PHILIPPINE REPORTS

VOL. 866

NOVEMBER 5, 2019 TO NOVEMBER 27, 2019

VOLUME 866

REPORTS ON CASES

DECIDED BY THE

SUPREME COURT

OF THE

PHILIPPINES

FOR THE PERIOD

NOVEMBER 5 - 27, 2019

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2023

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.C. No. 12455. November 5, 2019]

LEDESMA D. SANCHEZ, *complainant, vs.* **ATTY. CARLITO R. INTON,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; VIOLATION OF THE 2004 RULES ON NOTARIAL PRACTICE; NOTARIZATION, CONCEPT OF; A NOTARY PUBLIC MUST OBSERVE WITH UTMOST CARE THE BASIC REQUIREMENTS IN THE PERFORMANCE OF HIS NOTARIAL DUTIES. — [T]he Court has emphasized that notarization is not an empty, meaningless or routinary act, but one invested with substantive public interest. Notarization converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. Thus, a notarized document is, by law, entitled to full faith and credit upon its face. It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his notarial duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined. In this light, the Court has ruled that notaries must inform themselves of the facts they certify to; most importantly, they should not take part or allow themselves to be part of illegal transactions.

2. ID.; ID.; ID.; NOTARIAL RULES REQUIRE THAT NOTARIZATION SHOULD BE DONE IN THE PRESENCE OF THE SIGNATORY AND PROHIBIT THE NOTARY

PUBLIC FROM NOTARIZING A DOCUMENT THAT CONTAINS AN INCOMPLETE NOTARIAL CERTIFICATE; RESPONDENT WAS REMISS IN HIS DUTIES AS NOTARY PUBLIC WHEN HE FAILED TO CONFIRM THE IDENTITY OF THE PERSON WHO SOUGHT FOR SUCH NOTARIZATION. — [I]n notarizing the *Kasunduan*, respondent failed to confirm the identity of the person claiming to be Sanchez through the competent evidence of identity required by the Rules. Section 2 (b), Rule IV of the Notarial Rules provides that a notary public should not notarize a document unless the signatory to the document is in the notary's presence personally at the time of the notarization, and personally known to the notary public *or* otherwise identified through competent evidence of identity. The physical presence of the affiant ensures the proper execution of the duty of the notary public under the law to determine whether the former's signature was voluntarily affixed. On the other hand, the submission of competent evidence of identity as defined under Section 12, Rule II of the Notarial Rules ensures that the affiant is the same person who he or she claims to be. x x x Further, Section 5 (b), Rule IV of the Notarial Rules prohibits a notary public from notarizing a document that contains an incomplete notarial certificate. A notarial certificate, as defined in Section 8, Rule II of the Notarial Rules, requires a statement of the facts attested to by the notary public in a particular notarization. This includes the *jurat* or the act by which an individual on a single occasion: *(a)* appears in person before the notary public and presents an instrument or document; *(b)* is personally known to the notary public or identified by the notary public through competent evidence of identity, as defined in the Rules; *(c)* signs the instrument or document in the presence of the notary; and *(d)* takes an oath or affirmation before the notary public as to such instruments or document. Pursuant to the foregoing, the Court had consistently held that "a notary public must not notarize a document unless the person who signed it are the very same persons who executed the same, and personally appeared before him to attest to the truth of the contents thereof. The purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free and voluntary act and deed." Here, it is undisputed that respondent notarized the *Kasunduan* on September 15, 2016 and that he did not personally know Sanchez. While he insisted, however, that

Sanchez and a Dennis Garcia appeared in his office and presented their respective identification cards on said date of notarization, the document itself belies this claim for as the records bear out, there is no mention at all of any competent evidence of identity of either party, including in the *jurat* thereof which remained incomplete[.] x x x [R]espondent was remiss in the faithful observance of his duties as a notary public when he failed to confirm the identity of the person claiming to be Sanchez through the competent evidence of identity required by the Notarial Rules.

3. ID.; ID.; ID.; NOTARIES PUBLIC MUST PERSONALLY PERFORM THE NOTARIAL ACTS AND MUST NOT ALLOW THEIR SECRETARIES OR NON-LAWYERS TO NOTARIZE IN THEIR STEAD. — [R]espondent also violated the Notarial Rules when he allowed his secretaries to perform notarial acts in his behalf. Section 7, Rule II of the Notarial Rules defines "notarization" or "notarial act" as any act that a notary public is empowered to perform under said Rules. A "notary public" is any person commissioned to perform official acts under the same Rules. In performing a notarial act, a notary public is required to, among others: sign by hand on the notarial certificate; and affix his official signatures only at the time the said act is performed. Hence, it has been settled that "[s]ince a notarial commission is personal to each lawyer, the notary public must also personally administer the notarial acts that the law authorizes him to execute. This important duty is vested with public interest. Thus, no other person, other than the notary public, should perform it." In this case, it has been established that respondent allows his secretaries to perform notarial acts in his stead, and even forge his signature for such purpose[.] x x x As a notary public and their employer, respondent is responsible for their acts which include implementing such reasonable measures that would preclude opportunities for the abuse of his prerogative authority as notary public by his secretaries and enable them to copy his signature and perform notarial acts on his behalf. Evidently, respondent is guilty of negligence in the performance of his notarial duty which the Court cannot countenance. It must be stressed that a notary public carries with him a duty imbued with public interest. At all times, a notary public must be wary of the duties pertaining to his office. Thus, those who are qualified to live up with the mandate of such office must, in absolute terms, be stripped off with such authority.

4. ID.; ID.; ID.; BREACH OF THE NOTARIAL RULES ALSO CONSTITUTES A VIOLATION OF THE CODE OF PROFESSIONAL RESPONSIBILITY. — [I]t is well to note that in the realm of legal ethics, a breach of the Notarial Rules would also constitute a violation of the Code of Professional Responsibility (CPR), considering that an erring lawyer who is found to be remiss in his functions as a notary public is also considered to have violated his oath as a lawyer. He does not only fail to fulfill his solemn oath of upholding and obeying the law and its legal processes, but he also commits an act of falsehood and engages in an unlawful, dishonest, and deceitful conduct.

5. ID.; ID.; ID.; ID.; PENALTY IMPOSED IS SUSPENSION FROM THE PRACTICE OF LAW, REVOCATION OF THE EXISTING COMMISSION, AND DISQUALIFICATION FROM BEING COMMISSIONED AS A NOTARY PUBLIC. — As to the proper penalty to be imposed on respondent, prevailing jurisprudence instructs that an erring lawyer who violates the Notarial Rules must be meted with the following penalties: *(a)* suspension from the practice of law for one (1) year; *(b)* immediate revocation of his notarial commission, if any; and *(c)* disqualification from being commissioned as notary public for a period of two (2) years. Guided by the foregoing, and taking into consideration that respondent was already previously reprimanded by the Court for performing a similar infraction, the imposition of the penalties of suspension from the practice of law for a period of two (2) years, disqualification from being commissioned as a notary public for the same period, and revocation of the existing commission, if any, against respondent are only just and proper under the circumstances.

D E C I S I O N

PERLAS-BERNABE, *J.*:

This administrative case stemmed from a complaint-affidavit[1] filed by Ledesma D. Sanchez (Sanchez) before the Integrated

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[1] Dated February 22, 2017; *rollo*, p. 2.

Bar of the Philippines (IBP) against respondent Atty. Carlito R. Inton (respondent) for violation of the 2004 Rules on Notarial Practice (Notarial Rules).[2]

The Facts

In her complaint, Sanchez alleged that on September 15, 2016, respondent notarized a document denominated as "*Kontrata ng Kasunduan*" (*Kasunduan*),[3] which she purportedly executed and signed at the latter's office in Cabanatuan City. She, however, vehemently denied having appeared before respondent on said date, claiming that she was at her store located at Fairview Center Mall in Quezon City,[4] and to corroborate such assertion, presented a *Sinumpaang Salaysay*[5] of her employee Jennen De Leon. Moreover, Sanchez averred that on February 10, 2017, she presented a document denominated as *Acknowledgment of Legal Obligation With Promissory Note* (*Acknowledgment*)[6] for respondent's notarization. She was surprised when respondent's secretaries, presumably acting in his behalf, did not ask the whereabouts of the signatory of the said document, and worse, immediately asked for the payment and affixed respondent's signature thereon.[7]

In his Answer,[8] respondent admitted having notarized the *Kasunduan* on September 15, 2016, but argued that Sanchez had also admitted such fact before the Prosecutor's Office during the preliminary investigation in the case filed against her by

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[2] A.M. No. 02-8-13-SC, July 6, 2004, as amended. In the complaint-affidavit, Sanchez stated Notarial Law, instead of the 2004 Rules on Notarial Practice.

[3] *Rollo*, p. 3.

[4] See *id*. at 45-46.

[5] Dated February 2, 2017; *id*. at 16.

[6] *Id*. at 4.

[7] *Id*. at 2.

[8] Dated March 28, 2017; *id*. at 10-11.

one Dennis Garcia, the other signatory to the document. As regards the *Acknowledgment*, he denied having notarized the same, and instead, claimed that it does not appear in his notarial book. Lastly, respondent appealed to Sanchez considering that he is already seventy (70) years old, and the complaint may aggravate his sickness leading to his untimely death.[9] In support of his arguments, respondent attached a *Sinumpaang Salaysay*[10] dated April 4, 2017, executed by his secretaries Rose Anne Hazel D. Samson and Lannie E. Sorza.

The Action and Recommendation of the IBP

In a Report and Recommendation[11] dated March 8, 2018, the IBP Investigating Commissioner (IBP-IC) found respondent administratively liable for failure to comply with the Notarial Rules, and accordingly, recommended that respondent's commission as notary public, if existing, be immediately revoked, and that he be barred from being commissioned as a notary public for a period of two (2) years.[12]

The IBP-IC found respondent negligent in failing to verify the identities of the signatories to the *Kasunduan*, which he admitted having notarized on September 15, 2016, by requiring the presentation of their respective competent evidence of identity pursuant to Section 6,[13] in relation to

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[9] *Id*. at 10.

[10] *Id*. at 12.

[11] *Id*. at 44-49. Penned by Commissioner Jose Alfonso M. Gomos.

[12] See *id*. at 47-49.

[13] Section 6, Rule II of the Notarial Rules reads:

SEC. 6. *Jurat*. – "*Jurat*" refers to an act in which an individual on a single occasion:

(a) appears in person before the notary public and presents an instrument or document;

(b) is personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules;

(c) signs the instrument or document in the presence of the notary; and

Section 12,[14] Rule II of the Notarial Rules. In this regard, the IBP-IC pointed out that regardless of whether Sanchez personally appeared before respondent, the latter still failed to indicate in said document the parties' respective competent evidence of identity as required by the Rules. As regards the *Acknowledgment*, the IBP-IC likewise found respondent negligent considering that it is respondent's name which appears on the document as the notarizing officer and it was his secretaries who prepared and signed his signature on the same.[15]

In a Resolution[16] dated June 28, 2018, the IBP Board of Governors adopted the above findings and recommendation of the IBP-IC, with modification, recommending respondent's disqualification from being appointed as notary public for a period of one (1) year, instead of two (2) years, and the immediate revocation of his notarial commission if subsisting.

The Issue Before the Court

The issue for the Court's resolution is whether or not the IBP correctly found respondent liable for violation of the Notarial Rules.

(d) takes an oath or affirmation before the notary public as to such instrument or document.

[14] Section 12, Rule II of the Notarial Rules reads:

SEC. 12. *Competent Evidence of Identity*. – The phrase "competent evidence of identity" refers to the identification of an individual based on:

(a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual x x x;

(b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification.

[15] See *rollo*, pp. 48-49.

[16] *Id*. at 42-43. Signed by Assistant National Secretary Doroteo L.B. Aguila.

The Court's Ruling

The Court affirms and adopts the findings and recommendations of the IBP with modifications, as will be explained hereunder.

Time and again, the Court has emphasized that notarization is not an empty, meaningless or routinary act, but one invested with substantive public interest. Notarization converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. Thus, a notarized document is, by law, entitled to full faith and credit upon its face. It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his notarial duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined.[17] In this light, the Court has ruled that notaries must inform themselves of the facts they certify to; most importantly, they should not take part or allow themselves to be part of illegal transactions.[18]

In this case, the Court finds that respondent failed to live up with the duties of a notary public as dictated by the Notarial Rules.

First, in notarizing the *Kasunduan*,[19] respondent failed to confirm the identity of the person claiming to be Sanchez through the competent evidence of identity required by the Rules. Section 2 (b), Rule IV of the Notarial Rules provides that a notary public should not notarize a document unless the signatory to the document is in the notary's presence personally at the time of the notarization, and personally known to the notary public *or* otherwise identified through competent evidence of

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[17] See *Triol v. Agcaoili, Jr.*, A.C. No. 12011, June 26, 2018, citing *Vda. de Miller v. Miranda*, 772 Phil. 449, 455 (2015).

[18] *Id*.

[19] *Rollo*, p. 3.

identity.[20] The physical presence of the affiant ensures the proper execution of the duty of the notary public under the law to determine whether the former's signature was voluntarily affixed. On the other hand, the submission of competent evidence of identity as defined under Section 12, Rule II of the Notarial Rules ensures that the affiant is the same person who he or she claims to be. Section 12 reads:

> Section 12. *Competent Evidence of Identity*. – The phrase "competent evidence of identity" refers to the identification of an individual based on:
>
> (a) at least **one current identification document issued by an official agency bearing the photograph and signature of the individual** x x x; or
>
> (b) the oath or affirmation of one credible witness **not privy** to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses **neither of whom is privy** to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification. (Emphases and underscoring supplied)

Further, Section 5 (b),[21] Rule IV of the Notarial Rules prohibits a notary public from notarizing a document that contains an incomplete notarial certificate. A notarial certificate, as defined in Section 8,[22] Rule II of the Notarial Rules, requires a statement

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[20] See Section 2 (b), Rule IV of the 2004 Rules on Notarial Practice.

