the preservation or disturbance of domestic tranquility or marital peace is no longer feasible. At any rate, mere personal identification as one's spouse cannot be considered as equivalent to adverse testimony. There is also nothing inimical under the law if Sanchez admits before the investigating police officers her relationship with a suspected NPA member. There is simply an unjust inconsistency between alleging fear of being tagged as a spouse of a communist and, at the same time, banking upon the same legal status to support her petition for a writ of *amparo*.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondents.

D E C I S I O N

LEONEN, *J.*:

In determining whether a petition for a writ of *amparo* should be granted, judges, as impartial inquisitors, must assure themselves that there is no actual or future threat to the petitioner's life, security, or liberty. Indeed, pursuing rebels is a legitimate law enforcement objective, but the zeal with which our law enforcement officers clamp down on persons of interest or their loved ones must be bound by the fundamental rights of persons.

This Court resolves a Petition for Review on *Certiorari*[1] filed by Vivian A. Sanchez (Sanchez), assailing the Decision[2] of the Regional Trial Court, which denied her Petition for a writ of *amparo*.

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[1] *Rollo*, pp. 10-34.

[2] *Id*. at 169-187. The Decision, in Spl. Pro. No. 2018-08-1070 and promulgated on September 13, 2018, was penned by Executive Judge Francisco S. Guzman.

On August 16, 2018, Sanchez learned that her estranged husband, Eldie Labinghisa (Labinghisa), was among the seven (7) alleged members of the New People's Army who were gunned down by the Philippine National Police in Barangay Atabay, San Jose, Antique.[3]

Upon discovering that the corpses were sent to St. Peter's Funeral Home, Sanchez went there to verify the news of her husband's death. At the funeral home, however, the police officers stationed there took photos of her without her permission. Fearing what the officers had done, she left without being able to see or identify her husband's body.[4]

A few hours after Sanchez had returned from the funeral home, Police Officer 2 Nerissa A. De la Cruz (PO2 Dela Cruz), a close friend of hers, informed her that her photo was being circulated at the police station. The officer urged her to tell the investigating officers her husband's name, otherwise, they would go after her.[5] PO2 De la Cruz also warned her to voluntarily cooperate with the investigating officers, or they might suspect her and put her under surveillance.[6]

The following day, Sanchez went back to the funeral home, where she was confronted by three (3) police officers who threatened to apprehend and charge her with obstruction of justice if she refused to answer their questions. Again fearing for her safety, Sanchez hurried home without confirming the identity of her husband's body.[7]

Later that day, two (2) police officers went to Sanchez's house and showed her a photo of a cadaver. She confirmed the dead body as Labinghisa.[8]

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[3] *Id*. at 36.

[4] *Id*.

[5] *Id*. at 36, 86, and 89.

[6] *Id*. at 90 and 155-156.

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

[8] *Id*. at 37.

In the following days, Sanchez noticed the frequent drive-bys of a police car in front of her house and a vehicle that tailed her and her family when they went to Iloilo to attend her husband's wake.[9] She also noticed someone shadowing her when she was outside her house, causing her to fear for her and her children's safety.[10]

This fear was shared by her 15-year-old daughter, Scarlet Labinghisa, who attested that the constant police presence caused her anxiety as she worried for her mother's security:

> ... (On that same night, after dinner and while we were watching TV, I saw a patrol car pass by our house twice that me and my younger sister was puzzled and I began to feel nervous. We hurriedly closed our gate and doors. Starting that night, I already had trouble sleeping);
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> . . . . . .
>
> ... (On August 17, 2018, around 3:00 o'clock (*sic*) in the morning, I woke up feeling tired and nervous, but I continued preparing for school when I saw a vehicle passing our house several times but I just did not mind it. Around 6:00 o'clock (*sic*) in the morning, while were (*sic*) waiting for our ride to school, a patrol car passed in front of us, we hurriedly went inside our house and observed what they will do);
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> . . . . . .
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> ... (While we were on our way to Dalipe, I saw a vehicle following our ride but we continuedon (*sic*), then when we were already on our way to Iloilo, the same vehicle was still following us);
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> . . . . . .
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> ... (From that time, I always feel anxious for our security particularly that of my mother because what will happen to me and my sister if she will be gone, so my mother decided to seek help to ensure our security)[.][11]

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[9] *Id.* at 42.

[10] *Id.* at 37 and 42.

[11] *Id.* at 45-46.

On August 24, 2018, Sanchez filed before the Regional Trial Court of San Jose, Antique a Petition for Writ of *Amparo*[12] against Police Superintendent Marc Anthony D. Darroca (Police Superintendent Darroca), Police Senior Superintendent Leo Irwin D. Agpangan, Police Chief Superintendent John C. Bulalacao, and the police officers under their authority.

Sanchez alleged that the police officers' constant surveillance of her and her family made them fear for their safety and prevented them from going out of their house.[13] She pointed out that if the conduct of surveillance and monitoring was for her and her family's safety, then the police should have informed them of it beforehand.[14]

In an August 28, 2018 Order,[15] the Regional Trial Court issued a writ of *amparo* and a temporary protection order. It also directed members of the Philippine National Police to file a verified written return. The dispositive portion of the Regional Trial Court Order read:

> WHEREFORE, in consonance with Section 6 of A.M. No. 07-9-12- SC, also known as *The Rule on the Writ of Amparo*, let a **WRIT OF AMPARO** be issued, as follows:
>
> 1) ORDERING the RESPONDENTS to file their **verified written RETURN** within seventy-two (72) hours after the service of this writ, together with supporting affidavits, which shall, among other things, contain the following:
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> a) The lawful defenses to show that the respondent did not violate or threaten with violation the right to life, liberty and security of the aggrieved party, through any act or omission;

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[12] *Id*. at 35-40. Irwin was sometimes spelled as Erwin.

[13] *Id*. at 37.

[14] *Id*.

[15] *Id*. at 52-55. The Regional Trial Court Order was penned by Executive Judge Francisco S. Guzman.

b) The steps or action taken by the respondents to determine the fate or whereabouts of the aggrieved party and the person or persons responsible for the threat, act or omission;

c) All relevant information in the possession of the respondents pertaining to the threat, act or omission against the aggrieved party;

2) ORDERING the holding of a **SUMMARY HEARING** of the petition on **September 04, 2018** [Tuesday] at **2:00 o'clock in the afternoon** in the Session Hall of RTC Branch 12, Office of the Executive Judge, Hall of Justice, San Jose, Antique, and DIRECTING the parties to personally appear thereat; and

3) GRANTING a **TEMPORARY PROTECTION ORDER** prohibiting the respondents from going within a radius of one kilometer from the petitioner and her children, and to REFRAIN the respondents from the conduct of surveillance to the petitioner and her children.

RELATIVE TO THE FOREGOING, Mr. ELMER B. ESCAÑO, Branch Sheriff, under the supervision of ATTY. MA. B.G. CANDIDA D. RIVERO, Clerk of Court and Ex-Officio Provincial Sheriff of this Court, is hereby directed to PERSONALLY SERVE with DISPATCH this WRIT to the respondents herein mentioned, together with a copy of the Petition and its annexes.

Let copies of this WRIT be forthwith furnished to Branch Sheriff Elmer B. Escaño, Atty. Ma. BG Rivero, Atty. LV Jo T. Escartin and Atty. Antonio A. Alcantara and petitioner Vivian A. Sanchez, and let a separate copy hereof together with a copy of the verified petition be served personally upon all the respondents.

SO ORDERED.[16] (Emphasis in the original)

In their Verified Return,[17] the police officers denied violating or threatening to violate Sanchez and her family's right to life, liberty, and security.[18] They stressed that Sanchez's allegations

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[16] *Id*. at 54-55.

[17] *Id*. at 56-78.

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

were grounded on "baseless assumptions, hearsay, mistaken belief, speculations, impressions[,] and feelings[.]"[19]

On September 4, 2018, a summary hearing was conducted.[20]

In a September 13, 2018 Decision,[21] the Regional Trial Court dismissed the Petition for a writ of *amparo*.

The Regional Trial Court held that Sanchez failed to substantiate her assertion that she became a person of interest to the police after she had identified her husband's dead body. This was because she was unable to specifically allege the police officers' acts or the acts they sanctioned which threatened her security and liberty.[22] The Regional Trial Court stated:

> Furthermore, there was scarcity of any specific allegations that the public respondents had participated, authorized or at least sanctioned the perceived threat to the petitioner's right to life, liberty and security, and the evidence adduced thus far, does not inspire a sensible and judicious conclusion that a privilege of the Writ of Amparo is justified. The petition consists merely of the petitioner and her daughter's bare allegation of monitoring and surveillance made by the police, sans any corroborative evidence to support that she was purposely singled out with the intention to inflict harm, injury or damage, which thereby threatened her security or a possible allusion to or insinuation of extra-legal killing or enforced disappearance. The court, at this point, cannot make an enlightened deduction that it was really the respondents who are responsible for the alleged monitoring and surveillance, as no tangible evidence was presented to prove such fact. Assuming *arguendo*, that she and her daughters were indeed tailed and monitored by the PNP, the petitioner failed to offer any justification for the said act, except her relationship with the deceased Eldie Labinghisa and the latter's involvement with the New People's Army, which rationale, at the very least, is likely a mistaken belief.[23]

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[19] *Id*. at 60.

[20] *Id*. at 170, RTC Decision.

[21] *Id*. at 169-187.

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

[23] *Id*. at 186-187.

The dispositive portion of the Regional Trial Court Decision read:

> DISPOSING THEREBY, the petitioner has not sufficiently proven her instant Petition by substantial evidence.
>
> WHEREFORE, premises considered, the Privilege of the Writ of Amparo is hereby **DENIED**. Necessarily, the Temporary Protection Order previously issued is LIFTED.
>
> Let copies of this Decision be separately furnished to Atty. Antonio A. Alcantara, Atty. LV Jo. T. Escartin, Atty. Connie T. Alian, Atty. Troy Warren A. Cayanan, petitioner Vivian A. Sanchez, and respondents PSupt. Mark Anthony D. Darroca, PSSupt. Leo Irwin D. Agpangan and PCSupt. John C. Bulalacao.
>
> SO ORDERED.[24] (Emphasis in the original)

Thus, Sanchez filed her Petition for Review on *Certiorari*.[25] Before this Court, petitioner contends that she was able to prove with substantial evidence that she and her children were under constant police surveillance and monitoring, which constitutes a clear violation of their right to life, liberty, and security. She also insists that the police officers' unauthorized taking and distribution of her photo was likewise a violation of her right to privacy, which has caused her great fear and anxiety.[26]

Respondents were directed to comment[27] on the Petition.

In their Comment,[28] respondents reiterate that petitioner failed to prove that she was entitled to the grant of the privilege of a writ of *amparo*, as her allegations against them were unsubstantiated and merely speculative.[29] They insist that as the wife of a member of the National People's Army, she was

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[24] *Id*. at 187.

[25] *Id*. at 10-34.

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

[27] *Id*. at 191.

[28] *Id*. at 199-212.

[29] *Id*. at 205-206.

a proper interview subject. They also claim that taking her photo was merely part of the regular investigation process.[30]

Nonetheless, respondents denied that petitioner and her children were under surveillance, or that they were tailed by members of the police force.[31]

Petitioner was directed[32] to reply to respondents' Comment. However, she manifested[33] that she would not file a reply, as respondents merely refuted the arguments she raised in her Petition and did not raise any new issues.[34]

The sole issue for this Court's resolution is whether or not petitioner Vivian A. Sanchez was able to prove with substantial evidence her entitlement to the privilege of a writ of *amparo*.

The Petition is meritorious.

I

The Rule on the Writ of *Amparo* was issued by this Court as an exercise of its power to "promulgate rules concerning the protection and enforcement of constitutional rights[.]"[35] Section 1 defines a petition for a writ of *amparo* as "a remedy available to any person whose right to life, liberty[,] and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity." The writ of *amparo* is, thus, an equitable and extraordinary remedy primarily meant to address concerns such as, but not limited to, extrajudicial killings and enforced disappearances, or threats thereof.[36]

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[30] *Id*. at 207-208.

[31] *Id*. at 208-209.

[32] *Id*. at 216.

[33] *Id*. at 218-220.

[34] *Id*. at 218.

[35] CONST., Art. VIII, Sec. 5 provides:
SECTION 5. The Supreme Court shall have the following powers:
. . . . . .

Section 17[37] of the Rule on the Writ of *Amparo* specifies substantial evidence as the degree of proof required of both parties to a petition. Section 18 further reinforces the requirement of substantial evidence for the petitioner to establish his or her allegations to warrant the issuance of a writ of *amparo*:

SECTION 18. *Judgment*. — The court shall render judgment within ten (10) days from the time the petition is submitted for decision. *If the allegations in the petition are proven by substantial evidence, the court shall grant the privilege of the writ and such reliefs as may be proper and appropriate*; otherwise, the privilege shall be denied. (Emphasis supplied)

In *Secretary of National Defense v. Manalo*,[38] this Court explains that the remedy of a writ of amparo, being a summary proceeding, requires only substantial evidence to provide rapid

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(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

[36] *De Lima v. Gatdula*, 704 Phil. 235, 243 (2013) [Per J. Leonen, *En Banc*].

[37] RULE ON THE WRIT OF *AMPARO*, Sec. 17 provides:

SECTION 17. *Burden of Proof and Standard of Diligence Required*.— The parties shall establish their claims by substantial evidence.

The respondent who is a private individual or entity must prove that ordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty.

The respondent who is a public official or employee must prove that extraordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty.

The respondent public official or employee cannot invoke the presumption that official duty has been regularly performed to evade responsibility or liability.

[38] 589 Phil. 1 (2008) [Per *C.J.* Puno, *En Banc*].

judicial relief to the petitioner.[39] More than a mere scintilla, substantial evidence is such relevant evidence that a reasonable mind might determine as adequate to support a conclusion.[40] In *Philippine Metal Foundries, Inc. v. Court of Industrial Relations*,[41] this Court further defines substantial evidence as "such evidence which affords a substantial basis from which the fact in issue can be reasonably inferred."[42]

Additionally, hearsay evidence, which is generally considered inadmissible under the rules of evidence, may be considered in a writ of *amparo* proceeding if required by the unique circumstances of the case.[43] This Court in *Razon, Jr. v. Tagitis*[44] concluded that the "totality of the obtaining situation"[45] must be taken into consideration to determine if a petitioner is entitled to a writ of *amparo*:

> At this point, we need not go into another full discussion of the justifications supporting an evidentiary standard specific to the Writ of *Amparo*. Suffice it to say that we continue to adhere to the substantial evidence rule that the Rule on the Writ of *Amparo* requires, with some adjustments for flexibility in considering the evidence presented. When we ruled that hearsay evidence (usually considered inadmissible under the general rules of evidence) may be admitted as the circumstances of the case may require, we did not thereby dispense with the substantial evidence rule; we merely relaxed the evidentiary rule on the *admissibility of evidence*, maintaining all the time the standards of reason and relevance that underlie every evidentiary situation. This, we did, by considering the totality of the obtaining situation and the consistency of the hearsay evidence

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[39] *Id*. at 41.

[40] *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635, 642 (1940) [Per *J*. Laurel, *En Banc*].

[41] 179 Phil. 109 (1979) [Per *J*. Antonio, Second Division].

[42] *Id*. at 114.

[43] *Razon, Jr. v. Tagitis*, 626 Phil. 581, 592 (2010) [Per *J*. Brion, *En Banc*].

[44] 626 Phil. 581 (2010) [Per *J*. Brion, *En Banc*].

[45] *Id*. at 592.

with the other available evidence in the case.[46] (Emphasis in the original)

The totality of petitioner's evidence undoubtedly showed that she became a person of interest after she had first visited the funeral home, where her photo was taken. PO2 De la Cruz tried to downplay the situation by claiming that petitioner's photo was not "posted" in the police station, but she likewise did not deny telling petitioner that she saw petitioner's photo at the police station.[47] Whether petitioner's photo was actually posted and distributed at the police station or was just taken for future reference, the taking of the photo bolsters petitioner's claims that she was being monitored by the police.

Respondents try to paint petitioner's claims as the ramblings of a paranoid and overly suspicious person, but even her daughter confirmed the numerous times the police drove by their house and being tailed whenever they set foot outside their house. This shows that petitioner was not merely imagining the threats against her and her family.

The totality of obtaining circumstances likewise shows that petitioner and her children were the subject of surveillance because of their relationship with a suspected member of the New People's Army, creating a real threat to their life, liberty, or security.

Being Labinghisa's widow, despite being separated in fact from him for more than a decade, puts her at a precarious position in light of the current administration's aggressive efforts to stamp out the communist struggle in the country, which is seen as the "scourge of society[.]"[48] Her apprehension at being targeted as a suspected member of the New People's Army

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[46] *Id*.

[47] *Rollo*, pp. 155-156.

[48] Chito Chavez, *DILG: Revival of Anti-Subversion Law urgent, critical, inevitable*, MANILA BULLETIN, August 15, 2019, <https://news. mb. com.ph/2019/08/15/dilg-revival-of-anti-subversion-law-urgent-critical-inevitable/> (last accessed on August 21, 2019).

was, thus, palpable and understandable, causing her to "act suspiciously" as claimed by respondents, who subjected her to threats and accusations.

Respondent Police Superintendent Darroca claims that petitioner was only placed under general investigation because they wanted to know the identity of the last unclaimed cadaver.[49] However, the drive-bys and tailings intensified *after* petitioner had identified her husband, belying his assertions that their investigation was innocuous.

Further, petitioner's relationship with her husband insulates her from any inquiries regarding Labinghisa's purported membership in the New People's Army. Whatever information respondents may hope to extract from her or her children are protected by spousal and filial privileges, which continue to exist even after Labinghisa's death.

II

Marriage[50] is an inviolable social institution and the foundation of the family[51] which, in turn, is the foundation of the nation.[52]

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[49] *Rollo*, pp. 107-108.

[50] FAMILY CODE, Art. 1 provides:

ARTICLE 1. Marriage is a special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal and family life. It is the foundation of the family and an inviolable social institution whose nature, consequences, and incidents are governed by law and not subject to stipulation, except that marriage settlements may fix the property relations during the marriage within the limits provided by this Code.

[51] CONST., Art. XV, Sec. 2 provides:

SECTION 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.

[52] CONST., Art. XV, Sec. 1, provides:

SECTION 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.

In recognition of the significance of marriage to Philippine society, testimonial privilege[53] and communication privilege[54] have been granted to spouses. This is to preserve their harmonious relationship and to prevent any party, including a spouse, to take advantage of the free communication between the spouses or of information learned within the union.

This Court, in *People v. Francisco,*[55] explained the reasons behind marital disqualification:

> The rule contained in section 26 (d) of Rule 123 is an old one. Courts and text-writers on the subject have assigned as reasons therefor the following: First, identity of interest; second, the consequent danger of perjury; third, the policy of the law which deems it necessary to guard the security and confidences of private life even at the risk of an occasional failure of justice, and which rejects such evidence because its admission would lead to domestic disunion and unhappiness; and, fourth, because where a want of domestic [tranquility] exists, there is danger of punishing one spouse through the hostile testimony of the other. This has been said in the case of *Cargill vs. State* (220 Pac., 61, 6a; 25 Okl. Cr., 314; 35 A. L. R., 133), thus:
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> "The reasons given by law text-writers and courts why neither a husband nor wife shall in any case be a witness against the

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[53] RULES OF COURT, Rule 130, Sec. 22, provides:

SECTION 22. *Disqualification by reason of marriage*. — During their marriage, neither the husband nor the wife may testify for or against the other without the consent of the affected spouse, except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants.

[54] RULES OF COURT, Rule 130, Sec. 24(a), provides:

SECTION 24. *Disqualification by reason of privileged communication*.— The following persons cannot testify as to matters learned in confidence in the following cases:

(a) The husband or the wife, during or after the marriage, cannot be examined without the consent of the other as to any communication received in confidence by one from the other during the marriage except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants[.]

[55] 78 Phil. 693 (1947) [Per *J.* Hilado, *En Banc*].

> other except in a criminal prosecution for a crime committed by one against the other have been stated thus: First, identity of interests; second, the consequent danger of perjury; third, the policy of the law which deems it necessary to guard the security and confidences of private life even at the risk of an occasional failure of justice, and which rejects such evidence because its admission would lead to domestic disunion and unhappiness; and, fourth, because, where a want of domestic tranquillity exists, there is danger of punishing one spouse through the hostile testimony of the other. (70 C. J., 119.)"[56]

Therefore, the overriding consideration in the State's support of marriage is the recognition of its status as an inviolable social institution, with the State implicitly acknowledging the importance of unfettered communication between the spouses.

The family and its members likewise enjoy a similar privilege. No one can be compelled to testify against his or her direct descendants or direct ascendants.[57]

Nonetheless, exceptions do exist to the general rule of marital privilege or disqualification. Among these is when a spouse commits an offense that "directly attacks, or directly and vitally impairs, the conjugal relation[.]"[58] This Court expounded in *Francisco* that when there is no more spousal harmony to be preserved because of strained domestic relations, the identity of interests and the danger of perjury disappear, and the law's aim of protecting the security of private life also ceases to exist.[59]

None of the exceptions to marital privilege exist here.

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[56] *Id.* at 703.

[57] RULES OF COURT, Rule 130, Sec. 25 provides:

SECTION 25. *Parental and filial privilege.*— No person may be compelled to testify against his parents, other direct ascendants, children or other direct descendants.

[58] *Ordoño v. Daquigan*, 159 Phil. 323, 326 (1975) [Per *J.* Aquino, *En Banc*] citing *Cargill v. State*, 35 ALR 133, 220 Pac. 64, 25 Okl. 314.

[59] *People v. Francisco*, 78 Phil. 693, 704 (1947) [Per *J.* Hilado, *En Banc*].

Petitioner admits to being separated in fact from Labinghisa for more than a decade. Yet, this does not suffice as an exception, as separation is not tantamount to strained marital relations. Further, neither spouse committed an offense that impaired their conjugal union. Labinghisa's supposed membership in the New People's Army is not an offense envisioned by jurisprudence which would create an exception to the general rule of marital disqualification.

Wives and children are not ordinary witnesses, as evidenced by the privileges they enjoy against State incursion into their relationships. Hence, respondents' surveillance of petitioner and her children as witting or unwitting witnesses against her husband or his activities is correctible by a writ of *amparo*.

III

Similar to marital privilege, the right to privacy is also a basic, fundamental right. The Constitution recognizes every person's right to physical privacy, hence the explicit limitations on unwarranted State intrusion into personal affairs.

To safeguard against the enormous powers wielded by the State and nip any potential abuse and interference into the private sphere, the Constitution guarantees, among others, every person's right to due process,[60] to be secure against unreasonable searches and seizures,[61] and to the privacy of their communication and

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[60] CONST., Art. III, Sec. 1 provides:

SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

[61] CONST., Art. III, Sec. 2 provides:

SECTION. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

correspondence.[62] The Civil Code,[63] in turn, punishes with damages those who meddle and pry into another person's private affairs.

This is why respondent Police Superintendent Darroca's lack of contrition over his police officers' act of taking petitioner's photo without her permission—and then placing it on display at the police station—is disturbing. It appears as though he sees nothing wrong in flagrantly and inexcusably violating petitioner's right to privacy.

Petitioner was not a person of interest when she went to the funeral parlor to identify her husband's body. Certainly, the police officers stationed there did not know who she was. Yet, they took her photo against her wishes and badgered her into admitting her relationship with her husband, a suspected member of the New People's Army.

Respondent Police Superintendent Darroca excused the police officers' discourteous and threatening actions toward a civilian by saying that such was merely part of the investigation process and that the police officers acted in good faith.

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[62] CONST., Art. III, Sec. 3(1) provides:

SECTION 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise, as prescribed by law.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

[63] CIVIL CODE, Art. 26 provides:

ARTICLE 26. Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief:

(1) Prying into the privacy of another's residence;

(2) Meddling with or disturbing the private life or family relations of another;

(3) Intriguing to cause another to be alienated from his friends;

(4) Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition.

This Court is not convinced.

The Philippine National Police's Ethical Doctrine Manual[64] enjoins its police officers to respect human dignity and human rights,[65] and to judiciously use their authority in the performance of duty.[66]

The police officers' brusque treatment of petitioner, threatening her with imprisonment and displaying her photo at the police station, does not reflect the professional and courteous image that the Philippine National Police wishes to convey as an institution. What they did was clearly not part of the usual investigation protocol. The police officers could not be said to have acted in good faith when they ganged up on and accosted a defenseless civilian.

Even the surreptitious surveillance of petitioner and her family is an abuse of the Philippine National Police's authority. If respondents wanted to interview petitioner and her children, they should have done so formally: informing them of their rights, holding the interview in an environment free of intimidation, and making sure that they had access to and were assisted by legal counsel or legal assistance groups. Further, when a minor

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[64] Philippine National Police Manual: Ethical Doctrine Manual, <https://proarmm.pnp.gov.ph/downloads/EthicalDoctrine.pdf> (last accessed on August 30, 2019).

[65] Philippine National Police Manual: Ethical Doctrine Manual, Ch. III, Sec. 2.9 provides:

2.9 *Respect for Human Rights* — In the performance of duty, PNP members shall respect and protect human dignity and uphold the human rights of all persons. No member shall inflict, instigate or tolerate extra-judicial killings, arbitrary arrests, any act of torture or other cruel, inhuman or degrading treatment or punishment and shall not invoke superior orders or exceptional circumstances such as a state-of-war, a threat to national security, internal political instability or any public emergency as a justification for committing such human rights violations.

[66] Philippine National Police Manual: Ethical Doctrine Manual, Ch. III, Sec. 3.2 provides:

3.2 *Judicious Use of Authority* — PNP members shall exercise proper and legitimate use of authority in the performance of duty.

is being interviewed, the interviewer should be specially trained to handle children.

Moreover, the Regional Trial Court erred in failing to consider the gender and power issues at play here, and how they affected the dynamics between the parties. Male police officers were investigating and surveilling the widow and daughter of an alleged communist, creating two (2) tiers of power: (1) law enforcer-civilian; and (2) male-female.

The Philippine National Police Manual wishes to craft the institution's image as a valiant peacekeeper dedicated to ensuring public safety and community participation,[67] but the bleak reality is that most people keep their guards up when faced with a member of the police force. In a patriarchal society where women have had to calibrate their responses toward men, the additional layer of power presented by a man in uniform would lead even an innocent civilian, especially a woman, to act jittery and nervously, trying to find a way to protect herself from her perceived vulnerabilities.

The gross imbalance in power dynamics makes it understandable for petitioner to initially hesitate to reveal her relationship with Labinghisa. As it turned out, she was correct to do so, as the moment the police officers found out who she was, she and her daughters became the subject of surveillance.

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[67] Philippine National Police Manual: Ethical Doctrine Manual, Ch. I, Sec. 2 provides:

Section 2. Declaration of Policy

All members of the Philippine National Police shall abide, adhere to and internalize the provisions of this Ethical Doctrine. Towards this end, a truly professionalized and dedicated law enforcer shall be developed in promoting peace and order, ensuring public safety and enhancing community participation guided by the principle that a public office is a public trust and that all public servants must, at all times, be accountable to the people. They shall serve with utmost responsibility, integrity, morality, loyalty and efficiency with due respect to human rights and dignity as hallmark of a democratic society. They shall, at all times, support and uphold the Constitution, bear faithful allegiance to the Constitution, bear faithful allegiance to the legitimate government, respect the duly constituted authority and be loyal to the police service.

In inferring conclusions involving power deficits in relationships, judges must be careful not to be gender-blind. In denying the Petition for the writ of amparo, the Regional Trial Court echoed respondents' statement that the taking of petitioner's photo and the threats of obstruction of justice thrown at her were part of "the conduct of a logical investigation."[68] It could not see, or it refused to see that these actions, together with the surveillance done, were actual or imminent threats against petitioner and her children.

In rendering judgment, judges must not impose a standpoint viewed from their implicit status in society. They must look beyond their status as well-connected people who can assert themselves against men in uniform and who have no filial relation to one tagged as a communist.

By advertently or inadvertently ignoring petitioner's not so unique predicament as the spouse of a labeled communist, the Regional Trial Court created standards that would deny protection to those who need it most.

Petitioner's apprehension over the threat to her security was duly supported by substantial evidence. It was further corroborated by her daughter who also witnessed the constant police drive-bys and the tailings done by an unmarked vehicle. Thus, petitioner and her children deserve the protection of a writ of amparo.

IV

Respondents' claim that the police officers reported and asked for the investigation of the plate number of the car that did the surveillance[69] should not have been enough for the trial court. The trial court should have required a full report from respondents. As compared with petitioner, they had better, if not exclusive access to the information from the Land Transportation Office.

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[68] *Rollo*, p. 184, RTC Decision.

[69] *Rollo*, p. 63.

In his Affidavit[70] attached to the Verified Return,[71] respondent Police Superintendent Darroca denied putting petitioner and her children under surveillance or ordering his officers to follow them:

> 10. As regards the tinted vehicle with plate number ALL 5385 who the petitioner alleged to have followed her and her daughters to Iloilo City, I categorically state that I have no knowledge about it; Moreover, I have no knowledge about the alleged call the petitioner received on August 22, 2018 nor I did (*sic*) order any of my men to follow her or her children[.][72]

However, his denial is not the lawful defense required in a Verified Return, but a merely general denial, which is proscribed in Section 9[73] of the Rule on the Writ of *Amparo*. Further, he

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[70] *Id*. at 107-111.

[71] *Id*. at 56-78.

[72] *Id*. at 109.

[73] RULE ON THE WRIT OF *AMPARO*, Sec. 9 provides:

> SECTION 9. *Return; Contents*. — Within seventy-two (72) hours after service of the writ, the respondent shall file a verified written return together with supporting affidavits which shall, among other things, contain the following:
>
> (a) The lawful defenses to show that the respondent did not violate or threaten with violation the right to life, liberty and security of the aggrieved party, through any act or omission;
>
> (b) The steps or actions taken by the respondent to determine the fate or whereabouts of the aggrieved party and the person or persons responsible for the threat, act or omission;
>
> (c) All relevant information in the possession of the respondent pertaining to the threat, act or omission against the aggrieved party; and
>
> (d) If the respondent is a public official or employee, the return shall further state the actions that have been or will still be taken:
>
> 1. to verify the identity of the aggrieved party;
>
> 2. to recover and preserve evidence related to the death or disappearance of the person identified in the petition which may aid in the prosecution of the person or persons responsible;
>
> 3. to identify witnesses and obtain statements from them concerning the death or disappearance;

failed to show that he observed extraordinary diligence in performing his duty, a required by Section 17 of the Rule on the Writ of Amparo:

> SECTION 17. Burden of Proof and Standard of Diligence Required. — The parties shall establish their claims by substantial evidence.
>
> The respondent who is a private individual or entity must prove that ordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty.
>
> *The respondent who is a public official or employee must prove that extraordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty.*
>
> The respondent public official or employee cannot invoke the presumption that official duty has been regularly performed to evade responsibility or liability. (Emphasis supplied)

Petitioner and her daughter categorically stated that police cars have driven by their house with alarming regularity after petitioner had identified her husband's body. To this, respondent Police Superintendent Darroca only issued a blanket denial that he did not direct his officers to tail or monitor petitioner and her family. He did not present affidavits from his police officers to support his claim. Further, petitioner's report of being tailed by a vehicle only merited a perfunctory request from the police to the Land Transportation Office. The police, which had better resources to perform the investigation, should have done more to follow up her request. Their failure to exert the extraordinary diligence expected of them hints at a motive against petitioner and her family.

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4. to determine the cause, manner, location and time of death or disappearance as well as any pattern or practice that may have brought about the death or disappearance;

5. to identify and apprehend the person or persons involved in the death or disappearance; and

6. to bring the suspected offenders before a competent court.

The return shall also state other matters relevant to the investigation, its resolution and the prosecution of the case.

A general denial of the allegations in the petition shall not be allowed.

In granting the Petition for the writ of amparo, this Court in *Republic v. Cayanan*[74] pointed out that the State, in submitting its passive certificates, failed to comply with the extraordinary diligence required of it by the Rule on the Writ of *Amparo*:

> In its return, the CIDG only attached *passive certificates* issued by its operating divisions to the effect that Pablo was not being detained by any of them. Said certifications were severely inadequate. It is almost needless to characterize the certifications as non-compliant with the requirement for a detailed return. As such, the certifications amounted to a general denial on the part of the CIDG. The quoted rule requires the verified written return of the CIDG to be accompanied by supporting affidavits. Such affidavits, which could be those of the persons tasked by the CIDG and other agencies like the NBI and probably the Land Transportation Office (LTO) to collaborate in the investigation of the abduction of Pablo, would have specified and described the efforts expended in the search for Pablo, if such search was really conducted, and would have reported the progress of the investigation of the definite leads given in the Perez's *sinumpaang salaysay* on the abduction itself.[75] (Emphasis in the original, citation omitted)

The proceedings for the issuance of writs of *amparo* are extraordinary. They are significant not only in terms of final relief. In determining whether the petition must be granted, judges act as impartial inquisitors seeking to assure themselves that there is no actual or future threat to the life or liberty of petitioners. In a way, courts hearing writs of amparo assist in ferreting out the truth by providing an antidote to the naturally intimidating atmosphere of police investigations, especially involving communist and other rebels against the government.

The Rule on the Writ of Amparo was crafted in an era when extrajudicial killings and involuntary disappearances were on the rise allegedly due to the government's efforts to defeat an

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[74] G.R. No. 181796, November 7, 2017, 844 SCRA 183 [Per *J*. Bersamin, *En Banc*].

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

insurgency. The Rule was, in part, this Court's statement that the insurgents' narrative that fundamental rights were not durable and universal at all times was false. It was an affirmation of the belief that, perhaps unlike the rebels, our Constitution protected civility and human rights, and that this protection was what differentiated the government from the insurgents. It was, and still is, a rule that underscores our humanity and our civility.

While pursuing rebels is a legitimate law enforcement objective, the zeal of our police must be bound by the fundamental rights of persons, especially the loved ones of persons of interest. After all, the values we have in our Constitution are what differentiate us from lawless elements.

WHEREFORE, the Petition is **GRANTED**. A **PERMANENT PROTECTION ORDER** is issued prohibiting members of the Philippine National Police from monitoring or surveilling petitioner Vivian A. Sanchez and her children, Scarlet Sanchez Labinghisa and Star Sanchez Labinghisa. The respondent police officers are reminded to uphold the rights of citizens as contained in the Constitution as well as conduct investigations in accordance with their promulgated manuals including the Ethical Doctrine Manual.

SO ORDERED.

Bersamin, C. J., Carpio, Peralta, Perlas-Bernabe, Caguioa, Lazaro-Javier, and *Inting, JJ.*, concur.

Hernando, J., dissents, see dissenting opinion.

Reyes, A. Jr., Gesmundo, Carandang, and *Zalameda, JJ.*, join the dissent of *J.* Hernando.

Reyes, J. Jr., J., on leave.

DISSENTING OPINION

HERNANDO, *J.*:

I dissent.

Section 1 of The Rule on the Writ of *Amparo* clearly states the purpose and coverage of such a writ:

> Sec. 1. *Petition*. — The petition for a writ of *amparo* is a remedy available to any person whose **right to life, liberty and security is violated or threatened with violation** by an unlawful act or omission of a public official or employee, or of a private individual or entity.
>
> The writ shall cover **extralegal killings** and **enforced disappearances** or **threats thereof**. (Emphasis and underscoring supplied.)

The Court further expounds in *Ladaga v. Mapagu*[1] that:

> The writ of *amparo* was promulgated by the Court pursuant to its rule-making powers in response to the alarming rise in the number of cases of enforced disappearances and extrajudicial killings. It plays the preventive role of breaking the expectation of impunity in the commission of extralegal killings and enforced disappearances, as well as the curative role of facilitating the subsequent punishment of the perpetrators. In *Tapuz v. Del Rosario*, the Court has previously held that the writ of *amparo* is an extraordinary remedy intended to address violations of, or threats to, the rights to life, liberty or security and that, being a remedy of extraordinary character, it is not one to issue on amorphous or uncertain grounds but only upon reasonable certainty.

The Rule on the Writ of *Amparo* also provides that for the court to render judgment granting the privilege of the writ, the petitioner must be able to discharge the burden of proving the allegations in the petition by the standard of proof required, that is, substantial evidence.[2] Substantial evidence is such relevant

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[1] 698 Phil. 525.

[2] Sec. 18. *Judgment*. — The court shall render within ten (10) days from the time the petition is submitted for decision. If the allegations in the petition

evidence as a reasonable mind might accept as adequate to support a conclusion.[3]

In a petition for writ of *amparo*, the court is allowed a certain degree of leniency or flexibility in the application of the evidentiary rules by adopting the totality of evidence standard. The Court explained in *Razon, Jr. v. Tagitis*[4] that evidentiary difficulties had compelled it to adopt standards appropriate and responsive to the circumstances, without transgressing the due process requirements that underlie every proceeding.[5] It determined that the fair and proper rule was to consider all the pieces of evidence adduced in their totality, and to consider any evidence otherwise inadmissible under usual rules to be admissible if it is consistent with the admissible evidence adduced.[6] In other words, the rules are reduced to the most basic test of reason — *i.e.*, to the relevance of the evidence to the issue at hand and its consistency with all other pieces of adduced evidence.[7] Thus, even hearsay testimony or circumstantial evidence can be admitted and appreciated if it satisfies this basic minimum test.[8] Yet the Court also issued a *caveat* in *Bautista v. Dannug-Salucon*[9] that such use of the standard does not unquestioningly authorize the automatic admissibility of hearsay or circumstantial evidence in all *amparo* proceedings. The matter of the admissibility of evidence should still depend on the facts and circumstances peculiar to each case.

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are proven by substantial evidence, the court shall grant the privilege of the writ and such reliefs as may be proper and appropriate; otherwise, the privilege shall be denied.

[3] *Republic v. Cayanan*, G.R. No. 181796, November 7, 2017, 844 SCRA 183.

[4] 621 Phil. 536 (2009).

[5] *Id.* at 613.

[6] *Id.* at 616.

[7] *Id.*

[8] *Id.*

[9] G.R. No. 221862, January 23, 2018.

Judging by the foregoing quantum of proof applicable particularly to a petition for a writ of *amparo*, it is my view that Sanchez failed to present substantial evidence to prove her entitlement to such a writ. After a judicious review of the records, I find no established violation or threat to the life, liberty, or security of Sanchez or her children by any of the respondents. Neither did Sanchez show proof that the respondents committed any unlawful act or omission as to justify her plea for a writ of *amparo*.

To reiterate, the writ of *amparo* specifically covers cases of extralegal killings and enforced disappearances, or threats thereof.

Extralegal killings are described as killings committed without due process of law, *i.e.*, without legal safeguards or judicial proceedings.[10]

At the outset, Sanchez filed the Petition for Writ of *Amparo* before the RTC with herself as the aggrieved party and not her deceased husband, Labinghisa. Hence, it is not for the Court herein to look into the circumstances of Labinghisa's death during the alleged PNP-NPA encounter. There is also, notably, no allegation here at all that Labinghisa's death was an extralegal killing.

As for Sanchez, the Court fails to perceive any actual, imminent, or continuing threat on her life and/or that of her children. By her own narrative, the only express threat made against her was that she would be persecuted for obstruction of justice if she would refuse to answer the questions of the police officers at St. Peter's during her second visit on August 17, 2018. This hardly puts her in danger of extrajudicial killing. Even assuming that the alleged surveillance and monitoring conducted on Sanchez and her children were true, the Court still cannot make a deduction simply based thereon that they are under threat of extralegal killing. Corollarily, Sanchez failed to establish that the surveillance and monitoring allegedly conducted on her and her children

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[10] *Mamba v. Bueno*, 805 Phil. 359, 377 (2017).

amounted to unlawful acts as to fall under the protective mantle of the writ of *amparo*.

Neither was Sanchez able to satisfactorily prove that she had been the victim of enforced disappearance or is under threat thereof, as it is defined under Section 3(g) of Republic Act (R.A.) No. 9851[11]:

> "Enforced or involuntary disappearance of persons" means the arrest, detention, or abduction of persons by, or with the authorization, support or acquiescence of a State or a political organization followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing from the protection of the law for a prolonged period of time.

In *Navia v. Pardico*,[12] the Court identified the elements constituting enforced disappearance, to wit:

> From the statutory definition of enforced disappearance, thus, we can derive the following elements that constitute it:
>
> (a) that there be an arrest, detention, abduction or any form of deprivation of liberty;
>
> (b) that it be carried out by, or with the authorization, support or acquiescence of, the State or a political organization;
>
> (c) that it be followed by the State or political organization's refusal to acknowledge or give information on the fate or whereabouts of the person subject of the *amparo* petition; and,
>
> (d) that the intention for such refusal is to remove subject person from the protection of the law for a prolonged period of time.

As thus dissected, it is now clear that for the protective writ of *amparo* to issue, allegation and proof that the persons subject thereof

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[11] Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity.

[12] 688 Phil. 266 (2012).

are missing are not enough. It must also be shown and proved by substantial evidence that the disappearance was carried out by, or with the authorization, support or acquiescence of, the State or a political organization, followed by a refusal to acknowledge the same or give information on the fate or whereabouts of said missing persons, with the intention of removing them from the protection of the law for a prolonged period of time. Simply put, the petitioner in an *amparo* case has the burden of proving by substantial evidence the indispensable element of government participation.[13]

Pursuant to the first element of enforced disappearance, Sanchez did not allege, much less prove, that she had been arrested, detained, or abducted by any of the respondents or people acting under their authority. There is likewise absolute lack of allegations and proof of government participation in such arrest, detention, or abduction. While Sanchez might have been interrogated by police officers during her second visit to St. Peter's on August 17, 2018, she was still able to eventually leave and go home that same day. There appears to be no other instance when Sanchez or her daughters had been actually deprived of their liberty. Even until the hearing of her Petition, Sanchez apparently could still freely travel from one place to another. Sanchez's basic allegation was only that she and her daughters were afraid to leave their house and engage in their daily activities because of the purported surveillance and monitoring. Yet, their mere apprehensions, without any other substantiating evidence, do not qualify as a threat that will justify issuance of the writ.

Sanchez mainly deduced the existence of a threat against her life, liberty, and security from information allegedly relayed to her by two persons, namely, (a) PO2 Dela Cruz, her contact in the police who disclosed to her that her photos were being circulated in the PNP and being posted at police stations;[14] and (b) her brother, who told her that the Mayor of Hamtic wanted her to go to the police station to clarify her name and

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[13] *Id.* at 279-280.

[14] *Rollo*, p. 125.

involvement.[15] However, Sanchez's brother neither executed any affidavit nor testified in court. Consequently, there was no way for the courts to verify whether he had in fact relayed such information to Sanchez and whether such information was reliable and true. More significantly, PO2 Dela Cruz expressly denied telling Sanchez that her picture was being circulated within the PNP and posted at police stations.

PO2 Dela Cruz, whom Sanchez introduced in her pleadings to be not merely her contact and informant in the local police but also her close personal friend and godmother to her daughter Star, described the context and details of her exchange of text messages with Sanchez from August 15 to August 22, 2018:

CROSS-EXAMINATION BY ATTY. ALCANTARA:

Q Madam witness, there was an exchange of text messages from August 15, 2018 until August 22, 2018 between you and the petitioner?
A Yes, sir.

x x x x x x x x x

Q xxx [Y]ou have an idea that [Sanchez] is being monitored?
A Based on...?

Q Based on your testimony, these are the text messages?
A Based on her allegation, sir, **I am not very sure if the person alleged who is conducting monitoring is a member of the police station, sir**.

Q **So it is also true that her picture is being posted in the police stations, according to your text?**
A **No, sir.**

Q **So you deny your text messages?**
A **A picture of Vivian was taken when she went to the funeral parlor of St. Peter but her picture was not posted at the Municipal police station, sir.**

Q **So, let's be clear, who is monitoring the petitioner?**
A **I do not have any idea because based on her she was being**

[15] *Id.* at 127.

monitored but I was not sure if that was the members of the Philippine National Police.

Q But in your text messages, it appears that you are the one xxx informing her that she [was] being monitored, in your text message?
A Yes, sir.

Q So, how did you come to know that she was being monitored because that was the contents [*sic*] of your text messages?
A **She [was] about to be monitored, sir.**

Q How did you know that?
A **Because she will not disclose the real name of her husband** that is why there is a possibility that she will be monitored, Sir.

Q So there is a possibility that the police force of Antique would monitor her because she would not reveal the name of her husband, correct?
A Yes, sir.[16] (Emphases supplied.)

That PO2 Dela Cruz testified in respondents' favor weighs heavily and adversely against Sanchez. While PO2 Dela Cruz affirmed in open court that she had informed Sanchez that the latter's picture was taken at St. Peter's and that the latter might be monitored, she also clarified that it was in connection with the investigation of the police as regards the remaining unidentified body among the seven fatalities from the PNP-NPA encounter on August 15, 2018.

Similarly, Sanchez's actuations raised the police's suspicions. Despite being able to confirm as early as the evening of August 15, 2018 that the unidentified body was Labinghisa's, Sanchez still went to St. Peter's presumably to be able to personally identify Labinghisa's remains. She went to St. Peter's on two consecutive days, on August 16 and 17, 2018, on the pretext of identifying whether one of the remains was that of her husband, but she refused to disclose to the police officers then present her deceased husband's name. There is no evident reason for her evasiveness

[16] *Id.* at 150-156.

when she and Labinghisa, as she had asserted, were already separated-in-fact for more than 13 years. Such circumstances would reasonably make her the subject of a lawful legitimate police investigation. Per PSupt. Darroca's testimony, Sanchez and other persons claiming any of the bodies at St. Peter's were all placed under general investigation[17] and interviewed to obtain information that might be vital in the ongoing anti-insurgency operations.

As for respondent police officers, I find for the sufficiency of their conduct, defenses, and compliance with Section 17 of the Rule on the Writ of *Amparo*, which states:

> Sec. 17. *Burden of Proof and Standard of Diligence Required*.— The parties shall establish their claims by substantial evidence.
>
> The respondent who is a private individual or entity must prove that ordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty.
>
> **The respondent who is public official or employee must prove that extraordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty.**
>
> The respondent public official or employee cannot invoke the presumption that official duty has been regularly performed to evade responsibility or liability. (Emphasis supplied.)

Extraordinary diligence as required and contemplated in this provision is more than the diligence expected of a good father of a family. Section 9 (d) of the Rule on the Writ of *Amparo* is thus relevant:

> SEC. 9. *Return; Contents*. — Within seventy-two (72) hours after service of the writ, the respondent shall file a verified written return together with supporting affidavits which shall, among other things, contain the following:
>
> (a) The lawful defenses to show that the respondent did not violate or threaten with violation the right to life, liberty and security of the aggrieved party, through any act or omission;

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[17] TSN, September 4, 2018, pp. 33-35, *id.* at 144-146.

(b) The steps or actions taken by the respondent to determine the fate or whereabouts of the aggrieved party and the person or persons responsible for the threat, act or omission;

(c) All relevant information in the possession of the respondent pertaining to the threat, act or omission against the aggrieved party; and

(d) **If the respondent is a public official or employee, the return shall further state the actions that have been or will still be taken:**

i. to verify the identity of the aggrieved party;

ii. to recover and preserve evidence related to the death or disappearance of the person identified in the petition which may aid in the prosecution of the person or persons responsible;

iii. to identify witnesses and obtain statements from them concerning the death or disappearance;

iv. to determine the cause, manner, location and time of death or disappearance as well as any pattern or practice that may have brought about the death or disappearance;

v. to identify and apprehend the person or persons involved in the death or disappearance; and

vi. to bring the suspected offenders before a competent court.

The return shall also state other matters relevant to the investigation, its resolution and the prosecution of the case.

A general denial of the allegations in the petition shall not be allowed. (Emphasis supplied.)

Respondents exercised this extraordinary diligence in the performance of their duty and proved the same. The averments in their Verified Return and attached Affidavits,[18] bolstered by

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[18] Their statements in their Verified Return (*rollo*, pp. 63-73) and correlative Affidavits, all averred in compliance with Section 9 of the Rule on the Writ of *Amparo* and affirmed in open court, should suffice:

PCSUPT JOHN C BULALACAO

Attached to this Return as ANNEX "2" is the Affidavit of PCSUPT BULALACAO, attesting that:

x x x x x x x x x

PSupt. Darroca's testimony in open court, that they had expended and would continue to expend extraordinary diligence in acting

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6. In compliance with Section 9 of the Rule and Order of the Court, the following are my actions to be undertaken, to wit:

As regards the alleged threat and acts committed by PNP members to the person of the petitioner, Vivian A Sanchez, and to her children, Scarlet S. Labinghisa and Star S. Labinghisa and as compliance to the Writ of *Amparo* issued by Ron. Judge Francisco S. Guzman, Executive Judge, RTC 12, San Jose, I have to undertake the following:

a. To direct PSSUPT LEO ERWIN D AGPANGAN, Provincial Director of Antique Police Provincial Office to validate if there is any record with any office of any alleged threat against the petitioner;

b. To direct all personnel of Police Regional Office 6 not to deliberately and intentionally come within one kilometer radius from the petitioner xxx and to her children xxx until further advise [*sic*] pursuant to the order of the court issuing the Temporary Protection Order; but such order must not be understood to mean that the police personnel are prevented from performing their regular functions and duties maintaining peace and order in their respective areas of responsibilities and such order must not be prejudicial to the safety and well-being of the rest of the citizens in the community;

x x x x x x x x x

PSSUPT LEO IRWIN D. AGPANGAN

Attached to this Return as ANNEX "3" is the Affidavit of PSSUPT AGPANGAN, attesting that:

x x x x x x x x x

5. In compliance with Section 9 of the Rule, as regards the alleged threat and acts committed by PNP members to the person of the petitioner, Vivian A Sanchez, and to her children, Scarlet S. Labinghisa and Star S. Labinghisa and as compliance to the Writ of *Amparo* issued by Hon. Judge Francisco S. Guzman, Executive Judge, RTC 12, San Jose, I have undertaken and will undertake the following:

a. Directed PSUPT MARK ANTHONY D DARROCA, Officer-in Charge of the San Jose MPS to validate the alleged threat if there is any against the petitioner.

b. To direct the Chief of Police of the Hamtic MPS to validate the alleged: 1) meeting between Vivian A Sanchez and an alleged intel personnel in the house of the former; 2) the alleged passing-by house of the petitioner of the patrol car of the Hamtic MPS;

c. To direct the OIC San Jose Municipal Police Station to verify with the Land Transportation Office (LTO) the alleged tinted car with plate number ALL 5385.

on Sanchez's allegations, are adequate defenses. They had respectively issued the orders to their subordinates to validate if there was any threat against Sanchez and not to deliberately and intentionally come within one kilometer radius of Sanchez and her children pursuant to the TPO issued by the RTC. PSSupt. Agpangan further ordered the Police Chief of the Hamtic MPS to validate the alleged visit of its police intelligence personnel and the passing-by of its police patrol car at Sanchez's house, as well as the Officer-in-Charge of the San Jose MPS to verify with the Land Transportation Office the ownership of the tinted car with plate number ALL 5385 which purportedly followed Sanchez and her children around. To this effect, a Vehicle Verification Request to the Land Transportation Office was likewise submitted by the defense before the RTC to prove that respondents attempted to trace the said tinted vehicle alleged

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6. To direct all personnel of the Antique PPO not to deliberately and intentionally come within one kilometer radius from the petitioner xxx and to her children xxx until further advise [*sic*] pursuant to the order of the court issuing the Temporary Protection Order; but such order must not be understood to mean that the police personnel are prevented from performing their regular functions and duties maintaining peace and order in their respective areas of responsibilities and such order must not be prejudicial to the safety and well-being of the rest of the citizens in the community;

PSUPT. MARK ANTHONY D. DARROCA

Attached to this Return as ANNEX "3" is the Affidavit of PSSUPT AGPANGAN attesting that:

x x x x x x x x x

13. As regards the alleged threat and acts committed by PNP members to the person of the petitioner, Vivian A Sanchez, and to her children, Scarlet S. Labinghisa and Star S. Labinghisa and as compliance to the Writ of *Amparo* issued by Hon. Judge Francisco S. Guzman, Executive Judge, RTC 12, San Jose, I have ordered my men not to not to [*sic*] come within one kilometer radius from the petitioner xxx and to her children xxx until further advise [*sic*] pursuant to the order of the court issuing the Temporary Protection Order; but such order must not be understood to mean that the police personnel are prevented from performing their regular functions and duties maintaining peace and order in their respective areas of responsibilities and such order must not be prejudicial to the safety and well-being of the rest of the citizens in the community.

to have tailed Sanchez and her children outside their home.[19] It bears reiterating that PO2 Dela Cruz's corroborative statements in open court confirmed that Sanchez was in fact not under any surveillance and that there was no clear evidence that the police was plotting against her life, liberty, or security.

Even if she was indeed being monitored, the only reason apparent from the records was that Sanchez or any other concerned persons claiming the bodies at St. Peter's were all under general investigation[20] and may possess information vital to the ongoing anti-insurgency operations.[21] To gain such information is within police duty, and to withhold the same may constitute probable cause for obstruction of justice.

In fine, to sanction this case with a grant of a writ of *amparo* may set a dangerous precedent and will have a crippling effect upon legitimate police operations such as monitoring, surveillance, and interviewing. To repeat, Section 1 of the Rule of the Writ of *Amparo* states that the writ of *amparo* is a remedy against an unlawful act or omission of a public official, or of a private individual or employee. To grant the petition for writ of *amparo* is to declare that the police operations such as monitoring, surveillance, and interviewing are unlawful acts.

We step into the shoes of the investigating police officers. What would be their natural course of action upon sighting Sanchez in the funeral parlor, asking to look at the bodies of the slain suspected NPA members and declining to explain her purpose when asked?

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[19] Per testimony of PSupt. Darroca, *id*. at 149.

[20] *Id*. at 144-146.

[21] Sanchez made the following allegations per her Petition for Writ of *Amparo*, par. 8, p. 2 thereof, *id.* at 36, as reiterated in her present Petition for Review on *Certiorari*, par. 8, p. 4 thereof, *id.* at 13:

"The next day, Petitioner went back to St. Peter's Funeral Home to confirm again her husband's body, however three (3) police officers began interrogating her and even threatened to arrest and charge her with obstruction of justice when she refused to answer. xxx"

Besides, it is settled that mere threat of legal action against Sanchez, *i.e.*, charging her with the offense of obstruction of justice, was proper under the circumstances and is not an actionable wrong. It was not a threat to *unjustly* deprive her of her liberty.

Also note that Presidential Decree No. 1829 (PD 1829)[22] penalizes any person who knowingly or willfully obstructs, impedes, frustrates, or delays the apprehension of suspects and the investigation and prosecution of criminal cases. Stubborn and unjustified refusal (as against initial hesitation) to reveal identities of suspected NPA members may give rise to a punishable act under PD 1829.

Withal, respondents' defenses were not a mere blanket denial. All these enabled the RTC to judiciously determine that respondents' efforts to verify the existence of the alleged threat were sincere and sufficient.[23]

It is also necessary to state that the evidentiary rules on privileged communication will not insulate Sanchez or her children from any inquiries regarding Labinghisa's purported membership in the NPA. The pertinent provisions under Rule 130 of the Rules of Court state:

Section 22. *Disqualification by reason of marriage*. — During their marriage, neither the husband nor the wife may testify for or against the other without the consent of the affected spouse, except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants.

Section 24. *Disqualification by reason of privileged communication.* — The following persons cannot testify as to matters learned in confidence in the following cases:

(a) The husband or the wife, during or after the marriage, cannot be examined without the consent of the other as to any

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[22] Penalizing Obstruction of Apprehension and Prosecution of Criminal Offenders (1981).

[23] Per *Republic v. Cayanan, supra* note 3.

> communication received in confidence by one from the other during the marriage except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants;
>
> x x x x x x x x x
>
> **Section 25.** *Parental and filial privilege*. — No person may be compelled to testify against his parents, other direct ascendants, children or other direct descendants.

However, there was no indication in the records that Sanchez or any of her children were being made to testify against Labinghisa. It is a long stretch to claim that respondents' alleged surveillance of Sanchez and her children is tantamount to making them act as witnesses against Labinghisa, which is a State incursion into their privileged wife-husband and children-father relationships and thus correctible by a writ of *amparo*.

Also, the marital privilege rule is inapplicable in the case at hand. As already mentioned, there was never an instance that Sanchez or any of her children were being forced to testify against Labinghisa or against each other. In any case, and in view of Labinghisa's demise, the preservation or disturbance of domestic tranquility or marital peace is no longer feasible.

At any rate, mere personal identification as one's spouse cannot be considered as equivalent to adverse testimony. There is also nothing inimical under the law if Sanchez admits before the investigating police officers her relationship with a suspected NPA member. There is simply an unjust inconsistency between alleging fear of being tagged as a spouse of a communist and, at the same time, banking upon the same legal status to support her petition for a writ of *amparo*.

It also bears emphasizing that all these rules on evidence enjoy relevance only in matters covered by judicial proceedings. Section 1, Rule 128 of the Rules of Court provides:

> **Section 1.** *Evidence defined*. — Evidence is the means, sanctioned by these rules, of ascertaining **in a judicial proceeding** the truth respecting a matter of fact. (Emphasis supplied.)

Plainly, the alleged acts committed by public respondents against Sanchez and her children transgressing upon their purported privileges were committed out of court. Hence, the rules on evidence should not apply here.

The RTC had meticulously considered and carefully weighed all the evidence presented by the parties. There is, in my mind, no reason for this Court, even after its own review of the evidence on record, to disturb the findings of fact of the court *a quo*, especially considering that the latter had an opportunity to observe the behavior of the witnesses in the course of their testimony and was in a better position to gauge their veracity.

Even applying the minimum of the totality of evidence standard, which would have allowed the admission and appreciation of hearsay and circumstantial evidence, Sanchez still failed to discharge the burden of proof necessary for the grant of a writ of *amparo* in her favor. There is just a dearth of evidence adduced by Sanchez, hence, falling short of substantial evidence necessary to establish any actual violation or threat to her right to life, liberty, or security. Her apprehensions did not rise to the level that must be necessarily protected by a writ of *amparo*. Otherwise stated, mere acts of surveillance or monitoring, as part of legitimate police operations, could not and should not be characterized as acts indicative of or preparatory to extrajudicial killings or enforced disappearances falling under the protective mantle of a writ of *amparo*. At most, these are indications of instinctive fear, trauma even, naturally brought out by her connections with a person slain by the police authorities. On its lonesome, this fear does not impel the issuance of the writ of *amparo*. The writ cannot be issued on mere inferences or deductions.

This Court on several occasions granted the writ on the basis of indirect and circumstantial proof, but only after a painstaking probe into the totality, strength, and credibility of the entire evidence on record:

In *Bautista v. Dannug-Salucon*,[24] the Court affirmed the decision of the Court of Appeals granting Atty. Maria Catherine Dannug-

[24] G.R. No. 221862, January 23, 2018.

Salucon's petition for a writ of *amparo* that had been backed up by circumstantial evidence and uncorroborated testimonies. Dannug-Salucon, a founding member of the National Union of People's Lawyers in Isabela and a human rights lawyer representing political prisoners and suspected members of the NPA, alleged that, per information of her clients and employees, the Philippine National Police (PNP) and the Armed Forces of the Philippines (AFP) had tagged her as a Red Lawyer and were conducting surveillance on her activities and routine. Numerous incidents transpired leading to the filing of the *amparo* case: her paralegal, also an activist and human rights defender, was fatally gunned down; one of her clients who was a civilian asset for the PNP Intelligence Section told her that the AFP was tracking her and had included her name on the military's Watch List of so-called terrorist supporters; her confidential informant was cornered by three military operatives who interrogated him regarding the purpose of his visit to Dannug-Salucon's office; different individuals appearing to be soldiers had even approached and questioned the vendors in front of her office as to their observations on Dannug-Salucon's schedule; members of the Criminal Investigation Detection Group and soldiers visited her office with no clearly declared purpose; her driver had been tailed by an unidentified motorcycle rider; and a known civilian asset of the Military Intelligence Group (MIG) in Isabela informed her that she was being watched by the MIG. She also tried reporting the incidents to the National Bureau of Investigation (NBI) in Isabela but received no positive report identifying the individuals behind the alleged surveillance. In granting the writ, the Court held that the combination of all the foregoing incidents had adequately established that "the threats to her right to life, liberty and security were neither imaginary nor contrived, but real and probable.

Razon, Jr. v. Tagitis,[25] a case cited and heavily relied upon by Sanchez, involved a petition for a writ of *amparo* by Mary Jean Tagitis, the wife of a consultant for the Islamic Development Bank who suddenly disappeared and reportedly fell under custody of police intelligence operatives and was being held against his will in an attempt of the police to implicate him with the terrorist group Jemaah Islamiyah. Colleagues of her husband reported his disappearance to the local police authorities but to no avail. Tagitis thereafter filed complaints with the PNP in Cotabato and Jolo seeking help to find her husband.

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[25] *Supra* note 4.

Her efforts, however, yielded no positive results and she was even chided by the police that her husband was not missing but was on a *rendezvous* with another woman. It was ruled therein that cases of enforced disappearances pose "evidentiary difficulties compel the Court to adopt standards appropriate and responsive to the circumstances, without transgressing the due process requirements that underlie every proceeding,"[26] and that even hearsay testimony may be considered by the *amparo* court provided such testimony can lead to conclusions consistent with the admissible evidence adduced.[27] Finding that Tagitis properly pleaded the ultimate facts of her husband's enforced disappearance and the totality of the circumstances met the requirements of substantial evidence, the Court deemed sufficient the hearsay evidence presented by Tagitis.

No factual circumstances run in common between the present case and the aforecited ones, and all these jurisprudential precepts granting exception to indirect proof do not apply here.

There is no automatic admissibility of hearsay evidence in all *amparo* proceedings.[28] In this case, there is no reason to deviate from this rule, as Sanchez's proof consisted only of hearsay that are all too frail, inadequate, and unfounded to stand on its own.

It must be kept in mind that the extraordinary remedy of writ of *amparo* ought to be resorted to and granted judiciously, lest the ideal sought by the *Amparo* Rule be diluted and undermined by the indiscriminate filing of *amparo* petitions for purposes less than the desire to secure *amparo* reliefs and protection and/or on the basis of unsubstantiated allegations.[29]

I therefore vote to **DENY** the Petition for Writ of *Amparo*.

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[26] *Id.* at 613.

[27] *Id.* at 616.

[28] *Supra* note 4.

[29] *Rubrico v. Macapagal-Arroyo*, 627 Phil. 37, 73-74 (2010).

EN BANC

[G.R. No. 244443. October 15, 2019]

STO. NIÑO CONSTRUCTION, represented by DEXTER W. TSANG, *petitioner*, *vs.* **COMMISSION ON AUDIT, represented by HON. MICHAEL G. AGUINALDO, Chairperson,** *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; DOCTRINE OF FINALITY OF JUDGMENTS; EXCEPTIONS. — Under the doctrine of finality of judgments, when a judgment becomes final the same is immutable and unalterable and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law and whether it be made by the court that rendered it or by the Highest Court of the land. Nevertheless, this doctrine may be relaxed in order to serve substantial justice in case compelling circumstances that clearly warrant the exercise of the Court's equity jurisdiction are extant. Similarly, under Rule 64/65 of the Rules of Court, the Court has allowed resort to a petition for *certiorari* despite finality of assailed decisions, where the same were issued either in excess of or without jurisdiction or for certain special considerations, such as public welfare or public policy, among other exceptions.

APPEARANCES OF COUNSEL

Bernardo R. Sumicad for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

CARANDANG, *J.*:

The instant Petition for *Certiorari*[1] under Rule 64 of the Rules of Court assails the Decision dated December 29,

[1] *Rollo,* pp. 4-7.

2016[2] and Resolution dated November 28, 2018[3] of the Commission on Audit (COA) in COA CP Case No. 2013-209. The assailed Decision and Resolution denied the Petition for Money Claim[4] amounting to ₱11,425,875.67 filed by Sto. Niño Construction, represented by Dexter W. Tsang against Department of Public Works and Highways (DPWH), Ipil Engineering District, Zamboanga, Sibugay with the COA.

Facts of the Case

On April 23, 2009, the Bids and Awards Committee (BAC) of the DPWH conducted a public bidding for the improvement and rehabilitation of Payao Road located in Zamboanga, Sibugay. Petitioner Sto. Niño Construction (STC) was the lowest responsive bidder per BAC Resolution No. 05-059[5] dated May 8, 2009. However, no award of contract was issued because of the pending fund allocation from the Department of Budget and Management.

Prior to the bidding for the rehabilitation project of Payao Road, former Zamboanga Sibugay Representative, Belma Cabilao (Rep. Cabilao), in a letter[6] dated July 30, 2008, requested for funding assistance amounting to ₱12,000,000.00 for the foregoing rehabilitation project. Thereafter, in a letter[7] dated November 11, 2008, the Undersecretary for Operations of DPWH for the Mindanao Region notified Department Assistant Secretary Maria Catalina E. Cabral of a "marginal note" of former President Gloria Macapagal-Arroyo for the immediate release of ₱12,000,000.00 to fast track the implementation of the rehabilitation project.

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[2] *Id*. at 20-26.

[3] *Id*. at 8-13.

[4] *Id*. at 16-19.

[5] *Id*. at 20.

[6] *Id*. at 14.

[7] *Id*. at 15.

While waiting for the release of funds, STC began the project upon the verbal instruction of Rep. Cabilao in order to minimize the insurgency problem in said area. The company also claims that both Rep. Cabilao and Undersecretary Renato Ebarle (Usec. Ebarle), from the Office of the President, assured STC that funding for the project will be made available and released for payment.[8]

On November 18, 2009, STC completed the rehabilitation project of Payao Road based on the Certification[9] issued by the District Engineer of DPWH Ipil Engineering District.[10] STC claims that the cost of the project amounted to ₱11,425,875.67. However, no funding was released as payment for the construction works rendered by STC.[11] Thus, STC filed a Petition for Money Claim[12] against DPWH Ipil Engineering District.

The District Engineer of DPWH Ipil Engineering District filed its Answer/Comment[13] to the petition, affirming STC's claim that high ranking national government officials, specifically Usec. Ebarle, had assured funding for the Payao Road project; that Rep. Cabilao assured the company on the release of funding; that the project was immediately implemented after verbal instruction from Rep. Cabilao in order to minimize and eliminate insurgency in the area; that the project was completed in accordance with the approved plans and program works; and that the project was already turned over to the government.[14] DPWH also notes the recommendation of the Public Works, Transport and Energy, National Government Sector that STC be paid the amount of ₱8,238,271.35 representing the work

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[8] *Id*. at 5.

[9] Not attached to the *rollo*.

[10] *Rollo*, p. 21.

[11] *Id*. at 20-21.

[12] *Id*. at 16-19.

[13] Not attached to the *rollo*.

[14] *Rollo*, p. 21.

accomplished based on *quantum meruit* and the inspection by COA Regional Technical Information Technology Services.[15]

In a Decision[16] dated December 29, 2016, COA denied STC's Petition for Money Claim. COA held that under Sections 85(1)[17] and 86[18] of Presidential Decree No. (P.D.) 1445[19] fund appropriation and the availability of funds are indispensable requirements for the implementation of government contracts. Section 87 of the same law provides that contracts entered without the appropriation and funds available shall be void. In addition, officers entering into the contract shall be liable to the government or the contracting party for the consequent damage to the same extent as if the transaction had been wholly between private parties. There should be an appropriation to cover

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[15] *Id*.

[16] *Id*. at 20-26.

[17] Sec. 85. *Appropriation before entering into contract.*

1. No contract involving the expenditure of public funds shall be entered into unless there is an appropriation therefor, the unexpended balance of which, free of other obligations, is sufficient to cover the proposed expenditure.

x x x x x x x x x

[18] Sec. 86. *Certificate showing appropriation to meet contract.* Except in the case of a contract for personal service, for supplies for current consumption or to be carried in stock not exceeding the estimated consumption for three months, or banking transactions of government-owned or controlled banks no contract involving the expenditure of public funds by any government agency shall be entered into or authorized unless the proper accounting official of the agency concerned shall have certified to the officer entering into the obligation that funds have been duly appropriated for the purpose and that the amount necessary to cover the proposed contract for the current fiscal year is available for expenditure on account thereof, subject to verification by the auditor concerned. The certificate signed by the proper accounting official and the auditor who verified it, shall be attached to and become an integral part of the proposed contract, and the sum so certified shall not thereafter be available for expenditure for any other purpose.

[19] Presidential Decree No. 1445 entitled, "Ordaining and Instituting a Government Auditing Code of the Philippines," otherwise known as the "Government Auditing Code of the Philippines," approved on June 11, 1978.

any expenditure of public funds before a contract can be entered. In this case, since there is no appropriation, there is no contract to speak of.[20]

COA denied the application of the principle of *quantum meruit.* Although the cases *Soler v. Court of Appeals,*[21] and *EPG Construction Co v. Vigilar*[22] applied said principle despite the absence of appropriation and contract before the implementation of the projects, COA emphasized that construction in said cases was authorized by the agency. In the instant case, COA held that the DPWH Ipil Engineering District did not issue a Notice of Award to STC. Consequently, no contract was executed between STC and DPWH Ipil Engineering District because the procuring entity was fully aware that there was no fund available for the project at the time the BAC conducted the public bidding. Therefore, there was no consent or authorization from DPWH to proceed with the implementation of the project.[23]

COA reiterated that STC still has another recourse provided in Section 87 of P.D. 1445. The provision states that while contracts entered into without the appropriation and funds shall be void, the officers entering into the contract shall be liable to the government or the contracting party for the consequent damage to the same extent as if the transaction had been wholly between private parties.

STC received the foregoing COA decision on February 9, 2017. On June 28, 2017, a Notice of Finality of Decision[24] was issued.[25] On August 14, 2017, STC belatedly filed its Motion for Reconsideration.[26]

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[20] *Rollo,* p. 22.

[21] 410 Phil. 264 (2001).

[22] 407 Phil. 53 (2001).

[23] *Rollo,* pp. 22-24.

[24] Not attached to the *rollo.*

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

[26] *Id.* at 27-28.

In a Resolution[27] dated November 28, 2018, COA denied the motion for reconsideration for having been filed out of time. COA stressed that a Notice of Finality of Decision had been issued. It also held that the principle of *quantum meruit* may not be applied in the instant case because the services rendered by STC was in violation of applicable laws, rules and regulations. COA reiterated that there was absence of a written contract and covering appropriation for the construction of Payao Road. In addition, DPWH did not give its consent and authority for STC to proceed with the implementation of the project. While the District Engineer and the Audit Team Leader of DPWH may have recommended payment to STC, the same does not constitute authority to said company to implement the project. It was only Rep. Cabilao who intervened and gave her verbal instruction for STC to proceed. In doing so, it is as if Rep. Cabilao entered into a private contract with STC. The COA held that to apply *quantum meruit* in this scenario, "would only render the power of this Commission to disallow irregular or illegal transactions useless and ineffective as those guilty of violating the laws in entering illegal and/or irregular government contracts would be able to escape liability and recover the proceeds of their unlawful activity by the mere expediency or under the guise of *quantum meruit.*"[28]

Aggrieved by the assailed Decision and Resolution, STC instituted the instant petition reiterating its arguments raised before COA. STC insists on the application of principle of *quantum meruit* and should be compensated for work performed for the rehabilitation of a public road. Said principle was applied in the cases of *Soler v. Court of Appeals*,[29] *EPG Construction v. Vigilar*,[30] and *Royal Trust Construction v. Commission on Audit*,[31]

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[27] *Id*. at 8-13.

[28] *Id*. at 11.

[29] *Supra* note 21.

[30] *Supra* note 22.

[31] G.R. No. 84202 (Resolution), November 22, 1988.

whose factual and legal antecedents, as claimed by STC, are in all fours with its case.

COA, through the Office of the Solicitor General, argues otherwise. In citing *Philippine Realty and Holdings Corporation v. Ley Constructions and Development Corporation*,[32] COA explains that the claim for remuneration under the principle of unjust enrichment shall only prosper when it is proven that STC constructed the project by mistake, fraud, coercion or request. Here, STC voluntarily undertook the construction project knowing fully well that there was no fund available for the project, and without prior consent of the DPWH. STC also failed to prove that COA committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed Decision and Resolution. In fact, COA followed the provisions of law on the requirements for a valid government contract. Further, the COA Decision had attained finality for failure of STC to timely file a motion for reconsideration rendering the Decision immutable, which can no longer be amended or modified.

Under the doctrine of finality of judgments, when a judgment becomes final the same is immutable and unalterable and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law and whether it be made by the court that rendered it or by the Highest Court of the land. Nevertheless, this doctrine may be relaxed in order to serve substantial justice in case compelling circumstances that clearly warrant the exercise of the Court's equity jurisdiction are extant.[33] Similarly, under Rule 64/65 of the Rules of Court, the Court has allowed resort to a petition for *certiorari* despite finality of assailed decisions, where the same were issued either in excess of or without jurisdiction or for certain special considerations, such as public welfare or public policy, among other exceptions.[34]

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[32] 667 Phil. 32 (2011).

[33] *Spouses Navarra v. Liongson,* 784 Phil. 942, 953-954 (2016).

[34] *Orlina v. Ventura,* G.R. No. 227033, December 3, 2018.

We find that the instant case falls under the exception of the doctrine of immutability because COA committed grave abuse of discretion when it overlooked relevant facts. COA denied STC's claim of payment for work rendered due to lack of fund appropriation and written contract from DPWH and without the two requirements, payment would constitute illegal expenditure. However, COA failed to consider the implied authorization and subsequent acts done by DPWH, which cured the cited defects.

DPWH conducted the public bidding for the project and under BAC Resolution No. 05-059[35] dated May 8, 2009, STC was declared to have submitted the lowest responsive bid for the project. Thereafter, a certification was issued by the District Engineer of DPWH attesting to the completion of the works rendered by said company.[36] In fact, during the pendency of proceedings for the Petition of Money Claim before the COA, the DPWH, through its District Engineer in Ipil, Zamboanga, Sibugay, admits that construction works for the project commenced even without funding; that the same had to be completed in order to eliminate insurgency problems in the area; that the project was completed, turned over to and accepted by the government and has been accessible and passable to the public.[37] Finally, the Audit Team Leader of DPWH recommended payment to STC for the cost of actual services rendered amounting to ₱8,238,271.35 based on the technical inspection and verification made by COA Regional Technical Information Technology Services. If, as COA held, that there was no authorization from DPWH to implement the rehabilitation/ construction of Payao Road, then DPWH could have refused liability by claiming the nullity of the works done by STC, but such is not the case.

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[35] *Rollo,* p. 20.

[36] *Id*. at 21.

[37] *Id*.

With the acknowledgment by DPWH of works rendered by STC, its recommendation to pay after the completion of the project, and the urgency to finish the project because of the insurgency problem in the area, there is no legal impediment to pay what is due to STC. The actions done by DPWH were curative in nature "intended to enable persons to carry into effect that which they have designed and planned, but has failed of the expected legal consequence by reason of some statutory disability"[38] or lack of legal requisites to validate the action, as in this case.

The government and the people of Zamboanga Sibugay clearly benefited from the construction works. To deny the company of compensation for the construction and rehabilitation of the Payao Road is unjustified and would constitute unjust enrichment on the part of the government and the people, who derived benefits thereof at the expense of STC.

WHEREFORE, the petition is **GRANTED**. The Decision dated December 29, 2016 and Resolution dated November 28, 2018 of the Commission on Audit in COA CP Case No. 2013-209 are hereby **REVERSED** and **SET ASIDE**. The Department of Public Works and Highways is hereby **ORDERED** to pay Sto. Niño Construction the amount of ₱8,238,271.35 as determined by the Commission on Audit Regional Technical Information Technology Services for actual services rendered by the company.

SO ORDERED.

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

Reyes, J. Jr., J., on leave.

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[38] *Batong Buhay Gold Mines, Inc. v. Dela Serna,* 370 Phil. 872 (1999).

THIRD DIVISION

[A.C. No. 8608. October 16, 2019]
(Formerly CBD Case No. 11-2907)

ADELFA PROPERTIES, INC. (now FINE PROPERTIES, INC.), *complainant, vs.* **ATTY. RESTITUTO S. MENDOZA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEY-CLIENT PRIVILEGE; AN ATTORNEY IS TO KEEP INVIOLATE HIS CLIENT'S SECRETS OR CONFIDENCE AND NOT TO ABUSE THEM; FACTORS ESSENTIAL TO ESTABLISH THE EXISTENCE OF THE PRIVILEGE. — One rule adopted to serve [the] purpose [of preserving and protecting attorney-client relationship] is the attorney-client privilege: an attorney is to keep inviolate his client's secrets or confidence and not to abuse them. Thus, the duty of a lawyer to preserve his client's secrets and confidence outlasts the termination of the attorney-client relationship, and continues even after the client's death. In sum, the Court elucidated on the factors essential to establish the existence of the said privilege, to wit: (1) There exists an attorney-client relationship, or a prospective attorney-client relationship, and it is by reason of this relationship that the client made the communication. Matters disclosed by a prospective client to a lawyer are protected by the rule on privileged communication even if the prospective client does not thereafter retain the lawyer or the latter declines the employment. The reason for this is to make the prospective client free to discuss whatever he wishes with the lawyer without fear that what he tells the lawyer will be divulged or used against him, and for the lawyer to be equally free to obtain information from the prospective client. x x x x (2) The client made the communication in confidence. The mere relation of attorney and client does not raise a presumption of confidentiality. The client must intend the communication to be confidential. A confidential communication refers to information transmitted by voluntary act of disclosure between attorney and client in confidence and by means which, so far as the client is aware, discloses the information to no

third person other than one reasonably necessary for the transmission of the information or the accomplishment of the purpose for which it was given. Our jurisprudence on the matter rests on quiescent ground. Thus, a compromise agreement prepared by a lawyer pursuant to the instruction of his client and delivered to the opposing party, an offer and counter-offer for settlement, or a document given by a client to his counsel not in his professional capacity, are not privileged communications, the element of confidentiality not being present. (3) The legal advice must be sought from the attorney in his professional capacity. The communication made by a client to his attorney must not be intended for mere information, but for the purpose of seeking legal advice from his attorney as to his rights or obligations. The communication must have been transmitted by a client to his attorney for the purpose of seeking legal advice.

2. **ID.; ID.; ID.; MERE ALLEGATION, WITHOUT ANY EVIDENCE AS TO THE SPECIFIC CONFIDENTIAL INFORMATION ALLEGEDLY DIVULGED BY THE LAWYER, IS NOT SUFFICIENT TO ESTABLISH A BREACH OF THE RULE. —** The filing of the illegal dismissal case against complainant, and the disclosure of information in support thereof is not *per se* a violation of the rule on privileged communication because it was necessary in order to establish his cause of action against complainant. In sum, mere allegation, without any evidence as to the specific confidential information allegedly divulged by Atty. Mendoza, is difficult, if not impossible to determine if there was any violation of the rule on privileged communication. Such confidential information is a crucial link in establishing a breach of the rule on privileged communication between attorney and client. It is not enough to merely assert the attorney-client privilege. The burden of proving that the privilege applies is placed upon the party asserting the privilege.

3. **ID.; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); RULES 13.02, 21.01 AND 21.02 VIOLATED WHEN LAWYER CAUSED HIMSELF TO BE INTERVIEWED BY THE MEDIA THEREBY DIVULGING INFORMATION HE HAS GATHERED IN THE COURSE OF HIS EMPLOYMENT WITH THE COMPLAINANT. —** [T]he Court finds Atty. Mendoza's act of causing himself to be interviewed by the media, *i.e.*, ABS-CBN, thereby divulging information he has gathered in the

course of his employment with complainant in the media to be violative of Rules 13.02, 21.01 and 21.02 of the CPR, which state: Rule 13.02 - A lawyer shall not make public statements in the media regarding a pending case tending to arouse public opinion for or against a party. CANON 21 — A LAWYER SHALL PRESERVE THE CONFIDENCE AND SECRETS OF HIS CLIENT EVEN AFTER THE ATTORNEY-CLIENT RELATION IS TERMINATED. Rule 21.01 — A lawyer shall not reveal the confidences or secrets of his client except; (a)When authorized by the client after acquainting him of the consequences of the disclosure; (b)When required by law; (c)When necessary to collect his fees or to defend himself, his employees or associates or by judicial action. Rule 21.02 — A lawyer shall not, to the disadvantage of his client, use information acquired in the course of employment, nor shall he use the same to his own advantage or that of a third person, unless the client with full knowledge of the circumstances consents thereto. Here, Atty. Mendoza's actuation of allowing himself to be interviewed by the media, thus, utilizing that forum to accuse his former employer of committing several illegal activities and divulging information which he secured in the course of his employment while he was the complainant's in-house counsel, no matter how general the allegations are, is an act which is tantamount to a clear breach of the trust and confidence of his employer.

4. ID.; DISBARMENT OR SUSPENSION OF ATTORNEYS; GROUNDS; GROSS MISCONDUCT WARRANTED THE PENALTY OF SUSPENSION FROM THE PRACTICE OF LAW. — A member of the Bar may be penalized, even disbarred or suspended from his office as an attorney, for violating the lawyer's oath and/or for breaching the ethics of the legal profession as embodied in the CPR, for the practice of law is a profession, a form of public trust, the performance of which is entrusted to those who are qualified and who possess good moral character. The appropriate penalty on an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts. Under Section 27, Rule 138 of the Revised Rules of Court, a member of the Bar may be disbarred or suspended on any of the following grounds: (1) deceit; (2) malpractice or other gross misconduct in office; (3) grossly immoral conduct; (4) conviction of a crime involving moral turpitude; (5) violation of the lawyer's oath; (6) willful

disobedience of any lawful order of a superior court; and (7) willful appearance as an attorney for a party without authority. A lawyer may be disbarred or suspended for misconduct, whether in his professional or private capacity, which shows him to be wanting in moral character, honesty, probity and good demeanor, or unworthy to continue as an officer of the court. While the Court finds no violation of the rule on non-disclosure of privileged communication, the acts of Atty. Mendoza, in allowing himself to be interviewed by the media constitute gross misconduct in his office as attorney, for which a suspension from the practice of law is warranted.

APPEARANCES OF COUNSEL

Rosero Estrada Lazaro Ramos and Sabillo Law Offices for complainant.

R E S O L U T I O N

PERALTA, *J.*:

Before us is a Complaint for Disbarment[1] filed by Adelfa Properties, Inc. (now Fine Properties, Inc.), as represented by Ma. Nalen Rosero-Galang, against respondent Atty. Restituto Mendoza *(Atty. Mendoza)*, for allegedly violating the Lawyer's Oath and Canons 15, 17, 18, 21, and Rule 21.02 of the Code of Professional Responsibility *(CPR).*

The facts are as follows:

Adelfa Properties, Inc. *(complainant)* is a corporation duly organized and existing under the laws of the Republic of the Philippines, the majority stockholders of which are then Senator Manuel B. Villar, Jr. and his wife Senator Cynthia Villar. The corporation is primarily engaged in real estate development. Imperative to its business operation, Adelfa maintains a pool of lawyers, each of which is assigned as in-house counsel to its affiliate companies. As in-house counsel, they provide legal

[1] *Rollo,* pp. 1-24.

advice and opinion not only to the company they are assigned to but also to other affiliate companies of Adelfa as deed arises. They also represent the companies in court litigations and administrative proceedings, and handle legal issues confronting the companies.

In 2004, Brittany Corporation, an affiliate company of Adelfa, hired Atty. Mendoza as one of its in-house counsel. As in-house counsel, Atty. Mendoza, who practically holds an executive position, thus, apart from his legal expertise, must be able to blend well with company offices and other executives. However, much to the dismay and disappointment of Adelfa and its affiliates, Atty. Mendoza failed to blend effectively and efficiently with his co-in house counsels, officers and other executives. Complainant added that Atty. Mendoza's performance evaluation, particularly his ability to adapt to his work environment had been consistently low that he had to be transferred from one company to another, from one supervisor to another, in order to find him a suitable place in the company.

Thus, on February 1, 2007, Atty. Mendoza was transferred to Casa Regalia, Inc. However, due to his failure to work well again with his peers and superiors, he was again transferred and placed under the supervision of Atty. Edgardo Mendoza, and was tasked to handle non-core business or non-housing business collection and criminal cases.

Nevertheless, complainant averred that Atty. Mendoza's performance continued to disappoint the company, thus, in May 2009, Cynthia J. Javarez, Senior Officer of MB Villar Group of Companies, spoke with Atty. Mendoza about his poor annual performance evaluation. In her Affidavit[2] dated September 30, 2009, Javarez stated that after she informed Atty. Mendoza of the unfavorable assessment made by the senior officers, he threatened them and retorted, *"I will bring down the Company with me,"* and even brazenly claimed that he has information and documents against the company boss.

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[2] *Id.* at 27.

Complainant also alleged that on May 15, 2009, Atty. Mendoza approached another lawyer of one of the affiliated companies of Adelfa and showed him an affidavit which the former supposedly executed, containing an account of the alleged irregular and illegal acts and corrupt practices of the complainant and its affiliated companies. Atty. Mendoza allegedly told said lawyer that he would give said Affidavit to Senator Panfilo Lacson, unless Jerry M. Navarrete *(Navarrete),* one of the senior officers of one of Adelfa's affiliated companies, immediately meets with him to discuss his concerns.

In an Affidavit[3] executed by Navarrete, dated June 2, 2009, Navarrete stated that on May 20, 2009, he met Atty. Mendoza at Starbucks, 6750 Building, Ayala Center, Makati City. He averred that during the meeting, Atty. Mendoza told him that he took part in the preparation of documents in one of the illegal and irregular transactions of Adelfa and/or its affiliates, and that he had information and documents that are damaging to the political career of Senator Villar. Despite being reminded that Atty. Mendoza is bound by the attorney-client confidentiality rules, Atty. Mendoza continued to demand that he be paid ₱25,000,000.00, otherwise, he would surrender all the documents he had against Senator Villar to Senator Lacson.

Because complainant did not accede Atty. Mendoza's demands, the latter allegedly made a phone call to Engr. Momar Santos *(Engr. Santos),* one of Adelfa's officers. In his Affidavit[4] dated June 2, 2009, Engr. Santos stated that Atty. Mendoza threatened that he will go all out against Senator Villar, and that he knew where he and his family resides should he release certain indecent photos of him.

Thus, due to breach of trust and confidence, complainant sent a notice of termination[5] dated May 22, 2009 to Atty. Mendoza. In the said termination letter, complainant manifested

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

[4] *Id.* at 31-32.

[5] *Id.* at 33-34.

they found substantial evidence that Atty. Mendoza has violated the company's core values and the pertinent provisions of the Labor Code. Complainant averred that Atty. Mendoza's threats against Engr. Santos and his family, his attempts to extort money, and his threats to expose incriminating information against Senator Villar constitute serious misconduct, gross and habitual neglect of duties, and willful breach of trust and confidence.

Complainant pointed out that in the illegal dismissal complaint which Atty. Mendoza filed against them, it is apparent that its filing was tainted by malice and caprice. In the said labor case, complainant averred that Atty. Mendoza asked for: (1) ₱73,433.54 per month as full backwages, (2) recovery of all salary increases due him, (3) performance bonuses given every six months of the year, (4) moral damages of ₱30,000,000.00, (5) exemplary damages of ₱30,000,000.00, and (6) attorney's fees equivalent to 15% of the total award.[6]

To aggravate the situation, complainant lamented that on April 20, 2010, Atty. Mendoza even had himself interviewed by ABS-CBN TV Patrol where he maliciously claimed that he was dismissed from employment because he does not want to participate in the corrupt practices of the company. He also said therein that Senator Villar uses his influence and power to obtain favorable decisions in land disputes, when in truth, he had neither worked with Senator Villar nor the latter asked him to do work for him.

On April 22, 2010, in a press conference, Atty. Mendoza publicly declared that he will testify against Senator Villar on the alleged land grabbing issue committed by complainant and its affiliates.

Thus, complainant filed a disbarment complaint against Atty. Mendoza for violation of Canons 15, 17, 18 and 21, Rule 21.02 of the Code of Professional Responsibility and the lawyer's oath. Complainant also added that Atty. Mendoza also violated Canon 7, Rule 7.03, Canons 8 and 11, Rule 11.04 of the Code

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[6] *Id.* at 94.

of Professional Responsibility for imputing that judges, justices and other public officers allow themselves to be bribed.

In a Resolution[7] dated June 23, 2010, the Court resolved to require Atty. Mendoza to file his comment on the charges against him.

In his Comment[8] dated September 22, 2010, Atty. Mendoza argued that contrary to the allegations against him, he actually upheld the lawyer's oath and Rule 1.01, Canon 1 of the Code of Professional Responsibility by refusing to engage in immoral, dishonest, unlawful and deceitful conduct. He claimed that his employment was terminated because he stood up for his principles to which he was branded as abrasive and not a team player.

Atty. Mendoza averred that he filed the labor complaint in order to seek justice for his illegal termination, and that he never wanted the media attention he got from filing his labor complaint against complainant. He, however, asserted the truth of his allegations of bribery of judges, justices and other government officials, as he claimed that he was privy to said incidents having worked as in-house counsel for complainant.

On November 15, 2010, the Court resolved to refer the instant case to the Integrated Bar of the Philippines *(IBP)* for investigation, report and recommendation.[9]

In its Report and Recommendation dated March 26, 2013, Commissioner Romualdo A. Din, Jr., IBP-Commission on Bar Discipline *(CBD)*, found Atty. Mendoza to have violated Canon 17 and Rule 21.02 of Canon 21 of the Code of Professional Responsibility, and recommended that he be suspended for one (1) year from the practice of law.

In Resolution No. XX-2013-613 dated May 11, 2013, the IBP-Board of Governors resolved to adopt and approve with

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[7] *Id.* at 198.

[8] *Id.* at 208-241.

[9] *Id.* at 370.

modification the report and recommendation of the Investigating Commissioner. Instead, it recommended that Atty. Mendoza be suspended from the practice of law for six (6) months.

RULING

We adopt the findings and recommendation of the IBP.

In engaging the services of an attorney, the client reposes on him special powers of trust and confidence. Their relationship is strictly personal and highly confidential and fiduciary. The relation is of such delicate, exacting and confidential nature that is required by necessity and public interest.[10] Only by such confidentiality and protection will a person be encouraged to repose his confidence in an attorney. The hypothesis is that abstinence from seeking legal advice in a good cause is an evil which is fatal to the administration of justice.[11] Thus, the preservation and protection of that relation will encourage a client to entrust his legal problems to an attorney, which is of paramount importance to the administration of justice.[12] One rule adopted to serve this purpose is the attorney-client privilege: an attorney is to keep inviolate his client's secrets or confidence and not to abuse them. Thus, the duty of a lawyer to preserve his client's secrets and confidence outlasts the termination of the attorney-client relationship, and continues even after the client's death.[13]

In sum, the Court elucidated on the factors essential to establish the existence of the said privilege, to wit:

(1) There exists an attorney-client relationship, or a prospective attorney-client relationship, and it is by reason of this relationship that the client made the communication.

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[10] *Regala v. Sandiganbayan,* 330 Phil. 678, 699 (1996), citing Agpalo, Ruben, *Legal Ethics,* 1992 ed., p. 136.

[11] *Hilado v. David,* 84 Phil. 569, 578 (1949), citing J. Wigmore's *Evidence* §§ 2285, 2290, 2291 (1923).

[12] *Id.* at 579.

[13] *Mercado v. Atty. Vitriolo,* 498 Phil. 49, 57 (2005).

Matters disclosed by a prospective client to a lawyer are protected by the rule on privileged communication even if the prospective client does not thereafter retain the lawyer or the latter declines the employment. The reason for this is to make the prospective client free to discuss whatever he wishes with the lawyer without fear that what he tells the lawyer will be divulged or used against him, and for the lawyer to be equally free to obtain information from the prospective client.

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(2) The client made the communication in confidence.

The mere relation of attorney and client does not raise a presumption of confidentiality. The client must intend the communication to be confidential.

A confidential communication refers to information transmitted by voluntary act of disclosure between attorney and client in confidence and by means which, so far as the client is aware, discloses the information to no third person other than one reasonably necessary for the transmission of the information or the accomplishment of the purpose for which it was given.

Our jurisprudence on the matter rests on quiescent ground. Thus, a compromise agreement prepared by a lawyer pursuant to the instruction of his client and delivered to the opposing party, an offer and counter-offer for settlement, or a document given by a client to his counsel not in his professional capacity, are not privileged communications, the element of confidentiality not being present.

(3) The legal advice must be sought from the attorney in his professional capacity.

The communication made by a client to his attorney must not be intended for mere information, but for the purpose of seeking legal advice from his attorney as to his rights or obligations. The communication must have been transmitted by a client to his attorney for the purpose of seeking legal advice.[14]

Applying all these rules in the instant case, we find that the evidence on record fails to substantiate complainant's allegations.

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[14] *Id.* at 58-60.

We note that complainant did not even specify the alleged communication in confidence disclosed by respondent. Complainant merely claimed that the privilege was broken without averring any categorical and concrete allegations and evidence to support their claim.

The filing of the illegal dismissal case against complainant, and the disclosure of information in support thereof is not *per se* a violation of the rule on privileged communication because it was necessary in order to establish his cause of action against complainant. In sum, mere allegation, without any evidence as to the specific confidential information allegedly divulged by Atty. Mendoza, is difficult, if not impossible to determine if there was any violation of the rule on privileged communication. Such confidential information is a crucial link in establishing a breach of the rule on privileged communication between attorney and client. It is not enough to merely assert the attorney-client privilege. The burden of proving that the privilege applies is placed upon the party asserting the privilege.

Further, our jurisprudence is replete with cases reiterating that in disbarment proceedings, the burden of proof rests upon the complainant.[15] In the recent case of *Reyes v. Atty. Nieva,*[16] this Court had the occasion to clarify that the proper evidentiary threshold in disbarment cases is substantial evidence.

In the instant case, a careful scrutiny of the evidence presented would reveal that the degree of proof indispensable in a disbarment case was not met. Complainant claims that Atty. Mendoza has been threatening and blackmailing them. However, the Court finds that the complaint, as well as the submitted affidavits, failed to discharge the necessary burden of proof as no other evidence was presented to substantiate their claims of extortion. The affidavits merely provided general statements and lacked evidence in support of their allegation of extortion.

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[15] *Concepcion v. Atty. Fandino, Jr.,* 389 Phil. 474, 480 (2000).

[16] 794 Phil. 360, 379 (2016).

However, the Court, nonetheless, does not find Atty. Mendoza totally absolved of fault. While We find the allegations of violation of rule on privileged communication and extortion to be unsubstantiated, the Court finds Atty. Mendoza's act of causing himself to be interviewed by the media, *i.e.*, ABS-CBN, thereby divulging information he has gathered in the course of his employment with complainant in the media to be violative of Rules 13.02, 21.01 and 21.02 of the CPR, which state:

> Rule 13.02 — A lawyer shall not make public statements in the media regarding a pending case tending to arouse public opinion for or against a party.
>
> CANON 21 — A LAWYER SHALL PRESERVE THE CONFIDENCE AND SECRETS OF HIS CLIENT EVEN AFTER THE ATTORNEY-CLIENT RELATION IS TERMINATED.
>
> Rule 21.01 — A lawyer shall not reveal the confidences or secrets of his client except;
>
> (a)When authorized by the client after acquainting him of the consequences of the disclosure;
>
> (b)When required by law;
>
> (c)When necessary to collect his fees or to defend himself, his employees or associates or by judicial action.
>
> Rule 21.02 — A lawyer shall not, to the disadvantage of his client, use information acquired in the course of employment, nor shall he use the same to his own advantage or that of a third person, unless the client with full knowledge of the circumstances consents thereto.

Here, Atty. Mendoza's actuation of allowing himself to be interviewed by the media, thus, utilizing that forum to accuse his former employer of committing several illegal activities and divulging information which he secured in the course of his employment while he was the complainant's in-house counsel, no matter how general the allegations are, is an act which is tantamount to a clear breach of the trust and confidence of his employer.

Given the situation, the most decent and ethical thing which Atty. Mendoza should have done was instead lodge a proper complaint against complainant if he finds it necessary and allowed the judicial system to take its course. He should have exercised prudence and refrained from holding press conferences, issuing press statements, or giving interviews to the media on any matter or incident related to the issues subject of the controversy. The fact that he brought his issues to the arena of public opinion was reckless and punctuates his indiscretion.

This prohibition is founded on principles of public policy, good taste and, more importantly, upon necessity. In the course of a lawyer-client relationship, the lawyer learns all the facts connected with the client's case, including its weak and strong points. Such knowledge must be considered sacred and guarded with care. No opportunity must be given to him to take advantage of his client; for if the confidence is abused, the profession will suffer by the loss thereof. It behooves lawyers not only to keep inviolate the client's confidence, but also to avoid the appearance of treachery and double-dealing for only then can litigants be encouraged to entrust their secrets to their lawyers, which is paramount in the administration of justice. It is for these reasons that we have described the attorney-client relationship as one of trust and confidence of the highest degree.[17]

PENALTY

A member of the Bar may be penalized, even disbarred or suspended from his office as an attorney, for violating the lawyer's oath and/or for breaching the ethics of the legal profession as embodied in the CPR, for the practice of law is a profession, a form of public trust, the performance of which is entrusted to those who are qualified and who possess good moral character. The appropriate penalty on an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.[18]

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[17] *Pacaña, Jr. v. Atty. Pascual-Lopez,* 611 Phil. 399, 409-410 (2009).

[18] *Jimenez v. Atty. Francisco,* 749 Phil. 551, 574 (2014).

Under Section 27, Rule 138 of the Revised Rules of Court, a member of the Bar may be disbarred or suspended on any of the following grounds: (1) deceit; (2) malpractice or other gross misconduct in office; (3) grossly immoral conduct; (4) conviction of a crime involving moral turpitude; (5) violation of the lawyer's oath; (6) willful disobedience of any lawful order of a superior court; and (7) willful appearance as an attorney for a party without authority. A lawyer may be disbarred or suspended for misconduct, whether in his professional or private capacity, which shows him to be wanting in moral character, honesty, probity and good demeanor, or unworthy to continue as an officer of the court.

While the Court finds no violation of the rule on non-disclosure of privileged communication, the acts of Atty. Mendoza, in allowing himself to be interviewed by the media constitute gross misconduct in his office as attorney, for which a suspension from the practice of law is warranted.

WHEREFORE, the Court finds Atty. Restituto S. Mendoza **GUILTY** of violation of Rules 13.02, Canon 21, 21.01 and 21.02 of the Code of Professional Responsibility for which he is **SUSPENDED** from the practice of law for a period of six (6) months, effective upon receipt of this Resolution, with a **STERN WARNING** that a commission of the same or similar offense in the future will result in the imposition of a more severe penalty.

Let a copy of this Resolution be entered into the records of Atty. Restituto S. Mendoza and furnished to the Office of the Clerk of Court, the Office of the Bar Confidant, the Integrated Bar of the Philippines, and all courts in the Philippines, for their information and guidance.

Atty. Mendoza is **DIRECTED** to **INFORM** the Court of the date of his receipt of this Resolution so that the Court can determine the reckoning point when his suspension shall take effect.

SO ORDERED.

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

Leonen, J., on wellness leave.

THIRD DIVISION

[A. C. No. 10408. October 16, 2019]

HERNANDO PETELO, *complainant, vs.* **ATTY. SOCRATES RIVERA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; RULE 9.01, CANON 9, RULE 1.10, CANON 1 AND RULE 10.01, CANON 10 THEREOF; A LAWYER VIOLATES THE CODE OF PROFESSIONAL RESPONSIBILITY WHEN HE ALLOWS A PERSON WHO HAS NO LICENSE TO PRACTICE LAW, TO SIGN PLEADINGS AND TO FILE A SUIT BEFORE THE COURT USING HIS SIGNATURE AND DETAILS.— Indeed, Atty. Rivera's flip-flopping version deserves no credence at all. What is apparent in his narration is that he was indeed the one who filed the subject civil suit by allowing somebody to use his signature and other details in the preparation of pleadings and filing the same before the court. As correctly pointed out by Petelo, Atty. Rivera's act of allowing persons other than himself to use his signature in signing papers and pleadings, in effect, allowed non-lawyers to practice law. Worse, he failed to display or even manifest any zeal or eagerness to unearth the truth behind the events which led to his involvement in the filing of the unauthorized civil suit, much less to rectify the situation. Although he claimed that the signatures were forgeries, there was nary a display of willingness on his part to pursue any legal action against the alleged forgers. On the contrary, he openly admitted his association with a disbarred lawyer and their ongoing agreement to allow the latter to use his signature and "details" in the preparation of pleadings. By so doing, Atty. Rivera not only willingly allowed a non-lawyer to practice law; worse, he allowed one to continue to practice law notwithstanding that this Court already stripped him of his license to practice law. Clearly, the foregoing acts of Atty. Rivera constituted violations of the Code of Professional Responsibility, particularly Rule 9.01, Canon 9, Rule 1.10, Canon 1 and Rule 10.01, Canon 10, which read: Rule 9.01, Canon 9: A lawyer shall not

delegate to any unqualified person the performance of any task which by law may only be performed by a member of the Bar in good standing. Rule 1.10, Canon 1: A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct. Rule 10.01, Canon 10: 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.

2. ID.; ID.; ID.; THE PRACTICE OF LAW IS A PRIVILEGE BURDENED WITH CONDITIONS AND IS RESERVED ONLY FOR THOSE WHO MEET THE TWIN STANDARDS OF LEGAL PROFICIENCY AND MORALITY.— It bears to stress at this juncture that membership to the Bar has always been jealously guarded such that only those who have successfully hurdled the stringent examinations, possessed and maintained the required qualifications are allowed to enjoy the privileges appurtenant to the title. Thus, it has been said that "[t]he title of 'attorney' is reserved to those who, having obtained the necessary degree in the study of law and successfully taken the Bar Examinations, have been admitted to the Integrated Bar of the Philippines and remain members thereof in good standing; and it is they only who are authorized to practice law in this jurisdiction." "The practice of law is a privilege burdened with conditions and is reserved only for those who meet the twin standards of legal proficiency and morality. It is so delicately imbued with public interest that it is both a power and a duty of this Court to control and regulate it in order to protect and promote the public welfare." However, Atty. Rivera abused the privilege that is only personal to him when he allowed another who has no license to practice law, to sign pleadings and to file a suit before the court using his signature and "details." By allowing a non-lawyer to sign and submit pleadings before the court, Atty. Rivera made a mockery of the law practice which is deeply imbued with public interest; he totally ignored the fact that his act of filing a suit will have a corresponding impact and effect on the society, particularly on the life and property rights of the person or persons he wittingly involved in the litigation, in this case, Fe and Petelo. Atty. Rivera's cavalier act of allowing someone to use to his signature and his "details" in the complaint have concomitant and significant effects on the property rights of Fe and Petelo.

3. ID.; ID.; ID.; A LAWYER WHO MISLEADS THE COURT COMMITS A FALSEHOOD, OR CONSENTED TO THE DOING OF ANY IN COURT, IN VIOLATION OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— There is, thus, no question in our mind that by delegating to someone else the work that is reserved only for lawyers, Atty. Rivera violated Rule 9.01 of Canon 9 of the Code of Professional Responsibility. In addition, the actuations of Atty. Rivera tended to mislead the Court. Indeed, the RTC of Makati City was misled into believing that the complaint was filed by the real party-in-interest and that Atty. Rivera was duly authorized to file the same. As it turned out, the RTC eventually dismissed the complaint after it was established thru the Manifestation filed by Petelo that it was filed not by the real party-in-interest or by the duly authorized representative. Atty. Rivera, thus, in violation of Rule 10.01, Canon 10, committed a falsehood, or consented to the doing of any in court; he not only misled the RTC but likewise wasted its precious time and resources.

4. ID.; ID.; ID.; A LAWYER WHO BESTOWS LICENSE TO ANYBODY TO PRACTICE LAW USURPS THE RIGHT AND AUTHORITY THAT IS EXCLUSIVELY VESTED UPON THE SUPREME COURT; THE RIGHT TO PRACTICE LAW IS NOT A NATURAL OR CONSTITUTIONAL RIGHT BUT IS IN THE NATURE OF A PRIVILEGE OR FRANCHISE, LIMITED TO PERSONS OF GOOD MORAL CHARACTER WITH SPECIAL QUALIFICATIONS DULY ASCERTAINED AND CERTIFIED.— Atty. Rivera must be reminded that "[t]he practice of law is not a natural, absolute or constitutional right to be granted to everyone who demands it. Rather, it is a high personal privilege limited to citizens of good moral character, with special educational qualifications, duly ascertained and certified." Being a personal privilege, Atty. Rivera cannot simply consent to anyone using his signature and other bar details. Atty. Rivera did not have the authority to bestow license to anybody to practice law because by doing so, he usurped the right and authority that is exclusively vested upon this Court. The authority to allow somebody to practice law and to closely scrutinize the fitness and qualifications of any law practitioner remains with this Court; and Atty. Rivera has no right whatsoever to exercise the same. To emphasize, "the right to practice law is not a natural or constitutional right but is in the nature of a privilege or franchise. It is limited to persons

of good moral character with special qualifications duly ascertained and certified. The right does not only presuppose in its possessor integrity, legal standing and attainment, but also the exercise of a special privilege, highly personal and partaking of the nature of a public trust."

5. ID.; ID.; ID.; PENALTY OF SUSPENSION FROM THE PRACTICE OF LAW IMPOSED UPON THE RESPONDENT-LAWYER FOR VIOLATION OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— [W]e find the recommendation of the IBP to suspend Atty. Rivera from the practice of law for a period of one (1) year warranted by the circumstances of the case. In *Tapay v. Bancolo*, the Court similarly imposed the penalty of suspension of one (1) year to the respondent-lawyer therein who was found to have authorized or delegated to his secretary the signing of the pleadings for filing before the courts.

APPEARANCES OF COUNSEL

Eddie U. Tamondong, Jr. for complainant.

D E C I S I O N

HERNANDO, *J.*:

This administrative complaint stemmed from the alleged unauthorized filing by respondent Atty. Socrates Rivera (Atty. Rivera) of a Complaint[1] for *Declaration of Nullity of Real Estate Mortgage, Promissory Note, Certificate of Sale and Foreclosure Proceedings in Connection with TCT No. 455311 with* Damages before the Regional Trial Court (RTC) of Makati City, Branch 150, captioned as *Fe Mojica Petelo, represented by her Attorney-in-Fact Hernando M. Petelo, plaintiff, versus Emmer*[2] *Bartolome Ramirez, World Partners Bank, and as Necessary Parties, the Register of Deeds, Makati City and the Assessor's Office, Makati City, defendants,* and docketed thereat as Civil Case No. 13-580.

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[1] *Rollo*, pp. 9-22.

[2] Also spelled as Emerr in some parts of the records.

In the said Complaint, there was a declaration that Fe Mojica Petelo (Fe), thru her Attorney-in-Fact, Hernando Petelo (Petelo), engaged the legal services of Atty. Rivera and that Petelo himself caused the preparation of the Complaint.[3]

Upon discovery of the pendency of the Complaint, Petelo filed on March 31, 2014 a Petition before this Court praying for the disbarment, suspension, or imposition of any disciplinary action against respondent Atty. Rivera for alleged commission of acts constituting malpractice of law, misconduct, and violation of the Code of Professional Responsibility. Petelo narrated that sometime in 2011, his sister, Fe, who was based in the United States of America, designated him as Attorney-in-Fact to enter into a Joint Venture Agreement with Red Dragon Builders Corporation for the construction of a townhouse on the lot owned by Fe, located at Brgy. Palanan, Makati City and covered by Transfer Certificate of Title (TCT) No. 455711. Complainant claimed that Jessie and Fatima Manalansan,[4] the owners of Red Dragon Builders Corporation, inveigled him into surrendering to them the original copy of TCT No. 455711 which they eventually used as collateral for the Php8 million loan they contracted with World Partners Bank without the knowledge and consent of Petelo. According to Petelo, the Spouses Manalansan superimposed the name of a certain Emmer B. Ramirez to make it appear that he was the duly constituted attorney-in-fact of Fe in the Special Power of Attorney instead of Petelo. When the Spouses Manalansan failed to pay the monthly amortizations, World Partners Bank instituted foreclosure proceedings against the mortgage. During the auction sale, World Partners Bank emerged as the highest bidder and was issued a certificate of sale over TCT No. 455711.

When Petelo got wind of the foregoing transactions, he instructed his daughter to secure a certified true copy of TCT No. 455711 from the Register of Deeds of Makati City. To his surprise, he learned that an entry of *lis pendens* pertaining to

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[3] *Rollo*, pp. 13-15.

[4] Manansala in some parts of the records.

Civil Case No. 13-580 for *Declaration of Nullity of Real Estate Mortgage, Promissory Note, Certificate of Sale and Foreclosure Proceedings in Connection with TCT No. 455311 with Damages* before the Regional Trial Court of Makati City, Branch 150, was annotated at the back of the title. Upon further investigation with the RTC, Petelo found out that the civil complaint was filed by respondent Atty. Rivera purportedly on Petelo's and Fe's behalf.

Since he never engaged the services of Atty. Rivera, Petelo wrote the latter a letter[5] seeking clarification/explanation as to how his services was engaged, but the same went unheeded. Consequently, and in order to draw out Atty. Rivera, Petelo filed a Manifestation[6] with the RTC of Makati City stating that neither he nor his sister Fe authorized Atty. Rivera to file the aforementioned case. However, Petelo's ploy to draw out respondent Atty. Rivera was unsuccessful because the latter did not attend the hearing on Petelo's Manifestation before the RTC. Bothered by the turn of events, Petelo filed the instant administrative complaint charging Atty. Rivera with negligence in the performance of his duties as a lawyer, because he did not verify the identity of the person he was dealing with prior to the filing of the civil suit. Also, Petelo posited that if Atty. Rivera was in good faith, he should have responded to Petelo's letter and attended the hearing on the manifestation before the RTC. In fine, Petelo asserted that Atty. Rivera engaged in unlawful, dishonest and deceitful conduct in violation of the Code of Professional Responsibility.

By Resolution[7] dated April 21, 2014, the Court required Atty. Rivera to file his Comment on the complaint. Citing his busy schedule and other similar urgent pleadings to prepare, Atty. Rivera moved for additional period of time within which to submit his comment.[8]

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[5] *Rollo*, p. 17.

[6] *Id.* at 18-19.

[7] *Id.* at 23.

[8] *Id.* at 24-31.

However, when Atty. Rivera eventually submitted his Comments, We noticed that he committed a number of legal somersaults equivalent to the number of comments he submitted. Stated otherwise, Atty. Rivera presented a different version each time he submitted a comment. For example, in his Comment[9] dated July 31, 2014 filed before the Court, Atty. Rivera narrated that during the first week of May 2013, a person representing himself to be Hernando Petelo sought to engage his legal services regarding the filing of the civil suit. In effect, Atty. Rivera admitted authorship of the Complaint filed before the RTC of Makati City, which a certain Hernando Petelo supposedly caused to be prepared and filed thereat. However, even after being informed that it was not the real Petelo who caused the preparation and the filing of the Complaint, Atty. Rivera still saw nothing wrong in what he did and even prayed for the dismissal of the administrative complaint for lack of merit. Incidentally, he also informed the Court that the RTC of Makati City already dismissed Civil Case No. 13-580 on the ground of lack of jurisdiction over the matter. Indeed, in its Order[10] dated May 23, 2014, the RTC of Makati City ordered the dismissal of the complaint, it being deemed not filed by the proper party in interest. Moreover, the RTC of Makati City held that "[i]t appearing that the lawyer who signed the complaint was not authorized by the real Hernando Petelo, the alleged Attorney-in-Fact of Fe Mojica Petelo who disowned knowing him, then, it can be safely concluded that the lawyer who signed the pleading violated Section 3, Rule 7 of the Rules of Court."[11]

On August 18, 2014, the Court required Petelo to file a Reply to respondent's Comment.[12] The Court, however, dispensed with the filing of the Reply by Resolution[13] dated July 4, 2016.

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[9] *Id.* at 33-37.

[10] *Id.* at 38-40; per Judge Elmo M. Alameda.

[11] *Id.* at 39.

[12] *Id.* at 45.

[13] *Id.* at 49.

At the same time, the Court referred this case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation. Thereafter, the Investigating Commissioner scheduled the case for mandatory conference/hearing[14] and, likewise, required Atty. Rivera to file his Answer.

In compliance with the Order[15] of the Investigating Commissioner, Atty. Rivera filed a Comment.[16] Perhaps forgetting that he had earlier admitted having filed the complaint in behalf of Petelo, Atty. Rivera this time presented a totally different version. He vehemently denied any participation in the preparation and the filing of the complaint. He even disowned the signatures affixed therein and even went to the extent of having them labelled as forgeries; he also alleged that he never attended any of the hearings in the said case.

Thereafter, the parties submitted their respective Position Papers. In his Position Paper, Petelo pointed out that during one of the scheduled mandatory conferences before the Investigating Commissioner, Atty. Rivera made the following admission: "that he learned about the case thru a disbarred lawyer, Bede Tabalingcos,[17] with whom he had previous collaborations; that his details were still being used by Tabalingcos' office because before, he allowed them to sign for him on 'minor' pleadings."[18] When asked by the Investigating Commissioner on how he came to know about the case, he said that he received a call from Tabalingcos' office. During the same hearing, petitioner admitted that he remained in contact with the office of Tabalingcos and that said office have been using his signature/ details without his authority."[19]

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[14] *Id*. at 51.

[15] *Id*. at 58.

[16] *Id*. at 59-60.

[17] *Id*. at 71.

[18] *Id*. at 72.

[19] *Id*. at 72.

In his yet another Comment[20] dated June 23, 2014 filed before the IBP, and again forgetting his protestation on non-participation in the preparation and filing of the complaint, Atty. Rivera reversed himself and revetted to his earliest version wherein he admitted that he was the one who filed the civil complaint.[21] Nonetheless, he disavowed having committed any unethical conduct, and thus moved for the dismissal of the administrative complaint.[22] Atty. Rivera, however, again executed another turnabout by changing his theory in his Position Paper[23] when he denied any hand in the filing of the complaint before the RTC of Makati City and claimed that the signatures therein were forgeries.

On May 17, 2019, the Investigating Commissioner submitted his Report with recommendation that Atty. Rivera be suspended from the practice of law for **at least** one (1) year. The Investigating Commissioner gave credence to the version of Petelo finding the same in accord with normal human experience and straightforward, while he found the version of Atty. Rivera to have failed the test of factual consistency, common sense and logic. The Investigating Commissioner noted the tendency of Atty. Rivera to shift versions of his factual narrations, particularly with regard to whether he had a hand in the filing of the complaint or not. In the end, the Investigating Commissioner concluded that the submissions of Atty. Rivera were "factually implausible if not outrightly erroneous."[24] He opined that "[t]here is no need to belabor the obvious, [that is,]the unauthorized filing of a Civil Complaint and effecting a Notice of *Lis Pendens* for and in behalf of a party is an act which constitutes, at the very least, dishonest and deceitful conduct and at the same time an act intended to mislead a court of law."[25] The defense

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[20] *Id*. at 125-129.

[21] *Id*. at 126.

[22] *Id*. at 127.

[23] *Id*. at 131-136 at 131-132.

[24] *Id*. at 149.

[25] *Id*. at 151.

of Atty. Rivera that the filing of the complaint and the affixing of his "signatures" therein might have been orchestrated by the staff of disbarred lawyer Bede Tabalingcos was given short shrift because it would not serve to exculpate Atty. Rivera; on the contrary, if given credence, it would even constitute unauthorized practice of law proscribed under Canon 9, Rule 9.01 of the Code of Professional Responsibility.[26] The Board of Governors (BOG) of the IBP, in its Resolution[27] dated June 29, 2018 resolved to adopt the findings of the Investigating Commissioner with modification that Atty. Rivera must be meted the penalty of suspension from the practice of law for **a period** of one (1) year with a stem warning that repetition of a similar act would be dealt with more severely.

Our Ruling

We adopt the findings and recommendation of the IBP there being reasonable grounds to hold him administratively liable. Indeed, Atty. Rivera's flip-flopping version deserves no credence at all. What is apparent in his narration is that he was indeed the one who filed the subject civil suit by allowing somebody to use his signature and other details in the preparation of pleadings and filing the same before the court. As correctly pointed out by Petelo, Atty. Rivera's act of allowing persons other than himself to use his signature in signing papers and pleadings, in effect, allowed non-lawyers to practice law. Worse, he failed to display or even manifest any zeal or eagerness to unearth the truth behind the events which led to his involvement in the filing of the unauthorized civil suit, much less to rectify the situation. Although he claimed that the signatures were forgeries, there was nary a display of willingness on his part to pursue any legal action against the alleged forgers. On the contrary, he openly admitted his association with a disbarred lawyer and their ongoing agreement to allow the latter to use his signature and "details" in the preparation of pleadings. By so doing, Atty. Rivera not only willingly allowed a non-lawyer to practice law;

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[26] *Id.* at 151.

[27] *Id.* at 142.

worse, he allowed one to continue to practice law notwithstanding that this Court already stripped him of his license to practice law.

Clearly, the foregoing acts of Atty. Rivera constituted violations of the Code of Professional Responsibility, particularly Rule 9.01, Canon 9, Rule 1.10, Canon 1 and Rule 10.01, Canon 10, which read:

> Rule 9.01, Canon 9: A lawyer shall not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the Bar in good standing.
>
> Rule 1.1 0, Canon 1: A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.
>
> Rule 10.0 1, Canon 10: A lawyer shall not do any falsehood, nor consent to the doing of any in court; now shall he mislead, or allow the Court to be misled by any artifice.

It bears to stress at this juncture that membership to the Bar has always been jealously guarded such that only those who have successfully hurdled the stringent examinations, possessed and maintained the required qualifications are allowed to enjoy the privileges appurtenant to the title. Thus, it has been said that "[t]he title of 'attorney' is reserved to those who, having obtained the necessary degree in the study of law and successfully taken the Bar Examinations, have been admitted to the Integrated Bar of the Philippines and remain members thereof in good standing; and it is they only who are authorized to practice law in this jurisdiction."[28] "The practice of law is a privilege burdened with conditions and is reserved only for those who meet the twin standards of legal proficiency and morality. It is so delicately imbued with public interest that it is both a power and a duty of this Court to control and regulate it in order to protect and promote the public welfare."[29] However, Atty. Rivera abused the privilege that is only personal to him when he allowed another

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[28] *Alawi v. Alauya*, 335 Phil. 1096, 1106 (1997).

[29] *Pantanosas Jr. v. Pamatong*, 787 Phil. 86, 88 (2016).

who has no license to practice law, to sign pleadings and to file a suit before the court using his signature and "details." By allowing a non-lawyer to sign and submit pleadings before the court, Atty. Rivera made a mockery of the law practice which is deeply imbued with public interest; he totally ignored the fact that his act of filing a suit will have a corresponding impact and effect on the society, particularly on the life and property rights of the person or persons he wittingly involved in the litigation, in this case, Fe and Petelo. Atty. Rivera's cavalier act of allowing someone to use to his signature and his "details" in the complaint have concomitant and significant effects on the property rights of Fe and Petelo. Our pronouncement in *Republic v. Kenrick Development Corporation*[30] is relevant:

> Contrary to respondent's position, a signed pleading is one that is signed either by the party himself or his counsel. Section 3, Rule 7 is clear on this matter. It requires that a pleading must be signed by the party or counsel representing him.
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> Therefore, only the signature of either the party himself or his counsel operates to validly convert a pleading from one that is unsigned to one that is signed.
>
> Counsel's authority and duty to sign a pleading are personal to him. He may not delegate it to just any person.
>
> The signature of counsel constitutes an assurance by him that he has read the pleading; that, to the best of his knowledge, information and belief, there is a good ground to support it; and that it is not interposed for delay. Under the Rules of Court, it is counsel alone, by affixing his signature, who can certify to these matters.
>
> The preparation and signing of a pleading constitute legal work involving practice of law which is reserved exclusively for the members of the legal profession. Counsel may delegate the signing of a pleading to another lawyer but cannot do so in favor of one who is not. The Code of Professional Responsibility provides:

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[30] 529 Phil. 876, 883-886 (2006).

> Rule 9.01—A lawyer shall not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the Bar in good standing.

Moreover, a signature by agents of a lawyer amounts to signing by unqualified persons, something the law strongly proscribes.

Therefore, the blanket authority respondent claims Atty. Garlitos entrusted to just anyone was void. Any act taken pursuant to that authority was likewise void. There was no way it could have been cured or ratified by Atty. Garlitos' subsequent acts.

Moreover, the transcript of the November 26, 1998 Senate hearing shows that Atty. Garlitos consented to the signing of the answer by another "as long as it conformed to his draft." We give no value whatsoever to such self-serving statement.

No doubt, Atty. Garlitos could not have validly given blanket authority for just anyone to sign the answer. The trial court correctly ruled that respondent's answer was invalid and of no legal effect as it was an unsigned pleading. Respondent was properly declared in default and the Republic was rightly allowed to present evidence *ex parte*.

Respondent insists on the liberal application of the rules. It maintains that even if it were true that its answer was supposedly an unsigned pleading, the defect was a mere technicality that could be set aside.

Procedural requirements which have often been disparagingly labeled as mere technicalities have their own valid *raison d' etre* in the orderly administration of justice. To summarily brush them aside may result in arbitrariness and injustice.

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As a final note, the Court cannot close its eyes to the acts committed by Atty. Garlitos in violation of the ethics of the legal profession. Thus, he should be made to account for his possible misconduct.

There is, thus, no question in our mind that by delegating to someone else the work that is reserved only for lawyers, Atty. Rivera violated Rule 9.01 of Canon 9 of the Code of Professional Responsibility. In addition, the actuations of Atty. Rivera tended

to mislead the Court. Indeed, the RTC of Makati City was misled into believing that the complaint was filed by the real party-in-interest and that Atty. Rivera was duly authorized to file the same. As it turned out, the RTC eventually dismissed the complaint after it was established thru the Manifestation filed by Petelo that it was filed not by the real party-in-interest or by the duly authorized representative. Atty. Rivera, thus, in violation of Rule 10.01, Canon 10, committed a falsehood, or consented to the doing of any in court; he not only misled the RTC but likewise wasted its precious time and resources.

Atty. Rivera must be reminded that "[t]he practice of law is not a natural, absolute or constitutional right to be granted to everyone who demands it. Rather, it is a high personal privilege limited to citizens of good moral character, with special educational qualifications, duly ascertained and certified."[31] Being a personal privilege, Atty. Rivera cannot simply consent to anyone using his signature and other bar details. Atty. Rivera did not have the authority to bestow license to anybody to practice law because by doing so, he usurped the right and authority that is exclusively vested upon this Court. The authority to allow somebody to practice law and to closely scrutinize the fitness and qualifications of any law practitioner remains with this Court; and Atty. Rivera has no right whatsoever to exercise the same. To emphasize, "the right to practice law is not a natural or constitutional right but is in the nature of a privilege or franchise. It is limited to persons of good moral character with special qualifications duly ascertained and certified. The right does not only presuppose in its possessor integrity, legal standing and attainment, but also the exercise of a special privilege, highly personal and partaking of the nature of a public trust."[32]

Finally, we find the recommendation of the IBP to suspend Atty. Rivera from the practice of law for a period of one (1)

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[31] *In the Matter of the Admission to the Bar of Argosino*, 316 Phil. 43, 46 (1995).

[32] *People v. Santocildes, Jr.*, 378 Phil. 943 (1999).

year warranted by the circumstances of the case. In *Tapay v. Bancolo*,[33] the Court similarly imposed the penalty of suspension of one (1) year to the respondent-lawyer therein who was found to have authorized or delegated to his secretary the signing of the pleadings for filing before the courts.

ACCORDINGLY, We find respondent Atty. Socrates Rivera administratively liable for violating Rule 1.01, Canon 1, Rule 9.01 of Canon 9, and Rule 10.01, Canon 10, of the Code of Professional Responsibility. He is hereby **SUSPENDED** from the practice of law for one (1) year effective upon finality of this Decision with a stern warning that a repetition of the same or similar acts shall be dealt with more severely.

Let a copy of this Decision be attached to respondent Atty. Socrates Rivera's record in this Court as attorney. Further, let copies of this Decision be furnished to the Integrated Bar of the Philippines and the Office of the Court Administrator, which is directed to circulate them to all the courts in the country for their information and guidance.

SO ORDERED.

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

Leonen, J., on official leave.

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[33] 707 Phil. 1 (2013).

SECOND DIVISION

[G.R. No. 198867. October 16, 2019]

CHUA PING HIAN also known as JIMMY CHING, *petitioner, vs.* **SILVERIO MANAS (deceased), substituted by his heirs, namely, CARIDAD MANAS, surviving spouse, and children, NESTOR MANAS, ROLANDO MANAS, RENE MANAS and BENILDA MANAS,** *respondent.*

SYLLABUS

1. CIVIL LAW; THE CIVIL CODE; OBLIGATIONS AND CONTRACTS; CONTRACT OF SALE; THE FAILURE OF THE SELLER TO COMPLY ON HIS OBLIGATIONS JUSTIFIES THE BUYER'S REFUSAL TO PAY THE BALANCE OF THE PURCHASE PRICE; IN A RECIPROCAL OBLIGATION, THE PERFORMANCE OF ONE IS CONDITIONED ON THE SIMULTANEOUS FULFILLMENT OF THE OTHER OBLIGATION; NEITHER PARTY INCURS IN DELAY IF THE OTHER DOES NOT COMPLY OR IS NOT READY TO COMPLY IN A MANNER WITH WHAT IS INCUMBENT UPON HIM.—[T]he Contract of Sale between petitioner Ching, as buyer, and respondent Manas, as seller, gave rise to a **reciprocal obligation**, wherein petitioner Ching was obliged to pay the balance of the purchase price while respondent Manas was obliged to make complete delivery of the objects of the sale on or before January 15, 1998 and ensure complete installation, dry run-testing, and satisfactory operations of all the equipment installed. In a reciprocal obligation, the performance of one is conditioned on the simultaneous fulfillment of the other obligation. Neither party incurs in delay if the other does not comply or is not ready to comply in a manner with what is incumbent upon him. As explained by recognized Civil Law Commentator, former CA Justice Eduardo P. Caguioa, a reciprocal obligation has been defined as that "where each of the parties is a promissee of a prestation and promises another in return as a counterpart of equivalent of the other. x x x The most salient feature of this obligation is

reciprocity." In the instant case, it is not of serious dispute that respondent Manas reneged on his obligations as seller, justifying petitioner Ching's refusal to pay the balance of the purchase price.

2. ID.; ID.; ID.; ID.; AWARD OF STIPULATED INTEREST TO RESPONDENT NOT PROPER AS PETITIONER WAS JUSTIFIED IN WITHHOLDING THE PAYMENT OF THE BALANCE OF THE PURCHASE PRICE BECAUSE OF SEVERAL BREACHES OF CONTRACT COMMITTED BY THE RESPONDENT.— x x x. x x x [A]s agreed upon by the parties in the Contract of Sale, the stipulated interest to be paid by petitioner Ching shall only accrue when the installment payment is already due and petitioner Ching failed to make such installment payment. Simply stated, petitioner Ching shall pay the stipulated interest only when he is in delay. Based on the established facts of the instant case, petitioner Ching was not in delay when he failed to pay the balance of the purchase price. x x x Respondent Manas covenanted that the payment of the remaining balance by petitioner Ching was made contingent on the latter's satisfactory assessment that respondent Manas completely delivered and installed all of the movie projector units. Obviously, petitioner Ching did not find the delivery, installation, and operation of the movie projector systems satisfactory on account of respondent Manas' failure to deliver the fifth Simplex XL movie projector, the failure of respondent Manas to ensure the complete installation of the movie projector systems, and respondent Manas' delivery of defective components. In fact, very telling is the unequivocal pronouncement of the CA that "***[petitioner] Ching had a valid reason for refusing payment*** until the issue of recoupement (*sic*) for breach of warranty was resolved." Therefore, with petitioner Ching being justified in withholding the payment of the balance of the purchase price on account of the several breaches of contract committed by respondent Manas, it cannot be said that petitioner Ching was in delay. Necessarily, respondent Manas is not entitled to the stipulated interest as provided in the Contract of Sale. And considering that petitioner Ching cannot be deemed in delay in accordance with the Contract of Sale, the legal interest shall accrue only from the finality of this Decision until full payment.

APPEARANCES OF COUNSEL

Rafael T. Durian for petitioner.
Maronilla Reciña & Associates for respondent.

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 petitioner Chua Ping Hian, also known as Jimmy Ching (petitioner Ching), against respondent Silverio Manas (respondent Manas), assailing the Amended Decision[2] dated October 13, 2011 (assailed Decision) rendered by the Court of Appeals[3] (CA) in CA-G.R. CV No. 88099.

The Facts and Antecedent Proceedings

As narrated by the CA, and as culled from the records of the instant case, the essential facts and antecedent proceedings of the case are as follows:

> [Petitioner Ching] and his family own several cinemas in Metro Manila. Sometime in July 1997, [respondent Manas] learned that Ching was going to open four theaters in the Sunshine Mall Plaza in Taguig, Metro Manila. He visited [petitioner] Ching at the latter's office at Spring Cinema, Libertad, Pasay City and introduced himself as a supplier of movie equipments *(sic)* to Emilio Ching's ([petitioner] Ching's brother) cinemas at Holiday Plaza, Libertad, Pasay City.
>
> [Petitioner] Ching informed [respondent] Manas that he needed five complete sets of Simplex Model XL movie projectors for the cinemas at Sunshine Mall. [Respondent] Manas informed [petitioner] Ching that he happened to have Simplex Model XL projectors which

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[1] *Rollo*, pp. 8-33.

[2] *Id*. at 35-43. Penned by Associate Justice Rosmari D. Carandang (now a Member of the Court), with Associate Justices Japar B. Dimaampao and Apolinario D. Bruselas, Jr. concurring.

[3] Special Former 16th Division.

are US Rebuilt. He then invited [petitioner] Ching to his house in Makati where said projectors were stored so that the latter could see the same. Since only four Simplex projectors were available then, [respondent] Manas assured [petitioner] Ching that the fifth set of Simplex Model XL will arrive from the United States anytime.

On 15 August 1997, [respondent] Manas and [petitioner] Ching executed the Contract of Sale, the pertinent portions of which reads:

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1. *OBJECT OF SALE — The SELLER hereby agrees to sell and deliver to the BUYER "FIVE (5) SETS OF SIMPLEX Model XL 35MM MOVIE PROJECTOR and SOUND REPRODUCER, U.S. REBUILT, each set complete with accessories of accurate and exact fittings, the quatity (sic), full descriptions/specifications of the complete items composing each set are as listed in the list hereto attached ANNEX "A" and made as integral part hereof.*

2. *PURCHASE PRICE AND MANNER OF PAYMENT— For each complete set, the purchase price shall be SIX HUNDRED THIRTY THOUSAND PESOS (₱630,000.00), Philippine currency, or the total sum of THREE MILLION ONE HUNDRED FIFTY THOUSAND PESOS (₱3,150,000.00) for the entire five (5) complete sets, which stipulated purchase price shall be paid by the BUYER to the SELLER in the following manner:*

   (a) *A downpayment of 30% or ₱945,000.00 upon the signing of this Contract;*

   (b) *A second payment of 40% or ₱1,260,000.00 upon full and complete delivery of all the items above-mentioned at the site to be designated by the BUYER provided the complete delivery is effected on or before Jan. 15, 1998; and*

   (c) *The balance of 30% or ₱945,000.00 after the complete installation, dry run/testing and satisfactory operations of all the units/sets installed.*

3. *INSTALLATION — The SELLER shall undertake the complete installation of the apparatus/equipment herein purchased at his own expense provided all the wires and*

materials to be used in the installation shall be for the account of the BUYER.

4. *WARRANTY — The SELLER hereby warrants full and satisfactory usefulness of all the apparatus, equipment, parts and accessories for two (2) years counted from the date of their installation. During said warranty period, any breakdown or malfunction due to the poor quality or manufacturing defects of the main apparatus, its parts and accessories shall be replaced or repaired by the SELLER at his own expense, except xenon and exuter bulbs, switches and meters.*

5. *DUTY & TAXES — The SELLER hereby warrants to hold the BUYER free and harmless for any duty or taxes that may be assessed by the government on all the articles herein sold.*

6. *NON-PERFORMANCE OF OBLIGATION — In the event of failure by the SELLER to deliver and install the apparatus/equipment herein purchased, the BUYER shall have the option of rescinding this Contract with damages or institute a legal action for specific performance with damages. On the other hand, in the event (sic) failure by the BUYER to pay any installment of the herein agreed purchase price when such is already due, the BUYER shall be liable to pay an interest on the amount due at the rate of fourteen (14%) percent per annum.*

7. *VENUE OF ACTION — In the event of any legal action that may arise from this Contract, the venue shall be in the appropriate court in Pasay City, exclusively.*

x x x x x x x x x

In anticipation of the signing of the above contract, or on 19 July 1997, [petitioner] Ching paid [respondent] Manas the amount of ₱945,000.00 as downpayment. The four sets of Simplex XL projectors were delivered on 22 August 1997. Several other equipments (*sic*), parts and accessories for the projector sets were delivered within the period of 22 August 1997 until 8 May 1999.

[Petitioner] Ching claims that he asked [respondent] Manas to deliver the fifth Simplex projector set and install the projectors. [Respondent] Manas, not having yet the fifth Simplex XL projector

set, prevailed on [petitioner] Ching to receive a Century brand projector. After all, it was intended only to be a standby projector. Because the opening date of his cinemas was fast approaching, [petitioner] Ching agreed. The Century projector, which in the market is a little higher in price than the Simplex brand, was delivered on 29 November 1998.

Despite the clarity of paragraph 3 of the contract, the parties differed in the interpretation thereof. Said paragraph reads:

x x x x x x x x x

> *3.* *INSTALLATION — The SELLER shall undertake the complete installation of the apparatus/equipment herein purchased at his own expense provided all the wires and materials to be used in the installation shall be for the account of the BUYER.*
>
> x x x x x x x x x

[Respondent] Manas claims to have completed installation of the projectors. On the other hand, [petitioner] Ching asserts that [respondent] Manas failed to completely install the apparatus/ equipment prompting him to hire Nelson Ruzgal to do the wiring connections for a fee of ₱20,000.00.

Ruzgal commenced his work on the wirings to make the apparatus/ equipments (*sic*) work on 26 November 1998. He was assisted by the two projectionists of [petitioner] Ching, Adan Mostera and Lito Pilar. Two days before the scheduled opening of the cinemas, on 23 December 1998, Ruzgal and the projectionists could not light the lamphouses. [Respondent] Manas, who had been observing them, called in his own technician to help. Since the lamphouse would not light, [respondent] Manas' technician took some parts from the rectifier. After re-installing said parts, the lamphouse lit up. Having observed how [respondent] Manas' technician focused the lamphouses and lit the xenon bulb, Ruzgal and [petitioner] Ching's two projectionists, went to the other theaters to adjust the lamphouses. Since the adjusting mechanism was found inside the lamphouse and the bulb inside emitted heat, it took them almost an hour to adjust one lamphouse. It took Ruzgal and the projectionists overnight to finish adjusting all ten lamphouses.

On 24 December 1998, the trial run of the cinemas was successfully held and the cinemas officially opened on 25 December 1998.

In the first four months after operations, some parts of the projectors started having problems. [Respondent] Manas was informed of the defects and asked to replace the same but he failed to do so. The defective equipments (*sic*) and their defects are as follows:

1. Two pieces optical lens malfunctioned, first, in February 1999 and another in March 1999. Because [respondent] Manas did not replace the same, [petitioner] Ching bought the parts at Star Theater Supply, Inc.

2. Ten pieces lamphouses and one reflector. In March to April 1999, the lamphouses misaligned. In an attempt to fix the same, one of [petitioner] Ching's projectionists, opened the lamphouse and ended up breaking the reflector inside. Since [respondent] Manas did not repair or replace the same and no spare parts were readily available in the market, [petitioner] Ching contracted Rodegelio Anday to fabricate lamphouses for him for the contract price of ₱555,000.00.

3. Ten pieces rectifiers. In April 1999, the rectifiers also malfunctioned due to electrical fluctuations.

4. One piece projector motor. In late 1999 to early 2000, the projector motor which drives the projector to run and play the movies, did not work To avoid stoppage in the operations of his cinemas, [petitioner] Ching utilized available spare parts from the other cinemas he owned.

Sometime in May 1999, [respondent] Manas wrote [petitioner] Ching a notice of full compliance of the terms of the contract of sale. He also asked Lito Pilar, one of [petitioner] Ching's projectionists to affix his signature thereon. It reads thus:

Sir:

FULLY COMPLETED AND COMPLIED with the terms of the CONTRACT OF SALE -10 units XL projection film systems of Cinemas 1, 2, 3, 4 — Sunshine Cinema Mall, FTC Complex.

LOCATORS	***1***	***2***	***3***	***4***
Projector Heads			*Ok*	*Ok*
Soundheads/Motors			*Ok*	*Ok*

Xenon Lamphouses			*Ok*	*Ok*
Rectifiers			*Ok*	*Ok*
Lenses, Flat/Mascope			*Ok*	*Ok*
BOOTH ACCESSORIES			*Ok*	*Ok*
Projectionist	*Adan Mostera*		*Lito Pilar*	

Kindly inspect the whole projection systems of Cinemas 1, 2, 3, 4 and should you find them to your fullest satisfaction, please release the remaining balance (70%) of the Contract of Sale be paid and release to the undersigned.

Thank you.

Very respectfully yours,

(Sgd.) Silverio M Manas

[Petitioner] Ching received a copy of this letter only after he received the summons of the court *a quo*.

On 24 August 1999, [respondent] Manas' lawyer, Redentor A. Salonga, wrote [petitioner] Ching a demand letter, which reads thus:

Sir:

I have been retained by Mr. Silverio M. Manas to take the necessary action to enforce the collection of your account in his favor in the principal amount of ₱2,205,000.00 which represents the difference between the principal contract price of ₱3,150,000.00 for certain movie equipment delivered and installed by Mr. Manas and utilized in your movie houses, and your downpayment of ₱945,000.00.

I understand from Mr. Manas that you proposed to liquidate your account in monthly installments of ₱250,000.00, which was however, not accepted by Mr. Manas.

Through this letter of demand, it is hoped that you will pay, on or before 10 September 1999, the aforesaid principal amount of ₱2,205,000.00 or propose to Mr. Manas in writing, an acceptable and better schedule of payment for his approval.

In default thereof, I shall be left with no other choice but to institute the appropriate legal action not only for the principal but also for interests and damages.

x x x x x x x x x

[Petitioner] Ching, replied through a letter written by his lawyer, Roger L. Em, dated 8 September 1999, the pertinent portion of which reads:

x x x x x x x x x

According to Mr. Jimmy Ching, he encountered the following problems in his dealings with Mr. Manas, to wit:

1.) Mr. Ching agreed to pay Mr. Manas a second payment of ₱1,260,000.00 provided complete delivery of the object of the sale is effected on or before 15 January 1998. Actual delivery of the items was completed only on 8 May 1999. Mr. Ching suffered damages on account of the long delayed complete delivery.

2.) Mr. Manas made express warranty for full and satisfactory usefulness of all apparatus, equipment, parts and accessories for two (2) years from date of installation/ as already advised by Mr. Ching to Mr. Manas, two (2) optical lenses were defective; ten (10) units of projector lamp house including the reflectors (without xenon lamp) were defective and inefficient; and ten (10) units of Rectifiers were defective and inefficient. These defective and inefficient part/accessories from another supplier for a total price of ₱555,000.00.

Considering that both parties appear to have their respective causes of action, we believe it would be to the best interests of our respective clients if the matter be settled according to the proposal of Mr. Ching, a copy of which is attached. Litigating the matter in court might be very expensive to both parties and could take several years to obtain a final judgment.

We will appreciate it if you could convince Mr. Manas to accept the attached proposal. Upon his acceptance, Mr. Ching will immediately send over the amount of ₱400,000.00 as installment for August and September 1999.

x x x x x x x x x

The attached proposal reads:

STATEMENT

10 units Simplex Model XL 3mm movie Projectors with Projector Heads, sound head/motors, Xenon lamphouse, rectifiers, lenses, etc. @ 315.00	*3,150,000.00*
To be returned and deducted from total cost	
2 pcs. Optical lens (defective) 9,800.00	*- 19,600.00*
10 units Projector Lamp House including reflector w/o Xenon Lamp (defective and inefficient) @ 18,500.00	*- 185,000.00*
10 units rectifiers (defective and inefficient) @ 37, 000.00	*- 370,000.00*
Advertising Commitment	*- 25,000.00*
	- ₱2,550,400.00
To be deducted (downpayment)	*- 945,000.00*
	₱1,605,400.00

Payment to be made	
August 30, 1999	*₱ 200,000.00*
September 30, 1999	*200,000.00*
October 30, 1999	*200,000.00*
November 30, 1999	*200,000.00*
December 30, 1999	*200,000.00*
January 30, 2000	*200,000.00*
February 30, 2000	*200,000.00*
March 30, 2000	*₱ 205,400.00*
	₱1,605,400.00

On 26 September 2000, [respondent] Manas filed a complaint for Sum of Money and Damages against [petitioner] Ching before the Regional Trial Court[, Branch 118 of Pasay City (RTC)]. The case

was docketed as Civil Case No. 00-0297 for Sum of Money and Damages]. He alleged that he had faithfully complied with the Contract of Sale and the equipments *(sic*) he delivered were utilized by [petitioner] Ching in the formal opening of his cinemas on 24 December 1998. Despite repeated demands, both verbal and written, [petitioner Ching] refused to pay him the remaining balance of ₱2,205.000.00. [Respondent] Manas prayed that [petitioner Ching] be ordered to pay him the unpaid sum of ₱2,205,000.00 as principal, with 12% interest per annum as agreed in the invoices/delivery receipts, counted from date of formal demand on 24 August 1999 until fully paid. He also asked for damages and attorney's fees.

x x x x x x x x x

On 4 September 2006, the RTC rendered a Decision[4] in favor of [respondent] Manas, finding: (a) that there was complete and timely delivery of the equipments (*sic*); (b) that [respondent Manas] installed the movie equipments (*sic*); (c) that [respondent Manas] is not liable on the express two (2) year warranty embodied in the contract of sale; and (d) that [respondent Manas], with the consent of [petitioner Ching], validly substituted with another brand the movie projector specified in the contract of sale. The court ruled as follows:

> *WHEREFORE, all the foregoing considered, judgment is hereby rendered in favor of plaintiff Silverio Manas and against the defendant Chua Ping Hian, a.k.a. Jimmy Ching, ordering the latter to pay the former the total amount of ₱2,205,000.00 plus stipulated interest of 12% per annum from date of default until fully paid. Defendant is also ordered to pay plaintiff ₱20,000.00 as attorney's fees. The claim for moral and exemplary damages is hereby denied for lack of merit.*
>
> *Defendant's counterclaims are denied for lack of merit.*
>
> *Costs against the defendant.*
>
> *SO ORDERED.*

Aggrieved, [petitioner] Ching filed [an] appeal [before the CA].[5]

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[4] *Rollo*, pp. 87-99. Penned by Presiding Judge Pedro B. Corales.

[5] *Id*. at 46-57.

The Ruling of the CA

In its Decision[6] dated March 11, 2009, the CA found petitioner Ching's appeal partly impressed with merit.

Even as the CA found that the substitution of the fifth set of Simplex brand with the Century brand by respondent Manas was acquiesced to by petitioner Ching,[7] so that petitioner Ching is obligated to pay respondent Manas an outstanding balance of ₱2,205,000.00, the CA nevertheless found that respondent Manas failed to comply with his contractual duty to completely install the projectors which then prompted petitioner Ching to hire other persons to completely install the equipment. The CA likewise held that some of the equipment delivered by respondent Manas, *i.e.*, lamphouses, optical lenses, and projector motor, were defective, forcing petitioner Ching to secure replacements, and that petitioner Ching did not waive his right to complain about the defects.

Considering the foregoing, the CA held that the expenses incurred by petitioner Ching arising from the incomplete installation and some defective equipment should be deducted from the outstanding balance owed by petitioner Ching to respondent Manas. The CA summarized the total expenses incurred by petitioner Ching as follows:

Expenses Incurred	***Amount***
A. Cost of Installation performed by Nelson Ruzgal	*₱20,000.00*
1. Cash Voucher for Downpayment *26 November 1998* *₱10,000.00*	
2. *Cash Voucher for Complete Payment for labor contract* *6 January 1999* *₱10,000.00*	

[6] *Id*. at 45-77. Penned by Associate Justice Teresita Dy-Liacco Flores, with Associate Justices Rosmari D. Carandang (now a Member of the Court) and Apolinario D. Bruselas, Jr., concurring.

[7] *Id*.

B.Replacement of Defective Equipments (sic)	
1. Optical Lenses *a. Star Theater Supply, Inc.* *Invoice No. 7420, 11 February 1999* *₱8,360.00* *b. Star Theater Supply, Inc.* *Invoice No. 5028, 23 March 1999* *₱8,800.00*	*₱17,160.00*
2. Lamphouses *As fabricated by Rodegelio Anday per contract* *Contract Price ₱555,000.00* *Less: Cost of 10 rectifiers 370,000.00* *185,000.00*	*₱185,000.00*
3. Project Motor *Star Theater Supply, Inc.* *Invoice No. 7818, 15 August 2000*	*₱4,600.00*
4. Reflector	*₱8,500.00*
Expenses Incurred	***Amount***
G&O Enterprises, Inc. *Invoice No. 8273, 26 December 1999*	
TOTAL EXPENSES INCURRED	***₱235,260.00***[8]

Hence, the CA deducted from the balance of ₱2,205,000.00 "the amount of [₱]235,260.00 representing the expenses incurred by [petitioner] Ching as indicated above. Thus, [petitioner] Ching's outstanding account payable to Manas is now [₱]1,969,740.00."[9]

The dispositive portion of the CA's Decision reads as follows:

WHEREFORE, in view of the foregoing, the appealed RTC Decision is hereby **MODIFIED**. Its dispositive portion shall now read as follows:

> *WHEREFORE, all the foregoing considered, judgment is hereby rendered in favor of plaintiff Silverio Manas and against the defendant Chua Ping Hian, a.k.a. Jimmy Ching, ordering*

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[8] *Id*. at 75-76.

[9] *Id*. at 76.

the latter to pay the former ***the total amount of ₱1,969,740.00 with an interest rate of 12% per annum counted from the finality of this judgment until it is fully paid****. The claim for moral and exemplary damages is hereby denied for lack of merit.*

Defendant's counterclaims are denied for lack of merit.

Costs against the defendant.

SO ORDERED.[10]

Unsatisfied, petitioner Ching filed a Most Respectful Motion for Partial Reconsideration[11] dated March 31, 2009. Respondent Manas likewise filed a Motion for Reconsideration.

Petitioner Ching argued that: (1) the CA failed to consider that the fifth movie projector unit provided by respondent Manas, *i.e.*, Century brand projector, costs much less at ₱220,000.00 compared to the agreed upon model, *i.e.*, Simplex Model XL movie projector, which costs ₱630,000.00 and (2) petitioner Ching had good reason in refusing to pay the balance of the purchase price, considering that the CA itself held that "[petitioner] Ching had a valid reason for refusing payment until the issue of recoupment for breach of warranty was resolved."[12]

On the other hand, in his Motion for Reconsideration, respondent Manas argued that: (1) the wiring installation was for the account of the buyer, petitioner Ching; (2) the stipulated interest of 12% *per annum* should be counted from the date of extrajudicial demand on August 24, 1999 until full payment; and (3) there is no valid reason for denying the award for attorney's fees.

In the Amended Decision, the CA partially granted petitioner Ching and respondent Manas' respective Motions for Reconsideration:

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[10] *Id*.

[11] *Id*. at 78-85.

[12] *Id*. at 76.

Accordingly, this Court resolves the two motions as follows:

1. Defendant-appellant's Motion for Partial Reconsideration is **PARTLY GRANTED** in that the amount of ₱410,000.00 (sic) should be deducted from the his (*sic*) outstanding balance amounting to ₱1,969,740.00.

2. Plaintiff-appellee's Motion for Reconsideration is **PARTLY GRANTED** in that the stipulated interest rate of 12% per annum shall be counted from the date of extrajudicial demand on August 24, 1999 until full payment.

With the above disposition, the dispositive portion of the Decision in this case is hereby **AMENDED** as follows:

WHEREFORE, all the foregoing considered, judgment is hereby rendered in favor of plaintiff Silverio Manas and against the defendant Chua Ping Hian, a.k.a. Jimmy Ching, ordering the latter to pay the former **the total amount of ₱1,559,740.00 with an interest rate of 12% per annum counted from the date of extrajudicial demand on August 24, 1999 until full payment**. The claim for moral and exemplary damages is hereby denied for lack of merit.

Defendant's counterclaims are denied for lack of merit.

Costs against the defendant.

SO ORDERED.[13]

Hence, the instant appeal by petitioner Ching before the Court.

Respondent Manas filed his Comment[14] to the instant Petition on February 13, 2012, while petitioner Ching filed his Reply[15] to respondent Manas' Comment on May 21, 2012.

On April 18, 2017, the counsel of respondent Manas filed a Manifestation of Death and Motion to Substitute Heirs,[16] informing the Court that respondent Manas passed away on

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[13] *Id*. at 41-42.

[14] *Id*. at 206-211.

[15] *Id*. at 213-222.

[16] *Id*. at 227-230.

February 7, 2017, as well as praying that the surviving heirs of respondent Manas be deemed to have substituted the deceased.

The Issue

Petitioner Ching raises a *singular issue* — whether respondent Manas is entitled to an award of stipulated interest for the supposed delay on the part of petitioner Ching in the payment of the remaining balance of the contract price.

Conjunctively, petitioner Ching prays for a singular relief — that the Court modify the CA's Amended Decision by deleting the portion of the said Decision which awards stipulated interest at the rate of 12% *per annum* in favor of respondent Manas.

The Court's Ruling

The instant Petition is impressed with merit. Respondent Manas is *not* entitled to an award of stipulated interest.

To recall, the RTC, in its Decision dated September 4, 2006, ruled that stipulated interest of 12% should be awarded in favor of respondent Manas, counted from the date of default. The CA modified the same and held that the interest of 12% *per annum* stipulated by the parties in the Contract of Sale should be applied from the finality of judgment until full payment. In the Amended Decision, the CA further modified the RTC's Decision and held that the 12% stipulated interest should be counted from the date of extrajudicial demand on August 24, 1999 until full payment.

Based on the established facts of the instant case, however, both the RTC and CA committed error in awarding contractual stipulated interest in favor of respondent Manas.

The contractual stipulated interest is provided in paragraph 6 of the Contract of Sale, which states that in the event of failure by petitioner Ching to pay any installment of the herein agreed purchase price *when such is already due*, the latter shall be liable to pay an interest on the amount due at the rate of 14% percent *per annum* (and not 12% *per annum* as incorrectly held by the RTC and CA):

6. NON-PERFORMANCE OF OBLIGATION — In the event of failure by the SELLER to deliver and install the apparatus/equipment herein purchased, the BUYER shall have the option of rescinding this Contract with damages or institute a legal action for specific performance with damages. On the other hand, in the event (sic) failure by the BUYER to pay any installment of the herein agreed purchase price when such is already due, the BUYER shall be liable to pay an interest on the amount due at the rate of fourteen (14%) percent per annum.

Hence, as agreed upon by the parties in the Contract of Sale, the stipulated interest to be paid by petitioner Ching shall only accrue when the installment payment is *already due* and petitioner Ching failed to make such installment payment. Simply stated, petitioner Ching shall pay the stipulated interest only when he is in **delay**.

Based on the established facts of the instant case, petitioner Ching was ***not in delay*** when he failed to pay the balance of the purchase price.

To recall, based on paragraph 2 of the Contract of Sale, petitioner Ching obligated himself to make three installment payments as regards the objects of the sale: (a) the down payment of 30% or ₱945,000.00 upon the signing of the Contract of Sale, which petitioner Ching did; (b) a second payment of 40% or ₱1,260,000.00 *upon full and complete delivery of all the items indicated in the Contract of Sale, provided the complete delivery is effected on or before January 15, 1998;* and (c) the balance of 30% or ₱945,000.00 *after the complete installation, dry run/testing and satisfactory operations of all the units/sets installed*.

Stated simply, the Contract of Sale between petitioner Ching, as buyer, and respondent Manas, as seller, gave rise to a **reciprocal obligation**, wherein petitioner Ching was obliged to pay the balance of the purchase price while respondent Manas was obliged to make complete delivery of the objects of the sale on or before January 15, 1998 and ensure complete installation, dry run-testing, and satisfactory operations of all the equipment installed.

In a reciprocal obligation, the performance of one is conditioned on the simultaneous fulfillment of the other obligation.[17] Neither party incurs in delay if the other does not comply or is not ready to comply in a manner with what is incumbent upon him.[18] As explained by recognized Civil Law Commentator, former CA Justice Eduardo P. Caguioa, a reciprocal obligation has been defined as that "where each of the parties is a promissee of a prestation and promises another in return as a counterpart of equivalent of the other. x x x The most salient feature of this obligation is reciprocity."[19]

In the instant case, it is not of serious dispute that respondent Manas reneged on his obligations as seller, justifying petitioner Ching's refusal to pay the balance of the purchase price.

First, in its Amended Decision, the CA already found as established fact that there was no complete delivery of the objects of sale in accordance with the Contract of Sale.

It was the obligation of respondent Manas to deliver five sets of Simplex Model XL 35mm movie projectors. Respondent Manas was only able to deliver four sets, and the fifth set delivered was a Century brand projector. As held by the CA in its Amended Decision, the delivery of the Century brand projector cannot be considered a substantial compliance of the obligation to deliver a Simplex Model XL movie projector because the Century brand projector is significantly less valuable compared to a Simplex Model XL movie projector. As found by the CA, the Century brand projector is worth only ₱220,000.00, while a Simplex Model XL projector costs ₱630,000.00, or almost three times the value of the Century brand projector.[20]

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[17] *Vermen Realty Development Corp. v. Court of Appeals*, 296 Phil. 420, 426 (1993).

[18] CIVIL CODE, Art. 1169.

[19] Eduardo P. Caguioa, *COMMENTS AND CASES ON CIVIL LAW, CIVIL CODE OF THE PHILIPPINES*, Vol. IV, Revised 2nd ed., 1966, p. 147.

[20] *Rollo*, pp. 36-38.

The CA likewise noted that petitioner Ching "did not acquiesce [to] the delivery of the Century brand as a substitute of the Simplex model. [Petitioner Ching] had to accept the Century brand delivered on November 29, 1998 considering that he had already announce (sic) to the public that the theater will start its operation on December 25, 1998 x x x. Hence, he was forced to accept the Century brand in time for the opening of the movie house."[21]

The CA pointed out that the evidence on record reveals that when petitioner Ching reminded respondent Manas that he would pay respondent Manas the complete balance of the contract price only after the complete delivery of the five sets of the Simplex Model XL movie projectors, respondent Manas responded positively as the fifth set of the Simplex Model XL movie projector would supposedly be forthcoming.[22] The records also show that the fifth Simplex Model XL movie projector was never delivered to petitioner Ching.

Second, as factually found by the CA, "the delivery was made after 15 January 1998"[23] in contravention of respondent Manas' obligation to deliver the objects of the sale on or before January 15, 1998.

Third, there was no complete installation of the movie projector units as contemplated under the Contract of Sale.

The CA factually found that "[respondent] Manas is liable to [petitioner] Ching for failing to comply with his obligation to completely install the equipments (*sic*) which resulted to [petitioner] Ching's expenses in hiring a third party to completely install the projectors."[24] It must be recalled that petitioner Ching was obligated to pay the balance of 30% or ₱945,000.00 only after the complete installation, dry run/testing and satisfactory

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[21] *Id*. at 37.

[22] *Id*. at 38.

[23] *Id*. at 58.

[24] *Id*. at 67.

operations of all the units/sets installed. As stressed by the CA, "[t]he stipulation in the contract of sale is clear and unambiguous. The **complete** installation is to be made by the seller."[25]

The "complete installation" contemplated under the Contract of Sale refers to the installation of five complete sets of Simplex Model XL movie projectors. However, as already discussed, the fifth Simplex Model XL movie projector was not delivered and installed, despite respondent Manas promising petitioner Ching that the said unit "was coming anytime soon."[26] Hence, even as petitioner Ching engaged the services of a third party to complete the installation of the projectors delivered, there was still no complete installation envisioned under the contract because the fifth Simplex Model XL unit was never delivered and installed.

Furthermore, the Court notes that in the May 1999 letter issued by respondent Manas addressed to petitioner Ching, it is apparent that respondent Manas sought the payment of the remaining balance of 70% of the contract price only after petitioner Ching would have inspected the entire projection system and found them to be satisfactory:

> *Kindly inspect the whole projection systems of Cinemas 1, 2, 3, 4 and should you find them to your fullest satisfaction, please release the remaining balance (70%) of the Contract of Sale be paid and release (sic) to the undersigned*.[27]

Simply stated, respondent Manas covenanted that the payment of the remaining balance by petitioner Ching was made contingent on the latter's satisfactory assessment that respondent Manas completely delivered and installed all of the movie projector units. Obviously, petitioner Ching did not find the delivery, installation, and operation of the movie projector systems satisfactory on account of respondent Manas' failure to deliver

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[25] *Id*. at 61. Emphasis in the original.

[26] *Id*. at 38.

[27] *Id*. at 51.

the fifth Simplex XL movie projector, the failure of respondent Manas to ensure the complete installation of the movie projector systems, and respondent Manas' delivery of defective components.

In fact, very telling is the unequivocal pronouncement of the CA that "***[petitioner] Ching had a valid reason for refusing payment*** until the issue of recoupement (sic) for breach of warranty was resolved."[28]

Therefore, with petitioner Ching being justified in withholding the payment of the balance of the purchase price on account of the several breaches of contract committed by respondent Manas,[29] it cannot be said that petitioner Ching was in delay. Necessarily, respondent Manas is not entitled to the stipulated interest as provided in the Contract of Sale. And considering that petitioner Ching cannot be deemed in delay in accordance with the Contract of Sale, the legal interest shall accrue only from the finality of this Decision until full payment.

WHEREFORE, the instant Petition is **GRANTED**. The Court of Appeals' Amended Decision dated October 13, 2011 in CA-G.R. CV No. 88099 is **AFFIRMED WITH MODIFICATIONS**. The dispositive portion of the Amended Decision is modified to read as follows:

> **WHEREFORE**, all the foregoing considered, judgment is hereby rendered in favor of plaintiff Silverio Manas and against the defendant Chua Ping Hian, a.k.a. Jimmy Ching, ordering the latter to pay the former the total amount of ₱1,559,740.00 with legal interest at a rate of 6% *per annum* from finality of judgment until full satisfaction.
>
> The claim for moral and exemplary damages is hereby denied for lack of merit.

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[28] *Id*. at 76. Emphasis and underscoring supplied.

[29] Unfortunately, petitioner Ching did not present sufficient proof of the quantification of whatever damages which he might have suffered thereby.

Defendant's counterclaims are denied for lack of merit.

Costs against the defendant.

SO ORDERED.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 202264. October 16, 2019]

ALEX SULIT *y* TRINIDAD, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; ESTAFA BY MEANS OF DECEIT; ELEMENTS; PRESENT.— The elements of estafa by means of deceit under Article 315(2)(a) of the RPC are the following: (a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and (d) that, as a result thereof, the offended party suffered damage. Preliminarily, it is a settled rule that factual findings of the trial courts are accorded great respect because they are in the best position to assess the credibility of the witnesses having had the opportunity to observe their demeanor during the trial. This

Court declines to disturb the factual findings of the Regional Trial Court (RTC) and the CA as they are in unison in finding that all the elements of estafa are extant in this case.

2. REMEDIAL LAW; EVIDENCE; CONSPIRACY; THE EXISTENCE OF CONSPIRACY MUST BE PROVEN BEYOND REASONABLE DOUBT; EXISTENCE OF CONSPIRACY ESTABLISHED IN CASE AT BAR.— [P]etitioner tries to limit his participation in all the transactions, arguing that his "mere presence" therein does not necessarily amount to conspiracy. 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, this Court agrees with the findings of the RTC and the CA that conspiracy is present.

3. ID.; ID.; ID.; THE FINDING OF CONSPIRACY NECESSARILY IMPLIES THAT THE ACT OF ONE IS THE ACT OF ALL; IT IS SUFFICIENT THAT THE ACTIONS OF PETITIONER AND HIS COHORTS WERE CLEARLY DIRECTED BY A PREMEDITATED JOINT ACTIVITY WHICH IS AIMED TOWARDS A COMMON PURPOSE.— Neither can this Court exclude petitioner from liability only because he did not participate in employing fraud or deceit upon the private complainants when they initally gave their money to Santias. At the risk of being repetitive, the finding of conspiracy necessarily implies that the act of one is the act of all. It is sufficient that they acted in concert pursuant to the same objective. Thus, it is not indispensable that petitioner engaged with private complainants from the time that they inquired on the investment scheme offered by Valbury to the time that they parted with their money. It is sufficient that the actions of petitioner and his cohorts were clearly directed by a premeditated joint activity which is aimed towards a common purpose.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; TRIAL; DEMURRER TO EVIDENCE; ACCUSED'S FILING OF A DEMURRER TO EVIDENCE WITHOUT LEAVE OF COURT

IS A WAIVER OF HIS RIGHT TO PRESENT EVIDENCE AND SUBMISSION OF THE CASE FOR JUDGMENT ON THE BASIS OF THE EVIDENCE FOR THE PROSECUTION.— This Court finds that petitioner was not deprived of due process when he was not able to present his evidence during trial. It is apparent from the records that petitioner filed a demurrer to evidence *without* leave of court. The consequence of such is the waiver of petitioner's right to present evidence under Sec. 23 of Rule 119 of the Revised Rules of Criminal Procedure. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

5. CRIMINAL LAW; REVISED PENAL CODE; ESTAFA BY MEANS OF DECEIT; PROPER IMPOSABLE PENALTY.— [T]he penalty corresponding to the amount defrauded was adjusted with the passage of Republic Act No. 10951 x x x. x x x [T]he total amount defrauded is ₱697,187.13. The imposable penalty is *arresto mayor* in its maximum period to *prision correccional* in its minimum period. There being no mitigating and aggravating circumstances, the maximum penalty should be one year and one day of *prision correccional.* Applying the Indeterminate Sentence Law, the minimum term of the indeterminate sentence is *arresto mayor* in its minimum and medium periods, the range of which is one month and one day to four months. Thus, the indeterminate penalty is two months and one day of *arresto mayor*, as minimum, to one year and one day of *prision correccional*, as maximum. This Court likewise imposes the legal interest of 6% per annum on the amount from date of finality of this Court's Decision until full payment as per Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013.

APPEARANCES OF COUNSEL

Isabel E. Florin for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

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

Before this Court is a Petition for Review on *Certiorari*,[1] assailing the Decision[2] dated May 24, 2011, Resolution[3] dated January 12, 2012, and Resolution[4] dated April 2, 2012 of the Court of Appeals (CA) in CA-G.R. CR No. 32929.

The Relevant Antecedents

Docketed as Criminal Cases Nos. 03-3663 to 03-3670 and 06-361, nine complaints for the crime of estafa were filed against Edgar G. Santias (Santias) and Alex T. Sulit (petitioner) anent several investment transactions with Valbury Assets Ltd. (Valbury), in which they served as Senior Account Manager[5] and Marketing Director,[6] respectively. Except for the name of the private complainants and the amounts involved, the nine Information were similarly worded, to wit:

> That in or about and during the period from August to September 2001, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating and mutually helping with one another, did then and there willfully, unlawfully and feloniously defraud complainant Caridad P. Bueno in the following manner to wit: the said accused by means of false manifestation and representations executed prior to or simultaneously with the commission of fraud which they made to the complainant to the effect that they are connected with Valbury Assets Ltd. and who have the authority to place her money in a foreign currency trading with the assurance of substantial return of investment and by means of other deceits of similar import, induced

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[1] *Rollo*, pp. 13-28.

[2] Penned by Associate Justice Juan Q. Enriquez, Jr. and Associate Justices Ramon M. Bato, Jr. and Florito S. Macalino, concurring; *id* at 36-45.

[3] *Id*. at 34-35.

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

[5] *Id*. at 50.

[6] *Id*. at 51.

and succeeded in inducing complainant to give the total amount of [USD] 7,500.00 to the accused, the latter knowing fully well that their manifestations and representations were false and fraudulent and were only made to obtain the said amount which accused applied and used to their own benefits, to the damage and prejudice of the complainant in the aforementioned amount of [USD] 7,500.00.

CONTRARY TO LAW.[7]

Upon arraignment, petitioner pleaded not guilty while Santias remained at large. Trial on the merits then ensued.[8]

Caridad Bueno (Bueno), Ma. Lita Bonsol (Bonsol), and Gregoria Ilot (Ilot) alleged that they were enticed by their former co-worker, Lordelyn Dizon (Dizon) to invest their money with Valbury, a company engaged in buying and selling of foreign currencies.[9]

On August 20, 2001, Bueno was accompanied by Dizon to the office of Valbury wherein she was introduced to Santias, George Gan (Gan), and petitioner. Santias took such opportunity to persuade Bueno to place her money in a foreign currency trading with the assurance that her money will be safe with them and she could withdraw the same anytime she pleases. Further, Santias promised that the money will earn an interest of USD 1,500.00 a month. Lured by the false promise of quick financial gains, Bueno returned to the office of Valbury the following day and placed an investment in the amount of ₱258,000.00 to Santias, who converted the money into USD 5,000.00 and promised to trade the same. The receipt of such money was acknowledged in a Letter dated August 30, 2001.[10]

On September 11, 2001, Bueno went to Valbury to inquire about her profits. However, she was informed by Gan, Santias,

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

[8] *Id*. at 38.

[9] *Id*.

[10] Transcript of Stenographic Notes (TSN), February 23, 2006, pp. 4-8; *id*. at 259-263.

and Sulit that the company lost the capital because of the World Trade bombing in New York City. They then persuaded Bueno to give an additional USD 1,000.00 investment so that they could trade it again; and by such means, they would be able to recover her loss.[11]

On September 25, 2001, Bueno tried to obtain her profits but was once again persuaded to make further investment in the amount of USD 1,500.00, piling up her total investments in the amount of USD 7,500.00. However, Bueno was not able to receive profit from any of her investment on account of business losses.[12]

When Bueno sought the aid of the National Bureau of Investigation (NBI), petitioner, Santias, and Gan returned 50% of her investment which amounted to USD 7,500.00.[13]

On the other hand, Bonsol corroborated the testimony of Bueno that Santias convinced her that her money will not only be safe with them but will earn huge interest should she choose to invest the same with Valbury.[14] Swayed by such promise, she invested her money in the amount of ₱510,000.00 and handed the same to Santias. However, Bonsol was not able to recover the profits promised to her upon demand.[15]

As Bonsol likewise sought the help of the NBI, she was able to recover ₱255,000.00 from petitioner, Gan, and Santias.[16]

Ilot testified that she gave her investment to Santias in the amount of ₱250,000.00. Santias told Ilot that her money will earn interest after a week. However, similar to what happened to Bueno and Bonsol, Ilot was not able to obtain her projected

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[11] *Rollo*, p. 264.

[12] *Id*. at 265-266.

[13] *Id.* at 267.

[14] TSN, September 7, 2006, p. 6; *id*. at 219.

[15] *Id*. at 49.

[16] TSN, June 8, 2006, p. 12; *id*. at 206.

profits as well as her initial investment. Ilot narrated that Sulit convinced her to invest additional money so as to recover her initial investment. To this, Ilot declined.[17]

It appeared from the records that the Securities and Exchange Commission (SEC) issued a Certification to the effect that Valbury is not a registered corporation which has the authority buy, sell, and trade foreign currencies.[18]

After the prosecution rested its case, petitioner filed a motion for demurrer to evidence, which was partly granted by the trial court in an Order dated April 25, 2008.[19] The trial court dismissed six out of the nine complaints for failure of the other complainants to appear.[20]

As the defense opted not to present evidence, the facts established in the trial court remained uncontroverted.[21]

In a Decision[22] dated July 23, 2009, the trial court found the petitioner guilty beyond reasonable doubt of the crime of estafa under Article 315, paragraph (par.) 2(a) of the Revised Penal Code (RPC). The trial court was convinced that petitioner represented to the offended parties that he, together with his cohorts, could trade their investment money and earn a high rate of interest knowing that they are not authorized to do so under pertinent securities regulation laws. Thus, the assurances that the complainants' money will earn high interest and that they could withdraw the same anytime were false. It was undisputed that the private complainants were not able to recover their money and the corresponding interest upon demand; more so, they were urged by petitioner and his cohorts to invest again so that they will be able to recover their money.

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[17] *Rollo*, pp. 50-51.

[18] *Id*. at 54.

[19] *Id.* at 52.

[20] *Id.* at 217.

[21] *Id*.

[22] Penned by Presiding Judge Perpetua Atal-Paño; *id*. at 46-56.

As Bonsol and Bueno were able to recover half of their invested money, the trial court found that the amount defrauded totaled to ₱698,500.00.

The dispositive portion of which reads:

> **WHEREFORE**, finding the accused ALEX SULIT guilty beyond reasonable doubt with the crime of ESTAFA under Article 315, par. 2 (a) of the Revised Penal Code and applying the Indeterminate Sentence Law he is hereby sentenced to suffer an imprisonment ranging from four (4) years and two (2) months of prision correccional as minimum to twenty (20) years as maximum.
>
> By way of civil liability, accused Sulit is likewise directed to pay the private complainants the following amounts: [Php 193,500.00] to Caridad Bueno, [Php 255,000.00] to Ma. Lita Bonsol and [Php 250,000.00] to Gregoria Ilot.
>
> **SO ORDERED**.[23]

Aggrieved, petitioner filed an appeal before the CA.

In a Decision[24] dated May 24, 2011, the CA found the appeal without merit. In affirming the decision of the trial court, the CA held that the elements of estafa under Article 315, par. 2(a) of the Revised Penal Code (RPC) are present in this case: petitioner conspired with his co-accused in employing fraud and deceit to induce the private complainants to invest in their business with the assurance of profits within a short period of time. Persuaded by such promises, private complainants parted with their money to the coffers of Valbury. However, the promise of substantial return of investment never materialized. The private complainants likewise, were not able to recover their money.

Moreover, the CA found that petitioner's active participation in all the transactions sanctioned the presence of conspiracy among him, Santias, and Gan.

The *fallo* thereof reads:

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[23] *Id*. at 55-56.

[24] *Supra* note 2.

WHEREFORE, premises considered, the appeal is **DENIED**. The assailed Decision dated July 23, 2009, rendered by the Regional Trial Court, Branch 134, Makati City, in Criminal Case Nos. 03-3664, 03-3669 and 06-361 is hereby **AFFIRMED.**

SO ORDERED.[25]

On June 14, 2011, the Public Attorney's Office filed a Motion to Withdraw Appearance as counsel for petitioner.[26]

The following day, petitioner filed a Motion for Reconsideration (of the Decision promulgated on May 24, 2011) and/or Motion to Reopen/Motion for New Trial with Leave of Court and with Reservation to File Further Arguments, Papers, *etc*.,[27] denying his participation in the investment transactions among the private complainants and Santias. Further, petitioner maintained that he suffered from the gross carelessness of his former lawyer when he consented to waive his right to present his evidence. As one of his reliefs, petitioner prayed for the remand of the case so that a new trial may be carried out.

To this, the CA issued a Minute Resolution dated July 7, 2011 giving due course to said motion and requiring the Office of the Solicitor General (OSG) to comment on the same.[28]

On June 17, 2011, Atty. Ernesto S. San Juan filed a Motion for Substitution of Counsel/Formal Entry of Appearance as new counsel for petitioner.[29]

After the OSG filed its comment, the CA subsequently issued a Resolution[30] dated January 12, 2012 denying petitioner's motion for reconsideration.

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[25] *Rollo,* p. 44.

[26] *Id*. at 30.

[27] *Id*. at 93-97.

[28] *Id*.

[29] *Id*.

[30] *Supra* note 3.

On February 15, 2012, petitioner filed a Very Urgent Motion to Resolve all Pending Matters, seeking the resolution of the motion for new trial.

In a Resolution[31] dated April 2, 2012, the CA denied the motion to reopen/new trial for lack of merit.

Hence, this petition.

The Issues

This Court is left to determine and resolve the following issues: (1) whether or not the guilt of petitioner was proven beyond reasonable doubt; and (2) whether or not petitioner was deprived of due process.

The Court's Ruling

The elements of estafa by means of deceit under Article 315(2)(a) of the RPC are the following: (a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and (d) that, as a result thereof, the offended party suffered damage.[32]

Preliminarily, it is a settled rule that factual findings of the trial courts are accorded great respect because they are in the best position to assess the credibility of the witnesses having had the opportunity to observe their demeanor during the trial.[33]

This Court declines to disturb the factual findings of the Regional Trial Court (RTC) and the CA as they are in unison in finding that all the elements of estafa are extant in this case.

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[31] *Supra* note 4.

[32] *People v. Menil, Jr.*, 394 Phil. 433, 450 (2000).

[33] *People of the Philippines v. Dejolde*, G.R. No. 219238, January 31, 2018.

First. Ensuing their fraudulent scheme, petitioner, Gan and Santias misrepresented that their company is engaged in the legitimate business of buying and selling foreign currencies. However, it was established during trial that Valbury is not authorized to do so as it is not registered with the SEC. Furthermore, petitioner, Santias, and Gan promised that they could trade the invested foreign currencies for a guaranteed profit and that such investment could be withdrawn at any time. *Second*. Such misrepresentation was used to convince the private complainants to deliver their money as investment to Valbury. *Third*. Private complainants relied on the words of guarantee by petitioner, Gan, and Santias to part with their money. And, *Fourth*. Private complainants suffered damages after they failed to recover not only their invested money, but also the guaranteed profits upon demand.

Petitioner's contention that private complainants should have expected the probability of losing their investments in view of the "Risk Disclosure Agreement" that they signed is misplaced. To stress, the RTC and the CA found that Valbury is not registered as an entity authorized to buy, sell, and trade foreign currencies with the SEC. Thus, petitioner, Gan, and Santias' misrepresentation that they could legally trade private complainants' money is a clear deceit and fraud on their part.

Moreover, petitioner tries to limit his participation in all the transactions, arguing that his "mere presence" therein does not necessarily amount to conspiracy.

As a rule, once conspiracy is shown, the act of one is the act of all the conspirators.[34] 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

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[34] See *People of the Philippines v. Jesalva*, 811 Phil. 299, 309 (2017), citing *People v. Medice*, G.R. No. 181701, January 18, 2012, 663 SCRA 344-345.

thereof, *i.e.*, it must be shown to exist as clearly and convincingly as the commission of the offense itself.[35]

In this case, this Court agrees with the findings of the RTC and the CA that conspiracy is present.

A careful and thorough review of the records of the case discloses that private complainants testified in detail as to petitioner's active participation in all the transactions, to wit:

On Caridad Bueno

Q: Now, were you able to get any interest or profit from the US $5,000.00 you invested?

A: None, sir.

Q: So, were you able to get the US$5,000.00 back?

A: No more, sir.

Q: Now, when did you learn that the US$5,000.00 got lost?

A: On September 11 attack, we went to the office of Valbury Assets to hear some news and it was there that we learned that our money was already lost.

Q: From whom did you learn that your money was lost?

A: Thru Edgar Santias, Alex Sulit and George Gan, sir.

x x x x x x x x x

A: **I was told by Mr. Gan, Mr. Santias and Mr. Sulit to put additional money so that my account could be revived and I could recover.**

Q: When you say you can recover, what were you supposed to recover?

A: That I give additional money so that they could trade again, sir.

Q: And, did you give additional investment?

A: Yes, sir.

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[35] See *People of the Philippines v. Anabe*, 644 Phil. 261, 278 (2010).

Q: How much?

A: US$ 1,000.00, sir.

x x x x x x x x x

Q: You went to the NBI, that's what you said earlier. What happened when you were at the NBI?

A: We talked and the NBI people planned to go to Valbury Assets to invest US$ 10,000.00, sir.

x x x x x x x x x

A: **We went to the office of Valbury Assets bringing with us $10,000.00 given by the NBI, sir.**

Q: And what happened there, if any?

A: **I endorsed it to Alex Sulit, sir**.

Q: You endorsed what?

A: The money inside the envelope, sir.[36]

During Caridad Bueno's cross, re-direct, and re-cross examination:

Q: The question Ms. Witness is during the time that you were paying, was there any occasion that you talked or communicated with Mr. Sulit? During that time.

A: None sir but he was there.

Q: But was there any occasion when you had Mr. Sulit communicated with you other than that incident?

A: We were already in group when he needs us.

Q: Can you please be more specific what is this meeting you referred to?

A: When we encountered problems with our money that was the time we sent there in group because we have the same cases (sic).

Q: Can you remember that date and time?

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[36] TSN, February 23, 2006, pp. 8-16; *rollo*, pp. 265-271.

A: October 2001.

Q: And what if any did Mr. Sulit tell your group?

A: **What I could remember during our last group meeting, we were asked to invest US$10,000.00 so that we could recover our investment.**

Q: Who specifically told you to invest more money?

A: They were (sic) three of them who were talking to us Sir.

Q: And who are these three persons?

A: **Edgar Santias, George Gan and Alex Sulit**.[37] (Emphases supplied)

On Ma. Lita A. Bonsol

Q: It states here that what was received by Valbury Assets was 10,000 US Dollars, how much exactly did you give to Valbury Assets?

A: [₱] 510,000.00 Sir

Q: Why is it stated that that it is 10,000 US dollars[?]

A: They converted the money into dollars Sir.

x x x x x x x x x

Q: After you paid the said amount, what happened next if any?

A: We were asked to wait.

Q: Wait for what Ms. Witness?

A: To wait for the interest.

Q: And did he mention when will the interest is supposed to come?

A: That I wait for about two (2) weeks Sir.

Q: Who told you this Ms. Witness?

A: Edgar Santias Sir.

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[37] TSN, March 30, 2006, p. 9; *id*. at 289.

Q: Now, did the interest arrive?

A: No Sir.

Q: Now, at anytime, were you able to receive the said interest?

A: None Sir.

Q: So, what did you do if any when you did not received (sic) any interest?

A: They asked me to put additional money but I do not have money anymore [.]

x x x x x x x x x

Q: When was this?

A: September 2001 Sir.

Q: Who actually told you that you should invest additional money?

A: Edgar Santias Sir.

Q: Aside from him, did he give any reason why you should give additional investment?

A: He told me that I should need additional money because he said that "naka-lock ang position".

Q: What was your understanding of that statement by Mr. Santias that "Naka-lock ang position"?

A: According to the explanation, I could not get the interest.

Q: Did you impure such additional funds?

A: No Sir.

Q: Since you did not receive any interest, what did you do if any?

A: We waited and called us for a meeting Sir.

Q: When you said they called you, who were called to that meeting?

A: Eliza Asuncion, Gloria Ilot, Caridad Bueno, Eliza Limson.

x x x x x x x x x

Q: Who called for that meeting?

A: **The president Mr. George Gan, Edgar Santias and Alex Sulit.**

Q: Did that meeting pushed through? (sic)

A: Yes Sir.

x x x x x x x x x

Q: Aside from the investors, who were there during the meeting?

A: **George Gan, Alex Sulit and Edgar Santias.**

Q: What happened during the meeting?

A: They told us that our money is already gone.

Q: **When you said "nila or they" that your money is gone, who actually told you?**

A: **Three (3) of them Sir**.[38] (Emphases supplied)

During cross, re-direct, and re-cross examination of Ma. Lita Bonsol:

Q: You said Ms. Witness that you were able to talk to Alex Sulit only when your investment had a problem, is that correct?

A: Yes Sir.

Q: And after you invested in Valbury Assets and prior to the problem in your investment, you did not have any communication with Alex Sulit, do you confirm that?

A: Whenever I go to the office, I see him Sir.[39]

On Gregoria Ilot

x x x x x x x x x

Q: So is my impression correct Ms. Ilot that the only reason that made you decide to include Mr. Sulit in your complaint against Valbury Assets is the fact at the time you went to

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[38] TSN, June 8, 2006, pp. 9-11; *rollo*, pp. 203-205.

[39] TSN, September 7, 2006, p. 11; *id*. at 224.

the office of Valbury Assets to the office of Mr. Santias and the other officers of the company, he was present, is that correct?

A: Yes Sir. But I was able to talk to Mr. Sulit after a week.

Q: But you will admit before this Court that when you are able to talk with Mr. Alex Sulit, you already invested your money and in fact you made it to Mr. Santias, is that correct?

A: Yes Sir.[40]

Based from the synthesis of testimonies, it is clear that petitioner actively participated in all the transactions. Petitioner's acts of inducing the private complainants to invest further so as to recover their "lost" investments makes him liable through conspiracy. It must likewise be noted that petitioner was always present during all the meetings — from the time when private complainants invested their money to the time that they sought the help of the NBI to recover the same. Even more, petitioner received the marked money provided by the NBI, representing the additional investment of USD 10,000.00 that petitioner, Gan, and Santias asked from Bueno. Undeniably, these circumstances are contrary to petitioner's denial of his participation.

Truly, petitioner and his cohorts have ultimate objective, that is, to induce private complainants to part with their money. To do so, petitioner and his cohorts misrepresented that they are in a legitimate business of buying and selling foreign currencies; that they could invest private complainants' money with guaranteed profits; and that private complainants have the option of withdrawing their money at any time. However, as it turned out, Valbury was not registered with the SEC and it was not able to deliver its promises to private complainants.

Neither can this Court exclude petitioner from liability only because he did not participate in employing fraud or deceit upon the private complainants when they initally gave their money to Santias.

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[40] TSN, January 30, 2007, p. 5; *id*. at 245.

At the risk of being repetitive, the finding of conspiracy necessarily implies that the act of one is the act of all. It is sufficient that they acted in concert pursuant to the same objective.[41] Thus, it is not indispensable that petitioner engaged with private complainants from the time that they inquired on the investment scheme offered by Valbury to the time that they parted with their money. It is sufficient that the actions of petitioner and his cohorts were clearly directed by a premeditated joint activity which is aimed towards a common purpose.

Lastly, this Court finds that petitioner was not deprived of due process when he was not able to present his evidence during trial.

It is apparent from the records that petitioner filed a demurrer to evidence *without* leave of court. The consequence of such is the waiver of petitioner's right to present evidence under Sec. 23 of Rule 119 of the Revised Rules of Criminal Procedure, to wit:

> Section 23. *Demurrer to Evidence.*
>
> x x x x x x x x x
>
> When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.
>
> x x x x x x x x x

In any case, petitioner failed to prove that he was deprived of due process, an exception to the general rule is that the negligence of counsel binds the client.[42]

Lastly, it must be considered that the penalty corresponding to the amount defrauded was adjusted with the passage of Republic Act No. 10951, to wit:

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[41] *People v. Mateo*, G.R. No. 210612, October 9, 2012, 842 SCRA 258, 274.

[42] *Ong Lay Hin v. Court of Appeals*, 752 Phil. 15, 24 (2015).

Section 85. Article 315 of the same Act, as amended by Republic Act No. 4885, Presidential Decree No. 1689, and Presidential Decree No. 818, is hereby further amended to read as follows:

> ART. 315. *Swindling (estafa).* — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:
>
> x x x x x x x x x
>
> 3rd. The penalty of arresto mayor in its maximum period to prision correccional in its minimum period, if such amount is over Forty thousand pesos (₱40,000) but does not exceed One million two hundred thousand pesos (₱1,200,000).

To summarize, the private complainants' investments are as follows: (a) Bueno's investment is in the amount of USD 7,500.00; (b) Bonsol's investment is in the amount of ₱255,000.00; and (c) Ilot's investment is in the amount of ₱250,000.00.

It was admitted that half of Bonsol and Bueno's investments were returned to them. Considering the prevailing rate when the commission of the crime took place in 2001,[43] the other half of Bueno's investment is in the amount of ₱192,187.13. The other half of Bonsol's investment, on the other hand, is in the amount of ₱255,000.00.

Thus, the total amount defrauded is ₱697,187.13.

The imposable penalty is *arresto mayor* in its maximum period to *prision correccional* in its minimum period. There being no mitigating and aggravating circumstances, the maximum penalty should be one year and one day of *prision correccional.*

Applying the Indeterminate Sentence Law, the minimum term of the indeterminate sentence is *arresto mayor* in its minimum and medium periods, the range of which is one month and one day to four months. Thus, the indeterminate penalty is two months

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[43] USD 1 is equivalent to 51.2499 Philippine Peso; http://www.bsp. gov.ph/statistics/sdds/exchrates.htm.

and one day of *arresto mayor,* as minimum, to one year and one day of *prision correccional*, as maximum.

This Court likewise imposes the legal interest of 6% per annum on the amount from date of finality of this Court's Decision until full payment as per Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013.

WHEREFORE, premises considered, the petition is **PARTLY GRANTED**. Accordingly, The Decision dated May 24, 2011, Resolution dated January 12, 2012, and Resolution dated April 2, 2012 of the Court of Appeals in CA-G.R. CR No. 32929 are **AFFIRMED** with **MODIFICATION.**

Petitioner Alex Sulit *y* Trinidad is found **GUILTY** beyond reasonable doubt of the crime of estafa under Article 315, par. 2(a) of the Revised Penal Code. He is hereby sentenced to suffer the penalty of imprisonment of two (2) months and one (1) day of *arresto mayor*, as minimum, to one (1) year and one (1) day of *prision correccional*, as maximum.

Petitioner Alex Sulit *y* Trinidad is likewise **ORDERED** to pay ₱192,187.13 to Caridad Bueno; ₱255,000.00 to Ma. Lita Bonsol; and ₱250,000.00 to Gregoria Ilot. An interest of 6% shall be imposed on these amounts from the finality of this Decision until full payment.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 204232. October 16, 2019]

THE LOCAL GOVERNMENT UNIT OF STA. CRUZ, DAVAO DEL SUR, as represented by its Municipal Mayor, ATTY. JOEL RAY L. LOPEZ, *petitioner, vs.* **PROVINCIAL OFFICE OF THE DEPARTMENT OF AGRARIAN REFORM, DIGOS CITY, DAVAO DEL SUR,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (CARL); ANY DECISION OF THE DEPARTMENT OF AGRARIAN REFORM (DAR) ON ANY AGRARIAN DISPUTE OR ON ANY MATTER PERTAINING TO THE APPLICATION, IMPLEMENTATION, ENFORCEMENT, OR INTERPRETATION OF THE CARL MAY BE BROUGHT TO THE COURT OF APPEALS BY A PETITION FOR *CERTIORARI*, AND NOT DIRECTLY BEFORE THE SUPREME COURT.— [T]he CARL provides that the remedy of *certiorari* is available to dispute any decision of the DAR on any agrarian matter pertaining to the application, implementation, enforcement or interpretation of the law: SEC. 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. The findings of fact of the DAR shall be final and conclusive if based on substantial evidence. However, the CARL expressly states that the a petition for *certiorari* must be filed with the Court of Appeals (CA), and not directly before this Court.

2. ID.; ID.; ID.; THE CONCURRENT JURISDICTION OF THE SUPREME COURT AND THE COURT OF APPEALS TO ISSUE AN INJUNCTIVE WRIT AS AGAINST THE DEPARTMENT OF AGRICULTURE IN THE IMPLEMENTATION OF THE CARL DOES NOT GIVE THE

PETITIONER UNRESTRICTED FREEDOM OF CHOICE OF COURT FORUM CONSISTENT WITH THE PRINCIPLE OF HIERARCHY OF COURTS; RATIONALE; EXCEPTIONS TO THE PRINCIPLE OF HIERARCHY OF COURTS; NOT PRESENT.— With the exclusion of the lower courts, this Court and the CA has concurrent jurisdiction to issue an injunctive writ as against the Department of Agriculture in the implementation of the CARL. However, such concurrence does not give the petitioner unrestricted freedom of choice of court forum consistent with the principle of hierarchy of courts. In the case of *Gios-Samar, Inc. v. Department of Transportaton and Communications*, the Court reminded that said doctrine is not a mere policy, but a constitutional filtering mechanism designed to enable the Court to focus on more fundamental and essential tasks assigned to it by the Constitution. Said principle, however, is subject to exceptions: (1) When there are genuine issues of constitutionality that must be addressed at the most immediate time; (2) When the issues involved are of transcendental importance; (3) Cases of first impression; (4) The constitutional issues raised are better decided by the Court; (5) Exigency in certain situations; (6) The filed petition reviews the act of a constitutional organ; (7) When petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; and (8) The petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy." However, as clarified in the *Gios-Samar* case, the determinative factor in allowing the application of one of the aforementioned exceptions is the **nature** of the question raised by the parties in those "exceptions" that enabled the Court to allow such direct resort. In this case, petitioner merely speculates in its Petition that the benefits of classifying the Tan Kim Kee Estate as an industrial zone far outweighs the benefits of the implementation of the CARL because in previous experiences, the CARP beneficiaries were not able to develop the agricultural lands awarded to them. However, such conjecture does not constitute any of the aforementioned exceptions to the general rule. Thus, the supremacy of the doctrine of hierarchy of courts prevails.

3. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; REAL PARTY-IN-INTEREST; EVERY ACTION MUST BE PROSECUTED OR DEFENDED IN THE NAME OF THE REAL PARTY-IN-INTEREST, A PARTY WHO STANDS TO BE BENEFITED OR INJURED BY THE JUDGMENT IN THE SUIT, WHOSE INTEREST IS PRESENT AND SUBSTANTIAL, NOT A MERE EXPECTANCY, OR A FUTURE, CONTINGENT, SUBORDINATE OR CONSEQUENTIAL INTEREST.— Note too that the Petition failed to state a cause of action considering the insufficiency of the allegations in the pleading. It must be highlighted that petitioner is *not* the registered owner of the Tan Kim Kee Estate. Section 2, Rule 3 of the Rules of Court is explicit in stating that every action must be prosecuted or defended in the name of the real party-in-interest, a party who stands to be benefited or injured by the judgment in the suit. On this note, real interest must be one which is present and substantial, as distinguished from a mere expectancy, or a future, contingent, subordinate or consequential interest. Petitioner's perceived and anticipated benefit from the development of the Tan Kim Kee Estate constitutes a mere expectancy. As aforementioned, the same does not suffice to consider it as a real party-in-interest. The Court stresses that procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons.

CAGUIOA, *J., separate concurring opinion*:

1. LABOR AND SOCIAL LEGISLATION; THE COMPREHENSIVE AGRARIAN REFORM LAW (CARL); THE PROPER REMEDY AS REGARDS RULINGS OF THE DEPARTMENT OF AGRARIAN REFORM (DAR) PERTAINING TO THE APPLICATION, IMPLEMENTATION, ENFORCEMENT, OR INTERPRETATION OF THE COMPREHENSIVE AGRARIAN REFORM LAW IS TO FILE A *CERTIORARI* PETITION BEFORE THE COURT OF APPEALS.— By filing the instant Petition, petitioner LGU of Sta. Cruz directly seeks recourse from the Court to reverse respondent DAR's decision to place the subject property under the coverage of the CARP. In this regard, Section 54 of CARL provides which court has jurisdiction to hear, try, and decide this cause of action, to wit: SEC. 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. The findings of fact of the DAR shall be final and conclusive if based on substantial evidence. As pronounced by the Court in *Department of Agrarian Reform v. Trinidad Valley Realty & Development Corp., et al*., "Section 54 of RA 6657 leaves no room for doubt that decisions, orders, awards or rulings of the DAR may be brought to the CA by *certiorari*." Hence, considering that the proper remedy as regards rulings of the DAR pertaining to the application, implementation, enforcement, or interpretation of the CARL is to file *certiorari* petition before the Court of Appeals (CA), x x x petitioner LGU of Sta. Cruz resorted to an improper remedy in filing the instant Petition directly before the Court. To be sure, the Court has no jurisdiction to hear the instant Petition.

2. ID.; ID.; ID.; EVEN IF THE SUPREME COURT HAS CONCURRENT JURISDICTION WITH THE COURT OF APPEALS TO HEAR THE PETITION FOR INJUNCTION AGAINST THE DAR, THE DOCTRINE OF HIERARCHY OF COURTS PRECLUDES THE SUPREME COURT FROM TAKING COGNIZANCE THEREOF; STRICT OBSERVANCE OF THE DOCTRINE OF HIERARCHY OF COURTS SHOULD NOT BE A MATTER OF MERE POLICY.— Even assuming *arguendo* that the Court has concurrent jurisdiction with the CA in hearing the instant Petition, the doctrine of hierarchy of courts, x x x precludes the Court from taking cognizance of the instant Petition. As unanimously held by the Court in *Gios-Samar, Inc. v. Department of Transportation and Communication*, strict observance of the doctrine of hierarchy of courts should not be a matter of mere policy. In this regard, x x x there is no special and important reason to convince this Court to assume jurisdiction over this Petition.

3. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; REAL PARTY-IN-INTEREST; EVERY ACTION MUST BE PROSECUTED OR DEFENDED IN THE NAME OF THE REAL PARTY-IN-INTEREST, A PARTY WHO WOULD BE BENEFITED OR INJURED BY THE JUDGMENT OR IS THE

PARTY ENTITLED TO THE AVAILS OF THE SUIT, WHOSE INTEREST IS PRESENT AND SUBSTANTIAL, NOT A MERE EXPECTANCY OR A FUTURE, CONTINGENT, SUBORDINATE OR CONSEQUENTIAL INTEREST; THE LACK OF ANY REAL PARTY-IN-INTEREST WARRANTS THE DISMISSAL OF THE PETITION.— [T]he instant Petition fails to state any cause of action as the instant Petition was not filed by the real party-in-interest. Under Rule 3, Section 2 of the Rules of Court, every action must be prosecuted or defended in the name of the real party-in-interest. It is not denied that the petitioner LGU of Sta. Cruz is not the registered owner of the subject property. **The lots comprising the subject property are owned by private landowners, *i.e.*, Lim, *et al.*, and *not* by petitioner LGU of Sta. Cruz.** The Court has held that "a *real party in interest* is a party who would be benefited or injured by the judgment or is the party entitled to the avails of the suit. ***Real interest means a present substantial interest, as distinguished from a mere expectancy or a future, contingent, subordinate or consequential interest.***" In filing the instant Petition, petitioner LGU of Sta. Cruz argues that it would be for the future benefit of the LGU if the area would be converted for industrial and other related usages. This is a mere expectancy or a future, contingent, subordinate or consequential interest. Hence, the lack of any real party-in-interest warrants the dismissal of the instant Petition.

4. LABOR AND SOCIAL LEGISLATION; THE COMPREHENSIVE AGRARIAN REFORM LAW (CARL); AFTER THE PASSAGE OF THE COMPREHENSIVE AGRARIAN REFORM LAW, AGRICULTURAL LANDS, THOUGH RECLASSIFIED BY LOCAL GOVERNMENT UNITS (LGUs) INTO NON-AGRICULTURAL USES, STILL HAVE TO UNDERGO THE DEPARTMENT OF AGRARIAN REFORM (DAR) LAND USE CONVERSION PROCEDURE BEFORE SUCH LANDS MAY BE EXCLUDED FROM THE COVERAGE OF COMPREHENSIVE AGRARIAN REFORM PROGRAM OR THE DAR'S APPROVAL OR CLEARANCE MUST BE SECURED TO EFFECT RECLASSIFICATION. — It has already been settled with definitiveness that after the passage of R.A. 6657, agricultural lands, though reclassified by LGUs, have to undergo the process of DAR conversion before such lands may be excluded from the coverage of CARP. x x x. As explained in

Chamber of Real Estate and Builders Associations, Inc., Executive Order No. (E.O.) 129-A, otherwise known as The Reorganization Act of the Department of Agrarian Reform, was issued in 1987 authorizing the DAR to approve or disapprove the conversion, restructuring or readjustment of agricultural lands into non-agricultural uses. Upon the passage of R.A. 7160, otherwise known as the Local Government Code of 1991, LGUs were granted the power to reclassify agricultural lands subject to certain conditions. However, this power of LGUs to reclassify agricultural land for non-agricultural purposes does not mean that DAR conversion can be dispensed with in order to exclude land beyond the coverage of CARP. That was expressly addressed and explained by the Court in *Chamber of Real Estate and Builders Associations, Inc.*, thus: "[t]he aforequoted provisions of law show that the power of the LGUs to reclassify agricultural lands is not absolute. The authority of the DAR to approve conversion of agricultural lands covered by Republic Act No. 6657 to non-agricultural uses has been validly recognized by said Section 20 of Republic Act No. 7160 by explicitly providing therein that, 'nothing in this section shall be construed as repealing or modifying in any manner the provisions of Republic Act No. 6657."' Hence, the rule mandating that "the reclassification of agricultural lands by LGUs shall be subject to the requirements of land use conversion procedure or that DAR's approval or clearance must be secured to effect reclassification, [does] not violate the autonomy of the LGUs" is settled.

5. ID.; ID.; ID.; THE DEPARTMENT OF AGRARIAN REFORM HAS THE POWER TO APPROVE THE APPLICATION FOR CONVERSION WITH A CONDITION THAT THE CONVERSION PLAN BE IMPLEMENTED WITHIN FIVE YEARS FROM THE APPROVAL OF THE CONVERSION. — It bears emphasis that the power of DAR to require the application for conversion is not only sourced from R.A. 6657. To reiterate, E.O. 129-A expressly grants DAR the power to approve and disapprove the conversion of agricultural lands for non-agricultural uses. And in exercise of its statutory power to promulgate rules and regulations implementing the said law, DAR required the completion of development within five years from the issuance of the Order of Conversion under DAR A.O. 12-94 and subsequent issuances. Hence, as recognized

by the Court in *Chambers of Real Estate and Builders Associations, Inc.*, despite the *Conversion of Lands* provision under R.A. 6657 referring only to agricultural lands already awarded, it cannot be said that respondent DAR has no power to require an application for conversion and impose the condition that the conversion plan be implemented within five years from the approval of the conversion. Therefore, applying the foregoing in the instant case, when respondent DAR issued the Order approving the application for conversion, but with the condition that the conversion plan to utilize the subject property for industrial and commercial purposes be actualized within five years from the conversion in 1994, the imposition of such condition was with legal basis. It is not disputed by petitioner LGU of Sta. Cruz that this condition was not met.

APPEARANCES OF COUNSEL

Romulus G. Tancontian for petitioner.
Bureau of Agrarian Legal Assistance for respondent.

D E C I S I O N

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

Directly filed before this Court is a Petition for Injunction with Application for Permanent Restraining Order[1] by the Local Government Unit of Sta. Cruz, Davao del Sur (LGU-Sta. Cruz), as represented by its Municipal Mayor, Atty. Joel Ray L. Lopez (petitioner) against the Provincial Office of the Department of Agrarian Reform, Digos City, Davao del Sur (respondent) to prevent the latter from subjecting the Tan Kim Kee Estate under the coverage of the Comprehensive Agrarian Reform Program (CARP) under Republic Act No. 6657 or the Comprehensive Agrarian Reform Law (CARL).

The Relevant Antecedents

The Tan Kim Kee Estate, comprising more or less 220 hectares, was designated as an industrial zone by virtue of the

[1] *Rollo,* pp. 3-12.

Municipal Comprehensive Development Plan/Land Use Plan and Zoning Ordinances (MCDP/LUP and ZOs) CY 1991-2000. The latter was subsequently approved by the Municipal Development Council (MDC), adopted by the *Sangguniang Bayan ng* Sta. Cruz, the *Sangguninang Panlalawigan*, the Regional Development Council, and the Inter-Agency Committee on Town Planning and Review.[2]

Said classification was carried on in the MCDP/LUP and ZOs CY 2000-2012. It was likewise approved through a public hearing and MDC Resolution, adopted by the *Sangguniang Bayan* through a Resolution and approved by the *Sangguniang Panlalawigan*.[3]

In classifying the Tan Kim Kee Estate as an industrial zone, LGU-Sta. Cruz envisioned it to support its agro-industrial program, making said area as an export processing zone.[4]

It appears that in 1994, Braulo Lim, *et al.*, landowners of the Tan Kim Kee Estate, filed an application for conversion of the Estate into commercial/industrial uses. The application was granted with the condition that the Estate be developed within the period of five years. The period was later on extended upon application of Braulo Lim, *et al*.[5]

Before the lapse of the prescribed period, Braulo Lim, *et al.* filed an application for the exclusion of the Estate from the coverage of CARP on the ground that the land was actually, exclusively, and directly used for cattle raising.[6]

In 2012, however, the Department of Agrarian Reform (DAR) subjected the Tan Kim Kee Estate under the coverage of the CARP.[7]

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[2] *Id*. at 6.

[3] *Id.*

[4] *Id*. at 7.

[5] *Id*. at 125-126.

[6] *Id*. at 126.

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

In an Order[8] dated January 3, 2013, the DAR denied the application for exclusion.

Seeking recourse from this Court *via* this Petition, petitioner contends that by putting said Estate into the coverage of CARP would slay the economic development strategy that is knitted in the approved town plans, affecting the progress and development not only for the Municipality, but for the province and the region as well.[9] Hence, it Is but proper that an injunction be issued against the respondent.

In its Supplemental Petition,[10] petitioner adds that irreparable damage on its part, as well as the investors that already expressed interest in developing the Tagabuli Bay will ensue and that the MCDP/LUP and ZOs will be prejudiced by said agrarian reform coverage of the area in consideration.

In its Comment[11] the respondent maintained that the Tan Kim Kee Estate was validly put under the CARP coverage for the landowners' failure to comply with the conversion plan under DAR guidelines. The DAR averred that the Tan Kim Kee landowners initially filed their application for conversion from agricultural land to industrial use. However, for a period of five years, they failed to implement the conversion plan. An extension of time within which to comply with the plan was granted by the DAR; despite so, the landowners still failed to comply therewith. Such failure to undertake the conversion activity within the period given by the DAR is in violation of the conditions imposed by relevant laws. Thus, the Tan Kim Kee Estate remains to be an agricultural land under Section 49 of the DAR Administrative Order No. 1, Series of 2002, which may be placed under the CARP.[12] As such, respondent maintains that the application for the issuance of an injunction should be denied.

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[8] *Id*. at 123-136.

[9] *Id*. at 8.

[10] *Id*. at 101-104.

[11] *Id*. at 111-118.

[12] *Id*. at 112-114.

In its Reply,[13] petitioner insists that its act of reclassifying the Tan Kim Kee Estate as an industrial zone is well within the autonomy provided by the Local Government Code and the Constitution.

Hence, this Petition.

The Issue

Essentially, the issue in this case is whether or not the reclassification of the Tan Kim Kee Estate as an industrial land removes it from the coverage of the CARL.

The Court's Ruling

Initially, it must be highlighted that the Notices of Coverage issued by the DAR basically placed the Tan Kim Kee Estate under the coverage of the CARP. Said notices notify the landowners that their respective properties shall be placed under the CARP; that they are entitled to exercise their retention right; and that a public hearing shall be conducted where they and the representatives of the concerned sectors of society may attend to discuss the results of the field investigation, the land valuation and other pertinent matters.[14] Thus, at this point, no acquisition was yet implemented.

The Court now resolves.

Petitioner directly resorted to this Court in applying for the issuance of an injunctive writ.

Preliminarily, the CARL provides that the remedy of *certiorari* is available to dispute any decision of the DAR on any agrarian matter pertaining to the application, implementation, enforcement or interpretation of the law:

SEC. 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

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[13] *Id.* at 139-146.

[14] *Roxas & Co., Inc. v. Court of Appeals*, 378 Phil. 727, 771 (1999).

Court of Appeals by *certiorari* except as otherwise provided in this Act within fifteen (15) days from the receipt of a copy thereof.

The findings of fact of the DAR shall be final and conclusive if based on substantial evidence.

However, the CARL expressly states that the a petition for *certiorari* must be filed with the Court of Appeals (CA), and not directly before this Court.

Nevertheless, whether injunction is available as a remedy in assailing the propriety of the implementation of the CARL is likewise explicitly provided under Section 68 thereof, to wit:

SEC. 68. *Immunity of Government Agencies from Undue Interference.* — No injunction, restraining order, prohibition or mandamus shall be issued by the *lower courts* against the Department of Agrarian Reform (DAR), the Department of Agriculture (DA), the Department of Environment and Natural Resources (DENR), and the Department of Justice (DOJ) in their implementation of the program. (Italics supplied)

With the exclusion of the lower courts, this Court and the CA has concurrent jurisdiction to issue an injunctive writ as against the Department of Agriculature in the implementation of the CARL. However, such concurrence does not give the petitioner unrestricted freedom of choice of court forum consistent with the principle of hierarchy of courts.[15]

In the case of *Gios-Samar, Inc. v. Department of Transportaton and Communications*,[16] the Court reminded that said doctrine is not a mere policy, but a constitutional filtering mechanism designed to enable the Court to focus on more fundamental and essential tasks assigned to it by the Constitution.

Said principle, however, is subject to exceptions:

(1) When there are genuine issues of constitutionality that must be addressed at the most immediate time;

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[15] *United Claimants Association of NEA (UNICAN) v. National Electrification Administration*, 680 Phil. 506, 514 (2012).

[16] G.R. No. 217158, March 12, 2019.

(2) When the issues involved are of transcendental importance;

(3) Cases of first impression;

(4) The constitutional issues raised are better decided by the Court;

(5) Exigency in certain situations;

(6) The filed petition reviews the act of a constitutional organ;

(7) When petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; and

(8) The petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy."[17]

However, as clarified in the *Gios-Samar* case, the determinative factor in allowing the application of one of the aforementioned exceptions is the **nature** of the question raised by the parties in those "exceptions" that enabled the Court to allow such direct resort.[18]

In this case, petitioner merely speculates in its Petition that the benefits of classifying the Tan Kim Kee Estate as an industrial zone far outweighs the benefits of the implementation of the CARL because in previous experiences, the CARP beneficiaries were not able to develop the agricultural lands awarded to them. However, such conjecture does not constitute any of the aforementioned exceptions to the general rule. Thus, the supremacy of the doctrine of hierarchy of courts prevails.

Note too that the Petition failed to state a cause of action considering the insufficiency of the allegations in the pleading.[19]

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[17] *Id*.

[18] *Id*.

[19] *Zuñiga-Santos v. Santos-Gran*, 745 Phil. 171, 177 (2014).

It must be highlighted that petitioner is *not* the registered owner of the Tan Kim Kee Estate.

Section 2, Rule 3 of the Rules of Court is explicit in stating that every action must be prosecuted or defended in the name of the real party-in-interest, a party who stands to be benefited or injured by the judgment in the suit. On this note, real interest must be one which is present and substantial, as distinguished from a mere expectancy, or a future, contingent, subordinate or consequential interest.[20]

Petitioner's perceived and anticipated benefit from the development of the Tan Kim Kee Estate constitutes a mere expectancy. As aforementioned, the same does not suffice to consider it as a real party-in-interest.

The Court stresses that procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons.[21]

Considering the procedural infirmities plaguing the instant Petition, the Court has no choice but to deny the same in the absence of any manifestation that the ends of substantive justice would be subserved thereby.

WHEREFORE, premises considered, the Petition is **DENIED**.

SO ORDERED.

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

Caguioa, J., see separate concurring opinion.

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[20] *Gemina v. Eugenio*, 797 Phil. 763, 770-771 (2016).

[21] *Malixi v. Baltazar*, G.R. No. 208224, November 22, 2017, 846 SCRA 244, 271, citing *Lazaro v. Court of Appeals*, 386 Phil. 412, 417 (2000).

SEPARATE CONCURRING OPINION

CAGUIOA, *J.*:

Before the Court is a Petition for Injunction with Application for Permanent Restraining Order filed by petitioner Local Government Unit (LGU) of Sta. Cruz, Davao del Sur (petitioner LGU of Sta. Cruz) against respondent Provincial Office of the Department of Agrarian Reform (DAR), Digos City, Davao del Sur (respondent DAR). The instant Petition seeks to prevent respondent DAR from subjecting the Tan Kim Kee Estate (subject property) under Republic Act No. (R.A.) 6657 or the Comprehensive Agrarian Reform Law (CARL).

The subject property was designated by petitioner LGU of Sta. Cruz as an industrial park through the latter's land use plan and zoning ordinance in 1991. In 1994, an application for conversion of the subject property for commercial/industrial uses was filed by Braulio A. Lim (Lim), *et al*., the landowners of the subject property. On November 8, 1994, respondent DAR, through then Secretary Ernesto Garilao, issued an Order approving the application for conversion, but with the condition that the conversion plan would be implemented within five years from the conversion in 1994. Upon application of Lim, *et al.*, respondent DAR, in its Order dated October 15, 1999, extended the five-year period for a non-extendible period of two years. Before the lapse of the said period, or on March 14, 2001, Lim, *et al.* filed an application for the exclusion of the subject property from the coverage of CARL on the ground that the land was actually, exclusively, and directly used for cattle raising.

Holding that the condition on the conversion of the subject property from agricultural land to industrial land within the prescribed period was not complied with, respondent DAR, in 2012, placed the subject property under the coverage of the Comprehensive Agrarian Reform Program (CARP) by issuing and publishing several Notices of Coverage.[1]

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[1] *Rollo,* pp. 119-122.

Subsequently, an Order (DARCO Order No. Exc-1301-027, s. 2013)[2] dated January 3, 2013 was issued by respondent DAR, through then DAR Secretary Virgilio R. delos Reyes, denying the application for exclusion filed by Lim, *et al*. in 2011.

On purely procedural grounds, the instant Petition merits outright dismissal.

By filing the instant Petition, petitioner LGU of Sta. Cruz directly seeks recourse from the Court to reverse respondent DAR's decision to place the subject property under the coverage of the CARP. In this regard, Section 54 of CARL provides which court has jurisdiction to hear, try, and decide this cause of action, to wit:

> SEC. 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.
>
> The findings of fact of the DAR shall be final and conclusive if based on substantial evidence.[3]

As pronounced by the Court in *Department of Agrarian Reform v. Trinidad Valley Realty & Development Corp., et al*.,[4] "Section 54 of RA 6657 leaves no room for doubt that decisions, orders, awards or rulings of the DAR may be brought to the CA by *certiorari*."[5]

Hence, considering that the proper remedy as regards rulings of the DAR pertaining to the application, implementation, enforcement, or interpretation of the CARL is to file a *certiorari* petition before the Court of Appeals (CA), I agree with the *ponencia*'s holding that petitioner LGU of Sta. Cruz resorted

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[2] *Id*. at 123-136.

[3] Emphasis and underscoring supplied.

[4] 726 Phil. 419 (2014).

[5] *Id*. at 434.

to an improper remedy in filing the instant Petition directly before the Court. To be sure, the Court has no jurisdiction to hear the instant Petition.

Even assuming *arguendo* that the Court has concurrent jurisdiction with the CA in hearing the instant Petition, the doctrine of hierarchy of courts, as correctly held by the *ponencia*, precludes the Court from taking cognizance of the instant Petition. As unanimously held by the Court in *Gios-Samar, Inc. v. Department of Transportation and Communication*,[6] strict observance of the doctrine of hierarchy of courts should not be a matter of mere policy. In this regard, I agree with the *ponencia* that there is no special and important reason to convince this Court to assume jurisdiction over this Petition.[7]

Moreover, I believe that the instant Petition fails to state any cause of action as the instant Petition was not filed by the real party-in-interest. Under Rule 3, Section 2 of the Rules of Court, every action must be prosecuted or defended in the name of the real party-in-interest.

It is not denied that the petitioner LGU of Sta. Cruz is not the registered owner of the subject property. **The lots comprising the subject property are owned by private landowners, *i.e.*, Lim, *et al.*, and *not* by petitioner LGU of Sta. Cruz.**

The Court has held that "a *real party in interest* is a party who would be benefited or injured by the judgment or is the party entitled to the avails of the suit. ***Real interest* means a *present substantial* interest, as distinguished from *a mere expectancy or a future, contingent, subordinate or consequential interest.*"**[8]

In filing the instant Petition, petitioner LGU of Sta. Cruz argues that it would be for the future benefit of the LGU if the

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[6] G.R. No. 217158, March 12, 2019.

[7] *Ponencia*, p. 5.

[8] *Hon. Fortich v. Hon. Corona*, 352 Phil. 461, 484 (1998); emphasis supplied, citation omitted.

area would be converted for industrial and other related usages.[9] This is a mere expectancy or a future, contingent, subordinate or consequential interest. Hence, the lack of any real party-in-interest warrants the dismissal of the instant Petition.

Nevertheless, even if the Court decides to go beyond the aforementioned procedural hurdles, a ruling on the substantive merits of the instant Petition leads to the same result—the denial of the instant Petition.

It has already been settled with definitiveness that after the passage of R.A. 6657, agricultural lands, though reclassified by LGUs, have to undergo the process of DAR conversion before such lands may be excluded from the coverage of CARP. As correctly pointed out by the *ponencia*, the Court already definitively held in *Chamber of Real Estate and Builders Associations, Inc. v. Secretary of Agrarian Reform (Chamber of Real Estate and Builders Associations, Inc.)*,[10] that:

> x x x In *Ros v. Department of Agrarian Reform*, this Court has enunciated that **after the passage of Republic Act No. 6657, agricultural lands, though reclassified, have to go through the process of conversion, jurisdiction over which is vested in the DAR**. However, agricultural lands, which are already reclassified before the effectivity of Republic Act No. 6657 which is 15 June 1988, are exempted from conversion. It bears stressing that the said date of effectivity of Republic Act No. 6657 served as the cut-off period for automatic reclassifications or rezoning of agricultural lands that no longer require any DAR conversion clearance or authority. **It necessarily follows that any reclassification made thereafter can be the subject of DAR's conversion authority**. Having recognized the DAR's conversion authority over lands reclassified after 15 June 1988, it can no longer be argued that the Secretary of Agrarian Reform was wrongfully given the authority and power to include "lands not reclassified as residential, commercial, industrial or other non-agricultural uses before 15 June 1988" in the definition of agricultural lands. Such inclusion does not unduly expand or enlarge the definition of agricultural lands; instead, it made clear what are the lands that can be the subject of

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[9] *Rollo*, p. 5.

[10] 635 Phil. 283 (2010).

DAR's conversion authority, thus, serving the very purpose of the land use conversion provisions of Republic Act No. 6657.

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Nevertheless, emphasis must be given to the fact that DAR's conversion authority can only be exercised after the effectivity of Republic Act No. 6657 on 15 June 1988. The said date served as the cut-off period for automatic reclassification or rezoning of agricultural lands that no longer require any DAR conversion clearance or authority. **Thereafter, reclassification of agricultural lands is already subject to DAR's conversion authority. Reclassification alone will not suffice to use the agricultural lands for other purposes. Conversion is needed to change the current use of reclassified agricultural lands**.

x x x x x x x x x

x x x **Reclassification alone will not suffice and does not automatically allow the landowner to change its use. It must still undergo conversion process before the landowner can use such agricultural lands for such purpose. Reclassification of agricultural lands is one thing, conversion is another. Agricultural lands that are reclassified to non-agricultural uses do not *ipso facto* allow the landowner thereof to use the same for such purpose**. Stated differently, despite having reclassified into school sites, the landowner of such reclassified agricultural lands must apply for conversion before the DAR in order to use the same for the said purpose.[11]

As explained in *Chamber of Real Estate and Builders Associations, Inc.*, Executive Order No. (E.O.) 129-A, otherwise known as The Reorganization Act of the Department of Agrarian Reform, was issued in 1987 authorizing the DAR to approve or disapprove the conversion, restructuring or readjustment of agricultural lands into non-agricultural uses.[12]

Upon the passage of R.A. 7160, otherwise known as the Local Government Code of 1991, LGUs were granted the power to reclassify agricultural lands subject to certain conditions.[13]

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[11] *Id*. at 307-311; emphasis and underscoring supplied, citations omitted.

[12] E.O. 129-A, Sec. 4(j).

[13] R.A. 7160, SEC. 20. *Reclassification of Lands*.—

However, this power of LGUs to reclassify agricultural land for non-agricultural purposes does not mean that DAR conversion can be dispensed with in order to exclude land beyond the coverage of CARP. That was expressly addressed and explained by the Court in *Chamber of Real Estate and Builders Associations, Inc.*, thus: "[t]he aforequoted provisions of law show that the power of the LGUs to reclassify agricultural

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(a) A city or municipality may, through an ordinance passed by the sanggunian after conducting public hearings 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, further*, 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 and 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) Where 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.

lands is not absolute. The authority of the DAR to approve conversion of agricultural lands covered by Republic Act No. 6657 to non-agricultural uses has been validly recognized by said Section 20 of Republic Act No. 7160 by explicitly providing therein that, 'nothing in this section shall be construed as repealing or modifying in any manner the provisions of Republic Act No. 6657."'[14]

Hence, the rule mandating that "the reclassification of agricultural lands by LGUs shall be subject to the requirements of land use conversion procedure or that DAR's approval or clearance must be secured to effect reclassification, [does] not violate the autonomy of the LGUs"[15] is settled.

It has been espoused that in *Pasong Bayabas Farmers Association, Inc. v. Court of Appeals*,[16] the power of the LGU to convert or reclassify lands is not subject to the approval of the DAR. However, this case is not controlling as the subject property in the said case was reclassified to non-agricultural land by the LGU, *i.e.*, Municipal Council of Carmona, *prior to the passage of R.A. 6657*.

Prior to the effectivity of R.A. 6657 on June 15, 1988, a conversion clearance from DAR was not necessary with respect to agricultural lands reclassified by the LGU. Under DAR Administrative Order No. (A.O.) 1, series of 1990,[17] the DAR clarified that agricultural lands classified in town plans and zoning ordinances as approved by the Housing and Land Use Regulatory Board and its preceding authorities *prior to June 15, 1988* were expressly excluded from the coverage of CARP.[18]

In sharp contrast, the subject property in the instant case was designated by petitioner LGU of Sta. Cruz as an industrial

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[14] *Chamber of Real Estate and Builders Associations, Inc. v. Secretary of Agrarian Reform, supra* note 10 at 313.

[15] *Id.* at 312.

[16] 473 Phil. 64 (2004).

[17] Revised Rules and Regulations Governing Conversion of Private Agricultural Lands to Non-Agricultural Uses.

[18] DAR Administrative Order No. 1, series of 1990.

park through the latter's land use plan and zoning ordinance in 1991 *after the passage of CARL*. To reiterate once more, reclassification of agricultural lands after the effectivity of CARL is subject to DAR's conversion authority.

It has also been posited that since R.A. 6657 applies only for conversion of lands previously placed under the agrarian reform law, petitioner LGU validly reclassified Tan Kim Kee Estate into an industrial land, pointing to Section 65 of R.A. 6657, as amended by R.A. 9700,[19] as basis of its argument that the DAR's power to approve applications for reclassification or conversion of agricultural land and the rule that failure to implement the conversion plan within five years from the approval of the conversion plan causing the land to automatically be covered by CARP applies only to applications by the landowner

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[19] An Act Strengthening The Comprehensive Agrarian Reform Program (CARP), Extending The Acquisition And Distribution Of All Agricultural Lands, Instituting Necessary Reforms, Amending For The Purpose Certain Provisions Of Republic Act No. 6657, Otherwise, Known As The Comprehensive Agrarian Reform Law Of 1988, As Amended, And Appropriating Funds Therefor; Section 65 provides:

SEC. 65. *Conversion of Lands*. — After the lapse of five (5) years from its award, when the land ceases to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes, the DAR, upon application of the beneficiary or the landowner with respect only to his/her retained area which is tenanted, with due notice to the affected parties, and subject to existing laws, may authorize the reclassification or conversion of the land and its disposition: *Provided*, That if the applicant is a beneficiary under agrarian laws and the land sought to be converted is the land awarded to him/her or any portion thereof, the applicant, after the conversion is granted, shall invest at least ten percent (10%) of the proceeds coming from the conversion in government securities: *Provided, further*, That the applicant upon conversion shall fully pay the price of the land: *Provided, furthermore*, That irrigated and irrigable lands, shall not be subject to conversion: *Provided, finally*, That the National Irrigation Administration shall submit a consolidated data on the location nationwide of all irrigable lands within one (1) year from the effectivity of this Act.

Failure to implement the conversion plan within five (5) years from the approval of such conversion plan or any violation of the conditions of the conversion order due to the fault of the applicant shall cause the land to automatically be covered by CARP.

or the beneficiary for the conversion of lands previously placed under the agrarian reform law after the lapse of five years from its award.

This position is untenable as *Chambers of Real Estate and Builders Associations, Inc*. already directly addressed this. The Court held therein that while "the DAR's express power over land use conversion provided for under Section 65 of Republic Act No. 6657 is limited to cases in which agricultural lands already awarded have, after five years, ceased to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes[,] x x x [t]o suggest, however, that these are the only instances that the DAR can require conversion clearances would open a loophole in Republic Act No. 6657 which every landowner may use to evade compliance with the agrarian reform program. It should logically follow, therefore, from the said department's express duty and function to execute and enforce the said statute that any reclassification of a private land[, including those that were not previously awarded to farmer-beneficiaries,] as a residential, commercial or industrial property, on or after the effectivity of Republic Act No. 6657 on 15 June 1988 should first be cleared by the DAR."[20]

It bears emphasis that the power of DAR to require the application for conversion is not only sourced from R.A. 6657. To reiterate, E.O. 129-A expressly grants DAR the power to approve and disapprove the conversion of agricultural lands for non-agricultural uses. And in exercise of its statutory power to promulgate rules and regulations implementing the said law, DAR required the completion of development within five years from the issuance of the Order of Conversion under DAR A.O. 12-94[21] and

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[20] *Chamber of Real Estate and Builders Associations, Inc. v. Secretary of Agrarian Reform, supra* note 10 at 308-309; citation omitted.

[21] Section VI(G) of DAR Administrative Order No. 12-94 re Consolidated and Revised Rules and Procedures Governing Conversion of Agricultural Lands to Non-Agricultural Uses.

subsequent issuances.[22] Hence, as recognized by the Court in *Chambers of Real Estate and Builders Associations, Inc.*, despite the *Conversion of Lands* provision under R.A. 6657 referring only to agricultural lands already awarded, it cannot be said that respondent DAR has no power to require an application for conversion and impose the condition that the conversion plan be implemented within five years from the approval of the conversion.

Therefore, applying the foregoing in the instant case, when respondent DAR issued the Order approving the application for conversion, but with the condition that the conversion plan to utilize the subject property for industrial and commercial purposes be actualized within five years from the conversion in 1994, the imposition of such condition was with legal basis.

It is not disputed by petitioner LGU of Sta. Cruz that this condition was not met. In fact, petitioner LGU of Sta. Cruz even admitted in the instant Petition that the subject property was not actually used for commercial and industrial purposes. It was admitted in the instant Petition that the subject property "has been utilized as [a] cattle ranch[.]"[23] In fact, in 2001, Lim, *et al.* even filed an Application for exclusion from CARP coverage on the ground that the subject property was actually, exclusively, and directly used for cattle raising.[24] It goes without saying that cattle raising is not a commercial or industrial activity. It is in fact an agricultural enterprise or agricultural activity — which includes the raising of livestock.[25]

For the foregoing reasons, I vote to **DISMISS** the Instant Petition.

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[22] Section 33.6 of DAR Administrative Order No. 01-02 re 2002 Comprehensive Rules on Land Use Conversion.

[23] *Rollo*, p. 8.

[24] *Ponencia*, p. 2.

[25] R.A. 6657, Sec. 3(b).

THIRD DIVISION

[G.R. No. 210906. October 16, 2019]

AGO REALTY & DEVELOPMENT CORPORATION (ARDC), EMMANUEL F. AGO, and CORAZON CASTAÑEDA-AGO, *petitioners, vs.* **DR. ANGELITA F. AGO, TERESITA PALOMA-APIN, and MARIBEL AMARO,** *respondents.*

[G.R. No. 211203. October 16, 2019]

DR. ANGELITA F. AGO, *petitioner, vs.* **AGO REALTY & DEVELOPMENT CORPORATION, EMMANUEL F. AGO, CORAZON C. AGO, EMMANUEL VICTOR C. AGO, and ARTHUR EMMANUEL C. AGO,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; THE CORPORATION CODE; CORPORATIONS; POWERS; THE POWER TO SUE IS LODGED IN THE BOARD OF DIRECTORS, ACTING AS A COLLEGIAL BODY; A CASE INSTITUTED BY A CORPORATION WITHOUT AUTHORITY FROM ITS BOARD OF DIRECTORS IS SUBJECT TO DISMISSAL ON THE GROUND OF FAILURE TO STATE A CAUSE OF ACTION.— While corporations are subjected to the State's broad regulatory powers, it is their directors and officers who are tasked with addressing questions of internal policy and management. **The business of a corporation is conducted by its board of directors, and so long as the board acts in good faith, the State, through the courts, may not interfere with its management decisions**. This finds support in Section 23 of the Corporation Code, which provides that a corporation exercises its powers, conducts its business, and controls and holds its property through its board of directors. As creatures of the law, corporations only possess those powers that are granted through statute, either expressly or by way of implication, or those that are incidental to their existence. One of the powers expressly granted by law to

corporations is the power to sue. As with other corporate powers, **the power to sue is lodged in the board of directors**, acting as a collegial body. Thus, in the absence of any clear authority from the board, charter, or by-laws, no suit may be maintained on behalf of the corporation. A case instituted by a corporation without authority from its board of directors is subject to dismissal on the ground of failure to state a cause of action.

2. ID.; ID.; ID.; DERIVATIVE SUITS; MINORITY STOCKHOLDERS MAY BRING SUITS ON BEHALF OF CORPORATIONS WHERE THE BOARD OF DIRECTORS ITSELF IS A PARTY TO THE WRONG, EITHER BECAUSE IT IS THE AUTHOR THEREOF OR BECAUSE IT REFUSES TO TAKE REMEDIAL ACTION.—As an exception to the x x x rule, jurisprudence has recognized certain instances when **minority stockholders may bring suits on behalf of corporations**. Where the board of directors itself is a party to the wrong, either because it is the author thereof or because it refuses to take remedial action, equity permits individual stockholders to seek redress. These actions have come to be known as **derivative suits**. In *Chua v. Court of Appeals*, the Court defined a derivative suit as "**a suit by a shareholder to enforce a corporate cause of action**."

3. ID.; ID.; ID.; ID.; IN DERIVATIVE SUITS, THE CORPORATION IS THE REAL PARTY IN INTEREST AS IT IS THE VICTIM OF THE WRONG, WHILE THE RELATOR-STOCKHOLDER IS MERELY A NOMINAL PARTY; THE JUDGMENT RENDERED IN THE SUIT MUST CONSTITUTE *RES JUDICATA* AGAINST THE CORPORATION, EVEN THOUGH IT REFUSES TO SUE THROUGH ITS BOARD OF DIRECTORS.— In derivative suits, it is the corporation that is the victim of the wrong. As such, it is the corporation that is properly regarded as the real party in interest, while the relator-stockholder is merely a nominal party. The corporation must be impleaded so that the benefits of the suit accrue to it and also because it must be barred from bringing a subsequent case against the same defendants for the same cause of action. Stated otherwise, the judgment rendered in the suit must constitute *res judicata* against the corporation, even though it refuses to sue through its board of directors.

4. ID.; ID.; ID.; ID.; AN INDIVIDUAL STOCKHOLDER IS PERMITTED TO INSTITUTE A DERIVATIVE SUIT ON

BEHALF OF THE CORPORATION WHEREIN HE HOLDS STOCK IN ORDER TO PROTECT OR VINDICATE CORPORATE RIGHTS, WHENEVER OFFICIALS OF THE CORPORATION REFUSE TO SUE OR ARE THE ONES TO BE SUED OR HOLD THE CONTROL OF THE CORPORATION; WHERE THE ACTS COMPLAINED OF CONSTITUTE A WRONG TO THE CORPORATION ITSELF, THE CAUSE OF ACTION BELONGS TO THE CORPORATION AND NOT TO THE INDIVIDUAL STOCKHOLDER OR MEMBER.— [N]ot every wrong suffered by a stockholder involving a corporation will vest in him or her the standing to commence a derivative suit. In *Cua, Jr., et al. v. Tan, et al.*, the Court explained when such actions lie, *viz.*: Suits by stockholders or members of a corporation based on wrongful or fraudulent acts of directors or other persons may be classified into individual suits, class suits, and derivative suits. Where a stockholder or member is denied the right of inspection, his suit would be individual because the wrong is done to him personally and not to the other stockholders or the corporation. Where the wrong is done to a group of stockholders, as where preferred stockholders' rights are violated, a class or representative suit will be proper for the protection of all stockholders belonging to the same group. **But where the acts complained of constitute a wrong to the corporation itself, the cause of action belongs to the corporation and not to the individual stockholder or member**. Although in most every case of wrong to the corporation, each stockholder is necessarily affected because the value of his interest therein would be impaired, this fact of itself is not sufficient to give him an individual cause of action since the corporation is a person distinct and separate from him, and can and should itself sue the wrongdoer. Otherwise, not only would the theory of separate entity be violated, but there would be multiplicity of suits as well as a violation of the priority rights of creditors. Furthermore, there is the difficulty of determining the amount of damages that should be paid to each individual stockholder. However, in cases of mismanagement **where the wrongful acts are committed by the directors or trustees themselves, a stockholder or member may find that he has no redress because the former are vested by law with the right to decide whether or not the corporation should sue, and they will never be willing to sue themselves**. The corporation would thus be helpless to seek

remedy. Because of the frequent occurrence of such a situation, the common law gradually recognized the right of a stockholder to sue on behalf of a corporation in what eventually became known as a "derivative suit." **It has been proven to be an effective remedy of the minority against the abuses of management**. Thus, an individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stock in order to protect or vindicate corporate rights, whenever officials of the corporation refuse to sue or are the ones to be sued or hold the control of the corporation. In such actions, the suing stockholder is regarded as the nominal party, with the corporation as the party in interest.

5. ID.; ID.; ID.; ID.; THE INSTITUTION OF A DERIVATIVE SUIT NEED NOT BE PRECEDED BY A BOARD RESOLUTION.— The record reveals that the complaint *a quo* was filed by Emmanuel, *et al*. While the caption states that ARDC was also one of the plaintiffs, there is nothing showing that the corporation's Board of Directors had authorized the filing of the case. Thus, the case is deemed as instituted by Emmanuel, *et al*. without ARDC's acquiescence. x x x [T]he corporate power to sue is exercised by the board of directors. For this purpose, the board may authorize a representative of the corporation to perform all necessary physical acts, such as the signing of documents. Such **authority may be derived from the by-laws or from a specific act of the board of directors**, *i.e.*,a board resolution. x x x. However, in derivative suits, the recognized rule is different. **Since the board is guilty of breaching the trust reposed in it by the stockholders, it is but logical to dispense with the requirement of obtaining from it authority to institute the case and to sign the certification against forum shopping**. It has been held that when "the corporation x x x is under the complete control of the principal defendants in the case, x x x it is obvious that a demand upon the [board] to institute an action and prosecute the same effectively would [be] useless, and the law does not require litigants to perform useless acts." **Thus, the institution of a derivative suit need not be preceded by a board resolution**.