[21] Section 5, Rule IV of the Notarial Rules reads:

> SEC. 5. *False or Incomplete Certificate*. – A notary public shall not:
>
> x x x x x x x x x
>
> (b) **affix an official signature or seal on a notarial certificate that is incomplete.** (Emphases and underscoring supplied)

[22] Section 8, Rule II of the Notarial Rules reads:

> SEC. 8. *Notarial Certificate*. – "Notarial Certificate" refers to the part of, or attachment to, a notarized instrument or document that is completed by the notary public, bears the notary's signature and seal, and **states the facts attested to by the notary public in a particular notarization as provided for by these Rules**. (Emphasis supplied)

of the facts attested to by the notary public in a particular notarization. This includes the *jurat* or the act by which an individual on a single occasion: (*a*) appears in person before the notary public and presents an instrument or document; (*b*) is personally known to the notary public or identified by the notary public through competent evidence of identity, as defined in the Rules; (*c*) signs the instrument or document in the presence of the notary; and (*d*) takes an oath or affirmation before the notary public as to such instrument or document.[23]

Pursuant to the foregoing, the Court had consistently held that "a notary public must not notarize a document unless the persons who signed it are the very same persons who executed the same, and personally appeared before him to attest to the truth of the contents thereof. The purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free and voluntary act and deed."[24]

Here, it is undisputed that respondent notarized the *Kasunduan* on September 15, 2016 and that he did not personally know Sanchez. While he insisted, however, that Sanchez and a Dennis Garcia appeared in his office and presented their respective identification cards on said date of notarization, the document itself belies this claim for as the records bear out, there is no mention at all of any competent evidence of identity of either party, including in the *jurat* thereof which remained incomplete, thus:

"SA KATUNAYAN NG LAHAT NG ITO, ang magkabilang panig ay lumagda ngayong ika- SEP 15 2016 dito sa Lungsod ng Ka[]banatuan.

[Signed]	[Signed]
DENNIS C. GARCIA	LEDESMA D. SANCHEZ
Unang Panig	Ikalawang Panig

[23] See Section 6, Rule II of the 2004 Rules on Notarial Practice.

[24] *Almario v. Llera-Agno*, A.C. No. 10689, January 8, 2018, 850 SCRA 1, 10-11.

x x x x x x x x x

SA HARAP KO BILANG ISANG NOTARYO PUBLIKO, dito sa Lungsod ng Kabanatuan, ngayong ika SEP 15 2016 ay personal na lumagda ang mga taong nabanggit sa ibabaw ng kanilang mga pangalan, at kanilang pinatutunayan sa akin na ang kanilang paglagda ay Malaya at kusang loob nilang ginawa."[25]

As the IBP aptly observed, respondent was remiss in the faithful observance of his duties as a notary public when he failed to confirm the identity of the person claiming to be Sanchez through the competent evidence of identity required by the Notarial Rules.

Second, respondent also violated the Notarial Rules when he allowed his secretaries to perform notarial acts in his behalf. Section 7, Rule II of the Notarial Rules defines "notarization" or "notarial act" as any act that a notary public is empowered to perform under said Rules. A "notary public" is any person commissioned to perform official acts under the same Rules.[26] In performing a notarial act, a notary public is required to, among others: sign by hand on the notarial certificate; and affix his official signature only at the time the said act is performed.[27] Hence, it has been settled that "[s]ince a notarial commission is personal to each lawyer, the notary public must also personally administer the notarial acts that the law authorizes him to execute. This important duty is vested with public interest. Thus, no other person, other than the notary public, should perform it."[28]

In this case, it has been established that respondent allows his secretaries to perform notarial acts in his stead, and even forge his signature for such purpose, as what happened on February 10, 2017 when respondent's secretaries "notarized" the *Acknowledgment* and affixed his signature therein. As a

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[25] *Rollo*, p. 3.

[26] See Section 9, Rule II of the 2004 Rules on Notarial Practice.

[27] See Section 1, Rule VII of the 2004 Rules on Notarial Practice.

[28] *Gimeno v. Atty. Zaide*, 759 Phil. 10, 20 (2015).

notary public and their employer, respondent is responsible for their acts which include implementing such reasonable measures that would preclude opportunities for the abuse of his prerogative authority as notary public by his secretaries and enable them to copy his signature and perform notarial acts on his behalf. Evidently, respondent is guilty of negligence in the performance of his notarial duty which the Court cannot countenance.

It must be stressed that a notary public carries with him a duty imbued with public interest. At all times, a notary public must be wary of the duties pertaining to his office. Thus, those who are not qualified to live up with the mandate of such office must, in absolute terms, be stripped off with such authority.[29]

Furthermore, it is well to note that in the realm of legal ethics, a breach of the Notarial Rules would also constitute a violation of the Code of Professional Responsibility (CPR), considering that an erring lawyer who is found to be remiss in his functions as a notary public is also considered to have violated his oath as a lawyer. He does not only fail to fulfill his solemn oath of upholding and obeying the law and its legal processes, but he also commits an act of falsehood and engages in an unlawful, dishonest, and deceitful conduct.[30] Thus, Rule 1.01, Canon 1 and Rule 10.01, Canon 10 of the CPR categorically state:

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

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

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CANON 10 – A lawyer owes candor, fairness and good faith to the court.

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[29] See *Spouses Chambon v. Atty. Ruiz*, A.C. No. 11478, September 5, 2017, 838 SCRA 526, 535.

[30] See *Triol v. Agcaoili, Jr.*, *supra* note 17.

Rule 10.01 – **A lawyer shall not do any falsehood, nor consent to the doing of any in court**; nor shall he mislead, or allow the Court to be misled by any artifice. (Emphases and underscoring supplied)

In sum, respondent not only violated the Notarial Rules when he: (*a*) notarized documents without ascertaining the identity of the person who sought for such notarization; and (*b*) allowed non-lawyers and non-notaries public to notarize documents on his behalf, but also violated the foregoing provisions of the CPR. Verily, not only did his actions cause damage to those directly affected by the same, it also undermined the integrity of the office of a notary public and degraded the function of notarization. In so doing, his conduct falls miserably short of the high standards of morality, honesty, integrity, and fair dealing required of lawyers, and it is only proper that he be administratively sanctioned.[31]

As to the proper penalty to be imposed on respondent, prevailing jurisprudence[32] instructs that an erring lawyer who violates the Notarial Rules must be meted with the following penalties: (*a*) suspension from the practice of law for one (1) year; (*b*) immediate revocation of his notarial commission, if any; and (*c*) disqualification from being commissioned as notary public for a period of two (2) years. Guided by the foregoing, and taking into consideration that respondent was already previously reprimanded by the Court for performing a similar

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[31] See *id*.

[32] See the following cases where the Court imposed similar penalty for similar violation of the 2004 Rules on Notarial Practice: *Dandoy v. Atty. Edayan*, A.C. No. 12084, June 6, 2018; *Orola v. Baribar*, A.C. No. 6927, March 14, 2018; *Atty. Bartolome v. Atty. Basilio*, 771 Phil. 1, 11 (2015); *Fire Officer I Sappayani v. Atty. Gasmen*, 768 Phil. 1, 9-10 (2015); *Gaddi v. Atty. Velasco*, 742 Phil. 810, 817 (2014); *Baysac v. Atty. Aceron-Papa*, 792 Phil. 635, 647 (2016); *Agbulos v. Atty. Viray*, 704 Phil. 1, 9-10 (2013); *Sultan v. Macabanding*, 745 Phil. 12, 21 (2014); *Ang v. Atty. Gupana*, 726 Phil. 127, 137 (2014); *Dela Cruz-Sillano v. Atty. Pangan*, 592 Phil. 219, 228 (2008); *Dela Cruz v. Atty. Dimaano, Jr.*, 586 Phil. 573, 579 (2008); and *Gonzales v. Atty. Ramos*, 499 Phil. 345, 354 (2005).

infraction,[33] the imposition of the penalties of suspension from the practice of law for a period of two (2) years, disqualification from being commissioned as a notary public for the same period, and revocation of the existing commission, if any, against respondent are only just and proper under the circumstances.[34]

WHEREFORE, the Court finds respondent Atty. Carlito R. Inton **GUILTY** of violating the 2004 Rules on Notarial Practice and the Code of Professional Responsibility. Accordingly, the Court hereby **SUSPENDS** him from the practice of law for a period of two (2) years; **PROHIBITS** him from being commissioned as a notary public for a period of two (2) years; and **REVOKES** his incumbent commission as a notary public, if any. He is **STERNLY WARNED** that a repetition of the same or similar acts in the future shall be dealt with more severely.

The suspension from the practice of law, the prohibition from being commissioned as notary public, and the revocation of his notarial commission, if any, shall take effect immediately upon receipt of this Decision by respondent. He is **DIRECTED** to immediately file a Manifestation to the Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

Let copies of this 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.

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[33] In *Spouses Leynes v. Atty. Inton* (See Minute Resolution in A.C. No. 9024, June 20, 2016), the Court REPRIMANDED respondent for his negligence in failing to ascertain that therein signatory to the Deed of Sale which he notarized did not have authority to sell the Spouses Leynes' property subject of said Deed.

[34] See *Triol v. Agcaoili, Jr.*, *supra* note 17.

Peralta, C.J., Leonen, Caguioa, Reyes, J. Jr., Hernando, Carandang, and *Zalameda, JJ.*, concur.

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

Gesmundo, J., on official business.

Lazaro-Javier and *Inting, J.*, on official leave.

THIRD DIVISION

[G.R. Nos. 220632 and 220634. November 6, 2019]

DEPARTMENT OF FINANCE-REVENUE INTEGRITY PROTECTION SERVICE (DOF-RIPS), *petitioner*, *vs.* **EDITA CRUZ YAMBAO and OFFICE OF THE OMBUDSMAN**, *respondents*.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTION; *CERTIORARI*; LIMITED TO ERRORS OF FACT OR LAW THAT CONSTITUTE GRAVE ABUSE OF DISCRETION; RATIONALE BEHIND NON-INTERFERENCE BY THE COURT WITH THE EXERCISE OF THE OMBUDSMAN'S DISCRETION IN DETERMINING THE EXISTENCE OF PROBABLE CAUSE WHEN THERE IS NO SHOWING OF GRAVE ABUSE OF DISCRETION. — Special civil actions for *certiorari* do not correct errors of fact or law that do not constitute grave abuse of discretion. Thus, as a general rule, this Court does not interfere with the exercise of the Office of the Ombudsman's discretion in determining the existence of probable cause when there is no showing that it acted in an "arbitrary, capricious, whimsical[,] or despotic manner." This Court explained the reasons for this deference in *Dichaves v. Office of the Ombudsman*. An independent constitutional body, the Office of the Ombudsman is "beholden to no one, acts as the champion of the people[,] and [is] the preserver of the integrity

of the public service." Thus, it has the sole power to determine whether there is probable cause to warrant the filing of a criminal case against an accused. This function is *executive* in nature.

2. ID.; ID.; ID.; PETITIONER FAILED TO SHOW ANY BASIS FOR THIS COURT TO FIND GRAVE ABUSE OF DISCRETION ON THE PART OF PUBLIC RESPONDENT. — This Court notes that public respondent did not ignore private respondent's declaration. Instead, it carefully considered this and exercised its discretion in determining that it was not perjurious. Public respondent found that when private respondent declared the brokerage firm as a business interest, she relied on her understanding that her husband worked with the brokerage firm and derived income from it[.] x x x In arriving at its conclusion that there was no showing of ill-gotten wealth, public respondent exercised its discretion, went through the evidence, and summarized the figures presented by the parties. x x x Public respondent compared this enumeration with private respondent's income, accounting for her basic annual salary and overtime pay. It also considered her claim that her husband has been employed since 1977, weighing the evidence she presented to support this against the dearth of evidence presented by petitioner to show otherwise. Although public respondent did not conclusively find that private respondent's husband has been regularly employed since 1977, it pointed out that neither petitioner nor private respondent submitted the husband's income tax returns, which could have supported either of their claims. Thus, it followed the rule that one who accuses has the burden of proving the accusation, which should rely on the strength of his or her evidence, not the weakness of the opponent's own evidence. Public respondent further noted that petitioner did not show which of private respondent's acquisitions, investments, and expenses were extravagant or lavish. It observed that the increase in private respondent's wealth was gradual, its percentage increase minimal and commensurate to private respondent's and her husband's annual income. Petitioner has, thus, failed to show any basis for this Court to find grave abuse of discretion on the part of public respondent.

3. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICIAL AND EMPLOYEE; A PUBLIC OFFICIAL CANNOT BE MADE LIABLE FOR INACCURACIES IN HER STATEMENT OF ASSETS, LIABILITIES, AND NET WORTH (SALN) IF SHE HAD NOT FIRST GIVEN THE

OPPORTUNITY TO CORRECT THE DEFECT. — [P]rivate respondent should not be liable for inaccuracies in her Statements of Assets, Liabilities, and Net Worth if she had not first been given the opportunity to correct the defects. x x x [I]n *Atty. Navarro v. Office of the Ombudsman*, this Court exonerated the reporting individual for making an over-declaration in his Statements of Assets, Liabilities, and Net Worth, and for lumping his properties. It pointed out that officials should be alerted to issues such as this to give an opportunity to rectify them[.] x x x In this case, there is no showing that private respondent had been given the opportunity to correct the defects in her Statements of Assets, Liabilities, and Net Worth before the Complaint was filed against her. If her or her husband's connection to Arnold L. Cruz Customs Brokerage was too ambiguous or a cause for concern, she should have been allowed to clarify the matter — especially since she expressly disclosed a connection with the firm. x x x The purpose of requiring public officials to submit statements of assets, liabilities, and net worth is to defeat corruption. Providing an opportunity to correct a defect before being sanctioned is aligned with this purpose.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Hortensio Domingo for private respondent.

R E S O L U T I O N

LEONEN, *J.*:

This Court resolves a Petition for *Certiorari*[1] under Rule 65 of the Rules of Court, praying that the Office of the Ombudsman's Joint Resolution[2] and Joint Order[3] be reversed and set aside,

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[1] *Rollo*, pp. 3-26, Verified Petition.

[2] *Id.* at 27-70. The Joint Resolution dated December 28, 2012 was penned by Graft Investigation and Prosecution Officer II Hilario A. Favila, Jr. and approved by Overall Deputy Ombudsman Melchor Arthur H. Carandang.