6. ID.; ID.; ID.;ID.; BEFORE INSTITUTING A DERIVATIVE SUIT, THE RELATOR-STOCKHOLDER MUST EXERT ALL REASONABLE EFFORTS TO EXHAUST ALL REMEDIES AVAILABLE UNDER THE ARTICLES OF INCORPORATION,

THE BY-LAWS, AND THE LAWS OR RULES GOVERNING THE CORPORATION OR PARTNERSHIP TO OBTAIN THE RELIEF HE OR SHE DESIRES AND SUCH FACT MUST BE ALLEGED WITH PARTICULARITY IN THE COMPLAINT; RATIONALE; ATTEMPTS BETWEEN STOCKHOLDERS TO AMICABLY SETTLE A CORPORATE DISPUTE HARDLY CONSTITUTE "ALL REASONABLE EFFORTS TO EXHAUST ALL REMEDIES AVAILABLE".— Before instituting a derivative suit, the relator-stockholder must exert all reasonable efforts to exhaust all remedies available under the articles of incorporation, the by-laws, and the laws or rules governing the corporation or partnership to obtain the relief he or she desires. Such fact must then be alleged with particularity in the complaint. "The obvious intent behind the rule is to make the derivative suit the final recourse of the stockholder, after all other remedies to obtain the relief sought had failed." In their petition, Emmanuel, *et al.* allege that they exerted all reasonable efforts to exhaust all remedies available to them. They point to the fact that they invited Angelita to a meeting to amicably settle the dispute. Indeed, the record shows that Emmanuel, Corazon, and Angelita came together for a special stockholders' meeting on August 11, 2006. However, their attempt to resolve the dispute turned sour when Angelita walked out before the meeting even started. Contrary to the postulation of Emmanuel and Corazon, their attempt to settle the dispute with Angelita can hardly be considered "all reasonable efforts to exhaust all remedies available." In *Yu, et al. v. Yukayguan, et al.*, the Court rejected the argument that attempts between stockholders to amicably settle a corporate dispute constitute "all reasonable efforts to exhaust all remedies available." x x x. More importantly, an apparent remedy available to Emmanuel, *et al.* was to cause ARDC itself, through its Board of Directors, to directly institute the case. Because of their controlling interest in the corporation, Emmanuel, *et al*. could have prevailed upon the board to pass a resolution authorizing any of them to file the case and sign the certification against forum shopping.

7. ID.; ID.; ID.; ID.; A WRONG DONE TO A CORPORATION MUST BE VINDICATED THROUGH LEGAL ACTION COMMENCED BY THE BOARD OF DIRECTORS, BUT WHERE THE BOARD'S DECISION IS TANTAMOUNT TO BREACHING THE TRUST REPOSED IN IT BY THE MINORITY, THE

AGGRIEVED MINORITY STOCKHOLDERS, IN A DERIVATIVE CAPACITY, MAY SUE OR DEFEND ON BEHALF OF THE CORPORATION.— The derivative suit has proven to be an effective tool for the protection of the minority shareholder's corporate interest. It is essentially an exception to the rule that a wrong done to a corporation must be vindicated through legal action commenced by the board of directors. Through the voting procedure found in the Corporation Code, the majority shareholders exercise control over the board of directors. In *Gamboa v. Finance Secretary Teves, et al.*, the Court, in no uncertain terms, declared that: "[i]ndisputably, one of the rights of a stockholder is the right to participate in the control or management of the corporation. This is exercised through his vote in the election of directors because it is the board of directors that controls or manages the corporation." Hence, **in the normal course of things, when a corporation is wronged, the board will readily litigate in order to protect the majority's corporate interests**. For the minority, on the other hand, this may not be the case. There may be situations where a corporation is wronged, but the board of directors refuses to take remedial action. The board's refusal may be based on valid business considerations, such as that the costs of litigation exceed the potential judgment award. But **in situations where the board's decision is tantamount to breaching the trust reposed in it by the minority, equity necessitates that the aggrieved stockholders be given a remedy**. Thus, the minority, in a derivative capacity, may sue or defend on behalf of the corporation.

8. ID.; ID.; ID.; ID.; WHERE A CORPORATION UNDER THE EFFECTIVE CONTROL OF THE MAJORITY IS WRONGED, BOARD-SANCTIONED LITIGATION SHOULD TAKE PRECEDENCE OVER DERIVATIVE ACTIONS; MAJORITY STOCKHOLDERS WHO HAVE UNDISPUTED CORPORATE CONTROL CANNOT RESORT TO DERIVATIVE SUITS WHEN THERE IS NOTHING WHICH PREVENTS THE CORPORATION ITSELF FROM FILING THE CASE.—Due to their control over the board of directors, the majority should not ordinarily be allowed to resort to derivative suits. **Where a corporation under the effective control of the majority is wronged, board-sanctioned litigation should take precedence over derivative actions**. **After all, the law expressly vests the**

power to sue in the board of directors, and a remedy based on equity, such as the derivative suit, can prevail only in the absence of one provided by statute. In other words, majority stockholders who have undisputed corporate control cannot resort to derivative suits when there is nothing preventing the corporation itself from filing the case. In the complaint they filed before the Legazpi City RTC, **Emmanuel, *et al.* alleged that, together, they own 70% of ARDC's shares of capital stock**. In support of their allegation, they attached to their complaint the corporation's General Information Sheet, which shows that, out of ARDC's 5,000 shares of stock, 3,500 belong to Emmanuel, *et al.* collectively, while only 1,500 belong to Angelita. Clearly, the case before the RTC was instituted by the stockholders holding the controlling interest in ARDC. However, **the wrong done directly to ARDC was a wrong done only indirectly to the inchoate corporate interests of Emmanuel, *et al***. If ARDC truly desired to vindicate its rights, it should have done so through its Board of Directors. **Considering the majority shareholdings of the plaintiffs *a quo*, their interests should have been protected by the board through affirmative action**.

9. ID.; ID.; ID.; ID.; MAJORITY SHAREHOLDERS CANNOT BE ALLOWED TO BYPASS THE FORMATION OF A BOARD AND DIRECTLY CONDUCT CORPORATE BUSINESS THEMSELVES, AS CORPORATIONS EXERCISE THEIR POWERS THROUGH THEIR GOVERNING BOARDS.— Being necessary to the legitimate operation of business, the board of directors is an organ that is indispensable to the corporate vehicle. If this case were allowed to prosper as a derivative suit, the non-election of boards of directors would be incentivized, and the stability brought by "centralized management" eroded. **Majority shareholders cannot be allowed to bypass the formation of a board and directly conduct corporate business themselves**. **The Court cannot stress enough that the law mandates corporations to exercise their powers through their governing boards**. Hence, if a person or group of persons truly desires to conduct business through the corporate medium, then he, she, or they, as a matter of law, must form a board of directors. To allow Emmanuel, *et al.* to forego the election of directors, and directly commence and prosecute this case would not only downplay the key role of the board in corporate affairs, but also undermine the theory of separate juridical personality.

10. ID.; ID.; ID.; A WRONG DONE TO A CORPORATION DOES NOT VEST IN ITS SHAREHOLDERS A CAUSE OF ACTION AGAINST THE WRONGDOER; MAJORITY SHAREHOLDERS WHO FOREGO THE ELECTION OF BOARD OF DIRECTORS CANNOT BE ALLOWED TO MAINTAIN THE SUIT THEMSELVES, ON BEHALF OF THE CORPORATION, AS THEY SHOULD NOT BE ALLOWED TO USE A DERIVATIVE SUIT TO SHORTCUT THE LAW.— It is axiomatic that a corporation is an entity with a legal personality separate and distinct from the people comprising it. Accordingly, a wrong done to a corporation does not vest in its shareholders a cause of action against the wrongdoer. Since the corporation is the real party in interest, it must seek redress itself. As stated above, a case instituted by the stockholders would be subject to dismissal on the ground that the complaint fails to state a cause of action. Here, because ARDC is the victim of the act complained of, the cause of action does not lie with Emmanuel, *et al*. The corporation should have filed the case itself through its board of directors. However, this could not be done since those responsible for the institution of this case never bothered to elect a governing body to wield ARDC's powers and to manage its affairs. Their omission cannot be without consequence. Verily, **by virtue of their admitted controlling interest in ARDC, Emmanuel, *et al.* could have come together and formed a board of directors consisting of all five of the corporation's stockholders**. Even without Angelita's participation, such a board would have been able to validly conduct business and, accordingly, could have sanctioned the filing of the complaint before the Legazpi City RTC. The aggrieved stockholders cannot now come before the Court, claiming that their remedy is a derivative suit. **Their failure to elect a board ultimately resulted in their failure to exhaust all legal remedies to obtain the relief they desired**. Since this case could have been brought by ARDC, through its board, its stockholders cannot maintain the suit themselves, purporting to sue in a derivative capacity. **Emmanuel, *et al.* should not be allowed to use a derivative suit to shortcut the law**.

11. ID.; ID.; ID.; ID.; A CLOSE CORPORATION MAY TASK ITS STOCKHOLDERS WITH THE MANAGEMENT OF BUSINESS, ESSENTIALLY DESIGNATING THEM AS DIRECTORS, PROVIDED ITS ARTICLES OF

INCORPORATION CONTAINS A PROVISION TO THAT EFFECT.— Neither can Emmanuel, *et al.* take refuge in their assertion that ARDC is a close family corporation. They claim that the stockholders of a close corporation may take part in the active management of corporate affairs. Hence, they, as ARDC's stockholders, are legally invested with the power to sue for the corporation. As correctly claimed, under Section 97 of the Corporation Code, a close corporation may task its stockholders with the management of business, essentially designating them as directors. However, the law is clear that a close corporation must do so through a provision to that effect contained in its articles of incorporation. Nowhere in ARDC's Articles of Incorporation can such a provision be found. **There is nothing that expressly or impliedly allows Emmanuel, *et al.* and Angelita, or any of them, to manage the corporation**. Hence, the merger of stock ownership and active management that Emmanuel, *et al.* rely on cannot be applied to ARDC.

12. ID.; ID.; ID.; ID.; A FAMILY CORPORATION IS NOT EXEMPT FROM COMPLYING WITH THE REQUIREMENTS AND FORMALITIES OF THE RULES FOR FILING A DERIVATIVE SUIT.— [A]ssuming *arguendo* that ARDC is a close family corporation, the same cannot be considered a justification for noncompliance with the requirements for the filing of a derivative suit. In *Ang v. Sps. Ang*, the Court declared: The fact that [SMBI] is a family corporation does not exempt private respondent Juanito Ang from complying with the Interim Rules. In the x x x *Yu* case, the Supreme Court held that a family corporation is not exempt from complying with the clear requirements and formalities of the rules for filing a derivative suit. There is nothing in the pertinent laws or rules which state that there is a distinction between x x x family corporations x x x and other types of corporations in the institution by a stockholder of a derivative suit.

13. ID.; ID.; ID.; CORPORATE OFFICERS; THE DESIGNATION OF A PERSON AS PRESIDENT IS INEFFECTUAL WHERE THE CORPORATION DOES NOT HAVE A BOARD OF DIRECTORS, AS THE LAW REQUIRES THE PRESIDENT OF A CORPORATION TO CONCURRENTLY HOLD OFFICE AS A DIRECTOR.— Emmanuel's designation as President was ineffectual because ARDC did not have a board of directors. Section 25 of the Corporation Code explicitly requires the

president of a corporation to concurrently hold office as a director. This only serves to further highlight the key role of the board as a corporate manager. By designating a director as president of the corporation, the law intended to create a close-knit relationship between the top corporate officer and the collegial body that ultimately wields the corporation's powers.

14. CRIMINAL LAW; REVISED PENAL CODE; MALICIOUS PROSECUTION; DEFINED AS AN ACTION FOR DAMAGES BROUGHT BY ONE AGAINST WHOM A CRIMINAL PROSECUTION, CIVIL SUIT, OR OTHER LEGAL PROCEEDING HAS BEEN INSTITUTED MALICIOUSLY AND WITHOUT PROBABLE CAUSE, AFTER THE TERMINATION OF SUCH PROSECUTION, SUIT, OR OTHER PROCEEDING IN FAVOR OF THE DEFENDANT THEREIN; FOR AN ACTION BASED ON MALICIOUS PROSECUTION TO PROSPER, IT IS INDISPENSABLE THAT THE INSTITUTION OF THE PRIOR LEGAL PROCEEDING BE IMPELLED OR ACTUATED BY BAD FAITH OR LEGAL MALICE.— Jurisprudence has defined malicious prosecution as "an action for damages brought by one against whom a criminal prosecution, civil suit, or other legal proceeding has been instituted maliciously and without probable cause, after the termination of such prosecution, suit, or other proceeding in favor of the defendant therein."While generally associated with criminal actions, "the term has been expanded to include unfounded civil suits instituted just to vex and humiliate the defendant despite the absence of a cause of action or probable cause." For an action based on malicious prosecution to prosper, it is indispensable that the institution of the prior legal proceeding be impelled or actuated by legal malice. Here, it was never shown that the institution of the case against Angelita was tainted with bad faith or malice. Since it is settled that she introduced improvements on ARDC's property without its consent, it follows that the complaint was not baseless at all. However, because the case was not brought by the corporation, but by its stockholders, its dismissal was properly decreed by the trial court.

15. ID.; ID.; ID.; THE DISMISSAL OF THE CASE INSTITUTED BY THE STOCKHOLDERS WITHOUT THE CONSENT OF THE CORPORATION DOES NOT *PER SE* MAKE THAT CASE ONE OF MALICIOUS PROSECUTION AND SUBJECT THEM

TO THE PAYMENT OF MORAL DAMAGES; SINCE IT IS NOT A SOUND PUBLIC POLICY TO PLACE A PREMIUM ON THE RIGHT TO LITIGATE, NO DAMAGES CAN BE CHARGED ON THOSE WHO EXERCISE SUCH PRECIOUS RIGHT IN GOOD FAITH, EVEN IF DONE ERRONEOUSLY.— The fact that Emmanuel, *et al*. brought the case without the consent of the corporation cannot be equivalent to malice. Surely, they could have elected a board of directors to run ARDC's affairs, but their failure to do so, coupled with the filing of the complaint before the RTC, should not make them liable for moral damages. After all, the fact that a case is dismissed does not *per se* make that case one of malicious prosecution and subject the plaintiff to the payment of moral damages. Since it is not a sound public policy to place a premium on the right to litigate, no damages can be charged on those who exercise such precious right in good faith, even if done erroneously.

16. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; AWARD OF ATTORNEY'S FEES, DELETED.— Neither does the Court see any cogent reason to award attorney's fees in favor of Angelita. Certainly, she only has herself to blame for the filing of the case before the RTC. If she did not introduce improvements on ARDC's property, Emmanuel, *et al.* would have no reason to institute an action against her. Since she treated corporate property as if it was her own, she should have reasonably expected retaliatory action from the other shareholders. Hence, the CA was correct to delete the award of attorney's fees.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for Ago Realty & Development Corporation.

Aquende Ralla & Associates for Dr. Angelita Ago and Maribel Amaro.

Antonio Bron for Teresita Paloma-Apin.

D E C I S I O N

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

Grounded on equity, the derivative suit has proven to be an effective tool for the protection of minority shareholders. Such actions have for their object the vindication of a corporate injury, even though they are not brought by the corporation, but by its stockholders. That said, derivative suits remain an exception. As a general rule, corporate litigation must be commenced by the corporation itself, with the imprimatur of the board of directors, which, pursuant to the law, wields the power to sue. Therefore, since the derivative suit is a remedy of last resort, it must be shown that the board, to the detriment of the corporation and without a valid business consideration, refuses to remedy a corporate wrong. A derivative suit may only be instituted after such an omission. Simply put, derivative suits take a back seat to board-sanctioned litigation whenever the corporation is willing and able to sue in its own name.

On appeal are the September 26, 2013 Decision[1] and the January 10, 2014 Resolution[2] rendered by the Court of Appeals (CA) in CA-G.R. CV No. 99771.

The Factual Antecedents

Petitioner Ago Realty & Development Corporation (ARDC) is a close corporation.[3] Its stockholders are petitioner Emmanuel F. Ago (Emmanuel); his wife, petitioner Corazon C. Ago (Corazon); their children, Emmanuel Victor C. Ago and Arthur Emmanuel C. Ago (collectively Emmanuel, *et al.*); and Emmanuel's sister, respondent Angelita F. Ago (Angelita). Per

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[1] *Rollo* (G.R. No. 210906), pp. 52-79. The assailed decision was penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Normandie B. Pizarro and Manuel M. Barrios concurring.

[2] *Id.* at 83-84.

[3] *Id.* at 172.

ARDC's General Information Sheet,[4] their respective stockholdings are as follows:

	Number of Subscribed Shares	Amount
Emmanuel	2,498	₱249,800.00
Corazon	1,000	₱100,000.00
Victor	1	₱100.00
Arthur	1	P100.00
Angelita	1,500	₱150,000.00
TOTAL	**5,000**	**₱500,000.00**

This controversy arose when **Angelita introduced improvements on Lot No. H-3, titled in the name of ARDC, without the proper resolution from the corporation's Board of Directors**. The improvements also encroached on Lot No. H-1 and Lot No. H-2, which also belonged to ARDC.[5]

Consequently, on August 11, 2006, ARDC and Emmanuel, *et al.* filed a complaint[6] before the Legazpi City Regional Trial Court (RTC). They essentially alleged that Angelita, in connivance with Teresita P. Apin (Teresita), Maribel Amaro (Maribel), and certain local officials of Legazpi City, introduced unauthorized improvements on corporate property. For her part, Teresita was accused of operating a restaurant named "Kicks Resto Bar" in the improvements,[7] while Maribel was impleaded as Angelita's employee.[8] On the other hand, the local officials were impleaded as defendants since they were responsible for issuing the permits relative to the improvements introduced by Angelita and the business concerns thereon.[9]

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[4] *Id.* at 183.

[5] *Id.* at 169.

[6] *Id.* at 161-182.

[7] *Id.* at 171.

[8] *Id.* at 163.

[9] *Id.* at 165-172.

On September 15, 2006, Teresita filed her answer. She denied all the material allegations and averred that her restaurant was operating not on Lot No. H-3, as stated in the complaint, but on Lot No. 1-B, which is not ARDC's property.[10]

On February 9, 2007, after their motion to dismiss was denied,[11] Angelita and Maribel filed their answer.[12] Angelita admitted to introducing improvements on the subject lots. She narrated that sometime in the 1960s, Emmanuel and Corazon immigrated to the United States, leaving the management of ARDC's properties to her. She thus took control of the corporation's properties and introduced improvements thereon, particularly a semi-permanent multipurpose structure[13] and a fence designed to protect the lot.[14]

Angelita further claimed that the suit was brought because she refused to heed to Emmanuel's demand that she buyout his shares in ARDC for $6,000,000.00. After she failed to satisfy the unreasonable demand, Emmanuel, through two letters sent by counsel, allegedly accused her of introducing improvements on ARDC's property and allowing Teresita to operate a restaurant business thereon, without the necessary authorization from the corporation's Board of Directors. For such acts, Emmanuel supposedly demanded damages amounting to ₱10,000,000.00.[15]

Anent Maribel's inclusion as defendant, it was argued that the plaintiffs had no cause of action against her since the complaint failed to point out any act for which she should be held accountable. Being a mere employee of Angelita, she had no participation in the acts complained of.[16]

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[10] *Id*. at 55.

[11] *Id*. at 56.

[12] *Id*.

[13] *Id*. at 57.

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

[15] *Id*. at 58.

[16] *Id*.

Notably, a defense common to all the defendants was that ARDC never authorized the institution of the suit. Without a resolution emanating from the corporation's Board of Directors, it was argued that Emmanuel, *et al.* had no legal standing to bring the case since the lots in question belonged to ARDC.

On July 24, 2007, the local officials of Legazpi City were dropped as defendants on motion of Emmanuel, *et al.* Hence, the case against them was dismissed.[17]

After the pre-trial conference was terminated on July 31, 2007, trial on the merits ensued.[18]

The RTC's Ruling

On September 20, 2012, the RTC rendered a Decision[19] dismissing the complaint and holding Emmanuel and Corazon jointly and severally liable for damages. Finding ARDC to be the real party in interest, the trial court ruled that the plaintiffs had no cause of action.[20] Since Emmanuel, *et al.* brought the case without the proper resolution from the Board of Directors,[21] it was held that they were not authorized to sue on behalf of the corporation.[22] **The RTC gave consideration to the undisputed fact that the properties in litigation belonged to ARDC, concluding that Emmanuel, *et al.*, in their individual capacities, were not the real parties in interest**.[23]

Next, the trial court found that Teresita's restaurant business was not operating on ARDC's property. The finding was based

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[17] *Id*. at 59.

[18] *Id*.

[19] *Id*. at 248-264.

[20] *Id*. at 256.

[21] *Id*. at 253.

[22] *Id*. at 256.

[23] *Id*.

on Corazon's admission that the restaurant was built on Lot No. 1-B, contrary to what was alleged in the complaint.[24]

Lastly, the suit was held to be baseless, thus entitling the defendants to damages and attorney's fees.[25] Angelita was awarded moral damages since Emmanuel's claims caused her embarrassment and tarnished her reputation in Bicol. Maribel was likewise awarded moral damages because the suit took her by surprise, made her restless, resulted in a rise in her blood pressure, and caused her to figure in an accident.[26] However, Teresita's claim for moral and exemplary damages failed, as she did not take the witness stand.[27] Nevertheless, she,[28] Angelita, and Maribel[29] were awarded attorney's fees on the ground that the action was clearly unfounded.

The *fallo* of the RTC's Decision reads:

> WHEREFORE, in view of the foregoing, the court hereby orders:
>
> 1. That the herein-entitled complaint be **DISMISSED** as it is hereby **DISMISSED** and
>
> 2. That Emmanuel F. Ago and Corazon Casta[ñ]eda-Ago be ordered to pay jointly and solidarily the following in damages:
>
> A. To Teresita Paloma Apin, the amount of ₱150,000.00 in attorney's fees;
>
> B. To each of Dr. Angelita F. Ago and Maribel Amaro, the amount of ₱100,000.00 in moral damages; and,
>
> C. To both Dr. Angelita F. Ago and Maribel Amaro, the amount of ₱200,000.00 in attorney's fees.
>
> SO ORDERED.[30] (Emphasis in the original)

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[24] *Id.* at 259.

[25] *Id.*

[26] *Id.* at 263.

[27] *Id.* at 261.

[28] *Id.*

[29] *Id.* at 263.

[30] *Id.* at 264.

The CA's Ruling

On September 26, 2013, the CA rendered the herein assailed Decision affirming the RTC's ruling anent the plaintiffs' lack of cause of action, but deleting the lower court's award of moral damages and attorney's fees. **The appellate court held that the case partook of the nature of a derivative suit.** As such, **Emmanuel, *et al.* needed the imprimatur of ARDC's Board of Directors to institute the action**.[31] While they were able to present a resolution purportedly authorizing the filing of the case, the CA refused to give credence thereto on the ground that the same was passed by the corporation's stockholders, and not its Board of Directors.[32]

As for the award of moral damages, the CA held that the case was not totally baseless considering that Angelita indeed introduced substantial improvements on ARDC's property. The filing of the case was thus held to be free from malicious intent.[33] Likewise, the award of attorney's fees was erroneous since there was no factual or legal basis for its grant.[34]

The CA, therefore, disposed of the case, *viz*.:

> **WHEREFORE**, the Decision dated September 20, 2012 of the Regional Trial Court of Legazpi City, Branch 1, in Civil Case No. 10585 is **AFFIRMED WITH MODIFICATION**, in that, the award of moral damages and attorney's fees in favor of the defendants-appellees is **DELETED**.
>
> **SO ORDERED**.[35] (Emphasis in the original)

After the CA denied their respective motions for reconsideration through the herein assailed Resolution, ARDC,

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[31] *Id*. at 72.

[32] *Id*. at 73.

[33] *Id*. at 77.

[34] *Id*. at 78.

[35] *Id*.

Emmanuel, and Corazon,[36] on the one hand, and Angelita,[37] on the other, filed the instant consolidated petitions for review on *certiorari*, raising the following issues:

The Issues

In G.R. No. 210906 (filed by ARDC and Emmanuel, *et al.*):

Whether or not Emmanuel, *et al.* may sue on behalf of ARDC absent a resolution or any other grant of authority from its Board of Directors sanctioning the institution of the case.[38]

In G.R. No. 211203 (filed by Angelita):

Whether or not the grant of moral damages and attorney's fees in favor of Angelita is warranted.[39]

The Court's Ruling

The petitions have no merit. Hence, the CA's decision stands.

The historical development of corporation law in the Philippines

Towards the end of the Spanish occupation, the application of the Spanish Code of Commerce was extended to the Philippine Islands.[40] This introduced the *sociedad anónima*, a juridical entity formed "upon the execution of the public instrument in which its articles of agreement appear, and the contribution of funds and personal property."[41] Just as today's corporations, *sociedades anónimas* could own and deal in property, as well as sue and be sued.[42]

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[36] *Id*. at 16-47.

[37] *Rollo* (G.R. No. 211203), pp. 43-77.

[38] *Rollo* (G.R. No. 210906), pp. 23-25.

[39] *Rollo* (G.R. No. 211203), p. 60.

[40] *Philippine Corporate Law*, Cesar L. Villanueva, p. 4 (2013).

[41] *Mead v. McCullough*, 21 Phil. 95, 106 (1911), cited in Villanueva.

[42] *Id*.

With the conclusion of the Treaty of Paris, Spain ceded the Philippines to the United States.[43] The Americans brought with them their notion of the corporation through the enactment of Act No. 1459, "a sort of codification of American corporate law."[44] Their attention was caught by the fact that Spanish law did not provide for an entity that was precisely equivalent to the American or English corporation.[45] To them, the *sociedad anónima* was an inadequate business medium.

Appropriately named the Corporation Law, Act No. 1459 took effect on April 1, 1906 and was to serve as the principal corporate regulatory statute for the next 74 years. The law defined a corporation as "an artificial being created by operation of law, having the right of succession and the powers, attributes, and properties expressly authorized by law or incident to its existence,"[46] a definition that is still used to this day. It contained special provisions expressly penalizing the employment of persons in involuntary servitude[47] and the unlicensed transaction of business by a foreign corporation.[48]

However, as Act No. 1459 was unable to keep up with modern commerce, it was replaced by *Batas Pambansa Blg*. 68, otherwise known as the Corporation Code. The new law codified various jurisprudential pronouncements made under its predecessor, clarified the obligations of corporate directors and officers, and defined close corporations, providing special rules for their formation and the ownership of their stock. It also dispensed with the old restrictions pertinent to agricultural and mining corporations, the limitations on corporate ownership of

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[43] Encyclopedia Britannica, Treaty of Paris< https://www.britannica.com/event/Treaty-of-Paris-1898>visited October 10, 2019.

[44] *Harden v. Benguet Consolidated Mining Co*., 58 Phil. 141, 146 (1933).

[45] *Id.* at 145.

[46] Act No. 1459, Sec. 2.

[47] Act No. 1459, Sec. 15.

[48] Act No. 1459, Sec. 69.

real property, and the penal clauses integrated into certain provisions of the law.[49]

The Corporation Code was the law in effect at the time the factual antecedents of this case occurred.

The most recent edition of our corporation law came with the passage of Republic Act No. 11232, or the Revised Corporation Code, which took effect on February 23, 2019. This new piece of legislation introduced many significant changes to the corporate regulatory regime in this jurisdiction. Notably, it removed the requirement to incorporate with at least five incorporators,[50] the minimum capitalization requirement for stock corporations,[51] and the 50-year limit on the duration of the corporate term.[52] Also, in an effort to strengthen corporate governance, the new law requires corporations imbued with public interest to allocate a certain percentage of their board seats to independent directors,[53] as well as to elect a compliance officer to ensure adherence to all relevant laws and regulations.[54]

Corporate powers are exercised by the board of directors

If there is one constant that has been observed from the introduction of the Spanish Code of Commerce to the enactment of the Revised Corporation Code, it is that "[c]orporations are creatures of the law."[55] They owe their existence to the sovereign powers of the State, exercised by the Legislature, which—by general law or, in certain instances, direct act—prescribes the

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[49] *Philippine Corporate Law*, Cesar L. Villanueva, pp. 7-8 (2013).

[50] REPUBLIC ACT NO. 11232, Sec. 10.

[51] REPUBLIC ACT NO. 11232, Sec. 12.

[52] REPUBLIC ACT NO. 11232, Sec. 11.

[53] REPUBLIC ACT NO. 11232, Sec. 22.

[54] REPUBLIC ACT NO. 11232, Sec. 24.

[55] *Cagayan Fishing Development Co., Inc. v. Sandiko*, 65 Phil. 223, 227 (1937).

manner of their formation or organization.[56] Throughout their lifetimes, corporations are subject to a plethora of regulatory requirements, such as those involving annual reports,[57] voting in stockholders' or directors' meetings,[58] and, depending on the industry where the firm operates, limitations on foreign ownership.[59] As so aptly put in *Ang Pue & Co., et al. v. Sec. of Comm. and Industry*,[60] "[t]o organize a corporation x x x is not a matter of absolute right but a privilege which may be enjoyed only under such terms as the State may deem necessary to impose."[61]

While corporations are subjected to the State's broad regulatory powers, it is their directors and officers who are tasked with addressing questions of internal policy and management.[62] **The business of a corporation is conducted by its board of directors, and so long as the board acts in good faith, the State, through the courts, may not interfere with its management decisions**.[63] This finds support in Section 23 of the Corporation Code, which provides that a corporation exercises its powers, conducts its business, and controls and holds its property through its board of directors.[64]

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[56] *Philippine Corporate Law*, Cesar L. Villanueva, p. 17 (2013).

[57] See: *Batas Pambansa Blg.* 68, Sec. 141.

[58] See: *Batas Pambansa Blg.* 68, Secs. 49-59.

[59] See: REPUBLIC ACT No. 7042.

[60] 115 Phil. 629 (1962).

[61] *Id.* at 631-632.

[62] *Phil. Stock Exchange, Inc. v. The Hon. CA*, 346 Phil. 218, 234 (1997).

[63] *Id.*

[64] **Sec. 23.** ***The board of directors or trustees.*** —Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors x x x.

As creatures of the law, corporations only possess those powers that are granted through statute, either expressly or by way of implication, or those that are incidental to their existence.[65]

One of the powers expressly granted by law to corporations is the power to sue.[66] As with other corporate powers, **the power to sue is lodged in the board of directors**, acting as a collegial body.[67] Thus, in the absence of any clear authority from the board, charter, or by-laws,[68] no suit may be maintained on behalf of the corporation. A case instituted by a corporation without authority from its board of directors is subject to dismissal on the ground of failure to state a cause of action.[69]

In certain instances, however, the stockholders may sue on behalf of the corporation

As an exception[70] to the foregoing rule, jurisprudence has recognized certain instances when **minority stockholders may bring suits on behalf of corporations**.[71] Where the board of directors itself is a party to the wrong, either because it is the author thereof or because it refuses to take remedial action, equity permits individual stockholders to seek redress.[72] These actions have come to be known as **derivative suits**. In *Chua v. Court of Appeals*,[73] the Court defined a derivative suit as "**a suit by a shareholder to enforce a corporate cause of action.**"[74]

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[65] *Umale, et al. v. ABS Realty Corp.*, 667 Phil. 351, 363 (2011).

[66] *Batas Pambansa Blg.* 68, Sec. 36(1).

[67] *Shipside, Inc. v. Court of Appeals*, 404 Phil. 981, 994 (2001).

[68] *Social Security System v. Commission on Audit*, 433 Phil. 946, 955-956 (2002).

[69] *Societe Des Produits, Nestle, S.A. v. Puregold Price Club, Inc.*, 817 Phil. 1030, 1042 (2017).

[70] *Philippine Corporate Law*, Cesar L. Villanueva, p. 230 (2013).

[71] *Ching, et al. v. Subic Bay Golf and Country Club, Inc., et al.*, 742 Phil. 606, 620-621 (2014).

[72] *Cua, Jr., et al. v. Tan, et al.*, 622 Phil. 661, 714 (2009).

[73] 485 Phil. 644 (2004).

[74] *Id.* at 655.

In derivative suits, it is the corporation that is the victim of the wrong. As such, it is the corporation that is properly regarded as the real party in interest, while the relator-stockholder is merely a nominal party.[75] The corporation must be impleaded so that the benefits of the suit accrue to it and also because it must be barred from bringing a subsequent case against the same defendants for the same cause of action.[76] Stated otherwise, the judgment rendered in the suit must constitute *res judicata* against the corporation, even though it refuses to sue through its board of directors.[77]

That said, not every wrong suffered by a stockholder involving a corporation will vest in him or her the standing to commence a derivative suit.[78] In *Cua, Jr., et al. v. Tan, et al.*,[79] the Court explained when such actions lie, *viz*.:

> Suits by stockholders or members of a corporation based on wrongful or fraudulent acts of directors or other persons may be classified into individual suits, class suits, and derivative suits. Where a stockholder or member is denied the right of inspection, his suit would be individual because the wrong is done to him personally and not to the other stockholders or the corporation. Where the wrong is done to a group of stockholders, as where preferred stockholders' rights are violated, a class or representative suit will be proper for the protection of all stockholders belonging to the same group. **But where the acts complained of constitute a wrong to the corporation itself, the cause of action belongs to the corporation and not to the individual stockholder or member**. Although in most every case of wrong to the corporation, each stockholder is necessarily affected because the value of his interest therein would be impaired, this fact of itself is not sufficient to give him an individual cause of action

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[75] *Villamor, Jr. v. Umale*, 744 Phil. 31, 47 (2014).

[76] *Asset Privatization Trust v. Court of Appeals*, 360 Phil. 768, 805 (1998), citing *Commercial Law of the Philippines*, Aguedo F. Agbayani, Vol. III, p. 566, citing Ballantine, pp. 366-367.

[77] *Id*.

[78] *Florete, et al. v. Florete, et al.*, 778 Phil. 614, 636 (2016).

[79] *Supra*.

since the corporation is a person distinct and separate from him, and can and should itself sue the wrongdoer. Otherwise, not only would the theory of separate entity be violated, but there would be multiplicity of suits as well as a violation of the priority rights of creditors. Furthermore, there is the difficulty of determining the amount of damages that should be paid to each individual stockholder.

However, in cases of mismanagement **where the wrongful acts are committed by the directors or trustees themselves, a stockholder or member may find that he has no redress because the former are vested by law with the right to decide whether or not the corporation should sue, and they will never be willing to sue themselves**. The corporation would thus be helpless to seek remedy. Because of the frequent occurrence of such a situation, the common law gradually recognized the right of a stockholder to sue on behalf of a corporation in what eventually became known as a "derivative suit." **It has been proven to be an effective remedy of the minority against the abuses of management**. Thus, an individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stock in order to protect or vindicate corporate rights, whenever officials of the corporation refuse to sue or are the ones to be sued or hold the control of the corporation. In such actions, the suing stockholder is regarded as the nominal party, with the corporation as the party in interest.[80] (Emphasis and underscoring supplied)

Here, the CA held that since the cause of action belongs to ARDC, the properties in question being titled in its name, the case instituted by Emmanuel, *et al.* was derivative in nature. As such, they should have first secured a board resolution authorizing them to bring suit.[81] Emmanuel, *et al.* counter, arguing that a derivative suit does not require the imprimatur of the board of directors.[82] Since, in derivative suits, the corporation is usually under the control of the wrongdoers, it would be absurd to require the stockholders to obtain board authority prior to the commencement of litigation.

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[80] *Id*. at 715-716.

[81] *Rollo* (G.R. No. 210906), pp. 72-73.

[82] *Id*. at 26.

Emmanuel, *et al.* are correct.

A board resolution is not needed for the institution of a derivative suit

The record reveals that the complaint *a quo* was filed by Emmanuel, *et al*. While the caption states that ARDC was also one of the plaintiffs, there is nothing showing that the corporation's Board of Directors had authorized the filing of the case. Thus, the case is deemed as instituted by Emmanuel, *et al.* without ARDC's acquiescence.

As discussed above, the corporate power to sue is exercised by the board of directors. For this purpose, the board may authorize a representative of the corporation to perform all necessary physical acts, such as the signing of documents.[83] Such **authority may be derived from the by-laws or from a specific act of the board of directors**, *i.e.*, a board resolution.[84]

In *Rep. of the Phils. v. Coalbrine Int'l. Phils., Inc., et al.*,[85] the Court dismissed a complaint for damages instituted by a corporation because the managing director who signed the certification against forum shopping failed to show that the board of directors authorized her to do so. Ruling that the lack of such certification was prejudicial to the corporation's cause, the Court held that the managing director should have first obtained a valid board resolution sanctioning the filing of the case and the signing of the certification.

However, in derivative suits, the recognized rule is different. **Since the board is guilty of breaching the trust reposed in it by the stockholders, it is but logical to dispense with the requirement of obtaining from it authority to institute the case and to sign the certification against forum**

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[83] *Rep. of the Phils. v. Coalbrine Int'l. Phils., Inc., et al.*, 631 Phil. 487, 495 (2010).

[84] *Id*.

[85] *Id*.

shopping. It has been held that when "the corporation x x x is under the complete control of the principal defendants in the case, x x x it is obvious that a demand upon the [board] to institute an action and prosecute the same effectively would [be] useless, and the law does not require litigants to perform useless acts."[86] **Thus, the institution of a derivative suit need not be preceded by a board resolution**.

But, given that authority from the board of directors can be dispensed with in derivative suits, can the case filed by Emmanuel, *et al.* even be classified as such in the first place?

Emmanuel, *et al.* argue that they have the right to file a derivative suit on behalf of ARDC.[87] Since the corporation was the victim of the wrong committed by Angelita, *i.e.*, the introduction of improvements on its property without its consent, a derivative suit lies as the appropriate remedy.

On this score, they err.

The derivative suit is an equitable remedy and one of last resort

The right of stockholders to bring derivative suits is not based on any provision of the corporation Code or the Securities regulation Code, but is a right that is implied by the fiduciary duties that directors owe corporations and stockholders.[88] **Derivative suits are, therefore, grounded not on law, but on equity**.[89]

In *Hi-Yield Realty, Incorporated v. Court of Appeals, et al.*,[90] a corporation, through its controlling stockholder and without authority from its board of directors, entered into loan obligations

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[86] *Everett v. Asia Banking Corporation*, 49 Phil. 512, 527 (1926).

[87] *Rollo* (G.R. No. 210906), p. 30.

[88] *Florete, et al. v. Florete, et al., supra* note 78, at 635.

[89] *Ching, et al. v. Subic Bay Golf and Country Club, Inc., et al., supra* note 71, at 621.

[90] 608 Phil. 350 (2009).

that later led to the foreclosure of its property. A minority stockholder then instituted a petition to annul the subject mortgage deeds and the consequent foreclosure sales. The complaint alleged that the suing minority stockholder had been excluded from corporate affairs and that attempts between him and the other stockholders to compromise the case had failed. Since the board of directors did nothing to rectify the corporation's questionable transactions, the Court allowed the institution of the complaint as a derivative suit.

In *Gochan v. Young*,[91] minority stockholders instituted a complaint against directors and officers who appropriated for themselves corporate funds through excessive salaries and cash advances. It was stated that the capital of the corporation was impaired, as the firm was prevented from using its own funds in the conduct of its regular business. The Court held that the suit was correctly classified as derivative in nature since the relator-stockholders had clearly alleged injury to the corporation. The fact that the plaintiffs alleged damage to themselves in their personal capacities on top of the damage done to the corporation merely gave rise to an additional cause of action, but it did not disqualify them from filing a derivative suit.

In *San Miguel Corporation v. Kahn*,[92] a significant number of shares of San Miguel Corporation (SMC) were acquired by 14 other companies. SMC tried to repurchase shares through its wholly-owned foreign subsidiary, Neptunia Corporation Limited (Neptunia). However, the shares had been sequestered by the Presidential Commission on Good Government (PCGG) on the ground that they were owned by one of the cronies of former President Ferdinand E. Marcos. Later, SMC's Board of Directors passed a resolution assuming Neptunia's liability for the purchase of the subject shares. The board opined that there was nothing illegal about the assumption of liability since Neptunia was wholly-owned by SMC. Subsequently, Eduardo de los Angeles (De

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[91] 406 Phil. 663 (2001).

[92] 257 Phil. 459 (1989).

los Angeles), director and minority stockholder of SMC, brought a derivative suit challenging the board resolution as constituting an improper use of corporate funds. When the case reached the Court, it was held that De los Angeles had properly resorted to a derivative suit. It was of no moment that he owned only 20 SMC shares or that he was elected to the board of directors by the PCGG. Since the case concerned the validity of the assumption by SMC of the indebtedness of Neptunia, a cause of action that indeed belonged to the former corporation, the Court held that De los Angeles could maintain the suit on behalf of SMC.

Despite derivative suits being grounded on equity, they cannot prosper in the absence of any or some of the requisites enumerated in the Interim Rules of Procedure for Intra-Corporate Controversies,[93] *viz*.:

Rule 8
DERIVATIVE SUITS

Section 1. *Derivative action*. — A stockholder or member may bring an action in the name of a corporation or association, as the case may be, provided, that:

(1) He was a stockholder or member at the time the acts or transactions subject of the action occurred and the time the action was filed;

(2) He exerted all reasonable efforts, and alleges the same with particularity in the complaint, to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires;

(3) No appraisal rights are available for the acts or acts complained of; and

(4) The suits is not a nuisance or harassment suit.[94]

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[93] *Ching, et al. v. Subic Bay Golf and Country Club, Inc., et al., supra* note 71.

[94] A.M. No. 01-2-04-SC, March 13, 2001.

The second requisite does not obtain in this case.

Before instituting a derivative suit, the relator-stockholder must exert all reasonable efforts to exhaust all remedies available under the articles of incorporation, the by-laws, and the laws or rules governing the corporation or partnership to obtain the relief he or she desires. Such fact must then be alleged with particularity in the complaint.[95] "The obvious intent behind the rule is to make the derivative suit the final recourse of the stockholder, after all other remedies to obtain the relief sought had failed."[96]

In their petition, Emmanuel, *et al.* allege that they exerted all reasonable efforts to exhaust all remedies available to them. They point to the fact that they invited Angelita to a meeting to amicably settle the dispute.[97] Indeed, the record shows that Emmanuel, Corazon, and Angelita came together for a special stockholders' meeting on August 11, 2006. However, their attempt to resolve the dispute turned sour when Angelita walked out before the meeting even started.[98]

Contrary to the postulation of Emmanuel and Corazon, their attempt to settle the dispute with Angelita can hardly be considered "all reasonable efforts to exhaust all remedies available."

In *Yu, et al. v. Yukayguan, et al.*,[99] the Court rejected the argument that attempts between stockholders to amicably settle a corporate dispute constitute "all reasonable efforts to exhaust all remedies available." It was held that:

> The allegation of respondent Joseph in his Affidavit of his repeated attempts to talk to petitioner Anthony regarding their dispute hardly constitutes "all reasonable efforts to exhaust all remedies available."

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[95] *Yu, et al. v. Yukayguan, et al.*, 607 Phil. 581, 612 (2009).

[96] *Id*.

[97] *Rollo* (G.R. No. 210906), p. 32.

[98] *Id.* at 253.

[99] *Supra* note 95.

Respondents did not refer to or mention at all any other remedy under the articles of incorporation or by-laws of Winchester, Inc., available for dispute resolution among stockholders, which respondents unsuccessfully availed themselves of. And the Court is not prepared to conclude that the articles of incorporation and by-laws of Winchester, Inc. absolutely failed to provide for such remedies.[100]

More importantly, an apparent remedy available to Emmanuel, *et al.* was to cause ARDC itself, through its Board of Directors, to directly institute the case. Because of their controlling interest in the corporation, Emmanuel, *et al.* could have prevailed upon the board to pass a resolution authorizing any of them to file the case and sign the certification against forum shopping.

The derivative suit has proven to be an effective tool for the protection of the minority shareholder's corporate interest. It is essentially an exception to the rule that a wrong done to a corporation must be vindicated through legal action commenced by the board of directors.

Through the voting procedure found in the Corporation Code,[101] the majority shareholders exercise control over the board of directors. In *Gamboa v. Finance Secretary Teves, et al.*,[102] the Court, in no uncertain terms, declared that:

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[100] *Id*.

[101] **Sec. 24. *Election of directors or trustees*.** — x x x. In stock corporations, every stockholder entitled to vote shall have the right to vote in person or by proxy the number of shares of stock standing, at the time fixed in the by-laws, in his own name on the stock books of the corporation, or where the by-laws are silent, at the time of the election; and said stockholder may vote such number of shares for as many persons as there are directors to be elected or he may cumulate said shares and give one candidate as many votes as the number of directors to be elected multiplied by the number of his shares shall equal, or he may distribute them on the same principle among as many candidates as he shall see fit: Provided, That the total number of votes cast by him shall not exceed the number of shares owned by him as shown in the books of the corporation multiplied by the whole number of directors to be elected x x x.

[102] 668 Phil. 1 (2011) cited in *Roy v. Chairperson Herbosa, et al.*, 800 Phil. 459 (2016).

"[i]ndisputably, one of the rights of a stockholder is the right to participate in the control or management of the corporation. This is exercised through his vote in the election of directors because it is the board of directors that controls or manages the corporation."[103] Hence, **in the normal course of things, when a corporation is wronged, the board will readily litigate in order to protect the majority's corporate interests**. For the minority, on the other hand, this may not be the case. There may be situations where a corporation is wronged, but the board of directors refuses to take remedial action. The board's refusal may be based on valid business considerations, such as that the costs of litigation exceed the potential judgment award. But **in situations where the board's decision is tantamount to breaching the trust reposed in it by the minority, equity necessitates that the aggrieved stockholders be given a remedy**. Thus, the minority, in a derivative capacity, may sue or defend[104] on behalf of the corporation.

Due to their control over the board of directors, the majority should not ordinarily be allowed to resort to derivative suits. **Where a corporation under the effective control of the majority is wronged, board-sanctioned litigation should take precedence over derivative actions. After all, the law expressly vests the power to sue in the board of directors,**[105] **and a remedy based on equity, such as the derivative suit, can prevail only in the absence of one provided by statute**.[106] In other words, majority stockholders who have undisputed corporate control cannot resort to derivative suits when there is nothing preventing the corporation itself from filing the case.

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[103] *Id*. at 53.

[104] *Chua v. Court of Appeals*, *supra* note 73, at 655.

[105] See: *Batas Pambansa Blg*. 68, Sec. 23.

[106] *Tirazona v. Philippine Eds Techno-Service, Inc. (PETInc.) and/or Kubota, et al.*, 596 Phil. 683, 692 (2009); and *Brito, Sr. v. Dianala, et al.*, 653 Phil. 200, 210 (2010).

In the complaint they filed before the Legazpi City RTC, **Emmanuel, *et al.* alleged that, together, they own 70% of ARDC's shares of capital stock.**[107] In support of their allegation, they attached to their complaint the corporation's General Information Sheet,[108] which shows that, out of ARDC's 5,000 shares of stock, 3,500 belong to Emmanuel, *et al*. collectively, while only 1,500 belong to Angelita.

Clearly, the case before the RTC was instituted by the stockholders holding the controlling interest in ARDC. However, **the wrong done directly to ARDC was a wrong done only indirectly to the inchoate corporate interests of Emmanuel, *et al***.[109] If ARDC truly desired to vindicate its rights, it should have done so through its Board of Directors. **Considering the majority shareholdings of the plaintiffs *a quo*, their interests should have been protected by the board through affirmative action.**

However, **this could not happen because ARDC did not have a board of directors**. On this point, the record is bereft of any showing that ARDC's stockholders ever met to elect its governing board. Before the trial court, Emmanuel admitted that ARDC never held any stockholders' meetings from the time it was incorporated until 2005, *viz*.:

Q Mr. Ago, you would also agree with me that from 1989 until 2000 you had no meeting of stockholders in Ago Realty and Development Corporation?
A No.

Q Do you mean to say that you had meeting?
A There were no meetings.

Q Similarly in 2000, 2001, 2003 until 2005[,] there were no meetings of stockholders in Ago Realty and Development Corporation[?]

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[107] *Rollo* (G.R. No. 210906), p. 163.

[108] *Id*. at 183.

[109] *Angeles v. Santos*, 64 Phil. 697, 707 (1937).

A No, there was no meeting.

Q And you would confirm or you would agree with me that there was no election likewise of Ago Realty and Development Corporation as far as its corporate officers are concerned?
A Yes.

Q And that was from 1989 until 2005?
A Yes.

Q Likewise, during that period from 1989 up to 2005[,] there were no board resolutions interpreted x x x or issued by Ago Realty and Development Corporation?
A No, there's no need.[110] (Citation omitted)

There is likewise no showing that ARDC held an election for its Board of Directors from 2005 until the filing of the complaint before the RTC. While Emmanuel, Corazon, and Angelita came together for a special stockholders' meeting on August 11, 2006, no election was held then. As mentioned earlier, Angelita walked out before the meeting started, and Emmanuel and Corazon were only able to pass a stockholders' resolution purportedly authorizing the institution of the instant case.[111] However, as amply discussed above, a corporation's power to sue is lodged in its board of directors. Hence, the resolution, not emanating from the board, was inefficacious.

The failure of ARDC's majority stockholders to elect a board of directors must be taken against them. To be sure, **there was nothing preventing Emmanuel, *et al.* from holding a meeting for the purpose of electing a board, even in Angelita's absence or over her objection**. It is admitted that the plaintiffs *a quo* hold a majority of ARDC's capital stock, by virtue of which they could have constituted a board to exercise the corporation's powers.[112] If they had done so, the instant case could have been instituted by ARDC itself.

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[110] *Rollo* (G.R. No. 210906), p. 75.

[111] *Id*. at 253.

[112] See: *Batas Pambansa Blg.* 68, Sec. 24.

The role of the board of directors is impressed with such importance that corporate business cannot properly be conducted without it

Being necessary to the legitimate operation of business, the board of directors is an organ that is indispensable to the corporate vehicle. If this case were allowed to prosper as a derivative suit, the non-election of boards of directors would be incentivized, and the stability brought by "centralized management"[113] eroded. **Majority shareholders cannot be allowed to bypass the formation of a board and directly conduct corporate business themselves. The Court cannot stress enough that the law mandates corporations to exercise their powers through their governing boards.** Hence, if a person[114] or group of persons truly desires to conduct business through the corporate medium, then he, she, or they, as a matter of law, must form a board of directors. To allow Emmanuel, *et al.* to forego the election of directors, and directly commence and prosecute this case would not only downplay the key role of the board in corporate affairs, but also undermine the theory of separate juridical personality.

It is axiomatic that a corporation is an entity with a legal personality separate and distinct from the people comprising it.[115] Accordingly, a wrong done to a corporation does not vest in its shareholders a cause of action against the wrongdoer. Since the corporation is the real party in interest, it must seek redress itself. As stated above, a case instituted by the stockholders would be subject to dismissal on the ground that the complaint fails to state a cause of action.[116]

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[113] *Philippine Corporate Law*, Cesar L. Villanueva, p. 23 (2013).

[114] Recently, Republic Act No. 11232 revised the Corporation Code, removing minimum number of incorporators required to form a corporation.

[115] *Situs Dev't. Corp., et al. v. Asiatrust Bank, et al.*, 691 Phil. 707, 722 (2012).

[116] *Pacaña-Contreras, et al. v. Rovila Water Supply, Inc., et al.*, 722 Phil. 460, 470 (2013).

Here, because ARDC is the victim of the act complained of, the cause of action does not lie with Emmanuel, *et al.* The corporation should have filed the case itself through its board of directors. However, this could not be done since those responsible for the institution of this case never bothered to elect a governing body to wield ARDC's powers and to manage its affairs. Their omission cannot be without consequence. Verily, **by virtue of their admitted controlling interest in ARDC, Emmanuel, *et al.* could have come together and formed a board of directors consisting of all five of the corporation's stockholders**. Even without Angelita's participation, such a board would have been able to validly conduct business[117] and, accordingly, could have sanctioned the filing of the complaint before the Legazpi City RTC. The aggrieved stockholders cannot now come before the Court, claiming that their remedy is a derivative suit. **Their failure to elect a board ultimately resulted in their failure to exhaust all legal remedies to obtain the relief they desired**. Since this case could have been brought by ARDC, through its board, its stockholders cannot maintain the suit themselves, purporting to sue in a derivative capacity. **Emmanuel, *et al.* should not be allowed to use a derivative suit to shortcut the law.**

Neither can Emmanuel, *et al.* take refuge in their assertion that ARDC is a close family corporation. They claim that the stockholders of a close corporation may take part in the active management of corporate affairs. Hence, they, as ARDC's

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[117] **Sec. 25.** ***Corporate officers, quorum.*** — x x x.

The directors or trustees and officers to be elected shall perform the duties enjoined on them by law and the by-laws of the corporation. Unless the articles of incorporation or the by-laws provide for a greater majority, a majority of the number of directors or trustees as fixed in the articles of incorporation shall constitute a quorum for the transaction of corporate business, and every decision of at least a majority of the directors or trustees present at a meeting at which there is a quorum shall be valid as a corporate act, except for the election of officers which shall require the vote of a majority of all the members of the board.

stockholders, are legally invested with the power to sue for the corporation.

As correctly claimed, under Section 97 of the Corporation Code,[118] a close corporation may task its stockholders with the management of business, essentially designating them as directors. However, the law is clear that a close corporation must do so through a provision to that effect contained in its articles of incorporation. Nowhere in ARDC's Articles of Incorporation[119] can such a provision be found. **There is nothing that expressly or impliedly allows Emmanuel, *et al.* and Angelita, or any of them, to manage the corporation**. Hence, the merger of stock ownership and active management that Emmanuel, *et al.* rely on cannot be applied to ARDC.

Further, assuming *arguendo* that ARDC is a close family corporation, the same cannot be considered a justification for noncompliance with the requirements for the filing of a derivative suit. In *Ang v. Sps. Ang*,[120] the Court declared:

> The fact that [SMBI] is a family corporation does not exempt private respondent Juanito Ang from complying with the Interim Rules. In the x x x *Yu* case, the Supreme Court held that a family corporation is not exempt from complying with the clear requirements and formalities of the rules for filing a derivative suit. There is nothing in the pertinent laws or rules which state that there is a distinction

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[118] **Sec. 97. *Articles of incorporation*. —** x x x.

The articles of incorporation of a close corporation may provide that the business of the corporation shall be managed by the stockholders of the corporation rather than by a board of directors. So long as this provision continues in effect:

x x x x x x x x x

2. Unless the context clearly requires otherwise, the stockholders of the corporation shall be deemed to be directors for the purpose of applying the provisions of this Code[.]

[119] *Rollo* (G.R. No. 211203), pp. 266-273.

[120] 711 Phil. 680 (2013).

between x x x family corporations x x x and other types of corporations in the institution by a stockholder of a derivative suit.[121] (Citation omitted)

The next contention of Emmanuel, *et al.* is that Emmanuel, as President of ARDC, had the authority to institute the case and sign the certification against forum shopping. In support of their argument, they point to the By-laws of ARDC, which provide that the President is authorized "[t]o represent the corporation at all functions and proceedings" and "[t]o perform such other duties as are incident in his office or are entrusted by the Board of Directors."[122] They assert that jurisprudence has consistently recognized the legal standing of the president to bring corporate litigation.[123]

The argument deserves scant consideration.

Emmanuel's designation as President was ineffectual because ARDC did not have a board of directors. Section 25 of the Corporation Code explicitly requires the president of a corporation to concurrently hold office as a director.[124] This only serves to further highlight the key role of the board as a corporate manager. By designating a director as president of the corporation, the law intended to create a close-knit relationship between the top corporate officer and the collegial body that ultimately wields the corporation's powers.

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[121] *Id.* at 692-693.

[122] *Rollo* (G.R. No. 210906), p. 33.

[123] *Id.* at 32-35.

[124] **Sec. 25.** ***Corporate officers, quorum.*** — Immediately after their election, the directors of a corporation must formally organize by the election of a **president, who shall be a director**, a treasurer who may or may not be a director, a secretary who shall be a resident and citizen of the Philippines, and such other officers as may be provided for in the by-laws. Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as president and secretary or as president and treasurer at the same time.

x x x (Emphasis supplied)

The lower courts correctly refused to award damages

Turning now to Angelita's petition, she argues that the CA erred in deleting the award of moral damages and attorney's fees. According to her, the case filed before the Legazpi City RTC was totally baseless and unfounded.[125] To support her assertion, she points to the fact that Emmanuel and Corazon sued without the authority of ARDC's Board of Directors.[126] Essentially, Angelita claims that the filing of the case *a quo* amounted to malicious prosecution.

The argument fails to persuade.

Jurisprudence has defined malicious prosecution as "an action for damages brought by one against whom a criminal prosecution, civil suit, or other legal proceeding has been instituted maliciously and without probable cause, after the termination of such prosecution, suit, or other proceeding in favor of the defendant therein."[127] While generally associated with criminal actions, "the term has been expanded to include unfounded civil suits instituted just to vex and humiliate the defendant despite the absence of a cause of action or probable cause."[128] For an action based on malicious prosecution to prosper, it is indispensable that the institution of the prior legal proceeding be impelled or actuated by legal malice.[129]

Here, it was never shown that the institution of the case against Angelita was tainted with bad faith or malice. Since it is settled that she introduced improvements on ARDC's property without its consent, it follows that the complaint was not baseless at all. However, because the case was not brought by the

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[125] *Rollo* (G.R. No. 211203), p. 62.

[126] *Id*.

[127] *Heirs of Yasoña v. De Ramos*, 483 Phil. 162, 168 (2004).

[128] *Bayani v. Panay Electric Co., Inc.*, 386 Phil. 980, 986 (2000).

[129] *Id*. at 987.

corporation, but by its stockholders, its dismissal was properly decreed by the trial court.

The fact that Emmanuel, *et al.* brought the case without the consent of the corporation cannot be equivalent to malice. Surely, they could have elected a board of directors to run ARDC's affairs, but their failure to do so, coupled with the filing of the complaint before the RTC, should not make them liable for moral damages. After all, the fact that a case is dismissed does not *per se* make that case one of malicious prosecution and subject the plaintiff to the payment of moral damages.[130] Since it is not a sound public policy to place a premium on the right to litigate, no damages can be charged on those who exercise such precious right in good faith, even if done erroneously.[131]

Neither does the Court see any cogent reason to award attorney's fees in favor of Angelita. Certainly, she only has herself to blame for the filing of the case before the RTC. If she did not introduce improvements on ARDC's property, Emmanuel, *et al.* would have no reason to institute an action against her. Since she treated corporate property as if it was her own, she should have reasonably expected retaliatory action from the other shareholders. Hence, the CA was correct to delete the award of attorney's fees.

WHEREFORE, the September 26, 2013 Decision and January 10, 2014 Resolution rendered by the Court of Appeals in CA-G.R. CV No. 99771 are **AFFIRMED**.

SO ORDERED.

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

Leonen, J., on wellness leave.

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[130] *Peralta v. Raval*, 808 Phil. 115, 136 (2017).

[131] *"J" Marketing Corp. v. Sia, Jr.*, 349 Phil. 513, 517 (1998).

SECOND DIVISION

[G.R. No. 211422. October 16, 2019]

CIRIACO OBERES, CESARIO OBERES, and GAUDENCIO OBERES, *petitioners, vs.* **ADRIANO OBERES,** *respondent.*

SYLLABUS

1. CIVIL LAW; THE CIVIL CODE; OBLIGATIONS AND CONTRACTS; CONTRACT OF SALE; A CONTRACT OF SALE IS PERFECTED AT THE MOMENT THERE IS A MEETING OF MINDS UPON THE THING WHICH IS THE OBJECT OF THE CONTRACT AND UPON THE PRICE; FOR CONSENT TO BE VALID, IT SHOULD BE INTELLIGENT, OR WITH AN EXACT NOTION OF THE MATTER TO WHICH IT REFERS, FREE, AND SPONTANEOUS. — For a deed of sale or any contract to be valid, Article 1318 of the Civil Code provides that three requisites must concur, namely: (1) the consent of the contracting parties; (2) the object; and (3) the consideration. All these elements must be present to constitute a valid contract. The absence of one renders the contract void. The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price. A contract of sale is consensual, as such it is perfected by mere consent. For consent to be valid, the following requisites must concur: (a) it should be intelligent, or with an exact notion of the matter to which it refers; (b) it should be free; and (c) it should be spontaneous. Intelligence in consent is vitiated by error; freedom by violence, intimidation or undue influence; and spontaneity by fraud. In asserting the invalidity of the deed of sale, petitioners staunchly maintain that petitioner Gaudencio did not sign the same. To prove such claim, petitioners aver that he was unschooled and did not know how to read, write, and sign his name. However, the fact that petitioner Gaudencio was illiterate does not prove that he did not enter into the sale transaction. It does not escape this Court's notice that petitioners never denied nor put in issue the authenticity of the signature appearing in the questioned deed of sale of petitioner Gaudencio's wife, who signified her consent to the sale of the disputed lot; and of Ben Cañada,

the barangay captain and Policarpio Labajo, his father-in-law who stood as witnesses thereto. Neither was there evidence presented showing that petitioner Gaudencio was tricked or coerced into signing the deed of sale. These show that petitioner Gaudencio intended to enter into the contract of sale.

2. **ID.; ID.; ID.; ID.; THE EXECUTION OF A CONTRACT IS PRESUMED TO BE ATTENDED BY FRAUD WHERE ONE OF THE CONTRACTING PARTIES DOES NOT HAVE THE BENEFIT OF A GOOD EDUCATION, AND THIS PRESUMPTION STANDS WHEN THE OTHER PARTY WHO ENFORCES THE CONTRACT FAILS TO SHOW TO THE SATISFACTION OF THE COURT THAT HE/SHE FULLY EXPLAINED TO THE FORMER THE CONTENTS OF THE CONTRACT IN THE DIALECT KNOWN TO HIM. —** There is no dispute that petitioner Gaudencio was unlettered and he did not know the English language, the language the deed of sale was written. Thus, under Article 1332 of the Civil Code, it is presumed that mistake or fraud attended the execution of a contract by one — petitioner Gaudencio in this case, who did not have the benefit of a good education. To overcome this presumption, it is incumbent upon the respondent to show to the satisfaction of the court that he fully explained to petitioner Gaudencio the contents of the deed of sale in the dialect known to him. Unfortunately, there is no evidence that was presented to show that respondent did so. As such, the presumption that the execution of the deed of sale was attended by fraud stands. Respondent's failure to perform his obligation dictated by law clearly establishes that petitioner Gaudencio's consent was not intelligently given, and therefore, vitiated, when he signed the questioned deed as he did not know the full import of the same. Respondent's failure to disclose the consequences and significance of the deed of sale despite his clear duty to do so constitutes fraud.

3. **ID.; ID.; ID.; ID.; CONTRACTS WHERE CONSENT IS VITIATED BY FRAUD IS VOIDABLE, AND THE ACTION FOR ANNULMENT THEREOF SHOULD BE BROUGHT WITHIN FOUR YEARS FROM THE TIME OF ITS DISCOVERY; DISMISSAL OF THE COMPLAINT FOR ANNULMENT OF DEED OF SALE ON GROUND OF PRESCRIPTION, AFFIRMED.—** Under Article 1390 of the Civil Code, contracts where consent is vitiated by fraud is voidable. Pursuant to

> Article 1391 of the same Code, the action for annulment of contracts where consent is vitiated by fraud shall be brought within four years from the time of discovery of the same. Applied in this case, the four-year period shall be reckoned from May 17, 1994, the time petitioners gained knowledge of the fraudulent deed of the respondent. x x x. Considering that petitioners lodged its complaint for annulment only on May 23, 2002, or eight years after the discovery of fraud, the CA correctly dismissed the complaint on the ground of prescription. [I]n dismissing the complaint on the ground of prescription, the CA neither penalized the petitioners nor rewarded the respondent. It simply applied Articles 1391 and 1139 of the Civil Code that the right of the petitioners to seek redress for the fraudulent acts of the respondent had been lost by the mere passage of time fixed by law.

APPEARANCES OF COUNSEL

Wilfredo J. Dela Gente and *Jose Vicente M. Arnado* for petitioners.

Manuel J. Adlawan for respondent.

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] seeking to reverse and set aside the June 4, 2013 Decision[2] and the January 29, 2014 Resolution[3] of the Court of Appeals-Cebu City (CA) which set aside the April 24, 2009 Decision[4] rendered by the Regional Trial Court (RTC) and dismissed the

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[1] *Rollo*, pp. 10-20.

[2] Penned by Associate Justice Carmelita Salandanan-Manahan, with Associate Justices Ramon Paul L. Hernando (now a Member of the Court) and Ma. Luisa Quijano-Padilla, concurring; *id*. at 22-36.

[3] *Id*. at 44-46.

[4] RTC records, pp. 173-186.

complaint filed by Ciriaco, Cesario and Gaudencio, all surnamed Oberes (collectively, the petitioners) on the ground of prescription.

On August 13, 2003, petitioners filed a Complaint for the Annulment of Deed of Sale, Recovery of Possession and Judicial Partition of Real Estate, Damages and Attorney's Fees against Adriano Oberes (respondent), praying for the court to: (a) annul the Deed of Absolute Sale over Lot No. 5306 in favor of the respondent; (b) order the partition of the said lot pursuant to Rule 69 of the Rules of Court; and (c) order the respondent to pay ₱25,000.00 moral damages; ₱25,000.00 exemplary damages; ₱20,000.00 attorney's fees; and ₱1,000.00 per court appearance.[5]

The late spouses Francisco Oberes and Catalina Larino[*] had five children, namely: petitioners, respondent, and Domingo. Upon their death,[6] the siblings inherited parcels of land, one of which was the property subject of the present controversy, particularly Lot No. 5306 located at Vito, Minglanilla, Cebu with an area of 3,461 square meters, covered by Transfer Certificate of Title No. 3794 and registered in the name of Francisco Oberes.[7]

Petitioner Gaudencio claimed that their parents left two parcels of land upon their demise — Lot No. 11450 and the land in dispute.[8] However, petitioner Cesario averred that their parents left them five parcels of land. The first four lots were previously owned by Marcela Paran, Pedro Sellon, Cenon Paran and Angel Oberes, while the fifth lot is the lot in dispute. As agreed upon by the siblings, the adjacent properties acquired from Marcela Paran and Pedro Sellon were given to the respondent. The lot purchased from Cenon Paran were adjudicated to Domingo and petitioner

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[5] *Id*. at 1-4.

[*] Also "Loreno" in some parts of the records; *id*. at 25.

[6] Francisco Oberes died on January 16, 1946 while Catalina Larino died on March 18, 1948. *See* Transcript of Stenographic Notes (TSN), June 2, 2005, pp. 10-11.

[7] RTC records, p. 156.

[8] TSN, July 21, 2004, p. 6; TSN, July 28, 2004, pp. 5-7.

Ciriaco.[9] As regards Lot No. 5306, the same was bestowed upon petitioner Gaudencio.[10] Their agreement to waive their rights over the said lot was subsequently put into writing, but the Affidavit of Waiver dated May 17, 1994 was only signed by Domingo, and petitioners Cesario and Ciriaco.[11] Respondent refused to sign the waiver on the ground that he already bought the lot from petitioner Gaudencio way back in 1973.[12] However, petitioner Gaudencio vehemently denied having executed the said Deed of Sale and demonstrated in court his inability to write or sign in the manner that his supposed signature was affixed in the said Deed of Sale.[13]

Respondent, on the other hand, alleged in his *Answer*[14] and the Affidavit[15] he executed during his lifetime[16] that their parents left two parcels of land in Vito, Minglanilla, namely, the disputed lot and Lot No. 11450, also known as Lot No. 5301-B, consisting of 5924 square meters under the name of their mother.[17] Sometime in 1972, he and his siblings orally partitioned the two lots. The entire Lot No. 11450 was assigned to Domingo and petitioners Ciriaco and Cesario, while the disputed lot was assigned to him and petitioner Gaudencio as their share in the inheritance. In 1973, petitioner Gaudencio offered to sell his undivided share of Lot No. 5306 to his co-heirs, but only the respondent took interest in the offer and eventually bought the property as evidenced by a notarized Deed of Sale executed by petitioner Gaudencio in his favor.[18] Respondent claimed that there was

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[9] TSN, August 3, 2004, pp. 5-9.

[10] TSN, November 10, 2004, pp. 7-8.

[11] RTC records, p. 56.

[12] *Id*. at 155.

[13] TSN, July 21, 2004, pp. 6-10.

[14] RTC records, pp. 19-24.

[15] *Id*. at 42-44.

[16] Respondent died on June 8, 2006. *Id*. at 101.

[17] *Id*. at 25.

[18] *Supra* note 12.

no dispute over Lot No. 5306 at the time of its partition between him and petitioner Gaudencio in 1972, and the sale of Gaudencio's portion to him in 1973. The issue only arose after petitioners Ciriaco and Cesario have sold their lots to third persons, and thereafter connived with petitioner Gaudencio, feigned ignorance regarding the sale of Gaudencio's portion of the inheritance to him and then claimed the disputed lot.[19]

Magdalena Oberes Largo (Magdalena), daughter of the respondent, substantially echoed the allegations of the respondent when she testified in court.[20] Additionally, she contended that sometime in 1994, Domingo and petitioners Ciriaco and Cesario went to the house of his father to inform him that they will have Lot No. 11450 transferred to their names so that they can sell the same. Subsequently, Lot No. 11450 was issued Tax Declaration No. 21247 in the names of petitioner Ciriaco and Cesario.[21] The name of Domingo was not included in the Tax Declaration because he had already died at that time without a spouse or child. On April 4, 1997, petitioner Ciriaco sold his share of Lot No. 11450 to Alisa E. Inoc who subsequently declared the same for tax purposes under her name per Tax Declaration No. 0128-22844.[22] Petitioner Cesario, for his part sold one-half of his share over Lot No. 11450 to Carlos Abella and Dulce Dugaduga, and the other half portion to Alfredo Carcueva and Felicisima Carcueva, who also declared the properties for tax purposes under their names per Tax Declaration Nos. 0128-22326[23] and 0128-22619,[24] respectively.[25]

Anent the sale of the disputed property by petitioner Gaudencio to the respondent, Magdalena averred that she was present

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[19] *Id*. at 20-21.

[20] TSN, March 25, 2008, pp. 3-7.

[21] RTC records, p. 29.

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

[23] *Id*. at 160.

[24] *Id*. at 162.

[25] TSN, March 25, 2008, pp. 7-12.

when the Deed of Sale covering the subject property was executed. According to her, the said deed was executed with the consent of Victorina Labajo Oberes (Victorina), wife of petitioner Gaudencio, and signed in the presence of two witnesses in the person of Ben Cañada, the Barangay Captain of Vito, Minglanilla, Cebu and Policarpio Labajo, the father of Victorina. Although petitioner Gaudencio was illiterate, he was still able to sign the deed of sale after he was instructed by his wife to follow or copy what she had written. After the sale, respondent immediately took possession of Lot No. 5306 and declared the same under his name as evidenced by Tax Declaration No. 0128-23030[26] and paid the real property tax[27] thereon.[28]

In a Decision dated April 24, 2009, the trial court found that the parents of the parties left two parcels of land when they died, namely: Lot No. 11450 and the disputed land. It has been sufficiently proved, as in fact it has never been denied, that petitioners Ciriaco and Cesario partitioned said Lot No. 11450 between them and received their respective portions therein as their share in their deceased parents' estate. Thus, the only issue in dispute is the validity of the partition of Lot No. 5306 between petitioner Gaudencio and the respondent. On this score, the trial court held:

> However, it is important to stress that [petitioner] Gaudencio is unlettered. He does not know how to read and write. When he writes, he is merely made to mechanically copy or follow the writings of another without the mental activities attached to writing. It was exhibited before this court that he merely copies writings when instructed. Even the [respondent] admit[s] that when Gaudencio writes, he is made to "copy" the writings. Thus, the first witness for [the respondent] testified that when he executed the questioned document, Gaudencio was merely made to copy the writings of his wife. The copying of writing becomes a mere mechanical act. There is no showing that there was mental or thought process when he was made

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[26] RTC records, p. 163.

[27] *Id.* at 165.

[28] TSN, March 25, 2008, pp. 12-16.

to sign the document. [Respondent] [had] not proven that the content of the document where Gaudencio was made to sign was explained to him. It could not simply be assumed that he understood the import of the document which was presented before him and here he made some writings thereon.[29]

For the said reasons, the trial court awarded one-half of the disputed lot to petitioner Gaudencio and the other half to the respondent. It disposed as follows:

> WHEREFORE, for reason of preponderance, this court hereby declares that [petitioner] Gaudencio Oberes owns one-half (1/2) of Lot No. 5306 of the Talisay-Minglanilla Friar Lands Estate while the heirs of [respondent] Adriano Oberes own the other one-half (1/2) of Lot No. 5306 of the Talisay-Minglanilla Friar Lands Estate. The Deed of Sale dated April 11, 1997 allegedly executed by [petitioner] Gaudencio Oberes is declared null and void.
>
> Since Gaudencio Oberes and the heirs of Adriano Oberes are co-owners of Lot No. 5306 of the Talisay-Minglanilla Friar Lands Estate, the partition prayed for by [petitioners] is hereby granted. Parties are directed to submit a project of partition for the courts approval not later than thirty (30) days from the finality of this decision.[30]

In a Decision[31] dated June 4, 2013, the CA set aside the Decision of the trial court and dismissed the complaint on the ground of prescription. It held that the records bear out the undisputed fact that petitioner Gaudencio was unlettered and could not understand the English language. Even assuming that petitioner Gaudencio affixed his signature thereto with the assistance of his wife, respondent nonetheless failed to present sufficient evidence to establish that the terms of such document were explained and the import of its execution were clearly and substantially clarified to petitioner Gaudencio in the Visayan dialect, the only dialect known to him. Since the respondent is the one seeking to enforce the contract of sale, he bears the

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[29] RTC records, p. 185.

[30] RTC records, p. 186.

[31] *Supra* note 2.

burden of proving that the stipulations in the agreement were fully explained to petitioner Gaudencio who was an illiterate. Having failed to do so, petitioner Gaudencio had been defrauded and his consent had undoubtedly been vitiated when he signed the document as he signed the same without full knowledge of its significance. The defect in petitioner Gaudencio's consent in the execution of the Deed of Sale makes the same voidable or annullable. As such, petitioners have four years from the time the intimidation, violence or undue influence ceases, or four years from the time of the discovery of mistake or fraud to file an action for the annulment of the voidable contract.

At the time Domingo and petitioners Ciriaco and Cesario executed the Affidavit of Waiver in favor of petitioner Gaudencio on May 17, 1994, they admitted to have already obtained knowledge or information that respondent was claiming full ownership over the disputed property on the ground that he purchased the same from petitioner Gaudencio way back on February 21, 1973. During such time, respondent's vehement refusal to sign the waiver and his insistence that he already purchased the property was already an indication of his commission of fraud. Since an action for annulment of contract must be brought within four years from the time of discovery of fraud or mistake, petitioners should have instituted their complaint within four years from May 17, 1994, or the discovery of fraud committed by the respondent. Since they filed their complaint only on May 23, 2002, or eight years after the discovery of fraud, the action has already prescribed, and must perforce, be dismissed.

Petitioners moved for reconsideration but the CA denied it in its Resolution[32] dated January 29, 2014.

Undaunted, petitioners filed the present petition premised on the following grounds:

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[32] *Supra* note 3.

The Issues

I.

Whether or not the Honorable Court of Appeals gravely abused its discretion in dismissing the Complaint on the ground of prescription

II.

Whether or not the honorable Court of Appeals gravely abused its discretion in declaring the questioned Deed of Sale merely voidable or annullable and not null and void as declared by the trial court.

The Arguments of the Parties

Petitioners argue that the CA incorrectly applied the ground of prescription in dismissing their complaint despite its clear finding of fraud on the part of the respondent in the execution of the questioned Deed of Sale. Having done so, the CA erroneously allowed the ground of prescription to be used as a shield against fraud and rewarded the respondent with the fruits of his fraudulent act at the expense of the petitioners. They should also not be penalized with the dismissal of their complaint by reason of prescription in trying their best to peacefully settle their differences with their brother and allowing a considerable time to pass before they took action in the hope that the passage of time will help resolve their disagreements.[33]

Petitioners likewise insist that the CA erred in not declaring the questioned Deed of Sale null and void. They explain that when their parents died, the petitioners and the respondent became co-owners of Lot 5306 by operation of law. It was only in 1994 when Domingo and petitioners Ciriaco and Cesario executed the affidavit of waiver in favor Gaudencio over the disputed property. Thus, when the said Deed of Sale was executed in 1973, Lot No. 5306 was still owned in common by the parties in this case. Thus, the total absence of consent of petitioners Ciriaco and Cesario to the said sale makes the same null and void. The sale of the disputed property insofar as petitioner Gaudencio is concerned should likewise be declared null and

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[33] *Rollo*, pp. 16-17.

void, and not merely voidable given that he had firmly denied having executed the same. Also, his alleged signature appearing in the questioned Deed of Sale is noticeably different from his handwriting when he was made to scribble when he testified in court, undeniably showing the improbability that petitioner Gaudencio indeed signed the said deed.[34]

Respondent countered that the decision of the CA to dismiss the complaint filed by the petitioners was not a reward to the respondent. Petitioners simply lost their right to file a case against the respondent, they having slept on their rights for more than the period of time allowed by law. The CA could not simply brush aside the ground of prescription by the mere assertion of the petitioners that they were looking for ways to settle amicably. To do so would violate the law.[35]

Furthermore, respondent posits that petitioners Ciriaco and Cesario cannot now claim to be co-owners of the disputed lot after selling their respective shares in Lot No. 11450, which were their inheritance and which they deliberately failed to mention. They have no right over the disputed lot; hence, they cannot be considered as privies to the sale. He also points out that both the trial court and the CA never mentioned any right of petitioners Ciriaco and Cesario over the disputed lot. Respondent likewise insists that the Deed of Sale is binding unless annulled by the court.[36]

The Ruling of the Court

For a deed of sale or any contract to be valid, Article 1318 of the Civil Code provides that three requisites must concur, namely: (1) the consent of the contracting parties; (2) the object; and (3) the consideration.[37] All these elements must be present to constitute a valid contract. The absence of one renders the

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[34] *Id*. at 18-19.

[35] *Id*. at 57.

[36] *Id*. at 57-58

[37] *Spouses Pen v. Spouses Julian*, 776 Phil. 50, 61 (2016).

contract void.[38] The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.[39] A contract of sale is consensual, as such it is perfected by mere consent.[40] For consent to be valid, the following requisites must concur: (a) it should be intelligent, or with an exact notion of the matter to which it refers; (b) it should be free; and (c) it should be spontaneous. Intelligence in consent is vitiated by error; freedom by violence, intimidation or undue influence; and spontaneity by fraud.[41]

In asserting the invalidity of the deed of sale, petitioners staunchly maintain that petitioner Gaudencio did not sign the same. To prove such claim, petitioners aver that he was unschooled and did not know how to read, write, and sign his name. However, the fact that petitioner Gaudencio was illiterate does not prove that he did not enter into the sale transaction. It does not escape this Court's notice that petitioners never denied nor put in issue the authenticity of the signatures appearing in the questioned deed of sale of petitioner Gaudencio's wife, who signified her consent to the sale of the disputed lot; and of Ben Cañada, the barangay captain and Policarpio Labajo, his father-in-law who stood as witnesses thereto. Neither was there evidence presented showing that petitioner Gaudencio was tricked or coerced into signing the deed of sale. These show that petitioner Gaudencio intended to enter into the contract of sale.

The question now is this: Was petitioner Gaudencio's consent to the deed of sale intelligently given?

There is no dispute that petitioner Gaudencio was unlettered and he did not know the English language, the language the deed of sale was written. Thus, under Article 1332[42] of the

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[38] *Clemente v. Court of Appeals*, 771 Phil. 113, 123 (2015).

[39] CIVIL CODE, Art. 1475.

[40] *Lim, Jr. v. San*, 481 Phil. 421, 427 (2004).

[41] *Leonardo v. Court of Appeals*, 481 Phil. 520, 530 (2004).

[42] Art. 1332. When one of the parties is unable to read, or if the contract is in a language not understood by him, and mistake or fraud is alleged, the

Civil Code, it is presumed that mistake or fraud attended the execution of a contract by one — petitioner Gaudencio in this case, who did not have the benefit of a good education.[43] To overcome this presumption, it is incumbent upon the respondent to show to the satisfaction of the court that he fully explained to petitioner Gaudencio the contents of the deed of sale in the dialect known to him. Unfortunately, there is no evidence that was presented to show that respondent did so. As such, the presumption that the execution of the deed of sale was attended by fraud stands. Respondent's failure to perform his obligation dictated by law clearly establishes that petitioner Gaudencio's consent was not intelligently given, and therefore, vitiated, when he signed the questioned deed as he did not know the full import of the same. Respondent's failure to disclose the consequences and significance of the deed of sale despite his clear duty to do so constitutes fraud.[44]

Neither can petitioners Ciriaco and Cesario claim that the deed of sale is null and void on the ground that they did not give their consent thereto. The records show that the parties had orally partitioned the properties left by their parents. They cannot now question the validity of such oral partition as its validity is well settled in our jurisdiction.[45] That they recognized the validity of the same is shown by the fact that they not only took possession of their respective shares in the inheritance, but they even sold the same to third persons.[46] Hence, petitioners Ciriaco and Cesario can no longer lay claim on the disputed lot, having already received their shares in the inheritance.

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person enforcing the contract must show that the terms thereof have been fully explained to the former.

[43] *Supra* note 41, at 532.

[44] Art. 1339 of the Civil Code provides: Failure to disclose facts, when there is a duty to reveal them, as when the parties are bound by confidential relations, constitutes fraud.

[45] *Casilang, Sr. v. Casilang-Dizon*, 704 Phil. 397, 418 (2013).

[46] RTC records, pp. 157-162.

Under Article 1390[47] of the Civil Code, contracts where consent is vitiated by fraud is voidable. Pursuant to Article 1391[48] of the same Code, the action for annulment of contracts where consent is vitiated by fraud shall be brought within four years from the time of discovery of the same. Applied in this case, the four-year period shall be reckoned from May 17, 1994, the time petitioners gained knowledge of the fraudulent deed of the respondent. As correctly found by the CA:

> A careful scrutiny of the records reveal[s] that at the time Cesario, Ciriaco and Domingo Oberes executed the Affidavits of Waiver in favor of Gaudencio on May 17, 1994, they admitted to have already obtained knowledge or information that [respondent] Adriano was claiming full ownership over the subject land because he allegedly purchased the same from Gaudencio way back February 21, 1973. During such time, Adriano's vehement refusal to sign the affidavit of waiver and his insistence that he already purchased the property was already an indication of his commission of fraud.[49]

Considering that petitioners lodged its complaint for annulment only on May 23, 2002,[50] or eight years after the discovery of fraud, the CA correctly dismissed the complaint on the ground of prescription.

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[47] Art. 1390. The following contracts are voidable or annullable, even though there may have been no damage to the contracting parties:

(1) Those where one of the parties is incapable of giving consent to a contract;

(2) Those where the consent is vitiated by mistake, violence, intimidation, undue influence or fraud.

These contracts are binding, unless they are annulled by a proper action in court. They are susceptible of ratification.

[48] Art. 1391. The action for annulment shall be brought within four years.

This period shall begin: In cases of intimidation, violence or undue influence, from the time the defect of the consent ceases. In case of mistake or fraud, from the time of the discovery of the same. And when the action refers to contracts entered into by minors or other incapacitated persons, from the time the guardianship ceases.

[49] *Rollo*, p. 34.

[50] RTC records, p. 7.

One final note. In dismissing the complaint on the ground of prescription, the CA neither penalized the petitioners nor rewarded the respondent. It simply applied Articles 1391[51] and 1139[52] of the Civil Code that the right of the petitioners to seek redress for the fraudulent acts of the respondent had been lost by the mere passage of time fixed by law.

WHEREFORE, premises considered, the petition is **DENIED**. The assailed June 4, 2013 Decision and the January 29, 2014 Resolution of the Court of Appeals-Cebu City in CA-G.R. CV No. 03166 are **AFFIRMED** *in toto*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 214882. October 16, 2019]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BERNABE EULALIO *y* ALEJO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; ELEMENTS; PROVED.— As regards the August 2004 incident (Criminal Case No. 31438-MN), this Court is convinced that Eulalio is guilty of rape, specifically, statutory rape. The elements of the said felony are: "(1) the offended party is under 12 years

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[51] *Supra* note 48.

[52] Art. 1139. Actions prescribe by the mere lapse of time fixed by law.

of age; and (2) the accused had carnal knowledge of the victim, regardless of whether there was force, threat, or intimidation or grave abuse of authority. It is enough that the age of the victim is proven and that there was sexual intercourse. As the law presumes absence of free consent when the victim is below the age of 12, it is not necessary to prove force, intimidation or consent as they are not elements of statutory rape." Significantly, it was proven by evidence that Eulalio had carnal knowledge of AAA, an 11-year-old victim, by using threats and intimidation.

2. ID.; ID.; ACTS OF LASCIVIOUSNESS ; AN ACCUSED WHO IS CHARGED WITH RAPE IN THE INFORMATION CAN BE HELD GUILTY OF ACTS OF LASCIVIOUSNESS, IF PROVED, UNDER THE VARIANCE DOCTRINE, AS ACTS OF LASCIVIOUSNESS IS INCLUDED IN RAPE.— As regards the September 2004 incident (Criminal Case No. 31439-MN), both the RTC and the CA properly convicted Eulalio of acts of lasciviousness, although charged with rape in the Information. Eulalio committed lewd acts upon AAA, who was only 11 years old at the time, by kissing her using threats and intimidation. Eulalio can only be held guilty of acts of lasciviousness although charged with rape "following the variance doctrine enunciated under Section 4 in relation to Section 5 of Rule 120 of the Rules on Criminal Procedure. Acts of lasciviousness; the offense proved, is included in rape, the offense charged."

3. ID.; ID.; ACTS OF LASCIVIOUSNESS UNDER ARTICLE 336 OF THE REVISED PENAL CODE AND SEXUAL ABUSE UNDER SECTION 5(b), ARTICLE III OF R.A. NO. 7610; ELEMENTS.— [W]e must also consider that the said felony should be evaluated in light of RA 7610 and as charged in the Information. The case of *People v. Molejon* is instructive in this respect: On the one hand, conviction under Article 336 of the RPC requires that the prosecution establish the following elements: (a) the offender commits any act of lasciviousness or lewdness upon another person of either sex; and (b) the act of lasciviousness or lewdness is committed either (i) by using force or intimidation; or (ii) when the offended party is deprived of reason or is otherwise unconscious; or (iii) when the offended party is under 12 years of age. On the other hand, sexual abuse under Section 5(b), Article III of R.A. No. 7610 has three elements: (1) the accused commits an act of sexua1 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 is below 18 years old.

4. ID.; SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT (ANTI-CHILD ABUSE LAW) (R.A. NO. 7610); SEXUAL ABUSE; THE CHILD IS DEEMED SUBJECTED TO OTHER SEXUAL ABUSE WHEN THE CHILD ENGAGES IN LASCIVIOUS CONDUCT UNDER THE COERCION OR INFLUENCE OF ANY ADULT; PHYSICAL VIOLENCE ON THE PERSON OF THE VICTIM IS NOT REQUIRED, AS MORAL COERCION OR ASCENDANCY IS SUFFICIENT. — To further expound on the aspect of other sexual abuse, the case of *Quimvel v. People* as cited in the *Molejon* case, explained that: As regards the second additional element, it is settled that **the child is deemed subjected to other sexual abuse when the child engages in lascivious conduct under the coercion or influence of any adult. Intimidation need not necessarily be irresistible. It is sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party**. The law does not require physical violence on the person of the victim; **moral coercion or ascendancy is sufficient**. The petitioner's proposition — that there is not even an iota of proof of force or intimidation as AAA was asleep when the offense was committed and, hence, he cannot be prosecuted under RA 7610 — is bereft of merit. **When the victim of the crime is a child under twelve (12) years old, mere moral ascendancy will suffice**. Withal, there is basis to rule that there was sexual abuse in the instant case, given that Eulalio kissed AAA, who was only 11 years old at the time, by employing threats to force her into submission.

5. ID.; ID.; ID.; THE OMISSION TO MENTION SECTION 5(b), ARTICLE III OF RA 7610 IN THE INFORMATION IS NOT FATAL SO AS TO VIOLATE ACCUSED'S RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF ACCUSATION AGAINST HIM, AS WHAT CONTROLS IS NOT THE TITLE OF THE INFORMATION OR THE DESIGNATION OF THE OFFENSE, BUT THE ACTUAL FACTS RECITED IN THE INFORMATION CONSTITUTING THE CRIME CHARGED; ACCUSED CAN BE CONVICTED OF ACTS OF LASCIVIOUSNESS IN RELATION TO SECTION 5(b) OF

RA 7610 EVEN IF SECTION 5(b) WAS NOT EXPRESSLY MENTIONED OR SPECIFIED IN THE INFORMATION GIVEN THE FACTS PROVIDED IN THE INFORMATION AND THOSE PROVEN DURING THE TRIAL.— [I]t is important to emphasize that although Section 5(b), Article III of RA 7610 was not expressly mentioned in the Information, "this omission is not fatal so as to violate his right to be informed of the nature and cause of accusation against him. Indeed, what controls is not the title of the information or the designation of the offense, but the actual facts recited in the information constituting the crime charged. As the Court categorically declared in *Quimvel v. People*: Jurisprudence has already set the standard on how the requirement is to be satisfied. Case law dictates that the allegations in the Information must be in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged and enable the court to know the proper judgment. The Information must allege clearly and accurately the **elements** of the crime charged. The facts and circumstances necessary to be included therein are determined by reference to the definition and elements of the specific crimes. x x x. Specifically, "[i]n *Olivarez v. Court of Appeals*, this Court found the information sufficient to convict the accused of sexual abuse despite the absence of the specific sections of RA 7610 alleged to have been violated by the accused." In the case at bench, the Information alleged sufficiently all the elements constituting the crime of acts of lasciviousness. Eulalio forced AAA, who was 11 years old at the time, to engage in lascivious acts which is within the ambit of other sexual abuse in relation to Section 5(b). Thus, even if Section 5(b) was not expressly mentioned or specified in the Information, Eulalio could still be convicted of acts of lasciviousness in relation to Section 5(b) of RA 7610 given the facts provided in the Information and those which were proven during the trial of the case.

6. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONIES OF CHILD VICTIMS ARE GIVEN FULL WEIGHT AND CREDIT, BECAUSE WHEN A WOMAN, MORE SO IF SHE IS A MINOR, SAYS THAT SHE HAS BEEN RAPED, SHE SAYS IN EFFECT ALL THAT IS NECESSARY TO SHOW THAT RAPE WAS COMMITTED.— [T]here is no dispute that the victim, AAA, was 11 years old at the time of the commission

of the crimes. More importantly, based on this Court's assessment of the records and the evidence, Eulalio was guilty of the crimes being imputed against him. It was satisfactorily proven that he had carnal knowledge of the victim, AAA, by employing threats and intimidation in order to achieve his reprehensible desires. It was also proven beyond doubt that through force and intimidation, he committed acts of lasciviousness on AAA by lying on top of her and kissing her on the lips. The clear, candid, and concise manner in which the commission of the felonies were described especially during the testimony of AAA ultimately confirmed that Eulalio was guilty beyond reasonable doubt for both crimes. Besides, "[i]t is settled jurisprudence that testimonies of child victims are given full weight and credit, because when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. Youth and immaturity are generally badges of truth and sincerity."

7. **ID.; ID.; ID.; A YOUNG GIRL'S REVELATION THAT SHE HAD BEEN RAPED, COUPLED WITH HER VOLUNTARY SUBMISSION TO MEDICAL EXAMINATION AND WILLINGNESS TO UNDERGO PUBLIC TRIAL WHERE SHE COULD BE COMPELLED TO GIVE OUT THE DETAILS OF AN ASSAULT ON HER DIGNITY, CANNOT BE SO EASILY DISMISSED AS MERE CONCOCTION.—** Indeed, AAA's positive and categorical testimony, together with her father's testimony, should be given credence especially since Eulalio did not even bother to raise any defense at all. In view of this, this Court emphasizes that "a young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction."

8. **ID.; ID.; ID.; THE TESTIMONIES OF THE PROSECUTION WITNESSES SHOULD BE ACCORDED GREAT WEIGHT WHERE THE SAID TESTIMONIES CORROBORATED EACH OTHER ON MATERIAL POINTS. —** In like manner, "[j]urisprudence is replete with cases where the Court ruled that questions on the credibility of witnesses should best be addressed to the trial court because of its unique position to

observe that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying which is denied to the appellate courts." Ergo, based on Our evaluation, the testimonies of the prosecution witnesses should be accorded great weight, given that the said testimonies corroborated each other on material points.

9. CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; PROPER IMPOSABLE PENALTY AND CIVIL LIABILITY OF ACCUSED-APPELLANT.— As for the penalties, the RTC, which the CA affirmed, correctly imposed *reclusion perpetua* in Criminal Case No. 31438-MN for the felony of statutory rape under Article 266-B of the RPC. The damages awarded by the appellate court in Criminal Case No. 31438-MN, however, must be modified. As explained in the case of *People v. Roy*, "when the circumstances surrounding the crime call for the imposition of *reclusion perpetua* only, there being no ordinary aggravating circumstance, the proper amount of civil indemnity, moral damages, and exemplary damages should be [PhP] 75,000.00 each." Moreover, the monetary awards should be subject to the interest rate of 6% *per annum* from the finality of the Decision until fully paid.

10. ID.; ID.; ACTS OF LASCIVIOUSNESS UNDER ARTICLE 336 OF THE REVISED PENAL CODE IN RELATION TO LASCIVIOUS CONDUCT UNDER SECTION 5(b) OF REPUBLIC ACT NO. 7610; PROPER IMPOSABLE PENALTY.— With regard to the penalty and monetary awards in Criminal Case No. 31439-MN for the crime of acts of lasciviousness, since the elements of Article 336 of the RPC as well as that of lascivious conduct under RA No. 7610 (given that the victim was below 12 years old) were clearly proven in this case, the imposable penalty is *reclusion temporal* in its medium period. Furthermore, Applying the Indeterminate Sentence Law (ISL), and in the absence of mitigating or aggravating circumstances, the minimum term shall be taken from the penalty next lower to *reclusion temporal* medium, which is reclusion *temporal minimum*, which ranges from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. The maximum term shall be taken from the medium period of the imposable penalty, *i.e., reclusion temporal* in its medium period, which ranges from fifteen (15) years, six (6) months and twenty (20) days to sixteen (16) years, five (5) months and nine

(9) days. Accordingly, the prison term is modified to twelve (12) years and one (1) day of *reclusion temporal* in its minimum period as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal* in its medium period as maximum.

11. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— [T]he award of civil indemnity, as well as moral and exemplary damages in favor of the offended party, should be increased to PhP 50,000.00 each in view of the recent pronouncement in *People v. Tulagan*. Likewise, a fine in the amount of PhP15,000.00 is imposed. Additionally, the said monetary awards should earn a legal interest of 6% *per annum* from the date of the finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

HERNANDO, *J.*:

On appeal is the April 15, 2014 *Decision*[1] rendered by the Court of Appeals (CA) in CA-G.R. CR HC No. 05924 affirming the ruling[2] of the Regional Trial Court (RTC) of Malabon City, Branch 169 in Criminal Case Nos. 31438-MN and 31439-MN convicting accused-appellant Bernabe Eulalio *y* Alejo (Eulalio) of rape and acts of lasciviousness.

The Antecedents:

Accused-appellant Eulalio is appealing his conviction for the crimes of rape and acts of lasciviousness, arguing that his guilt has not been proven beyond reasonable doubt.

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[1] *Rollo*, pp. 2-15; penned by Associate Justice Jose C. Reyes, Jr. (now a Member of this Court) and concurred in by Associate Justices Mario V. Lopez and Socorro B. Inting.

[2] *Records*, unpaginated; penned by Judge Emmanuel D. Laurea.

The pertinent facts are as follows:

Sometime in August 2004, 11-year-old AAA[3] was playing in the street when Eulalio summoned her to his house. When AAA refused, Eulalio threatened AAA that he would kidnap one of her siblings. Gripped with fear, AAA went along with Eulalio.

Upon reaching Eulalio's house, the latter brought AAA inside a room and started to undress her. When AAA resisted, Eulalio again threatened to kidnap her sibling. Eulalio then proceeded to undress himself and while standing, rubbed his genitalia against AAA's and kissed her. Eulalio then told AAA to lie down on the bed, forcibly spread her legs apart and inserted his penis into her vagina. Eulalio covered AAA's mouth to prevent her from shouting.

After he was done, Eulalio instructed AAA to put her clothes back on and sent her home. AAA did not reveal the incident to anyone in view of the threats of Eulalio.

About a month later, or on September 5, 2004, AAA was playing in the street when she was informed by CCC,[4] her older sister, that she was again being summoned by Eulalio who was waiting at their (AAA's) house. This time, AAA did as instructed.

AAA went home and sat on a *papag*. Eulalio did not undress her. Instead, he made AAA lie on the bed and kissed her.

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

[4] *Id.*

Eulalio and AAA were in this compromising position when AAA's father, BBB,[5] and mother, arrived. BBB then inquired what happened. They then went to the *barangay* to report the incident.

AAA submitted herself to a medical examination wherein the attending physician found deep healing laceration in her hymen, suggestive of a prior blunt force or penetrating trauma to the area.[6]

Two (2) separate Informations dated September 7, 2004 were filed charging Eulalio with rape in relation to Republic Act (RA) No. 7610, the accusatory portions of which read:

In Criminal Case No. 31438-MN (Rape in relation to RA 7610):

That sometime in the month of August, 2004, in the City of Malabon, 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 sexual intercourse with [AAA], [an 11-year-old minor], against her will and without her consent, which circumstances debase, degrade or demean the intrinsic worth of a child as a human being thereby endangering her youth[,] normal growth and development.

CONTRARY TO LAW.[7]

In Criminal Case No. 31439-MN (Rape in relation to RA 7610):

That on or about the 5th day of September 2004, in the City of Malabon, 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 sexual intercourse with [AAA], [an 11-year-old minor], against her will and without her consent, which circumstances debase, degrade or demean the intrinsic worth of a child as a human being thereby endangering her youth normal growth and development.

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[5] *Id.*

[6] Records, pp. 6, 12.

[7] *Id.* at 2.

CONTRARY TO LAW.[8]

During his arraignment, Eulalio entered a plea of not guilty."[9]

During trial, the prosecution presented AAA's birth certificate[10] which revealed that she was only 11 years old when the felonies were committed against her. Apart from this, the prosecution submitted the respective *Sinumpaang Salaysay* of AAA[11] and the *tanod*[12] (who arrested Eulalio) which further supported the prosecution's version of the story.

Interestingly, though, Eulalio waived his right to present evidence despite months of postponements of the hearings set by the trial court.[13]

The Ruling of the RTC

In a Decision[14] dated August 23, 2012, the RTC gave full credence to the testimony of the victim, AAA,[15] which was corroborated by the medical findings of the examining physician. The trial court further held that since the victim was only 11 years old at the time of the commission of the crimes, the employment of force or intimidation and the physical resistance of the victim were no longer material. Even so, the RTC found that Eulalio employed intimidation to overpower the victim.[16]

Apart from these, the RTC found that as regards the September 2004 incident, the victim's father, BBB, actually saw Eulalio on top of AAA while kissing her, which constituted

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[8] *Id.* at 8.

[9] *Id.* at 19.

[10] Folder of Exhibits, Exhibit "A".

[11] *Id.*, Exhibit "D".

[12] Records, pp. 5, 11.

[13] *Id.* at 72.

[14] *Supra* note 2.

[15] *Decision*, p. 4; *records*, unpaginated.

[16] *Id.* at 5.

as acts of lasciviousness which is necessarily included in a rape charge. More importantly, the trial court noted that Eulalio did not offer any defense despite several opportunities and in fact even waived the presentation of his defense a year after the prosecution already rested its case.[17]

Hence, the dispositive portion of the RTC's Decision reads:

> WHEREFORE, premises considered, the Court finds accused BERNABE EULALIO *y* ALEJO **GUILTY** beyond reasonable doubt of the crime of Statutory Rape in Criminal Case No. 31428[18]-MN. He is hereby sentenced to suffer the penalty of *reclusion perpetua* with all the accessory penalties provided by law, and to pay the costs. Accused is further ordered to indemnify the offended party in the sum of Seventy Five Thousand Pesos (Php 75,000.00) as civil indemnity; Seventy Five Thousand Pesos (Php 75,000.00) as moral damages; and Thirty Thousand Pesos (Php 30,000.00) as exemplary damages.
>
> In Criminal Case No. 31439-MN, the Court finds accused BERNABE EULALIO y ALEJO **GUILTY** beyond reasonable doubt of the crime of Acts of Lasciviousness. He is hereby sentenced to suffer the indeterminate penalty of imprisonment of SIX (6) MONTHS of *arresto mayor* as minimum, to FOUR (4) YEARS and TWO (2) MONTHS of *prision correccional* as maximum, and to pay the costs. Accused is further ordered to indemnify the offended party in the sum of Twenty Thousand Pesos (Php 20,000.00) as civil indemnity; Thirty Thousand Pesos (Php 30,000.00) as moral damages; and Five Thousand Pesos (Php 5,000.00) as exemplary damages.
>
> In the service of the sentence, the accused is entitled to the benefits of Article 29 of the Revised Penal Code as amended.
>
> SO ORDERED.[19]

Aggrieved, Eulalio appealed[20] before the Court of Appeals (CA) and assigned this sole error:

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[17] *Id.*

[18] Should be Criminal Case No. 31438-MN.

[19] *Rollo*, p. 5; *records*, unpaginated.

[20] *Records*, pp. 82-83.

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF STATUTORY RAPE AND ACTS OF LASCIVIOUSNESS DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[21]

The Ruling of the Court of Appeals

The CA, in its April 15, 2014 Decision,[22] affirmed the RTC's ruling convicting Eulalio of rape and acts of lasciviousness. However, the CA modified the amounts of the monetary awards, as follows:

> **WHEREFORE**, premises considered, the Decision of the RTC is hereby **AFFIRMED** with **MODIFICATION**.
>
> 1. In Criminal Case No. 31438-MN, we find accused-appellant Bernabe Eulalio y Alejo GUILTY of Rape defined and penalized under Articles 266-A and 266-B of the Revised Penal Code, as amended. He is sentenced to reclusion perpetua with all the accessory penalties prescribed by law; and is ORDERED to pay the victim, AAA, ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; and ₱30,000.00 as exemplary damages, all with interest at the rate of 6% per annum from the date of finality of this judgment; and
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> 2. In Criminal Case No. 31439-MN, we find accused-appellant with all the accessory penalties prescribed by law GUILTY of Acts of Lasciviousness defined and penalized under Articles 336 of the Revised Penal Code, as amended. He is sentenced to an indeterminate prison term of 6 months of arresto mayor, as minimum, to 4 years and 2 months of prision correccional, as maximum; and is ORDERED to pay the victim, AAA, ₱20,000.00 as civil indemnity; ₱30,000.00 as moral damages; and ₱15,000.00 as exemplary damages, all with interest at the rate of 6% per annum from the date of finality of this judgment;
>
> **SO ORDERED**.[23]

Discontented, Eulalio appealed[24] his case before Us, raising the issue of whether or not he is guilty beyond reasonable doubt of the crimes imputed against him.

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[21] CA *rollo*, p. 37.

[22] *Supra* note 1.

[23] CA *rollo*, p. 110.

[24] *Id.* at 16-20.

The Court's Ruling:

The appeal is unmeritorious.

Article 266-A, paragraph (1) of the Revised Penal Code (RPC) reads as follows:

> Article 266-A. *Rape, When and How Committed.* — Rape is committed:
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> 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; and
>
> d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.[25] (Emphasis supplied.)

On the other hand, acts of lasciviousness is defined and penalized in this manner:

> Art. 336. *Acts of lasciviousness.* — Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prision correccional*.

As regards the August 2004 incident (Criminal Case No. 31438-MN), this Court is convinced that Eulalio is guilty of rape, specifically, statutory rape. The elements of the said felony are: "(1) the offended party is under 12 years of age; and (2) the accused had carnal knowledge of the victim, regardless of whether there was force, threat, or intimidation or grave abuse of authority. It is enough that the age of the victim is proven and that there was sexual intercourse. As the law

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[25] REVISED PENAL CODE, Article 266-A, as amended by Republic Act No. 8353 (1997).

presumes absence of free consent when the victim is below the age of 12, it is not necessary to prove force, intimidation or consent as they are not elements of statutory rape."[26] Significantly, it was proven by evidence that Eulalio had carnal knowledge of AAA, an 11-year-old victim, by using threats and intimidation.

As regards the September 2004 incident (Criminal Case No. 31439- MN), both the RTC and the CA properly convicted Eulalio of acts of lasciviousness, although charged with rape in the Information. Eulalio committed lewd acts upon AAA, who was only 11 years old at the time, by kissing her using threats and intimidation. Eulalio can only be held guilty of acts of lasciviousness although charged with rape "following the variance doctrine enunciated under Section 4[27] in relation to Section 5[28] of Rule 120 of the Rules on Criminal Procedure. Acts of lasciviousness; the offense proved, is included in rape, the offense charged."[29]

Apart from this, We must also consider that the said felony should be evaluated in light of RA 7610 and as charged in the

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[26] *People v. Roy*, G.R. No. 225604, July 23, 2018, citing *People v. Ronquillo*, G.R. No. 214762, September 20, 2017; *People v. Cadano, Jr.*, 729 Phil. 576, 584 (2014).

[27] *Lutap v. People*, G.R. No. 204061, February 5, 2018 citing SEC. 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.

[28] *Id.*, citing SEC. 5. *When an offense includes or is included in another*.— An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.

[29] *Id.*, citing *People v. Caoili*, G.R. No. 196342, August 8, 2017.

Information. The case of *People v. Molejon*[30] is instructive in this respect:

> On the one hand, conviction under Article 336 of the RPC requires that the prosecution establish the following elements: (a) the offender commits any act of lasciviousness or lewdness upon another person of either sex; and (b) the act of lasciviousness or lewdness is committed either (i) by using force or intimidation; or (ii) when the offended party is deprived of reason or is otherwise unconscious; or (iii) when the offended party is under 12 years of age.
>
> On the other hand, sexual abuse under Section 5(b), Article III of R.A. No. 7610 has three elements: (1) the accused commits an act of sexua1 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 is below 18 years old.

To further expound on the aspect of other sexual abuse, the case of *Quimvel v. People*[31] as cited in the *Molejon* case, explained that:

> As regards the second additional element, it is settled that **the child is deemed subjected to other sexual abuse when the child engages in lascivious conduct under the coercion or influence of any adult. Intimidation need not necessarily be irresistible. It is sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party**. The law does not require physical violence on the person of the victim; **moral coercion or ascendancy is sufficient**.
>
> The petitioner's proposition — that there is not even an iota of proof of force or intimidation as AAA was asleep when the offense was committed and, hence, he cannot be prosecuted under RA 7610 — is bereft of merit. **When the victim of the crime is a child under twelve (12) years old, mere moral ascendancy will suffice**. (Emphasis ours, citations omitted.)

Withal, there is basis to rule that there was sexual abuse in the instant case, given that Eulalio kissed AAA, who was only

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[30] G.R. No. 208091, April 23, 2018, citing *Cruz v. People*, 745 Phil. 54, 73 (2014) and *People v. Fragante*, 657 Phil. 577, 596 (2011).

[31] 808 Phil. 889, 930-931 (2017).

11 years old at the time, by employing threats to force her into submission.

In relation to this, it is important to emphasize that although Section 5(b), Article III of RA 7610 was not expressly mentioned in the Information, "this omission is not fatal so as to violate his right to be informed of the nature and cause of accusation against him. Indeed, what controls is not the title of the information or the designation of the offense, but the actual facts recited in the information constituting the crime charged.[32] As the Court categorically declared in *Quimvel v. People*:[33]

> Jurisprudence has already set the standard on how the requirement is to be satisfied. Case law dictates that the allegations in the Information must be in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged and enable the court to know the proper judgment. The Information must allege clearly and accurately the **elements** of the crime charged. The facts and circumstances necessary to be included therein are determined by reference to the definition and elements of the specific crimes.
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> The main purpose of requiring the elements of a crime to be set out in the Information is to enable the accused to suitably prepare his defense because he is presumed to have no independent knowledge of the facts that constitute the offense. The allegations of facts constituting the offense charged are substantial matters and the right of an accused to question his conviction based on facts not alleged in the information cannot be waived. As further explained in *Andaya v. People*:
>
> > No matter how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted of any offense unless it is charged in the information on which he is tried or is necessarily included therein. To convict him of a ground not alleged while he is concentrating his defense against the ground alleged would plainly be unfair and underhanded. **The rule is that a variance between the allegation in the information and**

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[32] *People v. Molejon*, *supra* note 30, citing *People v. Ursua*, G.R. No. 218575, October 4, 2017.

[33] *Supra* note 31 at 912-913.

> **proof adduced during trial shall be fatal to the criminal case if it is material and prejudicial to the accused so much so that it affects his substantial rights.** (Emphasis added, citations omitted.)

Specifically, "[i]n *Olivarez v. Court of Appeals*, this Court found the information sufficient to convict the accused of sexual abuse despite the absence of the specific sections of RA 7610 alleged to have been violated by the accused."[34] In the case at bench, the Information alleged sufficiently all the elements constituting the crime of acts of lasciviousness. Eulalio forced AAA, who was 11 years old at the time, to engage in lascivious acts which is within the ambit of other sexual abuse in relation to Section 5(b). Thus, even if Section 5(b) was not expressly mentioned or specified in the Information, Eulalio could still be convicted of acts of lasciviousness in relation to Section 5(b) of RA 7610 given the facts provided in the Information and those which were proven during the trial of the case.[35]

To stress, there is no dispute that the victim, AAA, was 11 years old at the time of the commission of the crimes. More importantly, based on this Court's assessment of the records and the evidence, Eulalio was guilty of the crimes being imputed against him. It was satisfactorily proved that he had carnal knowledge of the victim, AAA, by employing threats and intimidation in order to achieve his reprehensible desires. It was also proved beyond doubt that through force and intimidation, he committed acts of lasciviousness on AAA by lying on top of her and kissing her on the lips. The clear, candid, and concise manner in which the commission of the felonies were described especially during the testimony of AAA ultimately confirmed that Eulalio was guilty beyond reasonable doubt for both crimes.

Besides, "[i]t is settled jurisprudence that testimonies of child victims are given full weight and credit, because when a woman,

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[34] *People v. Molejon, supra* note 30, citing *Olivarez v. Court of Appeals*, 503 Phil. 421 (2005).

[35] *People v. Molejon, id.*, citing *Malto v. People*, 560 Phil. 119 (2007).

more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. Youth and immaturity are generally badges of truth and sincerity."[36]

Moreover, We held in *People v. Macapagal*[37] that:

> In cases of offended parties who are young and immature girls, there is considerable receptivity on the part of the courts to lend credence to their testimonies, considering not only their relative vulnerability, but also the shame and embarrassment to which such a grueling experience as a court trial, where they are called upon to lay bare what perhaps should be shrouded in secrecy, did expose them to. Indeed, no woman, much less a child, would willingly submit herself to the rigors, the humiliation and the stigma attendant upon the prosecution of rape, if she were not motivated by an earnest desire to put the culprit behind bars. Hence, BBB's testimony is entitled to full faith and credence. (citations omitted)

Indeed, AAA's positive and categorical testimony, together with her father's testimony, should be given credence especially since Eulalio did not even bother to raise any defense at all.[38] In view of this, this Court emphasizes that "a young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction."[39]

In like manner, "[j]urisprudence is replete with cases where the Court ruled that questions on the credibility of witnesses should best be addressed to the trial court because of its unique position to observe that elusive and incommunicable evidence

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[36] *People v. Salaver*, G.R. No. 223681, August 20, 2018, citing *People v. Vergara*, 724 Phil. 702, 709 (2014).

[37] G.R. No. 218574, November 22, 2017.

[38] *People v. Salaver*, *supra* note 36, citing *People v. Colentava*, 753 Phil. 361 (2015).

[39] *People v. Dalipe*, 633 Phil. 428, 448 (2010).

of the witnesses' deportment on the stand while testifying which is denied to the appellate courts."[40] Ergo, based on Our evaluation, the testimonies of the prosecution witnesses should be accorded great weight, given that the said testimonies corroborated each other on material points.

It is worthy to point out that both the RTC and the CA held that Eulalio was guilty of statutory rape and acts of lasciviousness. We likewise note that Eulalio did not present any defense which could otherwise convince Us of his innocence. We therefore see no reason to depart from the rulings of the RTC and the CA as regards the accused-appellant's guilt.

As for the penalties, the RTC, which the CA affirmed, correctly imposed *reclusion perpetua* in Criminal Case No. 31438-MN for the felony of statutory rape under Article 266-B of the RPC.[41]

The damages awarded by the appellate court in Criminal Case No. 31438-MN, however, must be modified. As explained in the case of *People v. Roy*,[42] "when the circumstances surrounding the crime call for the imposition of *reclusion*

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[40] *People v. Barcela*, 734 Phil. 332, 342 (2014).

[41] The rape in this case was not qualified as the circumstances needed to qualify the felony are not present. Notably, there is no longer a need to state that accused-appellant is not eligible for parole, given that the imposable penalty for the crime of statutory rape is not death. We have already explained that:

In summary, there is only a need to qualify that the accused is not 'eligible for parole' in cases where the imposable penalty should have been death were it not for the enactment of R.A. No. 9346. This is to differentiate cases where the penalty imposable was **reduced** to *reclusion perpetua* from cases where the penalty imposed was *reclusion perpetua*. Here, Gozo is guilty of simple rape, punishable by *reclusion perpetua*; thus, there was no need to indicate that he was ineligible for parole because accused sentenced to indeterminate penalties are *ipso facto* ineligible for parole. See *People v. Gozo*, G.R. No. 225605, July 23, 2018 citing A.M. No. 15-08-02-SC (Guidelines for the proper use of the phrase "without eligibility for parole" in indivisible penalties.)

[42] *Supra* note 26.

perpetua only, there being no ordinary aggravating circumstance, the proper amount of civil indemnity, moral damages, and exemplary damages should be [PhP] 75,000.00 each."[43] Moreover, the monetary awards should be subject to the interest rate of 6% *per annum* from the finality of the Decision until fully paid.[44]

With regard to the penalty and monetary awards in Criminal Case No. 31439-MN for the crime of acts of lasciviousness, since the elements of Article 336 of the RPC as well as that of lascivious conduct under RA No. 7610 (given that the victim was below 12 years old) were clearly proven in this case, the imposable penalty is *reclusion temporal* in its medium period.[45] Furthermore,

> Applying the Indeterminate Sentence Law (ISL), and in the absence of mitigating or aggravating circumstances, the minimum term shall be taken from the penalty next lower to *reclusion temporal* medium, which is reclusion *temporal minimum*, which ranges from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. The maximum term shall be taken from the medium period of the imposable penalty, *i.e.*, *reclusion temporal* in its medium period, which ranges from fifteen (15) years, six (6) months and twenty (20) days to sixteen (16) years, five (5) months and nine (9) days.[46]
>
> Accordingly, the prison term is modified to twelve (12) years and one (1) day of *reclusion temporal* in its minimum period as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal* in its medium period as maximum.[47]

Furthermore, the award of civil indemnity, as well as moral and exemplary damages in favor of the offended party, should be increased to PhP 50,000.00 each in view of the recent

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[43] *Id.*, citing *People v. Jugueta*, 783 Phil. 806, 840 (2016).

[44] *Id.*, citing *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

[45] Section 5(b), R.A. No. 7610; *See* also *People v. Lutap*, *supra* note 27, citing *People v. Caoili, supra* note 29.

[46] *Lutap v. People, supra* note 27; citing *Quimvel v. People, supra* note 31.

[47] *Id.*, citing *People v. Padlan*, G.R. No. 214880, September 6, 2017.

pronouncement in *People v. Tulagan*.[48] Likewise, a fine in the amount of PhP 15,000.00 is imposed.[49] Additionally, the said monetary awards should earn a legal interest of 6% *per annum* from the date of the finality of this Decision until fully paid.

In conclusion, We hereby affirm Eulalio's conviction for one count of statutory rape and one count of acts of lasciviousness. However, the penalties and monetary awards should be modified to conform to recent jurisprudence.

WHEREFORE, the instant appeal is hereby **DISMISSED**. The assailed April 15, 2014 Decision rendered by the Court of Appeals in CA-G.R. CR HC No. 05924, is hereby **AFFIRMED with MODIFICATIONS.**

In Criminal Case No. 31438-MN, accused-appellant Bernabe A. Eulalio is held **GUILTY** of statutory rape under Article 266-A of the Revised Penal Code as amended by Republic Act No. 8353 and is hereby sentenced to *reclusion perpetua* and its accessory penalties. He is likewise **ORDERED** to pay the victim AAA in addition to the costs of the suit, the following amounts, to wit: (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.

In Criminal Case No. 31439-MN, accused-appellant Bernabe A. Eulalio is held **GUILTY** of acts of lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of Republic Act No. 7610 and is hereby sentenced to twelve (12) years and one (1) day of *reclusion temporal* minimum, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal* medium, as maximum, and its accessory penalties. He is likewise **ORDERED** to pay the victim AAA in addition to the costs of the suit, the following amounts, to wit: (i) PhP 50,000.00 as civil indemnity; (ii) PhP 50,000.00 as moral damages; (iii) PhP 50,000.00 as exemplary damages; and (iv) PhP 15,000.00 as fine.

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[48] G.R. No. 227363, March 12, 2019.

[49] *Lutap v. People*, *supra* note 27.

All amounts due shall earn a legal interest of six percent (6%) *per annum* from the date of finality of this Decision until full payment.

SO ORDERED.

Peralta (Chairperson), Reyes, A. Jr., and *Carandang,*[*] *JJ.*, concur.

Leonen, J., on official leave.

SECOND DIVISION

[G.R. No. 220725. October 16, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CESARIA BASIO VERTUDES and HENRY BASIO VERTUDES,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); MANDATORY REQUIREMENTS OF SECTION 21 OF RA 9165; IN ORDER TO OBVIATE ANY UNNECESSARY DOUBT ON THE IDENTITY OF THE SEIZED DRUGS, THE PROSECUTION HAS TO SHOW AN UNBROKEN CHAIN OF CUSTODY OVER THE SAME AND ACCOUNT FOR EACH LINK IN THE CHAIN OF CUSTODY FROM THE MOMENT THE DRUGS ARE SEIZED UP TO THEIR PRESENTATION IN COURT AS EVIDENCE OF THE CRIME; THE PHYSICAL INVENTORY AND PHOTOGRAPHING OF THE SEIZED ITEMS MUST BE

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[*] Per Raffle dated October 9, 2019 *vice* Associate Justice Henri Jean Paul B. Inting.

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

2. **ID.; ID.; ID.; 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, PROVIDED THE PROSECUTION SATISFACTORILY PROVES THAT THERE IS JUSTIFIABLE GROUND FOR NON-COMPLIANCE, AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED. —** While the Court has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible; and the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the

items void and invalid, this has ***always*** been with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.

3. ID.; ID.; ID.; THREE WITNESSES REQUIREMENT NOT COMPLIED WITH WHERE THE PHYSICAL INVENTORY AND PHOTOGRAPHY OF THE ILLEGAL DRUG SEIZED WAS CONDUCTED IN THE PRESENCE OF THE BARANGAY TANODS, AS THE LAW REQUIRES THE PRESENCE OF AN ELECTED PUBLIC OFFICIAL; THE BUY-BUST TEAM'S COMMISSION OF SEVERAL AND PATENT PROCEDURAL LAPSES IN THE CONDUCT OF THE SEIZURE, INITIAL CUSTODY, AND HANDLING OF THE SEIZED DRUGS COMPROMISED THE INTEGRITY AND EVIDENTIARY VALUE OF THE CONFISCATED DRUGS.— In the case at bar, it is evident that the police officers, assuming that their story of a buy-bust operation is even true, blatantly disregarded the requirements laid down under Section 21. The buy-bust team committed several and patent procedural lapses in the conduct of the seizure, initial custody, and handling of the seized drugs, which thus compromised the integrity and evidentiary value of the confiscated drugs. More importantly, they had no valid excuse for their deviation from the rules. x x x. [T]he police failed to comply with the three witnesses requirement under Section 21. Although there were two Barangay *Tanods* that were present at the Barangay Hall for the inventory and photography of the seized items, they are not the required witnesses contemplated by the law. It should be emphasized that the law requires the presence of an **elected public official**. A Barangay *Tanod* is not an elected official; they are merely appointed by the Sangguniang Barangay. In addition, the prosecution did not offer any justifiable reason for the deviation by the buy-bust team from the requirements laid down under Section 21. They merely alleged that they decided to transfer to the Barangay Hall to conduct the inventory and photography of the seized items because the relatives of the accused were allegedly meddling with their operation. However, they did not even allege that their safety was threatened by an immediate retaliatory action by the accused or the crowd that allegedly meddled with their operation. Neither did they state that they

made earnest efforts to secure the presence of the required witnesses at the place of seizure and arrest. It bears stressing that the prosecution has the burden of (1) proving the police officers' compliance with Section 21 of RA 9165, and (2) providing a sufficient explanation in case of non-compliance.

4. ID.; ID.; ID.; JUSTIFIABLE REASONS FOR NON COMPLIANCE WITH THE THREE WITNESSES REQUIREMENT; NOT PRESENT.— As the Court *en banc* unanimously held in the recent case of *People v. Lim*. It must be **alleged** and **proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape. Verily, none of the abovementioned circumstances was attendant in the case. The police officers' excuse for non-compliance is hardly acceptable. Moreover, the members of the buy-bust team could have strictly complied with the requirements of Section 21 had they been more prudent in doing what is required in their job.

5. ID.; ID.; ID.; THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTY CANNOT OVERCOME THE STRONGER PRESUMPTION OF INNOCENCE IN FAVOR OF THE ACCUSED, WHERE THE BUY-BUST TEAM BLATANTLY DISREGARDED THE ESTABLISHED PROCEDURES.— The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right. In this connection, the presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of

the accused. Especially as applied in this case where there are several procedural lapses by the buy-bust operation which cast doubt as to the regularity in the performance of official duties by the police officers. The Court has repeatedly held that the fact that buy-bust is a planned operation, it strains credulity why the buy-bust team could not have ensured the presence of the required witnesses pursuant to Section 21 or at the very least marked, photographed and inventoried the seized items according to the procedures in their own operations manual. In this case, the presumption of regularity cannot stand because of the buy-bust team's blatant disregard of the established procedures under Section 21 of RA 9165.

6. **ID.; ID.; ID.; ID.; THE PROSECUTION FAILS TO PROVE THE *CORPUS DELICTI* OF THE OFFENSES OF ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS WHERE THE BUY-BUST TEAM COMMITTED MULTIPLE UNEXPLAINED BREACHES OF PROCEDURE IN THE SEIZURE, CUSTODY, AND HANDLING OF THE SEIZED DRUGS; WHERE DEVIATIONS FROM THE PRESCRIBED PROCEDURE ARE OBSERVED AND NO JUSTIFIABLE REASONS ARE PROVIDED, THE CONVICTION MUST BE OVERTURNED, AND THE INNOCENCE OF THE ACCUSED AFFIRMED.—** [T]he prosecution failed to prove the *corpus delicti* of the offenses of sale of illegal drugs and illegal possession of dangerous drugs due to the multiple unexplained breaches of procedure committed by the buy-bust team in the seizure, custody, and handling of the seized drug. As a reminder, the Court exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions of Section 21 RA 9165, as amended, and its implementing rules and regulations, which is fundamental in preserving the integrity and evidentiary value of the *corpus delicti*. **To the mind of the Court, the procedure outlined in Section 21 is straightforward and easy to comply with.** In the presentation of evidence to prove compliance therewith, the prosecutors are enjoined to recognize any deviation from the prescribed procedure and provide the explanation therefor as dictated by available evidence. Compliance with Section 21 being integral to every conviction, the appellate court, this Court included, is at liberty to review the records of the case to satisfy that the required proof has been adduced by the prosecution whether

the accused has raised, before the trial or appellate court, any issue of non-compliance. If deviations are observed and no justifiable reasons are provided, the conviction must be overturned, and the innocence of the accused affirmed.

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

CAGUIOA, *J.*:

This is an Appeal[1] under Section 13(c), Rule 124 of the Rules of Court from the Decision[2] dated December 5, 2014 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 06172, which affirmed the Decision[3] dated April 4, 2013 rendered by the Regional Trial Court, Branch 259, Parañaque City (RTC) in Criminal Case No. 10-0402, finding accused-appellants Cesaria Basio Vertudes (Cesaria) and Henry Basio Vertudes (Henry) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,[4] and in Criminal Case No. 10-0399, finding accused-appellant Cesaria likewise guilty beyond reasonable doubt of violating Section 11, Article II of RA 9165.

The Facts

Accused-appellants Cesaria and her son, Henry, were indicted for violation of Section 5 of RA 9165 in an Information which reads as follows:

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[1] See Notice of Appeal dated December 22, 2014, *rollo*, pp. 29-30.

[2] *Id*. at 2-28. Penned by Associate Justice Romeo F. Barza with Associate Justices Hakim S. Abdulwahid and Ramon A. Cruz, concurring.

[3] CA *rollo*, pp. 46-54. Penned by Presiding Judge Danilo V. Suarez.

[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,

That on or about the 17th day of April 2010, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together[,] and both of them mutually helping and aiding one another, not being authorized by law, did then and there willfully, unlawfully[,] and feloniously sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport two (2) heat-sealed transparent plastic sachets weighing 0.09 gram and 0.11 gram with a total weight of 0.20 gram to Police Posem Buyer PO2 Elbert Ocampo, which contents of the said plastic sachets when tested were found to be positive for **Methamphetamine Hydrochloride**, a dangerous drug.

CONTRARY TO LAW.[5]

In addition to the above-mentioned charge, Cesaria was likewise charged for violating Section 11 of RA 9165 in the following Information:

That on or about the 17th day of April 2010, in the City of Parañaque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to possess, did then and there willfully, unlawfully[,] and feloniously have in her possession and under her control and custody one (1) piece heat sealed transparent sachet weighing 0.12 gram, which when tested[,] [was] positive for **Methamphetamine Hydrochloride**, a dangerous drug.

CONTRARY TO LAW.[6]

Upon arraignment, Cesaria and Henry pleaded not guilty to the respective charges against them.[7]

Version of the Prosecution

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

AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES" (2002).

[5] *Rollo*, p. 3; emphasis in the original.

[6] *Id*. at 3-4; emphasis in the original.

[7] *Id*. at 4.

The combined testimonies of the witnesses for the prosecution, PO2 Elbert Ocampo *(PO2 Ocampo)* and SPO1 Ricky Macaraeg *(SPO1 Macaraeg)* show that on April 16, 2010 at around 10:00 p.m., PO2 Ocampo was on duty at the Station Anti-Illegal Drugs – Special Operations Task Group (SAIDSOTG) of Parañaque Police Station, when one of their regular assets came to their office to give information about the illegal selling of drugs in the area of Barangay Baclaran, Parañaque City by herein appellants Cesaria and Henry. A buy-bust team was then organized composed of PO2 Ocampo, who was to act as poseur-buyer, SPO1 Macaraeg, PSI Marlou Besona, PO3 Fernan Acbang, and PO2 Domingo Julaton (PO2 Julaton). Two Php1,000.00 bills were given to PO2 Ocampo to purchase Php2,000[.]00 worth of *shabu* from the suspects which he marked with *"x."* After coordinating with the Philippine Drug Enforcement Agency (PDEA) and conducting a short briefing, the team, together with their informant, then proceeded to Barangay Baclaran. Upon arrival at a small wet market along Quirino Avenue, Baclaran, PO2 Ocampo and the informant went toward Bagong Ilog Street, while the rest of the team discre[e]tly followed. There they spotted an elderly woman sitting outside of a house and a male person standing along the street who were later identified respectively as herein appellants Cesaria and her son[,] Henry. At about 12:10 a.m. of April 17, 2010, PO2 Ocampo and the informant proceeded to approach Henry to buy *shabu*. The informant greeted Henry and introduced PO2 Ocampo as a businessman in need of *shabu*. PO2 Ocampo then asked Henry if he has Php2,000.00 worth of *shabu* to which the latter replied that he does not have any and asked them to wait as he will first ask his mother, Cesaria, if she has some left. Henry then shouted to the latter, *"Nay, meron ka pa ba diyan, meron akong scorer dito,"* to which the latter replied, *"meron pa ako at marami pa akong hawak dito."* Cesaria then stood up to approach them. PO2 Ocampo handed Henry the marked money which the latter in turn handed to his mother. In return, Cesaria handed to Henry two (2) plastic sachets containing white crystalline substance which he in turn handed to PO2 Ocampo. Upon receiving the sachets, PO2 Ocampo executed the pre-arranged signal by turning his cap backwards to alert the rest of the team that the transaction has been completed. SPO1 Macaraeg then rushed to the scene and was able to arrest Henry. Cesaria, on the other hand, was apprehended by PO2 Ocampo. They introduced themselves as police officers and informed appellants of their constitutional rights. Upon instruction from PO2 Ocampo, Cesaria brought out the contents of her pockets which revealed the marked money previously given by PO2 Ocampo

and another plastic sachet likewise containing a white crystalline substance. PO2 Ocampo marked at the scene of the arrest the two plastic sachets subject of the sale and the other one recovered from the pocket of Cesaria. However, since there was already a crowd forming at the area, the team proceeded to the barangay hall of Baclaran. There, PO2 Ocampo prepared an inventory of the recovered evidence which was witnessed therein by Barangay Ex-O Jaime Marzan and Barangay Tanod Rene Eliserio. Photographs of the inventory were also taken therein by PO2 Julaton. The team then proceeded to their office to prepare the request for laboratory examination of the contents of the recovered plastic sachets.

On cross examination, PO2 Ocampo testified that no test buy was conducted previous to the buy-bust operation and that he became aware of Cesaria's previous arrest by the National Bureau of Investigation (NBI) upon watching the same on television.[8]

Version of the Defense

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

On the part of the defense, they first presented the testimony of herein appellant Cesaria. She testified that she was previously arrested by the NBI on April 10, 2010, by virtue of a search warrant against an alias *"Mommy"* but was nevertheless released on April 16, 2010 at 1:00 p.m. after it was established that she was not the said person. On her release, she was fetched by her son, herein appellant Henry and the latter's wife, Irish Agnot Vertudes *(Irish)*. From the NBI, she proceeded to the Parañaque City Jail to visit her incarcerated son Antonio after Irish informed her that the latter was in jail. At about 6:00 p.m., she left the Parañaque City Jail to go home to her house at No. 1823 Bagong Ilog Street, Barangay Baclaran, Parañaque City. At around 9:00 p.m., she was watching television in her room at the second floor of her house when several persons entered her house, two of whom went upstairs to her room and handcuffed her. They introduced themselves as policemen and told her to go with them to the police precinct to explain herself at their office. When she asked them what crime she committed, she was just told to go with them and explain at their office. When she went down, she saw

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[8] *Id*. at 4-6; italics in the original.

her son Henry who was likewise in handcuffs. They then proceeded to the car of the policemen along with her daughter-in-law and were taken to the Barangay outpost. Inside, they were made to stand up and face the table while PO2 Ocampo suddenly brought out a black pouch which contained two thousand pesos (Php 2,000.00) and three (3) plastic sachets. She asked them why they have placed the said items there when they did not recover anything from her, she was merely told, *"Huwag kana lang maingay."* She and the barangay tanod then signed a document. After which, she and Henry boarded again the policemen's car and were taken to their office near a fire station where she and Henry were made to sign a report. Afterwards, they were brought to a place for drug testing. They were not appraised by the police on the results of such test. They were taken to the Coastal Jail. Because of the incident, she and her son filed a complaint against the policemen who arrested them before the People's Enforcement Board.

x x x x x x x x x

The defense next presented as witness herein appellant Henry Basio Vertudes. He testified that herein appellant Cesaria is his mother. On the evening of April 16, 2010 at around 9:00 p.m., he was at the corner of Bagong Ilog and Bagong Silang Streets, having a drinking session with his friend Alison Duria when five men in civilian clothes with firearms approached and asked him to point to the house of a person they were looking for. When he failed to comply, they handcuffed him. When he asked what his fault was, they did not reply and started proceeding towards their house. He was then made to sit down in front of their house while two persons went inside. The said persons then went out with his mother. He asked the two persons why they brought his mother out of the house but they again did not answer. His pregnant wife also asked what violation he and his mother have committed but was threatened to be slapped and told to keep quiet. He and his mother were then taken to the Barangay outpost at Barangay Baclaran near Aiport Road where they were shown a small pouch while in the presence of Barangay Tanods. Pictures were then taken of the contents of said pouch. They then proceeded to the Police Headquarters near SM Sucat. They learned of the charges against them when they were brought for inquest at a small detention cell as SID. Because of the incident, they filed a complaint against the arresting officers before the PLEB. In relation

to said complaint, his wife, Irish, and his friend, Alison Duria submitted their sworn statements.[9]

Ruling of the RTC

In the assailed Decision[10] dated April 4, 2013, the RTC ruled that denial or frame-up is a standard defense ploy in most prosecutions for violation of the Dangerous Drugs Law.[11] Aside from the self-serving testimonies of the accused, no other witnesses were presented to corroborate recollections of the events leading to their arrest.[12] It further held that non-compliance with Section 21 of RA 9165 need not be followed as an exact science.[13] Non-compliance with Section 21 does not render the accused's arrest illegal or the items seized/confiscated inadmissible.[14] What is essential is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.[15]

The dispositive portion of the Decision reads:

WHEREFORE, premises considered[,] the court renders judgment as follows:

1. In ***Criminal Case No. 10-0399 for Violation of Sec. 11, Art. II, RA 9165***, the court finds accused **CESARIA BASIO VERTUDES, GUILTY** beyond reasonable doubt and is sentenced to suffer the penalty of **imprisonment of twelve (12) years and one (1) day as minimum to seventeen (17) years and four (4) months as maximum and to pay a fine of Php 300,000.00.**

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[9] *Id*. at 7-9; italics in the original.

[10] *Supra* note 3.

[11] *Rollo*, p. 50.

[12] *Id*.

[13] *Id*. at 52.

[14] *Id*.

[15] *Id*.

2. In ***Criminal Case No. 10-0402 for Violation of Sec. 5, Art. II, RA 9165,*** the court finds accused **HENRY BASIO VERTUDES and CESARIA BASIO VERTUDES, GUILTY** beyond reasonable doubt and are hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT AND TO PAY A FINE OF Php 500,000.00 EACH.**

x x x x x x x x x

SO ORDERED.[16]

Aggrieved, Cesaria and Henry appealed to the CA.

Ruling of the CA

In the assailed Decision[17] dated December 5, 2014, the CA affirmed the conviction of Cesaria and Henry. The dispositive portion of the Decision reads:

WHEREFORE, the foregoing considered, the present appeal is **DENIED**. The Decision of the Regional Trial [Court] of Parañaque, Branch 259, in Criminal Case Nos. 10-0399 and 10-0402 dated April 4, 2013, is hereby **AFFIRMED**.

SO ORDERED.[18]

The CA ruled that all the elements of the crime of illegal sale of *shabu* have been established by the testimony of PO2 Elbert Ocampo (PO2 Ocampo), the poseur-buyer in the buy-bust operation against appellants.[19] With respect to the charge of illegal possession of *shabu* against Cesaria, all the elements of the said crime were also sufficiently established by the prosecution.[20] It further ruled that prosecutions for illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation.[21] Their narration therefore

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[16] *Id*. at 53-54; emphasis and italics in the original.

[17] *Supra* note 2.

[18] *Rollo*, p. 27.

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

[20] *Id*. at 17.

[21] *Id*. at 18.

of the incident buttressed by the presumption that they have regularly performed their duties must be given weight in the absence of convincing proof to the contrary.[22] Lastly, it ruled that compliance with Section 21 of RA 9165 is not mandatory provided that the integrity and evidentiary value of the seized items have been preserved.[23]

Hence, the instant appeal.

Issues

Whether the guilt of Henry for violation of Section 5 and of Cesaria for violation of Sections 5 and 11 of RA 9165 was proven beyond reasonable doubt.

The Court's Ruling

The appeal is meritorious.

After a review of the records, the Court resolves to acquit Cesaria and Henry. The prosecution admittedly failed to prove that the buy-bust team complied with the mandatory requirements of Section 21 of RA 9165, which thus results in their failure to prove the guilt of Cesaria and Henry beyond reasonable doubt.

In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense[24] and the fact of its existence is vital to sustain a judgment of conviction.[25] It is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty.[26] Thus, in order to obviate any unnecessary doubt on their identity, the prosecution has to show an unbroken chain of custody over

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[22] *Id*.

[23] *Id*. at 20.

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

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

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

the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[27]

In this connection, the Court has repeatedly held that Section 21, Article II of RA 9165,[28] the applicable law at the time of the commission of the alleged crime, **strictly requires** that: (1) the seized items be inventoried and photographed **immediately after seizure or confiscation**; (2) that the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice.[29]

Verily, the three required witnesses **should already be physically present at the time of the conduct of the inventory of the seized items which, again, must be immediately done at the place of seizure and confiscation**

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[27] *People v. Manansala*, G.R. No. 229092, February 21, 2018, 856 SCRA 359, 370.

[28] The said section reads as follows:

Sec. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take 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/he representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

[29] See RA 9165, Art. II, Secs. 21(1) and 21(2); *People v. Ilagan y Baña*, G.R. No. 227021, December 5, 2018; *People v. Mendoza y Magno*, G.R. No. 225061, October 10, 2018; and *Ramos v. People*, G.R. No. 233572, July 30, 2018; emphasis and underscoring supplied.

— a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.[30]

While the Court has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible;[31] and the failure of the 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, this has ***always*** been with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items re properly preserved.[32]

The buy-bust team utterly failed to comply with the requirements of Section 21 of RA 9165

In the case at bar, it is evident that the police officers, assuming that their story of a buy-bust operation is even true, blatantly disregarded the requirements laid down under Section 21. The buy-bust team committed several and patent procedural lapses in the conduct of the seizure, initial custody, and handling of the seized drug, which thus compromised the integrity and evidentiary value of the confiscated drugs. More importantly, they had no valid excuse for their deviation from the rules.

Based on the narration of facts by the prosecution, the police officers marked the seized items at the scene of the arrest.[33] However, they claimed that since there was already a crowd forming at the area, the team proceeded to the Barangay Hall

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[30] *People v. Angeles y Arimbuyutan,* G.R. No. 237355, November 21, 2018; emphasis supplied.

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

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

[33] *Rollo,* p. 5.

of Baclaran.[34] There, PO2 Ocampo prepared an inventory of the recovered evidence, which was witnessed by Barangay Ex-O Jaime Marzan and Barangay Tanod Rene Eliserio.[35] Photographs of the inventory were also taken therein by PO2 Domingo Julaton.[36]

The Court points out that, as testified by PO2 Ocampo, **none** of the three required witnesses was present at the time of arrest of the accused-appellants and the seizure of the drugs. Only two Barangay Tanods were present at the inventory of the seized drugs at the Barangay Hall:

Q: Where were these markings placed?

A. The markings were done at the scene.

Q: Who were present at that time?

A: The accused, our group[,] and the relatives of the accused.

Q: What happened after the markings were made?

A: Our team leader decided to proceed to the barangay hall to conduct the inventory because the accused's relatives were already meddling with our operation.

x x x x x x x x x

Q: At the barangay, what happened?

A: In front of our witnesses, Barangay Ex-o Jaime Marzan and Barangay Tanod Rene Eliserio, we prepared the inventory ofthe recovered evidence.

Q: So, Ex-O Marzan and Tanod Eliserio were already at the barangay when you arrived there?

A: Yes, Ma'am.[37]

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[34] *Id*.

[35] *Id*.

[36] *Id*.

[37] TSN, September 28, 2011, pp. 26-27; emphasis supplied.

It is thus obvious that the police failed to comply with the three-witnesses requirement under Section 21. Although there were two Barangay *Tanods* that were present at the Barangay Hall for the inventory and photography of the seized items, they are not the required witnesses contemplated by the law. It should be emphasized that the law requires the presence of an **elected public official**. A Barangay *Tanod* is not an elected official; they are merely appointed by the Sangguniang Barangay.[38]

In addition, the prosecution did not offer any justifiable reason for the deviation by the buy-bust team from the requirements laid down under Section 21. They merely alleged that they decided to transfer to the Barangay Hall to conduct the inventory and photography of the seized items because the relatives of the accused were alledgedly meddling with their operation.[39] However, they did not even allege that their safety was threatened by an immediate retaliatory action by the accused or the crowd that allegedly meddled with their operation.[40] Neither did they state that they made earnest effort to secure the presence of the required witnesses at the place of seizure and arrest.

It bears stressing that the prosecution has the burden of (1) proving the police officers' compliance with Section 21 of RA 9165, and (2) providing a sufficient explanation in case of non-compliance. As the Court *en banc* unanimously held in the recent case of *People v. Lim*,[41]

> It must be **alleged** and **proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:
>
> (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and

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[38] RA 7160, Sec. 391(16).

[39] TSN, September 28, 2011, pp. 26-27.

[40] *People v. Lim*, G.R. No. 231989, September 4, 2018.

[41] *Id*.

> 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.[42]

Verily, none of the abovementioned circumstances was attendant in the case. The police officers' excuse for non-compliance is hardly acceptable. Moreover, the members of the buy-bust team could have strictly complied with the requirements of Section 21 had they been more prudent in doing what is required in their job.

Thus, contrary to the ruling of the RTC and the CA, the integrity and evidentiary value of the *corpus delicti* were compromised. Cesaria and Henry must perforce be acquitted.

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

The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right.[43] In this connection, the presumption of regularity in the performance of duty cannot

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[42] *Id*.; emphasis and underscoring supplied, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018.

[43] 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."

overcome the stronger presumption of innocence in favor of the accused.[44] Especially as applied in this case where there are several procedural lapses by the buy-bust operation which cast doubt as to the regularity in the performance of official duties by the police officers.

The Court has repeatedly held that the fact that buy-bust is a planned operation, it strains credulity why the buy-bust team could not have ensured the presence of the required witnesses pursuant to Section 21 or at the very least marked, photographed and inventoried the seized items according to the procedures in their own operations manual.[45]

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

All told, the prosecution failed to prove the *corpus delicti* of the offenses of sale of illegal drugs and illegal possession of dangerous drugs due to the multiple unexplained breaches of procedure committed by the buy-bust team in the seizure, custody, and handling of the seized drug.

As a reminder, the Court exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions of Section 21 of RA 9165, as amended, and its implementing rules and regulations, which is fundamental in preserving the integrity and evidentiary value of the *corpus delicti*. **To the mind of the Court, the procedure outlined in Section 21 is straightforward and easy to comply with.** In the presentation of evidence to prove compliance therewith, the prosecutors are enjoined to recognize any deviation from the prescribed procedure and provide the explanation therefor as dictated by available evidence. Compliance with Section 21 being integral to every conviction, the appellate court, this Court included, is at liberty to review the records of the case to satisfy itself that

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[44] *Id*.

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

the required proof has been adduced by the prosecution whether the accused has raised, before the trial or appellate court, any issue of non-compliance. If deviations are observed and no justifiable reasons are provided, the conviction must be overturned, and the innocence of the accused affirmed.[46]

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated December 5, 2014 of the Court of Appeals in CA-G.R. CR-H.C. No. 06172, is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellants **CESARIA BASIO VERTUDES** and **HENRY BASIO VERTUDES** are **ACQUITTED** of the crimes charged on the ground of reasonable doubt, and they are **ORDERED IMMEDIATELY RELEASED** from detention unless they are 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 (*Chairperson*), *Reyes, J. Jr., Lazaro-Javier,* and *Zalameda, JJ.,* concur.

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[46] See *People v. Jugo*, G.R. No. 231792, January 29, 2018, 853 SCRA 321.

THIRD DIVISION

[G.R. No. 221709. October 16, 2019]

NATIONAL POWER CORPORATION, *petitioner, vs.* **DELTA P, INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY; AS A RULE, FINDINGS OF FACT OF THE REGIONAL TRIAL COURT, AS AFFIRMED IN TOTALITY BY THE COURT OF APPEALS, ARE BINDING AND CONCLUSIVE UPON THE SUPREME COURT; CASE AT BAR.—** The Court adheres to the findings of fact consistent with both the RTC and the CA that the debit made by NAPOCOR was unilaterally done, and that NAPOCOR's supply of fuel to Delta P was an act of gratuity. As a rule, the findings of fact of the RTC, as affirmed in totality by the CA, are binding and conclusive upon this Court. In *Gatan v. Vinarao*, the Court stated it has always accorded great weight and respect to the findings of fact of trial courts, especially in their assessment of the credibility of witnesses. x x x In this case, absent any proper substantiation on the part of NAPOCOR that there was arbitrariness or oversight on the part of the RTC or CA in appreciating the evidence presented as to the status of the grant during the lower proceedings, the Court adheres to the lower courts' findings of fact.

2. **CIVIL LAW; DONATION; DEFINED AS AN ACT OF LIBERALITY; CASE AT BAR.—** [T]he Court agrees to the finding that the supplying of fuel was a donation, which was defined in *Republic of the Philippines v. Sps. Llamas,* to wit: A donation is, by definition, "an act of liberality." Article 725 of the Civil Code provides: Article 725. Donation is an act of liberality whereby a person disposes gratuitously of a thing or right in favor of another, who accepts it. To be considered a donation, an act of conveyance must necessarily proceed freely from the donor's own, unrestrained volition. A donation cannot be forced: it cannot arise from compulsion, be borne by a requirement, or otherwise be impelled by a mandate imposed upon the donor by forces that are external to him or her. Article 726 of the Civil Code reflects this commonsensical

wisdom when it specifically states that conveyances made in view of a "demandable debt" cannot be considered true or valid donations. NAPOCOR's grant was not forced, did not arise from any compulsion exerted upon it, and was not impelled by any mandate. Even arguing that NAPOCOR was constrained to supply the fuel at the request of the local government, there was nothing to hinder it from annotating or stating even in brief terms that this payment would be a loan meant to be paid back once Delta P reaches financial stability. NAPOCOR itself mentions that as a government entity subject of audit, the funds that it provides must be carefully accounted for. Thus, NAPOCOR should have protected what it supplied by putting a caveat for whatever it gave, and absent that, there is no other conclusion than to treat the supply of fuel as gratuitous and a donation without condition.

3. REMEDIAL LAW; JUDGMENTS; IMMUTABILITY OF JUDGMENT; WHEN A FINAL JUDGMENT IS EXECUTORY, IT BECOMES IMMUTABLE AND UNALTERABLE; TWO-FOLD PURPOSE; EXCEPTIONS.— It is axiomatic that when a final judgment is executory, it becomes immutable and unalterable. It may no longer be modified in any respect either by the tribunal which rendered it or even by this Court. The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time. It has a two-fold purpose: *first*, to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business, and *second*, to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist. Controversies cannot drag on indefinitely, and the rights and obligations of every litigant must not hang in suspense for an indefinite period of time. There are, however, recognizable instances when a final judgment may be subject to modification. In *FGU Insurance Corp. v. RTC of Makati City, Br. 66, et al.*, the Court took the occasion to expound on the doctrine and the instances when there can be an acceptable deviation from the same. x x x But like any other rule, it has exceptions, namely: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and

inequitable. The exception to the doctrine of immutability of judgment has been applied in several cases in order to serve substantial justice. x x x. In the case herein, none of these exceptions exist for the Court to digress "from the judgment of the RTC. NAPOCOR's premise that the post-audit qualifies as a supervening event that would bring into operation the non-application of the immutability doctrine, is mistaken. A supervening event, to be sufficient to stay or stop the execution, must alter the execution to become inequitable, impossible, or unfair, and cannot rest on unproved or uncertain facts. x x x In this case, the post-audit of the adjudged amount based on the PPA with PPC which provided a formula in the fuel component computable in the billings is irrelevant to the proceedings and cannot be deemed to be a fact that transpired after the judgment became final, as it was already existing. The post-audit concerned itself with the subject amounts already deemed final, and not any amounts that came about through the contemporaneous and/or subsequent actions of the involved parties.

4. CIVIL LAW; UNJUST ENRICHMENT; TWO CONDITIONS; ESTABLISHED IN CASE AT BAR.— Despite the foregoing, the Court agrees with the arguments posited by NAPOCOR and finds that the lower courts erred in stating that unjust enrichment is not present in this case. An exception to the general rule that the findings of fact are binding is when the inference of the lower court is manifestly mistaken. Herein, the Court finds that both the trial court and the CA were manifestly mistaken when they failed to take into consideration the fact that Delta P was enriched without justification due to the fuel supply given by NAPOCOR. There is unjust enrichment "when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience." The principle of unjust enrichment requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at the expense of another. In the case at bar, the fuel grant, while done unilaterally, was still done without NAPOCOR receiving anything in return, even when Delta P's internal issues were eventually sorted out. NAPOCOR ended up prejudiced by its action especially as there was no legal obligation mandating it to contribute to the woes of Delta P, only the intervention of the local government due

to the power crisis in Palawan. There was an appreciable monetary loss on the part of NAPOCOR, despite Delta P's lack of attendant blame, with the end result of Delta P's enrichment being a correlative loss on the books of NAPOCOR. x x x While the *Almario* case states that intent to donate on the part of NAPOCOR, which the Court holds is present despite the former's protestations, may be enough to remove a case from the ambit of the unjust enrichment doctrine, the failure to acquire any compensation even from the local government of Palawan, who had requested that NAPOCOR provide the fuel in the first place, means that there was unjust enrichment on the part of NAPOCOR. This case presents one of the rare situations where Delta P is unjustly enriched through the voluntary act of the enriching party, NAPOCOR in this case. The Court holds that while the principle of *solutio indebiti* will not apply as a remedy for NAPOCOR's recovery, as the payment of the fuel costs was not a mistake and NAPOCOR was not able to prove that the requirements for the same have been met, NAPOCOR is entitled to recover under the doctrine of unjust enrichment, for the amount it paid to Delta P for the supply of fuel, for the period February 25, 2003 to June 25, 2003.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Mcs Noche Law Offices for respondent.

D E C I S I O N

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

Challenged before this Court *via* this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court is the Decision[2] dated March 26, 2015 of the Court of Appeals (CA),

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[1] *Rollo,* pp. 9-26.

[2] Penned by Associate Justice Pedro B. Corales, with Associate Justices Sesinando E. Villon and Rodil V. Zalameda (now a Member of this Court), *concurring*; *id.* at 33-46.

and its Resolution[3] dated November 25, 2015, in CA-G.R. CV No. 99605, which affirmed the Decision[4] dated March 30, 2012 of the Regional Trial Court (RTC) of Puerto Princesa City, Branch 47, in Civil Case No. 3997.

The Antecedent Facts

The facts, as summarized from the CA, are as follows: respondent Delta P, Inc. (Delta P), an independent power producer, previously took over the operations of a generating plant in Puerto Princesa City owned by Paragua Power Corporation (PPC). At the time of the takeover of operations, PPC had a Power Purchase Agreement (PPA) with petitioner National Power Corporation (NAPOCOR), wherein the latter agreed to purchase the electricity generated by the former for the purpose of meeting NAPOCOR's obligation to supply the consumers of Palawan Electric Cooperative, Inc. in Puerto Princesa City and the towns of Narra, Aborlan, and Quezon, Palawan.[5]

As a result of Delta P's takeover, NAPOCOR was requested to direct payment for the services to Delta P. However, NAPOCOR refused to do so, with the reasoning that PPC, not Delta P, is the contracting party involved in the PPA. The standstill resulted in Delta P subsequently advising NAPOCOR that it could no longer operate the power station for lack of funds.[6]

On February 26, 2003, NAPOCOR Vice-President for Strategic Power Utilities Group, Lorenzo S. Marcelo (Marcelo), issued a Memorandum to NAPOCOR President Rogelio M. Murga (Murga) seeking approval to supply the fuel and pay the manpower services of PPC's generating plant due to the imminent power shortage in Puerto Princesa City. Allegedly,

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

[4] Rendered by Presiding Judge Jocelyn Sundiang Dilig; *id*. at 116-148.

[5] *Id*. at 34.

[6] *Id*.

this shortage was caused by Delta P's inability to produce the required electricity due to the lack of bunker fuel.[7]

The Memorandum was approved by Murga. Thus, Marcelo sent a letter on March 7, 2003 to Delta P's Plant Manager informing him that, upon the request of the local government of Palawan, NAPOCOR would supply fuel to the generating plant and pay the manpower salaries while Delta P's internal problems were being resolved.[8]

The already fragile equilibrium began to further fracture when Delta P instituted on March 12, 2003 an action for collection of sum of money against NAPOCOR, docketed as Civil Case No. 3766, insisting on its right to collect payment of electricity "off-taken" by NAPOCOR. On July 15, 2003, the RTC upheld the action taken by Delta P and rendered a judgment recognizing the latter's right under the doctrines of *accion in rem verso* and unjust enrichment to be paid for the electricity "off-taken" by NAPOCOR from the months December 2002 to June 2003. This was despite the lack of any existing contract between the parties, as the RTC found that NAPOCOR benefited from Delta P without paying a single centavo.[9]

NAPOCOR was, thus, ordered to pay ₱87,944,215.67 representing the ₱90,394,855.86 total value of the invoices from January 28, 2003 to June 27, 2003 less ₱2,450,640.19 for adjustment in billing due to reduction in tariff effective March 9, 2003, for the billing period February 25, 2003 to March 25, 2003.[10] This judgment attained finality, and was subsequently implemented against NAPOCOR.

On July 30, 2003, NAPOCOR sent to Delta P a Notice of Termination reminding the latter that it undertook the supply of fuel requirement of the generating plant as a remedial measure

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[7] *Id*.

[8] *Id*. at 35.

[9] *Id*. at 36.

[10] *Id*.

to address the imminent power shortage in Puerto Princesa City, but with the payment of the adjudged amount in Civil Case No. 3766, there was no longer any basis for the NAPOCOR to continue its fuel supply. Thus, Delta P stated that it will terminate the said supply of fuel to the 16MW Power Plant effective August 15, 2003.[11]

However, the parties belatedly agreed that Delta P should continue generating and supplying electricity in Palawan with the express undertaking of NAPOCOR to pay monthly invoices for the services rendered by Delta P at the power station.[12]

The contractual relationship of the parties continued without any hitch until the NAPOCOR issued on December 4, 2003 Debit Memo S1-03-12-0041 (Debit Memo) deducting ₱24,449,247.36 from Delta P's account for the alleged incremental costs of the fuel it had supplied to Delta P from February 25, 2003 to June 25, 2003. Finding the same preposterous, Delta P countered by filing a sum of money case assailing the validity of the Debit Memo for lack of prior agreement authorizing payment of the fuel costs.[13]

Therein, Delta P alleged that NAPOCOR voluntarily chose to supply fuel in the power station despite lack of request, in order to avoid a disruption of fuel, and that Delta P's acceptance of the fuel should not be construed as an implied approval to bear the costs of the same. Delta P, likewise, pointed to its previous invoices to NAPOCOR from February 25, 2003 to June 25, 2003, which did not include the fuel costs component of the electricity it generated and supplied at the power station.[14]

In response, NAPOCOR invoked Delta's alleged voluntary acceptance and benefit from the fuel supplied, and that upon

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[11] *Id*.

[12] *Id*. at 37.

[13] *Id*.

[14] *Id*.

an audit, it was discovered that there were variances between the actual costs of fuel and the fuel costs tariff.[15]

In its Decision[16] dated March 30, 2012, the RTC ruled in favor of Delta P, the dispositive portion of the same reading, to wit:

> **WHEREFORE**, premises considered, judgment is hereby rendered, to wit:
>
> 1. Declaring the debit made by the [NAPOCOR] on the account of the [Delta P] for the period from February 25, 2003 to June 25, 2003 for "cost of fuel delivered to DELTA P" in the total amount of TWENTY[-]FOUR MILLION, FOUR HUNDRED FORTY-NINE THOUSAND, TWO HUNDRED FORTY-SEVEN PESOS AND TH[IR]TY-SIX CENTAVOS (Php24,449,247.36) to be void and illegal;
>
> 2. Ordering the [NAPOCOR] to pay [Delta P]:
> a. TWENTY[-]FOUR MILLION, FOUR HUNDRED FORTY-NINE THOUSAND, TWO HUNDRED FORTY-SEVEN PESOS AND TH[IR]TY-SIX CENTAVOS (PHP24,449,247.36) plus legal interest from the finality of this Decision until full payment;
> b. FIVE HUNDRED THOUSAND PESOS (PHP500,000.00) as attorney's fees[.]
>
> With costs against the defendant.
>
> SO ORDERED.[17] (Emphasis in the original)

The RTC denied the NAPOCOR's Motion for Reconsideration in an Order[18] dated July 4, 2012. On appeal, the CA dismissed the NAPOCOR's petition for lack of merit,[19] to wit:

> **WHEREFORE,** the appeal is **DENIED** for lack of merit. The March 30, 2012 Decision and the July 4, 2012 Order of the [RTC],

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[15] *Id*.

[16] *Id*. at 116-148.

[17] *Id*. at 146-147.

[18] *Id*. at 40.

[19] Decision dated March 26, 2015; *id*. at 33-46.

Branch 47, Puerto Princesa City in Civil Case No. 3997 are hereby **AFFIRMED**.[20] (Emphasis in the original)

NAPOCOR's Motion for Reconsideration[21] was, likewise, struck down for lack of merit.[22] Hence, this Petition.

The Issues

First, whether or not NAPOCOR's supply of fuel to Delta P is gratuitous, and in the form of a donation.

Second, whether or not Delta P is liable to reimburse NAPOCOR for the latter's payment of the same, and subject to NAPOCOR's computation of the cost taking into consideration NAPOCOR's allegations that the post-audit constituted a supervening event justifying the payment, and despite the judgment rendered by the RTC in Civil Case No. 3766.

The Arguments of the Parties

NAPOCOR argues that the lower courts mistakenly perceived the supply of fuel to be in the form of a donation and essentially gratuitous. NAPOCOR states that, had it been its intention to provide fuel to Delta P free of charge, it would have necessarily manifested that gratuity clearly to the latter, especially since public funds were utilized to fund the procurement of the fuel and as such, all the expenses would be subject to post-audit.[23]

For NAPOCOR, the lower courts erred in finding as contrary to law NAPOCOR's act of debiting from Delta P's invoice the amount totaling ₱24,449,247.36. This debited amount allegedly corresponds to the incremental cost NAPOCOR had to shoulder because of its supply of fuel to Delta P's 16MW Diesel Power Station in Puerto Princesa City, Palawan.[24]

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[20] *Id*. at 45.

[21] *Id*. at 50-56.

[22] Resolution dated November 25, 2015; *id*. at 48-49.

[23] *Id*. at 19.

[24] *Id*. at 18.

NAPOCOR alleges that its debit was necessarily valid, as it was able to properly substantiate with competent evidence its overpayment and the alleged prevailing circumstances, rendering the execution inequitable. This overpayment was allegedly due to Delta P unjustifiably excluding the market fluctuations and transshipment costs that resulted to an erroneous computation, which led the NAPOCOR to make an overpayment of ₱24,449,247.36 representing the difference between the allowable fuel cost and the actual fuel cost.[25]

When NAPOCOR took on the responsibility of delivering fuel to Delta P, the latter, thus, became liable to compensate NAPOCOR all the incremental costs for delivering fuel, including the market fluctuations and transshipment costs from the period of March 2003 to June 2003. NAPOCOR alleges that its computation showed that Delta P merely indicated a zero amount in the fuel tariff, but the incremental fuel costs were not included, and that the increase in the cost of fuel in the international market was not taken into consideration by Delta P in its computation. Delta P, instead, relied on the reference rate stated in the PPA formula, and disregarded market fluctuations and transshipment costs.[26]

NAPOCOR, further, alleges that the principles of unjust enrichment and *solution indebiti* are applicable to the case at bar. As NAPOCOR took on the responsibility of delivering fuel to Delta P, the latter became liable to compensate NAPOCOR for all the incremental costs of the delivery, which included market fluctuations and transshipment.[27]

On the other hand, Delta P counters that NAPOCOR was unable to raise any arguments that have not already been considered, passed upon, and resolved by the trial court and

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

[26] *Id*. at 13-15.

[27] *Id*. at 21.

the CA, and, in fact, are merely rehashes or reiterations of the points already adjudicated upon by the lower courts.[28]

For Delta P, the payment made to it by NAPOCOR was not made by mistake as it was pursuant to a decision that had already become final and executory[29] and, as such, was now immutable and unalterable. Anent NAPOCOR's contention that it had the authority to conduct a post-audit of the adjudged amount based on the PPA with PPC which provided a formula in the fuel component computable in the billings to be provided by the power producer, Delta P contends that such is irrelevant to the case as the cause of action is not based on contract, but on the decision in Civil Case No. 3766.[30]

Delta P also points to the records showing that on cross-examination, officers of NAPOCOR admitted that any manifestation as to the amounts subjected to post-audit was only communicated internally and was not formally made known to Delta P. Witness testimony also showed that there was no disagreement regarding the fact that the invoices, which were adjusted by NAPOCOR, formed part of the decision in Civil Case No. 3766, further emphasizing the unilateral nature of NAPOCOR's deduction.[31]

For Delta P, not only did the decision in Civil Case No. 3766 become final and executory, the same was actually and already satisfied when NAPOCOR paid the sums adjudged without any condition or qualification.[32]

Ruling of the Court

NAPOCOR's petition is partly meritorious.

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[28] *Id.* at 100.

[29] *Id.* at 102.

[30] *Id.* at 106.

[31] *Id.* at 108.

[32] *Id.* at 113.

The debit was done unilaterally by the NAPOCOR.

The Court adheres to the findings of fact consistent with both the RTC and the CA that the debit made by NAPOCOR was unilaterally done, and that NAPOCOR's supply of fuel to Delta P was an act of gratuity.

As a rule, the findings of fact of the RTC, as affirmed in totality by the CA, are binding and conclusive upon this Court. In *Gatan v. Vinarao,*[33] the Court stated it has always accorded great weight and respect to the findings of fact of trial courts, especially in their assessment of the credibility of witnesses. It was held, thus:

> When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, unless the same is tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. Since it had the full opportunity to observe directly the deportment and the manner of testifying of the witnesses before it, the trial court is in a better position than the appellate court to properly evaluate testimonial evidence. The rule finds an even more stringent application where the CA sustained said findings, as in this case.[34]

In *Bank of the Philippine Islands v. Leobrera,*[35] the Court further stressed that:

> [F]indings of fact of the trial court, when affirmed by the [CA], are binding upon the Supreme Court. This rule may be disregarded only when the findings of fact of the [CA] are contrary to the findings and conclusions of the trial court, or are not supported by the evidence on record. But there is no ground to apply this exception to the instant case. This Court will not assess all over again the evidence adduced by the parties particularly where as in this case the findings of both the trial court and the [CA] completely coincide.[36]

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[33] G.R. No. 205912, October 18, 2017, 842 SCRA 602.

[34] *Id*. at 618, citing *People v. Regaspi,* 768 Phil. 593, 598 (2015).

[35] 461 Phil. 461 (2003).

[36] *Id*. at 469, citing *Mercado v. People,* 441 Phil. 216, 225 (2002).

In this case, absent any proper substantiation on the part of NAPOCOR that there was arbitrariness or oversight on the part of the RTC or CA in appreciating the evidence presented as to the status of the grant during the lower proceedings, the Court adheres to the lower courts' findings of fact. Even if the Court would rely on its own perusal of the records, it is clear that NAPOCOR's motivation for supplying the fuel was the power crisis in Palawan and the request of the local government to intervene. While this may not be as absolute an act of liberality as NAPOCOR had a personal agenda for doing so, such reason does not take away from the fact that the supplying of fuel was done without the annexing of any condition to be complied with by Delta P. There was not even an annotation in any document that Delta P would have to pay any amount back, nor any indication whatsoever that the supply was a mere loan. Absent any these, for whatever reason, the Court agrees to the finding that the supplying of fuel was a donation, which was defined in *Republic of the Philippines v. Sps. Llamas*,[37] to wit:

> A donation is, by definition, "an act of liberality." Article 725 of the Civil Code provides:
>
> > Article 725. Donation is an act of liberality whereby a person disposes gratuitously of a thing or right in favor of another, who accepts it.
>
> To be considered a donation, an act of conveyance must necessarily proceed freely from the donor's own, unrestrained volition. A donation cannot be forced: it cannot arise from compulsion, be borne by a requirement, or otherwise be impelled by a mandate imposed upon the donor by forces that are external to him or her. Article 726 of the Civil Code reflects this commonsensical wisdom when it specifically states that conveyances made in view of a "demandable debt" cannot be considered true or valid donations.[38] (Citation omitted)

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[37] 804 Phil. 264 (2017).

[38] *Id.* at 276.

NAPOCOR's grant was not forced, did not arise from any compulsion exerted upon it, and was not impelled by any mandate. Even arguing that NAPOCOR was constrained to supply the fuel at the request of the local government, there was nothing to hinder it from annotating or stating even in brief terms that this payment would be a loan meant to be paid back once Delta P reaches financial stability.

NAPOCOR itself mentions that as a government entity subject of audit, the funds that it provides must be carefully accounted for. Thus, NAPOCOR should have protected what it supplied by putting a caveat for whatever it gave, and absent that, there is no other conclusion than to treat the supply of fuel as gratuitous and a donation without condition.

The doctrine of immutability of judgment applies in this case.

Likewise, the Court agrees with the CA that there is no valid reason to depart from the doctrine of immutability of judgment of the RTC in Civil Case No. 3766, said doctrine applying as NAPOCOR's debit in essence served as a gross deviation of the final and executory judgment as rendered for NAPOCOR to pay the complete ₱87,944,215.67 to Delta P.

It is axiomatic that when a final judgment is executory, it becomes immutable and unalterable. It may no longer be modified in any respect either by the tribunal which rendered it or even by this Court. The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time. It has a two-fold purpose: *first*, to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business, and *second*, to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist. Controversies cannot drag on indefinitely, and the rights and obligations of every litigant must not hang in suspense for an indefinite period of time.[39]

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[39] *PCI Leasing and Finance, Inc. v. Milan, et al.*, 631 Phil. 257, 278 (2010).

There are, however, recognizable instances when a final judgment may be subject to modification. In *FGU Insurance Corp. v. RTC of Makati City, Br. 66, et al.*,[40] the Court took the occasion to expound on the doctrine and the instances when there can be an acceptable deviation from the same:

> Under the doctrine of finality of judgment or immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down.
>
> But like any other rule, it has exceptions, namely: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable. The exception to the doctrine of immutability of judgment has been applied in several cases in order to serve substantial justice. x x x.[41] (Citation omitted)

In *Go v. Echavez*,[42] the exceptions to the rule were further elaborated on, to wit:

> Clerical errors cover all errors, mistakes, or omissions that result in the record's failure to correctly represent the court's decision. However, courts are not authorized to add terms it never adjudged, nor enter orders it never made, *although it should have made such additions or entered such orders.*
>
> In other words, to be clerical, the error or mistake must be plainly due to inadvertence or negligence. x x x.
>
> *Nunc pro tunc* is Latin for "now for then." Its purpose is to put on record an act which the court performed, but omitted from the record through inadvertence or mistake. It is neither intended to render a new judgment nor supply the court's inaction. In other words, a

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[40] 659 Phil. 117 (2011).

[41] *Id.* at 123.

[42] 765 Phil. 410 (2015).

nunc pro tunc entry may be used to make the record speak the truth, but not to make it speak what it did not speak but ought to have spoken.

A void judgment or order has no legal and binding effect. It does not divest rights and no rights can be obtained under it; all proceedings founded upon a void judgment are equally worthless.

Void judgments, because they are legally nonexistent, are susceptible to collateral attacks. A collateral attack is an attack, made as an incident in another action, whose purpose is to obtain a different relief. In other words, a party need not file an action to purposely attack a void judgment; he may attack the void judgment as part of some other proceeding. A void judgment or order is a lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head. Thus, it can never become final, and could be assailed at any time.

Nevertheless, this Court has laid down a stiff requirement to collaterally overthrow a judgment. In the case of *Reyes, et al. v. Datu, We ruled that it is not enough for the party seeking the nullity to show a mistaken or erroneous decision; he must show to the court that the judgment complained of is utterly void.* In short, the judgment must be void upon its face.

Supervening events, on the other hand, are circumstances that transpire after the decision's finality rendering the execution of the judgment unjust and inequitable. It includes matters that the parties were not aware of prior to or during the trial because such matters were not yet in existence at the time. In such cases, courts are allowed to suspend execution, admit evidence proving the event or circumstance, and grant relief as the new facts and circumstances warrant.

To successfully stay or stop the execution of a final judgment, the supervening event: (i) must have altered or modified the parties' situation as to render execution inequitable, impossible, or unfair; and (ii) must be established by competent evidence; otherwise, it would become all too easy to frustrate the conclusive effects of a final and immutable judgment.[43] (Citations omitted and italics in the original)

In the case herein, none of these exceptions exist for the Court to digress from the judgment of the RTC. NAPOCOR's

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[43] *Id*. at 423-425.

premise that the post-audit qualifies as a supervening event that would bring into operation the non-application of the immutability doctrine, is mistaken. A supervening event, to be sufficient to stay or stop the execution, must alter the execution to become inequitable, impossible, or unfair, and cannot rest on unproved or uncertain facts.[44] In *Abrigo, et al. v. Flores, et al.*,[45] the Court said:

> We deem it highly relevant to point out that a supervening event is an exception to the execution as a matter of right of a final and immutable judgment rule, only if it directly affects the matter already litigated and settled, or substantially changes the rights or relations of the parties therein as to render the execution unjust, impossible or inequitable. A supervening event consists of facts that transpire *after* the judgment became final and executory, or of new circumstances that develop *after* the judgment attained finality, including matters that the parties were not aware of prior to or during the trial because such matters were not yet in existence at that time. In that event, the interested party may properly seek the stay of execution or the quashal of the writ of execution, or he may move the court to modify or alter the judgment in order to harmonize it with justice and the supervening event. The party who alleges a supervening event to stay the execution should necessarily establish the facts by competent evidence; otherwise, it would become all too easy to frustrate the conclusive effects of a final and immutable judgment.[46] (Citations omitted and italics in the original)

In this case, the post-audit of the adjudged amount based on the PPA with PPC which provided a formula in the fuel component computable in the billings is irrelevant to the proceedings and cannot be deemed to be a fact that transpired after the judgment became final, as it was already existing. The post-audit concerned itself with the subject amounts already deemed final, and not any amounts that came about through the contemporaneous and/or subsequent actions of the involved parties.

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[44] *Abrigo, et al. v. Flores, et al.*, 711 Phil. 251, 253 (2013).

[45] 711 Phil. 251 (2013).

[46] *Id*. at 261-262.

Lastly, the Court highlights the directive in the decision in Civil Case No. 3766. By way of recall, the dispositive portion of the decision reads, to wit:

> WHEREFORE, all the foregoing premises considered, judgment is hereby rendered ordering [NAPOCOR] to pay [Delta P] for the electricity off-taken by it from the latter's 16 MW Power Station located at Kilometer 13, Barangay Sta[.] Lourdes, Puerto Princesa City, Palawan from the months of December 25, 2002 to June 25, 2003 under the following invoices, to wit:
>
> | | Invoice No. | Invoice Date | Metering Date | Amount |
> |---|---|---|---|---|
> | 1 | 2003-001 | Jan. 28, 2003 | 25 Dec '02-25 Jan '03 | ₱16,129,510.32 |
> | 2 | 2003-002 | Feb. 07, 2003 | 25 Dec '02-25 Jan '03 | 9,808,653.03 |
> | 3 | 2003-003 | Feb. 27, 2003 | 25 Jan. '03-25 Feb '03 | 16,583,089.60 |
> | 4 | 2003-04 | Mar. 10, 2003 | 25 Jan '03-25 Feb '03 | 11,607,784.51 |
> | 5 | 2003-005 | Mar. 29, 2003 | 25 Feb '03-25 Mar '03 | 7,612,620.40 |
> | 6 | 2003-006 | Apr. 30, 2003 | 25 Mar '03-25 Apr '03 | 7,336,160.10 |
> | 7 | 2003-007 | May 30, 2003 | 25 Feb '03-25 Mar '03 | 2,787,181.97 |
> | 8 | 2003-008 | May 30, 2003 | 25 Apr '03-25 May '03 | 8,737,988.97 |
> | 9 | 2003-009 | June 27, 2003 | 25 May '03-25 June '03 | 9,991,846.96 |
> | | | | | ₱ 90,394,855.86 |
> | | | | Less: | ₱ 2,450,640.86 |
>
> for adjustment in billing due to reduction in tariff effective March 9, 2003 for the billing period February 25, 2003 to March 25, 2003.
>
> TOTAL ₱ 87,944,215.67
>
> *IT IS SO ORDERED*
>
> *Puerto Princesa City, July 15, 2003*[47]

The directive to NAPOCOR is clear. NAPOCOR must pay the judgment amount without any amount subtraction, and without any qualification. In fact, NAPOCOR proceeded to do so. Allowing a post-audit to serve as basis to modify the amount of judgment will open the floodgates for entities to manipulate the amounts they have to pay without any valid reason, and in direct contravention to the judgment findings of the courts.

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[47] *Rollo*, pp. 163-164.

Delta P was unjustly enriched by NAPOCOR when the latter supplied fuel to Delta P without receiving anything in return.

Despite the foregoing, the Court agrees with the arguments posited by NAPOCOR and finds that the lower courts erred in stating that unjust enrichment is not present in this case. An exception to the general rule that the findings of fact are binding is when the inference of the lower court is manifestly mistaken.[48] Herein, the Court finds that both the trial court and the CA were manifestly mistaken when they failed to take into consideration the fact that Delta P was enriched without justification due to the fuel supply given by NAPOCOR.

There is unjust enrichment "when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience." The principle of unjust enrichment requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at the expense of another.[49]

In the case at bar, the fuel grant, while done unilaterally, was still done without NAPOCOR receiving anything in return, even when Delta P's internal issues were eventually sorted out. NAPOCOR ended up prejudiced by its action especially as there was no legal obligation mandating it to contribute to the woes of Delta P, only the intervention of the local government due to the power crisis in Palawan. There was an appreciable monetary loss on the part of NAPOCOR, despite Delta P's lack of attendant blame, with the end result of Delta P's enrichment being a correlative loss on the books of NAPOCOR.

In *Almario v. Philippine Airlines, Inc.*:[50]

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[48] *Pascual v. Burgos, et al.,* 776 Phil. 167, 182, citing *Medina v. Mayor Asistio, Jr.,* 269 Phil. 225, 232 (2016).

[49] *Flores v. Spouses Lindo, Jr.,* 664 Phil. 210, 221 (2011).

[50] 559 Phil. 373 (2007).

(Article 22 of the New Civil Code) on unjust enrichment recognizes the principle that one may not enrich himself at the expense of another. An authority on Civil Law writes on the subject, *viz*[.]:

> Enrichment of the defendant consists in every patrimonial; physical, or moral advantage, so long as it is appreciable in money. It may consist of some positive pecuniary value incorporated into the patrimony of the defendant, such as: (1) the enjoyment of a thing belonging to the plaintiff; (2) the benefits from service rendered by the plaintiff to the defendant; (3) the acquisition of a right, whether real or personal; (4) the increase of value of property of the defendant; (5) the improvement of a right of the defendant, such as the acquisition of a right of preference; (6) the recognition of the existence of a right in the defendant; and (7) the improvement of the conditions of life of the defendant.
>
> x x x x x x x x x
>
> The enrichment of the defendant must have a correlative prejudice, disadvantage, or injury to the plaintiff. This prejudice may consist, not only of the loss of property or the deprivation of its enjoyment, but also of non-payment of compensation for a prestation or service rendered to the defendant without intent to donate on the part of the plaintiff, or the failure to acquire something which the latter would have obtained. The injury to the plaintiff, however, need not be the cause of the enrichment of the defendant. It is enough that there be some relation between them, that the enrichment of the defendant would not have been produced had it not been for the fact from which the injury to the plaintiff is derived. x x x[51] (Citations omitted)

While the *Almario* case states that intent to donate on the part of NAPOCOR, which the Court holds is present despite the former's protestations, may be enough to remove a case from the ambit of the unjust enrichment doctrine, the failure to acquire any compensation even from the local government of Palawan, who had requested that NAPOCOR provide the fuel in the first place, means that there was unjust enrichment on the part of NAPOCOR.

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[51] *Id.* at 385.

This case presents one of the rare situations where Delta P is unjustly enriched through the voluntary act of the enriching party, NAPOCOR in this case. The Court holds that while the principle of *solutio indebiti*[52] will not apply as a remedy for NAPOCOR's recovery, as the payment of the fuel costs was not a mistake and NAPOCOR was not able to prove that the requirements for the same have been met,[53] NAPOCOR is entitled to recover under the doctrine of unjust enrichment, for the amount it paid to Delta P for the supply of fuel, for the period February 25, 2003 to June 25, 2003.

However, as NAPOCOR failed to properly substantiate the amount of ₱24,449,247.36 it debited as a result of the supplying of fuel, the case is remanded to the trial court in order to determine the exact amount which NAPOCOR spent in the course of supplying fuel to Delta P for the aforementioned time period.

WHEREFORE, the petition for review on *certiorari* is **GRANTED** insofar as respondent Delta P, Inc. is liable to pay the amount corresponding to the fuel it received from petitioner National Power Corporation from February 25, 2003 to June 25, 2003. This case is remanded to the trial court to ascertain the amount to be paid by Delta P, Inc. All other claims of the National Power Corporation are denied for lack of merit.

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

Leonen, J., on wellness leave.

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[52] The principle of *Solutio Indebiti* is explained by Article 2154 of the Civil Code, which provides that if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises. There is application of the same when: (1) a payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) the payment is made through mistake, and not through liberality or some other cause. *Siga-an v. Villanueva*, 596 Phil. 760, 772-773 (2009).

[53] *Id*.

THIRD DIVISION

[G.R. No. 222530. October 16, 2019]

MR. AND MRS. ERNESTO MANLAN, *petitioners, vs.* **MR. AND MRS. RICARDO BELTRAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE COURT ACCORDS FINALITY ON THE FACTUAL FINDINGS OF THE TRIAL COURTS, ESPECIALLY WHEN SUCH FINDINGS ARE AFFIRMED BY THE APPELLATE COURT; EXCEPTIONS NOT PRESENT.— [I]t must be emphasized that this Court is not a trier of facts and only questions of law must be raised in a petition filed under Rule 45 of the Rules of Court. Moreover, this Court accords finality on the factual findings of the trial courts, especially when such findings are affirmed by the appellate court, as in the case at bench. Although said rule admits certain exceptions, none of which was proved here. Thus, this Court is *not* duty-bound to analyze and weigh all over again the evidence already considered in the proceedings before the trial court. More particularly, petitioners proffer factual issues such as whether respondents were in bad faith when they bought the property from the Orbetas and whether respondents fraudulently executed the Deed of Sale dated November 20, 1990. These factual matters are not within the province of this Court to look into, save only in exceptional circumstances which are not present here. As such, this Court gives credence to the factual evaluation made by the trial court which was affirmed by the CA.

2. CIVIL LAW; THE CIVIL CODE; OBLIGATIONS AND CONTRACTS; SALES; REQUISITES OF DOUBLE SALE; THE RULE ON DOUBLE SALE IS NOT APPLICABLE WHERE THE SALES INVOLVED WERE INITIATED NOT JUST BY ONE VENDOR BUT BY SEVERAL VENDORS.— In *Cheng v. Genato*, the Court enumerated the requisites in order for Article 1544 to apply, *viz.*: (a) The two (or more) sales transactions in issue must pertain to exactly the same subject matter, and must be valid sales transactions. (b) The two (or more) buyers at odds over the rightful ownership of the subject matter must each

represent conflicting interests; and (c) The two (or more) buyers at odds over the rightful ownership of the subject matter must each have bought from the very same seller. In fine, there is double sale when the same thing is sold to different vendees by a single vendor. It only means that Article 1544 has no application in cases where the sales involved were initiated not just by one vendor but by several vendors. Here, petitioners and respondents acquired the subject property from different transferors. The DOAS dated November 20, 1990 shows that all of the original co-owners (except for Manuel and Serbio, who are already deceased) sold the subject lot to respondents. On the other hand, the Receipt and Promissory Note both dated May 5, 1983, reveal that only Manuel sold the lot to petitioners. As found by the RTC and the CA, nothing on the records shows that Manuel was duly authorized by the other co-owners to sell the subject property in 1983. Evidently, there are two sets of vendors who sold the subject land to two different vendees. Thus, this Court upholds the findings of the trial court and the CA that the rule on double sale is not applicable in the instant case.

3. **ID.; ID.; ID.; ID.; A CONTRACT WHICH IS NOT IN THE FORM PRESCRIBED BY LAW DOES NOT RENDER THE ACTS OR CONTRACT INVALID, AS THE PARTIES CAN MERELY COMPEL EACH OTHER TO OBSERVE THAT FORM, ONCE THE CONTRACT HAS BEEN PERFECTED. —** Basic is the rule in civil law that the necessity of a public document for contracts which transmit or extinguish real rights over immovable property, as mandated by Article 1358 of the Civil Code, is only for convenience. It is not essential for its validity or enforceability. In other words, the failure to follow the proper form prescribed by Article 1358 of the Civil Code does not render the acts or contracts invalid. Where a contract is not in the form prescribed by law, the parties can merely compel each other to observe that form, once the contract has been perfected.

4. **ID.; ID.; ID.; ID.; A SALE OF A REAL PROPERTY THAT IS NOT CONSIGNED IN A PUBLIC INSTRUMENT IS VALID AND BINDING AMONG THE PARTIES. —** [I]t has been held, time and again, that a sale of a real property that is not consigned in a public instrument is, nevertheless, valid and binding among the parties. This is in accordance with the time-honored principle that even a verbal contract of sale of real

estate produces legal effects between the parties. Contracts are obligatory, in whatever form they may have been entered into, provided all the essential requisites for their validity are present.

5. ID.; ID.; ID.; ID.; A DEED OF SALE WITH A DEFECTIVE NOTARIZATION NEITHER AFFECTS THE VALIDITY OF THE TRANSACTION BETWEEN THE PARTIES NOR HAS AN EFFECT ON THE TRANSFER OF RIGHTS OVER THE SUBJECT PROPERTY FROM THE BUYER TO THE SELLER, BUT THE SAME SHALL BE TREATED AS A PRIVATE DOCUMENT.— [T]he defective notarization of the DOAS dated November 20, 1990 does not affect the validity of the transaction between the Orbetas and respondents. It has no effect on the transfer of rights over the subject property from the Orbetas to respondents. A defective notarization will merely strip the document of its public character and reduce it to a private instrument. Consequently, when there is a defect in the notarization of a document, the clear and convincing evidentiary standard normally attached to a duly notarized document is dispensed with, and the measure to test the validity of such document is preponderance of evidence. The document with a defective notarization shall be treated as a private document and can be examined under the parameters of Section 20, Rule 132 of the Rules of Court which provides that, "*before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either: (a) by anyone who saw the document executed or written; or (b) by evidence of the genuineness of the signature or handwriting of the maker x x x.*"

6. ID.; ID.; ID.; ID.; THE NON-APPEARANCE OF THE PARTIES BEFORE THE NOTARY PUBLIC WHO NOTARIZED THE DOCUMENT NEITHER NULLIFIES NOR RENDERS THE PARTIES' TRANSACTION VOID *AB INITIO*.— In the instant case, Ricardo Beltran (Ricardo) positively testified that he personally went to the Orbetas and that he was actually present when the Orbetas signed the contract. He likewise testified that while the deed of sale was not signed by the Orbetas before the notary public, they appeared before the latter and affirmed that their s ignatures therein were authentic. Ricardo has personal knowledge of the fact that the Orbetas signed the questioned deed of sale. Beyond doubt, respondents proved, by

preponderant evidence, that they are the rightful owners of the subject property. Moreover, the non-appearance of the parties before the notary public who notarized the document neither nullifies nor renders the parties' transaction void *ab initio*. The failure of the Orbetas to appear before the notary public when they signed the questioned deed of sale does not nullify the parties' transaction. Based on the foregoing, the Court finds that the CA did not err in ruling that the DOAS dated November 20, 1990 is valid and binding.

7. ID.; LAND REGISTRATION; PROPERTY REGISTRATION DECREE (PRESIDENTIAL DECREE NO. 1529); A COLLATERAL ATTACK TO A CERTIFICATE OF TITLE IS PROHIBITED; THE ATTACK IS DIRECT WHEN THE OBJECT OF THE ACTION IS TO ANNUL OR SET ASIDE SUCH JUDGMENT, OR ENJOIN ITS ENFORCEMENT, WHILE THE ATTACK IS INDIRECT OR COLLATERAL WHEN, IN AN ACTION TO OBTAIN A DIFFERENT RELIEF, AN ATTACK ON THE JUDGMENT IS NEVERTHELESS MADE AS AN INCIDENT THEREOF.— Section 48 of Presidential Decree No. 1529 or the Property Registration Decree, proscribes a collateral attack to a certificate of title x x x. In *Sps. Sarmiento v. Court of Appeals*, this Court differentiated a direct and collateral attack in this wise: An action is deemed an attack on a title when the object of the action or proceeding is to nullify the title, and thus challenge the judgment pursuant to which the title was decreed. The attack is direct when the object of the action is to annul or set aside such judgment, or enjoin its enforcement. On the other hand, the attack is indirect or collateral when, in an action to obtain a different relief, an attack on the judgment is nevertheless made as an incident thereof. In the instant case, petitioners argue that respondents are not innocent purchasers for value and were in bad faith in registering the subject lot. Such claim is merely incidental to the principal case of quieting of title and recovery of possession, and thus, an indirect attack on respondents' title.

8. ID.; ID.; ID.; A COUNTERCLAIM WHICH SPECIFICALLY PRAY FOR ANNULMENT OF THE TITLE AND RECONVEYANCE OF OWNERSHIP OF THE SUBJECT PROPERTY IS A DIRECT ATTACK ON THE TITLE.— From the extant jurisprudence, there is no arguing that for a counterclaim to be considered a direct attack on the title, it must specifically pray for annulment

of the questioned title and reconveyance of ownership of the subject property. After a careful scrutiny of petitioners' counterclaim in this case, this Court finds that they did not specifically ask for the reconveyance of the subject property to them. Nothing in the petitioners' counterclaim indicates that they were praying for reconveyance of Lot 1366-E. Instead, they merely repleaded their allegations in the Answer.

9. ID.; ID.; ID.; THE ATTACK ON THE TITLE IS COLLATERAL WHEN, IN THE MAIN ACTION FOR QUIETING OF TITLE AND RECOVERY OF POSSESSION, AN ATTACK ON THE PROCEEDING GRANTING THE PARTIES' TITLE WAS MADE AS AN INCIDENT THEREOF.— When confronted with respondents' title, petitioners argue that respondents procured it through fraudulent means because the questioned deed of sale is fictitious. This Court, however, finds that petitioners' objective in alleging respondents' bad faith in securing the title is to annul and set aside the judgment pursuant to which such title was decreed. Apparently, the attack on the proceeding granting respondents' title was made as an incident in the main action for quieting of title and recovery of possession. Evidently, petitioners' action is a collateral attack on the respondents' title, which is prohibited under the rules.

APPEARANCES OF COUNSEL

Erames Law Firm for petitioners.
Obar Partners and Associates for respondents.

D E C I S I O N

INTING, *J.*:

Before this Court is a petition[1] for review under Rule 45 of the Rules of Court assailing the Decision[2] dated April 29, 2015

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[1] *Rollo*, pp. 12-28.

[2] *Id*. at 127-136; penned by Associate Justice Edgardo L. Delos Santos, and concurred in by Associate Justices Ma. Luisa Quijano-Padilla and Marie Christine Azcarraga-Jacob.

and Resolution[3] dated December 4, 2015 of the Court of Appeals (CA) in CA-G.R. CV No. 01395 which affirmed *in toto* the Decision[4] dated April 5, 2006 of Branch 40, Regional Trial Court (RTC), Dumaguete City.

The Antecedents

The present case involves the conflicting claims of two sets of buyers over a parcel of land. One group avers of having bought the property from one of its co-owners and building their house thereon in good faith. Meanwhile, the other group claims of having bought the same land from all the co-owners and registered it in good faith.

Specifically, the subject matter here is a 1,214 square meter (sq.m.) land situated in *Barangay* Calindagan, Dumaguete City forming part of Lot 1366-E and originally owned in common by Serbio, Anfiano, Engracia, Carmela, Manuel, Teresito, Corazon, Segundina, and Leonardo, all surnamed Orbeta (collectively referred as "the Orbetas").

On May 5, 1983, Spouses Ernesto and Rosita Manlan (petitioners) bought a 500 sq.m. portion of the subject property from Manuel Orbeta for ₱30,000.00. After receiving the advance payment of ₱15,000.00, Manuel Orbeta allowed petitioners to occupy it.[5]

On October 21, 1986, the Orbetas (except for Manuel Orbeta who was already deceased; thus, represented by his wife Emiliana Villamil Orbeta) executed a Deed of Absolute Sale (DOAS) conveying the 714 sq.m. portion of the same property to Spouses Ricardo and Zosima Beltran (respondents). On November 20, 1990, respondents bought the remaining 500 sq.m. from the Orbetas,[6]

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[3] *Id*. at 143-144; penned by Associate Justice Edgardo L. Delos Santos, and concurred in by Associate Justices Pamela Ann Abella Maxino and Renato C. Francisco.

[4] *Id*. at 93-100; rendered by Presiding Judge Gerardo A. Paguio, Jr.

[5] *Id*. at 128.

[6] *Id*.

as evidenced by another DOAS.[7] Consequently, on January 28, 1991, the subject property was registered in respondents' name under Transfer Certificate of Title (TCT) No. 20152.[8]

Thereafter, respondents demanded from petitioners to vacate the property in dispute, but to no avail. Thus, they brought the matter to the *barangay lupon*. When conciliation failed, respondents filed an action for quieting of title and recovery of possession of the 500 sq.m. portion of the subject land.[9]

In the Complaint,[10] respondents claimed to be the absolute owners of the subject property having bought it from the Orbetas.

In their Answer,[11] petitioners alleged that they bought the 500 sq.m. portion of the disputed land from Serbio and Manuel Orbeta in 1983.

As counterclaim, they contended that the DOAS dated November 20, 1990, executed by respondents and the Orbetas, was fictitious, having been procured by means of falsification and insidious scheme and machination because at the time it was notarized, one of the co-owners, Serbio, was already dead. Accordingly, the deed could not be a source of respondents' right over the contested land.

Ruling of the RTC

In its April 5, 2006, Decision,[12] the RTC ruled that respondents had a better title over the subject property. The dispositive portion of its decision reads:

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

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

[8] *Id*. at 36.

[9] *Id*. at 129.

[10] *Id*. at 29-35.

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

[12] *Id*. at 93-100.

A. The plaintiffs are entitled to the possession of the 500[-]square meter portion of Lot 1366-E covered by Transfer Certificate of Title No. 2015[2];[13]

B. The defendants are declared to be builders or possessors in good faith entitled to reimbursement of all improvements and expenses, both necessary and useful, introduced into the 500[-]square meter portion of Lot 1366-E with right of retention as provided by Articles 448 and 546 of the Civil Code;

C. The defendants are ordered to vacate the 500[-]square meter portion of Lot 1366-E after reimbursement, as stated in paragraph B, by the plaintiffs;

No costs.

SO ORDERED.[14]

Although the RTC found that the notarization of the DOAS dated November 20, 1990 was defective, it, nevertheless, ruled that the defect did not affect the legality of the conveyance from the Orbetas to respondents. Moreover, it ruled that petitioners could not collaterally attack the validity of respondents' title. Thus, it upheld the transfer of rights from the Orbetas to respondents.

Aggrieved, petitioners elevated the case to the CA.

Ruling of the CA

On April 29, 2015, the CA promulgated the assailed Decision[15] affirming the RTC ruling, to wit:

WHEREFORE, all the foregoing proffered, the instant appeal is DENIED. The Decision dated April 5, 2006 of the RTC, Branch 40, Dumaguete City is hereby AFFIRMED.

SO ORDERED.[16]

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[13] *Id.* at 36. The Transfer Certificate of Title number is 20152 and not 20153.

[14] *Id.* at 99-100.

[15] *Id.* at 127-137.

[16] *Id.* at 136.

The CA held that the rule on double sales under Article 1544 of the New Civil Code does not apply here. It explained that there is double sale only when the same property is validly sold by one vendor to different vendees. It ruled that Lot 1366-E was not transferred by a single vendor to several purchasers considering that respondents bought the contested lot from the original co-owners, the Orbetas; while petitioners bought the same contested property from Manuel Orbeta.[17]

Likewise, the CA affirmed the RTC ruling that respondents had a better right over the subject property as they proved their valid conveyance from all the co-owners of the property. It also upheld the RTC findings that the defect in the notarization of the deed of sale dated November 20, 1990 did not affect the transfer of rights from the Orbetas to respondents. It ruled that a defective notarization, simply means that the deed of sale should be treated as a private document, which could be proved by anyone who saw the document executed or written, or by evidence anent the genuineness of the signature or handwriting of the maker. Lastly, it found that respondents were able to prove the authenticity and due execution of the questioned deed of sale.[18]

Petitioners moved for reconsideration, but the RTC denied it for lack of merit in the assailed Resolution[19] dated December 4, 2015.

In the instant petition, petitioners argue that: (1) the rules on double sale are applicable; (2) the CA erred in not considering that respondents were in bad faith in purchasing the subject property; (3) the DOAS dated November 20, 1990 is fraudulent as it was not validly notarized; and (4) the defective notarization in the deed of sale affected the validity of TCT No. 20152.

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[17] *Id*. at 132.

[18] *Id*. at 133-134.

[19] *Id*. at 143-144.

In a nutshell, petitioners raise the issue of whether the DOAS dated November 20, 1990 is valid.[20]

Ruling of the Court

The petition is unmeritorious.

At the outset, it must be emphasized that this Court is not a trier of facts and only questions of law must be raised in a petition filed under Rule 45 of the Rules of Court.[21] Moreover, this Court accords finality on the factual findings of the trial courts, especially when such findings are affirmed by the appellate court, as in the case at bench.[22] Although said rule admits certain exceptions,[23] none of which was proved here. Thus, this Court is *not* duty-bound to analyze and weigh all over again the evidence already considered in the proceedings before the trial court.

More particularly, petitioners proffer factual issues such as whether respondents were in bad faith when they bought the property from the Orbetas and whether respondents fraudulently executed the Deed of Sale dated November 20, 1990. These

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[20] *Id*. at 19.

[21] *Heirs of Mariano v. City of Naga*, G.R. No. 197743, March 12, 2018.

[22] *St. Mary's Farm, Inc. v. Prima Real Properties, Inc., et al.*, 582 Phil. 673, 679 (2008).

[23] As provided in *Medina v. Mayor Asistio, Jr.*, 269 Phil. 225, 232 (1990) the following are the exceptions: (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.

factual matters are not within the province of this Court to look into, save only in exceptional circumstances which are not present here. As such, this Court gives credence to the factual evaluation made by the trial court which was affirmed by the CA.

Based on the foregoing, the Court limits its discussion on the following questions of law: (1) whether the rules on double sale under Article 1544 of the New Civil Code are applicable; (2) whether the defective notarization affects the legality of sale; and (3) whether petitioners collaterally attacked the respondents' Torrens title.

On whether the rules on double sale are applicable.

Petitioners insist that this is a plain case of double sale. They argue that they bought in good faith the 500 sq.m. portion of Lot 1366-E in 1983, while respondents bought the subject property only in 1990. They stress that they have a better right over the property following the rules on double sale under Article 1544 of the New Civil Code.[24]

We disagree.

Petitioners' reliance on Article 1544 of the New Civil Code is misplaced.

Article 1544 of the New Civil Code provides:

> Art. 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.
>
> Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.
>
> Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith.

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[24] *Rollo*, p. 19.

In *Cheng v. Genato*,[25] the Court enumerated the requisites in order for Article 1544 to apply, *viz.*:

(a) The two (or more) sales transactions in issue must pertain to exactly the same subject matter, and must be valid sales transactions.

(b) The two (or more) buyers at odds over the rightful ownership of the subject matter must each represent conflicting interests; and

(c) The two (or more) buyers at odds over the rightful ownership of the subject matter must each have bought from the very same seller.[26]

In fine, there is double sale when the same thing is sold to different vendees by a single vendor.[27] It only means that Article 1544 has no application in cases where the sales involved were initiated not just by one vendor but by several vendors.[28]

Here, petitioners and respondents acquired the subject property from different transferors. The DOAS[29] dated November 20, 1990 shows that all of the original co-owners (except for Manuel and Serbio, who are already deceased) sold the subject lot to respondents. On the other hand, the Receipt and Promissory Note[30] both dated May 5, 1983, reveal that only Manuel sold the lot to petitioners. As found by the RTC and the CA, nothing on the records shows that Manuel was duly authorized by the other co-owners to sell the subject property in 1983.

Evidently, there are two sets of vendors who sold the subject land to two different vendees. Thus, this Court upholds the

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[25] 360 Phil. 891 (1998). Italics omitted.

[26] *Id.* at 909.

[27] *Heirs of Bayog-Ang v. Quinones*, G.R. No. 205680, November 21, 2018.

[28] *Mactan-Cebu International Airport Authority v. Sps. Tirol, et al.*, 606 Phil. 641, 651 (2009).

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

[30] *Id.* at 46.

findings of the trial court and the CA that the rule on double sale is not applicable in the instant case.

On whether the defective notarization affects the legality of the sale.

Petitioners maintain that the DOAS dated November 20, 1990 cannot be a source of rights for respondents because the notarization was defective. They contend that when the deed of sale was notarized, one of its signatories was already dead. In simple terms, petitioners assail the deed of sale as it was obtained by respondents through fraud.

Petitioners are mistaken.

Basic is the rule in civil law that the necessity of a public document for contracts which transmit or extinguish real rights over immovable property, as mandated by Article 1358[31] of the Civil Code, is only for convenience. It is not essential for its validity or enforceability.[32] In other words, the failure to follow the proper form prescribed by Article 1358 of the Civil Code does not render the acts or contracts invalid.[33] Where a

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[31] Art. 1358. The following must appear in a public document:

(1) Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property; sales of real property or of an interest therein are governed by Articles 1403, No. 2, and 1405;

(2) The cession, repudiation or renunciation of hereditary rights or of those of the conjugal partnership of gains;

(3) The power to administer property, or any other power which has for its object an act appearing or which should appear in a public document, or should prejudice a third person;

(4) The cession of actions or rights proceeding from an act appearing in a public document.

All other contracts where the amount involved exceeds five hundred pesos must appear in writing, even a private one. But sales of goods, chattels or things in action are governed by Articles 1403, No. 2 and 1405. (1280 a)

[32] *Estreller, et al. v. Ysmael, et al.*, 600 Phil. 292 (2009); see also *Estate of Gonzales v. Heirs of Perez*, 620 Phil. 47 (2009).

[33] *Peñalosa v. Santos*, 416 Phil. 12, 29 (2001).

contract is not in the form prescribed by law, the parties can merely compel each other to observe that form, once the contract has been perfected.[34]

In addition, it has been held, time and again, that a sale of a real property that is not consigned in a public instrument is, nevertheless, valid and binding among the parties.[35] This is in accordance with the time-honored principle that even a verbal contract of sale of real estate produces legal effects between the parties.[36] Contracts are obligatory, in whatever form they may have been entered into, provided all the essential requisites for their validity are present.[37]

Following these principles, the defective notarization of the DOAS dated November 20, 1990 does not affect the validity of the transaction between the Orbetas and respondents. It has no effect on the transfer of rights over the subject property from the Orbetas to respondents.

A defective notarization will merely strip the document of its public character and reduce it to a private instrument.[38] Consequently, when there is a defect in the notarization of a document, the clear and convincing evidentiary standard normally attached to a duly notarized document is dispensed with, and the measure to test the validity of such document is preponderance of evidence.[39] The document with a defective notarization shall be treated as a private document and can be examined under the parameters of Section 20, Rule 132 of the Rules of Court which provides that, "*before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either: (a) by anyone who saw*

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[34] *Id*.

[35] *The Estate of Pedro C. Gonzales, et al. v. Heirs of Marcos Perez*, 620 Phil. 47, 61 (2009).

[36] *Id*.

[37] CIVIL CODE, Article 1356.

[38] *Adelaida Meneses (deceased) v. Venturozo*, 675 Phil. 641, 652 (2011).

[39] *Id*.

the document executed or written; or (b) by evidence of the genuineness of the signature or handwriting of the maker x x x."[40]

In the instant case, Ricardo Beltran (Ricardo) positively testified that he personally went to the Orbetas and that he was actually present when the Orbetas signed the contract.[41] He likewise testified that while the deed of sale was not signed by the Orbetas before the notary public, they appeared before the latter and affirmed that their signatures therein were authentic.[42] Ricardo has personal knowledge of the fact that the Orbetas signed the questioned deed of sale.[43] Beyond doubt, respondents proved, by preponderant evidence, that they are the rightful owners of the subject property.

Moreover, the non-appearance of the parties before the notary public who notarized the document neither nullifies nor renders the parties' transaction void *ab initio*.[44] The failure of the Orbetas to appear before the notary public when they signed the questioned deed of sale does not nullify the parties' transaction.

Based on the foregoing, the Court finds that the CA did not err in ruling that the DOAS dated November 20, 1990 is valid and binding.

On whether the petitioners collaterally attacked the respondents' title.

Petitioners postulate that their counterclaim[45] in the Answer[46] constitutes a direct attack on respondents' title, which is allowed under the rules.

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[40] *The Heirs of Victoriano Sarili v. Lagrosa*, 724 Phil. 608, 619 (2014).

[41] *Rollo*, p. 133.

[42] *Id.* at 134.

[43] *Id.*

[44] *Mallari v. Alsol*, 519 Phil. 139, 149 (2006).

[45] *Rollo*, p. 43.

[46] *Id.* at 39-44.

Their claim holds no water.

Section 48 of Presidential Decree No. 1529 or the Property Registration Decree, proscribes a collateral attack to a certificate of title, *viz*.:

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

In *Sps. Sarmiento v. Court of Appeals*,[47] this Court differentiated a direct and collateral attack in this wise:

> An action is deemed an attack on a title when the object of the action or proceeding is to nullify the title, and thus challenge the judgment pursuant to which the title was decreed. The attack is direct when the object of the action is to annul or set aside such judgment, or enjoin its enforcement. On the other hand, the attack is indirect or collateral when, in an action to obtain a different relief, an attack on the judgment is nevertheless made as an incident thereof.[48] (Citations omitted.)

In the instant case, petitioners argue that respondents are not innocent purchasers for value and were in bad faith in registering the subject lot. Such claim is merely incidental to the principal case of quieting of title and recovery of possession, and thus, an indirect attack on respondents' title.

Citing *Sampaco v. Lantud* (*Sampaco*)[49] and *Development Bank of the Phils. v. CA and Carlos Cajes* (*DBP*),[50] petitioners insist that their counterclaim is a direct attack against respondents' title. After a careful perusal, petitioners cannot invoke *Sampaco* and *DBP* in their favor. Considering that the factual milieu in these cases is not on all fours with the instant case. In *Sampaco*,

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[47] 507 Phil. 101 (2005).

[48] *Id.* at 113.

[49] 669 Phil. 304 (2011).

[50] 387 Phil. 283 (2000).

therein petitioner filed a counterclaim and prayed for the cancellation of respondent's title and reconveyance of the subject property; thus:

> x x x Petitioner filed a counterclaim for actual and moral damages, and attorney's fees for the unfounded complaint and prayed for its dismissal. *He also sought the cancellation of respondent's OCT No. P-658 and the reconveyance of the subject parcel of land.*[51] (Italics supplied)

Similarly, in *DBP* the counterclaim filed by private respondent therein was specifically for reconveyance of land which was erroneously registered in the name of another person; thus:

> x x x Having been the sole occupant of the land in question, *private respondent may seek reconveyance of his property* despite the lapse of more than 10 years.
>
> Nor is there any obstacle to the determination of the validity of TCT No. 10101. It is true that the indefeasibility of torrens titles cannot be collaterally attacked. *In the instant case, the original complaint is for recovery of possession filed by petitioner against private respondent, not an original action filed by the latter to question the validity of TCT No. 10101* on which petitioner bases its right. To rule on the issue of validity in a case for recovery of possession is tantamount to a collateral attack. *However, it should not be overlooked that private respondent filed a counterclaim against petitioner, claiming ownership over the land and seeking damages.*[52] (Italics supplied)

From the extant jurisprudence, there is no arguing that for a counterclaim to be considered a direct attack on the title, it must specifically pray for annulment of the questioned title and reconveyance of ownership of the subject property.

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[51] *Supra* note 49 at 309.

[52] *Development Bank of the Phils. v. CA and Carlos Cajes, supra* note 50 at 300.

After a careful scrutiny of petitioners' counterclaim in this case, this Court finds that they did not specifically ask for the reconveyance of the subject property to them. Nothing in the petitioners' counterclaim indicates that they were praying for reconveyance of Lot 1366-E. Instead, they merely repleaded their allegations in the Answer.[53]

Finally, in *Co v. Court of Appeals*,[54] the Court through the pen of Justice Florenz Regalado judiciously discussed matters relating to counterclaim, thus:

> Anent the issue on whether the counterclaim attacking the validity of the Torrens title on the ground of fraud is a collateral attack, we distinguish between the two remedies against a judgment or final order. *A direct attack against a judgment is made through an action or proceeding the main object of which is to annul, set aside, or enjoin the enforcement of such judgment, if not yet carried into effect; or, if the property has been disposed of, the aggrieved party may sue for recovery. A collateral attack is made when, in another action to obtain a different relief, an attack on the judgment is made as an incident in said action.* This is proper only when the judgment, on its face, is null and void, as where it is patent that the court which rendered said judgment has no jurisdiction.
>
> In their reply dated September 11, 1990, petitioners argue that the issues of fraud and ownership raised in their so-called compulsory counterclaim partake of the nature of an independent complaint which they may pursue for the purpose of assailing the validity of the transfer certificate of title of private respondents. That theory will not prosper.
>
> While a counterclaim may be filed with a subject matter or for a relief different from those in the basic complaint in the case, it does not follow that such counterclaim is in the nature of a separate and independent action in itself. In fact, its allowance in the action is subject to explicit conditions, as above set forth, particularly in its required relation to the subject matter of the opposing party's claim. Failing in that respect, it cannot even be entertained as a counterclaim

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[53] *Rollo*, p. 43.

[54] 274 Phil. 108 (1991).

in the original case but must be filed and pursued as an altogether different and original action.

It is evident that the objective of such claim is to nullify the title of private respondents to the property in question, which thereby challenges the judgment pursuant to which the title was decreed. This is apparently a collateral attack which is not permitted under the principle of indefeasibility of a Torrens title. It is well settled that a Torrens title cannot be collaterally attacked. The issue on the validity of title, i.e., whether or not it was fraudulently issued, can only be raised in an action expressly instituted for that purpose. Hence, whether or not petitioners have the right to claim ownership of the land in question is beyond the province of the instant proceeding. That should be threshed out in a proper action. The two proceedings are distinct and should not be confused.[55] (Citations omitted; Italics supplied.)

When confronted with respondents' title, petitioners argue that respondents procured it through fraudulent means because the questioned deed of sale is fictitious. This Court, however, finds that petitioners' objective in alleging respondents' bad faith in securing the title is to annul and set aside the judgment pursuant to which such title was decreed. Apparently, the attack on the proceeding granting respondents' title was made as an incident in the main action for quieting of title and recovery of possession. Evidently, petitioners' action is a collateral attack on the respondents' title, which is prohibited under the rules.

WHEREFORE, the petition is **DENIED**. The Decision dated April 29, 2015 and the Resolution dated December 4, 2015 of the Court of Appeals in CA-G.R. CV No. 01395 are **AFFIRMED**.

SO ORDERED.

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

Leonen, J., on leave.

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[55] *Id*. at 115-116.

THIRD DIVISION

[G.R. No. 222955. October 16, 2019]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **INDUSTRIAL INSURANCE COMPANY, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; ESTOPPEL; ESTOPPEL BY SILENCE; 'ESTOPPEL BY SILENCE' ARISES WHERE A PERSON, WHO BY FORCE OF CIRCUMSTANCES IS UNDER A DUTY TO ANOTHER TO SPEAK, REFRAINS FROM DOING SO AND THEREBY LEADS THE OTHER TO BELIEVE IN THE EXISTENCE OF A STATE OF FACTS IN RELIANCE ON WHICH HE ACTS TO HIS PREJUDICE.— In *Pasion v. Melegrito*, the Court ruled that a party may be estopped from claiming the contrary of the matter through his or her silence whether the failure to speak is intentional or negligent as when such silence would result to a fraud on the other party. The Court explained: The principles of equitable estoppel, sometimes called *estoppel in pais,* are made part of our law by Art. 1432 of the Civil Code. Coming under this class is estoppel by silence, which obtains here and as to which it has been held that: x x x an estoppel may arise from silence as well as from words. **'Estoppel by silence' arises where a person, who by force of circumstances is under a duty to another to speak, refrains from doing so and thereby leads the other to believe in the existence of a state of facts in reliance on which he acts to his prejudice.** Silence may support an estoppel whether the failure to speak is intentional or negligent. 'Inaction or silence may under some circumstances amount to a misrepresentation and concealment of facts, so as to raise an equitable estoppel. **When the silence is of such a character and under such circumstances that it would become a fraud on the other party to permit the party who has kept silent to deny what his silence has induced the other to believe and act on, it will operate as an estoppel. This doctrine rests on the principle that if one maintains silence, when in conscience he ought to speak, equity will debar him from speaking when**

in conscience he ought to remain silent. He who remains silent when he ought to speak cannot be heard to speak when he should be silent.'

2. ID.; ID.; ID.; RESPONDENT IS ESTOPPED FROM ASSAILING THE VALIDITY OF THE BAIL BOND.—Here, the Court finds that IICI is estopped from assailing the validity of the bail bond. By IICI's silence and failure to notify the RTC despite repeated notice as to the existence of the bail bond in favor of the accused, Judge Fonacier was made to believe that Enriquez' act of issuing the bail bond was authorized by IICI. Had IICI been diligent in informing the court and moving for the cancellation of the bail bond after knowledge of its existence, the RTC could have cancelled it. Further, the RTC could have prevented the accused from fleeing from the trial of her case.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Dave John T. Hernandez for respondent.

R E S O L U T I O N

INTING, *J.*:

The People of the Philippines (petitioner), through the Office of the Solicitor General (OSG) filed the petition for review on *certiorari* assailing the Decision[1] dated April 10, 2015 and the Resolution[2] dated February 4, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 120712. The CA found grave abuse of discretion amounting to lack or excess of jurisdiction on the part of Judge Albert R. Fonacier (Judge Fonacier) of Branch 76, Regional Trial Court (RTC), Malolos City in denying the Motion to Lift and Recall Forfeiture Order (dated May 31, 2010) and to Withdraw Approval of and Return IICI Bail Bond No. JCR

[1] *Rollo*, pp. 12-22; penned by Associate Justice Melchor Q.C. Sadang with Associate Justices Celia C. Librea-Leagogo and Amy C. Lazaro-Javier (now a member of the Court), concurring.

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

(2) 005246[3] (motion to lift and recall forfeiture order) of respondent Industrial Insurance Company, Inc. (IICI), not declaring IICI Bail Bond JCR No. (2) 005246 dated September 14, 2006 (bail bond) void, and ordering the issuance of a writ of execution against it.[4]

Antecedents

IICI, a non-life insurance company, alleged that on April 22, 2005, it executed a General Agency Agreement (GAA) with FGE Insurance Management (FGE), a single proprietorship owned by Feliciano Enriquez (Enriquez), whereby it designated FGE as its general agent for the solicitation of non-life insurance including bonds.[5] Thereafter, through its Board of Directors, IICI also appointed Enriquez as its Operations Manager for Judicial Bonds — Criminal Cases with authority to issue bonds in criminal cases up to the maximum amount of ₱100,000.00.[6]

In the criminal case filed against the accused Rosita Enriquez (accused) for illegal possession of drugs under Section 11, Book II of Republic Act (RA) No. 9165,[7] before the RTC docketed as Criminal Case No. 2245-M-2006, accused posted the bail bond in the amount of ₱200,000.00. It was signed by Enriquez and approved by 1st Vice Executive Judge Herminia Pasamba.[8]

On July 7, 2008, IICI revoked Enriquez's authority after discovering that Enriquez had not been remitting proper premiums or giving a full and written accounting of all his bail bond transactions with the courts, or furnishing copies of IICI bail bonds that he filed in court, including the bail bond of the

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[3] *Id.* at 105-117.

[4] *Id.* at 21.

[5] *Id.* at 12.

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

[7] Comprehensive Dangerous Drugs Act of 2002.

[8] *Rollo*, p. 13.

accused. The Court Administrator and the Sandiganbayan were then notified of the revocation of Enriquez's authority.[9]

For failure of the accused to appear at the hearing on May 31, 2010, Judge Fonacier issued an Order[10] dated May 31, 2010 declaring the subject bond forfeited in favor of the Government, and directing IICI to produce the accused in court 30 days from receipt of the Order and to show cause why judgment should not be rendered against the bond.[11] For failure of IICI to do so and considering the manifestation of the accused's counsel that the accused had already gone abroad, the RTC issued its Order[12] dated August 16, 2010, giving IICI a period of 30 days from receipt of the Order to show cause as to why judgment should not be rendered against the bond.[13]

On October 20, 2010, IICI filed its motion to lift and recall forfeiture order, alleging that: (1) the bail bond was void because it was issued in violation of Sections 226 and 361 of the Insurance Code; (2) it should have been disapproved by the Office of the Clerk of Court and returned to IICI pursuant to Administrative Matter (A.M.) No. 04-7-02-SC, otherwise known as the Guidelines on Corporate Surety Bonds; and (3) the forfeiture of the bond was issued in violation of Section 13, Rule 114 of the Revised Rules on Criminal Procedure (Rules).[14]

Ruling of the RTC

On January 24, 2011, Judge Fonacier issued an Order[15] denying the motion to lift and recall forfeiture order and directing the issuance of a writ of execution against the bail bond.[16] Judge

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[9] *Id.*

[10] *Rollo*, p. 171.

[11] *Id.*

[12] Records, Vol. I, p. 258.

[13] *Id.*

[14] *Rollo*, p. 13.

[15] *Id.* at 100-101.

[16] *Id.* at 101.

Fonacier ruled that: (1) none of the circumstances under Section 22, Rule 114 of the Rules are present in the case as to warrant the cancellation of the bail bond; (2) the Clerk of Court, who was primarily tasked with determining the completeness and authenticity of the bail bond and its supporting documents, is vested with the presumption of regularity in the performance of duty; and (3) even assuming that Enriquez no longer had authority to approve the bail bond, IICI should have apprised the court, but failed to do so.[17]

IICI filed a motion for reconsideration, but this was denied by Judge Fonacier in his Order[18] dated May 6, 2011. Judge Fonacier reiterated his grounds for denying the motion to lift and recall forfeiture order and the issuance of a writ of execution.[19] He added that the RTC received a letter dated October 16, 2008 from IICI, through its manager Esmael Cuevas Gerga (Gerga) on December 5, 2008 wherein IICI requested that all writs of execution and orders should be forwarded to its head office at the address stated therein.[20] However, it did not mention that Enriquez ceased to be its authorized agent. Further, it was only after the Order dated August 16, 2010 was issued against it that, it raised for the first time the alleged lack of authority of Enriquez to issue the bail bond.[21]

Thus, IICI filed a petition for *certiorari* before the CA.[22]

Ruling of the CA

In its Decision[23] dated April 10, 2015, the CA granted the petition.[24]

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[17] *Id.*

[18] *Rollo*, pp. 102-104.

[19] *Id.* at 102-103.

[20] *Id.* at 103.

[21] *Id.*

[22] *Rollo*, pp. 78-99.

[23] *Id.* at 12-22.

[24] *Id.* at 21.

As to the procedural aspect, the CA ruled that the petition for *certiorari* was the proper remedy in this case.[25]

As to the merits, the CA found grave abuse of discretion amounting to lack or excess of jurisdiction on the part of Judge Fonacier in denying the motion to lift and recall forfeiture order of IICI, in not declaring the bond void, and in ordering the issuance of a writ of execution against it.[26]

The CA identified the defects in the bond which marred its issuance.[27]

First, Enriquez's act of increasing the amount of the bail to ₱200,000.00 was his unilateral act; hence, it did not bind IICI.[28] The CA ruled that the maximum amount of ₱100,000.00, as one of the limitations of the bond, was written on its face.[29] Also, there was no competent proof that Enriquez was authorized to do so by the IICI Board of Directors or that he had such authority by virtue of his position as operations manager.[30] Thus, the Clerk of Court should have required proof of such authority.[31]

Second, the waiver of appearance was not executed by the accused under oath as required by A.M. No. 04-7-02-SC.[32]

Third, as to the affidavit of justification, the jurat did not contain competent evidence of Enriquez's identity since what was presented was the community tax certificate (CTC) of Enriquez.[33] The CA explained that the CTC is not a competent evidence of

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

[26] *Id.* at 21.

[27] *Id.* at 20.

[28] *Id.* at 18.

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] *Rollo*, p. 19.

[33] *Id.* at 20.

identity because it did not bear the photograph of the individual concerned.[34]

Petitioner filed a motion for reconsideration of the CA Decision, but this was denied by the CA through its Resolution[35] dated February 4, 2016.

Hence, the instant petition.[36]

In the Resolution[37] dated June 6, 2016, the Court then required IICI to file its comment. However, the copy of the Resolution dated June 6, 2016 was returned to this Court on September 8, 2016, with postal notation "RTS-Moved Out."[38]

Subsequently, in a Manifestation[39] dated July 13, 2017, petitioner, through the OSG, stated among others that a certain Ms. Joe Ledesma, a Staff of the Conservatorship, Receivership and Liquidation Division of the Insurance Commission, confirmed the merger of IICI and Sterling Insurance Co., Inc. (Sterling) with the latter as the surviving entity and that the current address of Sterling is at 6/F, Zetta II Annex Bldg., 191 Salcedo Street, Legaspi Village, Makati City.[40]

After IICI received a copy of the petition at Sterling's address, IICI, through its counsel, filed its Explanation and Compliance[41] dated December 19, 2018 "submit[ting] upon the sound action and discretion of this Honorable Court the decision, judgment or resolution over the case or petition based on the existing records, even without the filing of the corresponding comment

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[34] *Id.*

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

[36] *Id.* at 26-40.

[37] *Id.* at 184.

[38] *Id.* at 190.

[39] *Id.* at 196-198.

[40] *Id.* at 197.

[41] *Id.* at 225-228.

thereon."[42] IICI reasoned that it was difficult for it to submit a substantive comment within the given period. Considering the difficulty in locating or retrieving the pertinent records of the case brought about by the physical turn-over and transfer of company records and documents from IICI to Sterling.[43]

The Court, in the Resolution[44] dated February 6, 2019, noted and accepted IICI's Explanation and Compliance dated December 19, 2018, and dispensed with the filing of IICI's comment on the petition.

Ruling of this Court

The Court grants the petition.

Contrary to the ruling of the CA, the Court finds that Judge Fonacier did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in denying respondent's motion to lift and recall forfeiture order and in ordering the issuance of a writ of execution against the bond.

The Court notes that in IICI's petition before the CA, it indicated its principal office address at 8th floor, Cuevas Tower Condominium, Taft Avenue corner Pedro Gil Street, Malate Manila (Malate, Manila).[45]

IICI's address as stated in its petition before the CA is significant considering that after IICI revoked the authority of Enriquez as its agent on July 7, 2008, IICI, through Gerga, requested to the RTC thru its letter dated October 16, 2008 that all writs of execution and orders be forwarded to its head office at the address stated therein.[46]

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[42] *Id.* at 226.

[43] *Id.* at 225.

[44] *Id.* at 235.

[45] *Id.* at 79.

[46] *Id.* at 103.

On December 9, 2008,[47] the Produce Order issued by the RTC for IICI to produce the accused in court were sent to Malate, Manila unlike the previous Produce Orders which bore different addresses.

The RTC then issued Produce Orders dated February 23, 2009,[48] April 13, 2009,[49] July 27, 2009,[50] September 14, 2009,[51] November 9, 2009,[52] January 18, 2010,[53] March 1, 2010,[54] and April 12, 2010.[55] All of these Produce Orders were addressed to IICI at its address in Malate, Manila and directed IICI to produce the accused in court on the particular dates stated therein for arraignment/pre-trial. Despite receipt of the Produce Orders, IICI failed to produce the accused in court.

Notably, IICI was silent as to the revocation of Enriquez's authority despite the fact that as discussed by the RTC, it previously sent a letter dated October 16, 2008 indicating its address. Further, IICI was already deemed to know of the existence of the bail bond when the RTC sent the Produce Orders at its given address. And yet, IICI still remained silent and failed to bring the alleged irregularities of the bail bond to the RTC until the filing of its motion to lift and recall forfeiture order.

In *Pasion v. Melegrito*,[56] the Court ruled that a party may be estopped from claiming the contrary of the matter through his

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[47] Records, Vol. I, p. 207.

[48] *Id.* at 210.

[49] *Id.* at 214.

[50] *Id.* at 219.

[51] *Id.* at 222.

[52] *Id.* at 226.

[53] *Id.* at 237.

[54] *Id.* at 241.

[55] *Id.* at 245.

[56] 548 Phil. 302 (2007).

or her silence whether the failure to speak is intentional or negligent as when such silence would result to a fraud on the other party. The Court explained:

> The principles of equitable estoppel, sometimes called *estoppel in pais*, are made part of our law by Art. 1432 of the Civil Code. Coming under this class is estoppel by silence, which obtains here and as to which it has been held that:
>
> > x x x an estoppel may arise from silence as well as from words. **'Estoppel by silence' arises where a person, who by force of circumstances is under a duty to another to speak, refrains from doing so and thereby leads the other to believe in the existence of a state of facts in reliance on which he acts to his prejudice.** Silence may support an estoppel whether the failure to speak is intentional or negligent.
> >
> > 'Inaction or silence may under some circumstances amount to a misrepresentation and concealment of facts, so as to raise an equitable estoppel. **When the silence is of such a character and under such circumstances that it would become a fraud on the other party to permit the party who has kept silent to deny what his silence has induced the other to believe and act on, it will operate as an estoppel. This doctrine rests on the principle that if one maintains silence, when in conscience he ought to speak, equity will debar him from speaking when in conscience he ought to remain silent. He who remains silent when he ought to speak cannot be heard to speak when he should be silent.'**[57] (Emphasis in the original.)

Here, the Court finds that IICI is estopped from assailing the validity of the bail bond. By IICI's silence and failure to notify the RTC despite repeated notice as to the existence of the bail bond in favor of the accused, Judge Fonacier was made to believe that Enriquez' act of issuing the bail bond was authorized by IICI. Had IICI been diligent in informing the court and moving for the cancellation of the bail bond after knowledge of its existence. the RTC could have cancelled it. Further, the RTC could have prevented the accused from fleeing from the trial of her case.

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[57] *Id.* at 311.

WHEREFORE, the Petition is **GRANTED**. The Decision dated April 10, 2015 and the Resolution dated February 4, 2016 of the Court of Appeals in CA-G.R. SP No. 120712 are **REVERSED** and **SET ASIDE**. The Orders dated January 24, 2011 and May 6, 2011 of the Regional Trial Court are **REINSTATED.**

SO ORDERED.

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

Leonen, J., on leave.

SECOND DIVISION

[G.R. No. 223822. October 16, 2019]

REPUBLIC OF THE PHILIPPINES, represented by THE REGIONAL EXECUTIVE DIRECTOR, DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR), REGIONAL OFFICE NO. III, *petitioner, vs.* **TANDUAY LUMBER, INC., VERBO REALTY AND DEVELOPMENT CORP., SPOUSES CLEMENTE and MA. LOURDES GARCIA, JOHN MICHAEL H. ARTIENDA, SPOUSES TEODORO D.G. CHAN and ANGELITA G. CHAN, LICERIO M. LIBUNAO, MARICRIS A. MELCHOR, MARICRIS C. ARMADO, WINSTON T. CAPATI and THE REGISTER OF DEEDS OF BULACAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; MOOT AND ACADEMIC; THE PASSAGE OF THE "AGRICULTURAL FREE

PATENT REFORM ACT" (R.A. NO. 11231) REMOVING THE RESTRICTION ON THE CONVEYANCE, TRANSFER OR DISPOSITION OF THE PATENTED LAND WITHIN FIVE YEARS FROM AND AFTER THE ISSUANCE OF THE PATENT PURSUANT TO SECTION 118 OF COMMONWEALTH ACT (CA) 141 AND THE TITLE OF THE PATENTEE SHALL NOW BE CONSIDERED AS TITLE IN FEE SIMPLE, HAS RENDERED THE GOVERNMENT'S ACTION FOR REVERSION OR RECONVEYANCE OF THE SUBJECT LAND MOOT AND ACADEMIC.— The passage of Republic Act No. (RA) 11231 or the "Agricultural Free Patent Reform Act" has rendered this issue moot and academic. Pursuant to *David v. Macapagal-Arroyo*, 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 have no practical use or value. Section 3 of RA 11231 provides: SEC. 3. Agricultural public lands alienated or disposed in favor of qualified public land applicants under Section 44 of Commonwealth Act No. 141, as amended, shall not be subject to restrictions imposed under **Sections 118, 119 and 121** thereof regarding acquisitions, encumbrances, conveyances, transfers, or dispositions. Agricultural free patent shall now be considered as **title in fee simple and shall not be subject to any restriction on encumbrance or alienation.** The removal of the restrictions imposed under Sections 118, 119 and 121 of Commonwealth Act No. (CA) 141 was given retroactive effect under Section 4 of RA 11231, x x x. x x x. [T]he State's complaint for reversion is based **solely** on Section 118 of CA 141. Since the restriction on the conveyance, transfer or disposition of the patented land subject of this case within five years from and after the issuance of the patent pursuant to Section 118 of CA 141 has been removed and the title of the patentee Epifania San Pedro is, under RA 11231, now considered as title in fee simple, which is not subject to any restriction on alienation or encumbrance, the Government no longer has any legal basis to seek the reversion or reconveyance of the subject land.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Tagumpay B. Ponce for respondents Verbo Lumber, *et al.*
Rommel H. Rama for respondent Licerio Libunao.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Resolution[2] dated September 3, 2015 of the Regional Trial Court, Third Judicial Region, Branch 13, Malolos, Bulacan (RTC) in Civil Case No. 622-M-2014 (RTC Resolution), granting the Special and Affirmative Defenses of the respondents and dismissing the Complaint for Cancellation of Title/Reversion[3] on the grounds of equitable estoppel and laches, and the Resolution[4] dated March 4, 2016 of the RTC, denying the motion for reconsideration filed by the petitioner.

The Facts and Antecedent Proceedings

The facts, as culled from the RTC Resolution, are as follows:

> 4. By virtue of Free Patent (FP) No. (III-12) 17306 dated May 20, 1987, Original Certificate of Title (OCT) No. P-22-C was issued and registered on May 25, 1987, in the name of Epifania San Pedro. It covers Lot No. 3070, Cad-333 situated in San Juan, Balagtas, Bulacan with an area of 12,108 square meters.
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> 5. After the death of Epifania San Pedro, Pelagio Francisco[,Sr.[5]] executed an Affidavit of Self Adjudication declaring that he was the sole surviving heir of the patentee. As a consequence thereof, OCT No. P-22-C was cancelled and Pelagio Francisco was issued Transfer Certificate of Title (TCT) No. T-7836 on October 25, 1990.

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[1] *Rollo* (Vol. I), pp. 29-61, exclusive of Annexes.

[2] *Id*. at 62-73. Penned by Presiding Judge Efren B. Tienzo.

[3] *Id*. at 96-106, excluding Annexes.

[4] *Id*. at 74-79.

[5] In the *Sinumpaang Salaysay* (or Affidavit of Self-Adjudication), the affiant's name is Pelagio S. Francisco, Sr. (*id*. at 111) while in TCT No. T-7836, the registered owner is Pelagio S. Francisco (*id*. at 112).

6. On December 3, 1990, Pelagio Francisco sold the subject property to defendant Tanduay Lumber. Thus, TCT No. T-7836 was cancelled and TCT No. P-8582 was issued in the name of Tanduay Lumber.

7. Defendant Tanduay Lumber thereafter caused the subdivision of the subject lot in[to] Lot Nos. 3070-A and 3070-B under Plan Psd-03-0778111, approved by the Land Management Service of the DENR, Regional Office No. III. Consequently, TCT No. T-24663 [P(M)[6]] was issued in the name of Nolasco R. Capati[, Sr.] covering Lot No. 3070-A[, by virtue of a Deed of Exchange wherein Lot No. 3070-A was exchanged with Lot No. 3069-[B-1[7]], while TCT No. T-24664 [P(M)[8]] was issued in the name of Tanduay Lumber covering Lot No. 3070-B.

8. On February 4, 2003, Nolasco R. Capati[, Sr.] transferred Lot No. 3070-A to Winston T. Capati. Accordingly, TCT No. T-24663 [P(M)] was cancelled and in lieu thereof, TCT No. T-44191 [P(M)[9]] was issued in the name of Winston T. Capati.

9. Lot No. 3070-A was subsequently further subdivided into two (2) lots: Lot Nos. 3070-A-1 and 3070-A-2, under Subdivision Plan Psd-03- 124704. Lot 3070-A-1 was registered under TCT No. T-55635 [P(M)[10]] in the name of Verbo Realty, [by virtue of a sale[11]] and Lot 3070-A-2 was registered under TCT No. T-55636 [P(M)[12]] in the name of Winston T. Capati.

10. Meanwhile, on December 31, 2002, Lot 3070-B was further subdivided into Lot Nos. 3070-B-1 to 3070-B-9, under Subdivision Plan Psd-03-125214. In a Deed of Conveyance dated July 8, 2003, Tanduay Lumber transferred Lot Nos. 3070-B-1, 3070-B-3, 3070-B-5 and 3070-B-6 in favor of Verbo Realty, which were registered under

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[6] *Rollo* (Vol. I), pp. 120-123.

[7] Per Entry No. 246907(M) annotated on page 4 of TCT No. T-8582, *id*. at 119.

[8] *Rollo* (Vol. I), pp. 124-126.

[9] *Id*. at 127-130.

[10] *Id*. at l31-134.

[11] Per Entry No. 683196 annotated on page 2 of TCT No. T-44191 P(M), *id*. at 128.

[12] *Id*. at 135-137.

TCT Nos. T-50387 [P(MY)[13]], T-50389 [P(M)[14]], T-50391 [P(M)[15] and T-50392 [P(M)[16]], respectively. On the other hand, Lot Nos. 3070-B-2, 3070-B-4, 3070-B-7, 3070-B-8 and 3070-B-9 were registered in favor of Tanduay Lumber, under TCT Nos. T-50388 [P(M)[17]], T-50390 [P(M)[18]], T-50393 [P(M)[19]], T- 50394 [P(M)[20]] and T-50395 [P(M)[21]], respectively.

11. Lot No. 3070-B-1 was sold to Spouses Clemente and Maria Lourdes Garcia. Thus, TCT No. T-64971 [P(M)[22]] was issued in their name[s].