[3] *Id.* at 71-78. The Joint Order dated July 20, 2015 was penned by Graft Investigation and Prosecution Officer II Richard E. Buban, reviewed by

and that the Office of the Ombudsman be ordered to file the necessary informations against Edita Cruz Yambao (Yambao).

On August 16, 2011, the Department of Finance-Revenue Integrity Protection Service (Revenue Integrity Protection Service) filed a Joint Complaint-Affidavit[4] (Complaint) before the Office of the Ombudsman against Yambao, then a Customs Operation Officer III at the Bureau of Customs. It accused her of falsification of public documents and perjury, violation of Republic Act No. 6713, or the Code of Conduct and Ethical Standards for Public Officials and Employees, and violation of Republic Act No. 1379.

As set forth in the Complaint,[5] the Revenue Integrity Protection Service was created through Executive Order No. 259, series of 2003, to conduct lifestyle checks, investigate graft and corruption allegations, and, when warranted, to file the corresponding complaints against officials and employees of the Department of Finance and its attached agencies.[6]

Pursuant to this mandate, the affiants to the Complaint conducted an investigation on Yambao's lifestyle, assets, and properties acquired during her tenure at the Bureau of Customs.[7] Based on a comparative analysis of her Statements of Assets, Liabilities, and Net Worth and her expenditures,[8] they claimed to have discovered the following: (1) Yambao did not file her Statement of Assets, Liabilities, and Net Worth in 2000 and 2003; (2) she amassed wealth that was grossly disproportionate to her income; and (3) over the years, she had made false, misleading, and incomplete statements in her Statements of Assets, Liabilities, and Net Worth.[9]

PIAB-C Acting Director Ruth Laura A. Mella, and approved by Overall Deputy Ombudsman Melchor Arthur H. Carandang.

[4] *Id.* at 79-95.

[5] *Id.* at 79.

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

[7] *Id.* at 80.

[8] *Id.* at 82.

[9] *Id.* at 81.

The table[10] of her total net worth from 2004 to 2009 is as follows:

ASSETS	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**
Real Properties						
Land Para[ñ]aque (1986)	115,400	115,400	115,400	115,400	115,400	115,400
House Para[ñ]aque (1987)	200,000	200,000	200,000	200,000		
House w/ 2 door Apartment					2,900,000	2,900,000
Land Para[ñ]aque (1997)	320,000	320,000	320,000	320,000	320,000	320,000
Personal and Other Properties						
Vehicle (2001)	950,000	950,000	950,000	950,000	950,000	950,000
Jewelries	175,000	200,000	200,000	200,000	210,000	210,000
Appliances	100,000	100,000	100,000	100,000	120,000	120,000
Cash	380,000	400,000	400,000	420,000	450,000	480,000
Total (Real + Personal Property[)]	2,240,400	2,285,400	2,285,400	2,305,000	5,065,400	5,095,400
LIABILITIES						
Car Loan	250,000	200,000				
Personal Loan	300,000	350,000	320,000	300,000	280,000	250,000
Bank Loan-Housing					2,000,000	1,900,000
TOTAL NET WORTH ([A]ssets-Liabilities)	1,690,400	1,735,400	1,965,400	2,005,400	2,785,400	2,945,400

[10] *Id.* at 82-83.

The Office of the Ombudsman summarized the charges in the Complaint as follows:

. . . **that** with an annual salary of Php9,756.00 as Customs Clerk II, respondent purchased *in cash* a 256 sq./m lot in Better Living Subdivision, Parañaque City, known to be an expensive residential community, in 1986; **that** she financed her acquisition with her annual earnings of only ₱15,264.00; **that** in 1987, with an annual income of ₱16,027.00, she acquired, through loan, a house worth ₱200,000.00; **that** in 1997, with four (4) school age children and with an annual salary of ₱86,988.00, respondent purchased a 261 square meters lot in Better Living Subdivision, Parañaque City; **that** when her annual salary was ₱215,052.00, she bought a house with a two-door apartment amounting to ₱2,900,000.00; **that** in 1993, she purchased a Lite Ace vehicle worth ₱500,000.00. In 2002, her husband, who was then an employee of "Arnold L. Cruz Custom Brokerage" bought a Honda CRV 2.0 Li AT SS metallic with Plate Number XGG-115 worth ₱950,000.00; **that** aside from these large purchases, she also bought jewelries and accumulated cash over the years; that in her SALN, she declared her house with two-door apartment as having market value of ₱3,000,000.00. The Property Tax Declaration, however specified that its market value was ₱261,000.00 and assessed value was ₱52,200.00; **that** in her 2002 SALN, she stated that she purchased a 2002 CRV 2.0 Li AT SS Metallica in 2001, although the acquisition was only in 2002. There is a deliberate false declaration of the date of purchase on the part of the respondent in order to shield and conceal from public scrutiny, the true nature of her accumulation of unexplained wealth; **that** she extensively traveled to expensive foreign destinations like in Osaka, Japan in year 1999 and San Francisco, U.S.A[.] in 2002. These travels entail spending thousands of pesos in airfare, food, lodging and other expenses. The purpose of her travel to the USA in 2002 was to accompany her minor daughter for medical treatment of her skin problem at Camp Discovery, Camp Knutton, Cross Lake, Minnesota, USA; **that** despite her travel to the USA with her two minor children (Cedric and Cermina) in 2002, she was able to purchase in cash a Honda CRV which is considered a luxury vehicle; **that** it is highly irregular for a government employee receiving a meager salary to afford such extensive expenses apart from the fact that she has five children which entail massive family expenditures; **that** when she traveled to Japan in 1999, she failed to secure the necessary travel authority from her superiors at the Department of Finance; **that** respondent consistently declared in her SALNs that

she has business interest or is connected with "Arnold L. Cruz Customs Brokerage" (Brokerage). In her 2001 and 2002 SALNs, she declared that her husband Cesar Yambao (Cesar) is the Operations Manager of the Brokerage while in her 2005, 2006 and 2007 SALNs [s]he declared her husband as self-employed. Significantly, the Brokerage was still declared as part of her business interest despite the fact that in her 2005, 2006 and 2007 SALNs she declared that her husband is no longer connected with the same; **that** in her March 21, 2007 Personal Data Sheet, she disclosed that Cesar was employed in the Customs Brokerage contrary to what she stated in her 2007 SALN; in her 2008 and 2009 SALNs, she continued to declare that Cesar was an employee of the said Customs Brokerage. Her connection with the Customs Brokerage is highly questionable since the verification from the Business Permit and Licensing Office of the City of Manila showed that the Brokerage or Arnold L. Cruz Customs Brokerage has no permit to operate business in Manila from 2006 to present and yet she maliciously declared such business in her 2007, 2008, and 2009 SALNs; **that** respondent continued to declare the Brokerage as her business interest at the time that she declared that her husband was self-employed, thus, making such declaration highly suspicious; **that** because of these inconsistencies, respondent is inferred to be the owner of the Brokerage, which is strengthened by her husband's declaration in his application of Philippine Ports Authority Pass Control that he is a representative of such Brokerage, and as such, it is definitely in conflict with her duties and responsibilities as Chief of the Assessment Division, DHL Customs Composite Unit, MICP, Bureau of Customs; **and that** she misdeclared that she operates a piggery farm in Sto. Cristo, Pulilan, Bulacan to cover up her accumulation of unexplained wealth, when in truth, no property in Sto. Cristo is registered in her name.[11] (Emphasis in the original)

In a December 28, 2012 Joint Resolution,[12] the Office of the Ombudsman dismissed the charges against Yambao.

The Office of the Ombudsman found that the evidence presented was insufficient to prove Yambao's non-filing of her Statements of Assets, Liabilities, and Net Worth in 2000

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

[12] *Id.* at 27-70.

and 2003, especially as weighed against her proof that she filed them.[13]

Moreover, the Office of the Ombudsman found that her disclosures in her Statements of Assets, Liabilities, and Net Worth appeared substantially true or compliant with the law. As for any discrepancies in her disclosures, it found no deliberate intent to falsify on her part.[14]

Finally, the Office of the Ombudsman found that the Revenue Integrity Protection Service did not substantiate its allegation that Yambao had unexplained wealth, in violation of Republic Act No. 1379.[15] The charge rested on the allegation that Yambao was the only breadwinner in her family, but the Office of the Ombudsman did not find sufficient evidence to establish this claim.[16]

The dispositive portion of the Joint Resolution read:

> **FOREGOING CONSIDERED**, the charges filed against **EDITA CRUZ YAMBAO**, Customs Operation Officer III, Bureau of Customs, Manila, are hereby **dismissed**.
>
> **SO RESOLVED**.[17] (Emphasis in the original)

The Revenue Integrity Protection Service filed a Motion for Reconsideration,[18] which the Office of the Ombudsman denied in a July 20, 2015 Joint Order.[19]

Thus, petitioner Revenue Integrity Protection Service filed this Petition.[20] Private respondent Yambao filed her Comments/

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[13] *Id.* at 50.

[14] *Id.* at 54.

[15] *Id.* at 69.

[16] *Id.* at 67.

[17] *Id.* at 69.

[18] *Id.* at 388-399.

[19] *Id.* at 71-78.

[20] *Id.* at 3-26.

Opposition,[21] and public respondent Office of the Ombudsman filed its Comment.[22] Thereafter, petitioner filed its Consolidated Reply.[23]

Petitioner insists that public respondent gravely abused its discretion by disregarding jurisprudential parameters in determining probable cause.[24] It argues that public respondent disregarded the evidence that established a *prima facie* presumption of ill-gotten wealth, which private respondent was not able to overturn.[25] It insists that it presented sufficient evidence, as preliminary investigation only requires evidence that "may engender well-grounded belief that an offense has been committed and that the accused is probably guilty thereof."[26]

Petitioner prays that public respondent be ordered to file informations for violations of: (1) Section 9 in relation to Section 11 of Republic Act No. 6713; (2) Section 7 of Republic Act No. 3019; (3) Articles 171 (4) and 183 of the Revised Penal Code; and (4) Republic Act No. 1379.[27]

The only issue for this Court's resolution is whether or not public respondent the Office of the Ombudsman committed grave abuse of discretion in determining that no probable cause exists to charge private respondent Edita Cruz Yambao with any of the offenses charged by petitioner Department of Finance-Revenue Integrity Protection Service.

Special civil actions for *certiorari* do not correct errors of fact or law that do not constitute grave abuse of discretion. Thus, as a general rule, this Court does not interfere with the

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[21] *Id.* at 506-547.

[22] *Id.* at 855-876.

[23] *Id.* at 882-901.

[24] *Id.* at 883.

[25] *Id.* at 19.

[26] *Id.* at 884.

[27] *Id.* at 20.

exercise of the Office of the Ombudsman's discretion in determining the existence of probable cause when there is no showing that it acted in an "arbitrary, capricious, whimsical[,] or despotic manner."[28]

This Court explained the reasons for this deference in *Dichaves v. Office of the Ombudsman*:[29]

> An independent constitutional body, the Office of the Ombudsman is "beholden to no one, acts as the champion of the people[,] and [is] the preserver of the integrity of the public service." Thus, it has the sole power to determine whether there is probable cause to warrant the filing of a criminal case against an accused. This function is *executive* in nature.
>
> The executive determination of probable cause is a highly factual matter. It requires probing into the "existence of such *facts and circumstances* as would excite the belief, in a reasonable mind, *acting on the facts within the knowledge of the prosecutor*, that the person charged was guilty of the crime for which he [or she] was prosecuted."
>
> The Office of the Ombudsman is armed with the power to investigate. It is, therefore, in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. As this Court is not a trier of facts, we defer to the sound judgment of the Ombudsman.
>
> Practicality also leads this Court to exercise restraint in interfering with the Office of the Ombudsman's finding of probable cause. *Republic v. Ombudsman Desierto* explains:
>
> > [T]he functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a

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[28] *Joson v. Office of the Ombudsman*, 816 Phil. 288, 320 (2017) [Per *J.* Leonen, Second Division].

[29] 802 Phil. 564 (2016) [Per *J.* Leonen, Second Division].

private complainant.[30] (Emphasis in the original, citations omitted)

In its assailed Joint Resolution, public respondent carefully considered the evidence presented, and its conclusions were based on the case records.

On the claim that private respondent did not file her 2000 and 2003 Statements of Assets, Liabilities, and Net Worth, public respondent did not give credence to petitioner's evidence: the October 1, 2010 Certification issued by the Human Resource Management Division of the Bureau of Customs. Public respondent noted that although the Human Resource Management Division receives or collates the statements of Bureau of Customs employees, it is not the repository of these statements.

Furthermore, public respondent noted that private respondent presented proof that she filed her 2000 and 2003 Statements of Assets, Liabilities, and Net Worth, with stamps showing when they were received by the Bureau of Customs.[31] Petitioner did not refute this. Thus, public respondent concluded that there was insufficient evidence to prove its allegation.[32]

On the charge that private respondent falsified her Statements of Assets, Liabilities, and Net Worth, public respondent found that her disclosures in her Statements of Assets, Liabilities, and Net Worth appeared substantially true or compliant with the law, and found insufficient proof of any deliberate intent to falsify.[33]

Meanwhile, in support of its claim that private respondent's husband did not have any income, making her the family's only breadwinner,[34] petitioner only presented private respondent's

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[30] *Id.* at 589-591.

[31] *Rollo*, pp. 50-51.

[32] *Id.* at 51.

[33] *Id.* at 54.

[34] *Id.* at 66-69.

Statements of Assets, Liabilities, and Net Worth and service records. As public respondent pointed out, the Statements themselves show that her husband was, in fact, engaged in the custom brokerage business, particularly employed at Arnold L. Cruz Customs Brokerage.[35] Thus, petitioner did not sufficiently establish that private respondent was the only income earner in her family.