12. Tanduay Lumber sold Lot No. 3070-B-2 to the Garcia spouses. This was accordingly registered under TCT No. T-54606 [P(M)[23]], issued in their name[s].

13. Lot No. 3070-B-4 was transferred to Jeffrey B. Miranda, who was accordingly issued TCT No. T-59827 [P(M)[24]]. Subsequently, Jeffrey B. Miranda sold the same to John Michael H. Artienda, as a result of which TCT No. T-59827 [P(M)] was cancelled and in lieu thereof, TCT No. T-75785 [P(M)[25]] was issued.

14. Lot No. 3070-B-5 was conveyed to Spouses Ruben and Amalia Nicolas, which was later on registered under TCT No. T-6348[6][26]

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[13] *Id*. at 143-146.

[14] *Id*. at 147-151.

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

[16] *Id*. at 156-159.

[17] *Id*. at 160-163.

[18] *Id*. at 164-167.

[19] *Id*. at 168-171.

[20] *Id*. at 172-175.

[21] *Id*. at 176-179.

[22] *Id*. at 180-183.

[23] *Id*. at 184-188.

[24] *Id*. at 189-192.

[25] *Id*. at 193-197.

[26] Stated as TCT No. T-63485 in the RTC Resolution dated September 3, 2015, p. 3, *id*. at 64.

[P(M)[27]]. In turn, they sold the subject lot back to Verbo Realty. As a consequence of the transfer, TCT No. 040-2012008381 was issued in the name of Verbo Realty.

15. Lot No. 3070-B-6 was transferred to the Garcia spouses. This was registered under TCT No. T-54943 [P(M)[28]] in their name(s].

16. Lot No. 3070-B-7 was also transferred to the Garcia spouses. Accordingly, TCT No. T-52118 [P(M)[29]] was issued in their favor.

17. Lot No. 3070-B-8 was similarly conveyed to the Garcia spouses, as a result of which, TCT No. 60193 [P(M)[30]] was issued. Later, the Garcia spouses sold the subject lot to Spouses Teodoro and Angelita Chan. Thus, TCT No. T-66304 [P(M)[31]] was registered and issued in favor of the Chan spouses.

18. Lot No. 3070-B-9 was transferred to Licerio M. Libunao. Consequently, TCT No. T-54989 [P(M)[32]] was issued in his favor.

19. Meanwhile, under the Consolidation-Subdivision Plan Pcs-03-015689, the Garcia spouses caused the consolidation of Lot Nos. 3070-B-1, 3070-B-2, 3070-B-6 and 3070-B-7 with Lot Nos. 3083 and 3084-C. Accordingly, TCT Nos. 040-2011005318, 040-2011005319 and 040-2011005320 were issued in the name[s]of the Garcia spouses.

20. Later, the Garcia spouses sold the lots covered by TCT No. 040-201100[5319] and TCT No. 040-2011[00]5320 to Maricris A. Melchor and Maricris C. Armado, respectively. By virtue of the transfer, TCT Nos. 040-2011008933 and 040-2012005417 were respectively registered in their names.

21. In a letter dated January 31, 2011, [a certain] Arturo and Teresita Mendoza[, represented by their lawyer, Tabalingcos & Associates,[33] wrote the OSG a petition to request] the OSG to cause the cancellation

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[27] *Rollo* (Vol. I), pp. 198-202.

[28] *Id*. at 206-211.

[29] *Id*. at 212-216.

[30] *Id*. at 217-221.

[31] *Id*. at 222-226.

[32] *Id*. at 227-230.

[33] See Letter dated January 31, 2011, *id*. at 246-251.

of Patent No. P-22-C issued to Epifania San Pedro, and all subsisting derivative titles. They alleged that the patentee sold the lot covered by said patent within five (5) years from the issuance of the patent, in violation of the provisions of Commonwealth Act (C.A.) No. 141 or the Public Land Act.

22. On February 7, 2011, the OSG forwarded the letter-petition to the RED of the DENR Regional Office No. III and requested the conduct of the appropriate investigation.

23. After investigation, the RED of the DENR Regional Office No. III recommended the filing of a reversion suit since the alienation made by Pelagio Francisco in favor of Tanduay Lumber violated Sections 118, 121 and 122 of C.A. No. 141.

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[A Complaint for Cancellation of Title/Reversion dated August 31, 2014 was filed by the Republic of the Philippines, represented by the Regional Executive Director (RED), DENR, Regional Office No. III (the petitioner) against Tanduay Lumber, Inc., Verbo Realty and Development Corp., Spouses Clemente and Ma. Lourdes Garcia, John Michael H. Artienda, Spouses Teodoro D.G. Chan and Angelita G. Chan, Licerio M. Libunao, Maricris A. Melchor, Maricris C. Armado and Winston T. Capati (the private respondents).[34]]

After service of summons upon the [private respondents], except for Tanduay Lumber, Inc. (Tanduay) whose location is unknown as it is said to have closed, the [private respondents] submitted their respective answers with Counter-claim and Special and Affirmative Defenses on laches, estoppels and prescription.

On June 17, 2015, the [private respondents] adduced evidence in support of their special and affirmative defenses. After submission of the respective memoranda for the [private respondents], this incident was submitted for resolution. A late memorandum was filed by the government despite its Motion for Extension of time to do so x x x.[35]

The RTC issued a Resolution dated September 3, 2015, the dispositive portion of which states:

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[34] See Complaint, *id.* at 96-106.

[35] RTC Resolution dated September 3, 2015, pp. 2-5; *id.* at 63-66.

WHEREFORE, the Special and Affirmative Defenses of the Defendants are GRANTED.

Accordingly, this Complaint for Cancellation of Title and Reversion is DISMISSED on the grounds of equitable estoppels and laches.

SO ORDERED.[36]

The petitioner filed a motion for reconsideration, which was denied by the RTC in its Resolution dated March 4, 2016, the dispositive portion of which reads:

WHEREFORE, the Motion for Reconsideration is DENIED for lack of merit.

SO ORDERED.[37]

On May 23, 2016, the petitioner filed the instant Rule 45 Petition. Subsequently, the private respondents, except Tanduay Lumber, Inc., filed their comments.[38]

Issue

The singular issue raised in the Petition is: Whether the petitioner's complaint for reversion and cancellation of titles is barred by estoppel and laches.[39]

The Court's Ruling

The passage of Republic Act No. (RA) 11231[40] or the "Agricultural Free Patent Reform Act" has rendered this issue moot and academic.

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[36] *Id*. at 12; *id*. at 73.

[37] RTC Resolution dated March 4, 2016, p. 6; *id*. at 79.

[38] *Rollo* (Vol. I), pp. 352-359, 361-383.

[39] *Id*. at 38.

[40] AN ACT REMOVING THE RESTRICTIONS IMPOSED ON THE REGISTRATION, ACQUISITION, ENCUMBRANCE, ALIENATION, TRANSFER AND CONVEYANCE OF LAND COVERED BY FREE PATENTS UNDER SECTIONS 118, 119 AND 121 OF COMMONWEALTH ACT NO. 141, OTHERWISE KNOWN AS "THE PUBLIC LAND ACT", AS AMENDED. Approved on February 22, 2019, published on March 15,

Pursuant to *David v. Macapagal-Arroyo*,[41] 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 have no practical use or value.[42]

Section 3 of RA 11231 provides:

> SEC. 3. Agricultural public lands alienated or disposed in favor of qualified public land applicants under Section 44 of Commonwealth Act No. 141, as amended, shall not be subject to restrictions imposed under **Sections 118, 119 and 121** thereof regarding acquisitions, encumbrances, conveyances, transfers, or dispositions. Agricultural free patent shall now be considered as **title in fee simple and shall not be subject to any restriction on encumbrance or alienation**. (Emphasis and underscoring supplied)

The removal of the restrictions imposed under Sections 118, 119 and 121 of Commonwealth Act No. (CA) 141 was given retroactive effect under Section 4 of RA 11231, which provides:

> SEC. 4. This Act shall have retroactive effect and any restriction regarding acquisitions, encumbrances, conveyances, transfers, or dispositions imposed on agricultural free patents issued under Section 44 of Commonwealth Act No. 141, as amended, before the effectivity of this Act shall be removed and are hereby immediately lifted: *Provided*, That nothing in this Act shall affect the right of redemption under Section 119 of Commonwealth Act No. 141, as amended, for transactions made in good faith prior to the effectivity of this Act.

The Complaint for Cancellation of Title/Reversion[43] dated August 31, 2014 filed by the OSG is anchored on the following allegations:

2019 and took effect on March 30, 2019 or 15 days after publication in the *Official Gazette* or in a newspaper of general circulation. RA 11231, Sec. 7.

[41] 522 Phil. 705 (2006).

[42] *Id*. at 753; citations omitted.

[43] *Rollo* (Vol. I), pp. 96-106, excluding Annexes.

23. After investigation, the RED of the DENR Regional Office No. III recommended the filing of a reversion suit since the alienation made by Pelagio Francisco in favor of Tanduay Lumber violated Sections 118, 121 and 122 of C.A. No. 141.

> **For failure to comply with the requirements of Section 118, in relation to Section 124, of C.A. No. 141, the State as the grantor of FP No. (III-12) 17306 has the right to petition the annulment of the patent and the cancellation of titles derived from said patent.**

24. Section 118 of C.A. No. 141 proscribes the alienation and encumbrance of a parcel of land acquired under free patent, within five (5) years from its grant:

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25. In the case at bar, FP No. (III-12) 17306 was issued on May 20, 1987 and the corresponding OCT No. P-22-C was issued on May 25, 1987. On August 24, 1990, or three (3) years and three (3) months after the grant of the free patent, Pelagio Francisco transferred the subject lot by executing an Affidavit of Self-Adjudication. Nevertheless, this transfer is not covered by the five-year prohibition as Section 118 of C.A. No. 141 does not cover transmission by inheritance, because the land gratuitously given by the State is preserved and kept in the family of the patentee.

26. However, on December 3, 1990 or just after three (3) years and six (6) months from the date of grant of the free patent, Pelagio Francisco transferred the subject land to Tanduay Lumber. This subsequent transfer **falls squarely within the five-year prohibition** against the alienation or sale of the patented land under Section 118 of C.A. No. 141. Accordingly, such transfer nullifies the said alienation and constitutes a cause for the reversion of the property to the State.

27. The prohibition against any alienation or encumbrance of the land grant is a *proviso* attached to the approval of every application. Prior to the fulfillment of the requirements of law, a patentee only has an inchoate right to the property; such property remains part of the public domain and, therefore, not susceptible to alienation or encumbrance. Conversely, when a patentee has complied with all the terms and conditions which entitles him to the issuance of a patent for a particular tract of public land, he acquires a vested interest therein and has to be regarded an equitable owner thereof.

28. Here, considering that Pelagio Francisco failed to comply with the statutory requirement to maintain the property for himself and his family within the prescribed period of five (5) years, the grant in their favor did not ripen into ownership.

29. Since the sale of the subject lot by Pelagio Francisco to Tanduay Lumber is null and void *ab initio*, it produces no legal effect whatsoever. Accordingly, Tanduay Lumber could not have transferred title to the subsequent holders of title.[44]

Clearly, the State's complaint for reversion is based **solely** on Section 118 of CA 141. Since the restriction on the conveyance, transfer or disposition of the patented land subject of this case within five years from and after the issuance of the patent pursuant to Section 118 of CA 141 has been removed and the title of the patentee Epifania San Pedro is, under RA 11231, now considered as title in fee simple, which is not subject to any restriction on alienation or encumbrance, the Government no longer has any legal basis to seek the reversion or reconveyance of the subject land.

WHEREFORE, the Petition is hereby **DENIED** for being moot and academic. The Complaint for Cancellation of Title/ Reversion, docketed as Civil Case No. 622-M-2014 and filed with the Regional Trial Court of Malolos, Bulacan, Branch 13, is **DISMISSED** for lack of cause of action.

SO ORDERED.

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

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[44] *Id*. at 101-103.

SECOND DIVISION

[G.R. No. 224912. October 16, 2019]

BF CITILAND CORPORATION, *petitioner, vs.* **BANGKO SENTRAL NG PILIPINAS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS AND PRACTICES; VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING; A DEFECTIVE VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING DUE TO ABSENCE THEREIN OF THE DETAILS OF THE AFFIANT'S COMPETENT EVIDENCE OF IDENTITY IS NOT FATAL TO A CASE, AS THE VERIFICATION IS ONLY A FORMAL, NOT A JURISDICTIONAL, REQUIREMENT THAT THE COURT MAY WAIVE; THE COURT RESOLVES ACTION BASED ON MERIT AND SUBSTANTIVE ISSUES, AND NOT ON TECHNICAL ISSUES.— In *Jorge v. Marcelo*, the Court allowed the non-presentation to the notary public and non-indication in the verification and certification of non- forum shopping of the affiant's competent evidence of identity, because he/she was personally known to the notary public x x x. Such is not the case here. The jurat of BF Citiland's Verification and Certification of Non-Forum Shopping does not mention that the affiants are personally known to the notary public. It clearly states that the affiants presented competent evidence of identity to the notary public and yet there were no entries under Identification and Date/Place of Issuance. Proofs of competent evidence of identities are required to ensure that the allegations are true and correct and not a product of the imagination or a matter of speculation, and that the pleading is filed in good faith. With the absence of the details of competent evidence of identity, the verification and certification are defective. However, the Court had previously held that a defective verification and certification is not fatal to a case. In several cases, the Court entertained a petition despite a defect in the verification and certification, and reasoned that "the verification is only a formal, not a jurisdictional, requirement that the Court may waive." In these cases, the Court considered

it more appropriate to resolve the action based on merit and substantive issues, and not on technical issues. Here, the Court had examined the pleadings of the parties and resolved to deny the petition based on substantive and technical grounds. Form follows substance. The technical grounds play a secondary role in our ruling and are only additional reasons for the denial of the petition. Still, the Court reminds the members of the bar to conform to the formal requirements under the Rules of Court for the proper and efficient administration of justice.

2. ID.; ID.; PETITION FOR REVIEW ON *CERTIORARI*; CONTENTS OF PETITION; THE FAILURE TO ATTACH MATERIAL PORTIONS OF THE RECORD AS WOULD SUPPORT THE PETITION WILL NOT NECESSARILY CAUSE THE OUTRIGHT DISMISSAL OF THE PETITION, AS THE COURT MAY STILL GIVE DUE COURSE TO THE SAME IF THERE IS SUBSTANTIAL COMPLIANCE WITH THE RULES.— Section 4, Rule 45 of the Rules of Court enumerates the contents of a petition for review on *certiorari* SEC. *4. Contents of petition.* — x x x. **(d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court a quo and the requisite number of plain copies thereof, and such material points of the record as would support the petition;** x x x. In *Cancio v. Performance Foreign Exchange Corp*., the Court held that non-compliance with Section 4, Rule 45 of the Rules of Court does not automatically result to dismissal of the case. Thus: The failure to attach material portions of the record will not necessarily cause the outright dismissal of the petition. While Rule 45, Section 4 of the Rules of Court requires that the petition "be accompanied by [x x x] such material portions of the record as would support the petition," This Court may still give due course if there is substantial compliance with the Rules. Here, BF Citiland attached the following documents: (1) certified true copies of the CA Decision and Resolution subject of this Petition; (2) complaint in the annulment case; (3) petition in the declaratory relief case; (4) January 29, 2014 Makati RTC, Branch 143 Order; (5) Omnibus Motion; (6) July 21, 2014 Makati RTC, Branch 141 Order; (7) November 8, 2014 Makati RTC, Branch 141 Order; and (8) BSP's petition for *certiorari* filed in the CA. The Court finds the above attachments as substantial compliance with Section 4(d), Rule 45 of the Rules of Court as it supports BF Citiland's position.

BF Citiland attached copies of the assailed CA Decision and Resolution, as well as the RTC's orders and pleadings that are pertinent to its position. A petitioner is not required to attach all pleadings, court orders/processes, exhibits, or documents of the case, but only those which are material and relevant to the issue/s presented in the petition.

3. ID.; ID.; PLEADINGS AND PRACTICES; FORUM SHOPPING; CONCEPT THEREOF, DISCUSSED.— *In Malixi v. Baltazar*, the Court discussed the concept of forum shopping : Forum shopping is generally judicial. It exists: [x x x] [W]henever a party "repetitively avail[s] of **several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues** either pending in, or already resolved adversely by; some other court." It has also been defined as "an act of a party against whom an adverse judgment has been rendered in one forum of seeking and possibly getting a favorable opinion in another forum, other than by appeal or the special civil action of *certiorari*, or the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition." Considered a pernicious evil, it adversely affects the efficient administration of justice since it clogs the court dockets, unduly burdens the financial and human resources of the judiciary, and trifles with and mocks judicial processes.

4. ID.; ID.; ID.; ID.; ELEMENTS OF FORUM SHOPPING; PRESENT.— The test to determine whether or not forum shopping was committed was explained in *Dy, et al. v. Yu, et al.*: To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the element of *litis pendentia* is present, or whether a final judgment in one case will amount to *res judicata* in another. Otherwise stated, **the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought. If a situation of *litis pendentia* or *res judicata* arises by virtue of a party's commencement of a judicial remedy identical to one which already exists (either pending or already resolved), then a forum shopping infraction is committed.** Here, the elements of forum shopping are present.

5. ID.; ID.; ID.; ID.; *LITIS PENDENTIA* AND *RES JUDICATA*; ELEMENTS; PRESENT; PETITION DENIED FOR VIOLATION OF THE RULE AGAINST FORUM SHOPPING.— In *Goodland Co., Inc. v. Banco De Oro-Unibank, Inc.*, the Court defined and enumerated the elements of *litis pendentia* and *res judicata*: *Litis pendentia* is a ground for the dismissal of an action when there is another action pending between the same parties involving the same cause of action, thus, rendering the second action unnecessary and vexatious. It exists when the following requisites concur: 1. Identity of parties or of representation in both cases[;] 2. Identity of rights asserted and relief prayed for[;] 3. The relief must be founded on the same facts and the same basis[;] and 4. Identity in the two preceding particulars should be such that any judgment which may be rendered in the other action, will, regardless of which party is successful, amount to *res judicata* on the action under consideration. *Res judicata*, on the other hand, exists if the following requisites concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) it must have been rendered by a court having jurisdiction over the subject matter and the parties; (4) there must be, between the first and the second action, identity of parties, of subject matter and cause of action. The first three elements of *litis pendentia* are the same as forum shopping, and it was discussed x x x as present in this case. The only question left for the Court to decide is whether a resolution in either the declaratory relief case or in the annulment case would result to either *litis pendentia* or *res judicata* on the remaining case. The Court resolves in the affirmative. It was established that the two actions have identity of parties, identity of right or cause of action, and identity of reliefs sought. A decision on the merits in one action is, in theory, also a decision on the other remaining action. However, since the two actions were filed in two different courts/*fora*, the complainant/petitioner is considered to be shopping for a favorable result; hence, the term forum shopping. Having determined the presence of all the elements of forum shopping, we deny the petition.

APPEARANCES OF COUNSEL

Mendoza, Cruz & Associates for petitioner.
Cruz Marcelo & Tenefrancia for respondent.

D E C I S I O N

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

In forum shopping, what is critical is the vexation brought upon the courts and the litigants by a party who asks different courts to rule on the same or related causes and grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different fora upon the same issues. Willful and deliberate violation of the rule against forum shopping is a ground for summary dismissal of the case; it may also constitute direct contempt.[1]

The Facts

In May 2004, petitioner BF Citiland Corporation (BF Citiland) executed a Deed of Conveyance over its real property, covered by Transfer Certificate of Title (TCT) No. 218687, in favor of Banco Filipino Savings and Mortgage Bank (Banco Filipino), as payment for subscription of shares of stocks amounting to ₱130 Million. Banco Filipino used the property as collateral to secure its Special Liquidity Facilities loan (SLF loan) from respondent Bangko Sentral ng Pilipinas (BSP). However, the property's title was not yet transferred to Banco Filipino pending the Securities and Exchange Commission's (SEC's) approval of the investment and the BSP's favorable endorsement. Thus, Banco Filipino asked BF Citiland to execute a third-party mortgage in favor of BSP. On July 2, 2004, BF Citiland signed the mortgage. On July 13, 2004, BF Citiland executed another deed of real estate mortgage over the same property as accommodation mortgagor to secure Banco Filipino's SLF loan from the BSP, this time amounting to ₱101 Million.[2]

In October 2004, BF Citiland learned that BSP disapproved the conveyance of the property in exchange for Banco Filipino

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[1] *Fontana Development Corp. v. Vukasinovic*, 795 Phil. 913, 924-925 (2016).

[2] *Rollo*, pp. 11, 28.

stocks, so it rescinded the deed. Banco Filipino agreed because it was unable to deliver the equivalent value of the shares of stock.[3]

On March 17, 2011, Banco Filipino was placed under receivership of the Philippine Deposit Insurance Corporation (PDIC).[4]

In 2011,[5] BSP filed a petition for extrajudicial foreclosure of real estate mortgage against BF Citiland covering TCT No. 218687. On October 25, 2011, BF Citiland received a notice of sheriff's sale from the Clerk of Court and *Ex-Officio* Sheriff of the Makati Regional Trial Court (RTC).[6]

On November 18, 2011, BF Citiland filed a petition for declaratory relief and prohibition with application for the issuance of writ of preliminary injunction/temporary restraining order docketed as **Civil Case No. 11-1146** (**declaratory relief case**) against BSP and the Makati RTC Clerk of Court and *Ex-Officio* Sheriff to determine BSP's right to foreclosure and to prevent them from conducting the public auction. It was raffled to **Makati RTC, Branch 143**.[7]

On August 2, 2012, the Makati RTC Clerk of Court proceeded with the auction sale of the mortgaged property, in which BSP was the highest bidder at ₱273,054,000.00.[8]

On November 8, 2012, BF Citiland filed an action for annulment of mortgage and foreclosure sale with application for preliminary injunction/temporary restraining order docketed as **Civil Case No. 12-1079** (**annulment case**) against Banco Filipino, BSP, and the Makati RTC Clerk of Court and *Ex-Officio* Sheriff to annul the following: (1) the deeds of real estate mortgage; (2)

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[3] *Id.* at 11.

[4] *Id.* at 28.

[5] *Id.* at 12.

[6] *Id.* at 28.

[7] *Id.*

[8] *Id.*

the auction sale; (3) the certificate of sale; and (4) the annotation on Banco Filipino's certificate of title. It was raffled to **Makati RTC, Branch 141**.[9]

BSP filed individual motions to dismiss in the Makati RTC Branches 141 and 143 on the ground of forum shopping. Branch 141 denied the motion to dismiss in the annulment case on July 5, 2013,[10] and the motion for reconsideration on December 4, 2013.[11] The Makati RTC reasoned that there is no forum shopping since the issues between the two actions are different.[12]

However, Branch 143 ruled differently in the declaratory relief case. In its January 29, 2014 Order,[13] the Makati RTC, Branch 143 dismissed the petition for declaratory relief because BF Citiland committed forum shopping. BF Citiland did not move for reconsideration, which resulted in the order becoming final and executory.[14]

BSP filed an omnibus motion before Branch 141 for the trial court to take judicial notice of the January 29, 2014 Order of Branch 143 and to dismiss the annulment case.[15] On July 21, 2014,[16] Branch 141 denied the omnibus motion because a similar motion to dismiss due to forum shopping had been previously filed, acted upon, and had attained finality. Branch 141 explained that even if it takes judicial notice of the dismissal of the case, this would not result to the dismissal of the annulment case as the court has expressly declared that dismissal shall only apply to the declaratory relief case.[17]

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

[10] *Id*. at 485-489.

[11] *Id*. at 519.

[12] *Id*. at 29.

[13] *Id*. at 71-73.

[14] *Id*. at 29.

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

[16] *Id*. at 88-90.

[17] *Id*.

BSP moved for reconsideration, which Branch 141 denied in its November 8, 2014 Order.[18] Aggrieved, BSP filed a petition for *certiorari* under Rule 65 of the Rules of Court with the Court of Appeals (CA), docketed as CA-G.R. SP No. 138747.

The CA Decision

On October 9, 2015, the CA rendered a Decision[19] granting the petition for *certiorari* and dismissed the annulment case.

The CA defined forum shopping as an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, other than by appeal or special civil action for *certiorari*. It pertains to the institution of two or more actions or proceedings based on the same cause so that one or the other would make a favorable disposition. Here, the CA ruled that BF Citiland was securing an advantage by filing two identical cases consecutively.[20]

The elements of forum shopping are: (1) the identity of parties or parties that represent the same interests in both actions; (2) the identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (3) the identity of the two preceding particulars, such that any judgment rendered in the other action will amount to *res judicata* in the action under consideration, regardless of which party is successful.[21]

The CA explained that the true test in identity of causes of action is not in the form of action, but on whether the same evidence would support and establish both causes of action.[22]

The CA resolved that there is identity of parties and of causes of action in the declaratory relief case and the annulment

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[18] *Id*. at 30, 240.

[19] Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Ramon A. Cruz and Melchor Q.C. Sadang, concurring; *id*. at 27-36.

[20] *Id*. at 32.

[21] *Id*.

[22] *Id*.

case.[23] The CA found no difference in both cases, because both were based on a single issue: whether or not the foreclosure of the real estate mortgages was proper while Banco Filipino is under receivership.[24] Even if BF Citiland added grounds to prove the nullity of the real estate mortgages, the same pieces of evidence were still required to prove its claim in either case.[25]

The CA demonstrated the similarity of causes of action in a comparative table.[26]

Facts alleged in Civil Case No. 11-1146	**Facts alleged in Civil Case No. 12-1079**
As stated in the above discussion, the debtor, Banco Filipino, cannot be compelled as yet to perform its obligations under the Promissory Notes executed in favor of the BSP due to the prohibition against payments while said Bank is under the receivership of the PDIC. Since the principal obligation, embodied [in the] Promissory Notes executed in favor of the BSP, cannot be enforced against the principal, then the accessory contract thereto, *i.e.*, the real estate mortgage executed by third-party mortgagor BF Citiland likewise cannot be enforced.[27]	As stated in the above discussion, the debtor, Banco Filipino, cannot be compelled as yet to perform its obligations under the Promissory Notes executed in favor of the BSP due to the prohibition against payments while said Bank is under the receivership of the PDIC. Since the principal obligation, embodied [in the] Promissory Notes executed in favor of the BSP, cannot be enforced against the principal, then the accessory contract thereto, *i.e.*, the real estate mortgage executed by third-party mortgagor BF Citiland likewise cannot be enforced.[28]

[23] *Id*.

[24] *Id*. at 32-33.

[25] *Id*. at 33-34.

[26] *Id*. at 33.

[27] *Id*.

[28] *Id*.

The CA elucidated on the nature of a petition for *certiorari* and the extent of grave abuse of discretion. A petition for *certiorari* is a remedy when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its jurisdiction, or with grave of abuse discretion amounting to lack or excess of jurisdiction. It is only available when there is no appeal, nor any plain, speedy, and adequate remedy at law. Grave abuse of discretion exists when the respondent acts in a capricious or whimsical manner in the exercise of its judgment as to be equivalent to lack of jurisdiction.[29]

Here, the CA determined that the Makati RTC, Branch 141 committed grave abuse of discretion for failing to apply the rule against forum shopping despite knowing that BF Citiland had previously filed a case. When there is a finding of forum shopping, the penalty is dismissal of both cases as a punitive measure to those who trifle with the orderly administration of justice.[30]

The CA discussed the settled rule in forum shopping. If forum shopping is willful and deliberate, both or all actions shall be dismissed with prejudice; otherwise, it shall be dismissed without prejudice. Here, the CA dismissed the case without prejudice, because of the absence of willful and deliberate intent to violate the rule against forum shopping on the part of BF Citiland. It indicated in its Certification of Non-Forum Shopping in Civil Case No. 12-1079 that Civil Case No. 11-1146 was pending. Furthermore, BSP was unable to substantiate that BF Citiland was in bad faith in committing forum shopping.[31]

BF Citiland moved for reconsideration, which the CA denied in its May 26, 2016 Resolution.[32] Unsuccessful, it filed before the Court a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.[33]

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[29] *Id*. at 31-32.

[30] *Id*. p. 34.

[31] *Id*. at 34-35.

[32] *Id*. at 38-42.

[33] *Id*. at 9-21.

The Issue Presented

The sole issue presented before the Court is whether or not BF Citiland committed forum shopping.

The Court's Ruling

The Petition is denied.

In its Petition, BF Citiland argued that the elements of forum shopping are absent, because: (1) there is lack of common cause of action since declaratory relief is a special civil action, while the annulment case is an ordinary civil action; and (2) there are no common rights asserted and reliefs prayed for since one action seeks a declaration on the right of the mortgagee to foreclose the property, while the other action aims to annul the deeds of mortgage, the auction sale, and the certificate of sale.[34]

In its Comment, BSP raised technical issues in the Petition: (1) lack of competent evidence of identity in the Verification and Certification of Non-Forum Shopping;[35] and (2) failure to attach material portions of the record as stated in Section 4(d), Rule 45 of the Rules of Court, making the Petition dismissible.[36] Respondent BSP also presented arguments on the correctness of the CA's ruling on the presence of forum shopping.[37]

In its Reply, BF Citiland did not tackle any of the technical issues and focused its discussion on the substantial issues.[38]

I. Technical Issue: Lack of competent evidence of identity in theVerification and Certification of Non-Forum Shopping

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[34] *Id*. at 14-20.

[35] *Id*. at 152-156.

[36] *Id*. at 157-159.

[37] *Id*. at 152-153, 160-188.

[38] *Id*. at 600-603.

In *Jorge v. Marcelo*,[39] the Court allowed the non-presentation to the notary public and non-indication in the verification and certification of non- forum shopping of the affiant's competent evidence of identity, because he/she was personally known to the notary public, to wit:

> The fact that it contained no details of her competent evidence of identity is inconsequential simply because its presentation may be excused or dispensed with. If it is not required for the affiant to show competent evidence of identity in case he/she is personally known to the notary public, with more reason that it is unnecessary to state the details of such competent evidence of identity in the notarial certificate.[40]

Such is not the case here. The jurat of BF Citiland's Verification and Certification of Non-Forum Shopping does not mention that the affiants are personally known to the notary public. It clearly states that the affiants presented competent evidence of identity to the notary public and yet there were no entries under Identification and Date/Place of Issuance.

> SUBSCRIBED AND SWORN to before me, a notary public for and in behalf of Parañaque this 7th day of July 2016, **affiants exhibited to me as competent evidence of identity**: (Emphasis supplied)
>
> Identification Date/Place of Issuance
>
> CARMELO M. MENDOZA
> ANNA FRANCESCA ABAD[41]

Proofs of competent evidence of identities are required to ensure that the allegations are true and correct and not a product of the imagination or a matter of speculation, and that the pleading is filed in good faith.[42] With the absence of the details of competent evidence of identity, the verification and certification are defective.

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[39] G.R. No. 232989, March 18, 2019.

[40] *Id*.

[41] *Rollo*, p. 23.

[42] *Malixi v. Baltazar*, G.R. No. 208224, November 22, 2017, 846 SCRA 244, 260.

However, the Court had previously held that a defective verification and certification is not fatal to a case. In several cases,[43] the Court entertained a petition despite a defect in the verification and certification, and reasoned that "the verification is only a formal, not a jurisdictional, requirement that the Court may waive." In these cases, the Court considered it more appropriate to resolve the action based on merit and substantive issues, and not on technical issues.

Here, the Court had examined the pleadings of the parties and resolved to deny the petition based on substantive and technical grounds. Form follows substance. The technical grounds play a secondary role in our ruling and are only additional reasons for the denial of the petition. Still, the Court reminds the members of the bar to conform to the formal requirements under the Rules of Court for the proper and efficient administration of justice.

II. Technical Issue: Failure to attach material portions of the record as stated in Rule 45, Section 4(d) of the Rules of Court

Section 4, Rule 45 of the Rules of Court enumerates the contents of a petition for review on *certiorari*:

> SEC. 4. *Contents of petition*. — The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; (c) set forth concisely a statement of the matters

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[43] *Orbe v. Filinvest Land, Inc*., G.R. No. 208185, September 6, 2017, 839 SCRA 72, 104, citing *Galicto v. Aquino III*, 683 Phil. 141, 175 (2012); *Coca-Cola Bottlers Philippines, Inc. v. Dela Cruz,* 622 Phil. 886, 900 (2009); *Victorio-Aquino v. Pacific Plans, Inc*., 749 Phil.790, 806-807 (2014); *Reyes v. Glaucoma Research Foundation,* Inc., 760 Phil. 779, 788 (2015).

involved, and the reasons or arguments relied on for the allowance of the petition; **(d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court *a quo* and the requisite number of plain copies thereof, and such material portions of the record as would support the petition**; and (e) contain a sworn certification against forum shopping as provided in the last paragraph of Section 2, Rule 42. (Emphasis supplied)

In *Cancio v. Performance Foreign Exchange Corp.*,[44] the Court held that non-compliance with Section 4, Rule 45 of the Rules of Court does not automatically result to dismissal of the case. Thus:

> The failure to attach material portions of the record will not necessarily cause the outright dismissal of the petition. While Rule 45, Section 4 of the Rules of Court requires that the petition "be accompanied by [x x x] such material portions of the record as would support the petition," This Court may still give due course if there is substantial compliance with the Rules.

Here, BF Citiland attached the following documents: (1) certified true copies of the CA Decision and Resolution subject of this Petition; (2) complaint in the annulment case; (3) petition in the declaratory relief case; (4) January 29, 2014 Makati RTC, Branch 143 Order; (5) Omnibus Motion; (6) July 21, 2014 Makati RTC, Branch 141 Order; (7) November 8, 2014 Makati RTC, Branch 141 Order; and (8) BSP's petition for *certiorari* filed in the CA.

The Court finds the above attachments as substantial compliance with Section 4(d), Rule 45 of the Rules of Court as it supports BF Citiland's position. BF Citiland attached copies of the assailed CA Decision and Resolution, as well as the RTC's orders and pleadings that are pertinent to its position. A petitioner is not required to attach all pleadings, court orders/processes, exhibits, or documents of the case, but only those which are material and relevant to the issue/s presented in the petition.

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[44] G.R. No. 182307, June 6, 2018.

III. Substantive Issue: Whether or not the elements of forum shopping are present

In *Malixi v. Baltazar*,[45] the Court discussed the concept of forum shopping:

> Forum shopping is generally judicial. It exists:
>
> [x x x] [W]henever a party "repetitively avail[s] of **several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues** either pending in, or already resolved adversely by; some other court." It has also been defined as "an act of a party against whom an adverse judgment has been rendered in one forum of seeking and possibly getting a favorable opinion in another forum, other than by appeal or the special civil action of *certiorari*, or the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition." Considered a pernicious evil, it adversely affects the efficient administration of justice since it clogs the court dockets, unduly burdens the financial and human resources of the judiciary, and trifles with and mocks judicial processes.
>
> The test to determine whether or not forum shopping was committed was explained in *Dy, et al. v. Yu, et al.*:
>
> To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the element of *litis pendentia* is present, or whether a final judgment in one case will amount to *res judicata* in another. Otherwise stated, **the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought. If a situation of *litis pendentia* or *res judicata* arises by virtue of a party's commencement of a judicial remedy identical to one which already exists (either pending or already resolved), then a forum shopping infraction is committed.** (Citations omitted; emphases supplied)

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[45] *Supra* note 40, at 278-279.

Here, the elements of forum shopping are present.

First, the petitioner/complainant in the declaratory relief case and the annulment case is the same, BF Citiland. There are common respondents in the two actions, BSP and the Makati RTC Clerk of Court and *Ex-Officio* Sheriff. The only difference is Banco Filipino, who was impleaded in the annulment case, but not in the declaratory relief case. However, even if Banco Filipino was not a party in the declaratory relief case, it still has an interest in its outcome because the foreclosure of the mortgages affects its SLF loan from BSP. With the identity of parties or interests in both cases, one of the elements of forum shopping is present.

Second, the declaratory relief case and the annulment case were filed after BSP foreclosed the mortgages on BF Citiland's property. The declaratory relief case assailed BSP's right to foreclose the mortgage while Banco Filipino was under receivership and sought to prevent the public auction. The annulment case aimed to nullify several documents and transactions, all related to the foreclosure of the mortgaged property. The first action was filed prior to the public auction, while the second action was filed thereafter.

In short, the two actions have a common set of facts and transactions — the foreclosure of mortgages. Both were aimed to protect BF Citiland's right to retain title and ownership over the mortgaged property. Both actions asked the courts (Branch 141 and Branch 143) to stop and/or invalidate the foreclosure proceeding and its subsequent proceedings. Both were based on the same theory of the case — Banco Filipino cannot be forced to perform its principal loan obligation to BSP because of the prohibition to pay while it is under PDIC receivership. Consequently, the accessory mortgage obligation cannot be enforced as well. Given the prohibition to pay, Banco Filipino cannot be put in default, which is a requirement before the creditor-mortgagee, BSP can foreclose the mortgage. Without being in default, the right to foreclose does not arise.

The Court observed that this theory of the case was found in the initiatory pleadings of both the declaratory relief case

and the annulment case, and were lengthily discussed using the exactly same words.[46] This is a crystal clear indication that both actions were cut from the same stone, but were presented differently.

The Court finds that, although the terminologies of the two actions are dissimilar, they were rooted on the same theory of the case, protected the same right of BF Citiland, and pursued the same result. Thus, there is identity of right or cause of action and relief sought.

Lastly, would a resolution in either of the actions result to *litis pendentia* or *res judicata*?

In *Goodland Co., Inc. v. Banco De Oro-Unibank, Inc.*,[47] the Court defined and enumerated the elements of *litis pendentia* and *res judicata*:

> *Litis pendentia* is a ground for the dismissal of an action when there is another action pending between the same parties involving the same cause of action, thus, rendering the second action unnecessary and vexatious. It exists when the following requisites concur:
>
> 1. Identity of parties or of representation in both cases[;]
> 2. Identity of rights asserted and relief prayed for[;]
> 3. The relief must be founded on the same facts and the same basis[;] and
> 4. Identity in the two preceding particulars should be such that any judgment which may be rendered in the other action, will, regardless of which party is successful, amount to *res judicata* on the action under consideration.
>
> *Res judicata*, on the other hand, exists if the following requisites concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) it must have been rendered by a court having jurisdiction over the subject matter and the parties; (4)

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[46] *Rollo*, pp. 47-49, 63-65.

[47] G.R. No. 208543, February 11, 2019.

there must be, between the first and the second action, identity of parties, of subject matter and cause of action.

The first three elements of *litis pendentia* are the same as forum shopping, and it was discussed in the preceding paragraphs as present in this case. The only question left for the Court to decide is whether a resolution in either the declaratory relief case or in the annulment case would result to either *litis pendentia* or *res judicata* on the remaining case.

The Court resolves in the affirmative. It was established that the two actions have identity of parties, identity of right or cause of action, and identity of reliefs sought. A decision on the merits in one action is, in theory, also a decision on the other remaining action. However, since the two actions were filed in two different courts/*fora*, the complainant/petitioner is considered to be shopping for a favorable result; hence, the term forum shopping. Having determined the presence of all the elements of forum shopping, we deny the petition.

WHEREFORE, premises considered, the petition is **DENIED**. The October 9, 2015 Decision and the May 26, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 138747 are **AFFIRMED.**

SO ORDERED.

Caguioa (Acting Chairperson), Hernando,[*] *Lazaro-Javier,* and *Zalameda, JJ.,* concur.

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[*] Designated additional member per Raffle dated October 9, 2019 in lieu of Associate Justice Antonio T. Carpio who recused himself from the case due to close association to counsel of a party.

SECOND DIVISION

[G.R. No. 227356. October 16, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARVIN BOLADO *y* NAVAL,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); CHAIN OF CUSTODY RULE; FOUR CONNECTING LINKS.— Appellant was charged with violation of Section 5, Art. II of RA 9165 (illegal sale of dangerous drugs) allegedly committed on July 5, 2012. The applicable law is RA 9165 before its amendment in 2014. In cases involving violations of RA 9165, the *corpus delicti* refers to the drug itself. It is, therefore, the duty of the prosecution to prove that the drugs seized from the accused were the same items presented in court. Section 21 of RA 9165 lays down the procedure in handling the dangerous drugs starting from their seizure until they are finally presented as evidence in court. This makes up the **chain of custody rule**. x x x Based on these provisions, the chain of custody rule consists of four (4) connecting links: **One.** The seizure and marking of the illegal drug recovered from the accused by the apprehending officer; **Two.** The turnover of the illegal drug seized by the apprehending officer to the investigating officer; **Three.** The turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and **Four.** The turnover and submission of the marked illegal drug seized by the forensic chemist to the court.

2. ID.; ID.; ID.; ID.; THE SEIZURE AND MARKING OF THE CONFISCATED DRUGS SHOULD BE DONE IMMEDIATELY AT THE PLACE OF ARREST AND SEIZURE, AND THE PHYSICAL INVENTORY AND TAKING OF PHOTOGRAPHS OF THE SEIZED OR CONFISCATED DRUGS SHOULD BE DONE IN THE PRESENCE OF THE ACCUSED, AND THE THREE-REQUIRED WITNESSES; NON-COMPLIANCE THEREOF TAINTED THE INTEGRITY OF THE SEIZED DRUG PRESENTED IN COURT.— The **first link** speaks of seizure and marking which should be done immediately at the place of

arrest and seizure. It also includes the physical inventory and taking of photographs of the seized or confiscated drugs which should be done in the presence of the accused, a media representative, a representative from the Department of Justice (DOJ), and any elected public official. Here, while marking of the seized drug was done immediately after seizure at the place of arrest, the physical inventory and taking of photograph thereof were not done in the presence of a representative from the Department of Justice (DOJ) and elected public official. x x x. PO2 Mejalla admitted that the inventory and taking of photograph were only witnessed by a media representative. He did not mention though that a DOJ representative and a local elected official were also present during the inventory and taking of photograph. The prosecution utterly failed to acknowledge this deficiency, let alone, offer any explanation therefor. This break in the chain tainted the integrity of the seized drug presented in court.

3. ID.; ID.; ID.; NON-COMPLIANCE WITH THE REQUIREMENTS UNDER SECTION 21 OF RA 9165, UNDER JUSTIFIABLE GROUNDS, AS LONG AS THE INTEGRITY AND THE EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED BY THE APPREHENDING OFFICERS, SHALL NOT RENDER VOID AND INVALID SUCH SEIZURES OF AND CUSTODY OVER SAID ITEMS, PROVIDED THE PROSECUTION EXPLAINS THE REASONS BEHIND THE PROCEDURAL LAPSES, AND THE INTEGRITY AND VALUE OF THE SEIZED EVIDENCE HAD NONETHELESS BEEN PRESERVED.— To be sure, strict compliance with the requirements under Section 21 of RA 9165 may not always be possible under various field conditions. Thus, the Implementing Rules and Regulations of RA 9165 offers a saving clause allowing leniency whenever justifiable grounds exist which warrant deviation from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved, *viz*: Section 21. (a) x x x Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. On this score, ***People v. Jugo*** specified the twin conditions for the saving clause to apply: [F]or the above-saving clause

to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. Moreover, the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist. PO2 Mejalla failed to offer any explanation which would have excused the buy-bust team's stark failure to comply with the chain of custody rule. In other words, the condition for the saving clause to become operational itself was not complied with. For the same reason, the *proviso* "so long as the integrity and evidentiary value of the seized items are properly preserved," will neither come into play.

4. ID.; ID.; ID.; ACCUSED-APPELLANT MUST BE ACQUITTED WHERE THE PROSECUTION FAILS TO PROVIDE JUSTIFIABLE GROUNDS FOR NON-COMPLIANCE WITH THE CHAIN OF CUSTODY RULE.— [I]n light of the prosecution's failure to provide justifiable grounds for non-compliance with the chain of custody rule, appellant's acquittal is in order. ***People v. Crispo*** is apropos: Since compliance with the procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction.

5. ID.; ID.; ID.; THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY APPLIES WHEN NOTHING IN THE RECORDS SUGGESTS THAT THE LAW ENFORCERS DEVIATED FROM THE STANDARD CONDUCT OF OFFICIAL DUTY REQUIRED BY LAW, BUT THE SAME CANNOT SUBSTITUTE FOR COMPLIANCE AND MEND THE BROKEN LINKS.— Suffice it to state that a presumption of regularity in the performance of official duty applies when nothing in the records suggests that the law enforcers deviated from the standard conduct of official duty required by law. It cannot substitute for compliance and mend the broken links. For it is a mere disputable presumption which cannot prevail

over the clear and convincing evidence to the contrary. Here, the presumption was amply overturned by compelling evidence on record of the breach of the chain of custody rule.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Hermes A. Dichosa for accused-appellant.

D E C I S I O N

LAZARO-JAVIER, *J.*:

THE CASE

This appeal assails the Decision[1] dated August 28, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06627 affirming the verdict of conviction of appellant Marvin Bolado *y* Naval for violation of Section 5, Article II of Republic Act No. 9165 (RA 9165) and imposing on him the corresponding penalties.

THE PROCEEDINGS BEFORE THE TRIAL COURT

THE CHARGE

By Information dated July 9, 2012, appellant was charged with violation of Section 5, Article II of RA 9165, *viz*:

That on or about the 5th day of July 2012 in the Municipality of Binangonan, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did then and there willfully, unlawfully and knowingly sell, deliver and give away to PO2 Jeffray B. Mejala[2], 0.06 gram of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet, which substance was found positive to the test for Methamphetamine Hydrochloride, also known as "shabu",

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[1] Penned by Associate Justice Stephen C. Cruz concurred in by Associate Justice Danton Q. Bueser and Associate Justice Eduardo B. Peralta, Jr., *rollo*, pp. 2-22.

[2] Also referred to as "Mejalla" in some parts of the record.

a dangerous drug, in consideration of the amount of Php 300.00, in violation of the above-cited law.

CONTRARY TO LAW.[3]

The case was raffled to the Regional Trial Court (RTC)-Branch 67, Binangonan, Rizal.

On arraignment, appellant pleaded not guilty.[4] Trial proper ensued.

The Prosecution's Version

The testimonies of PO2 Jeffray Mejalla and Forensic Chemist Beaune Villaraza may be summarized, in this wise:

On July 5, 2012, at 7 o'clock in the evening, PO2 Mejalla was on duty at the Binangonan, Rizal Police Station when he received a report from a confidential agent that *alias* "Barok" was selling illegal drugs at Brgy. Pag-asa, Binangonan, Rizal. After the report was blottered, PO2 Mejalla informed their chief who instructed him, PO1 Jaefran Bernardino, and the confidential informant to do a surveillance on "Barok." They drove to the target place near Family Lodge Hotel, along Binangonan highway. There, the confidential informant point out to a man whom he identified as "Barok," herein appellant. They noticed several male persons were approaching appellant and they would shake hands to conceal the items being handed from one to the other.[5]

After confirming the illegal transaction, PO2 Mejalla, PO1 Bernardino, and the confidential informant returned to the police station and coordinated with Philippine Drug Enforcement Agency (PDEA). PO2 Mejalla was assigned as poseur buyer, SPO1 Renato Membrebe, as team leader, and PO2 Froilan Quisquino, PO2 Remson Colacion, PO1 Mark Riel Canilon, and PO1 Rommel Bilos, as members. PO2 Mejalla prepared

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[3] Record, p. 1.

[4] *Id.* at 66.

[5] TSN dated September 5, 2012, pp. 5-9.

the buy-bust money, *i.e*. three (3) pieces of ₱100.00 bills which he marked "BAR-1, BAR-2, and BAR-3."[6]

The buy-bust team went back to the target place near Family Lodge Hotel. There, PO2 Mejalla and the confidential informant approached appellant who asked the confidential informant who his companion was. The confidential informant quipped: "*tropa to*" and then asked appellant, "*meron ba tayo dyan*?" Appellant asked how much he wanted to buy, to which the confidential informant replied ₱300.00 worth. Appellant pulled a plastic sachet containing white crystalline substance from his right pocket and asked for the payment. PO2 Mejalla gave appellant the buy-bust money while the latter handed the plastic sachet to the confidential informant. PO2 Mejalla scratched his nape to signal the buy-bust team that the illegal transaction had been consummated.[7]

PO2 Mejalla arrested appellant and introduced himself to the latter as a police officer. He frisked appellant and recovered the buy-bust money. Meantime, the confidential informant handed the plastic sachet to PO2 Mejalla who immediately marked it with "JBM." PO2 Mejalla also prepared an inventory of the seized item in the presence of media representative Tata Rey Abella. The team returned to the police station where the seized items were photographed and a request for examination was prepared.[8]

PO2 Mejalla brought the specimen and request to the Rizal Provincial Crime Laboratory which were received by Forensic Chemist Beaune Villaraza.[9] Per Chemistry Report No. D-310-12 the specimen yielded positive result for methamphetamine hydrochloride, a dangerous drug.[10]

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

[7] *Id.* at 11-13.

[8] *Id.* at 14-18.

[9] *Id.* at 19-20.

[10] Record, p. 91.

After examination, Forensic Chemist Villaraza placed the specimen inside an envelope and kept it in a vault. The specimen was only retrieved from the same vault on the day the forensic chemist testified in court.[11]

The prosecution presented the following evidence: photocopy of the police blotter;[12] Pre-Operation Report;[13] Booking Sheet and Arrest Report;[14] Request for Laboratory Examination;[15] Request for Medical Examination of Arrested Suspect;[16] Medical Examination Result,[17] Photographs of the appellant, the seized plastic sachet containing *shabu*, and the buy-bust money;[18] Inventory of Evidence;[19] Sinumpaang Salaysay of the Arresting Officers;[20] and Chemistry Report No. D-310-12.[21]

The Defense's Version

On the other hand, appellant himself, Joven Carminada, and Ding Rommel Martinez testified for the defense. They narrated:

On July 5, 2012, around 7 o'clock in the morning, Ding Rommel Martinez went to appellant's house to ask if he could repair his (Martinez) front gate. Appellant agreed. Martinez gave appellant ₱250.00 to buy the materials from the junk shop. Appellant went to Joven Carminada's house to borrow the latter's motorcycle.

At 10 o'clock in the morning, Carminada sent appellant a text message looking for his motorcycle because he had to

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[11] TSN dated October 10, 2012, p. 10.

[12] Record, p. 11.

[13] *Id.* at 12.

[14] *Id.* at 13.

[15] *Id.* at 14.

[16] *Id.* at 15.

[17] *Id.* at 16.

[18] *Id.* at 17-19.

[19] *Id.* at 20.

[20] *Id.* at 24-27.

[21] *Id.* at 91.

leave for work. Appellant replied that he met an accident. A car driven by PO1 Mike Salazar had side swept the motorcycle while they were traversing Binangonan National Highway. PO1 Salazar told appellant they should settle the matter in the police station. There, PO1 Salazar asked ₱5,000.00 from appellant. Appellant, however, was only able to give ₱3,000.00.

Appellant was not allowed to leave the police station because according to PO1 Salazar, he had a pending case and a certain PO1 Carilon was looking for him. By 12 noon, he was already detained in the police station. Thus, he could not have sold PO2 Mejalla the alleged *shabu*.

THE TRIAL COURT'S RULING

By Decision dated November 30, 2013, the trial court rendered a verdict of conviction.[22]

The trial court gave full credence to the testimonies of the prosecution witnesses who were police officers performing their official functions. It held that the chain of custody was observed, thus, the integrity and evidentiary value of the seized drug was properly preserved. It also rejected appellant's denial and alibi.[23]

THE PROCEEDINGS BEFORE THE COURT OF APPEALS

On appeal, appellant faults the trial court for finding him guilty as charged despite the following alleged omissions in the buy-bust operation: the confidential informant did not testify; the original buy-bust money was not presented in evidence; while the inventory took place in the place of arrest, the photographs of the seized items were taken in the police station; and, only a media representative was present during the inventory. Appellant also asserted that his warrantless arrest was illegal, thus, the items seized cannot be used against him as fruits of the poisonous tree.

For its part, the Office of the Solicitor General (OSG), through Assistant Solicitor General John Emmanuel F. Madamba and

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[22] CA *rollo*, pp. 39-40.

[23] *Id.*

Associate Solicitor Melissa A. Santos, countered in the main: 1) the elements of illegal sale of drugs were all proven; 2) there was substantial compliance with the chain of custody rule; 3) the presumption of regularity in the performance of the police officers' official functions prevails over appellant's bare denial and alibi; and, 4) the warrantless search was a valid incident to appellant's arrest *in flagrante delicto*.

THE COURT OF APPEALS' RULING

In its assailed Decision dated August 28, 2015, the Court of Appeals affirmed. It found that there was substantial compliance with the chain of custody rule and the integrity of the seized drug was properly preserved. There was, therefore, no doubt that the seized dangerous drug was the same one submitted to the crime laboratory for testing and subsequently presented in court as evidence. It gave credence to the testimonies of the prosecution witnesses who as police officers were presumed to have regularly performed their official functions.

THE PRESENT APPEAL

Appellant now seeks affirmative relief from the Court and pleads anew for his acquittal. In compliance with the Court's Resolution dated November 23, 2016, both appellant and the OSG manifested that in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.[24]

THE CORE ISSUE

Was the chain of custody complied with?

RULING

We acquit.

Appellant was charged with violation of Section 5, Art. II of RA 9165 (illegal sale of dangerous drugs) allegedly committed on July 5, 2012. The applicable law is RA 9165 before its amendment in 2014.

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[24] OSG's Manifestation, *rollo*, pp. 29-31; Appellant's Manifestation, *rollo*, pp. 34-35.

In cases involving violations of RA 9165, the *corpus delicti* refers to the drug itself. It is, therefore, the duty of the prosecution to prove that the drugs seized from the accused were the same items presented in court.[25]

Section 21 of RA 9165 lays down the procedure in handling the dangerous drugs starting from their seizure until they are finally presented as evidence in court. This makes up the **chain of custody rule**.

Section 21, paragraph 1 of RA 9165 reads:

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, on the other hand, relevantly ordains:

Section 21. (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, **physically inventory and photograph the same in**

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[25] *People v. Victoria*, G.R. No. 238613, August 19, 2019.

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

x x x x x x x x x

Based on these provisions, the chain of custody rule consists of four (4) connecting links:

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

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

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

Four. The turnover and submission of the marked illegal drug seized by the forensic chemist to the court.[26]

The **first link** speaks of seizure and marking which should be done immediately at the place of arrest and seizure. It also includes the physical inventory and taking of photographs of the seized or confiscated drugs which should be done in the presence of the accused, a media representative, a representative from the Department of Justice (DOJ), and any elected public official.[27]

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[26] *People v. Burdeos*, G.R. No. 218434, July 17, 2019.

[27] *People v. Baltazar*, G.R. No. 229037, July 29, 2019.

Here, while marking of the seized drug was done immediately after seizure at the place of arrest, the physical inventory and taking of photograph thereof were not done in the presence of a representative from the Department of Justice (DOJ) and elected public official.

PO2 Mejalla testified:

Q: Where were you when you put the markings on the plastic sachet?
A: In the area, ma'am.

Q: Was there an inventory of the said items?

A: There was a copy of the inventory ma'am.

x x x x x x x x x

Q: Who (was) present when you made this inventory?
A: Tata Rey ma'am.

Q: Who is this Tata Rey?
A: A radio announcer ma'am.

Q: Where were you when you prepared this inventory?
A: At the area ma'am.

Q: Was there any photos or pictures made about the items and the accused alias Barok?
A: We're not able to take photographs at the area but on the station because we don't have a camera then ma'am.[28]

PO2 Mejalla admitted that the inventory and taking of photograph were only witnessed by a media representative. He did not mention though that a DOJ representative and a local elected official were also present during the inventory and taking of photograph. The prosecution utterly failed to acknowledge this deficiency, let alone, offer any explanation therefor. This break in the chain tainted the integrity of the seized drug presented in court.[29]

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[28] TSN dated September 5, 2012, pp. 15 and 17-18.

[29] See *People v. Ismael*, 806 Phil. 21, 37 (2017).

In ***People v. Martin***, no DOJ representative was present during the inventory. In that case, the Court keenly noted that the prosecution failed to recognize this particular deficiency. The Court, thus, concluded that this lapse, among others, effectively produced serious doubts on the integrity and identity of the *corpus delicti* especially in the face of allegation of frame up.[30]

To be sure, strict compliance with the requirements under Section 21 of RA 9165 may not always be possible under various field conditions. Thus, the Implementing Rules and Regulations of RA 9165 offers a saving clause allowing leniency whenever justifiable grounds exist which warrant deviation from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved,[31] *viz*:

> Section 21. (a) x x x Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

On this score, ***People v. Jugo*** specified the twin conditions for the saving clause to apply:

> [F]or the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. Moreover, the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[32]

PO2 Mejalla failed to offer any explanation which would have excused the buy-bust team's stark failure to comply with the chain of custody rule. In other words, the condition for the saving clause to become operational itself was not complied

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[30] G.R. No. 231007, July 1, 2019.

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

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

with. For the same reason, the *proviso* "so long as the integrity and evidentiary value of the seized items are properly preserved," will neither come into play.

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

> Since compliance with the procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction.[33]

Suffice it to state that a presumption of regularity in the performance of official duty applies when nothing in the records suggests that the law enforcers deviated from the standard conduct of official duty required by law. It cannot substitute for compliance and mend the broken links. For it is a mere disputable presumption which cannot prevail over the clear and convincing evidence to the contrary.[34] Here, the presumption was amply overturned by compelling evidence on record of the breach of the chain of custody rule.

ACCORDINGLY, the appeal is **GRANTED**. The Decision dated August 28, 2015 of the Court of Appeals in CA-G.R. CR HC No. 06627 is **REVERSED** and **SET ASIDE**. Appellant Marvin Bolado *y* Naval is **ACQUITTED** in Criminal Case No. 12-0389. The Director of the Bureau of Corrections, Muntinlupa City is ordered to a) immediately release Marvin

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

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

Bolado *y* Naval 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 an entry of final judgment be issued immediately.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 227997. October 16, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NOELLITO[*] DELA CRUZ *y* DEPLOMO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; IN CRIMINAL CASES, AN APPEAL THROWS THE ENTIRE CASE WIDE OPEN FOR REVIEW AND THE REVIEWING TRIBUNAL CAN CORRECT ERRORS, THOUGH UNASSIGNED IN THE APPEALED JUDGMENT, OR EVEN REVERSE THE TRIAL COURT'S DECISION BASED ON GROUNDS OTHER THAN THOSE THAT THE PARTIES RAISED AS ERRORS.— [I]t must be stressed that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties

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[*] Also spelled as "Noelito" in some parts of the *Rollo*.

raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law. In this case, there is no doubt that accused-appellant is liable for the death of the victim. The Court, however, rules that based on a thorough review of the records, the applicable law, and jurisprudence, accused-appellant may only be convicted for homicide, and not murder.

2. **CRIMINAL LAW; REVISED PENAL CODE; QUALIFYING CIRCUMSTANCES; TREACHERY; TO BE APPRECIATED, IT MUST BE PROVED THAT AT THE TIME OF ATTACK, THE VICTIM WAS NOT IN A POSITION TO DEFEND HIMSELF OR TO RETALIATE OR ESCAPE, AND THE ACCUSED CONSCIOUSLY AND DELIBERATELY ADOPTED THE PARTICULAR MEANS, METHODS, OR FORMS OF ATTACK EMPLOYED BY HIM.—** It is established that qualifying circumstances must be proved with the same quantum of evidence as the crime itself, that is, beyond reasonable doubt. The qualifying circumstance of treachery or *alevosia* is present when the offender, in the execution of the crime against a person, employs means, methods or forms, which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. The essence of treachery is the sudden attack by the aggressor without the slightest provocation on the part of the unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring the commission of the crime without risk to the aggressor arising from the defense which the offended party might make. To be appreciated, the following elements must be present: 1. At the time of attack, the victim was not in a position to defend himself or to retaliate or escape; and 2. The accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him.

3. **ID.; ID.; ID.; ID.; WHEN THERE IS NO EVIDENCE THAT THE ACCUSED HAD, PRIOR TO THE MOMENT OF THE KILLING, RESOLVED TO COMMIT THE CRIME, OR THERE IS NO PROOF THAT THE DEATH OF THE VICTIM WAS THE RESULT OF MEDITATION, CALCULATION OR REFLECTION, TREACHERY CANNOT BE CONSIDERED.—** Contrary to the findings of the trial and appellate courts, We

hold that the second condition was not proven with clear and convincing evidence. The prosecution failed to establish that accused-appellant purposely adopted the means, method or form of attack to deprive the victim of a chance to either fight or retreat, or to ensure the execution of his criminal purpose without any risk to himself arising from the defense that the victim might offer, without the slightest provocation on the latter's part. While the victim may have been unarmed and was stabbed at the doorstep of his room, there was nary any evidence to show that the attack was preconceived and deliberately adopted without risk to accused-appellant. To be sure, the attack was committed in broad daylight, inside a house shared with other tenants, within the immediate view and in proximity of the witness, Vilma. Thus, all these negate that the attack was done deliberately to ensure the victim would not be able to defend himself, or to retreat, or even to seek help from others. Even Vilma's testimony was bereft of any indication that indeed, accused-appellant deliberately made the attack: x x x. When there is no evidence that the accused had, prior to the moment of the killing, resolved to commit the crime, or there is no proof that the death of the victim was the result of meditation, calculation or reflection, treachery cannot be considered.

4. ID.; ID.; ID.; ID.; TREACHERY CANNOT BE APPRECIATED WHERE THE STABBING WAS TRIGGERED BY THE PROVOCATIVE ACTUATIONS OF THE VICTIM; IN THE ABSENCE OF CLEAR AND CONVINCING EVIDENCE TO PROVE THE QUALIFYING CIRCUMSTANCE OF TREACHERY, ACCUSED-APPELLANT SHOULD BE HELD LIABLE FOR THE CRIME OF HOMICIDE, AND NOT MURDER. — [F]or treachery to be appreciated there must not be even the slightest provocation on the part of the victim. However, from the prosecution's own version of the events, the victim loudly cursed at accused-appellant for knocking on his door. As such, the victim had an inkling that accused-appellant may resort to retaliatory measures. Hence, the stabbing may have been triggered by the provocative actuations of the victim; an act made on impulse or as a reaction to an actual or imagined provocation. In the absence of clear and convincing evidence to prove the qualifying circumstance of treachery, accused-appellant should be held liable for the crime of homicide, and not murder.

5. REMEDIAL LAW; EVIDENCE; DEFENSE OF ALIBI; UNAVAILING WHERE THE ACCUSED FAILED TO SHOW THAT IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO COMMIT THE CRIME. — Alibi, as a defense, is unavailing in this case where accused-appellant lived in the same house and was only one (1) floor away from the room of the victim. Verily, accused-appellant's account of being asleep at the time of the incident does not show it was physically impossible for him to commit the crime. Accused-appellant also brings to our attention that Dr. San Diego's testimony disputes that of Ronald's. For while the latter stated that Ramir was stabbed in the head, Dr. San Diego allegedly made no mention that the wounds of the victim were found therein. However, a closer scrutiny of the medico legal report reveals the victim sustained three (3) incised wounds on his forehead. Hence, Ronald's testimony was actually corroborated by the autopsy and testimony by Dr. San Diego.

6. CRIMINAL LAW; REVISED PENAL CODE; EXEMPTING CIRCUMSTANCES; INSANITY; IN ORDER FOR THE ACCUSED TO BE EXEMPTED FROM CRIMINAL LIABILITY UNDER A PLEA OF INSANITY, HE MUST SUCCESSFULLY SHOW THAT HE WAS COMPLETELY DEPRIVED OF INTELLIGENCE, AND SUCH COMPLETE DEPRIVATION OF INTELLIGENCE MUST BE MANIFEST AT THE TIME OR IMMEDIATELY BEFORE THE COMMISSION OF THE OFFENSE; MERE ABNORMALITY OF THE MENTAL FACULTIES WILL NOT EXCLUDE IMPUTABILITY.— In *People v. Madarang,* the Court explained how insanity is successfully invoked as a circumstance to evade criminal liability, to wit: In the Philippines, the courts have established a *more stringent criterion* for insanity to be exempting as it is required that there must be a *complete deprivation of intelligence* in committing the act, *i.e.,* the accused is *deprived of reason;* he acted *without the least discernment* because there is a *complete absence of the power to discern, or* that there is a *total deprivation of the will. Mere abnormality of the mental faculties will not exclude imputability.* The issue of insanity is a question of fact for insanity is a condition of the mind, not susceptible of the usual means of proof. As no man can know what is going on in the mind of another, the state or condition of a person's mind can only be measured and judged

by his behavior. Establishing the insanity of an accused requires opinion testimony which may be given by a witness who is intimately acquainted with the accused, by a witness who has rational basis to conclude that the accused was insane based on the witness' own perception of the accused, or by a witness who is qualified as an expert, such as a psychiatrist. *The testimony or proof of the accused's insanity must relate to the time preceding or coetaneous with the commission of the offense with which he is charged.* Hence, in order for the accused to be exempted from criminal liability under a plea of insanity, he must successfully show that: (1) he was **completely deprived of intelligence**; and (2) such complete deprivation of intelligence must be manifest **at the time or immediately before the commission of the offense**. The records of the case reveal that the defense failed to prove its plea of insanity under the requirements set by law. Although accused-appellant underwent out-patient consultation for his diagnosed condition of schizophrenia from August 2006 until 13 June 2009, this evidence of insanity may be accorded weight only if there is also **proof of abnormal psychological behavior immediately before or simultaneous with the commission of the crime.** The evidence on the alleged insanity must refer to the time preceding the act under prosecution or to the very moment of execution.

7. ID.; ID.; HOMICIDE; PROPER IMPOSABLE PENALTY.— [T]he accused-appellant should be held liable for the crime of homicide under Article 249 of the Revised Penal Code, punishable by *reclusion temporal.* Applying the Indeterminate Sentence Law, and in the absence of any mitigating or aggravating circumstances, accused-appellant is 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.

8. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT. — In conformity with recent jurisprudence, accused-appellant is directed to pay the heirs of Ramir Php50,000.00 as civil indemnity, Php50,000.00 as moral damages, and Php50,000.00 as temperate damages. All monetary awards shall earn interest at the rate of six percent (6%) *per annum* from the date of the finality of the judgment until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

ZALAMEDA, R.V., *J.*:

The mere suddenness of an attack does not necessarily equate to treachery. The accused must have knowingly, deliberately, and consciously adopted the means or method to ensure the execution of his criminal purpose without risk to himself arising from the defense which the victim might offer, for the same to be appreciated as a qualifying circumstance.

The Case

This appeal seeks the reversal of the Decision dated 12 November 2015[1] of the Court of Appeals in CA-G.R. CR-HC No. 06689, which affirmed with modification the Decision dated 30 July 2013[2] of Branch 150, Regional Trial Court (RTC), Makati City, finding accused-appellant, Noellito Dela Cruz *y* Deplomo, guilty of the murder of Ramir Joseph Eugenio (Ramir).

Antecedents

In an Information dated 11 November 2009,[3] accused-appellant was charged with the crime of murder under Article 248 of the Revised Penal Code (RPC), as amended by Section 6 of Republic Act No. 7659. The accusatory portion of the Information reads as follows:

On the 9th day of November 2009, in the city of Makati, the Philippines, the accused, with intent to kill and by means of treachery,

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[1] *Rollo*, pp. 2-19; Penned by Associate Justice Sesinando E. Villon, and concurred in by Associate Justice Nina G. Antonia-Valenzuela and Associate Justice Pedro B. Corales.

[2] CA *Rollo*, pp. 25-34.

[3] *Id.* at 15.

did then and there willfully, unlawfully and feloniously stab one Ramir Joseph Eugenio, with a "knife" thereby inflicting serious and mortal wounds upon said Ramir Joseph Eugenio, which directly caused his death.

CONTRARY TO LAW.[4]

During his arraignment on 01 December 2009, accused-appellant entered a plea of "not guilty." Trial on the merits ensued after the pre-trial conference.[5]

Version of the Prosecution

The facts, as culled from the testimony of the prosecution witnesses, are as follows:

Ramir, accused-appellant, and witness Ronald Herreras (Ronald), along with several others, lived on different floors of a three-storey house. On 09 November 2009, while Ronald was working at a nearby vulcanizing shop, he heard that his uncle, herein accused-appellant, and Ramir were engaged in a fistfight inside the latter's room. Ronald rushed to the scene and found accused-appellant and Ramir blocking the door. As he tried to open the door, Ronald saw Ramir lying in a pool of blood, with accused-appellant holding a knife embedded on Ramir's forehead.

Petrified by the scene, Ronald closed the door and sought help from the other occupants of the house but to no avail. This prompted Ronald to go back to Ramir's room where he wrestled the knife from his uncle. Afterwards, he went to the ground floor of the house, threw the knife underneath the washing machine, and ran outside to seek help. Ramir was brought to the hospital but was declared dead on arrival. Upon questioning, Ronald told the investigating policeman that he hid the knife used to stab Ramir. When he returned to the house, Ronald retrieved the knife and surrendered it to PO3 Julius Guerrero.[6]

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[4] *Id.*

[5] *Id.* at 25.

[6] TSN dated 02 March 2010, pp. 7-20; *Rollo*, pp. 3-5.

Vilma Foronda (Vilma) corroborated Ronald's testimony in its material points. According to her, she lived in one (1) of the rooms in the house she shared with accused-appellant and the victim. On 09 November 2009, while she was cooking in her room with the door open, Vilma saw accused-appellant knock on Ramir's door. Ramir opened his door, saw accused-appellant, and cursed at him. Suddenly, accused-appellant took a knife from his pocket and stabbed Ramir who then retreated to his room. Out of fear, Vilma closed the windows, locked her door and shouted for help. She heard loud, banging noises coming from Ramir's room, with Ronald shouting, *"Tito Noel tama na po!"* Taking a peep through her door, she saw accused-appellant emerge from Ramir's room as if nothing happened. When she finally opened her door, Vilma saw people carrying Ramir's body out of the room.[7]

For his part, Dr. Roberto Rey San Diego (Dr. San Diego) recalled that he conducted an autopsy on the victim. Based on his examination, Dr. San Diego found Ramir to have sustained incised wounds on the forehead,[8] as well as stab wounds and contusions on his body. Anent the stab wounds, two (2) of these were considered fatal and another two (2) were classified as defense wounds.[9]

Version of the Defense

Denying the allegations against him, accused-appellant attested that on 09 November 2009 at around 11:00 a.m., he was sleeping inside his room when he was awakened by a policeman and a certain Philip, who pointed to him as the one who killed Ramir. He further testified that prior to the said date, he did not have any kind of misunderstanding with Ramir. He also denied owning the knife which was used in the killing. In his view, the witnesses who testified against him were upset for his refusal to extend financial assistance to them.[10]

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[7] TSN dated 01 June 2010, pp. 4-14; *Rollo,* pp. 5-6.

[8] *Records,* page 113.

[9] TSN dated 21 September 2010, pp. 6-12; *Rollo,* pp. 6-7.

[10] TSN dated 21 June 2011, pp. 4-10; *Rollo,* pp. 7-8.

Ruling of the RTC

The RTC convicted accused-appellant of the crime charged through a Decision dated 30 July 2013, the *fallo* of which reads:

> WHEREFORE, premises considered, the court finds accused Noellito dela Cruz Guilty beyond reasonable doubt of the crime of Murder under Article 248 of the Revised Penal Code as amended by Republic Act No. 7659 qualified by treachery and hereby sentences him to suffer the penalty of reclusion perpetua with all the accessory penalties provided by law. The accused is likewise ordered to pay the legal heirs of victim Ramir Joseph Eugenio the amounts of Php75,000.00 as civil indemnity, Php41,500.00 as actual damages and Php50,000.00 as moral damages all with interest at the legal rate of 6% per annum from this date until fully paid.
>
> SO ORDERED.[11]

As held by the trial court, accused-appellant's denial cannot prevail over the testimonies of Ronald and Vilma, who positively identified him as the person who stabbed Ramir. Moreover, the RTC ruled that accused-appellant failed to substantiate his defense of insanity.[12]

Ruling of the Court of Appeals

On 12 November 2015, the Court of Appeals rendered the assailed decision affirming the conviction of accused-appellant, to wit:

> **WHEREFORE,** in view of the foregoing, the appeal is **DENIED**. The Decision dated July 30, 2013 of the Regional Trial Court of Makati City, Branch 150, finding accused-appellant Noellito Dela Cruz y Deplomo guilty beyond reasonable doubt of the crime of MURDER, is hereby **AFFIRMED** with the **MODIFICATION** in that in addition to the monetary awards awarded by the court *a quo*, appellant is hereby further ordered to pay the heirs of Ramir Joseph Eugenio the amount of Ten Thousand Pesos (₱10,000.00) by way of exemplary damages. Interest at the legal rate of six percent (6%) per annum,

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[11] CA *Rollo,* p. 34.

[12] *Id.* at 31.

shall be imposed on the total monetary awards in the appealed decision until the same are fully paid.

SO ORDERED.[13]

The appellate court ruled that all the elements of murder had been properly alleged and proven by the prosecution. It found the testimonies of the prosecution witnesses to be sincere and straightforward thereby worthy of credence. In contrast, accused-appellant's denial and alibi were not substantiated by any clear and convincing evidence, and therefore, considered self-serving.[14]

Issues

For purposes of this appeal, the Office of the Solicitor General (OSG)[15] and the Public Attorney's Office (PAO)[16] manifested they were no longer filing their respective supplemental briefs, and prayed the briefs submitted to the Court of Appeals be considered in resolving the appeal.

In his brief, accused-appellant claims the prosecution witnesses gave conflicting testimonies leading to an inconsistent story as to how the crime transpired. Without conceding he committed the crime, accused-appellant also argues he was deprived of reason during its commission due to his diagnosed schizophrenia.[17]

In response, the OSG maintains all the elements of the crime of murder had been substantially proven by the prosecution. Furthermore, accused-appellant's defense of alibi cannot overcome the direct and positive testimony of Ronald and Vilma. The OSG also argues accused-appellant failed to substantiate with clear and convincing proof his claim of insanity.[18]

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[13] *Rollo,* p. 18.

[14] *Id.* at 10-18.

[15] *Id.* at 37-39.

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

[17] CA *Rollo,* pp. 67-80.

[18] *Id.* at 119-124.

With these contentions, the Court is tasked to determine whether the Court of Appeals erred in affirming accused-appellant's conviction for murder.

Ruling of the Court

The appeal is partly meritorious.

At the outset, it must be stressed that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[19]

In this case, there is no doubt that accused-appellant is liable for the death of the victim. The Court, however, rules that based on a thorough review of the records, the applicable law, and jurisprudence, accused-appellant may only be convicted for homicide, and not murder.

The qualifying circumstance of treachery or alevosia was not proven beyond reasonable doubt

It is established that qualifying circumstances must be proved with the same quantum of evidence as the crime itself, that is, beyond reasonable doubt.[20] The qualifying circumstance of treachery or *alevosia* is present when the offender, in the execution of the crime against a person, employs means, methods or forms, which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[21] The essence of treachery is the

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[19] *Ramos, et al. v. People,* 803 Phil. 775, 783 (2017).

[20] *People v. Magbuhos y Diola,* G.R. No. 227865, 07 November 2018.

[21] Art. 14, The Revised Penal Code.

sudden attack by the aggressor without the slightest provocation on the part of the unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring the commission of the crime without risk to the aggressor arising from the defense which the offended party might make. To be appreciated, the following elements must be present:

1. At the time of attack, the victim was not in a position to defend himself or to retaliate or escape; and
2. The accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him.[22]

Contrary to the findings of the trial and appellate courts, We hold that the second condition was not proven with clear and convincing evidence. The prosecution failed to establish that accused-appellant purposely adopted the means, method or form of attack to deprive the victim of a chance to either fight or retreat,[23] or to ensure the execution of his criminal purpose without any risk to himself arising from the defense that the victim might offer,[24] without the slightest provocation on the latter's part.[25]

While the victim may have been unarmed and was stabbed at the doorstep of his room, there was nary any evidence to show that the attack was preconceived and deliberately adopted without risk to accused-appellant. To be sure, the attack was committed in broad daylight,[26] inside a house shared with other tenants, within the immediate view and in proximity of the witness, Vilma. Thus, all these negate that the attack was done deliberately to ensure the victim would not be able to defend himself; or to retreat, or even to seek help from others.

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[22] *People v. Ampo,* G.R. No. 229938, 27 February 2019.

[23] See *People v. Academia, Jr.,* 366 Phil. 690, 696 (1999).

[24] *People v. Magbuhos y Diola,* G.R. No. 227865, 07 November 2018.

[25] *People v. Celeste,* 401 Phil. 463, 475 (2000).

[26] *Rollo,* page 4.

Even Vilma's testimony was bereft of any indication that indeed, accused-appellant deliberately made the attack:

Q: And after Noellito Dela Cruz the accused in this case knocked at the door of Ramir's room what happened next?

A: He was being opened the door by Ramir, sir (sic).

Q: And what else did you see, if any, after that?

A: When Ramir left the room, I heard what he said "PUTANG INA MO IKAW LANG PALA ISTORBO KA".

Q: After Ramir said those words what happened next?

A: After Ramir said those words I saw with my own eyes Noellito got a knife from his pocket and immediately stabbed Ramir, sir.[27]

When there is no evidence that the accused had, prior to the moment of the killing, resolved to commit the crime, or there is no proof that the death of the victim was the result of meditation, calculation or reflection, treachery cannot be considered.[28]

Further, for treachery to be appreciated there must not be even the slightest provocation on the part of the victim.[29] However, from the prosecution's own version of the events, the victim loudly cursed at accused-appellant for knocking on his door. As such, the victim had an inkling that accused-appellant may resort to retaliatory measures. Hence, the stabbing may have been triggered by the provocative actuations of the victim; an act made on impulse or as a reaction to an actual or imagined provocation.[30]

In the absence of clear and convincing evidence to prove the qualifying circumstance of treachery, accused-appellant should be held liable for the crime of homicide, and not murder.

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[27] TSN dated 01 June 2010, pp. 9-10.

[28] *People v. Francisco y Villagracia,* G.R. No. 216728, 04 June 2018.

[29] *People v. Dano,* 394 Phil. 1, 20 (2000).

[30] *Id.*

Denial and alibi cannot prevail over the positive identification of eye witnesses

Alibi, as a defense, is unavailing in this case where accused-appellant lived in the same house and was only one (1) floor away from the room of the victim. Verily, accused-appellant's account of being asleep at the time of the incident does not show it was physically impossible for him to commit the crime.

Accused-appellant also brings to our attention that Dr. San Diego's testimony disputes that of Ronald's. For while the latter stated that Ramir was stabbed in the head, Dr. San Diego allegedly made no mention that the wounds of the victim were found therein.[31] However, a closer scrutiny of the medico legal report[32] reveals the victim sustained three (3) incised wounds on his forehead. Hence, Ronald's testimony was actually corroborated by the autopsy and testimony by Dr. San Diego.

Proof of the accused's insanity must relate to the time immediately preceding or simultaneous with the commission of the offense

Undaunted, accused-appellant claims he was suffering from schizophrenia at the time of the commission of the crime in a final attempt to avoid criminal liability. According to Dr. Jose Loveria (Loveria), he diagnosed accused-appellant in August 2006 to be suffering from a mental illness under the classification of schizophrenia, paranoid type.[33] He further testified accused-appellant was his out-patient from August 2006 until 13 June 2009, but the latter subsequently failed to return for treatment

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[31] CA *Rollo,* p. 68.

[32] *Records,* p. 113.

[33] TSN dated 08 November 2011, p. 7.

and medication.[34] This allegedly caused accused-appellant to suffer from delusions triggering his attack on the victim.[35]

In *People v. Madarang*,[36] the Court explained how insanity is successfully invoked as a circumstance to evade criminal liability, to wit:

> In the Philippines, the courts have established a *more stringent criterion* for insanity to be exempting as it is required that there must be a *complete deprivation of intelligence* in committing the act, *i.e.*, the accused is *deprived of reason;* he acted *without the least discernment* because there is a *complete absence of the power to discern, or* that there is a *total deprivation of the will. Mere abnormality of the mental faculties will not exclude imputability*.
>
> The issue of insanity is a question of fact for insanity is a condition of the mind, not susceptible of the usual means of proof. As no man can know what is going on in the mind of another, the state or condition of a person's mind can only be measured and judged by his behavior. Establishing the insanity of an accused requires opinion testimony which may be given by a witness who is intimately acquainted with the accused, by a witness who has rational basis to conclude that the accused was insane based on the witness' own perception of the accused, or by a witness who is qualified as an expert, such as a psychiatrist. *The testimony or proof of the accused's insanity must relate to the time preceding or coetaneous with the commission of the offense with which he is charged.*[37]

Hence, in order for the accused to be exempted from criminal liability under a plea of insanity, he must successfully show that: (1) he was **completely deprived of intelligence;** and (2) such complete deprivation of intelligence must be manifest **at the time or immediately before the commission of the offense**.[38]

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[34] *Id.* at 7, 11-12.

[35] *Id.* at 13.

[36] 387 Phil. 846, 859 (2000).

[37] *Id.*

[38] *People v. Bacolot,* G.R. No. 233193, 10 October 2018.

The records of the case reveal that the defense failed to prove its plea of insanity under the requirements set by law. Although accused-appellant underwent out-patient consultation for his diagnosed condition of schizophrenia from August 2006 until 13 June 2009, this evidence of insanity may be accorded weight only if there is also **proof of abnormal psychological behavior immediately before or simultaneous with the commission of the crime.** The evidence on the alleged insanity must refer to the time preceding the act under prosecution or to the very moment of execution"[39]

The value of proving insanity at the time of or immediately before the commission of the offense is underscored in the testimony of the defense witness, Dr. Loveria, who admitted that a schizophrenic person may have non delusional moments, to wit:

Q: As far as the accused in this case is concerned, you did not see the patient immediately before November 9, 2009, right?

A: That is right, sir.

Q: So sir you are not sure on the mental condition of the accused at the time the incident subject matter of this case happened, right?

A: That is right, sir.

Q: You are not sure sir if the accused at the time he committed the act or the crime subject matter of this case he was susceptible of comprehending what is right and what is wrong?

A: Yes, sir.

Q: **Because a schizophrenic person can have a partial comprehension of what is right and what is wrong, right?**

A: **Yes, sir.**

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[39] *Id.*

Q: **There were conditions when a patient is not absolutely delusional, right?**

A: **Yes, sir.**

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Q: So, a schizophrenic person can perform an act with the full knowledge that what he committed is right or wrong, right?

A: Under medication, sir.

Q: But even if there is no medication or there were previous medications or there were lulls or in the application of medicine there will be (sic) time a schizophrenic person is not totally delusional?

A: I don't know about that, sir.

x x x x x x x x x

Q: **So, as far as the accused in this case is concerned, you did not examine him for the effect of not taking medication the prescribed medication (sic) for a certain period of time, is that correct sir?**

A: **Yes, sir.**

Q: **So you are not in a position to tell this Honorable Court as to the exact mental condition of the accused immediately before, during, and after November 9, 2009, am I correct sir?**

A: **That is why I did not say that I am absolutely certain. I said within reasonable certainty, sir.**

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Q: But in your expert opinion Mr. witness sir according to you the accused was very calm at the time of the arrest?

A: According to the Police Report, sir.

Q: And he did not resist the arrest?

A: According to the Police Report, sir.

Q: **Is it possible that he was normal at the time of the arrest?**

A: **Yes, sir.**

x x x x x x x x x

Q: May I repeat the question for clarity. According to you sir a normal person can also react the same way the accused reacted at the time of the arrest?

A: Yes, sir.

Q: **That is very clear. And he did not resist the arrest, according to you a normal person can also react the way the accused reacted at the time of the arrest?**

A: **Yes, sir.**[40] (Emphasis supplied)

As gleaned from his testimony, Dr. Loveria admitted that he did not assess the effect of accused-appellant's failure to take medications *vis-à-vis* his behavior during the crime. Moreover, the last consultation accused-appellant had with him was five (5) months before the incident. Accused-appellant's behavior immediately before, during, and after the commission of the crime were only relayed to the doctor by other witnesses. Clearly, Dr. Loveria did not have a well-defined basis to reach the conclusion that accused-appellant was insane at the time of the commission of the crime.

Proper penalty and award of damages

Based on the foregoing, the accused-appellant should be held liable for the crime of homicide under Article 249 of the Revised Penal Code, punishable by *reclusion temporal*. Applying the Indeterminate Sentence Law, and in the absence of any mitigating or aggravating circumstances, accused-appellant is 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.

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[40] TSN dated 08 November 2011, pp. 17-22.

In conformity with recent jurisprudence,[41] accused-appellant is directed to pay the heirs of Ramir Php50,000.00 as civil indemnity, Php50,000.00 as moral damages, and Php50,000.00 as temperate damages.[42] All monetary awards shall earn interest at the rate of six percent (6%) *per annum* from the date of the finality of the judgment until fully paid.

WHEREFORE, the Appeal is hereby **PARTIALLY GRANTED.** Accused-appellant Noellito Dela Cruz *y* Deplomo is declared **GUILTY** beyond reasonable doubt for the crime of **HOMICIDE**, and is sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor,* as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal,* as maximum. Further, accused-appellant is **ORDERED** to indemnify the heirs of Ramir Joseph Eugenio the amounts of Php50,000.00 as civil indemnity, Php50,000.00 as moral damages, and Php50,000.00 as temperate damages. An interest at the rate of six percent (6%) per annum shall be imposed on all damages awarded from the date of the finality of this Decision until fully paid.

SO ORDERED.

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

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[41] *People v. Jugueta,* 783 Phil. 806 (2016).

[42] In lieu of the lesser amount of actual damages of Php 41,500.00 awarded by the trial court; *Id.*

FIRST DIVISION

[G.R. No. 228154. October 16, 2019]

SIMEON GABRIEL RIVERA, MARILOU FARNACIO CANTANCIO, CESAR V. PRADAS, and EDUARDO A. CLARIZA, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA 3019); VIOLATION OF SECTION 3 (e), ESSENTIAL ELEMENTS OF; THREE MODES OF COMMITTING THE VIOLATION; PROOF OF THE EXISTENCE OF ANY OF THESE MODES IS REQUIRED TO WARRANT CONVICTION. —** The essential elements of the violation of Section 3(e) are the following, namely: (1) the accused must be a public officer discharging administrative, judicial, or official functions; (2) he must have acted with manifest partiality, or evident bad faith, or gross inexcusable negligence; and (3) 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. There are, therefore, three modes of committing the violation of Section 3(e), that is, through manifest partiality, or with evident bad faith, or through gross inexcusable negligence. x x x The three modes are distinct and different from one another. Hence, proof of the existence of any of these modes suffices to warrant conviction for the violation of Section 3(e).

2. **ID.; ID.; ID.; TO CONVICT FOR VIOLATION OF SECTION 3 (e) OF RA 3019, THE STATE MUST ESTABLISH BEYOND REASONABLE DOUBT ALL THE ELEMENTS OF THE CRIME AND THE EXISTENCE OF ANY OF THE MODES BY WHICH THE VIOLATION WAS COMMITTED; FOR FAILURE OF THE STATE IN THIS REGARD, THE COURT ACQUITS PETITIONERS.—** To start with, no specific showing was made to the effect that R. Magaway had obtained advance information or had been given any definite information on the proposed procurement; or that, if such was the case, the petitioners had

assisted in his obtention of such advance information. Thereby, the Sandiganbayan apparently indulged in plain conjecture. x x x [T]he observations by Sandiganbayan that the PSC-BAC members had exhibited manifest partiality in favor of Elixir during the post-qualification proceedings by declaring Elixir as a qualified bidder despite being organized as a partnership only on November 20, 2006 for being in contravention of the requirement for bidders to have been in existence and doing business for at least three years were unwarranted. As mentioned, the COA report considered the procurement regular and valid. As such, the declaration of Elixir as a qualified bidder in the post-qualification proceedings despite the supposed defects, standing alone, could not be competent evidence of manifest partiality. Moreover, it would appear from the records that Elixir had been actually converted into the partnership of the Magaways from its earlier status as the sole proprietorship of one of them, and the sole proprietorship had dealt with the PSC as a supplier for more than the required period. To be underscored is that the mere allegation that the petitioners as PSC-BAC members had accorded preferential treatment in favor of Elixir would not suffice to prove guilt for violation of Section 3(e). To hold otherwise is to let suppositions based on mere presumptions, not established facts, constitute proof of guilt. That holding is constitutionally impermissible, for suppositions would not amount to proof beyond reasonable doubt by virtue of their nature as conjectural and speculative. They do not overcome the strong presumption of innocence in favor of the petitioners as the accused. "In every criminal case, indeed, the accused enjoys the presumption of innocence, and is entitled to acquittal unless his guilt is shown beyond reasonable doubt. The proof of guilt must amount to a moral certainty that the accused committed the crime and should be punished. Thus, we have to acquit the petitioners on the ground that the State did not establish their guilt beyond reasonable doubt.

APPEARANCES OF COUNSEL

Rivera Santos & Maranan for petitioners.
Office of the Special Prosecutor for respondent.

D E C I S I O N

BERSAMIN, *C.J.*:

To convict for the violation of Section 3(e) of Republic Act No. 3019 *(Anti-Graft and Corrupt Practices Act)*, the State must allege in the information and establish beyond reasonable doubt during the trial that the accused acted in the discharge of his official, administrative or judicial functions through manifest partiality or evident bad faith, or with gross inexcusable negligence in order to cause undue injury to any party, including the Government, or to give any private party any unwarranted benefits, advantage, or preference. The mere allegation of such modes, not being evidence, is not competent as proof of guilt.

The Case

We hereby resolve this appeal by petition for review on *certiorari* seeking to reverse and undo the decision promulgated on June 16, 2016,[1] whereby the Sandiganbayan found and pronounced the petitioners guilty of violating Section 3(e) of R.A. No. 3019.

Antecedents

The petitioners, along with William Ramirez (Ramirez), Robert Magaway (R. Magaway) and Lawrence Andrew A. Magaway (L. Magaway), were charged with violating Section 3(e) of R.A. No. 3019 under the information whose accusatory portion stated:

That on or about the period 17 July 2007 to 05 December 2007, or sometime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, accused WILLIAM ICALINA RAMIREZ, a high-ranking public officer being then the Chairman of the Philippine Sports Commission (PSC), Planning Officer V CESAR VALERA PRADAS, in his capacity

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[1] *Rollo*, pp. 70-111; penned by Associate Justice Reynaldo P. Cruz, with the concurrence of Associate Justice Efren N. De La Cruz and Associate Justice Maria Cristina J. Cornejo.

as Chairman of the PSC Bids and Awards Committee (PSC-BAC), Administrative Officer V SIMEON GABRIEL MUSON RIVERA, Planning Officer III MARILOU FARNACIO CANTANCIO, Engineer II EDUARDO ABAN CLARIZA, in their capacity as PSC-BAC Members, all being employees of the PSC, acting as such, while in the performance of their official duties and functions, taking advantage of their official position and committing the offense in relation to their office, through manifest partiality, evident bad faith or gross inexcusable negligence, conspiring and confederating with ROBERT P. MAGAWAY AND LAWRENCE ANDREW A. MAGAWAY, owners of Elixir Sports Company (Elixir), did then and there willfully, unlawfully and criminally give unwarranted benefits, advantage or preference to Elixir Sports Company with the PSC-BAC enabling Elixir to post its bid without competition by dispensing with the requirement of Section 21.2.1 in relation to Section 21.2.3 of the Implementing Rules and Regulations-A (IRR-A) of R.A. No. 9184 that the Invitation to Apply for Eligibility and to Bid (IAEB) be published or advertised in a newspaper of general circulation and notwithstanding the failure of Elixir to qualify as a bidder as it does not possess the eligibility criteria as required under Section 23.11 of IRR-A, R.A. No. 9184, that it should have been in existence for at least three consecutive years prior to the advertisement and/or posting of the IAEB, the PSC-BAC nonetheless resolved to declare Elixir as the Single Lowest Calculated and Responsive Bid for the supply of the sports equipment for the Philippine cycling athletes who would participate in the 24th Southeast Asian Games in Thailand, and with WILLIAM ICALINA RAMIREZ, despite non-compliance by the PSC-BAC with the provisions of IRR-A, R.A. No. 9184, still approving the PSC-BAC Resolution No. 034-2007 SEA Games declaring Elixir as the Single Lowest Calculated and Responsive Bids, thus resulting to an overprice of the said sports equipment of Elixir in the total amount of Six Hundred Seventy-One Thousand Two Hundred Pesos (Php671,200.00), thereby the accused public officers giving unwarranted benefits, advantage or preference to Elixir and which eventually caused undue injury to the government in the total amount of Six Hundred Seventy-One Thousand Two Hundred Pesos (Php671,200.00).

CONTRARY TO LAW.[2]

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[2] *Id*. at 194-195.

All of the accused pled *not guilty* to the information at arraignment.[3]

The Sandiganbayan summarized the factual antecedents thusly:

On 11 July 2007, the joint task force of the Philippine Olympic Committee and Philippine Sports Commission (POC-PSC) for the 24th Southeast Asian Games (SEA Games) endorsed to the PSC Board of Commissioners (PSC Board) the proposal of the Philippine Amateur Cycling Association (PCA). This pertained to the purchase of cycling equipment and uniforms for the national athletes competing in the 24th SEA Games, in the amount of Two Million Three Hundred Sixty-Five Thousand Nine Hundred Eighty-one and 64/100 (Php2,365,981.64).

On 17 July 2007, the PSC Board appropriated the amount of Php13,559,340.44 to cover the budgetary requirements for the purchase of various sports equipment to be used by national athletes for the SEA Games. Out of this amount, Php2,365,981.64 was allotted for Cycling.

On 31 July 2007, Manuel R. Ibay, Jr., (Ibay) the Acting Property Head of the PSC, prepared Purchase Request (PR) No. SG07-79-2007 for SEA Games-Cycling, with the approval of accused Pradas as Acting Executive Director of the PSC.

On 3 September 2007, the PSC Bids and Awards Committee (PSC-BAC) posted on the PhilGEPS an Invitation to Apply for Eligibility and to Bid (IAEB) for the Supply and delivery of Sports Training Equipment for 2007 SEA Games-Cycling, with an ABC in the amount of Php2,365,981.64. The IAEB was also posted on the PSC website and on the PSC-BAC's Bulletin Board located at the 2nd Floor of the Administration Building of the PSC.

On 12 September 2007, the PSC-BAC conducted a Pre-Bidding Conference for the Supply and Delivery of Sports Equipment for Various Sporting Events of the 24th SEA Games. The Minutes of the Pre-Bid Conference indicated the attendance of Elixir, represented by accused Lawrence Magaway, as the only supplier for cycling.

Likewise, only Elixir submitted a bid proposal in response to the PSC-BAC's invitation to bid. Elixir is a partnership between accused

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[3] *Id*. at 72.

Robert Magaway and accused Lawrence Magaway. It was registered with the SEC on 20 November 2006.

On 10 October 2007, the PSC-BAC held the opening of bids, with Elixir's bid amounting to Php2,329,130.00. During post-qualification, an examination, validation and verification of all eligibility, technical capability and financial requirements submitted by Elixir allegedly showed that its bid was also responsive. Thus, the PSC-BAC issued Resolution No. 034-2007-SEA GAMES (Resolution) declaring Elixir as the bidder with the Single Lowest Calculated Bid (SLCB) and recommended the approval of the award of the contract for the Supply and Delivery of Training Sports Equipment for the 2007 SEA Games-Cycling in its favor.

On even date, accused Ramirez, who was then the Chairman of the PSC, approved the PSC-BAC's Resolution. He also signed the corresponding Notice of Award and Notice of Proceed. These notices bore the *"conforme"* of accused Lawrence Magaway, as Elixir's Manager.

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The final delivery was made on the same date. Thus, Elixir received the full payment in the amount of Php1,822,281.96.

After the SEA Games held in December 2007, a news article entitled "Cyclists Denounce Anomalies in Cycling Field" was published in the Manila Times on 28 February 2008. Said news article exposed the alleged anomalous purchase of supplies and equipment committed by PSC officials and employees for the 2007 SEA Games. This was the basis of the complaint filed by some members of the Philippine Cycling Team before the Field Investigation Office (FIO) of the Office of the Ombudsman.

On 06 March 2008, a special team was created by virtue of FIO Memorandum Circular No. 08-024. The team was tasked to conduct a fact-finding investigation relative to the complaint of the cyclists.

In the course of the investigation, the special team sent a letter to the Commission on Audit of the PSC (COA-PSC), requesting the conduct of a special audit regarding the procurement of equipment and other supplies of the PSC for the RP National Cycling Team for the 2007 SEA Games. In this Special Audit Report, the COA-PSC found no irregularities in the procurement of equipment and supplies

conducted by the PSC. It was further observed that the bid quotation in the amount of Php2,329,130.00 was within the Php2,365,981.64 ABC.

The result of the investigation of the special team however contradicted the findings of the COA-PSC. In their investigation Report dated 24 April 2008, the special team found several violations of the rules of R.A. No. 9184 committed by PSC officials and employees. Particularly, they discovered that the required newspaper publication of the IAEB was not complied with, even though the ABC was more than Php2,000,000.00. Moreover, Elixir was not a qualified bidder since as a business entity it had only been existing for a year, and not three years as required under the law. The result of the market probe they conducted also confirmed that some of the items delivered were overpriced. Consequently, the FIO filed a complaint against several officials of the PSC and the owners of Elixir.

After the conduct of preliminary investigation, the Ombudsman found probable cause to file an Information for violation of Sec. 3(e) R.A. No. 3019 against herein accused.[4]

On June 16, 2016, after trial, the Sandiganbayan promulgated the assailed decision pronouncing the petitioners, along with the Magaways, guilty of violating Section 3(e) of R.A. No. 3019, disposing thusly:

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

1. Accused Cesar V. Pradas, Simeon Gabriel M. Rivera, Marilou F. Cantancio, Eduardo A. Clariza, Roberto P. Magaway, Lawrence Andrew A. Magaway are found **GUILTY** beyond reasonable doubt of violation of Sec. 3(e), and pursuant to Section 9 thereof, are hereby sentenced to suffer an indeterminate penalty of imprisonment from six (6) years and one (1) month as minimum to ten (10) years as maximum, with perpetual disqualification from holding public office.

2. Accused William I. Ramirez is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. Accordingly, the hold departure order issued against him by reason of this case is hereby **LIFTED** and **SET ASIDE,** and his bond **RELEASED,** subject to the usual accounting and auditing procedures.

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[4] *Id*. at 82-90.

SO ORDERED.[5]

The Sandiganbayan opined that the petitioners as PSC-BAC members had not advertised the invitation to apply for eligibility and to bid (IAEB) in a newspaper of general circulation to prevent other suppliers from participating in the bidding; that the failure to advertise had favored Elixir Sports Company (Elixir); that the petitioners as PSC-BAC members had borne the responsibility to ensure that the procuring entity abided by the standards set forth in the law and the implementing rules and regulations, but they had been guilty of gross inexcusable negligence for not seeing to it that Elixir complied with the standards; that the PSC-BAC members had exhibited manifest partiality towards Elixir during the post-qualification proceedings by evaluating Elixir as a qualified bidder in contravention of the rules of the bidding requiring the bidders to have been in existence for three years and to have dealt with the procuring agency for the same length of time; and that the petitioners had thereby afforded Elixir with unwarranted benefits, advantage, or preference.[6]

The petitioners sought reconsideration, but the Sandiganbayan denied their motions through the assailed resolution of November 10, 2016.[7]

Issue

The petitioners maintain that the posting of the IAEB in the PhilGEPS[8] and the PSC-BAC's bulletin board substantially complied with the publication requirement; that they did not deliberately fail to publish the IAEB in a newspaper of general circulation because the BAC Secretariat had assured that such publication was no longer required for contracts with approved budget for the contract (ABC) of less than ₱5,000,000.00; and

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[5] *Id.* at 110-111.

[6] *Id.* at 92-99.

[7] *Id.* at 112-119.

[8] Acronym for Philippine Government Electronic Procurement System.

that Elixir had submitted documents showing its previous existence of more than three years and its having done business with the PSC in that length of time as the sole proprietorship of R. Magaway under the name and style of Elixir Trading; and that Elixir Trading had been converted into a partnership under the name and style of Elixir Sports Company, with R. Magaway and his brother, L. Magaway, as the partners.[9]

The Office of the Special Prosecutor (OSP) counters that the petitioners conspired in giving unwarranted benefit, advantage or preference in favor of Elixir by not publishing the IAEB in a newspaper of general circulation, and in awarding the contract to Elixir despite knowledge of its not being a qualified bidder.[10]

Did the Sandigabayan correctly find and pronounce the petitioners guilty of violating Section 3 (e) of RA 3019 in connection with the contract awarded in favor of Elixir?

Ruling of the Court

The appeal is meritorious.

Section 3(e) of R.A. 3019 provides:

SEC. 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:

x x x x x x x x x

(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.

x x x x x x x x x

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[9] *Rollo,* pp. 92-93.

[10] *Id.* at 552.

The essential elements of the violation of Section 3(e) are the following, namely: (1) the accused must be a public officer discharging administrative, judicial, or official functions; (2) he must have acted with manifest partiality, or evident bad faith, or gross inexcusable negligence; and (3) 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.[11]

There are, therefore, three modes of committing the violation of Section 3(e), that is, through manifest partiality, or with evident bad faith, or through gross inexcusable negligence. The modes have been well explained in *Fonacier v. Sandiganbayan*,[12] to wit:

> The second element enumerates the different modes by which means the offense penalized in Section 3 (e) may be committed. "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property." These definitions prove all too well that the three modes are distinct and different from each other. Proof of the existence of *any* of these modes in connection with the prohibited acts under Section 3(e) should suffice to warrant conviction. (Italics is part of the original text)

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[11] *Reyes v. People*, G.R. Nos. 177105-06, August 4, 2010, 626 SCRA 782, 793.

[12] G.R. Nos. 50691, 52263, 52766, 52821, 53350 & 53397, December 5, 1994, 238 SCRA 655, 687.

The three modes are distinct and different from one another.[13] Hence, proof of the existence of *any* of these modes suffices to warrant conviction for the violation of Section 3(e).[14]

The Sandiganbayan concluded that the petitioners had conspired to favor Elixir from the start; that Elixir had obtained advance information on the procurement to be carried out by the PSC; and that R. Magaway, one of the owners of Elixir, had no longer needed to wait for any kind of publication in order to be notified of the needs of the PSC because of his long standing relationship with the PSC.

The conclusions of the Sandiganbayan cannot be upheld.

To start with, no specific showing was made to the effect that R. Magaway had obtained advance information or had been given any definite information on the proposed procurement; or that, if such was the case, the petitioners had assisted in his obtention of such advance information. Thereby, the Sandiganbayan apparently indulged in plain conjecture.

Secondly, our impression after review indicates that the non-publication of the IAEB in a newspaper of general circulation was the outcome of the confusion in the minds of the petitioners as members of the PSC-BAC about the necessity for publication in respect of the particular procurement. It is not contested that Rivera had twice inquired from Noel Salumbides of the BAC Secretariat if the IAEB still had to be published in a newspaper of general circulation given the ABC of less than ₱5,000,000.00, and the latter had answered in the negative each time with the explanation that one of his subordinates had learned during a seminar about the new guideline of the Government Procurement Policy Board (GPPB) that effectively dispensed with the requirement for publication in a newspaper of general circulation for a procurement with an ABC of less than ₱5,000,000.00.[15]

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[13] *Id*.

[14] *Reyes v. People, supra*.

[15] *Rollo,* pp. 78-80; and 94-95.

The fact that Rivera directly inquired from the BAC Secretariat on the requirement to publish in a newspaper of general circulation surely indicated the sincere intention to satisfy the requirement for publication. In other words, the non-publication did not at all result from the petitioners' evident bad faith or gross inexcusable negligence towards Elixir, or from their gross inexcusable negligence as members of the PSC-BAC.

In all likelihood, the non-publication might have been engendered also by the petitioners already regarding the actual publication of the IAEB in the PhilGEPS, and its posting in the PSC's website itself as well as in conspicuous places like the PSC-BAC's bulletin board as sufficient compliance with the requirement for the publication. As we see it, the actual posting of the IAEB in the PhilGEPS and in the PSC-BAC's bulletin board was entirely consistent with the legal requirement for making the procurement as public as possible, instead of being concealed. Even if hindsight wisdom may enlighten us now that the petitioners did not faithfully discharge their responsibility as PSC-BAC members, it is not fair or reasonable to judge them as grossly negligent or having acted with evident bad faith under the circumstances obtaining at the time of the procurement.

Thirdly, that only Elixir submitted its bid in the end would not warrant the conclusion that Elixir had obtained or been given advance notice of the procurement. It is not at all amiss to point out that the records tended to indicate that eight suppliers had attended the pre-bid conference, a detail that revealed some degree of public awareness of the forthcoming procurement for the cycling equipment.[16] Such other suppliers, had they been interested and qualified, could have submitted bids of their own.

Fourthly, the procurement process was subjected to an audit by the Commission on Audit (COA). Based on its report dated March 11, 2008, the COA audit team found no irregularity in the procurement, and certified that the procurement had complied

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[16] *Id*. at 53-54.

with relevant laws and rules. The regularity and validity of the procurement process thereby became indisputable. The Sandiganbayan should not have accepted and bowed to the audit findings considering that the COA was the constitutionally-mandated audit arm of the Government vested with broad powers over all accounts pertaining to public revenue and expenditures and the uses of public funds and property.[17]

And, lastly, the observations by Sandiganbayan that the PSC-BAC members had exhibited manifest partiality in favor of Elixir during the post-qualification proceedings by declaring Elixir as a qualified bidder despite being organized as a partnership only on November 20, 2006 for being in contravention of the requirement for bidders to have been in existence and doing business for at least three years[18] were unwarranted.

As mentioned, the COA report considered the procurement regular and valid. As such, the declaration of Elixir as a qualified bidder in the post-qualification proceedings despite the supposed defects, standing alone, could not be competent evidence of manifest partiality. Moreover, it would appear from the records that Elixir had been actually converted into the partnership of the Magaways from its earlier status as the sole proprietorship of one of them, and the sole proprietorship had dealt with the PSC as a supplier for more than the required period.

To be underscored is that the mere allegation that the petitioners as PSC-BAC members had accorded preferential treatment in favor of Elixir would not suffice to prove guilt for violation of Section 3(e). To hold otherwise is to let suppositions based on mere presumptions, not established facts, constitute proof of guilt. That holding is constitutionally impermissible, for suppositions would not amount to proof beyond reasonable doubt by virtue

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[17] *Garcia, Jr. v. Office of the Ombudsman,* G.R. No. 197567, November 19, 2014, 741 SCRA 172, 189.

[18] *Rollo,* p. 96.

of their nature as conjectural and speculative.[19] They do not overcome the strong presumption of innocence in favor of the petitioners as the accused.

In every criminal case, indeed, the accused enjoys the presumption of innocence, and is entitled to acquittal unless his guilt is shown beyond reasonable doubt.[20] The proof of guilt must amount to a moral certainty that the accused committed the crime and should be punished. Thus, we have to acquit the petitioners on the ground that the State did not establish their guilt beyond reasonable doubt.[21]

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari;* and **ACQUITS** petitioners **SIMEON GABRIEL RIVERA, MARILOU FARNACIO CANTANCIO, CESAR V. PRADAS,** and **EDUARDO A. CLARIZA** for failure of the Prosecution to prove their guilt beyond reasonable doubt.

No pronouncement on costs of suit.

SO ORDERED.

Gesmundo, Carandang, and *Zalameda,*[*] *JJ.,* concur.

Perlas-Bernabe, J., on leave.

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[19] *Zapanta v. People,* G.R. Nos. 192698-99, April 22, 2015, 757 SCRA 172, 193.

[20] *People v. Claro,* G.R. No. 199894, April 5, 2017, 822 SCRA 365, 367.

[21] *Daayata v. People,* G.R. No. 205745, March 8, 2017, 820 SCRA 58, 74.

[*] Vice Associate Justice Francis H. Jardeleza, per Special Order No. 2712 dated September 27, 2019.

SECOND DIVISION

[G.R. No. 229364. October 16, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DONNA CLAIRE DE VERA and ABIGAIL CACAL *y* VALIENTE,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); SECTION 21 OF RA 9165; CHAIN OF CUSTODY RULE; LINK IN THE CHAIN OF CUSTODY; TO ENSURE THE INTEGRITY OF THE SEIZED DRUG ITEM, THE PROSECUTION MUST ACCOUNT FOR EACH LINK IN THE CHAIN OF CUSTODY.— 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 sold by the accused is the same substance presented in court. To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody: ***first***, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; ***second***, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; ***third***, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and ***fourth***, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court. This is the chain of custody rule. It came to fore due to the unique characteristics of illegal drugs which render them indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.

2. ID.; ID.; ID.; ID.; THE MARKING OF THE SEIZED DRUG MUST BE DONE AT THE PLACE OF ARREST IMMEDIATELY AFTER SEIZURE; FAILURE OF THE PROSECUTION TO EXPLAIN NON-COMPLIANCE WITH THE PRESCRIBED PROCEDURE FOR MARKING IS FATAL.— [T]the marking of the seized drug was not done at the place of arrest immediately after seizure. PO1 Sugayen testified that following appellants' arrest, they proceeded immediately to the Laoag

City Police Station. En route the police station, the item remained unmarked. It was clearly exposed to switching, planting, and contamination. Notably, the prosecution never explained why the prescribed procedure for marking was not followed. A similar circumstance obtained in ***People v. Victoria y Tariman*** wherein the Court acquitted the accused after the prosecution witnesses admitted that the seized item was not marked at the place of the arrest.

3. ID.; ID.; ID.; ID.; WHILE THE REQUIRED INVENTORY AND PHOTOGRAPHY MAY BE CONDUCTED AT THE NEAREST POLICE STATION OR AT THE NEAREST OFFICE OF THE APPREHENDING OFFICERS, THE SAME MAY BE ALLOWED ONLY IF ATTENDED WITH GOOD AND SUFFICIENT REASON. — The requirements of inventory and photograph of the confiscated items were not complied with. PO1 Sugayen admitted in open court that no receipt of the items seized was issued immediately after appellants got arrested. The inventory of the items was prepared only after the same were turned over to the evidence custodian SPO4 Ancheta at the police station. It was the latter who prepared the inventory in the police station. x x x While the required inventory and photography may be conducted at the nearest police station or at the nearest office of the apprehending officers, the same may be allowed only if attended with good and sufficient reason. Here, the prosecution did not give any valid explanation why it departed from the prescribed procedure for the inventory and photography.

4. ID.; ID.; ID.; ID.; THREE-WITNESS RULE; THE INVENTORY AND PHOTOGRAPH OF THE SEIZED ITEMS MUST BE MADE IN THE PRESENCE OF THE ACCUSED, A MEDIA REPRESENTATIVE, A REPRESENTATIVE FROM THE DEPARTMENT OF JUSTICE (DOJ), AND ANY ELECTED LOCAL OFFICIAL; RATIONALE; NON-COMPLIANCE MAY BE ALLOWED UNDER JUSTIFIABLE CIRCUMSTANCES, PROVIDED THE PROSECUTION SHOWS THAT THE PDEA OPERATIVES EXERTED EARNEST EFFORTS TO COMPLY WITH THE PROCEDURE ON THE THREE (3) WITNESS RULE; NOT COMPLIED WITH.— The law and the rules require the inventory and photograph of the seized items to be made *in the presence of the accused, a media representative, a representative from the Department of Justice (DOJ), and any elected local official*. This requirement was, again, not complied

with here. PO1 Sugayen did not mention that when the inventory and photography were done at the police station, assuming it was justified, they were done in the presence of three (3) required witnesses x x x. In ***People v. Martin y Ison***, we stressed that the absence of even one (1) of the three (3) required representatives during the inventory and photograph of the seized items was enough to breach the chain of custody. In that case, no photograph of the seized drug was taken at all and no DOJ representative was present during the inventory. The persons who witnessed the inventory were two (2) media representatives, a barangay councilor, and an acting clerk of court of the Municipal Trial Court. In ***People v. Mendoza***, the Court emphasized that the presence of these personalities is an insulation against the evils of switching, planting, or contamination of evidence. While non-compliance may be allowed under justifiable circumstances, jurisprudence clarifies that the prosecution must show that the PDEA operatives exerted earnest efforts to comply with the procedure on the three (3) witness rule. Here, the absence of the appellants and the three (3) insulating witnesses during the inventory and photography was not explained, and worse, was not even recognized by the arresting team.

5. ID.; ID.; ID.; ID.; THE DISCREPANCY AND THE GAP IN THE CHAIN OF CUSTODY SERIOUSLY AFFECT THE IDENTITY OF THE *CORPUS DELICTI* WITHOUT WHICH THE APPELLANTS MUST BE ACQUITTED.— There was no detailed account on the handling of the seized drug from the time it was confiscated up to its presentation in court, hence, putting the integrity of the *corpus delicti* in question. x x x The x x x substantial discrepancies on the identity of the alleged drug itself and the evidence of the buy-bust operation created serious doubt that the illegal drug allegedly seized from appellants and transmitted to the investigating officer and then to the forensic chemist are one and the same. Too, the discrepancy in the prosecution evidence on the identity of the seized and examined *shabu* and that formally offered in court cannot but lead to serious doubts regarding the origin of the *shabu* presented in court. This discrepancy and the gap in the chain of custody seriously affect the identity of the *corpus delicti* without which the appellants must be acquitted.

6. ID.; ID.; ID.; ID.; ABSENT ANY TESTIMONY ON THE MANAGEMENT, STORAGE, AND PRESERVATION OF THE ILLEGAL DRUGS SUBJECT OF SEIZURE AFTER ITS QUALITATIVE EXAMINATION, THE TURNOVER AND SUBMISSION BY THE FORENSIC CHEMIST OF THE MARKED ILLEGAL DRUGS SEIZED, TO THE COURT IS DEEMED NOT TO HAVE BEEN REASONABLY ESTABLISHED.— [N]one of the prosecution witnesses testified on how the *corpus delicti* was stored in the crime laboratory pending its delivery to the court for presentation as evidence. The prosecution stipulated on the proposed testimony of forensic chemist PS/Insp. Baligod. During the hearing, the defense sought several clarifications from the prosecution on who actually delivered the specimen to the court. In the end, it was revealed that SPO2 Flojo not PS/Insp. Baligod who did so x x x. SPO2 Flojo never took the stand to reconcile this substantial discrepancy for his testimony was peremptorily dispensed with. It is settled that absent any testimony on the management, storage, and preservation of the illegal drugs subject of seizure after its qualitative examination, the fourth link in the chain of custody of the illegal drugs is deemed not to have been reasonably established.

7. ID.; ID.; ID.; ID.; THE REPEATED BREACH OF THE CHAIN OF CUSTODY RULE WHICH CASTS SERIOUS UNCERTAINTY ON THE IDENTITY AND INTEGRITY OF THE *CORPUS DELICTI* MILITATE AGAINST A FINDING OF GUILT AGAINST THE ACCUSED-APPELLANTS. — The breaches of procedure committed by the police officers militate against a finding of guilt against herein appellants. The integrity and evidentiary value of the *corpus delicti* had been indubitably compromised. It is well-settled that the procedure in Section 21 of RA 9165 is a matter of substantive law and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects. [T]he chain of custody here was broken from the time the illegal drug was confiscated until it got presented in court. The repeated breach of the chain of custody rule had cast serious uncertainty on the identity and integrity of the *corpus delicti*. The metaphorical chain did not link at all, albeit it unjustly restrained appellants' right to liberty. Verily, therefore, a verdict of acquittal is in order.

8. ID.; ID.; ID.; ID.; THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL FUNCTIONS CANNOT SUBSTITUTE COMPLIANCE FOR THE PURPOSE OF MENDING THE BROKEN LINKS, FOR IT IS A MERE DISPUTABLE PRESUMPTION THAT CANNOT PREVAIL OVER CLEAR AND CONVINCING EVIDENCE OF MULTIPLE BREACH OF THE CHAIN OF CUSTODY RULE.— Although a saving clause in the Implementing Rules and Regulations of RA 9165 allows deviation from established protocol, this is subject to the condition that justifiable grounds exist and "so long as the integrity and evidentiary value of the seized items are properly preserved." Here, since the prosecution failed to recognize, nay, explain these procedural deficiencies, the saving clause cannot be validly invoked. Suffice it to state that the presumption of regularity in the performance of official functions cannot substitute compliance for the purpose of mending the broken links. For it is a mere disputable presumption that cannot prevail over clear and convincing evidence to the contrary. Here, the presumption was amply overthrown by compelling evidence pertaining to the multiple breach of the chain of custody rule.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.

Quezon B. Alejandro for accused-appellant Donna Claire de Vera.

The Law Firm of Augustin Rosqueta & Associates for Abigail Cacal *y* Valiente.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This appeal seeks to reverse the Decision[1] dated January 04, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 06822

[1] Penned by Associate Justice Agnes Reyes-Carpio with Associate Justices Andres B. Reyes, Jr. (now Member of the Court) and Romeo F. Barza, concurring, all members of the First Division, *Rollo*, pp. 2-16.

affirming the conviction of appellants Donna Claire De Vera and Abigail Cacal *y* Valiente for violation of Section 5, Article II of Republic Act No. 9165 (RA 9165).[2]

The Proceedings Before the Trial Court

The Charge

On October 14, 2011, an Amended Information was filed against appellants, *viz*:

> "That on or about the 9th day of October 2011, in the City of Laoag, Philippines and within the jurisdiction of this Honorable Court, the said accused, conspiring, confederating and mutually helping with one *another* did then and there willfully, unlawfully and feloniously sell and deliver to a poseur buyer (one) piece plastic sachet containing Methamphetamine Hydrochloride, locally known as "Shabu" with an aggregate weight of 0.0415 gram, a dangerous drug, without any license or authority, in violation of the aforesaid law.
>
> CONTRARY TO LAW.[3]"

The case was raffled to the Regional Trial Court-Branch 13, Laoag City.

On arraignment, appellants pleaded not guilty.

During the trial, PO1 Jackson Bannawagan Sugayen, SPO4 Loreto Ancheta,[4] and SPO4 Rovimanuel Balolong testified for the prosecution.

The testimonies of investigating officer SPO2 Teodoro Flojo (SPO2 Flojo) and forensic chemist Police Senior Inspector Roanalaine B. Baligod (PS/Insp. Baligod) were dispensed with

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[2] Otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

[3] Record, p. 18.

[4] Testified through written Proffer Testimony (Senior Police Officer 4 Loreto Ancheta) in lieu of his direct-examination (See Record, pp. 103 to 103 (a); but subjected to cross-examination and re-direct examination on October 2, 2012 (See TSN, October 2, 2012, pp. 320-349).

after the prosecution and the defense stipulated on their participation in the handling of the seized drug.[5]

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[5] **As to SPO2 Flojo**, the parties essentially stipulated on the following facts:

(1) On October 9, 2011 at 1:30 in the afternoon, he received one (1) heat-sealed plastic sachet containing crystalline substance allegedly containing *shabu* with a weight of more or less than 0.2 grams from SPO4 Loreto Ancheta;

(2) At the same afternoon, he turned over the heat-sealed transparent plastic sachet together with the Request for Laboratory Examination to the laboratory chemist Roanalaine B. Baligod and that after examining the same at 2:00 o'clock in the afternoon, he took back the plastic sachet and kept it in the evidence cabinet of the PNP Crime Lab;

(3) November 22, 2011, he retrieved the plastic sachet containing *shabu* from the evidence cabinet, turned it over to PS/Insp. Baligod who delivered it to the Court as evidence by Acknowledgment Receipt dated December 1, 2011;

(4) The envelope marked as D-051-00-2011 containing an elongated plastic sachet with white crystalline substance and also marked as CC#14940 *Pp vs. Donna (Claire) de Vera* is the same plastic containing white crystalline substance that he received from Officer Loreto Ancheta of the PNP;

(5) The markings LCPS "ACDV" was already present at the time he received the specimen;

(6) The plastic sachet is the same plastic sachet that he delivered to PS/Insp. Baligod; and

(7) The same plastic sachet was delivered to the Court on November 22, 2011. (See *TSN, February 23, 2012, pp. 42-43*)

As to PS/Insp. Baligod, the parties essentially stipulated on the following facts:

(1) On October 9, 2011 she received a request for laboratory examination from SPO2 Flojo to examine a one (1) heat-sealed sachet containing an alleged *shabu*;

(2) She conducted qualitative examination of the contents of one (1) heat-sealed transparent plastic sachet which turned positive for the presence of methamphetamine hydrochloride known as *shabu*;

(3) She reduced the examination in writing and executed Chemical Report No. D-051-2011;

(4) She placed her marking "RBB" and the case number D-051-2011 and date of examination as October 9, 2011; and

(5) At around November 22, 2011 around 2:30 o'clock in the afternoon, she retrieved the one (1) plastic sachet with the original letter request and the Chemistry Report No. D-051-2011 from the evidence locker and

On the other hand, Roy Constantino, Janet Hernando, Teofilo Bernabe and appellants De Vera and Cacal testified for the defense.

The Prosecution's Version

On October 8, 2011, around 8 o'clock in the evening, SPO4 Balolong of the Intel Operations Section of Laoag City Police Station received a phone call from an informant. The latter reported that a certain Abigail Cacal *y* Valiente would sell him *shabu* on October 9, 2011, in front of Data Center Philippines in Laoag City. SPO4 Balolong agreed to meet the informant around 5 o'clock the following morning. Meantime, SPO4 Balolong alerted PO1 Sugayen, SPO1 Arcel Agbayani (SPO1 Agbayani), PO2 Arnel Saclayan (PO2 Saclayan) of the buy-bust operation on the same day.[6]

Around 4:30 in the morning of October 9, 2011, the informant went to fetch SPO4 Balolong. Thereafter, they went to Laoag City Police Station for briefing together with the other members of the buy-bust team. It was discussed that the buy-bust operation will be conducted at the Data Center Philippines in Brgy. 8, A.G. Tupaz Street, Laoag City. PO1 Sugayen was designated as poseur-buyer and given the marked ₱1000.00 bill as buy-bust money. Team leader SPO4 Balolong, SPO1 Agbayani, PO2 Saclayan and PO1 Rizal Almondia (PO1 Almondia) were designated as back-up. It was agreed that once the sale was consummated, POl Sugayen will make a phone call to SPO4 Balolong.[7]

The pre-operation report was recorded in the police blotter. The team coordinated with the Philippine Drug Enforcement Agency (PDEA).[8]

The team together with the informant then headed to A.G. Tupaz Street. PO1 Sugayen and the informant rode a tricycle

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submitted to Atty. Bernadette Espejo of the Regional Trial Court, Laoag City. (*See TSN, February 15, 2012, pp. 13-14*).

[6] TSN dated August 30, 2012, pp. 209-211.

[7] *Id.* at pp. 212-213.

[8] *Id.* at pp. 213-217.

while the rest of the team took SPO4 Balolong's car. When they got to A.G. Tupaz Street, the team parked in front of the Civil Security Unit at the Laoag City Hall around two (2) blocks away from Data Center Philippines. PO1 Sugayen and the informant, on the other hand, positioned themselves in front of Data Center Philippines. The informant immediately informed Cacal of their presence in the area.[9]

After around fifteen (15) minutes, Cacal came. The informant introduced PO1 Sugayen to Cacal as the buyer. Cacal informed them he would text someone to bring in the item. After about thirty (30) minutes, a woman on board a motorcycle came. She was later on identified as appellant Donna Claire De Vera. She alighted from the motorcycle, removed her helmet, and handed a plastic sachet to Cacal. The latter gave the item to PO1 Sugayen, who immediately slid it into his pocket and gave De Vera the buy-bust money as payment. PO1 Sugayen then called SPO4 Balolong signifying that the sale had been completed. As the team was closing in, Cacal panicked. PO1 Sugayen was able to grab him though. Thereupon, PO2 Saclayan and PO1 Almondia helped out and handcuffed Cacal. SPO4 Balolong and SPO1 Agbayani, on the other hand, took care of De Vera. They recovered from her the buy-bust money. Both appellants were informed of their rights and were taken to the Laoag City Police Station.[10]

At the police station, the post operation events were registered in the police blotter.[11] PO1 Sugayen marked the plastic sachet with his initials "JBS"[12] and took pictures of the confiscated items.[13] He turned over the items to SPO4 Ancheta, the evidence custodian. SPO4 Ancheta did the inventory.[14]

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[9] TSN, dated May 24, 2012, pp. 72-73.

[10] TSN, dated May 24, 2012, pp. 75-84.

[11] TSN, dated August 30, 2012, p. 231.

[12] TSN, dated May 24, 2012, p. 85.

[13] TSN, dated August 30, 2012, p. 231.

[14] *Id.* at 242.

Police Inspector Edwardo C. Santos prepared the request for laboratory examination dated October 9, 2011. The confiscated item was then forwarded to the Ilocos Norte Provincial Crime Laboratory Office.[15]

On October 9, 2011, around 1:30 in the afternoon, SPO2 Flojo of the Laoag City Police Station received the plastic sachet marked "JBS."[16] He turned it over to forensic chemist PS/Insp. Baligod at the Ilocos Norte Provincial Crime Laboratory Office. In her Chemistry Report No. D-051-2011 dated October 9, 2011, PS/Insp. Baligod certified that the specimen confiscated from appellants yielded positive results for methamphetamine hydrochloride, a dangerous drug.[17]

The prosecution submitted the following evidence: Joint Affidavit of Arrest; Coordination Form; Extract Copy of Police Blotter with Entry No. 141639; Extract Copy of Police Blotter with Entry No. 141642; Inventory of Items; Letter Request for Laboratory Examination; Initial Laboratory Chemical Report No. D-051-2011; Final Laboratory Chemical Report No. D-051-2011; Pictures of appellants and confiscated items; One (1) piece transparent plastic sachet with contents; Photocopy of the crime laboratory logbook; Photocopy of ₱1,000.00 bill marked money; and Acknowledgment Receipt dated November 22, 2011.[18]

The Defense's Version

Appellant Cacal testified that on October 8, 2011, he was in Laoag City to follow up an employment offer at a live-band bar. He stayed at his friends' boarding house on Bacarra Road. In the morning of October 9, 2011, he received a text message from a certain Baldo, whom he had known for about two (2) months. He agreed to accompany Baldo to meet up with his

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[15] Record, p. 8.

[16] *Id.* at 39.

[17] *Id.* at 40.

[18] Index of Exhibits; Record, unnumbered page.

two (2) friends. They boarded a motorcycle and headed to the RCJ bus terminal. Five (5) minutes later, two (2) men alighted from a tricycle. They were PO1 Sugayen and Bong Marin. They both went to eat at a *carinderia* in front of the Data Center Philippines. While eating, both Marin and Baldo received calls and text messages. They stepped out of the *carinderia*, leaving him and PO1 Sugayen behind. After a while, he and PO1 Sugayen also left. They sat in front of a computer shop and talked about his previous work in Taiwan.[19]

After sometime, PO1 Sugayen brought out his phone and started texting. Suddenly, a car stopped in front of them. From afar, he saw Baldo and Marin running away. SPO4 Balolong and SPO1 Agbayani stepped out of the car and pointed their guns on him. PO2 Saclayan and two (2) other police officers arrived. He asked them if he did something wrong but SPO1 Agbayani just frisked him. He resisted the frisk and asked them again what crime he committed and if they had a search warrant. They told him that since he talked too much, they were bringing him to the police station for further investigation.[20] He continuously resisted but the police officers kicked, boxed, and mauled him. He asked them to stop otherwise he would charge them with police brutality. But they only continued to maul him. He fought back hitting SPO4 Balolong. The other police officers pinned him down on the ground, handcuffed him, and boarded him into a tricycle with PO2 Saclayan.[21]

At the Laoag City Police Station, SPO4 Balolong came, together with a crying woman who was later identified as De Vera. When asked if he knew De Vera, he replied in the negative. After a short interrogation, he was thrown into a prison cell.[22]

The following morning around 2 and 3 o'clock, SPO4 Ancheta and two (2) other police officers brought him and De Vera to

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[19] TSN, November 15, 2012, pp. 366-382.

[20] *Id.* at 387-391.

[21] *Id.* at 392-394.

[22] *Id.* at 403-404.

Camp Valentin S. Juan, Laoag City. A small plastic sachet was presented to them and SPO4 Ancheta told him it was found in his possession. Immediately, thereafter, he and De Vera were subjected to urinalysis before they were taken back to the police station.[23] He was again detained there. Around 4 and 5 o'clock in the afternoon, PO1 Sugayen visited and promised to help him because he knew he was innocent. Roy Constantino, a detainee in the same cell heard their conversation.[24]

Roy Constantino corroborated Cacal's testimony. He testified that on October 9, 2011, PO1 Sugayen visited Cacal in his prison cell. He heard him apologizing to Cacal for the frame-up and illegal arrest.[25]

Appellant De Vera, on the other hand, testified that in the morning of October 9, 2011, she was in the house of Teofilo Bernabe in Laoag City where she worked as babysitter and household helper.[26] She received a call from her aunt Racquel Fernandez. The latter asked her to pick up from Janet Hernando ₱1,000.00 which Hernando owed to her aunt. She obliged and by 9:25 in the morning, she left to meet Hernando in front of the Vigare Clinic located at the west side of Data Center Philippines and the RCJ bus terminal. Five (5) minutes later, Hernando came. She handed her the ₱1,000.00 which she slid into her pocket.[27] When she was about to leave, she heard a commotion and suddenly a car stopped in front of her. Two (2) men alighted from the vehicle. She later learned that they were SPO4 Balolong and SPO1 Agbayani. They approached her, pushed her against the wall, and boxed her head. SPO4 Balolong frisked her and took the ₱1,000.00 from her pocket. They then boarded her into a car and took her to the Laoag City Police Station. She was detained in one of the offices there. She saw

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[23] *Id.* at 405-407.

[24] *Id.* at 407-410.

[25] TSN, February 8, 2013, p. 453.

[26] TSN, June 7, 2013, p. 550.

[27] *Id.* at 552-556.

Cacal being interrogated in the same office. After a while, she was informed that there were drug charges against her.[28]

Janet Hernando corroborated De Vera's story. The former testified she knew De Vera as the niece of Racquel Fernandez whom she owed ₱3,000.00. Upon Fernandez' instruction she gave her final payment of ₱1,000.00 to De Vera on October 9, 2011 in front of the Vigare Clinic.[29]

Teofilo Bernabe also testified that De Vera worked for him as household help for five (5) years. On October 9, 2011, De Vera received a phone call from her aunt Racquel Fernandez instructing her to collect money from Janet Hernando. De Vera asked permission from him to do the errand so he allowed her to leave and use his motorcycle.[30]

The defense offered the following evidence: Joint Affidavit of Arresting Officers; Extract Copy of Police Blotter No. 141642 dated October 9, 2011; Letter Request for Laboratory Examination; Pre-Operational Report; Initial Laboratory Report D-051-2011; and Final Laboratory Report D-051-2011.[31]

The Trial Court's Ruling

By Decision dated March 28, 2014,[32] the trial court convicted appellants as charged, thus:

> **WHEREFORE**, judgment is hereby rendered finding accused Donna Claire de Vera and Abigail Cacal GUILTY as charged of illegal sale of shabu in conspiracy with each other and are therefore sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.
>
> The contraband subject hereof is hereby confiscated, the same to be disposed of as the law prescribes.

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[28] *Id.* at 558-563.

[29] TSN, April 16, 2013, pp. 509-514.

[30] TSN, May 23, 2013, pp. 525-527.

[31] Formal Offer of Documentary Evidence dated March 19, 2013, Record, pp. 128-129; See also Index of Exhibits, Record, unnumbered page.

[32] CA *Rollo*, pp. 13-31.

SO ORDERED.

The Proceedings Before the Court of Appeals

On appeal, appellants faulted the trial court for finding them guilty as charged. They claimed that the alleged incredulity of the prosecution's evidence, the procedural lapses committed during the buy-bust operation, and the prosecution's failure to prove the identity and integrity of the *corpus delicti* could not have established their guilt beyond reasonable doubt.[33]

On the other hand, the Office of the Solicitor General (OSG) countered in the main: a) the prosecution had established the elements of illegal sale of dangerous drugs; b) the identity and integrity of the *corpus delicti* were established by evidence; and c) appellants' denial and frame-up were unsubstantiated.[34]

The Court of Appeals' Ruling

By Decision dated January 04, 2016,[35] the Court of Appeals affirmed. It ruled that the prosecution had adequately and satisfactorily proved the elements of illegal sale of *shabu*. The chain of custody was substantially complied with and the *corpus delicti* was established with certainty. The absence of the designated witnesses under Section 21 of RA 9165 was not fatal to the prosecution's case so long as the integrity and evidentiary value of the illegal drugs were preserved. Appellants failed to adduce sufficient evidence to substantiate their defenses of denial and frame-up in light of the positive identification of the prosecution witnesses.

The Present Appeal

Appellants now seek affirmative relief from the Court and pray anew for their acquittal.

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[33] Appellant De Vera's Brief dated September 30, 2014, CA *Rollo*, pp. 49-56; See also Appellant Cacal's Brief dated February 4, 2015, CA *Rollo*, pp. 80-89.

[34] Plaintiff-Appellee's Brief dated May 28, 2015, CA *Rollo*, pp. 117-132.

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

In compliance with Resolution dated March 29, 2017, both the OSG and appellants[36] manifested that, in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.

The Threshold Issue

Did the Court of Appeals err in affirming the trial court's verdict of conviction despite the alleged attendant procedural infirmities relative to the chain of custody?

Ruling

We acquit.

Appellants were charged with violation of Section 5 of RA 9165 or illegal sale of dangerous drugs purportedly committed on October 9, 2011.

Section 21 of RA 9165 provides the procedure to ensure the integrity of the *corpus delicti, viz*:

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

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[36] Manifestation dated July 14, 2017 filed by Office of the Solicitor General, *Rollo*, pp. 35-36; Manifestation filed by appellant Donna Claire De Vera and received by the Court on November 24, 2017, *Rollo*, pp. 41-42; and Manifestation(s) and Motion dated January 21, 2019 filed by appellant Abigail Cacal *y* Valiente, *Rollo*, pp. 52-60.

> **(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

Its Implementing Rules and Regulations further states:

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

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 sold by the accused is the same substance presented in court.[37]

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody:[38] ***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;

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[37] *People v. Calvelo*, G.R. No. 223526, December 6, 2017, 848 SCRA 225, 244.

[38] As defined in Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002:

and ***fourth***, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.[39]

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.[40]

Here, prosecution witness PO1 Sugayen testified:

> Q: (Considering) that Officer Balolong is the team leader of this particular operation, Mr. Witness, did you turn over to him the plastic sachet?
>
> **A: No, sir.**
>
> Q: Did he not check if the plastic sachet contains shabu?
>
> **A: No, sir.**
>
> **Q: Never did you show to your team leader the alleged subject of the buy bust operation?**
>
> **A: No sir, it was at the police station that he came to see the plastic sachet, sir.**
>
> Q: Officer Balolong never bothered to ask you where is the plastic sachet?

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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

[39] *People v. Dela Torre y Cabalar,* G.R. No. 225789, July 29, 2019; *Jocson y Cristobal v. People*, G.R. No. 199644, June 19, 2019 citing *People v. Dahil,* 750 Phil. 212, 231 (2015).

[40] *People v. Hementiza*, 807 Phil. 1017, 1026 (2017).

A: He asked, sir.

Q: Did you not show to him?

A: It is (in) my pocket (,) sir, I told him, sir.

Q: At that time, Mr. Witness, you did not issue a Receipt of the Property Seized to the accused Abigail Cacal?

A: No, sir.

Q: You did not mark the plastic sachet (?)

COURT: **All these for emphasis, Atty. Bareng (.) Because the witness clearly (testified) on direct that after the arrest of the accused, they brought the accused to the police station where the (evidence) were marked.**

ATTY. BARENG:

Yes, your Honor.

Q: Upon arresting and seizing the items, Mr. Witness, did you call the barangay officials?

A: No, sir.

Q: Also media personalities and (representatives) of DOJ, you did not call?

A: It's only at the police station that they arrived, sir.

Q: (T)hat there were no photographs taken at the place of arrest?

A: There were no photographs, sir.

Q: What time did you turn over the plastic sachet to SPO4 Loreto Ancheta?

A: I was not able to take note of the time, sir.

Q: Upon confiscation of the plastic sachet, Mr. Witness, you did not put the same in a container?

A: No, sir.

Q: Upon confiscation, you just brought the accused and the seized specimen to the police station?

A: Yes, sir.

Q: No physical inventory that was taken at the place of arrest in the presence of the accused?

A: None, sir.[41] (Emphasis supplied).

PO1 Sugayen's testimony, on its face, bears how the chain of custody had been breached many times over in this case. In fact, all four (4) links were never at any point joined into one (1) unbroken chain. Consider:

First. The marking of the seized drug was not done at the place of arrest immediately after seizure. PO1 Sugayen testified that following appellants' arrest, they proceeded immediately to the Laoag City Police Station. En route the police station, the item remained unmarked. It was clearly exposed to switching, planting, and contamination. Notably, the prosecution never explained why the prescribed procedure for marking was not followed.

A similar circumstance obtained in ***People v. Victoria y Tariman***[42] wherein the Court acquitted the accused after the prosecution witnesses admitted that the seized item was not marked at the place of the arrest.

In ***People v. Lumaya***[43] the Court stressed that it is important to promptly mark the dangerous drug at the place of arrest because succeeding handlers will use such marking as reference. It operates to set apart as evidence the dangerous drugs from other items the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting, or contamination of evidence.

Second. The requirements of inventory and photograph of the confiscated items were not complied with. PO1 Sugayen admitted in open court that no receipt of the items seized was

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[41] TSN, May 29, 2012, pp. 127-129.

[42] G.R. No. 238613. August 19, 2019.

[43] See G.R. No. 231983, March 7, 2018.

issued immediately after appellants got arrested.[44] The inventory of the items was prepared only after the same were turned over to the evidence custodian SPO4 Ancheta at the police station. It was the latter who prepared the inventory in the police station.[45]

In ***People v. Omamos y Pajo***,[46] the Court acquitted the accused when nothing in the records showed that the required inventory and photography of the seized item were ever complied with. The prosecution's formal offer of evidence also did not bear compliance with these requirements.

While the required inventory and photography may be conducted at the nearest police station or at the nearest office of the apprehending officers, the same may be allowed only if attended with good and sufficient reason.[47] Here, the prosecution did not give any valid explanation why it departed from the prescribed procedure for the inventory and photography.

Third. The law and the rules require the inventory and photograph of the seized items to be made *in the presence of the accused, a media representative, a representative from the Department of Justice (DOJ), and any elected local official.* This requirement was, again, not complied with here.

PO1 Sugayen did not mention that when the inventory and photography were done at the police station, assuming it was justified, they were done in the presence of three (3) required witnesses, thus:[48]

> Q: Upon arresting and seizing the items, Mr. Witness, did you call the barangay officials?
> **A: No, sir.**

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[44] TSN, May 29, 2012, pp. 127-129.

[45] *Id.*

[46] See G.R. No. 223036, July 10, 2019.

[47] *People v. Tampan*, G.R. No. 222648, February 13, 2019.

[48] TSN, May 29, 2012, pp. 127-129.

Q: Also media personalities and (representatives) of DOJ, you did not call?
A: **It's only at the police station that they arrived, sir.**[49]

SPO4 Balolong similarly testified:

Q: Before you proceeded, Mr. Witness, to the alleged place of transaction, did you coordinate with the barangay officials of Brgy. 8, Laoag City for them to be witnesses in this alleged buy bust operation?
A: No, sir.

Q: Even after this operation, you did not coordinate with the barangay officials?
A: No. sir.

x x x x x x x x x

Q: Even representatives from the media, there were none?
A: **There were media who came at the station and conduct... there were media who came to the station after the operation, sir.**

Q: Who was that media who arrived?
A: I cannot recall, sir.

Q: How many media personalities arrived at your office?
A: I cannot recall, sir but there were some.

Q: Because there was none, am I right?
A: There were some media personalities, sir.[50] (Emphasis supplied)

In ***People v. Martin y Ison***,[51] we stressed that the absence of even one (1) of the three (3) required representatives during the inventory and photograph of the seized items was enough to breach the chain of custody. In that case, no photograph of the seized drug was taken at all and no DOJ representative was present during the inventory. The persons who witnessed the inventory were two (2) media representatives, a barangay

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[49] *Id.* at 128.

[50] TSN, September 4, 2012, pp. 296-297.

[51] G.R. No. 231007, July 1, 2019.

councilor, and an acting clerk of court of the Municipal Trial Court.

In ***People v. Mendoza***,[52] the Court emphasized that the presence of these personalities is an insulation against the evils of switching, planting, or contamination of evidence. While non-compliance may be allowed under justifiable circumstances, jurisprudence clarifies that the prosecution must show that the PDEA operatives exerted earnest efforts to comply with the procedure on the three (3) witness rule.[53] Here, the absence of the appellants and the three (3) insulating witnesses during the inventory and photography was not explained, and worse, was not even recognized by the arresting team.

Fourth. There was no detailed account on the handling of the seized drug from the time it was confiscated up to its presentation in court, hence, putting the integrity of the *corpus delicti* in question. Consider:

1. The prosecution failed to adduce evidence how the seized item was handled from the time it was (i) confiscated from appellants; (ii) while it was being transported en route the police station; and (iii) after the forensic chemist had examined it.

2. Per Amended Information dated October 14, 2011, the weight of the seized illegal drug was 0.0415 gram. While per stipulation, the parties recognized that it was SPO2 Flojo who received from SPO4 Ancheta the illegal drug which weighed more or less 0.2 gram.[54]

3. SPO2 Sugayen testified that he marked the plastic sachet containing the illegal drug with initials "JBS;" while the parties stipulated that SPO2 Flojo received the seized item with markings "LCPS ACDV." As the records show, SPO2 Flojo merely stated in his proffered testimony

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[52] 736 Phil. 749, 761 (2014).

[53] *People v. Miranda*, G.R. No. 229671, January 31, 2018.

[54] See TSN, February 23, 2012, pp. 42-43.

that the markings "LCPS ACDV" were already written on the specimen when he received the same.[55] The prosecution did not provide any explanation on the differences in the markings nor did the defense object to this substantial discrepancy.

4. SPO2 Flojo allegedly received the seized item from SPO4 Ancheta at 1:30 in the afternoon of October 9, 2011 and delivered it to forensic chemist PS/Insp. Baligod at **2 o'clock** in the afternoon. Chemistry Report No. D-051-2011 dated October 9, 2011,[56] however, indicated that PS/Insp. Baligod received the item at **1:30** in the afternoon.[57]

The foregoing substantial discrepancies on the identity of the alleged drug itself and the evidence of the buy-bust operation created serious doubt that the illegal drug allegedly seized from appellants and transmitted to the investigating officer and then to the forensic chemist are one and the same.

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[55] *Id.*

[56] Record, p. 8.

[57] ATTY. ALEJANDRO:

Your Honor please, may we know again if what time Officer Flojo turned over the plastic sachet to the Chemist Baligod for the first time? It was offered, your Honor please, that this witness, he is saying to the esteemed prosecutor within the hearing to this humble representation that he allegedly received the specimen containing white crystalline substance at 1:30 o'clock in the afternoon on October 9 and ...

COURT:

Received from whom?

ATTY. ALEJANDRO:

Received from Ancheta, your Honor (and) then he only submitted or delivered to the chemist at 2:00 in the afternoon of the same date 09 OCT 2011.

x x x x x x x x x

ATTY. ALEJANDRO:

Now, in the Chemistry Report, your Honor, I would like to invite the kind indulgence of the Honorable Court that it states (hereunder) **the time and date received signed by Forensic Baligod (is) 1:30 o'clock**. (Emphasis supplied) (See TSN, February 23, 2012, pp. 49-50).

Too, the discrepancy in the prosecution evidence on the identity of the seized and examined *shabu* and that formally offered in court cannot but lead to serious doubts regarding the origin of the *shabu* presented in court. This discrepancy and the gap in the chain of custody seriously affect the identity of the *corpus delicti* without which the appellants must be acquitted.[58]

Finally, none of the prosecution witnesses testified on how the *corpus delicti* was stored in the crime laboratory pending its delivery to the court for presentation as evidence.

The prosecution stipulated on the proposed testimony of forensic chemist PS/Insp. Baligod. During the hearing, the defense sought several clarifications from the prosecution on who actually delivered the specimen to the court. In the end, it was revealed that SPO2 Flojo not PS/Insp. Baligod who did so, thus:

> COURT:
> So, why did you make that proffer?
>
> PROSECUTOR FAJARDO:
> It was the usual method they usually do if SPO2 Teodoro is not around, your Honor.
>
> COURT:
> That is why... but it should have been known upon you that it is not true (,) that Police Senior Inspector Roanalaine Baligod (was the one) who retrieved it from evidence cabinet **because as records would show and as the Acknowledgment Receipt would show, it was SPO2 Teodoro Flojo who submitted it**.[59] (Emphasis supplied)

SPO2 Flojo never took the stand to reconcile this substantial discrepancy for his testimony was peremptorily dispensed with.[60]

It is settled that absent any testimony on the management, storage, and preservation of the illegal drugs subject of seizure after its

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[58] *People v. Kamad*, 624 Phil. 289, 311 (2010).

[59] TSN, February 15, 2012, p. 33.

[60] See TSN, February 23, 2012, pp. 42-56.

qualitative examination, the fourth link in the chain of custody of the illegal drugs is deemed not to have been reasonably established.[61]

In ***People v. Burdeos y Oropa***[62] citing ***People v. Hementiza*** the Court enunciated that an accused may be acquitted for illegal sale of dangerous drugs because the records are bereft of any evidence as to how the illegal drugs were brought to court. The forensic chemist therein merely testified that she made a report confirming that the substance contained in the sachets brought to her was positive for *shabu*. There was no evidence how the *shabu* was stored, preserved, or labeled; nor the identity of the person who had custody of the seized drug before it was presented to the Court ever established.[63]

In fine, the breaches of procedure committed by the police officers militate against a finding of guilt against herein appellants. The integrity and evidentiary value of the *corpus delicti* had been indubitably compromised. It is well-settled that the procedure in Section 21 of RA 9165 is a matter of substantive law and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.[64]

To repeat, the chain of custody here was broken from the time the illegal drug was confiscated until it got presented in court. The repeated breach of the chain of custody rule had cast serious uncertainty on the identity and integrity of the *corpus delicti*. The metaphorical chain did not link at all, albeit it unjustly restrained appellants' right to liberty. Verily, therefore, a verdict of acquittal is in order.[65]

Although a saving clause in the Implementing Rules and Regulations of RA 9165 allows deviation from established

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[61] See *People v. Ubungen y Pulido*, G.R. No. 225497, July 23, 2018.

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

[63] G.R. No. 227398, March 22, 2017.

[64] See *People v. Lumaya*, G.R. No. 231983, March 7, 2018 (citations omitted).

[65] See *Jocson y Cristobal v. People*, G.R. No. 199644, June 19, 2019.

protocol, this is subject to the condition that justifiable grounds exist and "so long as the integrity and evidentiary value of the seized items are properly preserved."[66] Here, since the prosecution failed to recognize, nay, explain these procedural deficiencies, the saving clause cannot be validly invoked.

Suffice it to state that the presumption of regularity in the performance of official functions cannot substitute compliance for the purpose of mending the broken links. For it is a mere disputable presumption that cannot prevail over clear and convincing evidence to the contrary.[67] Here, the presumption was amply overthrown by compelling evidence pertaining to the multiple breach of the chain of custody rule.

ACCORDINGLY, the appeal is **GRANTED**. The Decision dated January 04, 2016 of the Court of Appeals in CA-G.R. CR-H.C. No. 06822 is **REVERSED** and **SET ASIDE**.

Appellants **DONNA CLAIRE DE VERA** and **ABIGAIL CACAL *y* VALIENTE** are **ACQUITTED** in G.R. No. 229364 (Criminal Case No. 14940). The Superintendent of the Correctional Institution for Women, Mandaluyong City and Director of the Bureau of Corrections, Muntinlupa City are respectively: a) ordered to immediately release **DONNA CLAIRE DE VERA** and **ABIGAIL CACAL *y* VALIENTE** from custody unless she or he is being held for some other lawful cause; and b) submit their separate reports 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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[66] See Section 21 (a), Article II, of the IRR of RA 9165.

[67] *People v. Martin y Ison*, G.R. No. 231007, July 1, 2019 citing *People v. Cabiles*, 810 Phil. 969, 976 (2017).

SECOND DIVISION

[G.R. No. 230307. October 16, 2019]

HEIRS OF WILFREDO C. BOTENES, *petitioners, vs.* **MUNICIPALITY OF CARMEN, DAVAO, represented by MUNICIPAL MAYOR GONZALO O. CUARENTA, and RURAL BANK OF PANABO (DAVAO), INC.,** *respondents.*

SYLLABUS

1. CIVIL LAW; THE CIVIL CODE; OBLIGATIONS AND CONTRACTS; CONTRACTS; ELEMENTS; THREE STAGES OF CONTRACTS.— The Civil Code defines a contract as a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service. Under Article 1318 of the Civil Code, the concurrence of these elements are necessary for the validity of contracts, to wit: (1) consent of the contracting parties; (2) object certain which is the subject matter of the contract; and (3) cause of the obligation which is established. It is worthy to note that all contracts have three stages: preparation, perfection, and consummation: Preparation or negotiation begins when the prospective contracting parties manifest their interest in the contract and ends at the moment of their agreement. Perfection or birth of the contract occurs when they agree upon the essential elements thereof. Consummation, the last stage, occurs when the parties fulfill or perform the terms agreed upon in the contract, culminating in the extinguishment thereof.

2. ID.; ID.; ID.; ID.; WHEN THE TRUE INTENT OF THE PARTIES IS NOT EXPRESSED IN THE INSTRUMENT PURPORTING TO EMBODY THEIR AGREEMENT BY REASON OF MISTAKE, FRAUD, INEQUITABLE CONDUCT OR ACCIDENT, ONE OF THEM MAY ASK FOR REFORMATION OF THE INSTRUMENT.— In a contract of sale, its *perfection* is consummated at the moment there is a meeting of the minds upon the thing that is the object of the contract and upon the price. Consent is manifested by the meeting of the offer and the acceptance of the thing and the cause, which are to constitute the contract. However, when the true intent of the

parties is not expressed in the instrument purporting to embody their agreement by reason of mistake, fraud, inequitable conduct or accident, one of them may ask for reformation of the instrument. Reformation is predicated on the equitable maxim that equity treats as done that which ought to be done.

3. ID.; LAND REGISTRATION; PROPERTY REGISTRATION DECREE (PRESIDENTIAL DECREE NO. 1529); PARTIES MAY FILE A PETITION FOR THE AMENDMENT OF TITLE IN CASE OF ANY ERROR, OMISSION, OR MISTAKE OR UPON ANY OTHER REASONABLE GROUND. — As it was established that the Deeds between Botenes and the Municipality are valid, considering that the true intent was reflected therein, but noting the existence of the 1990 Plan which completely altered the numbering of the lots, it becomes necessary to amend the title of Botenes so as to conform with the 1990 Plan. Section 108 of Presidential Decree (PD) No. 1529 provides for the amendment of a title in case of any error, omission, or mistake or upon any other reasonable ground x x x. In the case of *Bayot v. Baterbonia*, this Court clarified that said provision may be applied in case where the technical description of the land is sought to be corrected. In said case, the lots in question were also renumbered because of the approval of a second lot survey. Thus, to correct the discrepancy, the Court ordered the parties involve to file a petition for the amendment of title so as to reflect its proper designation. On this note, it is significant to note that Botenes' possession over the lot was made in good faith as he was occupying the same for more than 15 years. Thus, in line with Section 108 of PD No. 1529 and *Bayot*, this Court deems it just to order the bank to file a petition for the correction of the title, considering its interest therein and the benefit which it may derive from the outcome of the petition. To order the petitioners to instead file the same would be inequitable as they would be burdened with additional costs in securing the ownership of the property, which is rightfully theirs at the onset.

APPEARANCES OF COUNSEL

Galgo Racho Wakan Law Firm for petitioners.
Alikan Law Firm for respondent Rural Bank of Panabo.

D E C I S I O N

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

Before us is a Petition for Review on *Certiorari*,[1] which seeks to assail the Decision[2] dated September 23, 2016 and Resolution[3] dated January 10, 2017 of the Court of Appeals-Cagayan De Oro City (CA), in CA-G.R. CV No. 03760-MIN, which granted the petition for reformation of instrument and quieting of title filed by the Municipality of Carmen, Davao and the Rural Bank of Panabo (Davao), Inc, filed by Wilfredo C. Botenes (Botenes), now substituted by his heirs.

The Relevant Antecedents

The property subject of the controversy is Lot No. 2, Block 25 of PDS-11-025504, which is covered by Transfer Certificate of Title (TCT) No. T-77779 and registered under the name of Botenes.[4]

On May 5, 1980, the Municipality of Carmen, Davao (Municipality) engaged the services of Geodetic Engineer Leanardo Busque (Engr. Busque) to survey and subdivide a large tract of land in Barangay Poblacion, Carmen, Davao, for its conversion into a town site.[5]

Consequently, a subdivision plan was prepared by Engr. Busque. Said plan was approved by the Municipality on May 21, 1981. The 1981 Subdivision Plan (1981 Plan) had the lots in Block 25 numbered in this Manner:[6]

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[1] *Rollo*, pp. 5-28.

[2] Penned by Associate Justice Ruben Reynaldo G. Roxas, with Associate Justices Edgardo T. Lloren and Oscar V. Badelles; *id*. at 48-60-A.

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

[4] *Id*. at 49.

[5] *Id*.

[6] *Id*.

1	3	5	7	9	11	13	15	**17**	**19**
2	4	6	8	10	12	14	16	18	20

Based on the 1981 Plan, the Municipality executed two Deeds of Sale with Mortgage over Lot No. 2 and Lots Nos. 17 and 19 in favor of Botenes and Felicisima Prieto (Prieto), respectively.[7]

Allegedly, another subdivision plan (1990 Plan) was prepared by Engr. Busque and was subsequently approved by the Bureau of Lands on February 28, 1990.[8] Under the 1990 Plan, the numerical sequence of the lots was modified so as to conform with the standard procedure for numbering of lots; hence:[9]

20	18	16	14	12	10	8	6	4	**2**
19	**17**	15	13	11	9	7	5	3	1

To simplify, Lot 2 of the 1981 Plan became Lot 19 under the 1990 Plan and vice versa.[10]

On November 6, 1992, the Municipality executed a Deed of Absolute Sale over Lot No. 2, Block 25 (1992 Deed) in favor of Botenes after full payment of amortization thereof. On the basis of said sale, TCT No. T-77779 over Lot No. 2, Block 25 was registered in his name.[11]

On the other hand, Prieto conveyed her rights over Lots 17 and 19, Block 25 to a certain Merlyn Plasabas (Plasabas). The latter sold Lot 2, Block 25 (*formerly Lot 19 under the 1981 Plan*) under the 1990 Plan in favor of the Rural Bank of Panabo (Davao), Inc., *now* One Network Bank (bank). A deed of sale over said lot was thereafter executed.[12]

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[7] *Id*.

[8] *Id*.

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

[10] *Id*.

[11] *Id*.

[12] *Id*.

Armed with the deed of sale, the bank attempted to register its ownership over its property; however, its application was denied since the property was already registered in the name of Botenes.[13]

The bank requested Botenes to allow the correction of the 1992 Deed as it alleged that the document failed to reflect the true intent of the parties since there was a mistake in the object of the contract, that is, Lot 2, Block 25 under the 1981 Plan instead of designating its new numerical designation which is Lot 19, Block 25 of the 1990 Plan.[14]

Insisting on his right of ownership over the property, Botenes refused the correction of the 1992 Deed. Hence, the Municipality and the bank filed a petition for reformation of instrument, quieting of title, and damages before the Regional Trial Court of Panabo City, Branch 34 (RTC).[15]

To this, the Municipality filed a Motion for Summary Judgment.[16]

In a Decision dated October 2, 1998, the RTC dismissed the case.[17]

On March 27, 1999, Botenes was substituted by his heirs in view of his death.[18]

As the case was dismissed, the Municipality and the bank filed an appeal before the CA, which remanded the case to the court of origin for a full-blown trial on the merits.[19] However, despite the order of the CA to conduct a full-blown trial, the parties elected to file their respective memoranda.[20]

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[13] *Id*.

[14] *Id*. at 50-51.

[15] *Id*. at 51.

[16] *Id*.

[17] *Id*.

[18] *Id*. at 49.

[19] *Id*. at 35-36.

[20] *Id*. at 52.

After such submission, the RTC rendered a Decision[21] dated December 10, 2013, still dismissing the petition. Among others, the RTC noted that it cannot determine with certainty whether the land sold in 1981 by the Municipality to Botenes was not the same lot denominated as Lot 2, Block 25 in the approved 1990 Plan; that Lot 19 (and not Lot 2), Block 25 in the approved 1990 Plan was the lot actually sold by the Municipality to Botenes; and that TCT No. T-77779 was invalid considering that Lot 2, Block 25 in the 1990 Plan was purchased by the bank. The *fallo* thereof reads:

> **WHEREFORE**, premised from the foregoing, the instant complaint is hereby **DISMISSED** for lack of merit. Defendant's counterclaim is likewise dismissed. No costs.
>
> **SO ORDERED**.[22]

Consequently, the Municipality and the bank filed a Motion for Reconsideration, which was denied in an Order[23] dated June 20, 2014.

On appeal, the CA rendered a Decision[24] dated September 23, 2016 which reversed the ruling of the RTC. The CA ruled that the totality of evidence indicates that the Municipality intended to sell Lot 19, Block 25 of the 1990 Plan, and not Lot 2 of the same block. This fact is evident from the apparent error in the description of the lots when the 1990 Plan renumbered the sequencing of lots, as testified to by Engr. Busque, thus:

> WHEREFORE, premises considered, the instant appeal is DENIED. However, the 10 December 2013 Decision rendered by the Regional Trial Court, Branch 4, Panabo City, dismissing the Petition for Reformation of Instrument, Quieting of Title and Damages is hereby REVERSED. Appellees' Petition for Reformation of Instrument, Quieting of Title is GRANTED (sic).

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[21] Penned by Presiding Judge Dorothy P. Montejo-Gonzaga; *id*. at 31-45.

[22] *Id*. at 45.

[23] *Id*. at 46.

[24] *Supra* note 2.

ACCORDINGLY, the parties are DIRECTED to REFORM the Deed of Absolute Sale dated 06 November 1992 by changing "LOT 2, BLOCK 25, PSD-11-025504" to "LOT 19, BLOCK 25, PSD-11 - 022504", thereby ceding in favor of appellants LOT 19, BLOCK 25, PSD-11-025504 instead of LOT 2, BLOCK 25, PSD-11-025504.

FURTHER, the Register of Deeds of Davao del Norte is directed to CANCEL Transfer Certificate of Title NO. T-77779 and ISSUE a new Transfer Certificate of Title in favor of appellants reflecting LOT 19, BLOCK 25, PSD-11-025504.

SO ORDERED.[25]

Clutching at straws, the Municipality and the bank filed their Motion for Reconsideration. However, in a Resolution[26] dated January 10, 2017, the same was denied.

The Issue

The issues in the case may be summarized as follows: (1) whether or not the reformation of the 1992 Deed should be amended so as to adhere to the intention of the parties thereto; and (2) whether or not the subsequent issuance of TCT No. T-77779 in favor of Botenes is proper.

The Court's Ruling

The Civil Code defines a contract as a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service.[27] Under Article 1318 of the Civil Code, the concurrence of these elements are necessary for the validity of contracts, to wit: (1) consent of the contracting parties; (2) object certain which is the subject matter of the contract; and (3) cause of the obligation which is established.

It is worthy to note that all contracts have three stages: preparation, perfection, and consummation:

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[25] *Id*. at 60-60-A.

[26] *Supra* note 3.

[27] *Clemente v. Court of Appeals*, 771 Phil. 113, 123 (2015).

Preparation or negotiation begins when the prospective contracting parties manifest their interest in the contract and ends at the moment of their agreement. Perfection or birth of the contract occurs when they agree upon the essential elements thereof. Consummation, the last stage, occurs when the parties fulfill or perform the terms agreed upon in the contract, culminating in the extinguishment thereof.[28]

In a contract of sale, its *perfection* is consummated at the moment there is a meeting of the minds upon the thing that is the object of the contract and upon the price.[29] Consent is manifested by the meeting of the offer and the acceptance of the thing and the cause, which are to constitute the contract.[30]

However, when the true intent of the parties is not expressed in the instrument purporting to embody their agreement by reason of mistake, fraud, inequitable conduct or accident, one of them may ask for reformation of the instrument.[31] Reformation is predicated on the equitable maxim that equity treats as done that which ought to be done.[32]

In this case, Botenes, the Municipality, and the bank posit contrary stances as regards the agreement found in the contract of sale. Botenes alleges that the Deed of Sale with Mortgage, and the 1992 Deed already expressed his true intent and that of the Municipality, *i.e.*, to buy and sell Lot 2, Block 25 under the 1981 Plan, respectively, for a valuable consideration. On

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[28] *Rockland Construction Company, Inc. v. Mid-Pasig Land Development Corporation*, 567 Phil. 565, 570 (2008).

[29] *Intac v. Court of Appeals*, 697 Phil. 373, 383 (2012).

[30] CIVIL CODE, Art. 1319.

[31] Art. 1359. When, there having been a meeting of the minds of the parties to a contract, their true intention is not expressed in the instrument purporting to embody the agreement by reason of mistake, fraud, inequitable conduct or accident, one of the parties may ask for the reformation of the instrument to the end that such true intention may be expressed.

If mistake, fraud, inequitable conduct, or accident has prevented a meeting of the minds of the parties, the proper remedy is not reformation of the instrument but annulment of the contract.

[32] *Rosello-Bentir v. Leanda*, 386 Phil. 802, 805 (2000).

the other hand, the Municipality avers that said Deeds did not accurately reflect the intent of the parties as to the object of the contract because of the mislabeling of the lots in the subsequent 1990 Plan.

It is significant to consider that the object of the contract in the Deed of Sale with Mortgage,[33] executed prior to Botenes' fulfillment of his obligation to pay the full price thereof, is Lot 2, Block 25 under the 1981 Plan. After Botenes has paid in full, the 1992 Deed,[34] indicating the same lot as object, was subsequently executed. Accordingly, TCT No. T-77779, still specifying the same lot, was issued in the name of Botenes.

However, the controversy arose when the application for registration of title was denied to the bank as it attempted to register its lot as Lot 2, Block 25 under the 1990 Plan. The cause for such denial is Botenes' previous registration of his lot as Block 2, Lot 25 of the 1981 Plan.

Let it be emphasized that the bank merely succeeded to the rights of Plasabas, who in turn, succeeded to the rights of Prieto, the original buyer of Lot 19, Block 25 under the 1981 Plan. To recall, it is undisputed that the Municipality executed two separate Deeds of Sale in favor of Prieto and Botenes in 1981. Such fact establishes the intent of the Municipality to sell two distinct lots. Obviously, what was conveyed to Prieto then (*i.e*. Lot 19 under the 1981 Plan) bears a different technical description from what was conveyed to Botenes (*i.e* Lot 2 under the 1981 Plan). In other words, Botenes and the bank were asserting their ownership over the same lot number (under the 1981 and 1990 Plans, respectively), which refers to completely different lots. Thus, it is improper for the bank to claim ownership of Botenes' lot on the basis of the lot number alone.

On this note, it is clear that the lot sold to Botenes was plainly identified. The 1992 Deed and the certificate of title in

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[33] *Rollo*, pp. 72-73.

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

his name indicate the same technical description[35] of Lot 2, Block 25. Such technical description defines the exact metes and bounds of the property and determines its exact location, unlike a subdivision plan which merely divides a parcel of land into several pieces of lots. Based on the aforementioned instruments, it is clear that the Municipality intended to sell to Botenes the specific lot which has such technical description. Thus, when the 1992 Deed and the certificate of title provide for the technical description of the lot, it already located that particular lot regardless of the numbering of the lots by the approval of differing subdivision plans. Simply stated, the technical description of the lot is determinative of the object of the sale; more so when the sale was affirmed by the certificate of title, bearing the same technical description, in the name of Botenes.

This is further supported by Engr. Busque who admitted that the changes brought by said 1990 Plan merely pertains to the numbering of the lots, *viz.*:

> 4. [THUS], on the basis of the said subdivision plan [Exhibit F, supra], Lots were distributed to the respective buyer-awardees through the instrument of sale denominated as Deed(s) of Sale with Mortgage. In that particular plan [1981 Plan], it can be plainly seen that the lots in Block 25 are numbered in such a way that the lower numbered lots are positioned farther from Block 26 than the higher numbered lots. Thus, Lots 19 and 20 are closed (sic) to Block 26, and farthest from it are Lot[s] 1 and 2;
>
> 5. During the final drawing and preparation of plans, Block No. 25 was renumbered so as to conform to standard procedure of numbering lots. Thus, in the final plans, which the Bureau of Lands approved on February 28, 1990, **the numbering of lots Block 25 had been totally reversed, so that Lot 1 in the earlier plan became Lot 20, Lot 2 became Lot 19, and so on in continuous numerical sequence.** x x x
>
> 6. When the final subdivision plan and the technical description were approved in 1990, some of the sales originally made have been, in

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[35] S. 23 deg. 07'W., 22.50m. to point 2; N. 66 deg. 51'W., 12.00 m. to point 3; N. 21 deg. 51'W., 4.24 m to point 4; N. 23 deg. 06'E., 19.50 m. to point 5; S. 66 deg. 51'E., 15.00 m. to point of beginning; *Id.* at 66 and 69.

the meantime[,] fully paid. When the final deeds of sale were made out, the above changes in lot numbering had somehow been inadvertently overlooked. **Thus, the old numbers, which had in fact been superseded by the new numbering sequence, were erroneously carried over to the final deeds of sale with the result that the lots thus described in the final deeds of sale were in fact DIFFERENT from what was really and originally bought and sold**.[36] (Emphasis supplied)

Clearly, when the 1992 Deed was executed after the consummation of the sale, the designation of Lot 2 of Block 25 is still under the 1981 Plan. This is consistent with the Deed of Sale with Mortgage, the basis for the subsequent execution of the 1992 Deed, which designated the object of the sale as Lot 2 of Block 25 under the 1981 Plan. Had the Municipality intended to sell a different lot, it could have changed the object in the 1992 Deed; more so when the latter was executed two years after the approval of the 1990 Plan.

Also, it must likewise be clarified that the case of Botenes and the Rural Bank should not be paralleled with the case of Generoso Ebo (Ebo) and Perla Sandig (Sandig). In the latter, Ebo was awarded Lots Nos. 1 and 3, Block 25 of the 1981 Plan while Sandig was awarded Lot 20, Block 25 of the same plan. As there was a complete overhaul of the 1981 Plan in the approval of the 1990 Plan, Ebo and Sandig reconveyed Lots Nos. 1 and 3 and Lot 20, respectively, to the Municipality on condition that the latter will execute another deed of sale covering Lots Nos. 20 and 18 under the 1990 Plan.

These circumstances led the CA to dispose that if Ebo and Sandig reconveyed their lots because of the approval of the 1990 Plan, Botenes should also surrender his title.

This Court does not agree.

While Ebo and Sandig reconveyed their lots, the factual circumstances therein are different from the instant case. It must be noted that the discrepancies on the numbering of lots

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[36] *Id*. at 55-56.

caused by the approval of the 1990 Plan became evident *before* the execution of their respective Deeds of Absolute Sale, whereas in the case of Botenes, the technical description of his property was identified with clarity in the 1992 Deed and in the certificate of title, indicating with certitude that it is indeed the parcel of land sold to him. Also, Ebo and Sandig were not asserting their rights of ownership over their respective parcels of land involving different subdivision plans.

As it was established that the Deeds between Botenes and the Municipality are valid, considering that the true intent was reflected therein, but noting the existence of the 1990 Plan which completely altered the numbering of the lots, it becomes necessary to amend the title of Botenes so as to conform with the 1990 Plan.

Section 108 of Presidential Decree (PD) No. 1529 provides for the amendment of a title in case of any error, omission, or mistake or upon any other reasonable ground, to wit:

> **Section 108.** *Amendment and alteration of certificates*. No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same be Register of Deeds, except by order of the proper Court of First Instance. A registered owner **or other person having an interest in registered property**, or, in proper cases, the Register of Deeds with the approval of the Commissioner of Land Registration, **may apply by petition to the court upon the ground** that the registered interests of any description, whether vested, contingent, expectant or inchoate appearing on the certificate, have terminated and ceased; or that new interest not appearing upon the certificate have arisen or been created; or **that an omission or error was made in entering a certificate or any memorandum thereon, or, on any duplicate certificate**; x x x (Emphasis supplied)

In the case of *Bayot v. Baterbonia*,[37] this Court clarified that said provision may be applied in case where the technical description of the land is sought to be corrected. In said case,

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[37] 400 Phil. 126 (2004).

the lots in question were also renumbered because of the approval of a second lot survey. Thus, to correct the discrepancy, the Court ordered the parties involve to file a petition for the amendment of title so as to reflect its proper designation.[38]

On this note, it is significant to note that Botenes' possession over the lot was made in good faith as he was occupying the same for more than 15 years. Thus, in line with Section 108 of PD No. 1529 and *Bayot*, this Court deems it just to order the bank to file a petition for the correction of the title, considering its interest therein and the benefit which it may derive from the outcome of the petition. To order the petitioners to instead file the same would be inequitable as they would be burdened with additional costs in securing the ownership of the property, which is rightfully theirs at the onset.

WHEREFORE, premises considered, the petition is **PARTLY GRANTED**. The Decision dated September 23, 2016 and Resolution dated January 10, 2017 of the Court of Appeals-Cagayan De Oro City in CA-G.R. CV No. 03760-MIN are **REVERSED and SET ASIDE**.

Rural Bank of Panabo (Davao), Inc. is **ORDERED** to file the appropriate petition in court within thirty (30) days from the finality of this Decision for the amendment of the property covered by Transfer Certificate of Title No. T-77779 from Lot 2, Block 25 of the 1981 Subdivision Plan to Lot 19, Block 25 of the 1990 Subdivision Plan, pursuant to Section 108 of Presidential Decree No. 1529.

SO ORDERED.

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

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[38] *Id*. at 131-132.

FIRST DIVISION

[G.R. No. 233015. October 16, 2019]

LUIS L. CO and ALVIN S. CO, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES, BANGKO SENTRAL NG PILIPINAS and PHILIPPINE DEPOSIT INSURANCE CORPORATION,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; ESTAFA BY MEANS OF DECEIT; ESSENTIAL ELEMENTS.— To properly charge an accused with *estafa* under Article 315, par. 2(a), *supra*, the information should aver the following essential elements, to wit: (1) that the accused used a fictitious name or false pretense that he possesses power, influence, qualifications, property, credit, agency, business, imaginary transaction, or other similar deceits; (2) that the accused used such deceitful means prior to or simultaneous with the execution of the fraud; (3) that the offended party relied on such deceitful means to part with his money or property; and (4) that the offended party suffered damage.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATIONS; WHERE IT WAS ALLEGED IN THE INFORMATION THAT FRAUD COULD NOT HAVE BEEN COMMITTED WITHOUT THE FALSIFICATION OF THE PRIVATE DOCUMENTS, THE CRIME CHARGED WAS FALSIFICATION OF PRIVATE DOCUMENTS INSTEAD OF ESTAFA; THE RECITAL IN THE INFORMATION OF THE FACTS CONSTITUTIVE OF THE OFFENSE, NOT THE DESIGNATION OF THE OFFENSE THEREIN, DETERMINES THE CRIME BEING CHARGED AGAINST THE ACCUSED.— It is a fundamental tenet in criminal procedure that the recital in the information of the facts constitutive of the offense, not the designation of the offense therein, determines the crime being charged against the accused. The amended information designated the offense the petitioners committed as *estafa*, stating therein that they so committed it by: ***x x x taking advantage of their position as such, by means of false pretenses or fraudulent acts which they made prior to or simultaneous with the commission of the fraud to***

the effect that there exists a contract between the said bank and ACME INVESTIGATION SERVICE, INC., a non-existent security agency, that the said security services of which were rendered in favour of the said bank x x x. x x x. The aforequoted allegations indicate that the petitioners signed the billing statements and requested payments on the basis that Acme Investigation Service, Inc. (Acme) had actually rendered security services to Jade Bank, prompting Jade Bank to pay. In other words, the amended information claimed that the fraud could not have been committed without the falsification of the private documents. Under such alleged circumstances, the crime charged was falsification of private documents instead of *estafa*.

3. CRIMINAL LAW; ESTAFA; THERE IS NO COMPLEX CRIME OF *ESTAFA* THROUGH FALSIFICATION OF A *PRIVATE* DOCUMENT AS THE DAMAGE ESSENTIAL TO BOTH IS THE SAME; IF THE FALSIFICATION OF A PRIVATE DOCUMENT IS COMMITTED AS A MEANS TO COMMIT ESTAFA, THE PROPER CRIME TO BE CHARGED IS FALSIFICATION; IF THE ESTAFA CAN BE COMMITTED WITHOUT THE NECESSITY OF FALSIFYING A DOCUMENT, THE PROPER CRIME TO BE CHARGED IS ESTAFA.— It is not amiss to observe that there is no complex crime of *estafa* through falsification of a *private* document considering that the damage essential to both is the same. As a result, having such offenses compounded or complexed in accordance with Article 48 of the *Revised Penal Code* is inherently disallowed. We reiterate the pronouncement made in *Batulanon v. People*, to wit: As there is no complex crime of estafa through falsification of private document, it is important to ascertain whether the offender is to be charged with falsification of a private document or with estafa. **If the falsification of a private document is committed as a means to commit estafa, the proper crime to be charged is falsification. If the estafa can be committed without the necessity of falsifying a document, the proper crime to be charged is estafa.**

4. ID.; ID.; FALSIFICATION OF A PRIVATE DOCUMENT; ELEMENTS; FIRST ELEMENT OF THE CRIME, NOT ESTABLISHED.— Falsification of a private document under Article 172, paragraph 2 of the *Revised Penal Code*, has the following elements, namely: (1) that the offender committed any of the acts of falsification, except those in paragraph 7,

enumerated in Article 171 of the *Revised Penal Code;* (2) that the falsification was committed in any private document; and (3) that the falsification caused damage to a third party or at least the falsification was committed with intent to cause such damage. The Prosecution sought to establish that Acme did not exist; that Jade Bank did not benefit from any security services that could have been rendered by Acme; that petitioner Luis Co had signed the request for payment in favor of Acme; and that the checks issued as payments had been deposited under fictitious accounts the petitioners owned and controlled. The first element of the crime of falsification of a private document was not established beyond reasonable doubt.

5. **REMEDIAL LAW; EVIDENCE; OPINION RULE; OPINION OF ORDINARY WITNESS IS NOT ADMISSIBLE; EXCEPTIONS; NOT PRESENT; THE IMPRESSION OF AN ORDINARY WITNESS ON THE SIMILARITY IN THE SIGNATURES, WHICH WAS NOT DERIVED FROM OBJECTIVE FACTS BUT UPON HER OPINION, IS A TESTIMONY THAT HAS NO PROBATIVE VALUE.—** Zamora's impression on the similarity in the signatures, which was clearly not derived from objective facts but upon her opinion, was testimony that had no probative value by virtue of its being the opinion of an ordinary witness. Indeed, the Prosecution did not show that her opinion came under any of the exceptions enumerated in Section 50, Rule 130 of the *Rules of Court, viz.:* Sec. 50. *Opinion of ordinary witnesses.* — The opinion of a witness for which proper basis is given, may be received in evidence regarding - (a) The identity of a person about whom he has adequate knowledge; (b) A handwriting with which he has sufficient familiarity; and (c) The mental sanity of a person with whom he is sufficiently acquainted. The witness may also testify on his impressions of the emotion, behavior, condition or appearance of a person.

6. **ID.; ID.; CREDIBILITY OF WITNESSES; FINANCIAL INCENTIVES CAST GRAVE DOUBTS ON THE WITNESS' SINCERITY AND TRUTHFULNESS, AND NEGATED THE CREDIBILITY OF HIS RECOLLECTIONS AS A WITNESS; A WITNESS IS SAID TO BE BIASED WHEN HIS RELATION TO THE CAUSE OR TO THE PARTIES IS SUCH THAT HE HAS AN INCENTIVE TO EXAGGERATE OR GIVE FALSE COLOR TO HIS STATEMENTS, OR TO SUPPRESS OR TO PERVERT THE TRUTH, OR TO STATE WHAT IS FALSE.—**

[R]aul Permejo, another witness for the Prosecution, recalled that petitioner Alvin Co had instructed him to deposit checks in the accounts held in Citytrust and Metrobank; and that petitioner Alvin Co had used the name Nelson Sia in several bank transactions. Yet, Permejo was discredited as an unreliable witness in the face of his candid admission that he had received money from the counsel after each time he had testified in court against the petitioners. The financial incentives cast grave doubts on his sincerity and truthfulness, and negated the credibility of his recollections as a witness. The money was possibly a sufficient incentive for him to pervert his recollection and capacity for truth telling, rendering him untrustworthy for being fully biased *against* the petitioners. In this connection, a witness is said to be biased when his relation to the cause or to the parties is such that he has an incentive to exaggerate or give false color to his statements, or to suppress or to pervert the truth, or to state what is false.

7. CRIMINAL LAW; FALSIFICATION OF PRIVATE DOCUMENT; AN ACCUSED WHO WAS ABSOLVED OF THE CRIME OF FALSIFICATION OF A PRIVATE DOCUMENT MUST LIKEWISE BE CLEARED OF THE CRIME OF *ESTAFA;* A PERSON WHO MAKES USE OF A PRIVATE DOCUMENT, WHICH HE FALSIFIED, TO DEFRAUD ANOTHER, COMMITS THE CRIME OF FALSIFICATION OF A PRIVATE DOCUMENT; THE INTENT TO DEFRAUD IN USING THE FALSIFIED PRIVATE DOCUMENT IS PART AND PARCEL OF THE CRIME, AND CANNOT GIVE RISE TO THE CRIME OF ESTAFA, BECAUSE THE DAMAGE, IF IT RESULTED, WAS CAUSED BY, AND BECAME THE ELEMENT OF, THE CRIME OF FALSIFICATION OF PRIVATE DOCUMENT; THE CRIME OF ESTAFA CANNOT BE COMMITTED WITHOUT ITS OWN ELEMENT OF DAMAGE.— Absolving the petitioners of the crime of falsification of a private document likewise clears them of the crime of *estafa*. We adopt with approval the commentary expressed by a respected treatise on criminal law on the matter, *viz.:* x x x On the other hand, in the falsification of a private document, there is no crime unless another fact, independent of that of falsifying the document, is proved: *i.e.* damage or intent to cause it. Therefore, when one makes use of a private document, which he falsified, to defraud another, there results only one crime: the falsification of a private document. The

damage to another is caused by the commission of the crime of falsification of falsification of private document. **The intent to defraud in using the falsified private document is part and parcel of the crime, and cannot give rise to the crime of estafa, because the damage, if it resulted, was caused by, and became the element of, the crime of falsification of private document. The crime of estafa in such case was not committed, as it could not exist without its own element of damage.**

8. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS ON THE ISSUE OF CREDIBILITY OF WITNESSES AND THE CONSEQUENT FINDINGS OF FACT COULD BE REVIEWED AND UNDONE IF THE COURT FINDS MATTERS OF SUBSTANCE AND VALUE WHOSE PROPER SIGNIFICANCE AND IMPACT HAVE BEEN OVERLOOKED OR INCORRECTLY APPRECIATED AND WHICH, IF DULY CONSIDERED OR PROPERLY APPRECIATED, WOULD ALTER THE RESULT OF THE CASE.— We normally accord the trial court's evaluation of the credibility of witnesses the highest respect, and will not disturb the evaluation on appeal, but we also state that findings on the issue of credibility of witnesses and the consequent findings of fact could be reviewed and undone if we, as the ultimate dispenser of justice, find matters of substance and value whose proper significance and impact have been overlooked or incorrectly appreciated and which, if duly considered or properly appreciated, would alter the result of the case. No findings by the trial court are impervious to the onslaught of a just and fair appreciation by a higher court. After all, every appeal of a criminal conviction opens the entire records to review, and this is because our oaths as judges bind and commit us to ensure that no one should be held criminally responsible and condemned to suffer punishment unless the evidence against him has been sufficient and amounts to the moral certainty of his guilt.

APPEARANCES OF COUNSEL

Ephraim B. Cortez for petitioners.

Custodio Acorda Sicam & De Castro Law Offices for respondents BSP & PDIC.

D E C I S I O N

BERSAMIN, *C.J.*:

When the information charges the accused to have forged a private document to commit fraud against another, the crime is falsification of a private document instead of *estafa*. It is the recital of the facts constitutive of the offense, not the designation of the offense in the information, that determines the crime being charged against the accused.

There can be no complex crime of falsification of private documents and *estafa* because the element of damage essential in both is the same.

The Case

We resolve the appeal filed by the petitioners to seek the review and reversal of the decision promulgated on December 22, 2015,[1] whereby the Court of Appeals (CA) affirmed with modification the judgment rendered on February 11, 2013 by the Regional Trial Court (RTC), Branch 15, in Manila convicting them of *estafa* as defined and penalized under Article 315, paragraph 2(a), of the *Revised Penal Code*.[2]

Antecedents

The CA summarized the factual and procedural antecedents thusly:

Accused-[a]ppellants Luis L. Co (Luis) and his son Alvin Milton S. Co (Alvin) were originally charged before the RTC with Estafa, as defined and penalized under Art. 315, paragraph 1(b) of the RPC, in an Information, which reads:

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[1] *Rollo*, pp. 50-67; penned by Associate Justice Normandie B. Pizarro, with the concurrence of Associate Justice Samuel H. Gaerlan and Associate Justice Ma. Luisa C. Quijano-Padilla.

[2] *Id*. at 168-203; penned by Acting Presiding Judge Buenaventura Albert J. Tenorio, Jr.

That sometime during the period of March 1997 to December 1997, in the City of Manila and within the jurisdiction of this Honorable Court, the above-named accused[,] namely: ***LUIS L. CO*** *and* ***ALVIN MILTON S. CO****[,] as principals by direct participation, with unfaithfulness or abuse of confidence, in their capacity (sic) as President and Assistant Vice President[,] respectively[,] of Jade Progressive Savings and Mortgage Bank, a thrift bank organized under the existing laws of the Republic of the Philippines, conspiring, confederating[,] and mutually helping one another, did then and there, willfully, unlawfully, and feloniously defraud Jade Progressive Savings and Mortgage Bank, its depositors and creditors[,] through the use of deceit by authorizing the release of the total amount of* ***THREE MILLION,*** (sic) ***THIRTY[-]TWO THOUSAND NINE HUNDRED NINE PESOS (₱3,032,909.00)****of the bank's funds supposedly as payment for services rendered by* ***ACME INVESTIGATION SERVICES, INC.*** *(a non-existent security agency), when in truth and in fact, no such contract existed and no such security services were rendered by said ACME INVESTIGATION SERVICES, INC.[,] in favor of Jade Progressive Savings and Mortgage Bank. Thereafter, once in possession of the aforesaid amount of ₱3,032,909.00[,] the accused willfully, unlawfully, and feloniously misappropriate and convert the same for their own personal use and benefit, to the damage and prejudice of Jade Progressive Savings and Mortgage Bank, its depositors, creditors[,] and the Bangko Sentral ng Pilipinas, in the amount of ₱3,032,909.00, Philippine Currency.*

CONTRARY TO LAW.

The Accused-Appellants moved for the quashal of the Information on the ground that the same failed to allege facts constitutive of the crime of Estafa under Art. 315, paragraph 1(b) of the RPC. Their motion was denied; nonetheless, the RTC directed the prosecution to amend the Information.

The prosecution subsequently filed an amended Information this time charging the Accused-Appellants of Estafa, as defined and penalized under Art. 315, paragraph 2(a) of the RPC, the accusatory portion of which reads as follows:

That in or about and during the period comprised between March 1997 to December 1997, inclusive, in the City of Manila,

Philippines, the said accused, conspiring and confederating together and mutually helping each other, did then and there, willfully, unlawfully and feloniously defraud JADE PROGRESSIVE SAVINGS AND MORTGAGE BANK, a banking institution duly organized and existing under Philippine Laws, located at G/F Birchtree Plaza Bldg., 825 Muelle de Industria Binondo, this City, in the following manner[;] to wit: the said accused, Luis L. Co and Alvin Milton S. Co, President and Assistant Vice-President. respectively, of the said bank, and taking advantage of their position as such, by means of false pretenses or fraudulent acts which they made prior to or simultaneous with the commission of the fraud to the effect that there exists a contract between the said bank and ACME INVESTIGATION SERVICES. INC., a non-existent security agency, that the said security services of which were rendered in favor of the said bank, did in fact[,] with the intent to defraud, authorize the release of the amount of THREE MILLION, (sic) *THIRTY[-]TWO THOUSAND NINE HUNDRED NINE PESOS (₱3,032,909.00) and collect the same from the bank's funds for the purpose of paying the said security agency, said accused knowing fully well that no such security agency existed, no such contract exists between the said bank and the said agency[,] and no such security services were rendered in favor of the said bank and[,] therefore, no payment in the said amount of ₱3,032,909.00 having been made to the agency, that such acts/ pretenses were only made by the accused for the purpose of obtaining* (sic) *as in fact, they did obtain the said total amount of ₱3,032,909.00 from the funds of the bank for their own personal use and benefit, thereby defrauding the said bank and its depositors and creditors, to the damage and prejudice of the said JADE PROGRESSIVE SAVINGS AND MORTGAGE BANK, its depositors and creditors[,] and the Bangko Sentral ng Pilipinas, in the said total amount of ₱3,032,909.00 Philippine Currency.*

CONTRARY TO LAW.

The Accused-Appellants moved to quash the amended Information. They questioned the lack of signature of the Chief State Prosecutor and the Certification by any representatives of the State in the amended Information and the addition of new matters which changed the crime from Estafa under Art 315, par. 1(b) to Estafa under Art. 315, par. 2(a) of the RPC. Their motion was denied by the RTC.

When arraigned, the Accused-Appellants, assisted by counsel, pleaded not guilty to the crime charged. Pre-trial was conducted and terminated on June 7, 2004.

Thereafter, a hold departure order was issued against Accused-Appellants. Trial on the merits thereafter ensued.

The prosecution presented eight (8) witnesses: Catalina Zamora (Zamora), former Chief Accountant of Jade Bank; Minviluz Rubrico, former Deputy Liquidator of Jade Bank; Col. Emesto Jimeno, General Manager of Philippine Association of Detective and Protective Agency (PADPAO); Julie Mae Barrios, Branch Head of Metrobank, Rada-Rodriguez branch; Spenser Say, Cluster Head of Metrobank Boni Avenue branch; PSI Wilfredo Rayos, Chief of Records section of the Security Agencies and Guards Supervision Division of the Philippine National Police (PNP); Raul Permejo, former messenger of Jade Bank; and Rodolfo Rante, Assisting Deputy Liquidator of Jade Bank.

On the other hand, the defense presented the two (2) Accused-Appellants on the witness stand. The RTC denied the testimony of Josephine Bravo, a practicing accountant, as to the procedure and banking practice of Jade Bank for she has no personal knowledge thereof.

The Version of the Prosecution:

Jade Bank was a thrift bank duly organized and existing under Philippine laws, with principal office address at G/F Birchtree Plaza Bldg., 825 Muelle de Industria, Binondo, Manila. In 2001, it was placed under liquidation by the Philippine Deposit and Insurance Corporation (PDIC).

The Accused-Appellants were both shareholders and officers of Jade Bank at the time material to the case. Accused-Appellant Luis was a director in 1996 and Acting President in 1997 while Accused-Appellant Alvin was Assistant Vice President in 1996 and 1997.

On April 21, 1997, Accused-Appellant Luis' secretary, Myla Jardeleza, handed Violeta Gella (Gella), disbursing clerk of Jade Bank, a request for payment with letter billing from Acme for investigation services and surveillance. The request was with the approval of Accused-Appellant Luis. The letter billing signed by Arturo dela Cruz as Managing Director of Acme.

The check voucher and the checks were prepared by Gella and forwarded to Zamora, then Chief Accountant of Jade Bank. After

verifying the entries and signing the billing statements, Zamora forwarded it to Accused-Appellant Alvin for certification and then back to Accused-Appellant Luis for approval of the check voucher and manager's check. Both the Accused-Appellants signed and certified the check vouchers and the manager's check. At the time, Zamora noticed that the letterhead of Acme had no contact number and therein signature of Arturo dela Cruz was similar to the signature of Accused-Appellant Alvin.

Several transactions of the same nature as above followed. Overall, the Accused-Appellants caused the release of eight (8) manager's checks supposedly for payment for services rendered by Acme amounting to Three Million Thirty-Two Thousand and Nine Hundred Nine Pesos (PhP3,032,909.00), as follows:

Transaction Date	Date of Letter Billing	Voucher Number	Manager's Check Number	Amount
April 21, 1997	March 31, 1997	2235	348	₱242,900.00
April 21, 1997	April 23, 1997	2238	350	₱262,250.00
May 16, 1997	May 15, 1997	2239	468	₱400,250.00
June 17, 2007	June 15, 2007	2554	584	₱401,250.00
July 21, 1997	May 15, 1997	2826	722	₱313,838.00
August 14, 1997	July 31, 1997	3291	845	₱524,500.00
September 16, 1997	June 30, 1997	3585	1077	₱627,676.00
December 2, 1997	December 1, 1997	4246	1438	₱260,245.00

As it turned out, Acme was a fictitious agency as it was neither registered with the Securities and Exchange Commission nor granted with the required license by the Security Agencies and Guards Supervision Division of the PNP. It was also not a registered member of PADPAO.

Investigations revealed that seven (7) of the eight (8) checks were deposited to Metrobank Account No. 7-310-500212 under the names of Nelson Sia and/or Antonio Santos, alleged officers of Acme. Said bank account, however, was opened and is owned and controlled by the Accused-Appellants; Nelson Sia and Antonio Santos being the *alias* used by Accused-Appellants Alvin and Luis, respectively.

Check No. 468, on the other hand, was deposited in Citytrust Bank Account No. 04-020-00743-1 in the names of Henry Chua, Al Mendoza, Antonio Santos, and/or Amelia Santos. This bank account was likewise opened and is owned and controlled by the Accused-Appellants. Zamora, who was directed to open the Citytrust account, witnessed Accused-Appellant Luis sign as Antonio Santos and Accused-Appellant Alvin as AI Mendoza. The total amount has since been withdrawn from the accounts.

The Version of the Defense*:*

The Accused-Appellants denied the allegations against them.

Accused-Appellant Alvin stated that, as Sales/Product Manager and Assistant Vice President of Jade Bank, he was responsible for expanding the sales and creating new products and was under the supervision of Arcatomy Guarin, then the Chief Operating Officer and Executive Vice President of Jade Bank. He denied having any connection with Acme and maintained that he only signed the check vouchers after Zamora certified the correctness of the billing. He asserted further that the order for payment of Acme was approved by Accused-Appellant Luis.

On the other hand, Accused-Appellant Luis claimed that he signed the checks intended for Acme because all the initials from the accounting department were there. According to him, he was in no position to approve or disapprove billing statements because such is within the authority of the accounting department and he only signs the check if the payment is approved by said department and the check voucher is issued with all the required initials or signatures. He also testified that Acme provided security services to Jade Bank but that he has no direct participation in the said agency. On cross examination, however, he admitted that he cannot remember if Acme provided Jade Bank with security guards.

Accused-appellant Luis did not file his formal offer of evidence; thus, the RTC deemed him to have waived his right to file his formal offer of evidence.[3]

Judgment of the RTC

After trial, the RTC convicted the petitioners of the crime of *estafa.* It concluded that the witnesses and the documents

[3] *Id.* at 51-58.

presented by the Prosecution established that the petitioners had conspired to defraud Jade Progressive Savings and Mortgage Bank (Jade Bank) and its depositors by making it appear that Acme Investigation Services had actually rendered security services to Jade Bank despite said security agency being a fictitious entity.

The RTC disposed thusly —

WHEREFORE, premises considered, this Court finds accused **LUIS L. CO** and **ALVIN MILTON S. CO, GUILTY beyond reasonable doubt** of the crime of Estafa under paragraph 2 (a) of the Revised Penal Code. They are hereby sentenced to suffer four (4) years of prision correccional in its medium period as minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal in its medium period as maximum and to **indemnify Jade Progressive Savings and Mortgage Bank, its depositors and creditors and the Bangko Sentral Ng Pilipinas** in the amount of Three Million Thirty-two Thousand Nine Hundred and Nine Pesos (₱3,032,909.00) representing the total amount of checks paid for the alleged services rendered by Acme Investigation Services, Inc.,

SO ORDERED.[4]

Decision of the CA

On appeal, the CA affirmed the RTC but modified the penalty, *viz.:*

WHEREFORE, the appeal is **DENIED**. The assailed ***Decision*** of the RTC, as well as the Order denying the motion for reconsideration thereof, is **AFFIRMED** with **MODIFICATION** in that the Accused-Appellants are hereby sentenced to suffer the indeterminate penalty of Four (4) years and Two (2) months of *prision correccional*, as minimum, to Twenty (20) years of *reclusion temporal* as maximum; and to indemnify Jade Bank the sum of Three Million Thirty-Two Thousand Nine Hundred and Nine Pesos (PhP3,032,909.00), plus legal interests from the filing of the complaint until fully paid, plus costs.

SO ORDERED.[5]

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[4] *Id*. at 202-203.

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

With the denial of their motion for reconsideration on July 19, 2017,[6] the petitioners now bring this appeal.

Issue

The petitioners mainly contend that the Prosecution did not present sufficient evidence to prove that they had conspired to defraud Jade Progressive Savings and Mortgage Bank (Jade Bank). They submit the following issues to be considered and resolved, namely:

1. WHETHER OR NOT THE ESTABLISHED FACTS SUPPORT THE CONCLUSION OF BOTH THE TRIAL COURT AND THE COURT OF APPEALS THAT THE ACCUSED IS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ESTAFA DEFINED AND PENALIZED UNDER ARTICLE 315, PAR. 2 (A) OF THE REVISED PENAL CODE.
2. WHETHER OR NOT THE CONVICTION OF THE PETITIONERS IS DEVOID OF ANY EVIDENTIARY BASIS SINCE IT WAS ANCHORED ON THE TESTIMONIES OF WITNESSES WHICH LACK PROBATIVE VALUE.
3. WHETHER OR NOT THE ESTABLISHED FACTS PROVED THE EXISTENCE OF CONSPIRACY BETWEEN THE TWO PETITIONERS.[7]

Ruling of the Court

We find merit in the appeal.

I.
The crime charged was falsification of a private document, not *estafa*

The RTC and the CA convicted the petitioners for the crime of *estafa* under Article 315, paragraph 2(a) of the *Revised Penal Code*, which provides:

ARTICLE 315. Swindling (Estafa). — x x x:

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

[7] *Id*. at 19-20.

x x x x x x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

x x x x x x x x x

To properly charge an accused with *estafa* under Article 315, par. 2(a), *supra*, the information should aver the following essential elements, to wit: (1) that the accused used a fictitious name or false pretense that he possesses power, influence, qualifications, property, credit, agency, business, imaginary transaction, or other similar deceits; (2) that the accused used such deceitful means prior to or simultaneous with the execution of the fraud; (3) that the offended party relied on such deceitful means to part with his money or property; and (4) that the offended party suffered damage.[8]

It is a fundamental tenet in criminal procedure that the recital in the information of the facts constitutive of the offense, not the designation of the offense therein, determines the crime being charged against the accused. Thus, we turn to the amended information to know what crime the petitioners have been charged with.

The amended information designated the offense the petitioners committed as *estafa*, stating therein that they so committed it by:

x x x ***taking advantage of their position as such, by means of false pretenses or fraudulent acts which they made prior to or simultaneous with the commission of the fraud to the effect that there exists a contract between the said bank and ACME INVESTIGATION SERVICE, INC., a non-existent security agency, that the said security services of which were rendered in favor of***

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[8] *Lopez v. People*, G.R. No. 199294, Ju1y 31, 2013, 703 SCRA 118, 127.

the said bank, *did in fact[,] with the intent to defraud, authorize the release of the amount of THREE MILLION,* (sic) *THIRTY[-]TWO THOUSAND NINE HUNDRED NINE PESOS (₱3,032,909.00) and collect the same from the bank's funds for the purpose of paying the said security agency, said accused knowing fully well that no such security agency existed no such contract exists between the said bank and the said agency[,] and no such security services were rendered in favor of the said bank and[,] therefore, no payment in the said amount of ₱3,032,909.00 having been made to the agency, that such acts/pretenses were only made by the accused for the purpose of obtaining* (sic) *as in fact they did obtain the said total amount of ₱3,032,909.00 from the funds of the bank for their own personal use and benefit, thereby defrauding the said bank and its depositors and creditors, to the damage and prejudice of the said JADE PROGRESSIVE SAVINGS AND MORTGAGE BANK its depositors and creditors[,] and the Bangko Sentral ng Pilipinas, in the said total amount of ₱3,032,909.00 Philippine Currency.*

The aforequoted allegations indicate that the petitioners signed the billing statements and requested payments on the basis that Acme Investigation Service, Inc. (Acme) had actually rendered security services to Jade Bank, prompting Jade Bank to pay. In other words, the amended information claimed that the fraud could not have been committed without the falsification of the private documents. Under such alleged circumstances, the crime charged was falsification of private documents instead of *estafa*.

It is not amiss to observe that there is no complex crime of *estafa* through falsification of a *private* document considering that the damage essential to both is the same. As a result, having such offenses compounded or complexed in accordance with Article 48[9] of the *Revised Penal Code* is inherently disallowed. We reiterate the pronouncement made in *Batulanon v. People*,[10] to wit:

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[9] Article 48. *Penalty for complex crimes.* — When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

[10] G.R. No. 139857, September 15, 2006, 502 SCRA 35.

As there is no complex crime of estafa through falsification of private document, it is important to ascertain whether the offender is to be charged with falsification of a private document or with estafa. **If the falsification of a private document is committed as a means to commit estafa, the proper crime to be charged is falsification. If the estafa can be committed without the necessity of falsifying a document, the proper crime to be charged is estafa.** Thus, in *People v. Reyes,* the accused made it appear in the time book of the Calamba Sugar Estate that a laborer, Ciriaco Sario, worked 21 days during the month of July, 1929, when in reality he had worked only 11 days, and then charged the offended party, the Calamba Sugar Estate, the wages of the laborer for 21 days. The accused misappropriated the wages during which the laborer did not work for which he was convicted of falsification of private document.

In *US. v. Infante,* the accused changed the description of the pawned article on the face of the pawn ticket and made it appear that the article is of greatly superior value, and thereafter pawned the falsified ticket in another pawnshop for an amount largely in excess of the true value of the article pawned. He was found guilty of falsification of a private document. In *U.S. v. Chan Tiao,* the accused presented a document of guaranty purportedly signed by Ortigas Hermanos for the payment of ₱2,055.00 as the value of 150 sacks of sugar, and by means of said falsified documents, succeeded in obtaining the sacks of sugar, was held guilty of falsification of a private document.[11] [Bold underscoring supplied]

II
The Prosecution did not establish the crime of falsification of a private document

Falsification of a private document under Article 172, paragraph 2 of the *Revised Penal Code,* has the following elements, namely: (1) that the offender committed any of the acts of falsification, except those in paragraph 7, enumerated in Article 171 of the *Revised Penal Code;* (2) that the falsification was committed in any private document; and (3) that the falsification

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[11] *Id*. at 52.

caused damage to a third party or at least the falsification was committed with intent to cause such damage.[12]

The Prosecution sought to establish that Acme did not exist; that Jade Bank did not benefit from any security services that could have been rendered by Acme; that petitioner Luis Co had signed the request for payment in favor of Acme; and that the checks issued as payments had been deposited under fictitious accounts the petitioners owned and controlled.

The first element of the crime of falsification of a private document was not established beyond reasonable doubt. Several circumstances we outline hereafter show why.

First of all, the testimonial and documentary evidence adduced herein did not reliably establish the authorship by either petitioner of the billing statements that would have stemmed from the non-existent contract of security services. Although Prosecution witness Catalina Zamora, the former Chief Accountant of Jade Bank, attested that she had seen petitioner Alvin Co sign the billing statements over the printed name of Arturo dela Cruz, the managing director of Acme, and insisted that such billing statements would have proved the fictitiousness of the contract averred in the amended information, we have noted the observation by the RTC that on her cross-examination Zamora had *denied* actually witnessing petitioner Alvin Co affixing his signature over the printed name Arturo dela Cruz in the billing statements.[13] It thus appeared that Zamora's only basis to declare that petitioner Alvin Co had authored the fictitious and falsified billing statements was her impression about the signatures of Arturo dela Cruz and petitioner Alvin Co looking similar.

Zamora's impression on the similarity in the signatures, which was clearly not derived from objective facts but upon her opinion, was testimony that had no probative value by virtue of its being the opinion of an ordinary witness. Indeed, the Prosecution did

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[12] *Dizon v. People*, G.R. No. 144026, June 15, 2006, 490 SCRA 593, 605.

[13] *Rollo*, p. 173.

not show that her opinion came under any of the exceptions enumerated in Section 50, Rule 130 of the *Rules of Court, viz.:*

> Sec. 50. *Opinion of ordinary witnesses.* — The opinion of a witness for which proper basis is given, may be received in evidence regarding—
>
> (a) The identity of a person about whom he has adequate knowledge;
>
> (b) A handwriting with which he has sufficient familiarity; and
>
> (c) The mental sanity of a person with whom he is sufficiently acquainted.
>
> The witness may also testify on his impressions of the emotion, behavior, condition or appearance of a person. (44a)

Secondly, Zamora declared that petitioner Alvin Co had used the *aliases* of Nelson Sia and Al Mendoza; and that petitioner Luis Co had used the *alias* of Antonio Santos. Her declarations became relevant to enable the tracing of the money back to the petitioners. But because she apparently had no personal knowledge on the use of the *aliases* by the petitioners, her declarations to that effect were hearsay and unreliable.

Thirdly, Zamora stated that petitioner Luis Co had ordered her to fill out the application card to open an account at Citytrust's Reina Regente Branch; and that petitioner Luis Co and three others had signed the card in her presence. Her statement did not suffice to incriminate the petitioners in the crime of falsification simply because there was no showing that the card thus filled out and signed had actually been used to open the Citytrust account. The doubt against Zamora's statement became pronounced in view of her admission that she had not herself delivered the card to Citytrust.

Moreover, although in most situations corroboration is not necessary for as long as the details of the crime have already been proved with sufficient clarity, we should point out that Zamora's statement, standing alone, did not credibly establish the receipt by the petitioners of the proceeds of the fraud. As

such, corroboration by other evidence became necessary herein to substantiate Zamora's statement if the objective therefor was to enable the traceback of the proceeds of the fraud to either of the petitioners. The lack of corroboration accented that the Prosecution had been remiss in discharging its duty by leaving its proof of guilt inconclusive and incomplete. It also exposed her incrimination of the petitioners to be far from reliable and clear.

Fourthly, the Prosecution presented bank officers as witnesses against the petitioners. However, it was notable that said witnesses did not categorically certify that petitioner Alvin Co, on one hand, and either Nelson Sia or Al Mendoza, on the other, were one and the same person.

Lastly, Raul Permejo, another witness for the Prosecution, recalled that petitioner Alvin Co had instructed him to deposit checks in the accounts held in Citytrust and Metrobank; and that petitioner Alvin Co had used the name Nelson Sia in several bank transactions. Yet, Permejo was discredited as an unreliable witness in the face of his candid admission that he had received money from the counsel after each time he had testified in court against the petitioners. The financial incentives cast grave doubts on his sincerity and truthfulness, and negated the credibility of his recollections as a witness. The money was possibly a sufficient incentive for him to pervert his recollection and capacity for truth telling, rendering him untrustworthy for being fully biased *against* the petitioners. In this connection, a witness is said to be biased when his relation to the cause or to the parties is such that he has an incentive to exaggerate or give false color to his statements, or to suppress or to pervert the truth, or to state what is false.[14]

Faced with all the foregoing circumstances, the Court cannot but consider doubtful and suspicious the proof on the existence of the first element of the crime of falsification of a private

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[14] *People v. Lusabio, Jr.*, G.R. No. 186119, October 27, 2009, 604 SCRA 565, 584-585.

document. A further discussion of the remaining elements of the offense has become unnecessary. Acquittal of the petitioners of the crime of falsification of a private document for failure to prove guilt beyond reasonable doubt should follow.

Absolving the petitioners of the crime of falsification of a private document likewise clears them of the crime of *estafa.* We adopt with approval the commentary expressed by a respected treatise on criminal law on the matter, *viz.:*

> When the offender commits on a document any of the acts of falsification enumerated in Article 171 as a necessary means to commit another crime, like estafa, theft or malversation. The two crimes form a complex crime under Article 48. However, the document falsified must be *public, official or commercial.*
>
> The falsification of a public, official or commercial document may be a means of committing estafa, because before the falsified document is actually utilized to defraud another, the crime of falsification has already been consummated, damage or intent to cause damage not being an element of the crime of falsification of public, official or commercial document. *(Intestate Estate of Manolita Gonzales Vda. De Carungcong v. People, GR No. 181409, February 11, 2010).* In other words, the crime of falsification has already existed. Actually utilizing that falsified public, official or commercial document to defraud another is estafa. But damage to another is caused by the commission of estafa, not by the falsification of the document. Therefore, the falsification of the public, official or commercial document is only a necessary means to commit estafa.
>
> On the other hand, in the falsification of a private document, there is no crime unless another fact, independent of that of falsifying the document, is proved: *i.e.* damage or intent to cause it. Therefore, when one makes use of a private document, which he falsified, to defraud another, there results only one crime: the falsification of a private document. The damage to another is caused by the commission of the crime of falsification of falsification of private document. **The intent to defraud in using the falsified private document is part and parcel of the crime, and cannot give rise to the crime of estafa, because the damage, if it resulted, was caused by, and became the element of, the crime of falsification of private document. The crime**

of estafa in such case was not committed, as it could not exist without its own element of damage.[15] [Bold emphasis supplied]

A final word needs to be said. We normally accord the trial court's evaluation of the credibility of witnesses the highest respect, and will not disturb the evaluation on appeal, but we also state that findings on the issue of credibility of witnesses and the consequent findings of fact could be reviewed and undone if we, as the ultimate dispenser of justice, find matters of substance and value whose proper significance and impact have been overlooked or incorrectly appreciated and which, if duly considered or properly appreciated, would alter the result of the case. No findings by the trial court are impervious to the onslaught of a just and fair appreciation by a higher court. After all, every appeal of a criminal conviction opens the entire records to review, and this is because our oaths as judges bind and commit us to ensure that no one should be held criminally responsible and condemned to suffer punishment unless the evidence against him has been sufficient and amounts to the moral certainty of his guilt.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on December 22, 2015 by the Court of Appeals in C.A.-G.R. CR No. 35911; **ACQUITS** petitioners **LUIS L. CO** and **ALVIN S. CO** of the crime charged for failure of the Prosecution to prove their guilt beyond reasonable doubt; and **ORDERS** the **DISMISSAL** of Criminal Case No. 03-211251 without pronouncement on costs of suit.

SO ORDERED.

Gesmundo, Carandang, and *Zalameda, JJ.,* concur.

Perlas-Bernabe, J., on official business.

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[15] II Reyes, L.B., *The Revised Penal Code;* 18th ed., Rex Bookstore, Manila, 2012, p. 235.

SECOND DIVISION

[G.R. No. 233479. October 16, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOMAR DOCA *y* VILLALUNA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; MURDER; ELEMENTS.— Murder is defined and penalized under Article 248 of the Revised Penal Code x x x. It requires the following elements: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code (RPC); and (4) the killing does not amount to parricide or infanticide.

2. ID.; ID.; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS IN ORDER TO BE APPRECIATED IN FAVOR OF THE ACCUSED; NOT PROVED; WHEN AN ACCUSED INVOKES SELF-DEFENSE TO ESCAPE CRIMINAL LIABILITY, THE ACCUSED ASSUMES THE BURDEN TO ESTABLISH HIS PLEA THROUGH CREDIBLE, CLEAR AND CONVINCING EVIDENCE; OTHERWISE, CONVICTION WOULD FOLLOW FROM HIS ADMISSION THAT HE HARMED OR KILLED THE VICTIM.— When an accused invokes self-defense to escape criminal liability, the accused assumes the burden to establish his plea through credible, clear and convincing evidence; otherwise, conviction would follow from his admission that he harmed or killed the victim. For self-defense to be appreciated, appellant must prove the following elements; (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the person defending himself. Unlawful aggression is the indispensable element of self-defense. If no unlawful aggression attributed to the victim is established, self-defense is unavailing, for there is nothing to repel. As aptly noted by the courts below, appellant relied solely on his self-serving testimony that he acted in self-defense. He did not present any evidence to

corroborate his claim. Neither did he offer any explanation why Roger allegedly attacked him. Surely, appellant's lone testimony cannot be considered as clear and convincing proof that he acted in self-defense. More, if at all there was unlawful aggression, it emanated not from the victim but from appellant.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURTS' FACTUAL FINDINGS ON THE CREDIBILITY OF WITNESSES ARE BINDING AND CONCLUSIVE ON THE REVIEWING COURT, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS.— Both the trial court and the Court of Appeals gave full credence to Rogelio's candid and unwavering eyewitness account of the incident. He was physically present at the *locus criminis* when it took place. He positively testified that appellant stabbed the victim while the latter was simply passing him by on his way home. His credible testimony was, thus, sufficient to support a verdict of conviction against appellant. In this jurisdiction, the assessment of credibility is best undertaken by the trial court since it has the opportunity to observe evidence beyond what is written or spoken, such as the deportment of the witness while testifying on the stand. Hence, the trial courts' factual findings on the credibility of witnesses are binding and conclusive on the reviewing court, especially when affirmed by the Court of Appeals, as in this case.

4. ID.; ID.; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; APPELLANT'S CLAIM OF SELF-DEFENSE IS UNAVAILING ABSENT UNLAWFUL AGGRESSION ATTRIBUTABLE TO THE VICTIM.— Appellant, nevertheless, assails Rogelio's testimony for allegedly being uncorroborated. This argument, however, is misleading. For prosecution witness Benjamin testified that he saw Roger walking towards the waiting shed where appellant was waiting. When Roger passed by appellant, he suddenly fell on the ground. The fact that Benjamin did not testify to having seen appellant deliver the killing blow is not fatal to the prosecution's case. His testimony that Roger suddenly fell on the ground is consistent with the prosecution's theory that there was no unlawful aggression which emanated from the victim; there was nothing for appellant to repel or defend himself from. In the absence of unlawful aggression attributable to Roger, appellant's claim of self-defense is unavailing.

5. ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; THE ESSENCE OF TREACHERY IS THAT THE ATTACK IS DELIBERATE AND WITHOUT WARNING AND IS DONE IN A SWIFT AND UNEXPECTED WAY, AFFORDING THE HAPLESS, UNARMED AND UNSUSPECTING VICTIM WITH NO CHANCE TO RESIST OR ESCAPE; TREACHERY CANNOT BE APPRECIATED WHERE THE VICTIM WAS AWARE OF AN IMPENDING DANGER AGAINST HIS PERSON COMING FROM THE ACCUSED, BUT IGNORED THE SAME.— There is treachery when the offender commits any of the crimes against persons by employing means, methods or forms that tend directly and especially to ensure its execution without risk to the offender arising from the defense that the offended party might make. The essence of treachery is that the attack is deliberate and without warning and is done in a swift and unexpected way, affording the hapless, unarmed and unsuspecting victim with no chance to resist or escape. Here, Rogelio and Roger were walking home when they saw appellant standing inside a waiting shed, drunk, angry and specifically looking for Roger. Appellant was shirtless, revealing a Rambo knife strapped around his waist. Given these circumstances, Roger cannot be characterized as an unsuspecting victim. He and his friends should have been alerted of an impending danger against his person coming from appellant. Yet he ignored the telltale signs of danger and proceeded to walk towards the waiting shed where appellant lie in wait, and where he eventually met his demise.

6. ID.; ID.; ID.; ID.; THE ATTACK ON VICTIM, THOUGH SUDDEN, IS NOT TREACHEROUS, ABSENT SHOWING THAT APPELLANT CONSCIOUSLY LAUNCHED THE SUDDEN ATTACK TO FACILITATE THE KILLING WITHOUT RISK TO HIMSELF; MERE SUDDENNESS OF THE ATTACK IS NOT SUFFICIENT TO HOLD THAT TREACHERY IS PRESENT, WHERE THE MODE ADOPTED BY THE ASSAILANTS DOES NOT POSITIVELY TEND TO PROVE THAT THEY THEREBY KNOWINGLY INTENDED TO INSURE THE ACCOMPLISHMENT OF THEIR CRIMINAL PURPOSE WITHOUT ANY RISK TO THEMSELVES ARISING FROM THE DEFENSE THAT THE VICTIM MIGHT OFFER.— [T]he attack on Roger, though sudden, was not treacherous. For there was no showing that appellant consciously launched

the sudden attack to facilitate the killing without risk to himself. Our ruling in ***People v. Pilpa*** is apropos: x x x **[M]ere suddenness of the attack is not sufficient to hold that treachery is present,** where the mode adopted by the assailants does not positively tend to prove that they thereby **knowingly intended** to insure the accomplishment of their criminal purpose without any risk to themselves arising from the defense that the victim might offer. Specifically, it must clearly appear that the method of assault adopted by the aggressor was **deliberately chosen** with a view to accomplishing the act without risk to the aggressor.

7. ID.; ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; REQUISITES; PRESENT; THE ESSENCE OF VOLUNTARY SURRENDER IS SPONTANEITY AND THE INTENT OF THE ACCUSED TO GIVE HIMSELF UP AND SUBMIT HIMSELF TO THE AUTHORITIES, EITHER BECAUSE HE ACKNOWLEDGES HIS GUILT OR HE WISHES TO SAVE THE AUTHORITIES THE TROUBLE AND EXPENSE THAT MAY BE INCURRED FOR HIS SEARCH AND CAPTURE.— Appellant further claims that the mitigating circumstances of voluntary surrender should be appreciated in his favor. Voluntary surrender requires the following: (1) the accused has not been actually arrested; (2) the accused surrenders himself to a person in authority of the latter's agent; and (3) the surrender is voluntary. The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself to the authorities, either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture. This Court finds, as the Court of Appeals did, that voluntary surrender should be credited in favour of appellant. The facts clearly show that appellant was not arrested; he surrendered to Brgy. Captain Palattao who brought him to the police station; and he surrendered voluntarily.

8. ID.; ID.; HOMICIDE; PROPER IMPOSABLE PENALTY.— [I]n the absence of evident premeditation and treachery, appellant may be convicted only of homicide for the killing of Roger C. Celestino. x x x. Although the Court of Appeals appreciated the mitigating circumstance of voluntary surrender, it nonetheless held that it could not modify appellant's indivisible penalty of *reclusion perpetua*. But since this Court downgraded appellant's crime to homicide, appellant may now benefit from

the attendant mitigating circumstance. x x x. Applying the Indeterminate Sentence Law and considering the mitigating circumstance of voluntary surrender, appellant should be sentenced to eight (8) years of *prision mayor* as minimum to twelve (12) years and six (6) months of *reclusion temporal* as maximum.

9. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT. — In accordance with prevailing jurisprudence, the awards of ₱75,000.00 civil indemnity and ₱75,000.00 moral damages should be decreased to ₱50,000.00 each; and the award of ₱75,000.00 as exemplary damages should be deleted. In cases of homicide, exemplary damages are awarded only if an aggravating circumstance was proven during the trial, even if not alleged in the Information. Meanwhile, the award of temperate damages of ₱50,000.00 is retained. A six percent (6%) interest *per annum* on these amounts should be paid from finality of this decision until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This appeal assails the Decision dated March 28, 2017[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 08266 affirming the trial court's verdict of conviction for murder against appellant.

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[1] Penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Leoncia R. Dimagiba and Henri Jean Paul B. Inting (now a member of this Court); *Rollo*, p. 2.

The Proceedings Before the Trial Court

The Charge

Under Information dated July 3, 2007, appellant Jomar Doca *y* Villaluna was charged with murder for the killing of Roger C. Celestino, *viz*:

> That on or about July 1, 2007 in the Municipality of Solana, Province of Cagayan and within the jurisdiction of this Honorable Court, the said accused JOMAR DOCA Y VILLALUNA armed with a Rambo knife, with intent to kill, with evident premeditation and with treachery, did, then and there willfully, unlawfully and feloniously attack, assault and stab ROGER C. CELESTINO, a minor 17 years of age thereby, inflicting upon him stab wound which caused his death.
>
> CONTRARY TO LAW.[2]

The case was raffled to the Regional Trial Court - Branch 4, Tuguegarao City, Cagayan. On arraignment, appellant pleaded "not guilty". Trial on the merits ensued.

During the trial, Rogelio Castro, Benjamin Cabisora, Dr. Rebecca Battung, SPO3 Bienimax Constantino and PO3 Roque Binayug testified for the prosecution. The testimony of Roger's father Pablo Celestino was dispensed with after the prosecution and the defense stipulated that Roger's death resulted in actual damages of ₱30,000.00. Meanwhile, appellant testified as lone witness for the defense.[3]

The Prosecution's Version

Eyewitness **Rogelio Castro** testified that on July 1, 2007, around 4 o'clock in the afternoon, he and Roger, along with two (2) others, were walking home from the house of Willie Cabisora in Villa Salud, Barangay Gadu, Solana, Cagayan when they saw appellant standing inside a waiting shed, drunk and angry. Appellant was looking for Roger, shirtless, revealing a Rambo knife strapped around his waist. Roger was walking

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[2] *Rollo*, p. 3.

[3] *Id*. at 3-5.

about fifty (50) meters ahead of them and arrived at the waiting shed first. As Roger was passing by appellant, the latter suddenly stabbed him in his left breast with the Rambo knife. As Roger fell on the ground, appellant immediately fled. He and his companions wanted to carry Roger into his house but the latter had already passed away.[4]

Benjamin Cabisora testified that he is Roger's relative and appellant's friend. On July 1, 2007, around 4:30 in the afternoon, he was seated in a waiting shed in front of the house of one Georgie Juan. Beside him stood appellant who appeared to be waiting for someone. He then saw Roger and his friends leave the house of Willie Cabisora. When Roger reached the waiting shed, he suddenly fell on the ground.[5]

Dr. Rebecca Battung testified that Roger died of shock due to loss of more than 1.5 liters of blood. The shock, in turn, was caused by severe hemorrhage from the stab wound in his chest.

PO3 Roque Binayug and **SPO3 Bienimax Constantino** testified that on July 1, 2007, they received a report at the police station regarding a stabbing incident in Villa Salud. They proceeded to the area and saw Roger's lifeless body inside a waiting shed. The investigating team recovered a Rambo knife beside the body of the victim. According to witnesses, it was the same Rambo knife used in the killing.[6]

The Defense's Version

Appellant invoked self-defense. He testified that on July 1, 2007, around 4:30 in the afternoon, he went to the house of his friend Georgie Juan. When he found out that Juan was not home, he decided to wait for him in a nearby waiting shed. There, he found prosecution witness Benjamin Cabisora. Roger arrived a few minutes later. Without warning, Roger boxed

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[4] CA *rollo*, pp. 45-46.

[5] *Id*. at 46.

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

him four (4) times, hitting him in the nose and chest. He initially did not fight back. But when Roger drew a fan knife (*balisong*), he grappled with Roger for the weapon. He was able to take hold of the fan knife and use it to stab Roger. He immediately fled because he feared for his life. The following day, he surrendered to then Barangay Captain Edgar Palattao of Barangay Andarayan who took him to the police authorities.[7]

The Trial Court's Ruling

By Judgment dated February 4, 2016,[8] the trial court found appellant guilty of murder, *viz*:

> WHEREFORE, accused JOMAR DOCA *y* Villaluna is hereby found GUILTY beyond reasonable doubt for Murder, defined and penalized under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659.
>
> The accused is hereby sentenced to suffer the penalty of RECLUSION PERPETUA and to pay the private complainant the amount of SEVENTY-FIVE THOUSAND PESOS (₱75,000.00) as civil indemnity, FIFTY THOUSAND PESOS (₱50,000.00) as moral damages, THIRTY THOUSAND PESOS (₱30,000.00) as exemplary damages, and THIRTY THOUSAND PESOS (₱30,000.00) as actual damages.
>
> Records shows that the accused was under the custody of the Cagayan Provincial Jail, since July 3, 2007. The preventive imprisonment of the accused during the pendency of this case shall be credited in full in his favor if he abided with the disciplinary rules upon convicted prisoners.
>
> SO ORDERED.[9]

The trial court held that appellant admitted to killing Roger when he invoked self-defense. But to justify the killing, the burden was on appellant to prove that Roger provoked him into committing the act. Appellant failed to discharge this burden.[10]

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

[8] Penned by Lyliha A. Abella-Aquino; CA *rollo*, p. 81.

[9] CA *rollo*, p. 98.

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

Although the trial court did not find sufficient evidence to establish that the killing was premeditated, it nevertheless appreciated treachery to have qualified the killing to murder. Meanwhile, voluntary surrender was not appreciated in appellant's favor because it was not shown that he acknowledged his guilt or wished to save the authorities the trouble of searching for and capturing him when he surrendered to Brgy. Captain Palattao.[11]

The Proceedings before the Court of Appeals

Appellant faulted the trial court for relying on Rogelio's alleged uncorroborated testimony. Benjamin merely testified that he saw Roger fall to the ground without mentioning appellant's participation in Roger's death.[12]

Too, the trial court erred in ruling that he employed treachery in killing Roger. The allegations of the witnesses that he was drunk, angry, and specifically looking for Roger should have cautioned Roger and his group from approaching him.[13]

Appellant maintained that he acted in self-defense.[14] At any rate, his voluntary surrender to Brgy. Captain Palattao should be considered as a mitigating circumstance.[15]

The Office of the Solicitor General (OSG), through Assistant Solicitor General Reynaldo L. Saludares and State Solicitor Jocelyn P. Castillo-Sarmiento defended the verdict of conviction. It riposted that the prosecution witnesses were able to identify appellant as the person who killed Roger. Treachery attended the killing since Roger was unarmed and had no means to defend himself. More, Roger was only seventeen (17) years old when the crime was committed; he was definitely weaker compared to appellant, a mature male. As for appellant's claim of self-

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[11] *Id*. at 52.

[12] *Id*. at 120.

[13] *Id*. at 126-127.

[14] *Id*. at 128-131.

[15] *Id*. at 131-132.

defense, it may not prosper in the absence of proof that unlawful aggression emanated from Roger.[16]

The Court of Appeals' Ruling

Under Decision dated March 28, 2017,[17] the Court of Appeals affirmed with modification on the monetary awards, *viz*:

> WHEREFORE, premises considered, the appeal is hereby DENIED. The Judgment dated February 4, 2016 is AFFIRMED with MODIFICATION in that the award of Thirty Thousand Pesos (₱30,000.00) as actual damages is deleted. In lieu thereof, temperate damages in the amount of Fifty Thousand Pesos (₱50,000.00) is awarded. Accused-appellant Jomar Doca y Villaluna is further ordered to pay Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity, Seventy-Five Thousand Pesos (₱75,000.00) as moral damages, and Seventy-Five Thousand Pesos (₱75,000.00) as exemplary damages. All damages awarded shall earn interest at the legal rate of six percent (6%) per *annum* from the date of finality of this judgment until fully paid.
>
> SO ORDERED.[18]

The Court of Appeals did not entertain appellant's theory of self-defense because his only proof thereof was his self-serving testimony. The testimonies of the prosecution witnesses also showed that Roger did not attack appellant in any way.[19]

The Court of Appeals appreciated the presence of treachery and qualified the killing to murder. It ruled that appellant's attack was so sudden and unexpected that Roger was completely deprived of a real chance to defend himself.[20]

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[16] *Id*. at 163-175.

[17] Penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Leoncia R. Dimagiba and now Supreme Court Associate Justice Henri Jean Paul B. Inting; *Rollo*, p. 2.

[18] *Rollo*, pp. 14-15.

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

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

Although the trial court erred when it failed to appreciate the mitigating circumstance of voluntary surrender, the Court of Appeals, nevertheless, affirmed the imposition of *reclusion perpetua* on appellant.[21]

As for the monetary awards, the Court of Appeals affirmed the award of ₱75,000.00 as civil indemnity, increased moral and exemplary damages from ₱50,000.00 and ₱30,000.00, respectively, to ₱75,000.00 each, deleted the award of actual damages of ₱30,000.00, and granted temperate damages of ₱50,000.00. It also imposed six percent (6%) interest *per annum* on the monetary awards from finality of the decision until fully paid.[22]

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays for his acquittal. In compliance with Resolution dated December 13, 2017,[23] both appellant and the OSG manifested that, in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.[24]

Issue

Did the Court of Appeals err in affirming appellant's conviction for murder?

Ruling

Murder is defined and penalized under Article 248 of the Revised Penal Code, *viz*:

> Article 248. *Murder*. — Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:

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[21] *Id*. at 13.

[22] *Id*. at 14.

[23] *Id*. at 22.

[24] *Id*. at 33 and 38.

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity;

x x x x x x x x x

2. With evident premeditation;

x x x x x x x x x

It requires the following elements: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code (RPC); and (4) the killing does not amount to parricide or infanticide.[25]

Appellant failed to establish that he acted in self-defense

Appellant admits the first two (2) elements but justifies the killing as an act of self-defense. According to appellant, he was waiting for his friend Georgie Juan in a nearby waiting shed when Roger arrived. Without warning, Roger boxed him four (4) times, hitting him in the nose and chest. He initially did not fight back. But when Roger drew a fan knife (*balisong*), he grappled with Roger for the weapon. He was able to take hold of the fan knife and used it to stab Roger. Thus, he was merely protecting himself from Roger's assaults.

We are not convinced.

When an accused invokes self-defense to escape criminal liability, the accused assumes the burden to establish his plea through credible, clear and convincing evidence; otherwise, conviction would follow from his admission that he harmed or killed the victim.[26] For self-defense to be appreciated, appellant must prove the following elements: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the person defending himself. Unlawful

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[25] See *People v. Villanueva*, 807 Phil. 245, 252 (2017).

[26] *Velasquez v. People*, 807 Phil. 438, 450 (2017).

aggression is the indispensable element of self-defense. If no unlawful aggression attributed to the victim is established, self-defense is unavailing, for there is nothing to repel.[27]

As aptly noted by the courts below, appellant relied solely on his self-serving testimony that he acted in self-defense. He did not present any evidence to corroborate his claim. Neither did he offer any explanation why Roger allegedly attacked him. Surely, appellant's lone testimony cannot be considered as clear and convincing proof that he acted in self-defense.[28]

More, if at all there was unlawful aggression, it emanated not from the victim but from appellant, thus:[29]

Q: Why were you not able to reach home?
A: Because Roger Celestino got into trouble, sir.

Q: With whom?
A: Jomar Doca, sir.

Q: How did it happen?
A: Jomar suddenly stabbed Roger Celestino, sir.

x x x x x x x x x

Q: How did Jomar Doca suddenly stabbed (sic) Roger Celestino?
A: Roger Celestino passed by in front of Jomar Doca.

Q: And while Roger was passing by, what did Jomar Doca do?
A: Jomar Doca stabbed Roger Celestino, sir.

Q: How many times did Jomar Doca stabbed (sic) Roger Celestino?
A: Once, sir.

x x x x x x x x x

Q: And what did Jomar Doca use in stabbing Roger Celestino?
A: Rambo knife, sir.

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[27] *People v. Fontanilla,* 680 Phil. 155, 165 (2012).

[28] *People v. Tanduyan,* 306 Phil. 444, 449 (1994).

[29] *Rollo,* p. 11.

Q: And what happened to Roger Celstino when he was stabbed by Jomar Doca?
A: Roger Celestino fell down, sir.

Both the trial court and the Court of Appeals gave full credence to Rogelio's candid and unwavering eyewitness account of the incident. He was physically present at the *locus criminis* when it took place. He positively testified that appellant stabbed the victim while the latter was simply passing him by on his way home. His credible testimony was, thus, sufficient to support a verdict of conviction against appellant.

In this jurisdiction, the assessment of credibility is best undertaken by the trial court since it has the opportunity to observe evidence beyond what is written or spoken, such as the deportment of the witness while testifying on the stand.[30] Hence, the trial court's factual findings on the credibility of witnesses are binding and conclusive on the reviewing court, especially when affirmed by the Court of Appeals, as in this case.[31]

Appellant, nevertheless, assails Rogelio's testimony for allegedly being uncorroborated. This argument, however, is misleading. For prosecution witness Benjamin testified that he saw Roger walking towards the waiting shed where appellant was waiting. When Roger passed by appellant, he suddenly fell on the ground.

The fact that Benjamin did not testify to having seen appellant deliver the killing blow is not fatal to the prosecution's case. His testimony that Roger suddenly fell on the ground is consistent with the prosecution's theory that there was no unlawful aggression which emanated from the victim; there was nothing for appellant to repel or defend himself from. In the absence of unlawful aggression attributable to Roger, appellant's claim of self-defense is unavailing.

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[30] See *People v. Ocdol*, 741 Phil. 701, 710-711 (2014).

[31] See *People v. Regaspi*, 768 Phil. 593, 598 (2015).

Neither evident premeditation nor treachery attended the killing

The Information alleged that evident premeditation and treachery attended the killing. As consistently held by the courts below, the prosecution failed to prove that the killing was premeditated but treachery nevertheless qualified the killing to murder.

We disagree.

There is treachery when the offender commits any of the crimes against persons by employing means, methods or forms that tend directly and especially to ensure its execution without risk to the offender arising from the defense that the offended party might make.[32] The essence of treachery is that the attack is deliberate and without warning and is done in a swift and unexpected way, affording the hapless, unarmed and unsuspecting victim with no chance to resist or escape.[33]

Here, Rogelio and Roger were walking home when they saw appellant standing inside a waiting shed, drunk, angry and specifically looking for Roger. Appellant was shirtless, revealing a Rambo knife strapped around his waist. Given these circumstances, Roger cannot be characterized as an unsuspecting victim. He and his friends should have been alerted of an impending danger against his person coming from appellant. Yet he ignored the telltale signs of danger and proceeded to walk towards the waiting shed where appellant lie in wait, and where he eventually met his demise.

In another vein, the attack on Roger, though sudden, was not treacherous. For there was no showing that appellant consciously launched the sudden attack to facilitate the killing without risk to himself. Our ruling in ***People v. Pilpa***[34] is apropos:

x x x **[M]ere suddenness of the attack is not sufficient to hold that treachery is present**, where the mode adopted by the assailants

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[32] See *People v. Watamama*, 734 Phil. 673, 682 (2014).

[33] *Id*.

[34] G.R. No. 225336, September 5, 2018.

does not positively tend to prove that they thereby **knowingly intended** to insure the accomplishment of their criminal purpose without any risk to themselves arising from the defense that the victim might offer. Specifically, it must clearly appear that the method of assault adopted by the aggressor was **deliberately chosen** with a view to accomplishing the act without risk to the aggressor.