Moreover, public respondent noted that private respondent presented sufficient evidence to show that her husband was gainfully employed and contributed to their family assets and expenses. Aside from her Statements of Assets, Liabilities, and Net Worth, she also presented affidavits from her husband's employer, Arnold L. Cruz (Cruz), the owner of the brokerage firm declared in the Statements of Assets, Liabilities, and Net Worth, which confirmed, among others, that her husband was an income earner.[36]

Now, petitioner claims that public respondent gravely abused its discretion in disregarding a Bureau of Permits Certification it presented, which showed that Arnold L. Cruz Customs Brokerage has not operated since 2006.[37] It insists that this Certification establishes that private respondent's husband had no income to contribute to the family.[38] Petitioner argues that Cruz's Affidavit showing her husband's employment was not enough to overturn the Certification.[39]

Petitioner places unfounded weight on this Certification. Quite the contrary, it only certifies:

. . . that based on the available records of this Office, no business permit was issued to ARNOLD L. CRUZ CUSTOM BROKERAGE

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[35] *Id.* at 67.

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

[37] *Id.* at 11.

[38] *Id.*

[39] *Id.* at 12.

located at 260 Padilla delos Reyes Bldg., 232 J. Luna St., Manila to operate any business in Manila from CY 2006 to present.[40]

Public respondent found that such a certification, without any other evidence, was insufficient to establish that private respondent's husband was unemployed and had no income. This is not grave abuse of discretion.

Further, public respondent considered and weighed the evidence presented by petitioner against that of private respondent. It noted that the affidavit issued by Cruz explains why no mayor's permit was issued to the firm. It reads in part:

> 6.) As an individual customs broker, I am not required by the Bureau of Customs for accreditation, a mayor's permit after the passage of RA 9280. However, it is the "WORLD CARGO TECHNOLOGY BROKERAGE CORPORATION" that obtains the mayor's permits for the customs business operations that we conduct at Padilla De Los Reyes Building, 232 Juan Luna Street, Binondo, Manila for both the corporation and "ARNOLD L. CRUZ CUSTOMS BROKER."[41]

Cruz's affidavit also explained that her husband derived income from Cruz's brokerage, showing that private respondent was not the sole breadwinner of her family. Part of it reads:

> 7.) For the period 2001 up to the present my uncle CESAR G. YAMBAO was employed by "ARNOLD L. CRUZ CUSTOMS BROKER" in various capacities as operations manager, marketing officer, etc. when attending to existing clients of "ARNOLD L. CRUZ CUSTOMS BROKER" where CESAR G. YAMBAO receives compensation and at the same time allowed as a free-lance self-employed.
>
> 8.) Since the volume of customs brokerage business is not constant and depends on the frequency of importations of the clients of "ARNOLD L. CRUZ CUSTOMS BROKERAGE," MR. CESAR G. YAMBAO is likewise allowed at the same time to dedicate his available free time as "self-employed" by being allowed to market his own clients and bring in additional business to "ARNOLD L. CRUZ

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[40] *Id.* at 854.

[41] *Id.* at 310.

CUSTOMS BROKER." In this manner, MR. CESAR YAMBAO's employment with "ARNOLD L. CRUZ CUSTOMS BROKER" is in no way inconsistent with his being "self-employed" when not attending to the clients of "ARNOLD L. CRUZ CUSTOMS BROKER."[42]

Public respondent even acknowledged that the affidavit of her husband's employer may have been self-serving. Nonetheless, it found that the evidence to charge private respondent was still insufficient:

> True, those affidavits may be considered as self-serving statements as far as the respondent is concerned; however, in the absence of evidence to the contrary, this Office may not be precluded of *(sic)* giving weight and credence thereof. Further, it is worthy to note that the herein affiants will not dare to come forward under pain of criminal prosecution for perjury to prove the innocence of respondent if they are not telling the truth. There is semblance of truth to their verified statements that respondent's husband is also gainfully employed, earning income for his family. Clearly, when they acquired the properties during the years indicated in her SALNs including the investments and the two foreign trips she made together with her children for medical purposes, there rises the presumption that they have the finances to support said acquisitions, investments and expenses.[43]

Petitioner also claims that public respondent gravely abused its discretion in ignoring private respondent's perjurious act of declaring Arnold L. Cruz Brokerage as a business interest, when she had none.[44]

This Court notes that public respondent did not ignore private respondent's declaration. Instead, it carefully considered this and exercised its discretion in determining that it was not perjurious. Public respondent found that when private respondent declared the brokerage firm as a business interest, she relied on her understanding that her husband worked with the brokerage firm and derived income from it:

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[42] *Id.*

[43] *Id.* at 68.

[44] *Id.* at 9.

Notably, when she declared that she has business and financial interest with Arnold L. Lim Brokerage she was banking on her honest belief that her husband was employed therein or in those years when he was self employed and apparently no longer connected with the brokerage, but was allowed to free-lance with the customers of said brokerage firm, he being a close relative of the registered owner. For merely relying on the fact that her husband was connected with the brokerage firm, she then cannot be faulted for disclosing about their business or financial interest therein in her subject SALNs.

Besides, respondent, not being learned in law could not just know what the SALN requires with respect to financial or business interest. As far as she is concerned, as her husband derived his income from said business entity, not to mention his close relationship with the owner, she can ascribe to her husband that he has financial connection or business interest with said firm. Her reliance on the facts under her disposal as the way she appreciated it should not be taken against her. She may be remiss on her duty of declaring what is true but it could not be said that she committed falsification or perjury.[45]

On petitioner's claim that private respondent acquired unexplained wealth, public respondent carefully weighed the parties' evidence. From there, it concluded that there was no showing of any ill-gotten wealth.[46]

Petitioner claims that public respondent erred in its appreciation of evidence, as there is a *prima facie* presumption of ill-gotten wealth. Petitioner insists that private respondent and her husband were not able to present sufficient evidence to show that they could afford their listed properties or her lifestyle.

This Court is not convinced.

In arriving at its conclusion that there was no showing of ill-gotten wealth, public respondent exercised its discretion, went through the evidence, and summarized the figures presented by the parties. Public respondent's summary reads:

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[45] *Id.* at 54-55.

[46] *Id.* at 64-69.

1. A residential lot in Parañaque City amounting to ₱115,400 acquired in 1986;

2. Constructed a house in said property costing them ₱200,000 which was obtained through loan in 1987;

3. In 1993, they bought a Lite-Ace in cash in the amount of ₱500,000.00;

4. In 1995, she bought a 15-year pension plan with the Pacific Plans payable within 10 years with a monthly payment of premium amounting to ₱3,200.00;

5. In 1996, her husband organized a business known as ZIPPY CARGO FORWARDERS (ZIPPY CARGO SERVICES, INC.) investing ₱135,000 shares of stocks or a paid up capital;

6. In 1997, they acquired a residential lot in the amount of ₱320,000 by way of personal loan;

7. In year 1999, she accompanied her sick child to Minnesota, USA spending the amount of ₱100,000.00;

8. In 2001, her mother died and as [a] result thereof she inherited jewelries in the amount of ₱95,000.00;

9. For over 30 years she acquired jewelries amounting to ₱115,00[0].00;

10. In January 2002, they sold their Lite-Ace in the amount of ₱280,000 which were used as part of the 30% down payment for Honda CRV worth ₱950,000.00 the balance of which was paid through Car Loan obtained from BPI Family Bank payable in three years/36 months ending year 2005;

11. In year 2002, she travelled to USA with her children Cermina and Cedric;

12. In 2008, they renovated their Old House with money sourced from the net proceeds of ₱737,568.00 of her Pension Plan which was pre-terminated by Pacific Plans, Inc. arising from its closure and a ₱2,000,000.00 housing loan from PNB with 9% per annum using as collateral their lot bought in 1986;

13. For the period September 2001 up to 2009, she received a total remuneration in her official capacity as BOC employee in the sum fairly estimated at ₱3,956,991.42;

14. She invested in the piggery farm owned by her sister;

15. From the year 2004-2009, she has a cash on hand from ₱380,000 to ₱480,000.00;

16. From 2004-2009 the value of their appliances increased from ₱100,000 to ₱120,000.00.[47]

Public respondent compared this enumeration with private respondent's income, accounting for her basic annual salary and overtime pay. It also considered her claim that her husband has been employed since 1977, weighing the evidence she presented to support this against the dearth of evidence presented by petitioner to show otherwise.[48]

Although public respondent did not conclusively find that private respondent's husband has been regularly employed since 1977, it pointed out that neither petitioner nor private respondent submitted the husband's income tax returns, which could have supported either of their claims. Thus, it followed the rule that one who accuses has the burden of proving the accusation, which should rely on the strength of his or her evidence, not the weakness of the opponent's own evidence.[49]

Public respondent further noted that petitioner did not show which of private respondent's acquisitions, investments, and expenses were extravagant or lavish. It observed that the increase in private respondent's wealth was gradual, its percentage increase minimal and commensurate to private respondent's and her husband's annual income.[50]

Petitioner has, thus, failed to show any basis for this Court to find grave abuse of discretion on the part of public respondent.

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

[48] *Id.* at 63-65.

[49] *Id.* at 66.

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

Furthermore, private respondent should not be liable for inaccuracies in her Statements of Assets, Liabilities, and Net Worth if she had not first been given the opportunity to correct the defects.

The laws requiring public officers to submit declarations of their assets, liabilities, net worth, and financial and business interests recognize that defects in a statement of assets, liabilities, and net worth may occur despite the reporting individual's lack of intent to conceal wealth. An opinion in *San Diego v. Fact-Finding Investigation Committee*[51] outlined the legal framework for this conclusion:

> Section 7 of the Anti-Graft and Corrupt Practices Act mandates every public officer to file a statement of assets, liabilities, and net worth with the office of his or her Department Head, Office of the President, or Office of the Secretary of the House of Representatives or Senate, wherever applicable. Violating this provision is sufficient to remove or dismiss a public officer, who shall be punished with a fine and/or imprisonment. However, the law was passed decades before the enactment of Republic Act No. 6713, which particularly governs the conduct and ethical standards of public officials and employees.
>
> The Code of Conduct and Ethical Standards for Public Officials and Employees specifies that a review and compliance procedure must be established to determine the existence of certain defects in a public officer's statement of assets, liabilities, and net worth. Under the procedure, if it is found that the statement of assets, liabilities, and net worth was: (1) not [f]iled on time; (2) incomplete; or (3) not in proper form, the reporting individual must be informed of this defect and directed to take corrective action.
>
> The law places the responsibility of establishing these procedures on designated committees in the House of Representatives and the Senate, as well as heads of offices, subject to the approval of the Department of Justice Secretary or the Supreme Court Chief Justice, for the executive branch and the judiciary, respectively. The law further provides:

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[51] *J.* Leonen, Concurring Opinion in *San Diego v. Fact-Finding Investigation Committee*, G.R. No. 214081, April 10, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65165> [Per *J.* Peralta, Third Division].

SECTION 10. *Review and Compliance Procedure.* — . . .

. . . . . .

(b) In order to carry out their responsibilities under this Act, the designated Committees of both Houses of Congress shall have the power within their respective jurisdictions, to render any opinion interpreting this Act, in writing, to persons covered by this Act, subject in each instance to the approval by affirmative vote of the majority of the particular House concerned.

The individual to whom an opinion is rendered, and any other individual involved in a similar factual situation, and who, after issuance of the opinion acts in good faith in accordance with it shall not be subject to any sanction provided in this Act.

Thus, the law clearly recognizes that a defect in the statement of assets, liabilities, and net worth may have occurred despite the reporting individual's good faith, and despite his or her lack of intent to conceal wealth. Moreover, once an opinion is rendered to a reporting individual, if he or she subsequently acts upon the opinion in good faith, he or she may not be sanctioned under Republic Act No. 6713.[52] (Citations omitted)

Thus, in *Atty. Navarro v. Office of the Ombudsman*,[53] this Court exonerated the reporting individual for making an over-declaration in his Statements of Assets, Liabilities, and Net Worth, and for lumping his properties. It pointed out that officials should be alerted to issues such as this to give an opportunity to rectify them:

Although it is the duty of every public official/employee to properly accomplish his/her SALN, it is not too much to ask for the head of the appropriate department/office to have called his attention should there be any incorrectness in his SALN. The DOF, which has supervision over the BIR, could have directed Navarro to correct his SALN. This is in consonance with the above-quoted Review and Compliance Procedure under R.A. No. 6713, as well as its Implementing Rules and Regulations *(IRR)*, providing for the procedure for review

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[52] *Id.*

[53] 793 Phil. 453 (2016) [Per *J.* Mendoza, Second Division].

of statements to determine whether they have been properly accomplished. To reiterate, it is provided in the IRR that in the event authorities determine that a SALN is not properly filed, they should **inform the reporting individual and direct him to take the necessary corrective action**.

In this case, however, Navarro was not given the chance to rectify the nebulous entries in his SALNs. Instead, the DOF, through its RIPS, filed a complaint-affidavit with the Ombudsman on the ground that his SALN was "generalized." Regardless, Navarro was able to show and explain the details of his SALN when he submitted his counter-affidavit with the necessary documents, to which the DOF-RIPS and the Ombudsman and the CA coldly closed their eyes.

As there was only a failure to give proper attention to a task expected of an employee because of either carelessness or indifference, Navarro should have been informed so he could have made the necessary explanation or correction. *There is nothing wrong with a generalized SALN if the entries therein can be satisfactorily explained and verified.*

. . . . . .

The Court is mindful of the duty of public officials and employees to disclose their assets, liabilities and net worth accurately and truthfully. In keeping up with the constantly changing and fervent society and for the purpose of eliminating corruption in the government, the new SALN is stricter, especially with regard to the details of real properties, to address the pressing issue of transparency among those in the government service. Although due regard is given to those charged with the duty of filtering malicious elements in the government service, it must still be stressed that such duty must be exercised with great caution as grave consequences result therefrom. Thus, some leeway should be accorded the public officials. They must be given the opportunity to explain any *prima facie* appearance of discrepancy. To repeat, where his explanation is adequate, convincing and *verifiable*, his assets cannot be considered unexplained wealth or illegally obtained.[54] (Emphasis in the original, citation omitted)

In this case, there is no showing that private respondent had been given the opportunity to correct the defects in her Statements of Assets, Liabilities, and Net Worth before the Complaint was

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[54] *Id.* at 476-478.

filed against her. If her or her husband's connection to Arnold L. Cruz Customs Brokerage was too ambiguous or a cause for concern, she should have been allowed to clarify the matter — especially since she expressly disclosed a connection with the firm. Thus, this Court reiterates its pronouncement in *Atty. Navarro*:

> Lest it be misunderstood, the corrective action to be allowed should only refer to typographical or mathematical rectifications and explanation of disclosed entries. It does not pertain to hidden, undisclosed or undeclared acquired assets which the official concerned intentionally concealed by one way or another like, for instance, the use of dummies. There is actually no hard and fast rule. If income has been actually reported to the BIR in one's ITR, such fact can be considered a sign of good faith.[55]

The purpose of requiring public officials to submit statements of assets, liabilities, and net worth is to defeat corruption. Providing an opportunity to correct a defect before being sanctioned is aligned with this purpose.[56]

WHEREFORE, the Petition for *Certiorari* is **DISMISSED**. The Office of the Ombudsman's December 28, 2012 Joint Resolution and July 20, 2015 Joint Order are **AFFIRMED**.

SO ORDERED.

Carandang and *Zalameda, JJ.*, concur.

Gesmundo, J., on leave.

Lazaro-Javier, J., on official leave.

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[55] *Id.* at 477.

[56] J. Leonen, Concurring Opinion in *San Diego v. Fact-Finding Investigation Committee*, G.R. No. 214081, April 10, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65165> [Per J. Peralta, Third Division].

THIRD DIVISION

[G.R. No. 227880. November 6, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RUTH DELA ROSA *y* LIKINON *a.k.a.* "SALLY,"** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; ANTI-TRAFFICKING IN PERSONS ACT OF 2003 (RA 9208); ELEMENTS OF TRAFFICKING IN PERSONS, REITERATED; "RECRUITMENT" ALSO CONTEMPLATES THE ACCUSED'S ACT OF PROVIDING THE CONDITION FOR PROSTITUTING THE VICTIM; PROSTITUTION, DEFINED. — In *People v. Casio*, this Court lists the elements of trafficking in persons: (1) The *act* of "recruitment, transportation, transfer or harbouring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders." (2) The *means* used which include "threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another; and (3) The *purpose* of trafficking is exploitation which includes "exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs." x x x This Court, x x x maintains that "recruitment" also contemplates an accused's act of providing the conditions for prostituting AAA. Prostitution is defined under Section 3(c) of Republic Act No. 9208 as "*any* act, transaction, scheme or design involving the use of a person by another, for sexual intercourse or lascivious conduct in exchange for money, profit or any other consideration."

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; VICTIM'S TESTIMONY GIVEN GREATER CREDENCE THAN ACCUSED'S DEFENSE; TRIAL COURT'S ASSIGNMENT OF PROBATIVE VALUE TO A WITNESS' TESTIMONY WILL NOT BE DISTURBED EXCEPT WHEN SIGNIFICANT MATTERS WERE

OVERLOOKED. — Here, AAA's testimony, which the lower courts found more credible than accused-appellant's defense, narrated that accused-appellant asked her to come along on an undisclosed errand, which turned out to be a meeting with Kim at the Coa Hotel. Accused-appellant then introduced AAA to Kim, allowed AAA to be sexually exploited in exchange for payment, then directed AAA to continue servicing Kim's requests under threat of exposing the girl to her mother. Thus, the trial court held that accused-appellant engaged in human trafficking[.] x x x The trial court's assignment of probative value to witnesses' testimonies will not be disturbed except when significant matters were overlooked, because it "has the opportunity to observe the demeanor of the witness on the stand." *People v. Diu* teaches that the trial court's findings acquire even greater weight once affirmed on appeal[.]

3. ID.; ID.; ID.; ACCUSED CANNOT USE THE VICTIM'S CONSENT AS A DEFENSE. — [A]ccused-appellant seemingly attempts to exculpate herself by showing that AAA consented to what was done to her, and that she voluntarily met with Kim on March 6, 2013. However, *Casio* teaches that an accused cannot use the minor's consent as a defense. In *Casio*, the victim was alleged to have engaged in prostitution prior to the incident subject of the case, and to have been "predisposed to having sex with 'customers' for money." This was deemed irrelevant to the commission of the crime[.]

4. CRIMINAL LAW; RA 9208; QUALIFIED TRAFFICKING IN PERSONS, COMMITTED; PENALTY AND CIVIL LIABILITY. — [A]ccused-appellant was found to have "transferred and provided AAA to Kim in exchange for money, through threats and by taking advantage of her vulnerability[.]" Accused-appellant failed to forward any arguments that would cast reasonable doubt on her conviction. Accordingly, this Court affirms her conviction. However, this Court modifies accused-appellant's liability for damages, as moral damages may be awarded here. *Casio* teaches that, consistent with *People v. Lalli,* those found guilty of human trafficking may be held liable for moral and exemplary damages, as with other analogous crimes that cause the victim physical and mental suffering, besmirched reputation, moral shock, and social humiliation[.] x x x Accused-appellant Ruth Dela Rosa *y* Likinon *a.k.a.* "Sally" is found **GUILTY** beyond reasonable doubt of qualified trafficking in

persons, defined under Section 4(a), in relation to Section 6(a), and penalized under Section 10(c) of Republic Act No. 9208. She is sentenced to suffer the penalty of life imprisonment, and to pay AAA a fine of ₱2,000,000.00, moral damages in the amount of ₱500,000.00, and the costs of the suit.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONEN, *J.*:

Sworn statements often conflict with testimonies given in open court because the former are seldom complete or comprehensive accounts of what actually happened.[1] Thus, "[a]ffidavits taken *ex parte* are generally considered inferior to the testimony given in open court."[2]

This is an appeal assailing the Decision[3] of the Court of Appeals, which affirmed the Regional Trial Court Judgment[4] convicting Ruth Dela Rosa *y* Likinon *a.k.a.* "Sally" (Dela Rosa) of qualified trafficking in persons under Republic Act No. 9208.

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[1] *People v. SPO1 Gonzalez, Jr.*, 781 Phil. 149, 159 (2016) [Per *J.* Perez, Third Division].

[2] *People v. Dabon*, 290-A Phil. 449, 456 (1992) [Per *J.* Regalado, Second Division].

[3] *Rollo*, pp. 2-17. The Decision promulgated on March 29, 2016 was penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Ricardo R. Rosario and Marie Christine Azcarraga-Jacob of the Sixteenth Division, Court of Appeals, Manila.

[4] CA *rollo*, pp. 39-64. The Decision promulgated on October 1, 2013 was penned by Presiding Judge Ma. Angelica T. Paras-Quiambao of Branch 59, Regional Trial Court, Angeles City.

On March 8, 2013, two (2) separate Informations were filed charging Dela Rosa with qualified human trafficking.[5] They read as follows:

Crim. Case No. 13-9820

"That during the period of February, 2013 to March 6, 2013, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named, accused, did, then and there, willfully, unlawfully and feloniously recruit, transfer, harbor and provide AAA, a minor of 16 years of age, to KIM CABEN for the purpose of prostitution and sexual exploitation, by taking advantage of the vulnerability of the said minor, AAA, thereby demeaning and degrading the child's intrinsic worth as a human being.

CONTRARY TO LAW." (*sic*)

Crim. Case No. 13-9821

"That during the period of February, 2013 to March 6, 2013, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there, willfully, unlawfully and feloniously recruit, transfer, harbor and provide BBB, a minor of 15 years of age, to KIM CABEN for the purpose of prostitution and sexual exploitation, by taking advantage of the vulnerability of the said minor, AAA, (*sic*) thereby demeaning and degrading the child's intrinsic worth as a human being.

CONTRARY TO LAW."[6] (Citations omitted)

Dela Rosa pleaded not guilty to the charges.[7] Thus, trial ensued.

The prosecution presented AAA, BBB, and Police Officer 2 Elena De Leon (PO2 De Leon) as its witnesses.

AAA testified that sometime in February 2013, she was at home when she received a call from Dela Rosa, asking to meet at JJ's Supermarket for an errand. AAA complied. However,

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[5] *Rollo*, p. 3.

[6] CA *rollo*, p. 39.

[7] *Rollo*, p. 4.

upon meeting at the supermarket, the two proceeded to the Coa Hotel on Friendship road in Angeles City.[8]

In one (1) of the hotel rooms, AAA waited with Dela Rosa and another woman whom she did not know. A few hours later, a Korean man, whom AAA came to know as Kim Caben (Kim), arrived and sent the unidentified woman home. Dela Rosa then introduced AAA to Kim as her niece, after which AAA was told to take a bath. Dela Rosa took her turn in the bathroom afterwards, leaving AAA alone with Kim.[9]

AAA saw Kim ingest a white "tawas-like substance" by injecting it into himself using a syringe, then by inhaling the smoke emitted by heating the substance. Once Dela Rosa was finished taking a bath, she joined Kim in smoking the heated substance.[10]

When they were done, Dela Rosa proceeded to perform fellatio on Kim, much to AAA's horror. Kim then ordered AAA to sit closer to him. When she did, Kim mashed her breasts and ordered her to lie down on her side. Kim then touched her genitals and had sex with her. Unable to bear it any longer, AAA asked to be excused. She was allowed to stay in the bathroom, where she waited for around half an hour before Dela Rosa fetched her.[11]

Upon exiting the hotel, Kim paid Dela Rosa ₱2,200.00, of which Dela Rosa gave AAA ₱700.00. Dela Rosa warned AAA not to tell anyone about what had happened and advised that the girl comply with Kim's future requests so as not to embarrass her.[12]

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[8] CA *rollo*, p. 42.

[9] *Id*. at 42.

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

[11] *Id*. at 43.

[12] *Id*.

On March 6, 2013, AAA received a text message from Kim, asking if she had "a lady friend" and if she could "give her lady friend to him[.]"[13] With Dela Rosa's threat in mind, AAA complied. She asked BBB, then 15 years old, to accompany her to Avante Hotel.[14]

At the hotel, the girls found Kim waiting inside an unnumbered room. Kim told them to take a shower while he ingested more of the white substance. They followed his order but refused to go out of the bathroom in fear, only doing so after Kim threatened them.[15]

Then, Kim had sex with each of the girls — AAA first, then BBB.[16]

Once he had his way with them, Kim told AAA and BBB to wait with him for his contact who would be bringing drugs to the hotel room.[17]

Around 15 minutes later, police officers barged into the room and arrested Kim. They took him along with the girls to 174th Camp Tomas Pepito in Sto. Domingo, Angeles City.[18]

BBB testified to a similar series of events that transpired on March 6, 2013. In the evening that day, she agreed to meet with AAA at the Jailhouse Bar, where they rode a tricycle to Avante Hotel. Once there, they entered a hotel room where a Korean man was waiting for them. BBB was made to take a bath while AAA stayed with the Korean man. Through the bathroom door, BBB peeped and saw AAA having sex with the Korean man. When it was her turn, BBB tried to resist, but she eventually acquiesced to the sex after the Korean man had

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[13] *Id*.

[14] *Id*. at 41 and 43.

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

[16] *Id*.

[17] *Id*. at 44.

[18] *Id*.

threatened to inject her with the white substance. Once he was done, the Korean man told the girls to wait in the room with him. Soon after, police officers barged into the room, arrested the Korean man, then took all of them to the police station.[19]

BBB told PO2 De Leon what happened during an interview the following day.[20] During cross-examination, BBB noted that "[i]t was AAA who asked her to meet with the Korean national."[21]

PO2 De Leon testified that she was the officer who interviewed AAA and BBB at the police station after Kim's arrest. Although she testified that she interviewed both AAA and BBB, she did not mention BBB's interview in her affidavit.[22] Meanwhile, she recounted that AAA told her that she met Kim through her aunt "Sally," who gave AAA's phone number to Kim.[23]

Based on these interviews, the police conducted an operation to arrest Dela Rosa. The police had AAA accompany them to Ipil-Ipil Street in Hadrian, Balibago, where they initially went to AAA's house to speak to AAA's mother, CCC. When they were unable to find CCC there, AAA called CCC and learned that she was with Dela Rosa. AAA asked CCC to meet at their house because "somebody wanted to talk to her."[24] As soon as Dela Rosa arrived with CCC, AAA identified Dela Rosa as the trafficker, prompting the police to arrest her. PO2 De Leon was present in this arrest and executed an affidavit of apprehension, which she identified and affirmed in open court.[25]

The defense, on the other hand, presented Dela Rosa, her common-law spouse Crisanto Samper (Crisanto), and Crisanto's niece Maria Donna Samper (Donna).

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[19] *Id*. at 41-42.

[20] *Id*. at 42.

[21] *Id*. at 46.

[22] *Id*.

[23] *Id*. at 45-46.

[24] *Id*. at 45.

[25] *Id*.

Dela Rosa denied the prosecution's version of events. She testified that she and Crisanto took in and raised AAA for six (6) years. Crisanto is AAA's maternal uncle. Sometime in December 2012, she invited AAA to accompany her to the supermarket to buy milk for her child. There, Dela Rosa received a call from her friend, Kim, who wanted to meet with her that afternoon. Dela Rosa told Kim that she was with her niece, AAA. When Kim said that he wanted to meet AAA, Dela Rosa asked AAA if she wanted to come with her to meet Kim. AAA agreed.[26]

Both of them met with Kim at the Avante Hotel. Dela Rosa then gave AAA money to go home while she stayed to help Kim pack his things for his flight back to Korea. When they were done, Kim gave her money for groceries. She went home immediately after.[27]

Dela Rosa further testified that on March 6, 2013, she was at home with her child and Crisanto when she received a call from CCC, asking if AAA was with them. Dela Rosa denied having seen AAA that day. CCC informed Dela Rosa that AAA had gone off to meet a "Mr. Kim" but had not yet returned. When AAA had still not returned home by midnight, CCC called Dela Rosa again to ask for her help to find AAA.[28]

CCC, Dela Rosa, and Crisanto went to the barangay hall the following day to ask for help. While they were there, Dela Rosa received a call from her niece, Donna, informing her that AAA was at her home looking for her, accompanied by police officers and Department of Social Welfare and Development personnel. When Dela Rosa returned home, the police apprehended her for reasons she did not know. At the police station, PO2 De Leon told her to admit to charges she was not even informed of yet. She later learned that she was being charged with human trafficking.[29]

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[26] *Id*. at 47.