In the case at bar, the testimonies of Leonila, Evangeline, and Carolina reveal that the assailants attacked the victim while the latter was having a seemingly random conversation with four friends in a public highway (Quirino Highway), and even in the presence of a *barangay tanod*, who later joined the group. Under these circumstances, the Court finds it difficult to agree that the assailants, including Pilpa, deliberately chose a particular mode of attack that purportedly ensured the execution of the criminal purpose without any risk to themselves arising from the defense that the victim might offer. To repeat, the victim was with five persons who could have helped him, as they had, in fact, helped him repel the attack. The Court thus fails to see how the mode of attack chosen by the assailants supposedly guaranteed the execution of the criminal act without risk on their end. x x x[35]

Similarly, in ***People v. Albino,***[36] therein appellant's group and some locals were drawn into an altercation when the victim approached to pacify them. Then, appellant suddenly shot the victim in the chest. The Court ruled that the sudden attack was not sufficient to qualify the killing to murder. For at that moment, appellant was enraged and did not have time to reflect on his actions. There was also no showing that he consciously launched the sudden attack to facilitate the killing without risk to himself. Appellant therein was thus convicted only of homicide.

All told, in the absence of evident premeditation and treachery, appellant may be convicted only of homicide for the killing of Roger C. Celestino.

Appellant's voluntary surrender mitigates his criminal liability

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[35] *Id*.

[36] G.R. No. 229928, July 22, 2019.

Appellant further claims that the mitigating circumstance of voluntary surrender should be appreciated in his favor. Voluntary surrender requires the following: (1) the accused has not been actually arrested; (2) the accused surrenders himself to a person in authority or the latter's agent; and (3) the surrender is voluntary. The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself to the authorities, either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture.[37]

This Court finds, as the Court of Appeals did, that voluntary surrender should be credited in favor of appellant. The facts clearly show that appellant was not arrested; he surrendered to Brgy. Captain Palattao who brought him to the police station; and he surrendered voluntarily.

Although the Court of Appeals appreciated the mitigating circumstance of voluntary surrender, it nonetheless held that it could not modify appellant's indivisible penalty of *reclusion perpetua*. But since this Court downgraded appellant's crime to homicide, appellant may now benefit from the attendant mitigating circumstance.

Penalty

Article 249 of the Revised Penal Code provides, thus:

Article 249. *Homicide.* — Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal.*

Applying the Indeterminate Sentence Law[38] and considering the mitigating circumstance of voluntary surrender, appellant

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[37] *People v. Manzano*, G.R. No. 217974, March 5, 2018.

[38] Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of

should be sentenced to eight (8) years of *prision mayor* as minimum to twelve (12) years and six (6) months of *reclusion temporal* as maximum.

In accordance with prevailing jurisprudence, the awards of ₱75,000.00 civil indemnity and ₱75,000.00 moral damages should be decreased to ₱50,000.00 each; and the award of ₱75,000.00 as exemplary damages should be deleted.[39] In cases of homicide, exemplary damages are awarded only if an aggravating circumstance was proven during the trial, even if not alleged in the Information.[40] Meanwhile, the award of temperate damages of ₱50,000.00 is retained.[41]

A six percent (6%) interest *per annum* on these amounts should be paid from finality of this decision until fully paid.

ACCORDINGLY, the appeal is **PARTLY GRANTED.** Appellant **JOMAR DOCA *y* VILLALUNA** is found guilty of **HOMICIDE.** He is sentenced to the indeterminate penalty of eight (8) years of *prision mayor* as minimum to twelve (12) years and six (6) months of *reclusion temporal* as maximum.

He is further required to pay ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as temperate damages. These amounts shall earn six percent (6%) interest *per annum* from finality of this decision until fully paid.

SO ORDERED.

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

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which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. (As amended by Act No. 4225.)

[39] See *People v. Jugueta*, 783 Phil. 806, 845 (2016).

[40] *Id*.

[41] See *People v. Macaspac*, 806 Phil. 285, 289-290 (2017).

THIRD DIVISION

[G.R. No. 235361. October 16, 2019]

MOISES G. CORO, *petitioner, vs.* **MONTANO B. NASAYAO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE ALLEGATIONS OF FORGERY IN THE EXECUTION OF THE DEED OF SALE REQUIRE A REVIEW OF EVIDENCE AS WELL AS THE DETERMINATION OF THE TRUTH OR FALSITY OF THE ALLEGED FACTS WHICH IS BEST LEFT TO THE COURTS BELOW, AS THE SUPREME COURT IS NOT A TRIER OF FACTS; QUESTIONS OF FACT, WHICH WOULD REQUIRE A RE-EVALUATION OF THE EVIDENCE, ARE INAPPROPRIATE UNDER RULE 45 OF THE RULES OF COURT AS THE JURISDICTION OF THE SUPREME COURT UNDER THIS PETITION IS LIMITED ONLY TO ERRORS OF LAW.— The question of whether the signatures of petitioner and his wife appearing in the April 1, 1963, DOAS are forgeries is a question of fact which is beyond this Court's jurisdiction under the present petition. It bears stressing that the resolution of who between petitioner and respondent is the real owner of the subject property and able to prove their title and claim over it will require reception and evaluation of evidence. In insisting that there is forgery in the execution of the Deed of Sale, petitioner is, in effect, asking this Court to make its own factual determination. He is not asking this Court to resolve which law properly applies given the set of facts in this case. On the contrary, the allegations of petitioner require a review of evidence as well as the determination of the truth or falsity of the parties' allegations. Questions of fact, which would require a re-evaluation of the evidence, are inappropriate under Rule 45 of the Rules of Court as the jurisdiction of this Court under this petition is limited only to errors of law. This Court is not a trier of facts and it cannot rule on questions which determine the truth or falsehood of alleged facts, the determination of which is best left to the courts below. While this rule is not absolute, none of the recognized exceptions, which allow the

Court to review the factual issues, exists in the instant case. Besides, as a matter of sound practice and procedure, this Court defers and accords finality to the factual findings of trial courts, more so, when as here, such findings are undisturbed by the appellate court.

2. ID.; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; FORGERY CANNOT BE PRESUMED BUT MUST BE PROVED BY CLEAR, POSITIVE AND CONVINCING EVIDENCE, AND THE BURDEN OF PROOF LIES ON THE PARTY ALLEGING FORGERY; BURDEN OF PROOF IS THE DUTY OF A PARTY TO PROVE THE TRUTH OF HIS CLAIM OR DEFENSE, OR ANY FACT IN ISSUE BY THE AMOUNT OF EVIDENCE REQUIRED BY LAW.— [S]ection 1, Rule 131 of the Rules of Court provides that the burden of proof is the duty of a party to prove the truth of his claim or defense, or any fact in issue by the amount of evidence required by law. As a rule, forgery cannot be presumed. An allegation of forgery must be proved by clear, positive and convincing evidence, and the burden of proof lies on the party alleging forgery. One who alleges forgery has the burden to establish his case by a preponderance of evidence, or evidence which is of greater weight or more convincing than that which is offered in opposition to it. The fact of forgery can only be established by a comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized to have been forged. Since petitioner is assailing the 1963 Deed of Sale, he evidently has the burden of making out a clear-cut case that the disputed document is bogus. Both the RTC and the CA concluded that petitioner failed to discharge the burden.

3. ID.; ID.; AUTHENTICATION AND PROOF OF DOCUMENTS; FORGERY HOW PROVED; ALLEGATION OF FORGERY NOT PROVED.— To establish forgery, the extent, kind, and significance of the variation in the standard and disputed signatures must be demonstrated. More importantly, it must be proved that the variation is due to the operation of a different personality and not merely an expected and inevitable variation found in the genuine writing of the same writer. It must be shown that the resemblance is a result of a more or less skillful imitation and not merely a habitual and characteristic resemblance which naturally appears in a genuine writing. Here, petitioner's

uncorroborated testimony failed to demonstrate that, based on the foregoing criteria, the questioned signatures were forgeries.

4. ID.; ID.; ID.; A DULY NOTARIZED DEED OF ABSOLUTE SALE IS ENTITLED TO FULL FAITH AND CREDIT, AND IS DEEMED TO BE IN FULL FORCE AND EFFECT, TO OVERTURN THIS LEGAL PRESUMPTION, EVIDENCE MUST BE CLEAR, CONVINCING, AND MORE THAN MERELY PREPONDERANT TO ESTABLISH THAT THERE WAS FORGERY THAT GAVE RISE TO A SPURIOUS CONTRACT; A DULY NOTARIZED CONTRACT ENJOYS THE *PRIMA FACIE* PRESUMPTION OF AUTHENTICITY AND DUE EXECUTION, AND IS PRESUMED VALID, REGULAR, AND GENUINE.— [T]he questioned DOAS is notarized. Settled is the rule that a duly notarized contract enjoys the *prima facie* presumption of authenticity and due execution. It is presumed valid, regular, and genuine with the end view of maintaining public confidence in the integrity of notarized documents. In *Libres, et al. v. Sps. Delos Santos and Olba*, this Court said: Notarial documents executed with all the legal requisites under the safeguard of a notarial certificate is evidence of a high character. To overcome its recitals, it is incumbent upon the party challenging it to prove his claim with clear, convincing and more than merely preponderant evidence. **A notarial document, guaranteed by public attestation in accordance with the law, must be sustained in full force and effect so long as he who impugns it does not present strong, complete, and conclusive proof of its falsity or nullity on account of some flaws or defects provided by law.** Without that sort of evidence, the presumption of regularity, the evidentiary weight conferred upon such public document with respect to its execution, as well as the statements and the authenticity of the signatures thereon, stand. On its face, the subject DOAS is entitled to full faith and credit, and is deemed to be in full force and effect. To overturn this legal presumption, evidence must be clear, convincing, and more than merely preponderant to establish that there was forgery that gave rise to a spurious contract. Petitioner obviously failed in this respect.

5. CIVIL LAW; THE CIVIL CODE; DAMAGES; MORAL DAMAGES; MORAL DAMAGES CANNOT BE AWARDED, WHETHER IN A CIVIL OR CRIMINAL CASE, IN THE ABSENCE OF PROOF OF PHYSICAL SUFFERING, MENTAL ANGUISH, FRIGHT,

SERIOUS ANXIETY, BESMIRCHED REPUTATION, WOUNDED FEELINGS, MORAL SHOCK, SOCIAL HUMILIATION, OR SIMILAR INJURY; MERE ALLEGATIONS DO NOT SUFFICE AS THEY MUST BE SUBSTANTIATED BY CLEAR AND CONVINCING PROOF.— [M]oral damages are compensatory damages for mental pain and suffering or mental anguish resulting from a wrong. The award of moral damages is not punitive in nature but are instead a type of award designed to compensate the claimant for actual injury suffered. And although incapable of pecuniary estimation, moral damages must somehow be proportional to and in approximation of the suffering inflicted. This is so because moral damages are in the category of an award designated to compensate the claimant for actual injury suffered and not, as stated, just to impose as a penalty on the wrongdoer. Here, respondent's complaint alleged that due to fraud, bad faith, and illegal manipulation of petitioner, he sustained mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, and mental shock. Yet, other than his bare allegations, respondent failed to present evidence supporting his assertions. Well-settled is the rule that moral damages cannot be awarded, whether in a civil or criminal case, in the absence of proof of physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, or similar injury. As in any award, the award of moral damages must be solidly anchored on a definite showing that respondent actually experienced emotional and mental sufferings. Mere allegations do not suffice as they must be substantiated by clear and convincing proof.

6. ID.; ID.; ID.; EXEMPLARY DAMAGES; IMPOSED BY WAY OF EXAMPLE OR CORRECTION FOR THE PUBLIC GOOD, IN ADDITION TO MORAL, TEMPERATE, LIQUIDATED, OR COMPENSATORY DAMAGES; REQUISITES FOR AN AWARD OF EXEMPLARY DAMAGES; AWARD OF EXEMPLARY DAMAGES MUST BE DELETED FOR LACK OF LEGAL BASIS.— Exemplary or corrective damages are imposed by way of example or correction for the public good, in addition to moral, temperate, liquidated, or compensatory damages. The award of exemplary damages is allowed by law as a warning to the public and as a deterrent against the repetition of socially deleterious actions. The following are the requisites for an award

of exemplary damages, to wit: *First*, they may be imposed by way of example or correction ***only in addition,*** among others, to compensatory damages, and cannot be recovered as a matter of right, their determination depending upon the amount of compensatory damages that may be awarded to the claimant. *Second,* the claimant must **first establish his right to moral, temperate, liquidated, or compensatory damages**. And *third*, the wrongful act must be accompanied by bad faith; and the award would be allowed only if the guilty party acted in a wanted, fraudulent, reckless, oppressive, or malevolent manner. In light of the Court's disquisition that respondent is not entitled to moral damages, the award of exemplary damages must likewise be deleted for lack of legal basis.

7. ID.; ID.; ID.; ATTORNEY'S FEES; THE TRIAL COURT MUST STATE THE FACTUAL, LEGAL, OR EQUITABLE JUSTIFICATION FOR THE AWARD OF ATTORNEY'S FEES IN THE BODY OF THE DECISION;AWARDS OF ATTORNEY'S FEES AND LITIGATION EXPENSES MUST BE DELETED FOR LACK OF BASIS.— The awards of ₱20,000.00. and ₱10,000.00 as attorney's fees and litigation expenses, respectively, are also deleted for lack of basis. It is well established that the trial court must state the factual, legal, or equitable justification for the award of attorney's fees in the body of the decision. Here, other than the statement that respondent was compelled to secure the services of counsel to defend his rights, the RTC failed to state the factual or legal justification for its award of attorney's fees in the former's favour. As such, it must be deleted.

APPEARANCES OF COUNSEL

Catre-Catre & Basco Law Offices for petitioner.
Edgar A. Esparrago for respondent.

D E C I S I O N

INTING, *J.*:

The Court has held in a number of cases that forgery cannot be presumed and must be proved by clear, positive

and convincing evidence. The burden of proof lies on the party alleging forgery to establish his/her case by a preponderance of evidence, or evidence which is of greater weight or more convincing than that which is offered in opposition to it. In this case, as properly observed by the lower courts. other than his own declaration that the signatures on the 1963 Deed of Sale were forged, herein petitioner failed to present any evidence to corroborate his claim.[1]

Under consideration are the: (a) Decision[2] dated March 29, 2017 of the Court of Appeals (CA) in CA-G.R. CV No. 03851-MIN which affirmed the Decision[3] dated September 30, 2014 of Branch 31, Regional Trial Court (RTC), Dapa, Surigao del Norte dismissing Moises Coro's (petitioner) Complaint[4] for Annulment of the Contract of Sale, Reconveyance of the Property with Damages and Attorney's Fees; and (b) Resolution[5] dated September 22, 2017 denying petitioner's Motion for Reconsideration.

The pertinent facts are as follows:

Petitioner alleged that he was the owner of a parcel of land in Cancohoy, Numancia, Surigao del Norte with an area of 1,375 square meters (sq.m.) and covered by Tax Declaration No. 16940. On July 23, 2003, he found out that Montano B. Nasayao (respondent) acquired the subject property by way of a forged Deed of Absolute Sale (DOAS) dated April 1, 1963. He denied having received money in consideration of

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[1] *Spouses Aguinaldo v. Torres, Jr.*, G.R. No. 225808, September 11, 2017 citing *Ambray v. Tsourous*, G.R. No. 209264, July 5, 2016, and *Gepulle-Garbo v. Spouses Garabato*, 750 Phil. 846, 855 (2015).

[2] *Rollo*, pp. 45-55; penned by Associate Justice Romulo V. Borja, and concurred in by Associate Justices Oscar V. Badelles and Perpetua Atal-Paño.

[3] *Id.* at 89-96.

[4] *Id.* at 60-63.

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

the sale nor having personally appeared before the notary public, Pedro Berro.[6]

In their Answer-in-Intervention,[7] respondent's wife and children stated that on April 1, 1963, petitioner sold the subject property to the respondent, his stepbrother. They further alleged that on April 19, 1963, respondent had the title of the property transferred in his name and thereafter, dutifully paid the corresponding taxes as evidenced by Tax Declaration No. 17518. On December 10, 1996, respondent was awarded Original Certificate of Title (OCT) No. 15011. Seven years later on, in February 2003, petitioner approached respondent's wife and son to buy back the land, but his offer was refused. Taking advantage of respondent's illness, petitioner surreptitiously occupied the property.[8]

After trial on the merits, the RTC rendered a Decision dismissing petitioner's complaint in Civil Case No. 540, the dispositive portion of which reads:

WHEREFORE, in light of all the foregoing, the complaint is hereby **DISMISSED** for lack of cause of action and judgment is hereby rendered as follows:

1) **DECLARING** the Deed of Absolute Sale dated April 1, 1963 as genuine, valid and binding;

2) **ORDERING** the plaintiff to pay the defendant the amount of Fifty Thousand (₱50,000.00) Pesos as Moral Damages, Thirty Thousand (₱30,000.00) Pesos as Exemplary Damages, Twenty Thousand (₱20,000.00) Pesos as Attorney's Fees and Ten Thousand (₱10,000.00) Pesos as Litigation Expenses; and

3) To pay the cost of this suit.

SO ORDERED.[9]

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[6] *Id.* at 45-46.

[7] *Id.* at 69-73.

[8] *Id.* at 46.

[9] *Id.* at 96.

The RTC found that the signatures appearing on the DOAS were genuine and that petitioner failed to prove forgery by clear and convincing evidence. Moreover, since the action was filed decades after the questioned DOAS was executed on April 1, 1963, it had already prescribed.

On appeal, the CA disagreed with the RTC's finding that the action had prescribed, but it nevertheless affirmed the ruling of the RTC that the testimonies of petitioner, his daughter Analiza Cambaya, and stepdaughter Nenita Oga do not supplant the presumption of regularity of the deed of sale as a public document.[10]

Petitioner filed a Motion for Reconsideration of the Decision dated March 29, 2017 of the CA. However, the CA denied his motion in the Reso1ution[11] dated September 22, 2017, thus:

> x x x Forgery is never presumed; being the party who alleged forgery, appellant has the burden of proving the same by clear, positive and convincing evidence, which appellant failed to do so here. Moreover, the authenticity of the Deed of Absolute Sale is a question of fact, and the trial court's finding as to its authenticity will not be disturbed in the absence of substantial evidence to the contrary. As the Court discussed, **the signature of appellant appearing in the Deed of Absolute Sale as well as in the documents he presented have no stark difference and appear to have been written by one and the same person. Further, the Deed of Absolute Sale is a public document, thus, has in its favor the presumption of regularity.**[12] (Emphasis supplied)

Hence, petitioner filed the instant Petition[13] for Review on *Certiorari* under Rule 45 of the Rules of Court.

In the main, petitioner is raising the issue of whether the CA erred in affirming the RTC's Decision upholding the validity of the subject DOAS.

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[10] *Id.* at 54.

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

[12] *Id.* at 58.

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

This Court denies the petition.

REVIEW OF FACTUAL FINDINGS; THE ISSUE OF THE GENUINENESS OF THE DEED OF SALE IS A QUESTION OF FACT NOT PROPER IN A PETITION FOR *CERTIORARI* UNDER RULE 45

In the RTC Decision, as affirmed by the CA, the RTC made the following findings of fact:

1. Records show that apart from petitioner's testimony that his signature and that of his wife appearing on the subject DOAS were forged, petitioner presented a Deed of Donation, a Senior Citizen Identification Card, and a Notice containing signatures of his wife sometime in 1995. He did not furnish the court with the specimen of his own signature though;
2. The RTC was convinced that the signature of his wife in the DOAS as compared with her signatures appearing on the Affidavit, Deed of Donation, her Senior Citizen ID, and in the Notice are similar; and
3. The RTC compared petitioner's signature in the DOAS with his signature in the Verification; it found that they are the same.

Petitioner disputes the foregoing findings and refutes the authenticity of the DOAS.

The question of whether the signatures of petitioner and his wife appearing in the April 1, 1963, DOAS are forgeries is a question of fact which is beyond this Court's jurisdiction under the present petition. It bears stressing that the resolution of who between petitioner and respondent is the real owner of the subject property and able to prove their title and claim over it will require reception and evaluation of evidence. In insisting that there is forgery in the execution of the Deed of Sale, petitioner is, in effect, asking this Court to make its own factual determination. He is not asking this Court to resolve which law properly applies given the set of facts in this case. On the contrary, the allegations

of petitioner require a review of evidence as well as the determination of the truth or falsity of the parties' allegations.[14]

Questions of fact, which would require a re-evaluation of the evidence, are inappropriate under Rule 45 of the Rules of Court as the jurisdiction of this Court under this petition is limited only to errors of law. This Court is not a trier of facts and it cannot rule on questions which determine the truth or falsehood of alleged facts, the determination of which is best left to the courts below. While this rule is not absolute, none of the recognized exceptions, which allow the Court to review the factual issues, exists in the instant case.[15]

Besides, as a matter of sound practice and procedure, this Court defers and accords finality to the factual findings of trial courts, more so, when as here, such findings are undisturbed by the appellate court.[16]

FORGERY IS NEVER PRESUMED; IT MUST BE PROVEN BY CLEAR, POSITIVE AND CONVINCING EVIDENCE.

In any event, Section 1, Rule 131 of the Rules of Court provides that the burden of proof is the duty of a party to prove the truth of his claim or defense, or any fact in issue by the amount of evidence required by law.[17]

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[14] RULES OF COURT, Rule 45, Section 1 provides:

Sec. 1. *Filing of Petition with Supreme Court.* — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. **The petition x x x shall raise only questions of law, which must be distinctly set forth.** (Emphasis supplied)

[15] *Gatan, et al. v. Vinarao, et al.*, G.R. No. 205912, October 18, 2017. See also *Rodriguez v. Your Own Home Development Corporation (YOHDC)*, G.R. No. 199451, August 15, 2018 citing *Loria v. Muñoz, Jr.*, 745 Phil. 506, 515 (2014).

[16] *Gepulle-Garbo v. Spouses Garabato*, 750 Phil. 846, 855 (2015).

[17] *Id.* citing *Vitarich Corporation v. Losin*, G.R. No. 181560, November 15, 2010, 634 SCRA 671, 684.

As a rule, forgery cannot be presumed. An allegation of forgery must be proved by clear, positive and convincing evidence, and the burden of proof lies on the party alleging forgery.[18] One who alleges forgery has the burden to establish his case by a preponderance of evidence, or evidence which is of greater weight or more convincing than that which is offered in opposition to it. The fact of forgery can only be established by a comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized to have been forged.[19]

Since petitioner is assailing the 1963 Deed of Sale, he evidently has the burden of making out a clear-cut case that the disputed document is bogus. Both the RTC and the CA concluded that petitioner failed to discharge the burden. The CA explained:

> An assiduous examination of the specimen signatures of Moises Coro found on his Social Security System (SSS) Identification Card, the Verification and Certification of Non-Forum Shopping attached to his complaint, and the Community Tax Certificates issued in 2000 and 2003 show no variance when compared with the signature on the deed of absolute sale, purported to be his. It needs no expert to notice the similar strokes of the letters. This notwithstanding, the fact that the deed of absolute sale was executed on April 1, 1963 while the signatures in the Verification as well as the Community Tax Certificate were affixed in 2003, or forty (40) years later. Even Moises Coro's alleged signature in the affidavit the defendant-appellee submitted is significantly the same as the one found in the deed of sale. In short, **a perusal of the signatures would lead to the conclusion that the standard signature and the one appearing in the deed of sale were written by one and the same person; no difference stark nor distinguishing is noticeable.** Stated differently, plaintiffs documentary evidence failed to raise any doubt as to the authenticity of the questioned signatures.[20] (Emphasis supplied.)

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[18] *Almeda, et al. v. Santos, et al.*, G.R. No. 194189, September 14, 2017 citing *Sps. Bernales v. Heirs of Julian Sambaan*, 624 Phil. 88, 97 (2010).

[19] *Gepulle-Garbo v. Spouses Garabato, supra* note 16 at 855-856.

[20] *Rollo*, p. 54.

To establish forgery, the extent, kind, and significance of the variation in the standard and disputed signatures must be demonstrated. More importantly, it must be proved that the variation is due to the operation of a different personality and not merely an expected and inevitable variation found in the genuine writing of the same writer. It must be shown that the resemblance is a result of a more or less skillful imitation and not merely a habitual and characteristic resemblance which naturally appears in a genuine writing. Here, petitioner's uncorroborated testimony failed to demonstrate that, based on the foregoing criteria, the questioned signatures were forgeries.[21]

NOTARIZED DOCUMENTS ENJOY THE PRESUMPTION OF REGULARITY.

Furthermore, the questioned DOAS is notarized. Settled is the rule that a duly notarized contract enjoys the *prima facie* presumption of authenticity and due execution. It is presumed valid, regular, and genuine with the end view of maintaining public confidence in the integrity of notarized documents. In *Libres, et al. v. Sps. Delos Santos and Olba*,[22] this Court said:

> Notarial documents executed with all the legal requisites under the safeguard of a notarial certificate is evidence of a high character. To overcome its recitals, it is incumbent upon the party challenging it to prove his claim with clear, convincing and more than merely preponderant evidence. **A notarial document, guaranteed by public attestation in accordance with the law, must be sustained in full force and effect so long as he who impugns it does not present strong, complete, and conclusive proof of its falsity or nullity on account of some flaws or defects provided by law.** Without that sort of evidence, the presumption of regularity, the evidentiary weight conferred upon such public document with respect to its execution, as well as the statements and the authenticity of the signatures thereon, stand.[23] (Emphasis supplied)

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[21] *Almeda, et al. v. Santos, et al., supra* note 18 at 646.

[22] 577 Phil. 509 (2008).

[23] *Id.* at 520-521 citing *Pan Pacific Industrial Sales Co., Inc. v. Court of Appeals*, G.R. No. 125283, February 10, 2006, 482 SCRA 164, 174;

On its face, the subject DOAS is entitled to full faith and credit, and is deemed to be in full force and effect. To overturn this legal presumption, evidence must be clear, convincing, and more than merely preponderant to establish that there was forgery that gave rise to a spurious contract.[24] Petitioner obviously failed in this respect.

THE ISSUE OF DAMAGES.

Finally, aside from the issue of forgery, petitioner contends that the award of moral and exemplary damages to respondent was inappropriate under the circumstances. There was no proof of respondent's alleged moral suffering, mental anguish, and the like. In addition, the filing of the subject complaint was not malicious to warrant the award of attorney's fees and litigation costs. According to petitioner, no premium should be placed on the right to litigate and not every winning party is entitled to an automatic grant of attorney's fees.[25]

This Court agrees with petitioner.

First, moral damages are compensatory damages for mental pain and suffering or mental anguish resulting from a wrong. The award of moral damages is not punitive in nature but are instead a type of award designed to compensate the claimant for actual injury suffered.[26] And although incapable of pecuniary estimation, moral damages must somehow be proportional to and in approximation of the suffering inflicted. This is so because moral damages are in the category of an award designed to

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Carandang-Collantes v. Capuno, G.R. No. 55373, July 25, 1983, 123 SCRA 652, 664; *Barcenas v. Tomas*, G.R. No. 150321, March 31, 2005, 454 SCRA 593.

[24] *Rodriguez v. Your Own Home Development Corporation (YOHDC)*, G.R. No. 199451, August 15, 2018 and *Gatan, et al. v. Vinarao, et al.*, *supra* note 15 at 611 citing *Ambray v. Tsourous*, G.R. No. 209264, July 5, 2016, 795 SCRA 627, 641-642.

[25] *Rollo*, pp. 37-38.

[26] *Guy v. Tulfo, et al.*, G.R. No. 213023, April 10, 2019.

compensate the claimant for actual injury suffered and not, as stated, just to impose as a penalty on the wrongdoer.[27]

Here, respondent's complaint alleged that due to fraud, bad faith, and illegal manipulation of petitioner, he sustained mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, and mental shock. Yet, other than his bare allegations, respondent failed to present evidence supporting his assertions. Well-settled is the rule that moral damages cannot be awarded, whether in a civil or criminal case, in the absence of proof of physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, or similar injury. As in any award, the award of moral damages must be solidly anchored on a definite showing that respondent actually experienced emotional and mental sufferings. Mere allegations do not suffice as they must be substantiated by clear and convincing proof.[28]

Second, respondent argued in his complaint that in order to avoid a repetition of similar acts, and as a correction for the public good, petitioner should be held liable for exemplary damages.

Exemplary or corrective damages are imposed by way of example or correction for the public good, in addition to moral, temperate, liquidated, or compensatory damages. The award of exemplary damages is allowed by law as a warning to the public and as a deterrent against the repetition of socially deleterious actions.[29] The following are the requisites for an award of exemplary damages, to wit:

First, they may be imposed by way of example or correction **only in addition**, among others, to compensatory damages, and cannot be recovered as a matter of right, their determination depending upon the amount of compensatory damages that may be awarded to the claimant.

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[27] *Id.* citing *Equitable Leasing Corporation v. Suyom*, 437 Phil. 244, 257 (2002).

[28] *Quezon City Government v. Dacara*, 499 Phil. 228, 244 (2005).

[29] *Sps. Timado v. Rural Bank of San Jose, Inc., et al.*, 789 Phil. 453, 459

Second, the claimant must **first establish his right to moral, temperate, liquidated, or compensatory damages.**

And *third*, the wrongful act must be accompanied by bad faith; and the award would be allowed only if the guilty party acted in a wanted, fraudulent, reckless, oppressive, or malevolent manner.[30] (Emphasis supplied)

In light of the Court's disquisition that respondent is not entitled to moral damages, the award of exemplary damages must likewise be deleted for lack of legal basis.

The awards of ₱20,000.00 and ₱10,000.00 as attorney's fees and litigation expenses, respectively, are also deleted for lack of basis. It is well established that the trial court must state the factual, legal, or equitable justification for the award of attorney's fees in the body of the decision. Here, other than the statement that respondent was compelled to secure the services of counsel to defend his rights, the RTC failed to state the factual or legal justification for its award of attorney's fees in the former's favor. As such, it must be deleted.[31]

WHEREFORE, the petition for review on *certiorari* is **PARTIALLY GRANTED**. The Decision dated March 29, 2017 and the Resolution dated September 22, 2017 of the Court of Appeals in CA-G.R. CV No. 03851-MIN are **AFFIRMED**, with the **MODIFICATION** in that the awards of moral damages, exemplary damages, and attorney's fees are **DELETED**. No costs.

SO ORDERED.

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

Leonen, J., on leave.

(2016) citing CIVIL CODE, Article 2229 and *Tan v. OMC Carriers, Inc.*, G.R. No. 190521, January 12, 2011, 639 SCRA 471, 485.

[30] *Id.* citing *Octot v. Ybañez*, G.R. No. L-48643, January 18, 1982, 111 SCRA 79-80.

[31] *Spouses Yulo v. Bank of the Philippine Islands*, G.R. No. 217044, January 16, 2019 citing *Ledda v. Bank of Philippine Islands*, 699 Phil. 273, 283 (2012).

THIRD DIVISION

[G.R. No. 237845. October 16, 2019]

BDO LIFE ASSURANCE, INC. (FORMERLY GENERALI PILIPINAS LIFE ASSURANCE CO., INC.), *petitioner, vs.* **ATTY. EMERSON U. PALAD,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROBABLE CAUSE; THE COURT IS NOT A TRIER OF FACTS; THE DETERMINATION OF PROBABLE CAUSE IS NOT LODGED WITH THE COURT, AND THAT THE LATTER'S DUTY IS ONLY TO ASCERTAIN WHETHER THERE WAS GRAVE ABUSE OF DISCRETION IN THE DETERMINATION OF THE SAME, ON THE PART OF A LOWER TRIBUNAL WITH THE DUTY TO LOOK AT THE FACTS TO SEE IF PROBABLE CAUSE IS PRESENT; EXCEPTIONS, NOT PRESENT.— In filing its Petition for Review on *Certiorari*, the petitioner claims that the CA, as well as the Department of Justice through the finding of the prosecutor in the case, committed grave abuse of discretion by ruling that Palad is not included in the charge sheet for estafa. In essence, the petitioner is asking the Court to take a second look at the facts of the case in order to determine whether or not there is probable cause to indict Palad as a co-conspirator in the fraudulent scheme as allegedly concocted by Alvarado. x x x It must, however, be emphasized that the Court is not a trier of facts. x x x. x x x [T]he determination of probable cause is and will always entail a review of the facts of the case. In *P/C Supt. Pfleider v. People*, it was held that the determination of probable cause is not lodged with the Court, and that the latter's duty is only to ascertain whether there was grave abuse of discretion in the determination of the same, on the part of a lower tribunal with the duty to look at the facts to see if probable cause is present, as is the prosecutor in the case at bar. To wit: Ordinarily, the determination of probable cause is not lodged with this Court. Its duty in an appropriate case is confined to the issue of whether the executive or judicial determination, as the case may be, of probable cause was done without or in excess of

jurisdiction or with grave abuse of discretion amounting to want of jurisdiction. This is consistent with the general rule that criminal prosecutions may not be restrained or stayed by injunction, preliminary or final. There are, however, exceptions to this rule. Among the exceptions are enumerated in *Brocka v. Enrile*. Herein, petitioner has been unable to convince the Court that an exception exists to warrant opening up the proceedings for a factual review. This, especially as the CA's Amended Decision conforms without deviation from the factual findings of the Department of Justice, the latter tribunal, who undoubtedly had the best possible opportunity and jurisdiction to ascertain if there is probable cause to indict Palad.

2. **ID.; ID.; ID.; THE MERE FACT THAT A LESSER SCINTILLA OF PROOF IS NECESSARY IN ORDER TO FIND PROBABLE CAUSE AS TO A SUSPECT'S INVOLVEMENT DOES NOT TAKE AWAY THE FACT THAT THE BURDEN IS ON THE PART OF THE ACCUSER TO SHOW A SUBSTANTIAL PROBABILITY THAT AN ACCUSED'S ACTIONS OR LACK THEREOF CONSTITUTE PARTICIPATION IN THE OFFENSE, AS ANY FINDING OF PROBABLE CAUSE SHOULD STILL BE GROUNDED ON REASONABLE EVIDENCE, AND NOT MERE CONJECTURES OR SPECULATION.—** The Court agrees with the petitioner that a finding of probable cause on the part of the prosecutor should not be equivalent to a finding of guilt beyond reasonable doubt. During a preliminary investigation, the prosecutor only determines whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial. x x x. However, the mere fact that a lesser scintilla of proof is necessary in order to find probable cause as to a suspect's involvement does not take away the fact that the burden is on the part of the accuser to show a substantial probability that an accused's actions or lack thereof constitute participation in the offense. Any finding should still be grounded on reasonable evidence, and not mere conjectures or speculation, which is wanting in this case.

3. **ID.; EVIDENCE; CONSPIRACY; DIRECT PROOF OF CONSPIRACY IS NOT INDISPENSABLE AND THE SAME MAY BE DEDUCED FROM THE MODE, METHOD, AND MANNER THE OFFENSE WAS PERPETRATED, OR INFERRED FROM THE ACTS OF THE ACCUSED**

THEMSELVES, WHEN SUCH ACTS POINT TO A JOINT PURPOSE AND DESIGN, CONCERTED ACTION, AND COMMUNITY OF INTEREST; PROOF OF THE PREVIOUS AGREEMENT AND DECISION TO COMMIT THE CRIME IS NOT ESSENTIAL.— [T]he Court finds that Palad is mistaken in his argument that the lower courts rightfully excluded him from the charge, solely because of his allegation that there was no direct evidence that linked him to the crime committed. Direct proof of conspiracy is not indispensable and the same may be inferred from the acts of the perpetrators. As explained in *Marasigan v. Fuentes, et al.*: Direct proof of conspiracy is rarely found; circumstantial evidence is often resorted to in order to prove its existence. Absent of any direct proof, as in the present case, conspiracy may be deduced from the mode, method, and manner the offense was perpetrated, or inferred from the acts of the accused themselves, when such acts point to a joint purpose and design, concerted action, and community of interest. An accused participates as a conspirator if he or she has performed some overt act as a direct or indirect contribution in the execution of the crime planned to be committed. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime or by exerting moral ascendancy over the other co-conspirators. Stated otherwise, it is not essential that there be proof of the previous agreement and decision to commit the crime; it is sufficient that the malefactors acted in concert pursuant to the same objective.

4. ID.; CRIMINAL PROCEDURE; PROBABLE CAUSE; MERE SPECULATION, ESPECIALLY AS TO THE STATE OF A MIND OF AN ACCUSED, DOES NOT PASS THE STANDARDS SET FOR THE FINDING OF PROBABLE CAUSE, EVEN IF WHAT IS LOOKED FOR IS NOT NECESSARILY PROOF BEYOND REASONABLE DOUBT; NO PROBABLE CAUSE TO INDICT RESPONDENT AS A CO-CONSPIRATOR IN THE FRAUDULENT SCHEME AGAINST PETITIONER.— Conspiracy under the law, for which Palad is being accused as a part of, occurs when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Even with this basic understanding of conspiracy as an indicator of criminal liability, it is the Court's belief that

petitioner was unable to show that Palad acted in concert pursuant to the objective to defraud the company, nor had any knowledge about the scheme, prompting Palad's exclusion from the charge as a co-conspirator. Petitioner in essence anchors its claim of Palad's involvement in the conspiracy on two grounds. First, the petitioner attempts to highlight that Palad's actions during the entrapment operation, before, during, and after, are suspicious enough to warrant a well-founded belief that he was well-aware of the goings-on attendant to the fraud. Second, Palad's identity as Amposta's brother-in-law and status as a lawyer, for petitioner, highlights the unmistakable fact that Palad had knowledge of the scheme despite the latter's averments to the contrary. Both reasons are grounded on hypothesis more than actuality. Mere speculation, especially as to the state of a mind of an accused, does not pass the standards set for the finding of probable cause, even if what is looked for is not necessarily proof beyond reasonable doubt.

5. ID.; EVIDENCE; CONSPIRACY; MERE PRESENCE AT THE SCENE OF THE CRIME AT THE TIME OF ITS COMMISSION, KNOWLEDGE, ACQUIESCENCE OR APPROVAL OF THE ACT, WITHOUT THE COOPERATION AND THE AGREEMENT TO COOPERATE, IS NOT ENOUGH TO ESTABLISH CONSPIRACY, BUT THAT THERE MUST BE INTENTIONAL PARTICIPATION IN THE TRANSACTION WITH A VIEW TO THE FURTHERANCE OF THE COMMON DESIGN AND PURPOSE.— Palad's presence during the entrapment operation does not in itself constitute a shady occurrence that would automatically warrant suspicion. Even if the accused were present and agreed to cooperate with the main perpetrators of the crime, his or her mere presence does not make him or her a party to it, absent any active participation in the furtherance of the scheme's common design or purpose. It is axiomatic that mere knowledge, acquiescence or approval of the act, without the cooperation and the agreement to cooperate, is not enough to establish conspiracy. This is expanded on and bolstered in *Rimando v. People*, where it was succinctly ruled: Mere presence at the scene of the crime at the time of its commission is not, by itself, sufficient to establish conspiracy. To establish conspiracy, evidence of actual cooperation rather than mere cognizance or approval of an illegal act is required. Nevertheless, mere knowledge, acquiescence

or approval of the act, without the cooperation or agreement to cooperate, is not enough to constitute one a party to a conspiracy, but that there must be intentional participation in the transaction with a view to the furtherance of the common design and purpose.

6. ID.; ID.; ID.; MERE RELATION IS NOT ENOUGH TO ATTRIBUTE CRIMINAL RESPONSIBILITY, ESPECIALLY WHEN TAKEN AS THE SOLE FACTOR OR EVEN A PRIMARY ONE.— [P]etitioner is vastly mistaken when it says that Palad's relationship with Amposta is an indicator of his complicity. Suffice it to say, mere relation is not enough to attribute criminal responsibility, especially when taken as the sole factor or even a primary one. At best, it adds to circumstantial proof that would shed light on the motives and attributions of the parties. By itself, however, it would set a dangerous precedent to ascribe even just reasonable link for conspiracy just because the two alleged co-conspirators are related.

7. ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; THE OBJECT OF PRELIMINARY INVESTIGATION IS TO SECURE THE INNOCENT AGAINST HASTY, MALICIOUS, AND OPPRESSIVE PROSECUTIONS, AND TO PROTECT HIM FROM THE OPEN AND PUBLIC ACCUSATION OF A CRIME, FROM THE TROUBLE, EXPENSES AND ANXIETY OF A PUBLIC TRIAL, AND ALSO TO PROTECT THE STATE FROM USELESS AND EXPENSIVE PROSECUTIONS; IT IS INCUMBENT ON THE COURT TO SEGREGATE AND REMOVE THOSE WHO HAVE NO BUSINESS BEING SUSPECTS AS THEIR INVOLVEMENT, IF AT ALL EVEN PRESENT, DOES NOT PASS THE TEST OF REASONABLE RELATION IN THE CONSPIRACY.— [P]etitioner pleading for the Court to include Palad in the charge sheet by opining that any defense he may proffer as to his innocence may be presented in the course of trial, is untenable reasoning. Agreeing with this proposition will do away with the very role and object of preliminary investigation, which is "to secure the innocent against hasty, malicious, and oppressive prosecutions, and to protect him from open and public accusation of crime, from the trouble, expenses and anxiety of a public trial, and also to protect the State from useless and expensive prosecutions." There are practical as well as legal considerations present to warrant exclusion. In this regard, not only will Palad, which in the eyes of the Court

is an innocent bystander unduly caught up in the controversy, be rightfully excluded on account of his apparent non-involvement, so too will the State be spared from exerting its resources persecuting an innocent individual. The parties are currently embroiled in this tangled controversy, where not only Palad is being tagged as a member of the conspiracy, but various other denizens who have their own defenses and justifications as to why they should not be involved. In the Court's power of judicial review, it is incumbent on the Court to ease the burden of the trial court in zeroing on the real culprits, so that the latter may be brought to face the dictates of criminal justice. Part and parcel of that is to likewise segregate and remove those who have no business being suspects as their involvement, if at all even present, does not pass the test of reasonable relation in the conspiracy.

8. ID.; ID.; ID.; EVIDENCE; CONSPIRACY; ABSENT GRAVE ABUSE OF DISCRETION, THE COURT RESPECTS THE FINDINGS OF THE LOWER TRIBUNALS OF LACK OF PROBABLE CAUSE TO INDICT THE RESPONDENT AS A CONSPIRATOR IN THE COMMISSION OF THE CRIME; IN THE ABSENCE OF ANY MOTIVE TO BE COMPLICIT IN THE SCHEME, THE COURT MUST ADHERE TO THE CONSTITUTIONALLY-PROTECTED PRESUMPTION OF INNOCENCE AND REMOVE THE ACCUSED FROM THE CHARGE SHEET. — In the absence of any motive to be complicit in the scheme, the Court must adhere to the constitutionally-protected presumption of innocence and remove Palad from the charge sheet, affirming the findings of both the CA and the Department of Justice. While the Court commiserates with petitioner as regards the fraud perpetuated against it, such ire, however justified and understandable, should not translate in the inclusion of all the names however in reality detached, involved on the sole basis that petitioner feels they are party to the crime, when clear proof on evidence will show their non-involvement. The factual antecedents and the evidence on record behooves the Court to rule in agreement with the lower tribunals whose findings are to be respected in the absence of their arbitrariness. Petitioner was unable to show that grave abuse of discretion peppered those findings, and was only able to voice out its suspicions that Palad was involved, and nothing more. Probable cause, although it requires less than evidence

justifying a conviction, demands more than bare suspicion, and which, among many other reasons as discussed, warrants the dismissal of petitioner's appeal.

APPEARANCES OF COUNSEL

Belo Gozon Elma Parel Asuncion & Lucila for petitioner.
Bello Valdez Caluya & Fernandez for respondent.

D E C I S I O N

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

THE CASE

Challenged before this Court via this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court is the October 2, 2017 Amended Decision[2] of the Court of Appeals (CA), and its February 27, 2018 Resolution.[3] The aforestated amended the CA's prior May 12, 2017 Decision[4] which affirmed with modification the Final Resolution dated December 30, 2010 of the Assistant Prosecutor of Makati City to find probable cause to charge respondent Atty. Emerson U. Palad (Palad) with attempted estafa thru falsification of public documents, as a conspirator.

THE ANTECEDENT FACTS

The antecedents, as reproduced by the CA in its Decision, are culled from the narration of the Assistant City Prosecutor.[5] The issues herein stem from a case for estafa through falsification

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[1] *Rollo*, pp. 433-466.

[2] Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Ramon A. Cruz and Carmelita Salandanan-Maranan, concurring; *id*. at 75-95.

[3] *Id*. at 97-98.

[4] *Id*. at 100-133.

[5] *Id*. at 101.

of documents filed by petitioner BDO Life Assurance (formerly, as Generali Pilipinas Assurance Co., Inc. and Generali Pilipinas Insurance Company, Inc.), through their authorized representatives Jose Maria F. Ignacio and Roland P. Arcadio, against Raynel Thomas V. Alvarado (Alvarado), Genevie B. Gragas (Gragas), Vincent Paul L. Amposta (Amposta), Teodoro M. Olguera (Olguera), Cynthia O. Taniegra (Taniegra), Armel M. Santos (Santos), Imelda B. Neo (Neo), and respondent Palad.[6] Alvarado had already been indicted for attempted estafa through falsification of public documents, and his inclusion for preliminary investigation referred on y to the motor vehicle insurance claim that he made from petitioner.[7]

The records from the National Bureau of Investigation (NBI) show that in May 2010, two Personal Accident Insurance claims on the death of spouses Carlos and Norma Andrada (spouses Andrada) were filed by Alvarado in petitioner's office under the name of Carlos Raynel Lao Andrada, the spouses Andradas' designated beneficiary.[8] The benefit coverage amounts to Php3,000,000.00, plus Php200,000.00 as burial expenses and Php200,000.00 as medical expenses for each of the insured.[9]

To support his claim, Alvarado submitted the following documents: (1) Death Certificate of insured Carlos Andrada; (2) Death Certificate of Norma Andrada; (3) An excerpt from a police blotter dated January 8, 2010 issued by the Philippine National Police, Flora Municipal Police Station, Flora, Apayao; (4) LTO Official Receipt dated March 3, 2009 issued in the name of Carlos D. Andrada for mother vehicle with Plate No. WVW 963; (5) LTO Certificate of Registration dated March 8, 2001 issued in the name of Carlos Andrada for the Ford Expedition with Plate No. WVW 963; and (6) Professional

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[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

Driver's License of Juan Ernesto Magadia Ciso, the alleged driver of the Andradas.[10]

In order to analyze the two insurance claims, petitioner sought the services of an external investigator to check on the veracity of the documents submitted by Alvarado *a.k.a.* Carl Andrada. In the course of the investigation, petitioner discovered that there was another claim filed by the beneficiary-son Carl Raynel Lao Andrada for his Own Damage and Named Personal Accident on the Ford Expedition with Plate No. WVW 963, the insured vehicle, which allegedly sustained damages on December 28, 2009 due to the homicide hold- up of the insured spouses, their driver Juan Ernesto M. Ciso, and bodyguard Mario Ellie Ciso. Such claim was assigned to the Technical Inspection Group (TIG), an independent adjuster, whose President and Chief Executive Officer is Teodoro M. Olguera. In its Evaluation Report dated March 22, 2010, the TIG confirmed the veracity of the incident and recommended to petitioner that the motor vehicle claim be paid. This claim was approved by petitioner, and Alvarado *a.k.a.* Carl Andrada received on March 12, 2010 the proceeds amounting to Php100,000.00.[11]

On the other hand, the two Personal Accident claims of Alvarado *a.k.a.* Carl Andrada were originally assigned to a different adjuster. However, said adjuster requested that the same be assigned to the TIG. Armel Santos, petitioner's Claims Supervisor, then reassigned the claims to the TIG service on Marine Survey and Adjustment Company, an independent claim adjuster, for the usual evaluation and recommendation.[12] The evaluation reports of the adjuster, together with the documents, were considered by Taniegra, who recommended the approval of the claims. Santos and Neo processed the approval.

In a separate investigation conducted by the petitioner, it was discovered that all the documents submitted by Alvarado

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[10] *Id.* at 102.

[11] *Id.*

[12] *Id.* at 103.

to support his personal accident insurance claims and that of the motor vehicle claim were fakes. Petitioner found out that the name "Juan Ernesto M. Ciso" did not exist; no driver's license was ever issued to the spouses Andrada; the LTO Property Division had not issued Plate No. WVW 963, as of June 10, 2010; as per Certificate issued by the NAPOLCOM PNP, Police Regional Office-Cordillera, SPO1 Julio Caballero Yusop was not an organic member of their Office and per available records, no record of incident transpired within their area of responsibility on December 28, 2009; and, the entries in the police blotter did not exist on record.[13]

Alarmed by these findings, petitioner sought the assistance of the Office of the Special Task Force of the NBI for investigation and the arrest of Alvarado *a.k.a.* Carl Andrada once cause for doing so was discovered. Upon verification from the National Statistics Office, it was found that while there indeed was a Carl Raynel Andrada, based on his birth record on file, there are no death records of the spouses Andrada.[14]

As a result of these findings, an entrapment operation was set and implemented on July 2, 2010, at around 2 o'clock in the morning inside petitioner's office in Makati. During the operation, Alvarado, Gragas, who represented herself as Alvarado's aunt, and Palad, the respondent herein, arrived.[15] Renato A. Vergel De Dios (Vergel De Dios), petitioner's President, inquired as to the development regarding the police investigation of the incident involving the spouses Andrada. Alvarado and Gragas said that they had not received any word from the police. Palad offered to Vergel De Dios a copy of the Police Report which was originally submitted by Alvarado.

When asked for identification documents, Palad presented his identification card issue by the Integrated Bar of the Philippines (IBP), while Gragas failed to show any. Nevertheless,

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[13] *Id*.

[14] *Id*.

[15] *Id*.

they all signed the check voucher and release claim for the payments of the insurance benefit worth almost Php6,240,000.00.[16] When the two marked Banco De Oro checks in the amount of Php3,120,000.00 each were tendered to and received by Alvarado, a pre-arranged signal was given to the NBI operatives who, subsequently, arrested the trio.[17]

It was then discovered that claimant Carl Andrada's real name was Raynel Thomas Alvarado, while "Melanie Andrada," who pretended to be the claimant's aunt, was actually found to be Genevie Gragas *y* Bartolome.[18]

During questioning, Alvarado and Gragas pointed to a certain Amposta, who happened to be Palad's brother-in-law, as the mastermind and financier of the *modus operandi* wherein insurance companies were defrauded by using falsified and fictitious documents.[19]

The Proceedings at the Prosecutor Level

After poring over the affidavits adduced by the parties implicated in the averred insurance fraud, the assistant city prosecutor found probable cause only against Alvarado, who pretended to be policy beneficiary Carl Andrada, and Gragas, who presented herself as "Carl's" aunt. The prosecutor ruled that there was no proof that the other named respondents therein dealt and cooperated with Alvarado and Gragas to such a degree that they could be branded conspirators to the crime.[20]

As to the other named individuals, it was determined that Neo, Santos, and Taniegra only performed their duties in processing the fraudulent claims; that Olguera, being the President of the TIG and who was requested by Alvarado to survey the

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[16] *Id*.

[17] *Id.* at 104.

[18] *Id*.

[19] *Id.* at 105.

[20] *Id*.

factual basis for the Andrada claims, could not be expected to personally conduct the investigations regarding the homicide and hold-up that triggered petitioner's obligation to pay such claims; that Amposta merely intended to discount the Generali checks that Alvarado and Gragas would have received pursuant to an innocent arrangement he reached with Gragas some months prior; and that Palad merely accompanied Alvarado and Gragas to receive the payment, upon request of the latter.[21]

The dispositive portion of the prosecutor's Final Resolution reflects said findings, to wit:

> WHEREFORE, premises considered, it is hereby recommended that Rayne Thomas Alvarado y Villas a.k.a. Carl Raynel Lao Andrada and Genevie Gragas y Bartolome a.k.a. Melanie Andrada, be indicted for violation of THE REVISED PENAL CODE, Art. 315, par. 2(a) and the attached Information be approved for filing in court.
>
> Further, it is recommended that Genevie Gragas y Bartolome be indicted as conspirator of Raynel Thomas y Villas in the case of attempted estafa thru falsification of public documents.
>
> The complaint against Atty. Emerson U. Palad, Vincent Paul L. Amposta, Teodoro M. Olguera, Cynthia O. Taniegra, Armel M. Santos, and Imelda B. Neo is recommended to be, as upon approval, it is hereby dismissed for insufficiency of evidence.[22]

Petitioner, thus, filed a Petition for Review with the Department of Justice, which denied the same through a Resolution dated May 16, 2015.[23]

The Proceedings with the Appellate Court

On appeal with the CA, the petitioner alleged that the Department of Justice committed grave abuse of discretion amounting to lack and/or excess of jurisdiction in issuing the assailed Resolution, which dismissed its petition for review of the Resolution of the City Prosecutor of Makati insofar as it

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[21] *Id*.

[22] *Id*. at 106.

[23] *Id*.

dismissed the complaint for attempted estafa through the falsification of public documents against Santos, Olguera, Amposta, and Palad.[24]

Initially, the CA found merit in the appeal, and reversed the Final Resolution. In its Decision dated May 12, 2017, the CA ruled that the Prosecutor General committed grave abuse of discretion for having affirmed a stricter standard to determine the existence of probable cause,[25] the standard being "clear and convincing evidence" and proof beyond reasonable doubt. Citing jurisprudence as basis,[26] the CA emphasized that the test in finding probable cause is reasonableness and believability, *i.e.*, that an average person can engender a well-founded belief that the accused has committed the crime alleged, and in affirming a different standard, the Prosecutor General has not acted in accordance with law, had acted arbitrarily, and had, thus, acted with grave abuse of discretion.

The CA found upon its own independent review that there was probable cause to charge with the same felony as that of Alvarado and Gragas and as conspirators of the same, Amposta, Olguera, Taniegra, and herein respondent Palad. The dispositive portion of the CA's initial Decision reads, to wit:

> **WHEREFORE**, premises considered, the instant Petition for Certiorari is **GRANTED**. The assailed Resolution dated 16 May 2015 of the Prosecutor General is hereby declared **NULL and VOID** for having been issued with grave abuse of discretion.
>
> Pursuant to this Decision, the Final Resolution of the assistant city prosecutor of Makati City dated 30 December 2010 is **AFFIRMED with MODIFICATION**, to the effect that:
>
> (a) We **affirm** that there is probable cause to charge Raynel Thomas Alvarado y Villas and Genevie Gragas y Bartolome with attempted estafa thru falsification of public documents.

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[24] *Id*. at 107.

[25] *Id*. at 119.

[26] *Id*. at 121, citing *Unilever Philippines v. Tan*, 725 Phil. 486, 497-498 (2014).

We also affirm the absence of probable cause to indict former respondent Imelda Neo and respondent Armel Santos, and

(b) We **modify** the Final Resolution to find probable cause to charge with the same felony and as conspirators of Alvarado and Gragas the following:

(1) Respondent Vincent Paul Amposta;

(2) Respondent Teodoro M. Olguera;

(3) Respondent Atty. Emerson U. Palad; and

(4) Former respondent Cynthia O. Taniegra.

SO ORDERED.[27]

Palad and Vincent Amposta filed separate Motions for Reconsideration of the above ruling of the CA. On October 2, 2017, the CA promulgated an Amended Decision, which reversed its earlier ruling charging Palad with probable cause. The dispositive portion of the same reads, to wit:

WHEREFORE, premises considered, the Court resolves the following:

1) The Motion for Reconsideration filed by respondent Vincent Paul L. Amposta is **DENIED** for lack of merit;

2) The Motion for Reconsideration filed by respondent Atty. Emerson U. Palad is hereby **GRANTED**;

3) This Court's 12 May 2017 Decision is **AMENDED** as follows:

"**WHEREFORE**, premises considered, the instant Petition for Certiorari is **PARTIALLY GRANTED** in that the Office of the City Prosecutor of Makati City is hereby **ORDERED** to indict for attempted estafa thru falsification of public documents respondents **Vincent Paul L. Amposta** and **Teodoro M. Olguera** in relation to NPS No. XV-05-INQ-10G-00275. The rest of the Final Resolution rendered by the Office of the City Prosecutor of Makati City dated 30 December 2010 is **AFFIRMED**."

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[27] *Id*. at 132.

SO ORDERED.[28]

In amending its earlier Decision, the CA found merit in Palad's arguments that no probable cause exists to include him in the charge sheet.[29] The CA found that a nuanced look at the records of the case will show that Palad had no participation in the insurance fraud, as he was only performing his duty as a lawyer by accompanying his clients in the recovery of the insurance proceeds. The CA reiterated that the insurance checks were already ready for collection when Palad came into the scene, and that petitioners could not be defrauded any further with or without his presence.[30] Palad merely submitted the police report supplied by his clients and that was already on file with petitioner, which was an action done in the ordinary course of business, typical for any practicing private lawyer.

The CA, likewise, held that Palad's voluntary submission of his IBP card reveals that he did not know that his clients were not who they represented themselves to be, as no reasonable and prudent person much less a lawyer would intentionally present his true identification card if he knew his clients are in the process of committing fraud.[31]

All told, the CA emphasized that conspiracy cannot be established by mere inferences or conjectures, and that petitioner failed to prove that Palad performed an overt act in pursuance or furtherance of the alleged complicity, so as to convince the investigating prosecutor that there is probable cause that Palad conspired with the others to commit the crime.[32]

Petitioner's Motion for Reconsideration was denied by the CA in its February 27, 2018 Resolution. Hence, this Petition.

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[28] *Id*. at 94.

[29] *Id*. at 89.

[30] *Id*. at 90.

[31] *Id*.

[32] *Id*. at 91.

THE ISSUE IN THE CASE AND THE ARGUMENTS OF THE PARTIES

The issue being brought for review is whether or not the Court of Appeals erred in amending its prior Decision and finding that there was no probable cause to indict Palad for the crime of attempted estafa through falsification, as a conspirator.[33]

In its Petition for Review, petitioner posits that Palad was not a mere innocent participant accompanying his clients, but a willing co-conspirator with his brother-in-law, Amposta, and whose presence and cooperation was indispensable to consummate the fraudulent act and ensure the receipt of the insurance proceeds.[34] Petitioner alleges that prior to the release of the proceeds, and during the entrapment operation, its president Vergel De Dios did not blindly release the insurance proceeds to Alvarado and Gragas. In fact, Vergel De Dios asked verification questions which were addressed not by the two, but by Palad. The latter was also an active participant in procuring the proceeds, while Alvarado and Gragas passively observed him perform his part in the conspiracy.[35]

Thus, petitioner argues that the presence of Palad was necessary and indispensable in the masquerade of fraud created by Alvarado and Gragas in order to fortify their story and to inspire confidence that the claims were valid and legal.[36] It further emphasized that any prudent lawyer would not immediately accommodate strangers and represent them in a claim involving more than six million pesos without even the knowledge or proof of who they are or their identities.[37]

Also, the fact that Palad's brother-in-law, Amposta, had a criminal case filed against him in other courts for estafa through falsification of public documents, in the mind of the petitioner,

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[33] *Id*. at 447-448.

[34] *Id*. at 448.

[35] *Id*. at 449.

[36] *Id*. at 450.

[37] *Id*. at 450.

should have made Palad cautious in accepting referral of clients for lawyering especially those involving insurance fraud claims.[38]

For petitioner, Palad's relation to Amposta is not merely that of a mere client but that of a family member upon whom he reposed trust and confidence, which meant that there is an inescapable inference that Palad was aware of the fraudulent scheme and decided to take part in the concerted act.[39] Petitioner cited the case of *People v. Balasa*[40] wherein it was held that if the indispensable act is performed by one who is related to the co-conspirators, it is not a far-fetched assumption that he or she is aware of the fraudulent scheme. This applies in the case when Palad accompanied Alvarado and Gragas. Palad's self-serving allegation of denial could not justify his actual presence at the time of the entrapment operation or overturn the finding of probable cause against him.[41]

In support, petitioner stressed the doctrine that the function of a preliminary investigation is merely to determine whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. The venue wherein Palad could present his defense is before the court during a full-blown trial.[42] For petitioner, Palad's self-serving allegations denying any knowledge or participation in the offense being charged without showing convincing evidence in support thereof simply cannot support the CA's Amended Decision recalling the earlier order of indictment against him.

On the other hand, Palad argues that the CA did not commit grave abuse of discretion in amending its prior Decision and, subsequently, dismissing the case against him as the pieces of evidence presented by petitioner were insufficient to establish

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[38] *Id*. at 451-452.

[39] *Id*. at 452.

[40] *Id*. at 453, citing 356 Phil. 362, 391 (1998).

[41] *Id*. at 454.

[42] *Id*. at 455.

probable cause to indict Palad.[43] This was a fact confirmed by two administrative bodies, both of which possess the expertise to determine the existence of probable cause, and whose findings must be accorded with great weight and respect.[44]

Aside from the procedural considerations in his favor, Palad likewise argues that he is not a co-conspirator in the crime of estafa through falsification of public documents. His mere presence during the entrapment operation is not enough to hold him as a co-conspirator, as it must be first shown that he actively participated in the commission of the crime charged.[45] Contrary to its statement, petitioner failed to present clear and convincing evidence that prior to the commission of the crime, Palad previously met with his co-conspirator and, subsequently, agreed to the commission of the offense. Petitioner merely inferred that there existed a conspiracy between Palad and the other respondents from the sole fact that Palad is the brother-in-law of the alleged mastermind, who is Amposta.[46]

Palad maintains that the acts petitioner proved that what he did are not directly related to the elements[47] of the crime of estafa through the falsification of a public document, such acts which include his presence during the tendering of the check, his presentation of his identification card, and his answering of questions posited to him by Vergel De Dios. In order to be considered a conspirator, Palad argues that these acts should have first, a direct and causal connection with the crime or any of the elements thereof, and second, the act should show an unequivocal intent to commit the crime for which he is charged as conspirator.[48] In this case, not only are such acts not related in the slightest to the crime alleged, they, when taken in regular

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[43] *Id*. at 837.

[44] *Id*. at 840.

[45] *Id*. at 843.

[46] *Id*. at 845.

[47] *Id*. at 847-488.

[48] *Id*. at 486.

context, are done in Palad's capacity as a lawyer and in routine fidelity to his client.

THE COURT'S RULING

The Petition is bereft of merit.

The determination of probable cause is a question of fact that is not a proper subject of the Court's review.

In filing its Petition for Review on *Certiorari*, the petitioner claims that the CA, as well as the Department of Justice through the finding of the prosecutor in the case, committed grave abuse of discretion by ruling that Palad is not included in the charge sheet for estafa. In essence, the petitioner is asking the Court to take a second look at the facts of the case in order to determine whether or not there is probable cause to indict Palad as a co-conspirator in the fraudulent scheme as allegedly concocted by Alvarado.

It must, however, be emphasized that the Court is not a trier of facts. In *Gatan v. Vinarao*,[49] citing *Miro v. Vda. de Erederos*,[50] the Court expanded on the parameters of its judicial review power under a Rule 45 petition, to wit:

a. Rule 45 petition is limited to questions of law

Before proceeding to the merits of the case, this Court deems it necessary to emphasize that a petition for review under Rule 45 is limited only to questions of law. Factual questions are not the proper subject of an appeal by *certiorari*. This Court will not review facts, as it is not our function to analyze or weigh all over again evidence already considered in the proceedings below. As held in *Diokno v. Hon. Cacdac*, a reexamination of factual findings is outside the province of a petition for review on *certiorari*, to wit:

> It is aphoristic that a re-examination of factual findings cannot be done through a petition for review on *certiorari* under Rule 45 of the Rules of Court because as earlier stated, this

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[49] G.R. No. 205912, October 18, 2017, 842 SCRA 602, 610-611.

[50] 721 Phil. 772, 785-787 (2013).

> Court is not a trier of facts[.] x x x. The Supreme Court is not duty-bound to analyze and weigh again the evidence considered in the proceedings below. This is already outside the province of the instant Petition for *Certiorari*.

There is a question of law when the doubt or difference arises as to what the law is on a certain set of facts; a question of fact, on the other hand, exists when the doubt or difference arises as to the truth or falsehood of the alleged facts. Unless the case falls under any of the recognized exceptions, we are limited solely to the review of legal questions.

b. Rule 45 petition is limited to errors of the appellate court

Furthermore, the "errors" which we may review in a petition for review on *certiorari* are those of the CA, and not directly those of the trial court or the quasi-judicial agency, tribunal, or officer which rendered the decision in the first instance. It is imperative that we refrain from conducting further scrutiny of the findings of fact made by trial courts, lest we convert this Court into a trier of facts. As held in *Reman Recio v. Heirs of the Spouses Agueda and Maria Altamirano, etc., et al.*, our review is limited only to the errors of law committed by the appellate court, to wit:

> Under Rule 45 of the Rules of Court, jurisdiction is generally limited to the review of errors of law committed by the appellate court. The Supreme Court is not obliged to review all over again the evidence which the parties adduced in the court *a quo*. Of course, the general rule admits of exceptions, such as where the factual findings of the CA and the trial court are conflicting or contradictory. (Citations omitted.)

All the more does the aforementioned apply in this particular instance because the determination of probable cause is and will always entail a review of the facts of the case.[51] In *P/C Supt. Pfleider v. People*,[52] it was held that the determination of probable cause is not lodged with the Court, and that the latter's duty is only to ascertain whether there was grave abuse of discretion in the determination of the same, on the part of a

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[51] *P/C Supt. Pfleider v. People*, 811 Phil. 151, 159 (2017).

[52] *Id*.

lower tribunal with the duty to look at the facts to see if probable cause is present, as is the prosecutor in the case at bar. To wit:

> Ordinarily, the determination of probable cause is not lodged with this Court. Its duty in an appropriate case is confined to the issue of whether the executive or judicial determination, as the case may be, of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction. This is consistent with the general rule that criminal prosecutions may not be restrained or stayed by injunction, preliminary or final. There are, however, exceptions to this rule. Among the exceptions are enumerated in *Brocka v. Enrile*.[53]

Herein, petitioner has been unable to convince the Court that an exception exists to warrant opening up the proceedings for a factual review. This, especially as the CA's Amended Decision conforms without deviation from the factual findings of the Department of Justice, the latter tribunal, who undoubtedly had the best possible opportunity and jurisdiction to ascertain if there is probable cause to indict Palad.

Even without the procedural bar, as well as the respect afforded to the factual findings of the lower tribunals, the Court's independent review of the case convinces the Court that petitioner's appeal, on its merits, has no validity.

Probable cause is lacking to find that Palad is a co-conspirator in the fraudulent scheme against Petitioner.

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[53] *Id*.; The cited case of *Brocka v. Enrile* lists the following as exceptions to the general rule: 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.

The Court agrees with the petitioner that a finding of probable cause on the part of the prosecutor should not be equivalent to a finding of guilt beyond reasonable doubt. During a preliminary investigation, the prosecutor only determines whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.[54]

Likewise, the Court finds that Palad is mistaken in his argument that the lower courts rightfully excluded him from the charge, solely because of his allegation that there was no direct evidence that linked him to the crime committed. Direct proof of conspiracy is not indispensable and the same may be inferred from the acts of the perpetrators. As explained in *Marasigan v. Fuentes, et al.*:[55]

> Direct proof of conspiracy is rarely found; circumstantial evidence is often resorted to in order to prove its existence. Absent of any direct proof, as in the present case, conspiracy may be deduced from the mode, method, and manner the offense was perpetrated, or inferred from the acts of the accused themselves, when such acts point to a joint purpose and design, concerted action, and community of interest. An accused participates as a conspirator if he or she has performed some overt act as a direct or indirect contribution in the execution of the crime planned to be committed. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime; or by exerting moral ascendancy over the other co-conspirators. Stated otherwise, it is not essential that there be proof of the previous agreement and decision to commit the crime; it is sufficient that the malefactors acted in concert pursuant to the same objective.[56]

However, the mere fact that a lesser scintilla of proof is necessary in order to find probable cause as to a suspect's involvement does not take away the fact that the burden is on

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[54] *Sec. De Lima, et al. v. Reyes*, 776 Phil. 623, 636 (2016).

[55] 776 Phil. 574 (2016).

[56] *Id.* at 588.

the part of the accuser to show a substantial probability that an accused's actions or lack thereof constitute participation in the offense. Any finding should still be grounded on reasonable evidence, and not mere conjectures or speculation, which is wanting in this case.

Conspiracy under the law, for which Palad is being accused as a part of, occurs when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[57] Even with this basic understanding of conspiracy as an indicator of criminal liability, it is the Court's belief that petitioner was unable to show that Palad acted in concert pursuant to the objective to defraud the company, nor had any knowledge about the scheme, prompting Palad's exclusion from the charge as a co-conspirator.

Petitioner in essence anchors its claim of Palad's involvement in the conspiracy on two grounds. First, the petitioner attempts to highlight that Palad's actions during the entrapment operation, before, during, and after, are suspicious enough to warrant a well-founded belief that he was well-aware of the goings-on attendant to the fraud. Second, Palad's identity as Amposta's brother-in-law and status as a lawyer, for petitioner, highlights the unmistakable fact that Palad had knowledge of the scheme despite the latter's averments to the contrary.

Both reasons are grounded on hypothesis more than actuality. Mere speculation, especially as to the state of a mind of an accused, does not pass the standards set for the finding of probable cause, even if what is looked for is not necessarily proof beyond reasonable doubt.

First, Palad's presence during the entrapment operation does not in itself constitute a shady occurrence that would automatically warrant suspicion. Even if the accused were present and agreed to cooperate with the main perpetrators of the crime, his or her mere presence does not make him or her a party to it, absent any active participation in the furtherance of the

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[57] Revised Penal Code, Article 8.

scheme's common design or purpose.[58] It is axiomatic that mere knowledge, acquiescence or approval of the act, without the cooperation and the agreement to cooperate, is not enough to establish conspiracy.[59] This is expanded on and bolstered in *Rimando v. People*,[60] where it was succinctly ruled:

> Mere presence at the scene of the crime at the time of its commission is not, by itself, sufficient to establish conspiracy. To establish conspiracy, evidence of actual cooperation rather than mere cognizance or approval of an illegal act is required. Nevertheless, mere knowledge, acquiescence or approval of the act, without the cooperation or agreement to cooperate, is not enough to constitute one a party to a conspiracy, but that there must be intentional participation in the transaction with a view to the furtherance of the common design and purpose.
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> The fact that petitioner accompanied her husband at the restaurant and allowed her husband to place the money inside her bag would not be sufficient to justify the conclusion that conspiracy existed. In order to hold an accused liable as co-principal by reason of conspiracy, he or she must be shown to have performed an overt act in pursuance or in furtherance of conspiracy.
>
> This Court has held that an overt or external act —
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> > is defined as some physical activity or deed, indicating the intention to commit a particular crime, more than a mere planning or preparation, which if carried out to its complete termination following its natural course, without being frustrated by external obstacles nor by the spontaneous desistance of the perpetrator, will logically and necessarily ripen into a concrete offense. The *raison d'etre* for the law requiring a direct overt act is that, in a majority of cases, the conduct of the accused consisting merely of acts of preparation has never ceased to be equivocal; and this is necessarily so, irrespective of his declared intent. It is that quality of being equivocal that must be lacking before the act becomes one which may be said to be a commencement

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[58] *People v. Jesalva*, 811 Phil. 299, 311 (2017).

[59] *Id*.

[60] G.R. No. 229701, November 29, 2017, 847 SCRA 339.

> of the commission of the crime, or an overt act or before any fragment of the crime itself has been committed, and this is so for the reason that so long as the equivocal quality remains, no one can say with certainty what the intent of the accused is. It is necessary that the overt act should have been the ultimate step towards the consummation of the design. It is sufficient if it was the first or some subsequent step in a direct movement towards the commission of the offense after the preparations are made. The act done need not constitute the last proximate one for completion. It is necessary, however, that the attempt must have a causal relation to the intended crime. In the words of *Viada*, the overt acts must have an immediate and necessary relation to the offense.[61]

Petitioner is mistaken by alleging that, by sole virtue of Palad being Alvarado's chosen counsel, this without a doubt would mean that the former is well aware of the circumstances of the fraud and that his accompanying Alvarado and Gragas was designed to perpetrate the same. This is an incorrect and prejudicial assumption, considering the fact that Palad was merely asked last-minute to join a companion of his brother-in-law, Amposta. Palad's act of accompanying Alvarado and Gragas to receive the checks was purely a routine action on the part of an attorney as requested. His giving of an identification card was further an indicator that he was completely out of the loop, particularly because his companions were using aliases and not their real names. By agreeing to be his client's counsel, a lawyer represents that he or she will exercise ordinary diligence or that reasonable degree of care and skill having reference to the character of the business he undertakes to do, to protect his client's interests and take all steps or do all acts necessary therefor, and his client may reasonably expect him to discharge his obligations diligently.[62] In this case, the ordinary diligence required from the lawyer consisted of Palad going with his client, or at least the referred-to companion of this client, and

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[61] *Id*. at 353-355.

[62] *Suarez v. Court of Appeals*, 292-A Phil. 386, 391-392 (1993), citing *Legal Ethics*, Ruben E. Agpalo, 4th ed., pp. 157, 169, 175.

delivering a document police report which was originally submitted by Alvarado.

While there may have been lack of absolute diligence, there was no legal nor even ethical compulsion for Palad to ascertain that the police report was of legitimate import, a police report which was most likely valid on its face as with the other documents submitted by Alvarado to petitioner, documents which, in fact, needed the scrutiny of third party analyzers before they could be tagged as fakes. It must also be recalled that the police report had already been existing even without Palad's offering or the same.

If one were to put one's self in Palad's moccasins, his actions were not out of the ordinary for a lawyer. It is incorrect for petitioner to state that the crime could not have been consummated without Palad's presence. For one thing, as petitioner itself acknowledges, the checks were already prepared for tendering as a result of the entrapment operation. Even if Palad were to be absent, the giving of the checks for the insurance proceedings would have pushed through. It is self-serving of petitioner to assert that Palad's presence gave an *imprimatur*, as well as a sense of validity to the nefarious transaction, as by the very nature of the operation, the checks would have been given, regardless. There is simply no masquerade of fraud as petitioner argues, because the fraud was already perpetuated, among other reasons.

Second, petitioner is vastly mistaken when it says that Palad's relationship with Amposta is an indicator of his complicity. Suffice it to say, mere relation is not enough to attribute criminal responsibility, especially when taken as the sole factor or even a primary one. At best, it adds to circumstantial proof that would shed light on the motives and attributions of the parties. By itself, however, it would set a dangerous precedent to ascribe even just reasonable link for conspiracy just because the two alleged co-conspirators are related.

Tangentially, *People v. Balasa*, which petitioner cites to support its claim that Palad's relation to the alleged mastermind, Amposta, is an indicator that he was aware of the scheme, is inapplicable to the case. In the *Balasa* case, the Court

categorically stated that the accused therein was not implicated as a co-conspirator solely because he was the father of the principal proponent of the perpetrated fraud, but due to other convincing proofs such as being an actual paymaster of the fraud, funding the latter. Even if one were to consider solely the question of relationship, the fact that the accused in *People v. Balasa* was the father and husband to three of the organizers is a more convincing proof of knowledge of the scheme, especially compared to the connection between Palad and Amposta, which is not even a blood relationship. Amposta is merely Palad's brother-in-law, and petitioner was unable to adduce further evidence establishing more than a theoretical link.

Third, petitioner pleading for the Court to include Palad in the charge sheet by opining that any defense he may proffer as to his innocence may be presented in the course of trial, is untenable reasoning. Agreeing with this proposition will do away with the very role and object of preliminary investigation, which is "to secure the innocent against hasty, malicious, and oppressive prosecutions, and to protect him from open and public accusation of crime, from the trouble, expenses and anxiety of a public trial, and also to protect the State from useless and expensive prosecutions."[63]

There are practical as well as legal considerations present to warrant exclusion. In this regard, not only will Palad, which in the eyes of the Court is an innocent bystander unduly caught up in the controversy, be rightfully excluded on account of his apparent non-involvement, so too will the State be spared from exerting its resources persecuting an innocent individual. The parties are currently embroiled in this tangled controversy, where not only Palad is being tagged as a member of the conspiracy, but various other denizens who have their own defenses and justifications as to why they should not be involved. In the Court's power of judicial review, it is incumbent on the Court to ease the burden of the trial court in zeroing on the real culprits, so that the latter may be brought to face the dictates of criminal justice. Part and parcel of that is to likewise segregate and

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[63] *Callo-Claridad v. Esteban, et al.*, 707 Phil. 172, 192-193 (2013).

remove those who have no business being suspects as their involvement, if at all even present, does not pass the test of reasonable relation in the conspiracy.

In conclusion, accusing Palad of being an active participant in the entire scheme is simply spurious. He was only present during the receiving of the fraudulent proceeds, and not during the steady progression of the falsification and fraud. He was merely asked to accompany Alvarado and Gragas for reasons even petitioner was not able to reasonably show were suspicious. This is a classic case of an innocent individual being in the wrong place, at the wrong time. Palad's decision to agree to go with Alvarado and Gragas should not prejudice his life, liberty, security, and peace of mind. While it may have not been the most diligent decision, it is not a criminal one which would place criminal liability on one who does not deserve it.

In the absence of any motive to be complicit in the scheme, the Court must adhere to the constitutionally-protected presumption of innocence and remove Palad from the charge sheet, affirming the findings of both the CA and the Department of Justice. While the Court commiserates with petitioner as regards the fraud perpetuated against it, such ire, however justified and understandable, should not translate in the inclusion of all the names however in reality detached, involved on the sole basis that petitioner feels they are party to the crime, when clear proof on evidence will show their non-involvement. The factual antecedents and the evidence on record behooves the Court to rule in agreement with the lower tribunals whose findings are to be respected in the absence of their arbitrariness. Petitioner was unable to show that grave abuse of discretion peppered those findings, and was only able to voice out its suspicions that Palad was involved, and nothing more. Probable cause, although it requires less than evidence justifying a conviction, demands more than bare suspicion,[64] and which, among many other reasons as discussed, warrants the dismissal of petitioner's appeal.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. The Amended Decision of

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[64] *Id.* at 185.

the Court of Appeals, and its February 27, 2018 Resolution are hereby **AFFIRMED**.

SO ORDERED.

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

Leonen, J., on wellness leave.

THIRD DIVISION

[G.R. No. 239052. October 16, 2019]

APOLINARIO Z. ZONIO, JR., *petitioner, vs.* **88 ACES MARITIME SERVICES, INC., KHALIFA A. ALGOSAIBI DIVING AND MARINE SERVICES CO., and JANET A. JOCSON,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE SUPREME COURT IS NOT A TRIER OF FACTS; THUS, ITS JURISDICTION IS LIMITED ONLY TO REVIEWING ERRORS OF LAW, EXCEPT WHERE THE FINDINGS OF FACT OF THE QUASI-JUDICIAL BODIES AND THE APPELLATE COURT ARE CONTRADICTORY. — [I]t is to be emphasized that this Court is not a trier of facts; thus, its jurisdiction is limited only to reviewing errors of law. The rule, however, admits of certain exceptions, one of which is where the findings of fact of the quasi-judicial bodies and the appellate court are contradictory, such as the instant case. Thus, this Court is constrained to review and resolve the factual issue in order to settle the controversy.

2. LABOR AND SOCIAL LEGISLATION; SEAFARERS; 2000 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA) STANDARD EMPLOYMENT CONTRACT;

DISABILITY BENEFITS; AN ILLNESS THAT IS NOT LISTED AS AN OCCUPATIONAL DISEASE IS DISPUTABLY PRESUMED AS WORK-RELATED, AND THE EMPLOYER HAS THE BURDEN TO PRESENT EVIDENCE TO OVERCOME THIS *PRIMA FACIE* CASE OF WORK-RELATEDNESS.— The 2000 POEA-SEC provides that any sickness resulting in disability because of an occupational disease listed under Section 32(A) of this Contract is deemed to be work-related, provided the conditions set therein are satisfied. Section 20(B)(4) of the 2000 POEA-SEC, on the other hand, declares that if the illness, such as diabetes mellitus, is not listed as an occupational disease under Section 32(A), the ailment is disputably presumed as work-related. The effect of the legal presumption in favor of the seafarer is to create a burden on the part of the employer to present evidence to overcome the *prima facie* case of work-relatedness. Absent any evidence from the employer to defeat the legal presumption, the *prima facie* case of work-relatedness prevails.

3. **ID.; ID.; ID.; ID.; ID.; THE FAILURE OF THE EMPLOYER TO PRESENT ANY EVIDENCE TO DEFEAT THE PRESUMPTION OF WORK-RELATEDNESS OF THE SEAFARER'S *DIABETES MELLITUS,* THE *PRIMA FACIE* CASE THAT IT IS WORK-RELATED PREVAILS.—** While the illness is not listed as one of the occupational diseases under Section 32(A) of the POEA-SEC, the ailment is presumed work-related under Section 20(B)(4) of the contract. Respondents are duty bound to overcome this presumption. However, other than their bare allegation, respondents did not present a scintilla of proof to establish the lack of casual connection between Apolinario's disease and his employment as a seafarer. Had respondents granted Apolinario's request to undergo a post-employment medical check-up, they could have presented a medical finding to contradict the presumption of work-relatedness of Apolinario's illness. The post-employment medical check-up could have been the proper basis to determine the seafarer's illness, whether it was work-related, or its specific grading of disability. Having failed to present any evidence to defeat the presumption of work-relatedness of Apolinario's diabetes mellitus, the *prima facie* case that it is work-related prevails.

4. **ID.; ID.; ID.; ID.; ID.; THE LEGAL PRESUMPTION IS ONLY LIMITED TO THE "WORK-RELATEDNESS" OF AN ILLNESS**

AND DOES NOT COVER AND EXTEND TO "COMPENSABILITY"; "WORK-RELATEDNESS MERELY RELATES TO THE ASSUMPTION THAT THE SEAFARER'S ILLNESS, ALBEIT NOT LISTED AS AN OCCUPATIONAL DISEASE, MAY HAVE BEEN CONTRACTED DURING AND IN CONNECTION WITH ONE'S WORK, WHILE "COMPENSABILITY" PERTAINS TO THE ENTITLEMENT TO RECEIVE COMPENSATION AND BENEFITS UPON A SHOWING THAT A SEAFARER'S WORK CONDITIONS CAUSED OR AT LEAST INCREASED THE RISK OF CONTRACTING THE DISEASE.–– [T]he presumption provided under Section 20(B)(4) is only limited to the "work-relatedness" of an illness. It does not cover and extend to compensability. In this sense, there exists a fine line between the work-relatedness of an illness and the matter of compensability. The former concept merely relates to the assumption that the seafarer's illness, albeit not listed as an occupational disease, may have been contracted during and in connection with one's work, whereas compensability pertains to the entitlement to receive compensation and benefits upon a showing that a seafarer's work conditions caused or at least increased the risk of contracting the disease.

5. ID.; ID.; ID.; ID.; THE SEAFARER IS ENTITLED TO RECEIVE DISABILITY COMPENSATION WHERE THE EMPLOYER FAILED TO ADDUCE ANY CONTRARY MEDICAL FINDINGS FROM THE COMPANY-DESIGNATED PHYSICIAN TO SHOW THAT THE SEAFARER'S ILLNESS WAS NOT CAUSED OR AGGRAVATED BY HIS WORKING CONDITIONS ON BOARD THE VESSEL.— [R]espondents herein failed to adduce any contrary medical findings from the company-designated physician to show that Apolinario's illness was not caused or aggravated by his working conditions on board the vessel. There was also no showing that Apolinario is predisposed to the illness by reason of genetics, obesity or old age. Such being the case, this Court consider that the stress and strains he was exposed to on board contributed, even to a small degree, to the development of his disease. Inasmuch as, compensability is the entitlement to receive disability compensation upon a showing that a seafarer's work conditions caused or at least increased the risk of contracting the disease, We find Apolinario's disease as compensable at bar.

6. ID.; ID.; ID.; ID.; REPORTORIAL REQUIREMENT; THE FAILURE OF THE SEAFARER TO SUBMIT HIMSELF TO A POST-EMPLOYMENT MEDICAL EXAMINATION WITHIN THREE WORKING DAYS FROM DISEMBARKATION SHALL RESULT IN THE FORFEITURE OF HIS RIGHT TO CLAIM DISABILITY BENEFITS, EXCEPT WHEN THE SEAFARER IS INCAPACITATED TO REPORT TO THE EMPLOYER UPON HIS REPATRIATION, AND WHEN THE EMPLOYER INADVERTENTLY OR DELIBERATELY REFUSED TO SUBMIT THE SEAFARER TO A POST-EMPLOYMENT MEDICAL EXAMINATION BY A COMPANY- DESIGNATED PHYSICIAN.— Section 20(B)(3) of the 2000 Amended POEA Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels lays down the procedure to be followed by a seafarer in claiming disability benefits x x x. [A] seafarer-claimant is mandated a period of three working days within which he should submit himself to a post-employment medical examination so that the company-designated physician can promptly arrive at a medical diagnosis. Due to the express mandate on the reportorial requirement, the failure of the seafarer to comply shall result in the forfeiture of his right to claim the above benefits. Nevertheless, while the requirement to report within three working days from repatriation appears to be indispensable in character, there are some established exceptions to this rule: (1) when the seafarer is incapacitated to report to the employer upon his repatriation; and (2) when the employer inadvertently or deliberately refused to submit the seafarer to a post-employment medical examination by a company-designated physician.

7. ID.; ID.; ID.; ID.; ID.; THE EMPLOYER, AND NOT THE SEAFARER, HAS THE BURDEN TO PROVE THAT THE SEAFARER WAS REFERRED TO A COMPANY-DESIGNATED DOCTOR.— In *Apines v. Elbug Shipmanagement Philippines, Inc., et al.*, the repatriated seafarer reported to the employer. He was, however, not referred to the company-designated physician. The Court emphasized that the employer , and not the seafarer, has the burden to prove that the seafarer was referred to a company-designated doctor. Here, Apolinario avers that two days after his repatriation to Manila on April 11, 2012, he reported to the office of 88 Aces to get his unpaid wages and for him to be referred to the company designated physician.

However, since his repatriation was due to the completion of his six-month POEA-approved employment contract, he was told by 88 Aces through Jocson that they could not shoulder his medical expenses. Having been denied to undergo the post medical examination, Apolinario just continued taking the medicine given to him by the doctor in Saudi Arabia. Between the two conflicting allegations from Apolinario and respondents, this Court is inclined to resolve the doubt in favor of Apolinario.

8. ID.; ID.; ID.; ID.; THE COMPANY DOCTOR HAS EITHER 120 OR 240 DAYS, DEPENDING ON THE CIRCUMSTANCES, WITHIN WHICH TO COMPLETE THE MEDICAL ASSESSMENT OF THE SEAFARER TO DETERMINE WHETHER THE SEAFARER IS FIT TO WORK AND TO ESTABLISH THE DEGREE OF HIS DISABILITY; OTHERWISE, THE DISABILITY CLAIM SHALL BE GRANTED; ABSENT A CERTIFICATION FROM THE COMPANY-DESIGNATED PHYSICIAN, THE SEAFARER'S DISABILITY SHALL BE CHARACTERIZED AS TOTAL AND PERMANENT.— It must be underscored that under Section 20-B of the POEA-SEC, it is the company-designated physician who is entrusted with the task of assessing a seafarer's disability. Jurisprudence is replete with pronouncements that it is the company-designated physician's findings which should form the basis of any disability claim of the seafarer. The company doctor has either 120 or 240 days, depending on the circumstances, within which to complete the medical assessment of the seafarer to determine whether the seafarer is fit to work and to establish the degree of his disability; otherwise, the disability claim shall be granted. x x x. In this case, respondents had the opportunity to refer Apolinario to a company-designated physician, but they chose to escape their responsibility. Between the non-existent medical assessment of the company-designated physician and the medical assessment of Apolinario's doctor of choice—stating that his disability is permanent and total—the latter evidently stands. Absent a certification from the company-designated physician, the law steps in to conclusively characterize his disability as total and permanent.

9. ID.; ID.; ID.; ID.; A SEAFARER HAS THREE YEARS FROM DISEMBARKATION TO FILE A CLAIM FOR DISABILITY

BENEFITS; A CLAIM FOR DISABILITY BENEFITS IS DEEMED INSTITUTED WHEN THE SEAFARER FILED HIS REQUEST FOR A SINGLE ENTRY APPROACH (SENA) BEFORE THE NATIONAL LABOR RELATIONS COMMISSION (NLRC).— Sections 2 and 18 of the Standard term and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels, provide for the duration and termination of contract between the employer and a seafarer x x x. [a] contract between an employer and a seafarer ceases upon its completion, when the seafarer signs off from the vessel and arrives at the point of hire. In this case, while Apolinario's six-month contract may have ended as early as August 2010, he nonetheless was able to sign off from MV Algosaibi 42 and arrive at the point of hire only on April 11, 2012. Section 30 of the 2000 POEA-SEC provides for the prescriptive period for filing claims arising from the contract: Sec. 30. PRESCRIPTION OF ACTION.- All claims arising from this Contract shall be made within three (3) years from the date the cause of action arises, otherwise the same shall be barred. It is well-settled that a seafarer's cause of action arises upon his disembarkation from the vessel. As Apolinario's disembarkation from Algosaibi 42 was on April 11, 2012, he had three years from the date, or until April 11, 2015, to make a claim for disability benefits. Records show that Apolinario had requested for a SENA before the NLRC as early as March 25, 2015. To elucidate, SENA is an administrative approach to provide an accessible, speedy, and inexpensive settlement of complaints arising from employer-employee relationship to prevent cases from ripening into full blown disputes. All labor and employment disputes undergo this 30-day mandatory conciliation-mediation process. Notwithstanding, that Apolinario filed his Complaint before the Labor Arbiter only on May 8, 2015 is of no moment. SENA being a pre-requisite to the filing of a Complaint before the Labor Arbiter, the date when Apolinario should be deemed to have instituted his claim was when he instituted his Request for SENA on March 25, 2015. Considering that the expiration of Apolinario's cause of action was on April 11, 2015, his claim was filed well within the 3-year prescriptive period.

10. ID.; ID.; ID.; ID.; THE SEAFARER'S SICKNESS ALLOWANCE SHALL BE EQUIVALENT TO HIS BASIC WAGE COMPUTED

AT THE TIME HE SIGNED OFF UNTIL HE IS DECLARED FIT TO WORK, OR THE DEGREE OF DISABILITY HAS BEEN ASSESSED BY THE COMPANY-DESIGNATED PHYSICIAN, BUT SHALL IN NO CASE EXCEED 120 DAYS.— Under Section 20(A)(3) of the 2010 POEA-SEC, the amount of sickness allowance that the seafarer shall receive from his employer shall be in an amount equivalent to his basic wage computed at the time he signed off until he is declared fit to work, or the degree of disability has been assessed by the company-designated physician, but shall in no case exceed 120 days. Considering that no assessment was made at bar by the company designated physician, Apolinario *is entitled to a sickness allowance equivalent to 120 days. His basic pay being US$506.00 per month or US$16.866 per day, he should be awarded US$2,024.00 as sickness allowance, or its equivalent amount in Philippine currency.*

11. CIVIL LAW; THE CIVIL CODE; DAMAGES; ATTORNEY'S FEES; ATTORNEY'S FEES CAN BE RECOVERED IN ACTIONS FOR THE RECOVERY OF WAGES OF LABORERS AND ACTIONS FOR INDEMNITY UNDER EMPLOYER'S LIABILITY LAWS; AWARD OF ATTORNEY'S FEES TO PETITIONER, WARRANTED.— Anent Apolinario's claim for attorney's fees, Article 2208 of the New Civil Code provides that attorney's fees can be recovered in actions for the recovery of wages of laborers and actions for indemnity under employer's liability laws. Attorney's fees is also recoverable when the respondent's act or omission has compelled the complainant to incur expenses to protect his interest. Such conditions being present in the case at bar, we find that an award of attorney's fees is warranted in favor of Apolinario.

APPEARANCES OF COUNSEL

Emerson T. Barrientos for petitioner.

Tarriela Tagao Ona & Associates for respondents.

D E C I S I O N

INTING, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking to nullify and set aside the Decision[2] dated July 31, 2017 and Resolution[3] dated April 26, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 145357. The CA dismissed for lack of merit the petition for *certiorari* filed by Apolinario Z. Zonio, Jr. (Apolinario), praying for the following reliefs: (1) the issuance of a Writ of *Certiorari* to annul the Decision[4] dated January 28, 2016 and Resolution[5] dated February 29, 2016 of the National Labor Relations Commission (NLRC); and (2) payment of (a) disability benefits in the amount of US$60,000.00, (b) sickness allowance of US$2,024.60, and (c) 10% of the total judgment award by way of attorney's fees.

The antecedents are as follows:

88 Aces Maritime Services, Inc. (88 Aces) is a domestic corporation engaged in the recruitment of Filipino seafarers for and on behalf of its foreign principal Khalifa Algosaibi Diving & Marine Services Co. (Khalifa Algosaibi). Janet A. Jocson (Jocson) is the president/owner/manager of 88 Aces.

On February 4, 2010, Apolinario was hired as an "ordinary seaman" by 88 Aces to board the vessel MV Algosaibi 42. His contract was for a duration of six months with a basic monthly salary of US$506.15.[6]

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[1] *Rollo*, pp. 35-95.

[2] *Id.* at 11-30; as penned by Associate Justice Magdangal M. De Leon with Associate Justices Franchito N. Diamante and Zenaida Galapate-Laguilles, concurring.

[3] *Id.* at 32-33.

[4] *Id.* at 326-340.

[5] *Id.* at 342-344.

[6] *Id.* at 161.

After passing the required pre-employment medical examination,[7] Apolinario left Manila on February 26, 2010 and embarked MV Algosaibi 42 in Ras Tanura, Saudi Arabia.

As an ordinary seaman, Apolinario's job on board the vessel included the following: 1) give assistance to the able seaman; 2) assist in the handling and operation of all deck gear such as topping, cradling and housing of booms; 3) aid the carpenter in the repair work when requested; and 4) to scale and chip paint, handle lines in the mooring of the ship, assist in the actual tying up and letting go of the vessel and stand as a lookout in the vessel.

After completing his six-month contract with 88 Aces in August 2010, Apolinario however was not repatriated as he directly entered into a new contract with 88 Aces' foreign principal, Khalifa Algosaibi. His new contract with Khalifa Algosaibi lasted until April 2012.

In April 2012, Apolinario was repatriated in Manila. On May 8, 2015, he filed a Complaint before the Labor Arbiter against 88 Aces, Jocson and Khalifa Algosaibi (collectively referred to as respondents) for the payment of disability benefits, attorney's fees, medical fees, sickness allowance and moral, exemplary and compensatory damages.[8]

In his Position Paper,[9] Apolinario alleged that while on board MV Algosaibi 42 in December 2010, he suddenly experienced dizziness. As his condition did not improve, he was sent to As Salama Hospital in Al-Khobar, Saudi Arabia where he was found to have high glucose and cholesterol.[10] Apolinario posited that he was given medicine by the doctor and was advised to observe proper diet and avoid stress. After taking the doctor's advice, his medical condition improved and he was able to perform his work well.

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[7] *Id.* at 162.

[8] *Id.* at 149-159.

[9] *Id.*

[10] *Id.* at 165.

However, after two years, particularly in January 2012, Apolinario alleged that his dizziness recurred, accompanied by the blurring of his vision. On April 2, 2012, he stated that he returned to As Salama Hospital where he was diagnosed to have diabetes mellitus[11] and dislipedemia.[12]

After his repatriation to the Philippines on April 11, 2012, Apolinario posited that he immediately reported to the office of 88 Aces to get his unpaid wages and for him to be referred to the company physician. However, since his repatriation was due to the completion of his six-month Philippine Overseas Employment Administration (POEA)-approved employment contract, he was allegedly told by President Janet Jocson that 88 Aces could not shoulder his medical expenses. Apolinario did not insist anymore and just continued taking the medicine given by the doctor in Saudi Arabia.

Subsequently, Apolinario felt well and thought that his illness was already cured. However, it recurred on August 2, 2013. Apolinario consulted Dr. Joseph Glenn Dimatatac, an internal medicine physician, and was informed that his illness was indeed diabetes mellitus.[13]

On March 17, 2015,[14] Apolinario consulted Dr. Rufo Luna, the Municipal Health Officer of the Municipality of San Jose, who declared him to be physically unfit to continue work due to his hyperglycemia.[15] Consequently, Apolinario demanded from

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[11] Commonly known as "diabetes" is a group of metabolic disorder characterized by high blood sugar levels over a prolonged period, <https://en.wikipedia.org/wiki/Diabetes> (visited September 12, 2019).

[12] It is an abnormal amount of lipids (*e.g.* triglycerides, cholesterol and/or fat phospholipids) in the blood, <https://en.wikipedia.org/wiki/Dyslipidemia> (visited September 12, 2019).

[13] *Id.* at 168.

[14] Dated as March 18, 2015 in some parts of the *rollo*.

[15] It is a condition in which an excessive amount of glucose circulates in the blood plasma <https://en.wikipedia.org/wiki/Hyperglycemia> (visited September 12, 2019).

respondents the payment of his disability benefits, but to no avail.

Apolinario argued that his illness is presumed as work-related. According to him, his stress was a factor in the development of his diabetes mellitus since he was exposed to frequent overtime, lack of sleep, and emotional/psychological stress for being away from his family. Moreover, Apolinario contended that his disability is permanent and total because he was already incapacitated to resume his sea duties for more than 240 days. Apolinario maintained that his cause of action to file a claim against respondents did not prescribe yet since his action was instituted within three years from his disembarkation from the vessel.

To counter Apolinario's claim, respondents, on the other hand, argued that Apolinario finished his six-month POEA-approved employment contract in August 2010 without any medical issue whatsoever. They contended that since the filing of his Complaint was made five years after the completion of his contract in August 2010, his cause of action had already prescribed for not having been filed within the three-year prescriptive period. Moreover, respondents claimed that contrary to Apolinario's allegation, he actually failed to comply with the three-day post-employment medical examination requirement. As such, he cannot be entitled to his money claims, moral, compensatory and exemplary damages.

The Ruling of the Labor Arbiter

On October 30, 2015, the Labor Arbiter ruled in favor of Apolinario and held that Apolinario's cause of action has not prescribed yet.[16] The Labor Arbiter explained that under Section 18 of the POEA-approved employment contract, the seafarer's contract with the employer is effective until the date of his arrival at the point of hire. Corollary thereto, the Labor Arbiter clarified that all claims arising from the contract should be made within three years from the date the cause of action arose. The Labor Arbiter concluded that since Apolinario's

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[16] *Rollo*, pp. 232-246.

arrival at the point of hire was April 11, 2012, he had until April 11, 2015 within which to institute his action. Thus, he was able to institute his claim against respondents within the reglementary period when he filed his Request for Single Entry Approach (SENA) at the NLRC in March 2015.

Moreover, the Labor Arbiter found that Apolinario, while on board, was exposed to physical and psychological stress due to rush jobs, lack of sleep and homesickness. Inasmuch as stress can prompt an increase in the level of one's blood sugar, the Labor Arbiter found nexus between Apolinario's nature of work and his ailment diabetes mellitus.

Lastly, the Labor Arbiter gave more weight to Apolinario's allegation that he actually requested to undergo the required post-employment medical examination, but 88 Aces denied it on the ground that his repatriation was not for medical reasons, but due to the completion of his contract.

Aggrieved, respondents elevated the case before the NLRC.

The Ruling of the NLRC

On January 28, 2016, the NLRC rendered a Decision[17] granting respondents' Appeal. In ruling for the Respondents and dismissing Apolinario's complaint, the NLRC ratiocinated that the findings of Apolinario's physicians cannot be accorded weight since their medical certificates were only issued on March 17, 2015 and June 15, 2015—about three years or more from Apolinario's repatriation on April 11, 2012.

Lastly, the NLRC held that since Apolinario failed to establish that his illness was work-related and that he requested for a post-employment medical examination, his claim for disability benefits must be denied.

The Ruling of the CA

On July 31, 2017, the CA affirmed the NLRC's Decision and dismissed Apolinario's Petition.

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[17] *Id.* at 326-340.

The CA held that Apolinario's repatriation was due to the completion of his contract and that Apolinario had no complaint whatsoever when he disembarked from the vessel. Moreover, the CA pointed out that Apolinario was no longer a subject of any POEA Standard Employment Contract (SEC) when he was found unfit to work. Not being covered by the contract, the CA denied Apolinario's claim based thereon.

Lastly, the CA opined that Apolinario did not proffer any reason for his failure to undergo the required post-employment medical examination. Having failed to undergo the required medical test, the CA concluded that Apolinario cannot be entitled to disability benefits.

Hence, the instant Petition.

The Ruling of this Court

At the outset, it is to be emphasized that this Court is not a trier of facts; thus, its jurisdiction is limited only to reviewing errors of law. The rule, however, admits of certain exceptions, one of which is where the findings of fact of the quasi-judicial bodies and the appellate court are contradictory, such as the instant case. Thus, this Court is constrained to review and resolve the factual issue in order to settle the controversy.[18]

The present controversy involves the claim for permanent and total disability benefits of a seafarer. Apolinario argues that contrary to the findings of the NLRC and the CA, his illness is presumed as work-related and compensable. Likewise, Apolinario argues that his cause of action had not prescribed yet as he instituted his action against the respondents within the three-year reglementary period.

The petition is meritorious.

Work-relatedness and compensability of the disease

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[18] *APQ Shipmanagement Co., Ltd. v. Caseñas*, 735 Phil. 300, 310 (2014).

The 2000 POEA-SEC provides that any sickness resulting in disability because of an occupational disease listed under Section 32(A) of this Contract is deemed to be work-related, provided the conditions set therein are satisfied. Section 20(B)(4) of the 2000 POEA-SEC, on the other hand, declares that if the illness, such as diabetes mellitus, is not listed as an occupational disease under Section 32(A), the ailment is disputably presumed as work-related.

The effect of the legal presumption in favor of the seafarer is to create a burden on the part of the employer to present evidence to overcome the *prima facie* case of work-relatedness. Absent any evidence from the employer to defeat the legal presumption, the *prima facie* case of work-relatedness prevails.[19]

To reinforce the *prima facie* case in his favor, Apolinario stated that during the existence of his contract, he experienced recurring dizziness and was diagnosed at As Salama Hospital in Al-Khobar Saudi Arabia to have contracted diabetes mellitus. In fact, while on board the vessel, he was twice sent to As Salama Hospital in Al-Khobar Saudi Arabia for medical treatment. To support his claim, Apolinario presented the medical record issued by the hospital and the different medical certificates of his physicians after his repatriation in Manila stating that he is already physically unfit to return to work due to his diabetes mellitus.

While the illness is not listed as one of the occupational diseases under Section 32(A) of the POEA-SEC, the ailment is presumed work-related under Section 20(B)(4) of the contract. Respondents are duty bound to overcome this presumption. However, other than their bare allegation, respondents did not present a scintilla of proof to establish the lack of casual connection between Apolinario's disease and his employment as a seafarer. Had respondents granted Apolinario's request to undergo a post-employment medical check-up, they could have presented a

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[19] *Romana v. Magsaysay Maritime Corp.*, G.R. No. 192442, August 9, 2017.

medical finding to contradict the presumption of work-relatedness of Apolinario's illness. The post-employment medical check-up could have been the proper basis to determine the seafarer's illness, whether it was work-related, or its specific grading of disability.[20] Having failed to present any evidence to defeat the presumption of work-relatedness of Apolinario's diabetes mellitus, the *prima facie* case that it is work-related prevails.

Nonetheless, the presumption provided under Section 20(B)(4) is only limited to the "work-relatedness" of an illness. It does not cover and extend to compensability.[21] In this sense, there exists a fine line between the work-relatedness of an illness and the matter of compensability.[22] The former concept merely relates to the assumption that the seafarer's illness, albeit not listed as an occupational disease, may have been contracted during and in connection with one's work, whereas compensability pertains to the entitlement to receive compensation and benefits upon a showing that a seafarer's work conditions caused or at least increased the risk of contracting the disease.[23]

It is medically accepted that stress has major effects on a person's metabolic activity. The effects of stress on glucose metabolism are mediated by a variety of counter-regulatory hormones that are released in response to stress and that result in elevated blood glucose levels and decreased insulin action. In diabetes, because of a relative or absolute lack of insulin, the increase in blood glucose on account of stress cannot be adequately metabolized. Thus, stress is a potential contributor to chronic hyperglycemia in diabetes.[24]

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[20] *Lorna B. Dionio v. ND Shipping Agency and Allied Services, Inc., Caribbean Tow and Barge (Panama) LTD.*, G.R. No. 231096, August 15, 2018.

[21] *Romana v. Magsaysay Maritime Corp.*, *supra* note 19.

[22] *Id.*

[23] *Atienza v. Orophil Shipping International Co., Inc.*, G.R. No. 191049, August 7, 2017.

[24] <https://www.ncbi.nlrc.nih.gov/pubmed/1425110> (last viewed September 12, 2019).

At this juncture, the case of *Millora v. ECC*[25] is instructive. The petitioner therein was the widow of Prisco Millora. The latter was a public school teacher and was diabetic during the last 11 years of his life. Upon his discharge from the hospital for treatment of his illness, he forthwith filed a claim for benefits due to diabetes mellitus, but it was denied. At the age of 40, Prisco died. Petitioner requested the Government Service Insurance System (GSIS) to reconsider its denial of the deceased's claim, but to no avail. This compelled petitioner to elevate the case to the Employees' Compensation Commission (ECC) for review, but the commission affirmed the dismissal of the case on the ground that the cause of the deceased's ailment was not work-connected. The ECC relied on the evaluation made by the GSIS that diabetes mellitus is hereditary in nature and could not have been caused by his employment conditions. To assail the ECC's findings and prove that the nature of her late husband's work as a teacher increased the risk of contracting diabetes mellitus, petitioner quoted the medical opinion of Dr. Augusto Litonjua, president of the Philippine Diabetic Association, published in the November 1, 1985 issue of Bulletin Today, to wit:

"Dr. Augusto Litonjua, president of the Philippine Diabetic Association, also said that other causes of diabetes are overweight, accidents, operations, pregnancy and certain drugs.

"Speaking before the weekly 'Agham Ugnayan', Litonjua said diseases caused either by a virus or bacteria were found to have damaged the pancreas and caused diabetes in persons 'with a predisposition.'

"Litonjua explained that a person under stressful physical or emotional situations secrete hormones that are 'contra-insulin' or hormones which outweigh the effects of insulin. Insulin, a hormone that is produced by the pancreas lowered blood sugar.

"He noted that there are more diabetes cases in urban than in a rural setting. This discrepancy is believed to be attributed to the

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[25] 227 Phil. 139 (1986).

more 'Westernized' environment in urban areas which have more problems and tensions x x x."[26]

The wife of the deceased argued that since the parents of her late husband were not diabetic and that the deceased was not predisposed to the ailment by reason of obesity or old age, it would be more fair to conclude that his contracting diabetes mellitus was increased by the nature of his work. This Court found merit in her contention and held that:

> Prisco Millora began work as a public school teacher when he was twenty-one [21] years old. Although not predisposed to diabetes mellitus by reason of old age, obesity or heredity, he became diabetic after eight [8] years in said employment. As a classroom teacher, his work was not confined to the regular eight-to-five schedule, but stretched into the long hours of the night preparing lesson plans and instructional materials. Aside from this, he was actively involved in the school's developmental projects. To our mind, such work situation could reasonably be described as physically and emotionally stressful, a situation cited by Dr. Litonjua as producing hormones which are 'contra-insulin' in their effects and which satisfies the evaluation made by respondent Commission of the endocrinal etiology of diabetes mellitus.[27]

In this case, to prove that his work conditions caused or at least increased the risk of contracting the disease, Apolinario showed that part of his duties as an Ordinary Seaman in MV Algosaibi 42 involved strenuous workload such as assist in the handling and operation of all deck gear such as topping, cradling and housing of booms; aid the carpenter in the repair work when requested; scale and chip paint, handle lines in the mooring of the ship, assist in the actual tying up and letting go of the vessel and stand as a lookout in the vessel. Apolinario further stated that while inside the vessel for several months, he was exposed to physical and psychological stress due to rush jobs, lack of sleep, heat stress, emergency works and homesickness for being away from his family. From the above enumeration

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[26] *Id.* at 145.

[27] *Id.* at 146.

of Apolinario's duties on board the vessel, he was certainly exposed to various strain and stress—physical, mental and emotional.

In the case of *Sevilla v. Workmen's Compensation Commission*,[28] the First Division of this Court ruled in favor of the compensability of diabetes mellitus quoting the case of *Abana, et al. v. Quisumbing*.[29] This Court held:

> While there is that possibility that factors other than the employment of the claimant may also have contributed to the aggravation of his illness, this is not a drawback to its compensability. For, under the law, it is not required that the employment be the sole factor in the growth, development or acceleration of claimant's illness to entitle him to the benefits provided for. It is enough that his employment had contributed, even in a small degree, to the development of the disease.[30]

As earlier stated, respondents herein failed to adduce any contrary medical findings from the company-designated physician to show that Apolinario's illness was not caused or aggravated by his working conditions on board the vessel. There was also no showing that Apolinario is predisposed to the illness by reason of genetics, obesity or old age. Such being the case, this Court consider that the stress and strains he was exposed to on board contributed, even to a small degree, to the development of his disease. Inasmuch as, compensability is the entitlement to receive disability compensation upon a showing that a seafarer's work conditions caused or at least increased the risk of contracting the disease, We find Apolinario's disease as compensable at bar.

Reportorial requirement to undergo post-employment medical examination within three days from disembarkation

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[28] 174 Phil. 448 (1978).

[29] 131 Phil. 387 (1968).

[30] *Id.* at 390.

Respondents insist that Apolinario did not comply with the post-employment medical examination within three working days from his repatriation. For his non-compliance, respondents argue that he is not entitled to the disability benefits he claim. To support their contention, Jocson submitted an Affidavit stating that Apolinario never requested for a post-employment medical examination after termination of his contract.

Section 20(B)(3) of the 2000 Amended POEA Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels lays down the procedure to be followed by a seafarer in claiming disability benefits, to wit:

> 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
>
> 3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.
>
> For this purpose, **the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return** except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. **Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.** If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties. [Emphases supplied]

As could be gleaned from the foregoing, a seafarer-claimant is mandated a period of three working days within which he should submit himself to a post-employment medical examination so that the company-designated physician can promptly arrive at a medical diagnosis. Due to the express mandate on the

reportorial requirement, the failure of the seafarer to comply shall result in the forfeiture of his right to claim the above benefits.[31]

Nevertheless, while the requirement to report within three working days from repatriation appears to be indispensable in character, there are some established exceptions to this rule: (1) when the seafarer is incapacitated to report to the employer upon his repatriation; and (2) when the employer inadvertently or deliberately refused to submit the seafarer to a post-employment medical examination by a company-designated physician.[32]

In *Apines v. Elburg Shipmanagement Philippines, Inc., et al.*,[33] the repatriated seafarer reported to the employer. He was, however, not referred to the company-designated physician. The Court emphasized that the employer, and not the seafarer, has the burden to prove that the seafarer was referred to a company-designated doctor.

Here, Apolinario avers that two days after his repatriation to Manila on April 11, 2012, he reported to the office of 88 Aces to get his unpaid wages and for him to be referred to the company designated physician. However, since his repatriation was due to the completion of his six-month POEA-approved employment contract, he was told by 88 Aces through Jocson that they could not shoulder his medical expenses. Having been denied to undergo the post medical examination, Apolinario just continued taking the medicine given to him by the doctor in Saudi Arabia.

Between the two conflicting allegations from Apolinario and respondents, this Court is inclined to resolve the doubt in favor of Apolinario. Besides, the factual backdrop of the case supports

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[31] *De Andres v. Diamond H Marine Services & Shipping Agency, Inc.*, 813 Phil. 746 (2017).

[32] *Falcon Maritime and Allied Services, Inc., et al. v. Angelito B. Pangasian*, G.R. No. 223295, March 13, 2019.

[33] 799 Phil. 220 (2016).

Apolinario's allegation that he requested to be referred to a company designated physician. As aptly noted by the Labor Arbiter, Apolinario repeatedly experienced dizziness and headaches, and needed medical attention while on board MV Algosaibi 42. In fact, because of his recurring sickness, he was examined twice at As Salama Hospital in Al-Khobar Saudi Arabia and even underwent thorough treatment thereat 10 days prior to his repatriation to Manila. Given Apolinario's sensitive medical condition days prior to his repatriation, We find dubious respondents' allegation that Apolinario did not request to be referred to post-employment medical examination when he arrived in Manila. Apolinario's medical condition during and after his employment on board lends credence to his claim that he asked to be medically examined by a company-designated physician but he was prevented so by respondents.

It must be underscored that under Section 20-B of the POEA-SEC, it is the company-designated physician who is entrusted with the task of assessing a seafarer's disability.[34] Jurisprudence is replete with pronouncements that it is the company-designated physician's findings which should form the basis of any disability claim of the seafarer.[35] The company doctor has either 120 or 240 days, depending on the circumstances, within which to complete the medical assessment of the seafarer to determine whether the seafarer is fit to work and to establish the degree of his disability; otherwise, the disability claim shall be granted.[36]

In the similar case of *De Andres v. Diamond H Marine Services & Shipping Agency, Inc., et al.*,[37] the repatriated seafarer therein also reported to the employer but was not referred to the company-designated physician. This Court stated

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[34] *Navales, Jr. v. ARL Maritime Services, Inc.*, G.R. No. 243530 (Notice), March 4, 2019.

[35] *Magsaysay Maritime Corp. v. Velasquez*, 591 Phil. 839 (2008).

[36] *Lorna B. Dionio v. ND Shipping Agency and Allied Services, Inc., Caribbean Tow and Barge (Panama) LTD., supra* note 20.

[37] *Supra* note 31.

that without the assessment of the said doctor, there was nothing for the seafarer's own physician to contest. Consequently, this Court upheld the medical assessment made by the seafarer's doctor of choice and granted the seafarer's permanent and total disability claim.

In this case, respondents had the opportunity to refer Apolinario to a company-designated physician, but they chose to escape their responsibility. Between the non-existent medical assessment of the company-designated physician and the medical assessment of Apolinario's doctor of choice—stating that his disability is permanent and total—the latter evidently stands. Absent a certification from the company-designated physician, the law steps in to conclusively characterize his disability as total and permanent.[38]

Termination of contract and prescriptive period to file claims for disability benefits

Sections 2 and 18 of the Standard term and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels, provide for the duration and termination of contract between the employer and a seafarer, to wit:

Sec. 2. Commencement/Duration of Contract. —

A) The Employment contract between the employer and the seafarer shall commence upon actual departure of the seafarer from the airport or seaport in the point of hire and with a POEA approved contract. **It shall be effective until the seafarer's date of arrival at the point of hire upon termination of his employment pursuant to Section 18 of this Contract.**

x x x x x x x x x

Sec. 18. Termination of Employment. —

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[38] *Ampo-on v. Reinier Pacific lnternational Shipping, Inc.*, G.R. No. 240614, June 10, 2019.

A) The employment of the seafarer shall cease when the seafarer **completes his period of contractual service aboard the vessel, signs off from the vessel and arrives at the point of hire**.

x x x x x x x x x (Emphasis supplied.)

A simple reading of the foregoing shows that a contract between an employer and a seafarer ceases upon its completion, when the seafarer signs off from the vessel and arrives at the point of hire.

In this case, while Apolinario's six-month contract may have ended as early as August 2010, he nonetheless was able to sign off from MV Algosaibi 42 and arrive at the point of hire only on April 11, 2012.

Section 30 of the 2000 POEA-SEC provides for the prescriptive period for filing claims arising from the contract:

Sec. 30. PRESCRIPTION OF ACTION.—

All claims arising from this Contract shall be made within three (3) years from the date the cause of action arises, otherwise the same shall be barred.