[27] *Id*.

[28] *Id*. at 48.

[29] *Id*.

For his part, Crisanto alleged that Dela Rosa was being falsely accused of human trafficking to cover up CCC's negligence in raising AAA. He testified that upon Dela Rosa's arrest, AAA told him that she would help Dela Rosa, whom she said was "just implicated in the case."[30] Likewise, he claimed that CCC assured him that she would help Dela Rosa.

Crisanto also testified that CCC allowed AAA to work at a bar, and should, thus, be the one held liable for what happened to AAA.[31]

Donna testified that on March 7, 2013, CCC asked her for Dela Rosa's whereabouts. She informed CCC that Dela Rosa was at home, and proceeded to text Dela Rosa that CCC was looking for her. Donna also heard CCC call Dela Rosa, asking that the latter help in looking for AAA. Donna testified that she did not know why CCC was looking for either Dela Rosa or AAA.[32]

Donna then testified that AAA came home accompanied by police officers and personnel from the Department of Social Welfare and Development. CCC and Dela Rosa arrived shortly after. Dela Rosa stayed outside the house while AAA and CCC broke down crying. Donna did not know why they were crying or why government officials were present in AAA's house. Eventually, Donna saw them all leave, and only later did she learn that Dela Rosa had been detained.[33]

In its October 1, 2013 Decision,[34] the Regional Trial Court acquitted Dela Rosa of the charges with respect to BBB. It found that Dela Rosa had no hand in BBB's encounter with Kim. BBB admitted that she went to Avante Hotel only upon AAA's request, and that she did not know how AAA came to

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[30] *Id*. at 50.

[31] *Id*.

[32] *Id*.

[33] *Id*. at 50-51.

[34] *Id*. at 39-64.

know Kim. On cross-examination, BBB admitted that Dela Rosa had no participation in what happened to her.[35]

As for what happened to AAA, the trial court found Dela Rosa guilty beyond reasonable doubt of qualified human trafficking, having found all the crime's elements present. Although the trial court found that Dela Rosa did not "recruit" or "hire" AAA,[36] Dela Rosa "transferred and provided AAA to Kim[.]"[37]

The trial court gave credence to AAA's "clear, candid[,] and positive"[38] testimony that Dela Rosa invited AAA to meet at a supermarket, but subsequently brought her to a hotel where she was made to have sex with Kim.[39] It noted "the deportment of AAA while on the witness stand"[40] and found no reason to question her credibility. It also noted that AAA lived with Dela Rosa for over six (6) years, which made it unlikely that she would "fabricate stories against the accused who took care of her."[41]

AAA's age was likewise undisputed, which qualified the crime of human trafficking under Section 4(a) of Republic Act No. 9208.[42]

However, the trial court found that Dela Rosa was not civilly liable for violating Republic Act No. 9208 because the prosecution failed to prove that AAA suffered "mental anguish, fright[,] and the like."[43] To the trial court, even if AAA's

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[35] *Id*. at 61-62.

[36] *Id*. at 57.

[37] *Id*.

[38] *Id*. at 58.

[39] *Id*. at 57.

[40] *Id*.

[41] *Id*. at 58.

[42] *Id*.

[43] *Id*. at 59.

testimony had the effect that she "felt afraid,"[44] these were insufficient proof of mental suffering.[45]

The dispositive portion of the Regional Trial Court Decision read:

> WHEREFORE, premises considered, in Criminal Case no. 13-9820, the court finds accused Ruth dela Rosa *y* Likinon also known as "Sally" GUILTY BEYOND REASONABLE DOUBT of the offense of Violation of Section 4(a) in relation to Section 6(a) of Republic Act No. 9208 or Qualified Trafficking in Person (*sic*) penalized in Section 10 (c) thereof embodied in the Information dated March 8, 2013. Accordingly, accused Ruth dela Rosa *y* Likinon also known as "Sally" is hereby sentenced TO SUFFER the penalty of life imprisonment and TO PAY a fine in the amount of Two million pesos (₱2,000,000.00).
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> In Criminal Case no. 13-9821, the court finds accused Ruth dela Rosa *y* Likinon also known as "Sally" NOT GUILTY of the offense of Violation of Section 4(a) in relation to Section 6(a) of Republic Act no. 9208 of Qualified Trafficking in Person (*sic*) penalized in Section 10 (c) of thereof (sic) embodied in the Information dated March 8, 2013 for failure of the prosecution to prove her guilt beyond reasonable doubt. Accordingly, accused Ruth dela Rosa *y* Likinon also known as "Sally" is hereby ACQUITTED of the charge in said Criminal Case No. 13-9821.
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> No costs.
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> SO ORDERED.[46]

Dela Rosa appealed her conviction. In her Brief,[47] she argued that the prosecution failed to prove her guilt beyond reasonable doubt. She questioned AAA's credibility given her failure to mention the February 2013 incident in the sworn statement taken by PO2 De Leon. This omission allegedly contradicted

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[44] *Id*.

[45] *Id*.

[46] *Id*. at 63-64.

[47] *Id*. at 25-38.

her testimony that Dela Rosa brought her to Coa Hotel and instructed her to have sex with Kim.[48] Dela Rosa further argued that AAA's sworn statement indicates that she went to Avante Hotel on March 6, 2013 "on her own volition[.]"[49]

The Office of the Solicitor General, on behalf of the People of the Philippines, countered in its Brief[50] that AAA's sworn statement and her testimony had no material inconsistencies. Her sworn statement was "merely responding to standard questions"[51] that did not allude to events other than the March 6, 2013 incident. Hence, she may not be faulted for failing to disclose other relevant prior events, and her complete narration of events on trial may not be discredited.[52]

Likewise, the Office of the Solicitor General asserted how AAA's testimony established that only through Dela Rosa's actions did AAA come to know Kim. Thus, AAA was made to endure what happened to her only because Dela Rosa made it so.[53]

As for what happened to BBB, the Office of the Solicitor General no longer questioned Dela Rosa's acquittal.

In its March 29, 2016 Decision,[54] the Court of Appeals denied Dela Rosa's appeal and affirmed the Regional Trial Court Decision *in toto*.[55]

The Court of Appeals affirmed the presence of all the elements of qualified trafficking in persons,[56] and found that Dela Rosa's

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

[49] *Id*. at 31.

[50] *Id*. at 89-101.

[51] *Id*. at 95.

[52] *Id*. at 95-96.

[53] *Id*. at 96-98.

[54] *Rollo*, pp. 2-17.

[55] *Id*. at 16.

[56] *Id*. at 12.

contentions regarding AAA's credibility deserved scant consideration.[57] It held that since AAA's sworn statement pertained only to the March 6, 2013 incident, and not the February 2013 incident, it did not conflict with her testimony.[58] The Court of Appeals ultimately gave more credence to AAA's testimony over Dela Rosa's denials.[59]

The dispositive portion of the Decision read:

> WHEREFORE, the Appeal is DISMISSED. The October 1, 2013 Decision of the Regional Trial Court of Angeles City, Branch 59, finding accused-appellant Ruth dela Rosa *y* Likinon also known as "Sally" guilty beyond reasonable doubt of violating Section 4(a), qualified by Section 6(a) of Republic Act No. 9208 in Criminal Case No. 13-9820, is AFFIRMED *in toto*.
>
> SO ORDERED.[60]

Thus, Dela Rosa filed a Notice of Appeal.[61] The Court of Appeals gave due course to her appeal and forwarded the records of the case to this Court in its May 16, 2016 Resolution.[62]

When required by this Court to submit supplemental briefs,[63] both parties manifested that their Briefs before the Court of Appeals sufficiently argued their positions.[64] In its June 7, 2017 Resolution,[65] this Court noted the parties' Manifestations, together with the certification of Acting Superintendent Elsa

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[57] *Id*. at 11.

[58] *Id*. at 14.

[59] *Id*. at 15.

[60] *Id*. at 16.

[61] *Id*. at 18-20.

[62] *Id*. at 21.

[63] *Id*. at 24-25.

[64] *Id*. at 27-32 (plaintiff-appellee's Manifestation) and 33-37 (accused-appellant's Manifestation).

[65] *Id*. at 38-39.

Aquino-Alabado of the Correctional Institution for Women as to accused-appellant's confinement.

The appeal forwards the sole issue of whether or not the Court of Appeals correctly affirmed the conviction of accused-appellant Ruth Dela Rosa *y* Likinon *a.k.a.* "Sally" for qualified human trafficking, as found by the Regional Trial Court. This necessarily involves a review of whether or not the lower courts correctly assessed the testimonies of the parties' witnesses.

Accused-appellant maintains that the Court of Appeals erred in affirming the trial court's ruling, given the material and irreconcilable difference between AAA's sworn statement and her oral testimony. She asserts that there was no mention of the February 2013 incident from the sworn statement, without which she could not be deemed to have "transferred and provided" AAA to Kim. Likewise, the sworn statement clearly shows that AAA went to Avante Hotel on March 6, 2013 "on her own volition[.]"[66] While AAA's sworn statement provides that Dela Rosa gave AAA's phone number to Kim, even AAA admitted during trial that she was not sure if Dela Rosa did, in fact, do so.[67] Thus, Dela Rosa insists that AAA, "without prodding from others,"[68] voluntarily met with Kim on March 6, 2013.

But for the Office of the Solicitor General, the absence of the February 2013 incident in AAA's sworn statement is not fatal to AAA's case. The omission was due to the "standard questions" propounded to AAA, which involved only the March 6, 2013 incident, leaving her no room to mention the February 2013 incident in her initial interview. In any event, AAA's testimony established that it was only through Dela Rosa's actions that AAA came to know Kim. Thus, AAA was exposed to Kim only because Dela Rosa introduced them to each other.[69]

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[66] CA *rollo*, p. 31.

[67] *Id*. at 32.

[68] *Id*. at 34.

[69] *Id*. at 96-98.

This Court resolves to dismiss the appeal.

In *People v. Casio*,[70] this Court lists the elements of trafficking in persons:

> (1) The *act* of "recruitment, transportation, transfer or harbouring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders."
>
> (2) The *means* used which include threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another; and
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> (3) The *purpose* of trafficking is exploitation which includes "exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs."[71] (Emphasis in the original, citation omitted)

Here, both the Regional Trial Court and the Court of Appeals found that accused-appellant committed qualified trafficking in persons under Section 4(a) in relation to Section 6(a) of Republic Act No. 9208, for having "transferred and provided" a then 16-year-old AAA to Kim in exchange for money.[72]

The trial court found that while the absence of a "prior agreement"[73] between accused-appellant and AAA precluded "recruitment," accused-appellant still "transferred and provided" AAA to Kim.

This Court, however, maintains that "recruitment" also contemplates an accused's act of providing the conditions for

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[70] 749 Phil. 458 (2014) [Per *J*. Leonen, Second Division].

[71] *Id*. at 472-473.

[72] CA *rollo*, p. 57.

[73] *Id*.

prostituting AAA. Prostitution is defined under Section 3(c) of Republic Act No. 9208 as "*any* act, transaction, scheme or design involving the use of a person by another, for sexual intercourse or lascivious conduct in exchange for money, profit or any other consideration."

In *People v. Mora*,[74] a minor was "convinced" to accompany the accused to a bar in Camarines Sur, where she was forced to work as a prostitute until she was able to escape eight (8) months after. Thus, this Court found the accused guilty beyond reasonable doubt of qualified trafficking in persons. The following acts were appreciated as elements of the offense:

> As correctly ruled by the courts *a quo*, Mora and Polvoriza are guilty beyond reasonable doubt of the crimes charged as *the prosecution had clearly established the existence of the elements* thereof, as seen in the following: *(a) Mora, through deception and by taking advantage of AAA's vulnerability as a minor, was able to "convince" the latter to go to Buraburan, Buhi, Camarines Sur; (b)* upon arrival thereat, *Mora took AAA to Polvoriza's videoke bar, i.e.*, Otoy's, *and left her there*; and *(c)* since then and *for the next eight (8) months, Polvoriza forced AAA to work as a prostitute in Otoy's*, coercing her to perform lewd acts on a nightly basis, such as dancing naked in front of male customers and even having sex with them. In this regard, *the courts a quo correctly found untenable Mora and Polvoriza's insistence that it was AAA who voluntarily presented herself to work as an entertainer/sex worker in Otoy's, as trafficking in persons can still be committed even if the victim gives consent – most especially in cases where the victim is a minor*.[75] (Emphasis supplied, citations omitted)

Here, AAA's testimony, which the lower courts had given greater credence than accused-appellant's defense, narrated that accused-appellant asked her to come along on an undisclosed errand, which turned out to be a meeting with Kim at the Coa Hotel. Accused-appellant then introduced AAA to Kim, allowed

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[74] G.R. No. 242682, July 1, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65451> [Per J. Perlas-Bernabe, Second Division].

[75] *Id*.

AAA to be sexually exploited in exchange for payment, then directed AAA to continue servicing Kim's requests under threat of exposing the girl to her mother.[76] Thus, the trial court held that accused-appellant engaged in human trafficking:

> It can be readily deduced from the foregoing that it was through the accused that Kim Caben knew AAA. The accused was [the] one who *brought* AAA to Coa Hotel where they met Kim Caben. It was the accused who *instructed* AAA on what to do while in the hotel. The accused was even *present* when Kim Caben and AAA had sex. Without the accused bringing AAA to Coa Hotel, the February 2013 incident would not have happened. In other words, it was the accused who *provided* AAA to Kim Caben.[77] (Emphasis in the original)

This occurred in February 2013. Yet, AAA's sworn statement, taken after she and BBB had been rescued on March 6, 2013,[78] did not mention this prior incident despite allegedly being discussed in her interview with PO2 De Leon.[79] According to accused-appellant, AAA's omission of the February 2013 incident in her sworn statement is materially inconsistent with her testimony in open court. This inconsistency, accused-appellant argues, casts reasonable doubt on her conviction.[80]

Accused-appellant is mistaken. The trial court's assignment of probative value to witnesses' testimonies will not be disturbed except when significant matters were overlooked,[81] because it "has the opportunity to observe the demeanor of the witness on the stand."[82] *People v. Diu*[83] teaches that the

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[76] CA *rollo*, p. 43.

[77] *Id*. at 57.

[78] *Id*. at 44.

[79] *Id*. at 45.

[80] *Id*. at 31.

[81] *People v. Dimapilit*, 816 Phil. 523, 541 (2017) [Per J. Leonen, Second Division].

[82] *Id*. at 540-541.

[83] 708 Phil. 218 (2013) [Per J. Leonardo-De Castro, First Division].

trial court's findings acquire even greater weight once affirmed on appeal:

> Thus, it has been an established rule in appellate review that the trial court's factual findings - including its assessment of the credibility of the witnesses, the probative weight of their testimonies, and the conclusions drawn from the factual findings are accorded great respect and even conclusive effect. These factual findings and conclusions assume greater weight if they are affirmed by the Court of Appeals.[84] (Citation omitted)

Furthermore, *People v. SPO1 Gonzalez, Jr.*[85] provides that sworn statements often conflict with testimonies given in open court. This is because sworn statements are seldom complete or comprehensive accounts of what actually happened:

> It has been consistently held that discrepancies and/or inconsistencies between a witness' affidavit and testimony do not necessarily impair his credibility as affidavits are taken *ex parte* and are often incomplete or inaccurate for lack or absence of searching inquiries by the investigating officer. *What is important is, in the over-all analysis of the case, the trial court's findings and conclusions are duly supported by the evidence on record.*[86] (Emphasis supplied, citation omitted)

This reasoning informs the rule that "[a]ffidavits taken *ex parte* are generally considered inferior to the testimony given in open court."[87]

In any event, AAA's failure to mention the February 2013 incident is understandable given the questions asked of her in her sworn statement. The records forwarded to this Court reveal that the examination conducted by PO2 De Leon involved only

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[84] *Id*. at 232.

[85] 781 Phil. 149 (2016) [Per J. Perez, Third Division].

[86] *Id*. at 159.

[87] *People v. Dabon*, 290-A Phil. 449, 456 (1992) [Per J. Regalado, Second Division].

the March 6, 2013 incident.[88] Thus, AAA never had the chance to include her encounter with Kim in February 2013.

Notwithstanding, AAA was still able to recount during trial what transpired in February 2013, to the trial court's satisfaction. The records also reveal that AAA affirmed the material points of her testimony on cross-examination.[89] Thus, the absence of the February 2013 incident from her sworn statement does not affect her credibility as a witness. Kim was able to know and sexually abuse AAA only because accused-appellant introduced them to each other.

Again, this Court emphasizes that "recruitment," as an element of trafficking in persons, includes the accused's acts of providing the conditions for prostituting a minor. Here, accused-appellant's admissions as to her relationship with Kim, and to having introduced him to AAA in a prior meeting, further convince this Court that she recruited, transferred, and provided AAA as a prostitute for Kim.

By highlighting the absence of the February 2013 incident from AAA's sworn statement, accused-appellant seemingly attempts to exculpate herself by showing that AAA consented to what was done to her, and that she voluntarily met with Kim on March 6, 2013.

However, *Casio* teaches that an accused cannot use the minor's consent as a defense. In *Casio*, the victim was alleged to have engaged in prostitution prior to the incident subject of the case, and to have been "predisposed to having sex with 'customers' for money."[90] This was deemed irrelevant to the commission of the crime:

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[88] CA *rollo*, pp. 30, 32-33, and 95.

[89] *Id*. at 46.

[90] *People v. Casio*, 749 Phil. 458, 475 (2014) [Per *J*. Leonen, Second Division].

Accused claims that AAA admitted engaging in prostitution even before May 2, 2008. She concludes that AAA was predisposed to having sex with "customers" for money. *For liability under our law, this argument is irrelevant.* As defined under Section 3 (a) of Republic Act No. 9208, trafficking in persons can still be committed even if the victim gives consent.

> SEC. 3. *Definition of Terms*.– As used in this Act:
>
> a. *Trafficking in Persons* – refers to the recruitment, transportation, transfer or harboring, or receipt of persons *with or without the victim's consent or knowledge*, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the persons, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.
>
> The recruitment transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall also be considered as "trafficking in persons" even if it does not involve any of the means set forth in the preceding paragraph....

The victim's consent is rendered meaningless due to the coercive, abusive, or deceptive means employed by perpetrators of human trafficking. Even without the use of coercive, abusive, or deceptive means, a minor's consent is not given out of his or her own free will.[91] (Emphasis supplied, citations omitted)

In this case, accused-appellant was found to have "transferred and provided AAA to Kim in exchange for money, through threats and by taking advantage of her vulnerability[.]"[92] Accused-appellant failed to forward any arguments that would

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[91] *Id*. at 475-476.

[92] *Rollo*, p. 12.

cast reasonable doubt on her conviction. Accordingly, this Court affirms her conviction.

However, this Court modifies accused-appellant's liability for damages, as moral damages may be awarded here. *Casio* teaches that, consistent with *People v. Lalli*,[93] those found guilty of human trafficking may be held liable for moral and exemplary damages, as with other analogous crimes that cause the victim physical and mental suffering, besmirched reputation, moral shock, and social humiliation:

> However, we modify by raising the award of moral damages from PhP150,000.00 to PhP500,000.00. We also award exemplary damages in the amount of PhP100,000.00. These amounts are in accordance with the ruling in *People v. Lalli* where this court held that:
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> > The payment of ₱500,000 as moral damages and ₱100,000 as exemplary damages for the crime of Trafficking in Persons as a Prostitute finds basis in Article 2219 of the Civil Code, which states:
> >
> > Art. 2219. Moral damages may be recovered in the following and analogous cases:
> >
> > (1) A criminal offense resulting in physical injuries;
> > (2) Quasi-delicts causing physical injuries;
> > (3) Seduction, abduction, rape, or other lascivious acts;
> > (4) Adultery or concubinage;
> > (5) Illegal or arbitrary detention or arrest;
> > (6) Illegal search;
> > (7) Libel, slander or any other form of defamation;
> > (8) Malicious prosecution;
> > (9) Acts mentioned in Article 309;
> > (10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.
> >
> > . . . . . .
> >
> > The criminal case of Trafficking in Persons as a Prostitute is an analogous case to the crimes of seduction, abduction, rape,

[93] 675 Phil. 126 (2010) [Per *J*. Carpio, Second Division].

> or other lascivious acts. In fact, it is worse. To be trafficked as a prostitute without one's consent and to be sexually violated four to five times a day by different strangers is horrendous and atrocious. *There is no doubt that Lolita experienced physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, and social humiliation when she was trafficked as a prostitute in Malaysia.* Since the crime of Trafficking in Persons was aggravated, being committed by a syndicate, the award of exemplary damages is likewise justified.[94] (Emphasis supplied, citations omitted)

However, in the absence of any aggravating circumstances, this Court may not award exemplary damages.

WHEREFORE, the appeal is **DISMISSED**. The Court of Appeals' March 29, 2016 Decision is **AFFIRMED with MODIFICATION**. Accused-appellant Ruth Dela Rosa *y* Likinon *a.k.a.* "Sally" is found **GUILTY** beyond reasonable doubt of qualified trafficking in persons, defined under Section 4(a), in relation to Section 6(a), and penalized under Section 10(c) of Republic Act No. 9208. She is sentenced to suffer the penalty of life imprisonment, and to pay AAA a fine of ₱2,000,000.00, moral damages in the amount of ₱500,000.00, and the costs of the suit.

All damages awarded shall be subject to interest at the rate of six percent (6%) per annum from the finality of this Decision until fully paid.[95]

SO ORDERED.

Carandang and *Zalameda, JJ.*, concur.

Gesmundo, J., on leave.

Lazaro-Javier, J., on official leave.

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[94] *People v. Casio*, 749 Phil. 458, 482-483 (2014) [Per J. Leonen, Second Division].

[95] *Nacar v. Gallery Frames*, 716 Phil. 267 (2013) [Per J. Peralta, *En Banc*].

THIRD DIVISION

[G.R. No. 230227. November 6, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **NOEL ZAPANTA *y* LUCAS,** *accused-appellant*.

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS OF BOTH CRIMES, ENUMERATED; UNBROKEN CHAIN OF CUSTODY OF THE SEIZED DRUGS MUST BE ESTABLISHED TO OBVIATE ANY UNNECESSARY DOUBT ON ITS IDENTITY.— In this case, accused-appellant was charged with the offenses of illegal sale and illegal possession of dangerous drugs, defined and penalized under Sections 5 and 11, Article II of RA 9165. In order to secure the conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must establish the following elements: (a) the identity of the buyer and the seller, the object and the consideration; and (b) the delivery of the thing sold and the payment. Similarly, the prosecution must establish the following elements to convict an accused with illegal possession of dangerous drugs: (a) that accused was in possession of an item or object identified as dangerous drugs; (b) such possession was not authorized by law and (c) the accused freely and consciously possessed the said drug. Jurisprudence teaches that in these cases, it is essential that the identity of the seized drug be established with moral certainty. In order to obviate any unnecessary doubts on such identity, the prosecution has to show an unbroken chain of custody over the same.

2. ID.; ID.; RA 9165 *VIS-À-VIS* ITS IMPLEMENTING RULES AND REGULATIONS (IRR); PROCEDURE THAT MUST BE FOLLOWED BY THE APPREHENDING OFFICERS; THERE WAS NON-COMPLIANCE WITH THE REQUIRED PROCEDURE IN CASE AT BAR. — Under Section 21 of RA 9165 and its Implementing Rules and Regulations (IRR), the apprehending officers are required,

immediately after seizure, to physically inventory and photograph the confiscated items in the presence of the accused, or his/her representative or counsel, a representative from the media and the DOJ, and any elected public official, who are required to sign the copy of the inventory and be given a copy thereof. In this case, there are glaring deficiencies which are not in accord with the rule set out under the law. x x x Herein, there was no showing that a physical inventory and photograph-taking of the seized items were conducted: x x x [T]here was neither receipt of inventory nor photograph of the seized items offered as evidence by the prosecution. There was also no showing that the presence of a representative from the media, the DOJ and any elected public official was secured to witness the conduct of the inventory. The mere marking of the seized drugs, unsupported by a physical inventory and taking of photographs, and in the absence of the necessary personalities under the law, fails to approximate compliance with the mandatory procedure under Sec. 21 of RA 9165.

3. ID.; ID.; ID.; LINKS IN THE CHAIN OF CUSTODY THAT MUST BE ESTABLISHED BY THE PROSECUTION, REITERATED; BREACH IN THE CHAIN OF CUSTODY EXISTS IN THIS CASE. — In *People v. Dahil*, the Court had laid down the links that must be established in the chain of custody of the confiscated item in a buy-bust operation, thus: "*first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court. The chain of custody rule requires the testimony for every link in the chain, describing how and from whom the seized evidence was received, its condition in which it was delivered to the next link in the chain, and the precautions taken to ensure its integrity. x x x [T]here was a breach in the chain of custody with the absence of the testimony of the prosecution witness as to how and from whom the seized evidence were received, the condition in which they were delivered to the next link in the chain, and the precautions taken to ensure their integrity.

4. ID.; ID.; ID.; ID.; ID.; PROSECUTION'S FAILURE TO GIVE A JUSTIFIABLE GROUND FOR NON-COMPLIANCE WITH SECTION 21 OF RA 9165 CREATES DOUBT ON THE INTEGRITY AND EVIDENTIARY VALUE OF THE CONFISCATED ITEMS, WHICH WARRANTS ACQUITTAL OF THE ACCUSED.— In spite of the failure to strictly adhere to Section 21 of RA 9165, the same provision provides a saving clause. It states that non-compliance with the requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer or team, shall not render void and invalid such seizure of and custody over said items. Said clause "applies only where the prosecution recognized the procedural lapses, and thereafter cited justifiable grounds." In this case, the saving clause failed to remedy the lapses committed by the police officers. There was no justification provided as to why no inventory and taking of photograph of the seized items were made. Neither was there any showing that earnest efforts were made to secure the attendance of a representative from the DOJ, the media, and an elected public official, to witness the inventory. Interestingly, this was supposed to have been a pre-planned buy-bust operation. x x x The prosecution could not also apply the saving mechanism of Section 21 of the IRR of RA 9165 because it miserably failed to prove that the integrity and the evidentiary value of the seized items were preserved. Accordingly, the accused were acquitted. The Court also declared that any doubt existing on the integrity and evidentiary value of the confiscated items due to the non-compliance with the rules under RA 9165 warants a reversal of the conviction of the accused. Law enforcers should not trifle with the legal requirement to ensure integrity in the chain of custody of seized dangerous drugs and drug paraphernalia. This is especially true when only a miniscule amount of dangerous drugs is alleged to have been taken from the accused, as in this case. Given the procedural lapses, serious uncertainty hangs over the identity of the seized drugs the prosecution presented as evidence before the Court. In effect, the prosecution failed to fully prove the elements of the crimes charged, creating reasonable doubt on the criminal liability of accused-appellant. Under the circumstances, there is no recourse but to acquit him.

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, *J.*:

This is an appeal[1] seeking to reverse and set aside the Decision[2] dated 29 September 2016 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 07228 which affirmed the Consolidated Decision[3] dated 08 September 2014 rendered by Branch 71, Regional Trial Court (RTC) of Antipolo City, in Criminal Case Nos. 06-32149 and 06-32150, finding Noel Zapanta *y* Lucas (accused-appellant) guilty beyond reasonable doubt of violations of Sections 5 and 11, both under Article II of Republic Act (RA) 9165 or the Comprehensive Dangerous Drugs Act of 2002.

Antecedents

Accused-appellant was charged for the subject offenses, in two separate Informations, the accusatory portions of which state:

Criminal Case No. 06-32149

That, on or about the 9th day of July 2006 in the Municipality of Taytay, 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 or give away to another **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

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[1] See Notice of Appeal dated October 21, 2016; *rollo*, pp. 18-19.