It is well-settled that a seafarer's cause of action arises upon his disembarkation from the vessel. As Apolinario's disembarkation from Algosaibi 42 was on April 11, 2012, he had three years from the date, or until April 11, 2015, to make a claim for disability benefits. Records show that Apolinario had requested for a SENA before the NLRC as early as March 25, 2015. To elucidate, SENA is an administrative approach to provide an accessible, speedy, and inexpensive settlement of complaints arising from employer-employee relationship to prevent cases from ripening into full blown disputes. All labor and employment disputes undergo this 30-day mandatory conciliation-mediation process.[39]

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[39] <https://blr.dole.gov.ph/2014/12/11/single-entry-approach-sena/> (visited September 12, 2019).

Notwithstanding, that Apolinario filed his Complaint before the Labor Arbiter only on May 8, 2015 is of no moment. SENA being a pre-requisite to the filing of a Complaint before the Labor Arbiter, the date when Apolinario should be deemed to have instituted his claim was when he instituted his Request for SENA on March 25, 2015. Considering that the expiration of Apolinario's cause of action was on April 11, 2015, his claim was filed well within the 3-year prescriptive period.

Claim for Sickness Allowance and Attorney's Fees

Under Section 20(A)(3) of the 2010 POEA-SEC, the amount of sickness allowance that the seafarer shall receive from his employer shall be in an amount equivalent to his basic wage computed at the time he signed off until he is declared fit to work, or the degree of disability has been assessed by the company-designated physician, but shall in no case exceed 120 days.[40]

Considering that no assessment was made at bar by the company designated physician, Apolinario *is entitled to a sickness allowance equivalent to 120 days. His basic pay being US$506.00 per month or US$16.866 per day, he should be awarded US$2,024.00 as sickness allowance, or its equivalent amount in Philippine currency.*

Anent, Apolinario's claim for attorney's fees, Article 2208 of the New Civil Code provides that attorney's fees can be recovered in actions for the recovery of wages of laborers and actions for indemnity under employer's liability laws. Attorney's fees is also recoverable when the respondent's act or omission has compelled the complainant to incur expenses to protect his interest. Such conditions being present in the case at bar, we find that an award of attorney's fees is warranted in favor of Apolinario.[41]

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[40] *Romana v. Magsaysay Maritime Corp., supra* note 19.

[41] *Remigio v. NLRC*, 521 Phil. 330 (2006).

WHEREFORE, the Decision dated July 31, 2017 and Resolution dated April 26, 2018 of the Court of Appeals in CA-G.R. SP No. 145357 are **REVERSED** and **SET ASIDE**. Private respondents are held jointly and severally liable to pay petitioner Apolinario Z. Zonio, Jr.: a) permanent total disability benefits of US$60,000.00 at its peso equivalent at the time of actual payment; b) sickness allowance of US$2,024.00 at its peso equivalent at the time of actual payment; and c) attorney's fees of 10% of the total monetary award at its peso equivalent at the time of actual payment. Costs against private respondents.

SO ORDERED.

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

Leonen, J., on leave.

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committed lewd acts upon AAA, who was only 11 years old at the time, by kissing her using threats and intimidation; he can only be held guilty of acts of lasciviousness although charged with rape "following the variance doctrine enunciated under Section 4 in relation to Section 5 of Rule 120 of the Rules on Criminal Procedure; acts of lasciviousness, the offense proved, is included in rape, the offense charged." (People *vs*. Eulalio *y* Alejo, G.R. No. 214882, Oct. 16, 2019) p. 850

ACTS OF LASCIVIOUSNESS UNDER THE REVISED PENAL CODE IN RELATION TO LASCIVIOUS CONDUCT UNDER R.A. NO. 7610

Civil liability of accused — The award of civil indemnity, as well as moral and exemplary damages in favor of the offended party, should be increased to 50,000.00 each in view of the recent pronouncement in *People v. Tulagan*; likewise, a fine in the amount of 15,000.00 is imposed; additionally, the said monetary awards should earn a legal interest of 6% *per annum* from the date of the finality of this Decision until fully paid. (People *vs*. Eulalio *y* Alejo, G.R. No. 214882, Oct. 16, 2019) p. 850

Elements — We must also consider that the said felony should be evaluated in light of R.A. No. 7610 and as charged in the Information; the case of *People v. Molejon* is instructive in this respect: On the one hand, conviction under Article 336 of the RPC requires that the prosecution establish the following elements: (a) the offender commits any act of lasciviousness or lewdness upon another person of either sex; and (b) the act of lasciviousness or lewdness is committed either (i) by using force or intimidation; or (ii) when the offended party is deprived of reason or is otherwise unconscious; or (iii) when the offended party is under 12 years of age; on the other hand, sexual abuse under Section 5(b), Article III of R.A. No. 7610 has three elements: (1) the accused commits an act of sexua1 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 is below

— The Rule on the Writ of *Amparo* was issued by this Court as an exercise of its power to "promulgate rules concerning the protection and enforcement of constitutional rights"; Section 1 defines a petition for a writ of *amparo* as "a remedy available to any person whose right to life, liberty, and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity"; the writ of *amparo* is, thus, an equitable and extraordinary remedy primarily meant to address concerns such as, but not limited to, extrajudicial killings and enforced disappearances, or threats thereof; the proceedings for the issuance of writs of amparo are extraordinary; they are significant not only in terms of final relief; in determining whether the petition must be granted, judges act as impartial inquisitors seeking to assure themselves that there is no actual or future threat to the life or liberty of petitioners; the Rule on the Writ of *Amparo* was crafted in an era when extrajudicial killings and involuntary disappearances were on the rise allegedly due to the government's efforts to defeat an insurgency; it was an affirmation of the belief that, perhaps unlike the rebels, our Constitution protected civility and human rights, and that this protection was what differentiated the government from the insurgents; it was, and still is, a rule that underscores our humanity and our civility. (*Id*.)

— The totality of petitioner's evidence undoubtedly showed that she became a person of interest after she had first visited the funeral home, where her photo was taken; whether petitioner's photo was actually posted and distributed at the police station or was just taken for future reference, the taking of the photo bolsters petitioner's claims that she was being monitored by the police; respondents try to paint petitioner's claims as the ramblings of a paranoid and overly suspicious person, but even her daughter confirmed the numerous times the police drove by their house and being tailed whenever they set foot outside their house; the totality of obtaining circumstances shows that petitioner and her children were the subject of surveillance because of their relationship with a

— The essential elements of the violation of Section 3(e) are the following, namely: (1) the accused must be a public officer discharging administrative, judicial, or official functions; (2) he must have acted with manifest partiality, or evident bad faith, or gross inexcusable negligence; and (3) 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; there are, therefore, three modes of committing the violation of Section 3(e), that is, through manifest partiality, or with evident bad faith, or through gross inexcusable negligence; the three modes are distinct and different from one another; hence, proof of the existence of any of these modes suffices to warrant conviction for the violation of Section 3(e). (*Id*.)

APPEALS

Appeal from the Decision of the Department of Agrarian Reform (DAR) — The CARL provides that the remedy of *certiorari* is available to dispute any decision of the DAR on any agrarian matter pertaining to the application, implementation, enforcement or interpretation of the law: SEC. 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; the findings of fact of the DAR shall be final and conclusive if based on substantial evidence; however, the CARL expressly states that a petition for *certiorari* must be filed with the Court of Appeals (CA), and not directly before this Court. (The Local Gov't. of Sta. Cruz, Davao Del Sur *vs*. Prov. Office of the Dep't. of Agrarian Reform, Digos City, Davao Del Sur, G.R. No. 204232, Oct. 16, 2019) p. 774

is confined to specific matters are generally accorded not only respect, but also finality, especially when affirmed by the CA, and, in particular reference to this appeal, the factual findings of construction arbitrators are accorded finality and conclusiveness, and should not be reviewable by the Court on appeal, one recognized exception occurs when the findings of the CA are contrary to those of the arbitrators; herein, the petitions separately raise issues that call for the calibration of evidence and the mathematical re-computation of the monetary awards; although such issues are factual in nature, the Court has to embark upon a review in view of the contrary findings by the CA and the Arbitral Tribunal, resulting in the variance of their monetary awards. (Shangri-La Properties, Inc. *vs*. BF Corp., G.R. Nos. 187552-53, Oct. 15, 2019) p. 324

Factual findings of the Office of the Ombudsman — Section 27 of R.A. No. 6770 provides that "findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive"; as such, this Court generally accords great respect and even finality to the findings of the Office of the Ombudsman; petitions for review on *certiorari* should be limited to questions of law; however, there are exceptions to this well-established rule wherein this Court may rule on questions of fact, some of which are: (1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is a grave abuse of discretion; and (4) the judgment is based on a misapprehension of facts. (Capt. Daquioag *vs*. Office of the Ombudsman, G.R. No. 228509, Oct. 14, 2019) p. 54

Factual findings of the Regional Trial Court and the Court of Appeals — The Court adheres to the findings of fact consistent with both the RTC and the CA that the debit made by NAPOCOR was unilaterally done, and that NAPOCOR's supply of fuel to Delta P was an act of gratuity; as a rule, the findings of fact of the RTC, as affirmed in totality by the CA, are binding and conclusive

understandable, should not translate in the inclusion of all the names however in reality detached, involved on the sole basis that petitioner feels they are party to the crime, when clear proof on evidence will show their non-involvement; the factual antecedents and the evidence on record behooves the Court to rule in agreement with the lower tribunals whose findings are to be respected in the absence of their arbitrariness. (BDO Life Assurance, Inc. *vs*. Atty. Palad, G.R. No. 237845, Oct. 16, 2019) p. 1110

Petition for review on certiorari to the Supreme Court under Rule 45 –– Section 4, Rule 45 of the Rules of Court enumerates the contents of a petition for review on *certiorari*. SEC. *4. Contents of petition.* – (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court a quo and the requisite number of plain copies thereof, and such material points of the record as would support the petition; in *Cancio v. Performance Foreign Exchange Corp*., the Court held that non-compliance with Section 4, Rule 45 of the Rules of Court does not automatically result to dismissal of the case; thus: The failure to attach material portions of the record will not necessarily cause the outright dismissal of the petition; while Rule 45, Section 4 of the Rules of Court requires that the petition "be accompanied by such material portions of the record as would support the petition"; this Court may still give due course if there is substantial compliance with the Rules; here, BF Citiland attached the following documents: (1) certified true copies of the CA Decision and Resolution subject of this Petition; (2) complaint in the annulment case; (3) petition in the declaratory relief case; (4) January 29, 2014 Makati RTC, Branch 143 Order; (5) Omnibus Motion; (6) July 21, 2014 Makati RTC, Branch 141 Order; (7) November 8, 2014 Makati RTC, Branch 141 Order; and (8) BSP's petition for *certiorari* filed in the CA; the Court finds the above attachments as substantial compliance with Section 4(d), Rule 45 of the Rules of

the arrest or the procedure in the court's acquisition of jurisdiction over the person of an accused must be made before she enters her plea; otherwise, the objection is deemed waived. (Padas *y* Garcia *vs.* People, G.R. No. 244327, Oct. 14, 2019) p. 82

ATTORNEYS

Attorney-client privilege — One rule adopted to serve the purpose of preserving and protecting attorney-client relationship is the attorney-client privilege: an attorney is to keep inviolate his client's secrets or confidence and not to abuse them; thus, the duty of a lawyer to preserve his client's secrets and confidence outlasts the termination of the attorney-client relationship, and continues even after the client's death; the Court elucidated on the factors essential to establish the existence of the said privilege, to wit: (1) There exists an attorney-client relationship, or a prospective attorney-client relationship, and it is by reason of this relationship that the client made the communication; matters disclosed by a prospective client to a lawyer are protected by the rule on privileged communication even if the prospective client does not thereafter retain the lawyer or the latter declines the employment; reason; (2) The client made the communication in confidence; the mere relation of attorney and client does not raise a presumption of confidentiality; the client must intend the communication to be confidential; a confidential communication refers to information transmitted by voluntary act of disclosure between attorney and client in confidence and by means which, so far as the client is aware, discloses the information to no third person other than one reasonably necessary for the transmission of the information or the accomplishment of the purpose for which it was given; thus, a compromise agreement prepared by a lawyer pursuant to the instruction of his client and delivered to the opposing party, an offer and counter-offer for settlement, or a document given by a client to his counsel not in his professional capacity, are not privileged communications, the element of confidentiality not being

present. (3) The legal advice must be sought from the attorney in his professional capacity; the communication made by a client to his attorney must not be intended for mere information, but for the purpose of seeking legal advice from his attorney as to his rights or obligations; the communication must have been transmitted by a client to his attorney for the purpose of seeking legal advice. (Adelfa Properties, Inc. *vs*. Atty. Mendoza, A.C. No. 8608 [Formerly CBD Case No. 11-2907], Oct. 16, 2019) p. 704

— The Court finds Atty. Mendoza's act of causing himself to be interviewed by the media, *i.e.*, ABS-CBN, thereby divulging information he has gathered in the course of his employment with complainant in the media to be violative of Rules 13.02, 21.01 and 21.02 of the CPR, which state: Rule 13.02 - A lawyer shall not make public statements in the media regarding a pending case tending to arouse public opinion for or against a party. CANON 21 - A LAWYER SHALL PRESERVE THE CONFIDENCE AND SECRETS OF HIS CLIENT EVEN AFTER THE ATTORNEY-CLIENT RELATION IS TERMINATED. Rule 21.01 - A lawyer shall not reveal the confidences or secrets of his client except; (a)When authorized by the client after acquainting him of the consequences of the disclosure; (b)When required by law; (c)When necessary to collect his fees or to defend himself, his employees or associates or by judicial action. Rule 21.02 - A lawyer shall not, to the disadvantage of his client, use information acquired in the course of employment, nor shall he use the same to his own advantage or that of a third person, unless the client with full knowledge of the circumstances consents thereto; Atty. Mendoza's actuation of allowing himself to be interviewed by the media, thus, utilizing that forum to accuse his former employer of committing several illegal activities and divulging information which he secured in the course of his employment while he was the complainant's in-house counsel, no matter how general the allegations are, is an act which is tantamount to a clear breach of the trust and confidence of his employer. (*Id*.)

—— The filing of the illegal dismissal case against complainant, and the disclosure of information in support thereof is not *per se* a violation of the rule on privileged communication because it was necessary in order to establish his cause of action against complainant; mere allegation, without any evidence as to the specific confidential information allegedly divulged by Atty. Mendoza, is difficult, if not impossible to determine if there was any violation of the rule on privileged communication; such confidential information is a crucial link in establishing a breach of the rule on privileged communication between attorney and client; the burden of proving that the privilege applies is placed upon the party asserting the privilege. (*Id*.)

Code of Professional Responsibility —— Rule 10.03, Canon 10 of the Code of Professional Responsibility mandates all lawyers to observe the rules of procedure and not misuse them to defeat the ends of justice; respondent was found to be one of these lawyers who has *repeatedly* deliberately abused court processes to fulfill his unlawful intentions and to harass fellow lawyers and their clients as well as judges and court employees who do not actuate his bidding; in order to unduly prolong the proceedings in different cases filed against him, respondent had interposed numerous appeals and petitions from issuances rendered by courts in these cases; a template for this kind of practice, G.R. No. 157659 and G.R. No. 157660, respondent deliberately ignored the final and executory decisions therein and disregarded the writs of possession correspondingly issued by the courts; respondent's dilatory and vexatious tactics were obviously to delay the full enforcement of the courts' decisions that were adverse to him; it is the ministerial duty of courts of law to issue a writ of possession once the decision in a case becomes final and executory; respondent's act of unduly extending the proceedings in these cases clearly run counter to the objective of the Rules of Court to promote a just, speedy, and inexpensive disposition of every action and

erroneous and completely devoid of basis in law, evidence, and jurisprudence, a person, let alone a lawyer, should not act contemptuously by challenging the judge or justice concerned to a public debate that would unavoidably expose him or her and the entire Judiciary which he or she represents, to public ridicule and mockery; a lawyer must foster respect for the courts and its officers; a lawyer must not sow hate or disrespect against the court and its members; he or she must be at the forefront in upholding its dignity; a lawyer, more than anyone, must know that there are proper venues for grievances against a magistrate or his or her decision or orders, which are sanctioned by law; debate, a public one at that, is not one of these remedies; respondent violated his basic obligation under the Rules of Court to *obey the laws of the Philippines, and to observe and maintain the respect due to the courts of justice and judicial officers*; he also transgressed Rule 11.05, Canon 11 of the Code of Professional Responsibility, which provides: 11.05 - A lawyer shall submit grievances against a Judge to the proper authorities only. (Genato *vs.* Atty. Mallari, A.C. No. 12486, Oct. 15, 2019) p. 247

—— There is no question in our mind that by delegating to someone else the work that is reserved only for lawyers, Atty. Rivera violated Rule 9.01 of Canon 9 of the Code of Professional Responsibility; in addition, the actuations of Atty. Rivera tended to mislead the Court; indeed, the RTC of Makati City was misled into believing that the complaint was filed by the real party-in-interest and that Atty. Rivera was duly authorized to file the same; the RTC eventually dismissed the complaint after it was established thru the Manifestation filed by Petelo that it was filed not by the real party-in-interest or by the duly authorized representative; Atty. Rivera, thus, in violation of Rule 10.01, Canon 10, committed a falsehood, or consented to the doing of any in court; he not only misled the RTC but likewise wasted its precious time and resources. (Petelo *vs*. Atty. Rivera, A.C. No. 10408, Oct. 16, 2019) p. 718

who abused the trust and confidence reposed upon them by their clients as well as to those who committed unlawful, dishonest, and deceitful conduct; the instant case is no exception; respondent guilty of gross misconduct for misappropriating and/or failing to return the money entrusted to her by her client and blatantly refusing to comply with the Court's order of suspension, and hereby imposes upon her the penalty of disbarment. (Arde *vs.* Atty. De Silva, A.C. No. 7607, Oct. 15, 2019) p. 229

— The severity of the penalty imposed on non-compliant attorneys depends on the circumstances obtaining in the case; the proper penalty to be imposed on the respondent is disbarment, take effect upon notice of this decision; this extreme penalty is fully called for in view of the serious affront that the respondent displayed towards the Supreme Court no less in disregarding the objectives of the MCLE program adopted under B.M. No. 1922, and of the cavalier foisting of his concealment on the courts, his clients and the public in general, including his colleagues in the Integrated Bar; disbarment is in accord with Section 27, Rule 38 of the *Rules of Court*, which provides: SEC. 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor*. – A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, or for any violation of the oath which he is required to take before admission to practice; the actuations of the respondent deserved to be severely punished in order to foster respect towards the Supreme Court, and to enhance fealty to the Rule of Law. (Atty. Gustilo *vs.* Atty. De La Cruz, A.C. No. 12318 [Formerly CBD Case No. 16-4972], Oct. 15, 2019) p. 237

Disbarment or suspension of — A member of the Bar may be penalized, even disbarred or suspended from his office as an attorney, for violating the lawyer's oath and/or for breaching the ethics of the legal profession as embodied in the CPR, for the practice of law is a profession, a form of public trust, the performance of which is entrusted

Practice of law — Atty. Rivera must be reminded that "the practice of law is not a natural, absolute or constitutional right to be granted to everyone who demands it; rather, it is a high personal privilege limited to citizens of good moral character, with special educational qualifications, duly ascertained and certified"; being a personal privilege, Atty. Rivera cannot simply consent to anyone using his signature and other bar details; he did not have the authority to bestow license to anybody to practice law because by doing so, he usurped the right and authority that is exclusively vested upon this Court; the authority to allow somebody to practice law and to closely scrutinize the fitness and qualifications of any law practitioner remains with this Court; and Atty. Rivera has no right whatsoever to exercise the same; "the right to practice law is not a natural or constitutional right but is in the nature of a privilege or franchise; it is limited to persons of good moral character with special qualifications duly ascertained and certified; the right does not only presuppose in its possessor integrity, legal standing and attainment, but also the exercise of a special privilege, highly personal and partaking of the nature of a public trust." (Petelo *vs*. Atty. Rivera, A.C. No. 10408, Oct. 16, 2019) p. 718

— Atty. Rivera's act of allowing persons other than himself to use his signature in signing papers and pleadings, in effect, allowed non-lawyers to practice law; worse, he failed to display or even manifest any zeal or eagerness to unearth the truth behind the events which led to his involvement in the filing of the unauthorized civil suit, much less to rectify the situation; although he claimed that the signatures were forgeries, there was nary a display of willingness on his part to pursue any legal action against the alleged forgers; on the contrary, he openly admitted his association with a disbarred lawyer and their ongoing agreement to allow the latter to use his signature and "details" in the preparation of pleadings; by so doing, Atty. Rivera not only willingly allowed a non-lawyer to practice law; worse, he allowed one to continue to practice

law notwithstanding that this Court already stripped him of his license to practice law; the foregoing acts of Atty. Rivera constituted violations of the Code of Professional Responsibility, particularly Rule 9.01, Canon 9, Rule 1.10, Canon 1 and Rule 10.01, Canon 10, which read: Rule 9.01, Canon 9: A lawyer shall not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the Bar in good standing; Rule 1.10, Canon 1: A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct; Rule 10.01, Canon 10: 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. (*Id*.)

—— Membership to the Bar has always been jealously guarded such that only those who have successfully hurdled the stringent examinations, possessed and maintained the required qualifications are allowed to enjoy the privileges appurtenant to the title; thus, it has been said that "[t]he title of 'attorney' is reserved to those who, having obtained the necessary degree in the study of law and successfully taken the Bar Examinations, have been admitted to the Integrated Bar of the Philippines and remain members thereof in good standing; and it is they only who are authorized to practice law in this jurisdiction"; "the practice of law is a privilege burdened with conditions and is reserved only for those who meet the twin standards of legal proficiency and morality; it is so delicately imbued with public interest that it is both a power and a duty of this Court to control and regulate it in order to protect and promote the public welfare"; Atty. Rivera abused the privilege that is only personal to him when he allowed another who has no license to practice law, to sign pleadings and to file a suit before the court using his signature and "details"; by allowing a non-lawyer to sign and submit pleadings before the court, Atty. Rivera made a mockery of the law practice which is deeply imbued with public interest; he totally ignored the fact that his act of filing a suit will have a corresponding impact and

effect on the society, particularly on the life and property rights of the person or persons he wittingly involved in the litigation, in this case, Fe and Petelo; Atty. Rivera's cavalier act of allowing someone to use to his signature and his "details" in the complaint have concomitant and significant effects on the property rights of Fe and Petelo. (*Id*.)

— We find the recommendation of the IBP to suspend Atty. Rivera from the practice of law for a period of one (1) year warranted by the circumstances of the case; *Tapay v. Bancolo*, cited. (*Id*.)

ATTORNEY'S FEES

Award of — Article 2208 of the New Civil Code provides that attorney's fees can be recovered in actions for the recovery of wages of laborers and actions for indemnity under employer's liability laws; attorney's fees is also recoverable when the respondent's act or omission has compelled the complainant to incur expenses to protect his interest; such conditions being present in the case at bar, an award of attorney's fees is warranted in favor of Apolinario. (Zonio, Jr. *vs*. 88 Aces Maritime Services, Inc., G.R. No. 239052, Oct. 16, 2019) p. 1138

— Neither does the Court see any cogent reason to award attorney's fees in favor of Angelita; certainly, she only has herself to blame for the filing of the case before the RTC; if she did not introduce improvements on ARDC's property, Emmanuel *et al*. would have no reason to institute an action against her; since she treated corporate property as if it was her own, she should have reasonably expected retaliatory action from the other shareholders; hence, the CA was correct to delete the award of attorney's fees. (Ago Realty & Dev't. Corp. (ARDC) *vs*. Dr. Ago, G.R. No. 210906 Oct. 16, 2019) p. 797

ATTORNEY'S FEES AND LITIGATION EXPENSES

Awards of — The awards as attorney's fees and litigation expenses are deleted for lack of basis; it is well established that the trial court must state the factual, legal, or equitable

absence of intent to harm the courts is a valid defense; here, Canlas reported about alleged attempts to buy off the Justices in the Poe cases; he claimed that he tried to get the side of the Justices on the alleged attempts but was unsuccessful; the Court is not immune from criticisms, and it is the duty of the press to expose all government agencies and officials and to hold them responsible for their actions; however, the press cannot just throw accusations without verifying the truthfulness of their reports; the perfunctory apology of Canlas does not detract from the fact that the article, directly or indirectly, tends to impede, obstruct, or degrade the administration of justice. (*Id*.)

Right against unreasonable searches and seizures –– In requiring a waiver in the *pro forma* Individual Application for New Firearm Registration, the Philippine National Police (PNP) appears to recognize the inviolability of the home; nevertheless, signing the Consent of Voluntary Presentation for Inspection does *not* result in a true and valid consented search; Section 9 of R.A. No. 10591 provides that applicants for Types 3 to 5 licenses "must comply with the inspection ... requirements"; however, the law is silent as to the scope, frequency, and execution of the inspection; this means that the Chief of the PNP is presumed to fill in these details in the Implementing Rules and Regulations; however, even the Implementing Rules is completely silent as to the parameters of the inspection; this renders applicants for firearms licenses incapable of intelligently waiving their right to the unreasonable search of their homes. (Acosta *vs*. Hon. Ochoa, G.R. No. 211559, Oct. 15, 2019) p. 400

–– Section 9 of R.A. No. 10591 and its corresponding provision in the Implementing Rules are unconstitutional for being violative of Article III, Section 2 of the Constitution; Section 9 authorizes warrantless inspections of houses which, are unreasonable and, therefore, require a search warrant; furthermore, Section 9 miserably failed to provide the scope and extent of the inspections, making them overbroad; while the State has heavily regulated

the use of and dealing in firearms to maintain peace and order, this does not excuse the utter lack of standards for the conduct of inspection; what this does is give unbridled discretion and power to government officials, the very discretion that Article III, Section 2 guards against; true, the standard of reasonableness can be found in the law and its Implementing Rules and Regulations; however, "reasonable" as a standard for inspection is not enough; for the waiver of the right against unreasonable searches to be valid, the provision allowing for the inspection must be as informative as to detail its scope and extent; signing the Consent of Voluntary Presentation for Inspection in the *pro forma* Individual Application for New Firearm Registration cannot be considered a valid waiver of the right against unreasonable searches under Article III, Section 2 of the Constitution; the applicant cannot intelligently consent to the warrantless inspection allowed in R.A. No. 10591 because of the utter lack of parameters on how the inspection shall be conducted. (*Id.*)

— The Implementing Rules and Regulations has since been amended in 2018, with its Section 9.3 now providing the scope of the inspection relating to applications for Types 3-5 licenses; to this Court, the inspection contemplated in Section 9.3 of the 2018 Implementing Rules, though it now provides the scope and extent of the inspection, may only be done with a search warrant as required in Article III, Section 2 of the Constitution; considering that the inspection is done before a license is issued, there is no compelling urgency to immediately conduct the inspection; a search warrant must first be obtained from a judge to determine probable cause for its issuance. (*Id.*)

— The right against unreasonable searches and seizures may be waived if it can be shown that the consent was "unequivocal, specific, and intelligently given, uncontaminated by any duress or coercion"; *Caballes v. Court of Appeals*, cited; consent to a search is not to be lightly inferred, but must be shown by clear and convincing evidence; the question whether a consent to a search was

in fact voluntary is a question of fact to be determined from the totality of all the circumstances; relevant to this determination are the following characteristics of the person giving consent and the environment in which consent is given: (1) the age of the defendant; (2) whether he was in a public or secluded location; (3) whether he objected to the search or passively looked on; (4) the education and intelligence of the defendant; (5) the presence of coercive police procedures; (6) the defendant's belief that no incriminating evidence will be found; (7) the nature of the police questioning; (8) the environment in which the questioning took place; and (9) the possibly vulnerable subjective state of the person consenting; the State has the burden of proving, by clear and positive testimony, that the necessary consent was obtained and that it was freely and voluntarily given. (*Id*.)

Right to privacy — Similar to marital privilege, the right to privacy is also a basic, fundamental right; this is why respondent Police Superintendent Darroca's lack of contrition over his police officers' act of taking petitioner's photo without her permission – and then placing it on display at the police station – is disturbing; it appears as though he sees nothing wrong in flagrantly and inexcusably violating petitioner's right to privacy. (In the Matter of Petition for Writ of Amparo of Vivian A. Sanchez *vs*. P/Supt. Darroca, G.R. No. 242257, Oct. 15, 2019) p. 646

Section 4.10 of the Implementing Rules — This Court does not find Section 4.10 of the Implementing Rules violative of Article III, Section 8 of the Constitution on the freedom of association; it has been held that Article III, Section 8 not only guarantees the freedom to associate; it also protects the freedom *not* to associate; the provision is not a basis to compel others to form or join an association; all that Section 4.10 provides is that a person intending to apply as a sports shooter must submit a certification from the president of a recognized gun club or sports shooting association that he or she is joining the competition; reason; this certification ensures that the extra ammunition is indeed granted to legitimate sports

of making false statements in his Personal Data Sheet (PDS); the evidence clearly shows that petitioner stated in his PDS that he has Police Officer I eligibility when the records show that he cheated on the March 29, 1998 examinations administered by the CSC (albeit, without legal effect) by allowing another person take the said examination in his behalf. Petitioner stated in his PDS that he passed the Police Officer I Examination knowing fully well that it was not true because he did not take the said exam; as an aspirant for a police officer position, he has a legal obligation to disclose the truth regarding his personal circumstances in the PDS, which is a requirement for his employment; Petitioner cannot justify his dishonest act with the fact that the CSC already lost its authority to administer the March 29, 1998 Police Officer I examinations because he cannot be considered to have acted in good faith in the first place; petitioner's act of passing off in his PDS that he has successfully hurdled the Police Officer I examinations, constituted malice on his part thereby negating any assertion of good faith; neither can petitioner argue that his appointment was a permanent one which entitled him to security of tenure. (San Felix *vs*. Civil Service Commission, G.R. No. 198404, Oct. 14, 2019) p. 21

—— The Civil Service Commission (CSC) has the authority and jurisdiction to investigate anomalies and irregularities in the civil service examinations and to impose the necessary and appropriate sanctions; the Constitution grants to the CSC, administration over the entire civil service; as defined, the civil service embraces every branch, agency, subdivision, and instrumentality of the government, including every government-owned or controlled corporation; Section 91 of R.A. No. 6975 or the *Department of Interior and Local Government Act of 1990* provides that the "Civil Service Law and its implementing rules and regulations shall apply to all personnel of the Department," to which herein petitioner belongs; however, it bears noting that on March 6, 1998, The Act providing for the Reform and Reorganization

covered by the AES Contract to Smartmatic by December 1, 2016; otherwise, any goods in its possession as of December 1, 2016 would be considered sold to it at the cost of 2,017,563,198.44, or a portion thereof; in the same Resolution, the Tribunal allowed the parties to send their representatives to observe the stripping and closure activities. (Marcos, Jr. *vs.* Robredo, P.E.T. Case No. 005, Oct. 15, 2019) p. 122

COMMISSION ON AUDIT (COA)

Decisions and resolutions — Generally, deference is given by the Court to the decisions and resolutions of the COA as a matter of general policy, not only on the basis of the doctrine of separation of powers but also in recognition of the COA's expertise on the laws it was entrusted to enforce; the Court also acknowledges the role that the COA assumes as guardian of public funds and properties pursuant to the 1987 Constitution under which the COA has been granted exclusive authority to disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties; the Court may only intervene to correct an assailed decision or resolution when the COA, in the exercise of its authority, acted without or in excess of jurisdiction, or with grave abuse of discretion. (Mla. Int'l. Airport Authority *vs.* Commission on Audit, G.R. No. 218388, Oct. 15, 2019) p. 526

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody rule — Apart from showing the presence of the elements, it is of utmost importance to likewise establish with moral certainty the identity of the confiscated drug; to remove any doubt or uncertainty on the identity and integrity of the seized drug, it is imperative to show that the substance illegally possessed and sold by the accused is the same substance offered and identified in court; this requirement is known as the Chain of Custody Rule under R.A. No. 9165 created to safeguard doubts concerning the identity of the seized drugs; chain of

— In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction; it is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty; thus, in order to obviate any unnecessary doubt on their identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime; in this connection, the Court has repeatedly held that Section 21, Article II of R.A. No. 9165, the applicable law at the time of the commission of the alleged crime, strictly requires that: (1) the seized items be inventories and photographed immediately after seizure or confiscation; (2) that the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice; verily, the three required witnesses should already be physically present at the time of the conduct of the inventory of the seized items which, again, must be immediately done at the place of seizure and confiscation – a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. (People *vs.* Vertudes, G.R. No. 220725, Oct. 16, 2019) p. 871

— 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 sold 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

(1) a representative from the media; (2) a representative from the DOJ; and (3) any elected public official; in this case, the records provide that the inventory of the illicit drugs was made in the PDEA Office in Camp Vicente Lim in Calamba City, Laguna when the buy-bust operation was conducted in San Pedro, Laguna; further, the inventory was only witnessed by the accused, a representative from the media, and an elected public official; the illicit drug was not even photographed as required by Section 21; there was no explanation offered as to these lapses; these glaring non-compliance with the provisions of Section 21 of R.A. No. 9165 render the integrity and the evidentiary value of the seized items to be highly compromised, consequently warranting accused-appellants' acquittal. (People *vs*. Lacdan *y* Perez, G.R. No. 208472, Oct. 14, 2019) p. 35

—— None of the prosecution witnesses testified on how the *corpus delicti* was stored in the crime laboratory pending its delivery to the court for presentation as evidence; the prosecution stipulated on the proposed testimony of forensic chemist PS/Insp. Baligod; absent any testimony on the management, storage, and preservation of the illegal drugs subject of seizure after its qualitative examination, the fourth link in the chain of custody of the illegal drugs is deemed not to have been reasonably established. (People *vs*. De Vera, G.R. No. 229364, Oct. 16, 2019) p. 1017

—— The breaches of procedure committed by the police officers militate against a finding of guilt against herein appellants; the integrity and evidentiary value of the *corpus delicti* had been indubitably compromised; the procedure in Section 21 of R.A. No. 9165 is a matter of substantive law and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects; the chain of custody here was broken from the time the illegal drug was confiscated until it got presented in court; the repeated breach of the chain of custody rule had cast serious uncertainty on the identity and integrity of the *corpus delicti*; the metaphorical chain did not link at all, albeit

inventory in the police station; while the required inventory and photography may be conducted at the nearest police station or at the nearest office of the apprehending officers, the same may be allowed only if attended with good and sufficient reason; here, the prosecution did not give any valid explanation why it departed from the prescribed procedure for the inventory and photography. (*Id*.)

— There was no detailed account on the handling of the seized drug from the time it was confiscated up to its presentation in court, hence, putting the integrity of the *corpus delicti* in question; the substantial discrepancies on the identity of the alleged drug itself and the evidence of the buy-bust operation created serious doubt that the illegal drug allegedly seized from appellants and transmitted to the investigating officer and then to the forensic chemist are one and the same; the discrepancy in the prosecution evidence on the identity of the seized and examined *shabu* and that formally offered in court seriously affect the identity of the *corpus delicti* without which the appellants must be acquitted. (*Id*.)

— To be sure, strict compliance with the requirements under Section 21 of R.A. No. 9165 may not always be possible under various field conditions; thus, the Implementing Rules and Regulations of R.A. No. 9165 offers a saving clause allowing leniency whenever justifiable grounds exist which warrant deviation from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved, *viz*: Section 21. (a) Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items; *People v. Jugo* specified the twin conditions for the saving clause to apply: For the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved; moreover, the justifiable ground for non-compliance must

— To convict an accused who is charged with illegal possession of dangerous drugs, defined and penalized under Section 11, Article II of R.A. No. 9165, the prosecution must establish the following elements by proof beyond reasonable doubt: (a) that the accused was in possession of dangerous drugs; (b) such possession was not authorized by law; and (c) the accused was freely and consciously aware of being in possession of dangerous drugs; the prosecution must prove with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms part of the *corpus delicti* of the crime; the prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, "planting," or contamination of evidence; the prosecution must be able to account for each link in the chain of custody from the moment that the illegal drugs are seized up to their presentation in court as evidence of the crime. (Mesa *y* San Juan *vs.* People, G.R. No. 241135, Oct. 14, 2019) p. 65

Inventory and photograph of the seized items — Section 21, Article II of R.A. No. 9165 laid down the procedure that must be observed and followed by police officers in the seizure and custody of dangerous drugs; paragraph 1 not only provides the manner by which the seized drugs must be handled, but likewise enumerates the persons who are required to be present during the inventory and taking of photographs; in 2014, R.A. No. 10640 partly amended R.A. No. 9165, specifically Section 21 thereof, to further strengthen the anti-drug campaign of the government; Paragraph 1 of Section 21 was amended, in that the number of witnesses required during the inventory stage was reduced from three (3) to only two (2); since the offenses subject of this appeal were committed before the amendment introduced by R.A. No. 10640, the old provisions of Section 21 and its Implementing Rules and Regulations (IRR) should apply. The use of the word "shall" means that compliance with the requirements is mandatory; Section 21(a) expressly provides that physical

and *People v. Mendoza*, cited; while non-compliance may be allowed under justifiable circumstances, jurisprudence clarifies that the prosecution must show that the PDEA operatives exerted earnest efforts to comply with the procedure on the three (3) witness rule; here, the absence of the appellants and the three (3) insulating witnesses during the inventory and photography was not explained, and worse, was not even recognized by the arresting team. (People *vs*. De Vera, G.R. No. 229364, Oct. 16, 2019) p. 1017

Saving clause — In this case, no DOJ representative and elected public official were present at the time of the physical inventory, marking, and taking of photographs of the evidence seized from petitioner; additionally, POI Villanueva testified that Crisostomo, the media representative, was not present when petitioner was arrested and the seized evidence were marked; Crisostomo merely signed the inventory after the marking of the evidence; it is therefore unclear whether he witnessed the actual physical inventory of the seized drugs; nevertheless, there is a saving clause under the IRR of R.A. No. 9165 in case of non-compliance with the Chain of Custody Rule; this saving clause, however, applies only (1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved; the prosecution, thus, loses the benefit of invoking the presumption of regularity and bears the burden of proving – with moral certainty – that the illegal drug presented in court is the same drug that was confiscated from the accused during his arrest; in this case, however, the prosecution offered no justification [nor explanation and] did not even recognize their procedural lapses; as a rule, strict compliance with the prescribed procedure is required because of the illegal drug's unique characteristic rendering it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise;

disregarded the requirements laid down under Section 21; the buy-bust team committed several and patent procedural lapses in the conduct of the seizure, initial custody, and handling of the seized drug, which thus compromised the integrity and evidentiary value of the confiscated drugs; they had no valid excuse for their deviation from the rules; the police failed to comply with the three-witnesses requirement under Section 21; the law requires the presence of an elected public official; the prosecution did not offer any justifiable reason for the deviation by the buy-bust team from the requirements laid down under Section 21; the prosecution has the burden of (1) proving the police officers' compliance with Section 21 of R.A. No. 9165, and (2) providing a sufficient explanation in case of non-compliance. (*Id*.)

COMPREHENSIVE FIREARMS AND AMMUNITION REGULATION ACT (R.A. NO. 10591) AND THE 2013 IMPLEMENTING RULES AND REGULATIONS (IRR)

Automatic revocation of license — Section 39(a) of R.A. No. 10591 and its corresponding provision in the Implementing Rules and Regulations, cited; the commission of the crime indicates the licensee's propensity for violence, which is contrary to the declared State policy of maintaining peace and order and protecting the people from violence; in such a case, the revocation of the license would be justified; ownership and possession of firearms is not a property right, but a mere privilege; should the State find that bearing arms would be contrary to its legitimate interests, it can revoke the license without violating the due process clause. (Acosta *vs*. Hon. Ochoa, G.R. No. 211559, Oct. 15, 2019) p. 400

Fees and licenses charged under the IRR — Petitioner PROGUN claims that the Implementing Rules and Regulations exacts numerous new fees and licenses such as sports shooters licenses, collectors licenses, license to purchase barrel and cylinder parts, among others, which are allegedly not required by law; it can be said that R.A. No. 10591 explicitly states that "reasonable licensing fees" may be

almost absolute, expectation of privacy in one's residence. (Acosta *vs*. Hon. Ochoa, G.R. No. 211559, Oct. 15, 2019) p. 400

Nature –– Petitioner PROGUN argues that the Implementing Rules and Regulations is an *ex post facto* law – a law that makes criminal an act done before its passage but innocent at the time of its commission – the enactment of which is prohibited in Article III, Section 22 of the Constitution; there is no such retroactive application mandated in the Implementing Rules and Regulations (IRR); on the contrary, firearm licenses to possess Class-A light weapons issued before the passage of R.A. No. 10591 are still recognized both under R.A. No. 10591 and its Implementing Rules; if the IRR were indeed in the nature of an *ex post facto* law, then private individuals who possess Class-A light weapons under the old law must be expressly punished under the new law because the new law only allows them to own and possess small arms; yet, as expressly provided in the law, existing license holders of Class-A light weapons may renew their licenses under the new law and Implementing Rules; as to petitioner PROGUN's claim that in 2014, the Philippine National Police "suddenly declared all existing firearms licenses as vacated" and required all to renew and re-apply for a new license under the new law under the pain of prosecution for illegal possession of firearms, this claim is unsubstantiated; no one became an "instant criminal" under the new law. (Acosta *vs*. Hon. Ochoa, G.R. No. 211559, Oct. 15, 2019) p. 400

–– Petitioner PROGUN in G.R. No. 215634 argues that the Implementing Rules and Regulations (IRR) has gone overboard and prescribed additional and more restrictive regulations for gun clubs, sports shooters, reloaders, gunsmithing, competitions, indentors, among others, "none of which is provided for by any reasonable standard" in R.A. No. 10591; however, it did not demonstrate how these regulations were "more restrictive" as compared with the law; on the contrary, R.A. No. 10591 sets forth a sufficient standard found in Section 2; it lays down

the State policy to "maintain peace and order and protect the people against violence" by providing "a *comprehensive* law regulating the ownership, possession, carrying, manufacture, dealing in and importation of firearms, ammunition, or parts thereof"; the Chief of the Philippine National Police incorporated provisions in the IRR to regulate the activities of gun clubs, sports shooters, reloaders, gunsmithing, competitions, and indentors, which are related to the ownership, possession, and dealing in firearms. (*Id*.)

Penal provisions relating to firearms use in the IRR — As to PROGUN's claim that penal provisions were added in the Implementing Rules, this is easily belied by a side-by-side comparison of the provisions of R.A. No. 10591 and the Implementing Rules and Regulations (IRR); when it comes to the penal provisions, the text of the IRR is almost a carbon copy of the law from which it is based; if there is any discrepancy, it is in item (g), where the Implementing Rules omitted the acquisition or possession of ammunition for a Class-A light weapon as a punishable act; still, contrary to PROGUN's claim, the Philippine National Police placed no additional penal provisions relating to firearms use in the Implementing Rules. (Acosta *vs*. Hon. Ochoa, G.R. No. 211559, Oct. 15, 2019) p. 400

Public consultations — Petitioner PROGUN also argues that the Implementing Rules and Regulations was allegedly drafted without the required consultation with the concerned sectors of society; this issue, however, is a factual question not proper in the present Petitions; this Court is inclined to believe respondent Philippine National Police's assertion that the meetings on the drafting of the Implementing Rules were well-attended by groups of gun dealers, private security agencies, and groups of gunsmiths and gun repair and customizing shops; this was evidenced by the Attendance Sheets and Minutes of the Stakeholders Hearing and Consultation attached to respondent PNP's Comment; the public hearing on August 15, 2013 was even attended by petitioner PROGUN, disproving its claim that no public consultations and

hearings were conducted in the drafting of the Implementing Rules; the Implementing Rules was, therefore, promulgated after the conduct of public consultations, in compliance with Section 44 of R.A. No. 10591. (Acosta *vs*. Hon. Ochoa, G.R. No. 211559, Oct. 15, 2019) p. 400

Right to bear arms — It is settled that the license to possess a firearm is not property; in *Chavez*, then Chief of Police Ebdane, Jr., taking cue from a speech delivered by then President Gloria Macapagal Arroyo, issued the Philippine National Police Guidelines suspending the issuance of permits to carry firearms outside of residence "to avert the rising crime incidents"; Chavez, a licensed gun owner with a permit to carry a firearm outside of residence, petitioned this Court to void the Guidelines for allegedly violating his right to due process; this Court disagreed with Chavez, ruling that there is no vested right in the continued ownership and possession of firearms; like any other license, the license to possess a firearm is "neither a property nor a property right"; as a mere "permit or privilege to do what otherwise would be unlawful," it does not act as "a contract between the authority granting it and the person to whom it is granted"; being in the nature of a license, the permit to carry firearm outside residence is neither a property nor a property right; a grantee of the permit does "not have a property interest in obtaining a license to carry a firearm. *Chavez* remains a binding precedent because, like P.D. No. 1866, which was effective during the promulgation of *Chavez*, the assailed R.A. No. 10591 still requires a license for ownership and possession of firearms. (Acosta *vs*. Hon. Ochoa, G.R. No. 211559, Oct. 15, 2019) p. 400

— Petitioners mainly assail the constitutionality of R.A. No. 10591 and its Implementing Rules and Regulations on the ground that they violate their "right to bear arms"; the history of our laws, however, reveals that we Filipinos have never had such constitutional right; the bearing of arms in our jurisdiction was, and still is, a mere statutory privilege, heavily regulated by the State; this Court

perpetrators; as explained in *Marasigan v. Fuentes, et al*.: Direct proof of conspiracy is rarely found; circumstantial evidence is often resorted to in order to prove its existence; absent of any direct proof, as in the present case, conspiracy may be deduced from the mode, method, and manner the offense was perpetrated, or inferred from the acts of the accused themselves, when such acts point to a joint purpose and design, concerted action, and community of interest; an accused participates as a conspirator if he or she has performed some overt act as a direct or indirect contribution in the execution of the crime planned to be committed; the overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime or by exerting moral ascendancy over the other co-conspirators. (BDO Life Assurance, Inc. *vs*. Atty. Palad, G.R. No. 237845, Oct. 16, 2019) p. 1110

— Mere relation is not enough to attribute criminal responsibility, especially when taken as the sole factor or even a primary one; at best, it adds to circumstantial proof that would shed light on the motives and attributions of the parties; by itself, however, it would set a dangerous precedent to ascribe even just reasonable link for conspiracy just because the two alleged co-conspirators are related. (*Id*.)

— Neither can this Court exclude petitioner from liability only because he did not participate in employing fraud or deceit upon the private complainants when they initally gave their money to Santias; at the risk of being repetitive, the finding of conspiracy necessarily implies that the act of one is the act of all; it is sufficient that they acted in concert pursuant to the same objective; it is not indispensable that petitioner engaged with private complainants from the time that they inquired on the investment scheme offered by Valbury to the time that they parted with their money; it is sufficient that the actions of petitioner and his cohorts were clearly directed by a premeditated joint activity which is aimed towards

matter of the contract; and (3) cause of the obligation which is established; it is worthy to note that all contracts have three stages: preparation, perfection, and consummation: Preparation or negotiation begins when the prospective contracting parties manifest their interest in the contract and ends at the moment of their agreement; perfection or birth of the contract occurs when they agree upon the essential elements thereof; consummation, the last stage, occurs when the parties fulfill or perform the terms agreed upon in the contract, culminating in the extinguishment thereof. (Heirs of Wilfredo C. Botenes *vs.* Mun. of Carmen, Davao, G.R. No. 230307, Oct. 16, 2019) p. 1043

Freedom of contract — The petitioner and the ADP-JAC Consortium, by executing the supplemental agreements, intended to modify the original consultancy services agreement with respect to the estimated man-months in order to complete the project, and to institute the necessary adjustments in the total cost of services; this is the only conclusion to be arrived at in view of the parties' choice of the word "*revised*" in Clause 2.03 found in each of the supplemental agreements in their reference to the estimated total number of man-months corresponding to the delays incurred in the completion of the project; the contemporaneous and subsequent acts of the parties should be considered in determining their intention; the parties to an existing contract may, by mutual assent, modify it, provided the modification does not contravene the law or public policy; We do not find anything irregular and unlawful in the manner that the petitioner and the ADP-JAC Consortium executed the supplemental agreements; for this purpose, we should uphold the right of the parties to alter any term of an existing contract by entering into a subsequent agreement, and the contract, as a modified, becomes a new contract between the parties, and the meaning to be given the subsequent agreements depends on the intention of the parties. (Mla. Int'l. Airport Authority *vs.* Commission on Audit, G.R. No. 218388, Oct. 15, 2019) p. 526

directors, and directly commence and prosecute this case would not only downplay the key role of the board in corporate affairs, but also undermine the theory of separate juridical personality. (Ago Realty & Dev't. Corp. (ARDC) *vs*. Dr. Ago, G.R. No. 210906 Oct. 16, 2019) p. 797

Close corporations — Assuming *arguendo* that ARDC is a close family corporation, the same cannot be considered a justification for noncompliance with the requirements for the filing of a derivative suit; in *Ang v. Sps. Ang*, the Court declared: The fact that SMBI is a family corporation does not exempt private respondent Juanito Ang from complying with the Interim Rules; in the *Yu* case, the Supreme Court held that a family corporation is not exempt from complying with the clear requirements and formalities of the rules for filing a derivative suit; there is nothing in the pertinent laws or rules which state that there is a distinction between family corporations and other types of corporations in the institution by a stockholder of a derivative suit. (Ago Realty & Dev't. Corp. (ARDC) *vs*. Dr. Ago, G.R. No. 210906 Oct. 16, 2019) p. 797

— Neither can Emmanuel, *et al*. take refuge in their assertion that ARDC is a close family corporation; under Section 97 of the Corporation Code, a close corporation may task its stockholders with the management of business, essentially designating them as directors; however, the law is clear that a close corporation must do so through a provision to that effect contained in its articles of incorporation; nowhere in ARDC's Articles of Incorporation can such a provision be found; there is nothing that expressly or impliedly allows Emmanuel, *et al*. and Angelita, or any of them, to manage the corporation; hence, the merger of stock ownership and active management that Emmanuel, *et al*. rely on cannot be applied to ARDC. (*Id*.)

Corporate officers — Emmanuel's designation as President was ineffectual because ARDC did not have a board of directors; Section 25 of the Corporation Code explicitly

— Before instituting a derivative suit, the relator-stockholder must exert all reasonable efforts to exhaust all remedies available under the articles of incorporation, the by-laws, and the laws or rules governing the corporation or partnership to obtain the relief he or she desires; such fact must then be alleged with particularity in the complaint; "the obvious intent behind the rule is to make the derivative suit the final recourse of the stockholder, after all other remedies to obtain the relief sought had failed." (*Id*.)

— Due to their control over the board of directors, the majority should not ordinarily be allowed to resort to derivative suits; where a corporation under the effective control of the majority is wronged, board-sanctioned litigation should take precedence over derivative actions.; the law expressly vests the power to sue in the board of directors, and a remedy based on equity, such as the derivative suit, can prevail only in the absence of one provided by statute; in other words, majority stockholders who have undisputed corporate control cannot resort to derivative suits when there is nothing preventing the corporation itself from filing the case; the case before the RTC was instituted by the stockholders holding the controlling interest in ARDC; however, the wrong done directly to ARDC was a wrong done only indirectly to the inchoate corporate interests of Emmanuel, *et al*.; if ARDC truly desired to vindicate its rights, it should have done so through its Board of Directors; considering the majority shareholdings of the plaintiffs *a quo*, their interests should have been protected by the board through affirmative action. (*Id*.)

— In derivative suits, it is the corporation that is the victim of the wrong; as such, it is the corporation that is properly regarded as the real party in interest, while the relator-stockholder is merely a nominal party; the corporation must be impleaded so that the benefits of the suit accrue to it and also because it must be barred from bringing a subsequent case against the same defendants for the same cause of action; stated otherwise, the judgment rendered

in the suit must constitute *res judicata* against the corporation, even though it refuses to sue through its board of directors. (*Id*.)

— Not every wrong suffered by a stockholder involving a corporation will vest in him or her the standing to commence a derivative suit; in *Cua, Jr., et al. v. Tan, et al.*, the Court explained when such actions lie, *viz.*: Suits by stockholders or members of a corporation based on wrongful or fraudulent acts of directors or other persons may be classified into individual suits, class suits, and derivative suits; where a stockholder or member is denied the right of inspection, his suit would be individual because the wrong is done to him personally and not to the other stockholders or the corporation; where the wrong is done to a group of stockholders, as where preferred stockholders' rights are violated, a class or representative suit will be proper for the protection of all stockholders belonging to the same group; but where the acts complained of constitute a wrong to the corporation itself, the cause of action belongs to the corporation and not to the individual stockholder or member; although in most every case of wrong to the corporation, each stockholder is necessarily affected because the value of his interest therein would be impaired, this fact of itself is not sufficient to give him an individual cause of action since the corporation is a person distinct and separate from him, and can and should itself sue the wrongdoer; otherwise, not only would the theory of separate entity be violated, but there would be multiplicity of suits as well as a violation of the priority rights of creditors; an individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stock in order to protect or vindicate corporate rights, whenever officials of the corporation refuse to sue or are the ones to be sued or hold the control of the corporation; in such actions, the suing stockholder is regarded as the nominal party, with the corporation as the party in interest. (*Id*.)

—— The corporate power to sue is exercised by the board of directors; for this purpose, the board may authorize a representative of the corporation to perform all necessary physical acts, such as the signing of documents; such authority may be derived from the by-laws or from a specific act of the board of directors, *i.e.*,a board resolution; however, in derivative suits, the recognized rule is different; since the board is guilty of breaching the trust reposed in it by the stockholders, it is but logical to dispense with the requirement of obtaining from it authority to institute the case and to sign the certification against forum shopping; when "the corporation is under the complete control of the principal defendants in the case, it is obvious that a demand upon the board to institute an action and prosecute the same effectively would be useless, and the law does not require litigants to perform useless acts"; thus, the institution of a derivative suit need not be preceded by a board resolution. (*Id*.)

—— The derivative suit has proven to be an effective tool for the protection of the minority shareholder's corporate interest; it is essentially an exception to the rule that a wrong done to a corporation must be vindicated through legal action commenced by the board of directors; through the voting procedure found in the Corporation Code, the majority shareholders exercise control over the board of directors; in *Gamboa v. Finance Secretary Teves, et al.*, the Court, in no uncertain terms, declared that: "indisputably, one of the rights of a stockholder is the right to participate in the control or management of the corporation; this is exercised through his vote in the election of directors because it is the board of directors that controls or manages the corporation"; hence, in the normal course of things, when a corporation is wronged, the board will readily litigate in order to protect the majority's corporate interests; thus, the minority, in a derivative capacity, may sue or defend on behalf of the corporation. (*Id*.)

Powers —— While corporations are subjected to the State's broad regulatory powers, it is their directors and officers who

— With the exclusion of the lower courts, this Court and the CA has concurrent jurisdiction to issue an injunctive writ as against the Department of Agriculture in the implementation of the CARL; however, such concurrence does not give the petitioner unrestricted freedom of choice of court forum consistent with the principle of hierarchy of courts; in the case of *Gios-Samar, Inc. v. Department of Transportation and Communications*, the Court reminded that said doctrine is not a mere policy, but a constitutional filtering mechanism designed to enable the Court to focus on more fundamental and essential tasks assigned to it by the Constitution; said principle, however, is subject to exceptions: (1) When there are genuine issues of constitutionality that must be addressed at the most immediate time; (2) When the issues involved are of transcendental importance; (3) Cases of first impression; (4) The constitutional issues raised are better decided by the Court; (5) Exigency in certain situations; (6) The filed petition reviews the act of a constitutional organ; (7) When petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; and (8) The petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy"; however, as clarified in the *Gios-Samar* case, the determinative factor in allowing the application of one of the aforementioned exceptions is the nature of the question raised by the parties in those "exceptions" that enabled the Court to allow such direct resort; petitioner merely speculates in its Petition that the benefits of classifying the Tan Kim Kee Estate as an industrial zone far outweighs the benefits of the implementation of the CARL because in previous experiences, the CARP beneficiaries were not able to develop the agricultural lands awarded to them; however, such conjecture does not constitute any

process of the pilot provinces were successfully concluded and the protest itself resolved on the merits; judicial notice may be taken that the protest in this case has been the subject of much attention and speculation in the public arena; each party has made allegations of the commission of electoral frauds irregularities, and anomalies against the other; as well, the parties and their counsels have publicly traded barbs and accusations in the media regarding the protest, despite the Tribunal's warning on violation of the *sub judice* rule; with this Resolution and the Memoranda required of both parties, the Tribunal will chart a way forward after the initial revision and recount, affording the parties the fullest opportunity to make their case consistent with due process of law; this Resolution does not yet resolve the entire case but is merely preliminary and interlocutory in nature; it is designed to hear the parties fully on the various legal issues relating to their controversy; it is not a finding for or against the protestant or the protestee. (*Id*.)

Precautionary Protection Order — In a Resolution dated July 12, 2016, the Tribunal issued a Precautionary Protection Order over the 92,509 clustered precincts covered by the Protest; the COMELEC, its agents, representatives, and persons acting in its place, including city/municipal treasurers, election officers, and responsible personnel and custodians, were directed to preserve and safeguard the integrity of all the ballot boxes and their contents, as well as other election documents and paraphernalia in all 92,509 clustered precincts. (Marcos, Jr. *vs*. Robredo, P.E.T. Case No. 005, Oct. 15, 2019) p. 122

EMPLOYMENT, TERMINATION OF

Illegal dismissal — Having terminated petitioner solely on the basis of a provision of a retirement plan which was not freely assented to by him, SMI is guilty of illegal dismissal; it is thus liable to pay petitioner backwages and to reinstate him without loss of seniority and other benefits; at this point, however, reinstatement is no longer possible since petitioner had already reached the

that, as a result thereof, the offended party suffered damage; preliminarily, it is a settled rule that factual findings of the trial courts are accorded great respect because they are in the best position to assess the credibility of the witnesses having had the opportunity to observe their demeanor during the trial; this Court declines to disturb the factual findings of the Regional Trial Court and the CA as they are in unison in finding that all the elements of *estafa* are extant in this case. (Sulit *y* Trinidad *vs*. People, G.R. No. 202264, Oct. 16, 2019) p. 754

Penalty — The penalty corresponding to the amount defrauded was adjusted with the passage of R.A. No. 10951; the total amount defrauded is 697,187.13; the imposable penalty is *arresto mayor* in its maximum period to *prision correccional* in its minimum period; there being no mitigating and aggravating circumstances, the maximum penalty should be one year and one day of *prision correccional;* applying the Indeterminate Sentence Law, the minimum term of the indeterminate sentence is *arresto mayor* in its minimum and medium periods, the range of which is one month and one day to four months; thus, the indeterminate penalty is two months and one day of *arresto mayor*, as minimum, to one year and one day of *prision correccional*, as maximum; legal interest of 6% per annum on the amount from date of finality of this Court's Decision until full payment as per Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013. (Sulit *y* Trinidad *vs*. People, G.R. No. 202264, Oct. 16, 2019) p. 754

ESTAFA BY MEANS OF DECEIT

Elements — To properly charge an accused with *estafa* under Article 315, par. 2(a), supra, the information should aver the following essential elements, to wit: (1) that the accused used a fictitious name or false pretense that he possesses power, influence, qualifications, property, credit, agency, business, imaginary transaction, or other similar deceits; (2) that the accused used such deceitful means prior to or simultaneous with the execution of the fraud; (3) that

EVIDENCE

Affidavit of desistance — An affidavit of desistance is "viewed with suspicion and reservation because it can easily be secured from a poor and ignorant witness, usually through intimidation or for monetary consideration"; it is not binding on the OMB-MOLEO which has the power to investigate and prosecute on its own any act or omission of a public officer or employee, office or agency which appears to be illegal, unjust, improper or inefficient; nonetheless, affidavits of desistance may still be considered in certain cases; in *Marcelo v. Bungubung*, this Court held that the express repudiation in the affidavit of desistance of the material points in the complaint-affidavit may be admitted into evidence, absent proof of fraud or duress in its execution; the affidavit of desistance makes the complaint-affidavit questionable and the CA took proper notice of it. (Capt. Daquioag *vs.* Office of the Ombudsman, G.R. No. 228509, Oct. 14, 2019) p. 54

Burden of proof — Section 1, Rule 131 of the Rules of Court provides that the burden of proof is the duty of a party to prove the truth of his claim or defense, or any fact in issue by the amount of evidence required by law; as a rule, forgery cannot be presumed; an allegation of forgery must be proved by clear, positive and convincing evidence, and the burden of proof lies on the party alleging forgery; one who alleges forgery has the burden to establish his case by a preponderance of evidence, or evidence which is of greater weight or more convincing than that which is offered in opposition to it; the fact of forgery can only be established by a comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized to have been forged; since petitioner is assailing the 1963 Deed of Sale, he evidently has the burden of making out a clear-cut case that the disputed document is bogus; both the RTC and the CA concluded that petitioner failed to discharge the burden. (Coro *vs.* Nasayao, G.R. No. 235361, Oct. 16, 2019) p. 1095

emotion, behavior, condition or appearance of a person. (Co *vs*. People, G.R. No. 233015, October 16, 2019) p. 1056

Rule on marital and filial privileges — Petitioner's relationship with her husband insulates her from any inquiries regarding Labinghisa's purported membership in the New People's Army (NPA); whatever information respondents may hope to extract from her or her children are protected by spousal and filial privileges, which continue to exist even after Labinghisa's death; marriage is an inviolable social institution and the foundation of the family which, in turn, is the foundation of the nation; in recognition of the significance of marriage to Philippine society, testimonial privilege and communication privilege have been granted to spouses; this is to preserve their harmonious relationship and to prevent any party, including a spouse, to take advantage of the free communication between the spouses or of information learned within the union; the overriding consideration in the State's support of marriage is the recognition of its status as an inviolable social institution, with the State implicitly acknowledging the importance of unfettered communication between the spouses; the family and its members likewise enjoy a similar privilege; no one can be compelled to testify against his or her direct descendants or direct ascendants; exceptions do exist to the general rule of marital privilege or disqualification; among these is when a spouse commits an offense that "directly attacks, or directly and vitally impairs, the conjugal relation"; this Court expounded in *Francisco* that when there is no more spousal harmony to be preserved because of strained domestic relations, the identity of interests and the danger of perjury disappear, and the law's aim of protecting the security of private life also ceases to exist; none of the exceptions to marital privilege exist here; petitioner admits to being separated in fact from Labinghisa for more than a decade; yet, this does not suffice as an exception, as separation is not tantamount to strained marital relations; further, neither spouse committed an offense that impaired their conjugal union;

and between the petitioner and the ADP-JAC Consortium, being a mere accessory of Loan Agreement No. PH-136, should likewise be treated as an executive agreement, and construed and interpreted in accordance with the doctrine of *pacta sunt servanda*; a similar treatment should be extended to the three Supplemental Agreements entered into by the petitioner and the ADP-JAC Consortium; the COA could not validly insist that the NEDA Guidelines, particularly that on applying a 5% interest on contingency, should find application because the contracting parties did not stipulate on the applicable law; the pronouncement in *Abaya v. Ebdane* and its progeny that international law applies in interpreting and implementing contracts executed in conjunction with executive agreements was controlling. (Mla. Int'l. Airport Authority *vs.* Commission on Audit, G.R. No. 218388, Oct. 15, 2019) p. 526

EXECUTIVE DEPARTMENT

Presidential immunity from suit — The Court has affirmed that there is no need to expressly provide for the concept of presidential immunity either in the Constitution or in law; while the concept of immunity from suit originated elsewhere, the ratification of the 1981 constitutional amendments and the 1987 Constitution made our version of presidential immunity unique; Section 15, Article VII of the 1973 Constitution, as amended, provided for immunity at two distinct points in time: the first sentence of the provision related to immunity during the tenure of the President, and the second provided for immunity thereafter; as the framers of our Constitution understood it, which view has been upheld by relevant jurisprudence, the President is immune from suit *during his tenure*; the immunity makes no distinction with regard to the subject matter of the suit; it applies whether or not the acts subject matter of the suit are part of his duties and functions as President; no balancing of interest has ever been applied to Presidential immunity under our jurisprudence; the Constitution provides remedies for violations committed by the Chief Executive except an ordinary suit before the courts; the Chief Executive must first be allowed to

FALSIFICATION OF A PRIVATE DOCUMENT

Commission of — Absolving the petitioners of the crime of falsification of a private document likewise clears them of the crime of *estafa*. We adopt with approval the commentary expressed by a respected treatise on criminal law on the matter, *viz.:* On the other hand, in the falsification of a private document, there is no crime unless another fact, independent of that of falsifying the document, is proved: *i.e.* damage or intent to cause it; the damage to another is caused by the commission of the crime of falsification of private document; the intent to defraud in using the falsified private document is part and parcel of the crime, and cannot give rise to the crime of *estafa*, because the damage, if it resulted, was caused by, and became the element of, the crime of falsification of private document; the crime of *estafa* in such case was not committed, as it could not exist without its own element of damage. (Co *vs*. People, G.R. No. 233015, Oct. 16, 2019) p. 1056

Elements — Falsification of a private document under Article 172, paragraph 2 of the *Revised Penal Code,* has the following elements, namely: (1) that the offender committed any of the acts of falsification, except those in paragraph 7, enumerated in Article 171 of the *Revised Penal Code;* (2) that the falsification was committed in any private document; and (3) that the falsification caused damage to a third party or at least the falsification was committed with intent to cause such damage; the Prosecution sought to establish that Acme did not exist; that Jade Bank did not benefit from any security services that could have been rendered by Acme; that petitioner Luis Co had signed the request for payment in favor of Acme; and that the checks issued as payments had been deposited under fictitious accounts the petitioners owned and controlled; the first element of the crime of falsification of a private document was not established beyond reasonable doubt. (Co *vs*. People, G.R. No. 233015, Oct. 16, 2019) p. 1056

Elements –– The test to determine whether or not forum shopping was committed was explained in *Dy, et al. v. Yu, et al.*: To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the element of *litis pendentia* is present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought; if a situation of *litis pendentia* or *res judicata* arises by virtue of a party's commencement of a judicial remedy identical to one which already exists (either pending or already resolved), then a forum shopping infraction is committed; here, the elements of forum shopping are present. (BF Citiland Corp. *vs.* Bangko Sentral ng Pilipinas, G.R. No. 224912, Oct. 16, 2019) p. 952

Verification and Certification of Non-Forum shopping –– In *Jorge v. Marcelo*, the Court allowed the non-presentation to the notary public and non-indication in the verification and certification of non-forum shopping of the affiant's competent evidence of identity, because he/she was personally known to the notary public; such is not the case here; the jurat of BF Citiland's Verification and Certification of Non-Forum Shopping does not mention that the affiants are personally known to the notary public; it clearly states that the affiants presented competent evidence of identity to the notary public and yet there were no entries under Identification and Date/Place of Issuance; proofs of competent evidence of identities are required to ensure that the allegations are true and correct and not a product of the imagination or a matter of speculation, and that the pleading is filed in good faith; with the absence of the details of competent evidence of identity, the verification and certification are defective; however, the Court had previously held that a defective verification and certification is not fatal to a case; in several cases, the Court entertained a petition despite a defect in the verification and certification, and reasoned

evidence to prove the qualifying circumstance of treachery, accused-appellant should be held liable for the crime of homicide, and not murder. (People *vs*. Dela Cruz *y* Deplomo, G.R.No. 227997, Oct. 16, 2019) **p. 984**

Penalty — In the absence of evident premeditation and treachery, appellant may be convicted only of homicide for the killing of Roger C. Celestino; although the Court of Appeals appreciated the mitigating circumstance of voluntary surrender, it nonetheless held that it could not modify appellant's indivisible penalty of *reclusion perpetua*; but since this Court downgraded appellant's crime to homicide, appellant may now benefit from the attendant mitigating circumstance; applying the Indeterminate Sentence Law and considering the mitigating circumstance of voluntary surrender, appellant should be sentenced to eight (8) years of *prision mayor* as minimum to twelve (12) years and six (6) months of *reclusion temporal* as maximum. (People *vs*. Doca *y* Villaluna, G.R. No. 233479, Oct. 16, 2019) p. 1077

—— The accused-appellant should be held liable for the crime of homicide under Article 249 of the Revised Penal Code, punishable by *reclusion temporal*; applying the Indeterminate Sentence Law, and in the absence of any mitigating or aggravating circumstances, accused-appellant is 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. (People *vs*. Dela Cruz *y* Deplomo, G.R.No. 227997, Oct. 16, 2019) p. 984

INFORMATION

Concept —— It is a fundamental tenet in criminal procedure that the recital in the information of the facts constitutive of the offense, not the designation of the offense therein, determines the crime being charged against the accused; the amended information designated the offense the petitioners committed as *estafa*, stating therein that they so committed it by: *taking advantage of their position*

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health that he suffered a stroke that paralyzed the left side of his body which required him to follow a strict regimen of medication and diet, and subjected him to a series of physical therapy; as a necessary consequence, he had to take numerous leaves of absence from work; however, this excuse deserves scant consideration; while this Court is emphatic on respondent Judge's fate, still it was incumbent upon him to inform this Court, through the OCA, of his inability to seasonably decide the case before him because the demands of public service could not abide by his illness; respondent Judge failed to make such a request. (*Id*.)

— The Court adopts the OCA's recommendation that a violation of Supreme Court rules, directives and circulars is a less serious charge punishable by suspension from office without salary and other benefits for not less than one nor more than three months, or a fine of more than 10,000.00 but not exceeding 20,000.00; the fines to be imposed have varied in each case, depending chiefly on the number of cases not decided within the reglementary period; also, this Court has to take into consideration the presence of aggravating or mitigating circumstances such as, but not limited to, the damage suffered by the parties from the delay, the health condition and age of the judge; in this case, this Court takes into account the health of respondent Judge and the fact that this is his first administrative infraction; the Court also notes that respondent Judge requested before the OCA for an assisting judge; and that sometime in 2014, the OCA appointed an assisting judge to Branch 10 to hear pending cases in the said court; considering that respondent Judge is undeniably guilty of undue delay or of violation of Supreme Court rules, directives and circulars, this Court finds that the amount of 5,000.00 as recommended by the OCA is too minimal; the Court deems it proper and just to increase the fine to 10,000.00 to be deducted from his disability retirement benefits. (*Id*.)

Gross ignorance of the law and procedure — The audit report copiously detailed how Judge Pinto had disregarded the law and procedure in handling the cases pending before her *sala*; among her gross errors and blunders were omitting to furnish to the OSG copies of the decisions she had rendered; granting motions to take advance testimonies and depositions even before the records of the cases were transmitted to her *sala*; accepting pretrial briefs on the same days of the holding of the pre-trial conferences, and permitting the lawyers to take part in the pre-trial conferences despite not being authorized to do so through special powers of attorney; acting on and admitting formal offers of exhibits even before the respondents or the State could comment thereon; and not giving notifications to the OSG regarding the progress of proceedings in at least 19 cases; any of these gross errors and blunders was sufficient to render her administratively liable for gross ignorance of the law and procedure; the OCA listed other irregularities committed by Judge Pinto; she was clearly guilty of gross ignorance of law and procedure; a judge is expected to exhibit more than just cursory acquaintance with statutes and procedural rules; Judge Pinto was expected to keep abreast of our laws, changes therein, as well as with the latest jurisprudence and rules of procedure, for she owed it to the public to be legally knowledgeable because ignorance of the law and procedure is the mainspring of injustice; Canon 6 of the *New Code of Judicial Conduct for the Philippine Judiciary* states that competence is a prerequisite to the due performance of the judicial office; Judge Pinto's flagrant disregard of laws and the rules of procedure affected her competency and conduct as a judge in the discharge of her official functions; she thereby ignored that the rules of procedure have been instituted to guarantee the speedy and efficient administration of justice, such that the failure to abide by said rules weakens the wisdom behind them and diminishes respect for the law; the blatant and unwarranted disregard by Judge Pinto of the provisions of A.M. Nos. 02-11-10-SC and other rules rendered her guilty of gross ignorance of the law

and procedure; *Office of the Court Adminstrator v. Castañeda*, cited. (OCA *vs*. Judge Tuazon-Pinto, A.M. No. RTJ-10-2250 [Formerly A.M. No. 08-08-460-RTC], Oct. 15, 2019) p. 288

Gross inefficiency — Judge Pinto did not refute the audit team's finding that she had allowed respondent Clarin to issue commitment or release orders in some instances; in her partial compliance/explanation, however, she would justify this by insisting on her doing so out of her desire to expedite the proceedings, for in that way the arresting officers and the accused would no longer need to wait for her to be done with her sessions and trials before the release of the accused could be ordered; the task of issuing the commitment or release orders required the exercise of judicial discretion and was not merely clerical or administrative; it pertained to Judge Pinto, and could not be transferred to her subordinate even for a brief moment; Judge Pinto's failure to adhere to and implement existing laws, policies, and the basic rules of procedure seriously compromised her ability to be an effective magistrate; the convenience of any party cannot ever justify the flagrant disregard of such laws, policies, and the basic rules of procedure. (OCA *vs*. Judge Tuazon-Pinto, A.M. No. RTJ-10-2250 [Formerly A.M. No. 08-08-460-RTC], Oct. 15, 2019) p. 288

Penalty — The sum of Judge Pinto's lapses and irregularities warranted the imposition of the supreme penalty of dismissal from the service; however, in *Re: Anonymous Letter dated August 12, 2010, Complaining against Judge Ofelia T. Pinto, Regional Trial Court, Branch 60, Angeles City, Pampanga*, we already imposed on her the supreme penalty of dismissal from service, with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to re-employment in any branch, agency or instrumentality of the government, including government-owned or controlled corporations; as the penalty of dismissal from service as recommended by the OCA is no longer feasible, fine in the maximum, *i.e.*, 40,000.00, to be deducted from her accrued leave credits, imposed. (OCA

not hang in suspense for an indefinite period of time; there are, however, recognizable instances when a final judgment may be subject to modification; in *FGU Insurance Corp. v. RTC of Makati City, Br. 66, et al.*, the Court took the occasion to expound on the doctrine and the instances when there can be an acceptable deviation from the same; but like any other rule, it has exceptions, namely: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable; the exception to the doctrine of immutability of judgment has been applied in several cases in order to serve substantial justice; none of these exceptions exist for the Court to digress "from the judgment of the RTC; NAPOCOR's premise that the post-audit qualifies as a supervening event that would bring into operation the non-application of the immutability doctrine, is mistaken; a supervening event, to be sufficient to stay or stop the execution, must alter the execution to become inequitable, impossible, or unfair, and cannot rest on unproved or uncertain facts; in this case, the post-audit of the adjudged amount based on the PPA with PPC which provided a formula in the fuel component computable in the billings is irrelevant to the proceedings and cannot be deemed to be a fact that transpired after the judgment became final, as it was already existing. (NAPOCOR *vs*. Delta P, Inc., G.R. No. 221709, Oct. 16, 2019) p. 891

JUDICIAL REVIEW

Actual case or controversy requirement — Acosta and Dela Paz, petitioners in G.R. No. 211559, did not allege actual facts in their Petition; as such, they failed to bring an actual case or controversy before this Court; Article VIII. Section 1 of the Constitution requires an actual case or controversy for this Court's exercise of its power of judicial review; there is an actual case or controversy if it involves "a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution"; the issue

their voices and the redress of their grievances"; however, if they are to do so, associations "must sufficiently establish who their members are, that their members authorized the associations to sue on their behalf, and that the members would be directly injured by the challenged governmental acts"; this Court, in *The Provincial Bus Operators Association of the Philippines*, summarized the factors to be considered in granting standing to associations and corporations suing on behalf of its members: The liberality of this Court to grant standing for associations or corporations whose members are those who suffer direct and substantial injury depends on a few factors; in all these cases, there must be an actual controversy; furthermore, there should also be a clear and convincing demonstration of special reasons why the truly injured parties may not be able to sue; alternatively, there must be a similarly clear and convincing demonstration that the representation of the association is more efficient for the petitioners to bring; in a class suit, a number of the members of the class are permitted to sue and to defend for the benefit of all the members so long as they are sufficiently numerous and representative of the class to which they belong; in addition to an actual controversy, special reasons to represent, and disincentives for the injured party to bring the suit themselves, there must be a showing of the transcendent nature of the right involved; only constitutional rights shared by many and requiring a grounded level of urgency can be transcendent. (*Id*.)

— Petitioners Acosta, Dela Paz, and PROGUN, however, have legal standing to file the present suit; an aspect of justiciability, legal standing is the "right of appearance in a court of justice on a given question"; it ensures that the party bringing the case has a "personal and substantial interest in its outcome such that he or she has sustained, or will sustain, direct injury as a result of its enforcement"; what is essential is *direct injury*, as this guarantees a "personal stake in the outcome of the controversy" which, in turn, assures "that concrete adverseness which sharpens

the same parties involving the same cause of action, thus, rendering the second action unnecessary and vexatious; it exists when the following requisites concur: 1. Identity of parties or of representation in both cases; 2. Identity of rights asserted and relief prayed for; 3. The relief must be founded on the same facts and the same basis; and 4. Identity in the two preceding particulars should be such that any judgment which may be rendered in the other action, will, regardless of which party is successful, amount to *res judicata* on the action under consideration; *res judicata*, on the other hand, exists if the following requisites concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) it must have been rendered by a court having jurisdiction over the subject matter and the parties; (4) there must be, between the first and the second action, identity of parties, of subject matter and cause of action; the first three elements of *litis pendentia* are the same as forum shopping, and it was discussed as present in this case; it was established that the two actions have identity of parties, identity of right or cause of action, and identity of reliefs sought; a decision on the merits in one action is, in theory, also a decision on the other remaining action; since the two actions were filed in two different courts/fora, the complainant/petitioner is considered to be shopping for a favorable result; hence, the term forum shopping; having determined the presence of all the elements of forum shopping, we deny the petition. (BF Citiland Corp. *vs.* Bangko Sentral ng Pilipinas, G.R. No. 224912, Oct. 16, 2019) p. 952

MALICIOUS PROSECUTION

Concept — Jurisprudence has defined malicious prosecution as "an action for damages brought by one against whom a criminal prosecution, civil suit, or other legal proceeding has been instituted maliciously and without probable cause, after the termination of such prosecution, suit, or other proceeding in favor of the defendant therein"; while generally associated with criminal actions, "the term has been expanded to include unfounded civil suits instituted

found the respondent to have acted in manifest bad faith, dishonesty, and deceit; the respondent had willfully contravened the requirement under B.M. No. 1922 by concealing his non-compliance with the use of the fictitious MCLE compliance number in his pleadings in the ejectment case; he had not also met the MCLE requirements corresponding to the second, third, fourth and fifth compliance periods; his actuations were designed to mislead the courts, his client and his colleagues in the profession, as well as all other persons who might have trusted in his representation of his compliance; the respondent was definitely guilty of violating Canon 1, Canon 7 and Canon 10 of the *Code of Professional Responsibility*, which state: CANON 1 – A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes. CANON 7 – A lawyer shall at all times uphold the integrity and dignity of the legal profession, and support the activities of the integrated bar. CANON 10 – A lawyer owes candor, fairness and good faith to the court. (Atty. Gustilo *vs.* Atty. De La Cruz, A.C. No. 12318 [Formerly CBD Case No. 16-4972], Oct. 15, 2019) p. 237

—— Pursuant to B.M. No. 1922, as amended, any attorney who fails to indicate in the pleadings filed in court the MCLE certificate of compliance or certificate of exemption may be subject to appropriate penalty and disciplinary action, like a fine of 2,000.00 for the first offense, 3,000.00 for the second offense, and 4,000.00 for the third offense; in addition to the fine, he may be listed as a delinquent member of the Integrated Bar, pursuant to Section 2, Rule 13 of B.M. No. 850 and its implementing rules and regulations; and he shall be discharged from the case and the client/s shall be allowed to secure the services of a new attorney with the concomitant right to demand the return of fees already paid to the noncompliant attorney. (*Id.*)

employers and employees to fix the employee's retirement age; absent such an agreement, the law fixes the age for compulsory retirement at sixty-five (65) years, while the minimum age for optional retirement is set at sixty (60) years; thus, retirement plans allowing employers to retire employees who have not yet reached the compulsory retirement age of sixty-five (65) years are not *per se* repugnant to the constitutional guaranty of security of tenure, *provided that the retirement benefits are not lower than those prescribed by law and they have the employee's consent;* it is axiomatic, therefore, that a retirement plan giving the employer the option to retire its employees below the ages provided by law must be assented to by the latter, otherwise, its adhesive imposition will amount to a deprivation of property without due process; in the recent case of *Laya, Jr. v. Philippine Veterans Bank*, we emphasized the character of the employee's consent to the employer's early retirement policy: it must be explicit, voluntary, free, and uncompelled. (Pulong *vs.* Super Mfg. Inc., G.R. No. 247819, Oct. 14, 2019) p. 95

—— Retirement is the result of a bilateral act of the parties, a voluntary agreement between the employer and the employee whereby the latter, after reaching a certain age, agrees to sever his or her employment with the former; the MOA here was not assented to by petitioner and his coworkers; it was not executed after consultations and negotiations with the employees' authorized bargaining representative; The MOA, therefore, does not bind petitioner; much less, its provisions on compulsory retirement at age sixty (60); for it was not a result of any bilateral act; instead, it was a unilateral imposition of SMI upon petitioner; petitioner's acceptance of the benefits that are usual gratuities granted to the employees as a matter of company practice does not equate to his assent to SMI's retirement plan; For petitioner was a mere passive recipient of whatever benefits were given him; at any rate, the acquiescence by the employee to an early retirement plan cannot be lightly inferred from his acceptance of employment, or in this case, employment

if Sen. De Lima's position that the acts complained of are not related to the official functions of the President, it also necessarily follows that the OSG can no longer continue to represent him. (De Lima *vs.* Pres. Duterte, G.R. No. 227635, Oct. 15, 2019) p. 578

PARTIES

Real party-in-interest — Note too that the Petition failed to state a cause of action considering the insufficiency of the allegations in the pleading; petitioner is *not* the registered owner of the Tan Kim Kee Estate; Section 2, Rule 3 of the Rules of Court is explicit in stating that every action must be prosecuted or defended in the name of the real party-in-interest, a party who stands to be benefited or injured by the judgment in the suit; real interest must be one which is present and substantial, as distinguished from a mere expectancy, or a future, contingent, subordinate or consequential interest; procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights; like all rules, they are required to be followed except only for the most persuasive of reasons. (The Local Gov't. of Sta. Cruz, Davao Del Sur *vs.* Prov. Office of the Dep't. of Agrarian Reform, Digos City, Davao Del Sur, G.R. No. 204232, Oct. 16, 2019) p. 774

PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION–STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Assessment of disability — Under Section 20-B of the POEA-SEC, it is the company-designated physician who is entrusted with the task of assessing a seafarer's disability; jurisprudence is replete with pronouncements that it is the company-designated physician's findings which should form the basis of any disability claim of the seafarer; the company doctor has either 120 or 240 days, depending on the circumstances, within which to complete the medical assessment of the seafarer to determine whether the seafarer is fit to work and to establish the degree of his disability; otherwise, the disability claim shall be

told by 88 Aces through Jocson that they could not shoulder his medical expenses; having been denied to undergo the post medical examination, he just continued taking the medicine given to him by the doctor in Saudi Arabia; between the two conflicting allegations from Apolinario and respondents, this Court is inclined to resolve the doubt in favor of Apolinario. (Zonio, Jr. *vs*. 88 Aces Maritime Services, Inc., G.R. No. 239052, Oct. 16, 2019) p. 1138

— Procedure to be followed by a seafarer in claiming disability benefits, laid down in Section 20(B)(3) of the 2000 Amended POEA Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels; a seafarer-claimant is mandated a period of three working days within which he should submit himself to a post-employment medical examination so that the company-designated physician can promptly arrive at a medical diagnosis; failure to comply therewith shall result in the forfeiture of his right to claim the above benefits; while the requirement to report within three working days from repatriation appears to be indispensable in character, there are some established exceptions to this rule: (1) when the seafarer is incapacitated to report to the employer upon his repatriation; and (2) when the employer inadvertently or deliberately refused to submit the seafarer to a post-employment medical examination by a company-designated physician. (*Id*.)

— Sections 2 and 18 of the Standard Term and Conditions Governing the Employment of Filipino Seafarers on Board Ocean Going Vessels provide for the duration and termination of contract between the employer and a seafarer; a contract between an employer and a seafarer ceases upon its completion, when the seafarer signs off from the vessel and arrives at the point of hire; Section 30 of the 2000 POEA-SEC provides for the prescriptive period for filing claims arising from the contract: Sec. 30. PRESCRIPTION OF ACTION.- All claims arising from this Contract shall be made within three (3) years

Work-related illness — While the illness is not listed as one of the occupational diseases under Section 32(A) of the POEA-SEC, the ailment is presumed work-related under Section 20(B)(4) of the contract; respondents are duty bound to overcome this presumption; the post-employment medical check-up could have been the proper basis to determine the seafarer's illness, whether it was work-related, or its specific grading of disability; having failed to present any evidence to defeat the presumption of work-relatedness of Apolinario's diabetes mellitus, the *prima facie* case that it is work-related prevails. (Zonio, Jr. *vs.* 88 Aces Maritime Services, Inc., G.R. No. 239052, Oct. 16, 2019) p. 1138

PRELIMINARY INVESTIGATION

Probable cause — Conspiracy under the law, for which Palad is being accused as a part of, occurs when two or more persons come to an agreement concerning the commission of a felony and decide to commit it; petitioner was unable to show that Palad acted in concert pursuant to the objective to defraud the company, nor had any knowledge about the scheme, prompting Palad's exclusion from the charge as a co-conspirator; petitioner anchors its claim of Palad's involvement in the conspiracy on two grounds; both reasons are grounded on hypothesis more than actuality; mere speculation, especially as to the state of a mind of an accused, does not pass the standards set for the finding of probable cause, even if what is looked for is not necessarily proof beyond reasonable doubt. (BDO Life Assurance, Inc. *vs.* Atty. Palad, G.R. No. 237845, Oct. 16, 2019) p. 1110

— The Court agrees with the petitioner that a finding of probable cause on the part of the prosecutor should not be equivalent to a finding of guilt beyond reasonable doubt; during a preliminary investigation, the prosecutor only determines whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial; however, the mere fact that a lesser

scintilla of proof is necessary in order to find probable cause as to a suspect's involvement does not take away the fact that the burden is on the part of the accuser to show a substantial probability that an accused's actions or lack thereof constitute participation in the offense; any finding should still be grounded on reasonable evidence, and not mere conjectures or speculation, which is wanting in this case. (*Id*.)

— The Court is not a trier of facts; the determination of probable cause is and will always entail a review of the facts of the case; *P/C Supt. Pfleider v. People*, cited; its duty in an appropriate case is confined to the issue of whether the executive or judicial determination, as the case may be, of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction; this is consistent with the general rule that criminal prosecutions may not be restrained or stayed by injunction, preliminary or final; there are, however, exceptions to this rule; enumerated in *Brocka v. Enrile*; petitioner has been unable to convince the Court that an exception exists to warrant opening up the proceedings for a factual review; this, especially as the CA's Amended Decision conforms without deviation from the factual findings of the Department of Justice, the latter tribunal, who undoubtedly had the best possible opportunity and jurisdiction to ascertain if there is probable cause to indict Palad. (*Id*.)

Purpose — The very role and object of preliminary investigation is "to secure the innocent against hasty, malicious, and oppressive prosecutions, and to protect him from open and public accusation of crime, from the trouble, expenses and anxiety of a public trial, and also to protect the State from useless and expensive prosecutions"; in the Court's power of judicial review, it is incumbent on the Court to ease the burden of the trial court in zeroing on the real culprits, so that the latter may be brought to face the dictates of criminal justice; part and parcel of that is to likewise segregate and remove those who have no business being suspects as their involvement, if at all even present,

does not pass the test of reasonable relation in the conspiracy. (BDO Life Assurance, Inc. *vs*. Atty. Palad, G.R. No. 237845, Oct. 16, 2019) p. 1110

2010 PRESIDENTIAL ELECTION TRIBUNAL (PET) RULES

Appreciation of ballots — After the revision had concluded, the revised ballots were then appreciated; during this process, the Tribunal validates and verifies the physical count of the ballots during the revision stage and rules on the parties' respective claims and objections thereon; the Tribunal approved, on November 6, 2018, the PET Guidelines in the Appreciation of Ballots Under the Automated Election System (Ballot Appreciation Guidelines), which superseded and replaced the Guidelines previously approved by the Tribunal on January 16, 2018; the Ballot Appreciation Guidelines were used in the appreciation of the ballots, specifically in determining the validity of the ballots and whether they contained valid votes; the cardinal objective of ballot appreciation was to discover and give effect to the intent of the voter. (Marcos, Jr. *vs*. Robredo, P.E.T. Case No. 005, Oct. 15, 2019) p. 122

— Claims may be made on the following: (1) ballots with votes cast for candidates other than the parties; (2) machine-rejected ballots (ballots rejected by the VCMs); and (3) ballots with stray votes (those with no votes or those with over-votes); the Tribunal may admit or reject a claim; only when a claim over a ballot is admitted will the party claiming gain one vote in his/her favor; the claims are as follows: Ambiguous Votes (AV) x x x B. Ballots with Over-Votes x x x C. Machine-Rejected Ballots (MRB) x x x D. No Specific Claim (NSC). (*Id*.)

— The Tribunal proceeded with the appreciation of the ballots following the Ballot Appreciation Guidelines and taking into consideration the objections and claims of the parties; the Tribunal pored over each ballot from all the clustered precincts involved both to rule on the objections and claims of the parties, and to determine the validity of each ballot and vote, regardless of whether the parties registered an

objection or claim; with the votes from revision as starting point, for objections, the Tribunal either sustained an objection, resulting in a deduction of a vote from the party for whom the vote was counted, or rejected an objection, resulting in the retention of the vote for the party for whom the vote was counted; the following are the grounds for objections: Spurious Ballots (SB) B. Substituted Ballots (SuB) C. Shaded by One (SBO) D. Shaded by Two or More (SBT) E. Marked Ballots (MB) F. Pre-shaded Ballots (PSB) G. No stated objection (NSO). (*Id*.)

—— To determine the effect of the revision and appreciation of the ballots in the 5,415 pilot clustered precincts, the Tribunal uses as its base figure the overall votes received by protestant and protestee in all the clustered precincts which functioned during the 2016 National and Local Elections based on the canvass by the National Board of Canvassers (votes as proclaimed); from these figures, the votes received by the parties in the 5,418 clustered precincts of the three (3) pilot provinces is then to be subtracted as these figures or votes will be replaced by the results of the revision and appreciation of the ballots to determine the effect of the revision and appreciation on the results of the 2016 National Local Elections; however, the paper ballots and ballot images in three (3) of the 5,418 clustered precincts of the pilot provinces were not revised and appreciated as they were unavailable, and were thus excluded from the 5,418 clustered precincts; given this, the Tribunal was able to revise and appreciate ballots from only 5,415 clustered precincts of the pilot provinces; based on the final tally after revision and appreciation of the votes in the pilot provinces, protestee Robredo maintained, as in fact she increased, her lead with 14,436,337 votes over protestant Marcos who obtained 14,157,771 votes; after the revision and appreciation, the lead of protestee Robredo increased from 263,473 to 278,566. (*Id*.)

Initial determination of the Grounds for Protest under Rule 65 —— Rule 65 of the 2010 PET Rules pertains to the

initial determination of the grounds for the protest; Rule 65 grants the protestant the opportunity to designate three (3) provinces that best exemplify the frauds or irregularities raised in his or her Protest; these provinces constitute the "test cases" by which the Tribunal will determine whether it would proceed with the protest; the full effect of Rule 65, however, is yet to be determined by the Tribunal based on the required submission of Memoranda mentioned in this Resolution; following Rule 65, the Tribunal found it premature to retrieve the ballot boxes, decrypt and print the ballot images, and conduct a technical examination on voters' signatures from provinces other than those designated to be the pilot provinces; the Tribunal further stressed that given the physical and logistical constraints it was facing, judicial economy required that action on matters other than those pertaining to the pilot provinces be deferred until such time that an initial determination has been made in the Protest. (Marcos, Jr. *vs.* Robredo, P.E.T. Case No. 005, Oct. 15, 2019) p. 122

Motion for inhibition — On August 6, 2018, protestant filed an *Extremely Urgent Motion to Inhibit Associate Justice Alfredo Benjamin S. Caguioa* (Motion to Inhibit) on the ground of evident bias and manifest partiality in favor of protestee; the Tribunal unanimously denied protestant's Motion to Inhibit in its Resolution dated August 28, 2018 for utter lack of merit, ruling that the grounds cited by protestant did not fall under any of the grounds for inhibition under Section 1, Rule 8 of the Internal Rules of the Supreme Court; citing *Philippine Commercial International Bank v. Spouses Dy*, the Tribunal held that the mere imputation of bias or partiality was not sufficient ground for inhibition, especially when the charges against Justice Caguioa were without basis and not supported by any evidence; the Tribunal further held that an opinion piece in a news website and an unauthenticated video circulating on social media websites were not credible and admissible supporting evidence, and that these were not even worthy of cognizance; the Tribunal also found

returns generated by the VCMs used in the 2016 National and Local Elections; the election return is a document in electronic and printed form directly produced by the VCM showing the date, province, municipality, and precinct in which the election was held, and the votes in figures for each candidate in a clustered precinct where the said VCM was utilized; hence, in the segregation of ballots, the Tribunal held that its Head Revisors must be guided by the number of votes indicated in the Election Returns; the Tribunal held that, in using the Election Returns and not merely adopting a specific shading threshold, the Tribunal's revision procedure will be more flexible and adaptive to calibrations of the voting or counting machines in the future; the Head Revisors were directed to use the Election Returns which normally would be inside the ballot boxes retrieved; however, in their absence, the Head Revisors were directed to use the certified true copies of Election Returns obtained from COMELEC; as to those ballots already previously revised, the procedure of verifying votes using the Election Returns was to be strictly enforced during the appreciation stage by the Tribunal. (Marcos, Jr. *vs*. Robredo, P.E.T. Case No. 005, Oct. 15, 2019) p. 122

— On January 16, 2018, the Tribunal issued the PET Revisor's Guide for the Revision of Ballots under the Automated Election System (Revisor's Guide) to govern the conduct of revision in election protests falling within the jurisdiction of the Tribunal under the AES, in lieu of the rules and procedures set out under Rules 38 to 45 (Revision of Votes) of the 2010 PET Rules; the objectives of the process of revision of ballots are: (1) to verify the physical count of the ballots; (2) to recount the votes of the parties; (3) to record the parties' objections and claims thereon; and (4) to accordingly mark such ballots which were objected to and claimed by the parties for purposes of identification during subsequent examination by the Tribunal and for reception of evidence, if any; the main purpose of the revision proceeding is to conduct a physical recount of the ballots and provide the parties with an

opportunity to register their objections and claims thereon, the validity of which will later be ruled upon by the Tribunal during the appreciation stage. (*Id*.)

–– Revision of ballots involved the following process: *first*, prior to the actual recount of the votes of the parties, the HRs were required to authenticate the ballots to ensure their genuineness, ensuring that the ballots contained all the security features of the official ballots and using ultraviolet lamps which could detect the hidden security marks; *second*, such HRs segregated the ballots which were read by the VCMs into four (4) categories: (1) Ballots for Protestant; (2) Ballots for Protestee; (3) Ballots for Other Candidates; and (4) Ballots with Stray Votes (ballots with no votes or those with more than one (1) vote for the Vice President position); *third*, the revisors for protestant and protestee registered their respective objections to the Ballots for Protestee and Ballots for Protestant, respectively; *fourth*, both Party Revisors registered their claims on the Ballots for Other Candidates and Ballots with Stray Votes; *fifth*, both Party Revisors registered their claims on ballots that were rejected by the VCMs and were not thus included in the ballot segregation, if any; and *lastly*, each Revision Committee (RC) recorded all relevant data, including the results of their revision, in a Revision Report signed by all three (3) members and to which the claims and objections of the Party Revisors were annexed for subsequent ruling by the Tribunal during the appreciation stage; the revision of ballots for the pilot protested precincts commenced on April 2, 2018 and was concluded on February 4, 2019; paper ballots and decrypted ballot images were revised in a total of 5,415 clustered precincts. (*Id*.)

–– Rule 43(1) of the 2010 PET Rules provides that during segregation of ballots in the revision process, a 50% threshold is to be applied in determining a valid vote: (1) In looking at the shades or marks used to register votes, the RC shall bear in mind that the will of the voters reflected as votes in the ballots shall as much as possible be given effect, setting aside any technicalities;

furthermore, the votes thereon are presumed to have been made by the voter and shall be considered as such unless reasons exist that will justify their rejection; however, marks or shades which are less than 50% of the oval shall not be considered as valid votes; any issue as to whether a certain mark or shade is within the threshold shall be determined by feeding the ballot on the PCOS machine, and not by human determination; on the other hand, the Revisor's Guide provides that any issue on whether a mark or shade is within the threshold must be resolved by the assigned Revision Supervisor in the following manner: RULE 62. *Votes of the Parties.* – In examining the shades or marks used to register the votes, the Head Revisor shall bear in mind that the will of the voters reflected as votes in the ballots shall, as much as possible, be given effect, setting aside any technicalities; furthermore, the votes thereon are presumed to have been made by the voter and shall be considered as such National and Local Elections reasons exist that will justify their rejection; any issue as to whether a certain mark or shade is within the threshold shall be resolved by the assigned Revision Supervisor; any objection to the ruling of the Revision Supervisor shall not suspend the revision of a particular ballot box; the ballot in question may be claimed or objected to, as the case may be, by the revisor of the party concerned. (*Id*.)

— The Tribunal declared that from the submissions of the parties and the COMELEC, what was adopted during the 2016 National and Local Elections was a range of 20% to 25% shading threshold for the following reasons: first, no official document predating the 2016 National and Local Elections was submitted to support the claim that the machines were indeed calibrated to observe a 25% threshold; second, in COMELEC Commissioner Guia's letter to the Tribunal dated September 6, 2016, it was disclosed that the public was not apprised of a 25% voting threshold as the voters were told to shade the ovals fully; third, no threshold was adopted for the 2016 National and Local Elections prior to COMELEC

to conduct a manual recount of the ballots in all clustered precincts that functioned during the 2016 National and Local Elections; the Tribunal explained that even if protestant succeeds in proving his first cause of action, this would not mean that he has already won the position for Vice President as this could only be determined by a manual recount of all votes in all precincts; since protestant had clearly stated that he was not praying for such relief, to allow the First Cause of Action to continue would be an exercise in futility and would have no practical effect; *thus, the First Cause of Action was dispensed with for judicial economy and for the prompt disposition of the case.* (Marcos, Jr. *vs.* Robredo, P.E.T. Case No. 005, Oct. 15, 2019) p. 122

Panel of Hearing Commissioners — In its Resolution dated June 6, 2017, the Tribunal constituted a panel of three (3) Commissioners to aid the Tribunal in the disposition of the Protest and Counter-Protest and to act in behalf of, and under the control and supervision of, the Tribunal; the Tribunal granted the Commissioners such powers as may be inherent, necessary, or incidental to the panel's duty to aid the Tribunal in the disposition of the case. (Marcos, Jr. *vs.* Robredo, P.E.T. Case No. 005, Oct. 15, 2019) p. 122

Preliminary conference — As per the Tribunal's Resolution, the preliminary conference was scheduled and conducted on July 11, 2017; the purposes of conducting a preliminary conference are: (1) to obtain stipulations or admissions of facts and documents to avoid unnecessary proof; (2) to simplify the issues; (3) to limit the number of witnesses; (4) to consider the most expeditious manner of the retrieval of ballot boxes containing the ballots, election returns, certificates of canvass, and other election documents involved in the election protest; and (5) to consider such other matters that may aid in the prompt disposition of the election protest. (Marcos, Jr. *vs.* Robredo, P.E.T. Case No. 005, Oct. 15, 2019) p. 122

counterclaim indicates that they were praying for reconveyance of Lot 1366-E; instead, they merely repleaded their allegations in the Answer. (Sps. Manlan *vs.* Sps. Beltran, G.R. No. 222530, Oct. 16, 2019) p. 912

— Section 48 of P.D. No. 1529 or the Property Registration Decree, proscribes a collateral attack to a certificate of title; in *Sps. Sarmiento v. Court of Appeals*, this Court differentiated a direct and collateral attack in this wise: An action is deemed an attack on a title when the object of the action or proceeding is to nullify the title, and thus challenge the judgment pursuant to which the title was decreed; the attack is direct when the object of the action is to annul or set aside such judgment, or enjoin its enforcement; on the other hand, the attack is indirect or collateral when, in an action to obtain a different relief, an attack on the judgment is nevertheless made as an incident thereof; petitioners argue that respondents are not innocent purchasers for value and were in bad faith in registering the subject lot; such claim is merely incidental to the principal case of quieting of title and recovery of possession, and thus, an indirect attack on respondents' title. (*Id.*)

— When confronted with respondents' title, petitioners argue that respondents procured it through fraudulent means because the questioned deed of sale is fictitious; this Court, however, finds that petitioners' objective in alleging respondents' bad faith in securing the title is to annul and set aside the judgment pursuant to which such title was decreed; apparently, the attack on the proceeding granting respondents' title was made as an incident in the main action for quieting of title and recovery of possession; evidently, petitioners' action is a collateral attack on the respondents' title, which is prohibited under the rules. (*Id.*)

Petition for the amendment of title — As it was established that the Deeds between Botenes and the Municipality are valid, considering that the true intent was reflected therein, but noting the existence of the 1990 Plan which

of the same; respondent's failure to disclose the consequences and significance of the deed of sale despite his clear duty to do so constitutes fraud. (*Id*.)

Requisites of double sale — In *Cheng v. Genato,* the Court enumerated the requisites in order for Article 1544 to apply, *viz*: (a) The two (or more) sales transactions in issue must pertain to exactly the same subject matter, and must be valid sales transactions; (b) The two (or more) buyers at odds over the rightful ownership of the subject matter must each represent conflicting interests; and (c) The two (or more) buyers at odds over the rightful ownership of the subject matter must each have bought from the very same seller; in fine, there is double sale when the same thing is sold to different vendees by a single vendor.; Article 1544 has no application in cases where the sales involved were initiated not just by one vendor but by several vendors; here, petitioners and respondents acquired the subject property from different transferors; the DOAS dated November 20, 1990 shows that all of the original co-owners (except for Manuel and Serbio, who are already deceased) sold the subject lot to respondents; on the other hand, the Receipt and Promissory Note both dated May 5, 1983, reveal that only Manuel sold the lot to petitioners; as found by the RTC and the CA, nothing on the records shows that Manuel was duly authorized by the other co-owners to sell the subject property in 1983; evidently, there are two sets of vendors who sold the subject land to two different vendees; thus, this Court upholds the findings of the trial court and the CA that the rule on double sale is not applicable in the instant case. (Sps. Manlan *vs*. Sps. Beltran, G.R. No. 222530, Oct. 16, 2019) p. 912

Validity of — It has been held, time and again, that a sale of a real property that is not consigned in a public instrument is, nevertheless, valid and binding among the parties; this is in accordance with the time-honored principle that even a verbal contract of sale of real estate produces legal effects between the parties; contracts are obligatory, in whatever form they may have been entered into,

Marcelino, cited. (Balmaceda-Tugano *vs.* Marcelino, A.M. No. P-14-3233 [Formerly OCA IPI No.12-3783-P], Oct. 14, 2019) p. 1

— Well-settled is that the sheriff's duty in the execution of a writ is purely ministerial; he is to execute the order of the court strictly to the letter; he has no discretion whether to execute the judgment or not; when the writ is placed in his hands, it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to implement it in accordance with its mandate; it is only by doing so could he ensure that the order is executed without undue delay; this holds especially true herein where the nature of the case requires immediate execution; absent a temporary restraining order, an order of quashal, or compliance with Section 19, Rule 70 of the Rules of Court, respondent sheriff has no alternative but to enforce the writ. (*Id.*)

SPECIAL CONTRACTS

Completed original scope of work — The Court agrees with the CA that the lack of SLPI-issued Progress Payment Certificates and the absence of BFC's claimed billings in the summary of payments did not negate the fact that BFC had completed the original scope of work; in finding that BFC had completed the original scope of work, the CA duly considered the evidence on record; in addition, as pointed out by BFC, SLPI did not issue any Schedule of Defects to contest the completed works; the Schedule of Defects was expressly provided for and required in the contract; had SLPI any complaint, or claim for defects or non-completion of any work, or any other concerns *vis-a-vis* BFC's work, it would have submitted the Schedule of Defects within the period agreed under their contract. (Shangri-La Properties, Inc. *vs.* BF Corp., G.R. Nos. 187552-53, Oct. 15, 2019) p. 324

Recovery of costs for additional work — Article 1724 governs the recovery of costs for any additional work because of a subsequent change in the original plans; the underlying purpose of the provision is to prevent unnecessary litigation

within the ambit of other sexual abuse in relation to Section 5(b); thus, even if Section 5(b) was not expressly mentioned or specified in the Information, Eulalio could still be convicted of acts of lasciviousness in relation to Section 5(b) of R.A. No. 7610 given the facts provided in the Information and those which were proven during the trial of the case. (People *vs*. Eulalio *y* Alejo, G.R. No. 214882, Oct. 16, 2019) p. 850

— To further expound on the aspect of other sexual abuse, the case of *Quimvel v. People* as cited in the *Molejon* case, explained that: As regards the second additional element, it is settled that the child is deemed subjected to other sexual abuse when the child engages in lascivious conduct under the coercion or influence of any adult; intimidation need not necessarily be irresistible; it is sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party; the law does not require physical violence on the person of the victim; moral coercion or ascendancy is sufficient; the petitioner's proposition – that there is not even an iota of proof of force or intimidation as AAA was asleep when the offense was committed and, hence, he cannot be prosecuted under R.A. No. 7610 – is bereft of merit; when the victim of the crime is a child under twelve (12) years old, mere moral ascendancy will suffice; withal, there is basis to rule that there was sexual abuse in the instant case, given that Eulalio kissed AAA, who was only 11 years old at the time, by employing threats to force her into submission. (*Id*.)

STATE, POWERS OF THE

Police power — Assuming, for the sake of argument, that the right to possess a firearm were considered a property right, property rights are always subject to the State's police power, defined as the "authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare"; in *Chavez*, this Court reiterated that "laws regulating the acquisition or possession of guns have frequently been upheld as

usually flocked with people, the prohibition on bringing the firearm to these public places is a reasonable measure to prevent mass shootings. (*Id*.)

—– Still related to the purpose of maintaining peace and order and preventing gun violence is Section 10 of R.A. No. 10591 and its corresponding provision in the Implementing Rules and Regulations; both prohibit the registration of Class-A light weapons to private individuals; as can be gleaned from both provisions, only small arms – those primarily designed for individual use, to be fired from the hand or shoulder – may be registered in the name of private individuals or entities; in contrast, the ownership of Class-A light weapons – "self-loading pistols, rifles, carbines, submachine guns, assault rifles and light machine guns not exceeding caliber 7.62MM which have fully automatic mode"– is only allowed for members of the Armed Forces of the Philippines (AFP), the Philippine National Police (PNP), and other law enforcement agencies; reason; consistent with its declared policy in R.A. No. 10591, the State balanced its interests to, on the one hand, keep violence at a minimum, and on the other, grant the right of the people to self-defense; the use of a small arm to defend oneself is, for the State, that which is reasonably necessary to repel the unlawful aggression; as for the members of the AFP, the PNP, and other law enforcement agencies, their duties to maintain peace and order and protect the public allow for the use of Class-A light weapons. (*Id*.)

—– The prohibition on the transfer of firearms ownership through succession is a valid exercise of police power; the qualifications for acquiring a firearm license under Section 4 of the law are highly personal to the licensee; these qualifications may not be possessed by his or her relative or next of kin; it is, therefore, only correct that the rights to own and possess a firearm are non-transferrable by succession; should he or she be interested, the deceased's relative or next of kin may apply for a license to own and possess the deceased's registered firearm under Section 26 of R.A. No. 10591. (*Id*.)

— The provisions assailed by petitioners are consistent with these general interests of maintaining peace and order and protecting the people from violence; Section 4(g) of R.A. No. 10591 and its corresponding provision in the Implementing Rules and Regulations, Section 4.4(a), both require that an applicant for a firearm license has not been convicted or is currently an accused in a pending criminal case punished with imprisonment for more than two (2) years; contrary to petitioners Acosta and Dela Paz's argument, these provisions do not violate the constitutional guarantee to presumption of innocence; Congress restricted the privilege to apply for a firearm from convicts and those currently accused in a pending criminal case punished with imprisonment for more than two (2) years, since a *prima facie* finding of an applicant's guilt indicates his or her propensity to violate the law; if R.A. No. 10591 is to function as a preventive measure against gun violence, then it is prudent to prohibit those who, during the preliminary investigation stage, were found probably guilty of an offense; besides, the acquittal or permanent dismissal of the criminal case re-qualifies an applicant to acquire a license; thus, the restriction is but a reasonable measure in line with the State policy in R.A. No. 10591. (*Id*.)

STATUTORY CONSTRUCTION

Doctrine of operative fact — In the Main Decision, the Court, in applying the doctrine of operative fact, held that FDCP and the producers of graded films need not return the amounts already received from LGUs because they merely complied with the provisions of R.A. No. 9167 which were in effect at that time; this disposition squarely hews with the practicality and fairness thrust of the operative fact doctrine because, as observed by the Court, to command the return of the amounts received pursuant to Sections 13 and 14 of R.A. No. 9167 which were then existing "would certainly impose a heavy, and possibly crippling, financial burden upon them who merely, and presumably in good faith, complied with the legislative fiat subject of this case"; contrary to Cebu City's position,

the Court's holding on this score must stand; the same rationale must apply to the Court's directive ordering cinema proprietors and operators to remit to FDCP any amusement taxes they have retained prior to Sections 13 and 14 of R.A. No. 9167 being declared unconstitutional; the operative fact doctrine equally applies to the non-remittance by said proprietors since the law produced legal effects prior to the declaration of the nullity of Sections 13 and 14 of R.A. No. 9167 in these instant petitions." (Film Dev't. Council of the Phils. *vs.* Colon Heritage Realty Corp., G.R. No. 203754, Oct. 15, 2019) p. 384

— The operative fact doctrine recognizes the existence and validity of a legal provision prior to its being declared as unconstitutional and hence, legitimizes otherwise invalid acts done pursuant thereto because of considerations of practicality and fairness; in this regard, certain acts done pursuant to a legal provision which was just recently declared as unconstitutional by the Court cannot be anymore undone because not only would it be highly impractical to do so, but more so, unfair to those who have relied on the said legal provision prior to the time it was struck down; however, in the fairly recent case of *Mandanas v. Ochoa, Jr.*, citing *Araullo v. Aquino III*, the Court stated that the doctrine of operative fact "applies only to cases where extraordinary circumstances exist, and only when the extraordinary circumstances have met the stringent conditions that will permit its application"; the doctrine of operative fact "nullifies the effects of an unconstitutional law or an executive act by recognizing that the existence of a statute prior to a determination of unconstitutionality is an operative fact and may have consequences that cannot always be ignored; it applies when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law"; in applying the doctrine of operative fact, courts ought to examine with particularity the effects of the already accomplished acts arising from the unconstitutional statute, and determine, on the basis of

TREACHERY

As a qualifying circumstance — Contrary to the findings of the trial and appellate courts, We hold that the second condition was not proven with clear and convincing evidence; the prosecution failed to establish that accused-appellant purposely adopted the means, method or form of attack to deprive the victim of a chance to either fight or retreat, or to ensure the execution of his criminal purpose without any risk to himself arising from the defense that the victim might offer, without the slightest provocation on the latter's part; while the victim may have been unarmed and was stabbed at the doorstep of his room, there was nary any evidence to show that the attack was preconceived and deliberately adopted without risk to accused-appellant; the attack was committed in broad daylight, inside a house shared with other tenants, within the immediate view and in proximity of the witness, Vilma; thus, all these negate that the attack was done deliberately to ensure the victim would not be able to defend himself, or to retreat, or even to seek help from others; even Vilma's testimony was bereft of any indication that indeed, accused-appellant deliberately made the attack: When there is no evidence that the accused had, prior to the moment of the killing, resolved to commit the crime, or there is no proof that the death of the victim was the result of meditation, calculation or reflection, treachery cannot be considered. (People *vs*. Dela Cruz *y* Deplomo, G.R.No. 227997, Oct. 16, 2019) p. 984

— It is established that qualifying circumstances must be proved with the same quantum of evidence as the crime itself, that is, beyond reasonable doubt; the qualifying circumstance of treachery or *alevosia* is present when the offender, in the execution of the crime against a person, employs means, methods or forms, which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make; the essence of treachery is the sudden attack by the aggressor without the slightest provocation on the part of the unsuspecting victim, depriving the latter of

UNJUST ENRICHMENT

Conditions — The Court agrees with the arguments posited by NAPOCOR and finds that the lower courts erred in stating that unjust enrichment is not present in this case; an exception to the general rule that the findings of fact are binding is when the inference of the lower court is manifestly mistaken; the Court finds that both the trial court and the CA were manifestly mistaken when they failed to take into consideration the fact that Delta P was enriched without justification due to the fuel supply given by NAPOCOR; there is unjust enrichment "when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience"; the principle of unjust enrichment requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at the expense of another; in the case at bar, the fuel grant, while done unilaterally, was still done without NAPOCOR receiving anything in return, even when Delta P's internal issues were eventually sorted out; NAPOCOR ended up prejudiced by its action especially as there was no legal obligation mandating it to contribute to the woes of Delta P, only the intervention of the local government due to the power crisis in Palawan; *Almario* case, cited; this case presents one of the rare situations where Delta P is unjustly enriched through the voluntary act of the enriching party, NAPOCOR in this case; the Court holds that while the principle of *solutio indebiti* will not apply as a remedy for NAPOCOR's recovery, as the payment of the fuel costs was not a mistake and NAPOCOR was not able to prove that the requirements for the same have been met, NAPOCOR is entitled to recover under the doctrine of unjust enrichment, for the amount it paid to Delta P for the supply of fuel, for the period February 25, 2003 to June 25, 2003. (NAPOCOR *vs.* Delta P, Inc., G.R. No. 221709, Oct. 16, 2019) p. 891

opportunity to observe evidence beyond what is written or spoken, such as the deportment of the witness while testifying on the stand; hence, the trial courts' factual findings on the credibility of witnesses are binding and conclusive on the reviewing court, especially when affirmed by the Court of Appeals, as in this case. (People *vs*. Doca *y* Villaluna, G.R. No. 233479, Oct. 16, 2019) p. 1077

— In like manner, "[j]urisprudence is replete with cases where the Court ruled that questions on the credibility of witnesses should best be addressed to the trial court because of its unique position to observe that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying which is denied to the appellate courts"; the testimonies of the prosecution witnesses should be accorded great weight, given that the said testimonies corroborated each other on material points. (People *vs*. Eulalio *y* Alejo, G.R. No. 214882, Oct. 16, 2019) p. 850

— Raul Permejo, another witness for the Prosecution, recalled that petitioner Alvin Co had instructed him to deposit checks in the accounts held in Citytrust and Metrobank; and that petitioner Alvin Co had used the name Nelson Sia in several bank transactions; yet, Permejo was discredited as an unreliable witness in the face of his candid admission that he had received money from the counsel after each time he had testified in court against the petitioners; the financial incentives cast grave doubts on his sincerity and truthfulness, and negated the credibility of his recollections as a witness; a witness is said to be biased when his relation to the cause or to the parties is such that he has an incentive to exaggerate or give false color to his statements, or to suppress or to pervert the truth, or to state what is false. (Co *vs*. People, G.R. No. 233015, October 16, 2019) p. 1056

— There is no dispute that the victim, AAA, was 11 years old at the time of the commission of the crimes; based on this Court's assessment of the records and the evidence,

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