[2] *Id.* at 2-17; penned by Associate Justice Stephen C. Cruz with Associate Justices Jose C. Reyes and Ramon Paul L. Hernando (now both members of this Court), concurring.

[3] CA *rollo*, pp. 50-55; penned by Judge Kevin Narce B. Vivero.

Methamphetamine Hydrochloride, commonly known as "*Shabu*," a dangerous drug, in consideration of the amount of Php100.00, in violation of the above-cited law.

CONTRARY TO LAW.[4]

Criminal Case No. 06-32150

That, on or about the 9th day of July 2006 in the Municipality of Taytay, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in his possession, direct custody and control **0.03** gram of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet and which was found positive to the test for Methamphetamine Hydrochloride, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[5]

On separate arraignments, accused-appellant pleaded not guilty to each of the charges. After pre-trial, trial ensued.

Version of the Prosecution

On the afternoon of 09 July 2006, the Taytay police station formed a team to conduct a buy-bust operation against one "Noel Bungo," later identified as accused-appellant. Together with the civilian asset, a member of the buy-bust team, acting as poseur-buyer, went to accused-appellant's house while the rest of the team strategically positioned themselves nearby. Accused-appellant asked the asset if they were buying, and upon positive confirmation, took out one (1) plastic sachet with suspected *shabu* and gave it to the poseur-buyer. In exchange, the buy-bust money was handed over to accused-appellant. Afterwards, the poseur-buyer executed the pre-arranged signal which eventually led to accused-appellant's arrest. The arresting officers recovered from the accused-appellant a plastic sachet with suspected *shabu* inside a coin purse and the buy-bust money.

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[4] Records, Criminal Case No. 06-32149, p. 1.

[5] Records, Criminal Case No. 06-32150, p. 1.

The buy-bust team went to the police station where the officer of the case marked the seized items. The request for laboratory examination, together with the sachets containing suspected *shabu*, were forwarded to the Eastern Police District Laboratory for qualitative examination. Per Laboratory Report, the specimens were found positive for methamphetamine hydrochloride, or *shabu*.

Version of the Defense

Accused-appellant denied the charges against him. He claimed that on the afternoon of 09 July 2006, while he and his wife were outside their house looking after the fighting cocks owned by one Larry Zapanta, two (2) men approached and asked them on the whereabouts of a certain *"Lanlan."* When he told them he did not know the person, the men entered his house, along with several others who identified themselves as police officers. Apparently, the men started searching the place, but when they found nothing, they boarded accused-appellant in a tricycle and instructed him to call his sister to ask for money or else they would file a case against him. When his sister failed to produce the money, he was brought to the police station.

Ruling of the RTC

In its consolidated decision, the RTC found accused-appellant guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165, sentencing him to suffer the penalty of life imprisonment plus a fine of ₱500,000.00.[6] It likewise found him guilty of violating Section 11, Article II of the same law and accordingly sentenced him to suffer the penalty of imprisonment of twelve (12) years and one (1) day to twenty (20) years with a fine of ₱300,000.00.[7]

The RTC held that the prosecution sufficiently established all the elements of illegal sale of dangerous drugs. The lone testimony of the prosecution witness established a complete

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[6] CA *rollo*, p. 55.

[7] *Id.*

picture detailing the buy-bust operation from the initial contact between the poseur-buyer and the seller, the offer to purchase, the promise or payment of the consideration until the consummation of sale by the delivery of the illegal drug subject of sale. The RTC also held that the prosecution satisfactorily proved that accused-appellant illegally possessed one (1) sachet of *shabu*, ratiocinating that mere possession of a regulated drug *per se* constitutes *prima facie* evidence of knowledge or *animus possidendi*, sufficient to convict accused-appellant. The RTC gave weight to the positive declaration of the police officer who appeared to be credible, as opposed to the claim of accused-appellant that the buy-bust operation was merely fabricated. Likewise, the RTC applied the presumption that the police officers performed their duties in a regular manner.[8]

Aggrieved, accused-appellant appealed to the CA.

Ruling of the CA

In the assailed decision, the CA affirmed accused-appellant's conviction. The CA ruled that the prosecution established through testimonial evidence the elements of illegal sale of dangerous drugs. The subsequent confiscation of another sachet with suspected *shabu* from accused-appellant's possession sans any authority to possess the same, likewise made him liable for illegal possession.

The CA also held that the prosecution was able to establish the links in the chain of custody despite some procedural lapses. To the CA, the totality of the testimonial, documentary, and object evidence not only adequately supported the findings that accused-appellant sold dangerous drugs and was in possession thereof; it also accounted for the unbroken chain of custody of the seized evidence as well.

Finally, the CA did not give credence to accused-appellant's defense of denial and frame-up. It declared that accused-appellant failed to overthrow the presumption of regularity accorded to

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[8] *Id.* at 54.

the official acts of the prosecution witnesses and maintained accused-appellant's conviction.[9]

Hence, this appeal.

Issue

The sole issue in this case is whether the CA correctly found accused-appellant guilty beyond reasonable doubt of illegal sale and illegal possession of dangerous drugs under RA 9165.

In his Supplemental Brief,[10] accused-appellant noted substantial gaps in the chain of custody as follows: first, the drugs seized from accused-appellant were not immediately marked; second, the police officers failed to conduct an inventory and take photographs of the drugs seized; third, the prosecution failed to present all persons who purportedly had custody of the drugs seized; and finally, there was no testimony as to the post-chemical examination. According to accused-appellant, said gaps raised doubt on the authenticity of the evidence presented in court, warranting his acquittal. Moreover, his defense that the police officers who arrested him were engaged in the *modus "hulidap gang"* had been sufficiently proven.

Ruling of the Court

The appeal is meritorious.

Prefatorily, an appeal in criminal cases leaves the whole case open for review, and the appellate court has the duty to correct, cite, and appreciate errors in the appealed judgment, assigned or unassigned.[11]

In this case, accused-appellant was charged with the offenses of illegal sale and illegal possession of dangerous drugs, defined and penalized under Sections 5 and 11, Article II of RA 9165. In order to secure the conviction of an accused charged with

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[9] *Rollo*, pp. 7-17.

[10] *Id.* at 32-47.

[11] *Santos v. People*, G.R. No. 232950, 13 August 2018.

illegal sale of dangerous drugs, the prosecution must establish the following elements: (a) the identity of the buyer and the seller, the object and the consideration; and (b) the delivery of the thing sold and the payment. Similarly, the prosecution must establish the following elements to convict an accused with illegal possession of dangerous drugs: (a) that accused was in possession of an item or object identified as dangerous drugs; (b) such possession was not authorized by law and (c) the accused freely and consciously possessed the said drug.[12] Jurisprudence teaches that in these cases, it is essential that the identity of the seized drug be established with moral certainty. In order to obviate any unnecessary doubts on such identity, the prosecution has to show an unbroken chain of custody over the same.[13]

Under Section 21 of RA 9165 and its Implementing Rules and Regulations (IRR),[14] the apprehending officers are required, immediately after seizure, to physically inventory and photograph the confiscated items in the presence of the accused, or his/her representative or counsel, a representative from the media and the DOJ, and any elected public official, who are required to sign the copy of the inventory and be given a copy thereof. In this case, there are glaring deficiencies which are not in accord with the rule set out under the law.

There was non-compliance with Sec. 21, Art. II, RA 9165

Herein, there was no showing that a physical inventory and photograph-taking of the seized items were conducted:

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[12] *People v. Ching*, G.R. No. 223556, 09 October 2017.

[13] *Id.*

[14] The subject offenses in this case were committed in 2006, or prior to the amendment introduced by RA 10640 which became effective only on 23 July 2014. Hence, the rules provided under Sec. 21 of RA 9165 and its IRR shall apply.

[ATTY. TOLENTINO]:

Q: After you recovered these items from the accused did you prepare a receipt of the things seized from the accused?

[PO1 CADAG]:

A: No.

Q: Did you take photographs of these items taken from the accused right there at the target area?

A: No.[15]

In fact, there was neither receipt of inventory nor photograph of the seized items offered as evidence by the prosecution. There was also no showing that the presence of a representative from the media, the DOJ and any elected public official was secured to witness the conduct of the inventory. The mere marking of the seized drugs, unsupported by a physical inventory and taking of photographs, and in the absence of the necessary personalities under the law, fails to approximate compliance with the mandatory procedure under Sec. 21 of RA 9165.[16]

The links in the chain of custody were not properly established by the prosecution

In *People v. Dahil*,[17] the Court had laid down the links that must be established in the chain of custody of the confiscated item in a buy-bust operation, thus: "*first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal

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[15] TSN, 28 July 2008, p. 47.

[16] *Santos v. People*, G.R. No. 232950, 13 August 2018.

[17] G.R. No. 212196, 12 January 2015, 745 SCRA 221.

drug seized by the forensic chemist to the court."[18] The chain of custody rule requires the testimony for every link in the chain, describing how and from whom the seized evidence was received, its condition in which it was delivered to the next link in the chain, and the precautions taken to ensure its integrity.[19]

First Link

The first link in the chain of custody rule refers to the marking of the seized item immediately after seizure. The sole prosecution witness, PO1 Allen Gleg Cadag (PO1 Cadag), testified that the marking was done not at the place of arrest but at the police station by an unnamed officer, for which the prosecution did not offer any justifiable reason:

[ATTY. TOLENTINO]:

Q: After you recovered these items did you placed *(sic)* markings right there *(sic)* and there after you recovered the items right there in the target area?

[PO1 CADAG]:

A: Already in the station.

Q: So the marking was done in the police station?

Q: Who placed the marking?

A: The officer in case. *(sic)*[20]

Second and Third Links

There is no testimony as to the turnover of the illegal drug seized by the apprehending officer to the investigating officer. PO1 Cadag testified that he turned over the illegal drug he purchased from accused-appellant to PO1 Dennis Montemayor (PO1 Montemayor).[21] However, as PO1 Montemayor was killed

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[18] *Id.* at 231.

[19] *People v. Havana*, G.R. No. 198450, 11 January 2016, 778 SCRA 534.

[20] TSN, 28 July 2008, pp. 47-48.

[21] *Id.* at 18.

in a police operation,[22] no other witness was presented to prove custody of the illegal drugs from the time of seizure until the marking at the police station. Anent the third link, PO1 Cadag testified that they brought the seized items to the crime laboratory for examination but there was no testimony as to who actually delivered the said items.

Fourth Link

The testimony of the forensic chemist, Police Senior Inspector Lourdes Cejes, was stipulated upon by the parties but only as to the fact that she conducted the examination of the specimens and the same tested positive for methamphetamine hydrochloride or *shabu*.[23] Records are bereft of any evidence as to the proper safeguards undertaken by those who handled the *shabu* after they were examined and until they were presented in court.

Clearly, there was a breach in the chain of custody with the absence of the testimony of the prosecution witness as to how and from whom the seized evidence were received, the condition in which they were delivered to the next link in the chain, and the precautions taken to ensure their integrity.

The prosecution failed to give a justifiable ground for non-compliance with Section 21 of RA 9165

In spite of the failure to strictly adhere to Section 21 of RA 9165, the same provision provides a saving clause. It states that non-compliance with the requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer or team, shall not render void and invalid such seizure of and custody over said items. Said clause "applies only where the prosecution recognized the procedural lapses, and thereafter cited justifiable grounds."[24]

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

[23] Records, Crim. Case 06-32150, pp. 94-95.

[24] *People v. Hementiza*, G.R. No. 227398, 22 March 2017.

In this case, the saving clause failed to remedy the lapses committed by the police officers. There was no justification provided as to why no inventory and taking of photograph of the seized items were made. Neither was there any showing that earnest efforts were made to secure the attendance of a representative from the DOJ, the media, and an elected public official, to witness the inventory. Interestingly, this was supposed to have been a pre-planned buy-bust operation.

In *People v. Dahil*,[25] there was non-compliance with the procedural requirements of Section 21 of RA 9165 because of inadequate physical inventory and lack of photographing of the drugs allegedly confiscated. No explanation was offered for the non-observance of the rule. The prosecution could not also apply the saving mechanism of Section 21 of the IRR of RA 9165 because it miserably failed to prove that the integrity and the evidentiary value of the seized items were preserved. Accordingly, the accused were acquitted. The Court also declared that any doubt existing on the integrity and evidentiary value of the confiscated items due to the non-compliance with the rules under RA 9165 warrants a reversal of the conviction of the accused.[26]

Law enforcers should not trifle with the legal requirement to ensure integrity in the chain of custody of seized dangerous drugs and drug paraphernalia. This is especially true when only a miniscule amount of dangerous drugs is alleged to have been taken from the accused,[27] as in this case. Given the procedural lapses, serious uncertainty hangs over the identity of the seized drugs the prosecution presented as evidence before the Court. In effect, the prosecution failed to fully prove the elements of the crimes charged, creating reasonable doubt on the criminal liability of accused-appellant.[28] Under the circumstances, there is no recourse but to acquit him.

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[25] *People v. Dahil, supra* at note 17.

[26] *People v. Viterbo*, G.R. No. 203434, 23 July 2014, 730 SCRA 672.

[27] *People v. Holgado*, G.R. No. 207992, 11 August 2014, 732 SCRA 554.

[28] *Supra* at note 22.

WHEREFORE, the appeal is hereby **GRANTED**. The Decision dated 29 September 2016 of the CA in CA-G.R. CR-H.C. No. 07228 is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **NOEL ZAPANTA *y* LUCAS** is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is **ORDERED IMMEDIATELY RELEASED** from detention, unless detained for any other lawful cause.

The Director of the Bureau of Corrections is **DIRECTED** to **IMPLEMENT** this Decision and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED.

Leonen (Chairperson) and *Carandang, JJ.*, concur.

Gesmundo, J., on leave.

Lazaro-Javier,[*] *J.*, on official leave.

THIRD DIVISION

[G.R. No. 233661. November 6, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **XXX,**[*] *accused-appellant.*

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[*] Designated as additional Member of the Third Division per Special Order No. 2728.

[*] The identity of the victim or any information which could establish or compromise her identity, including the names of her immediate family or household members, and the *barangay* and town of the incident, are withheld pursuant to SC Amended Administrative Circular No. 83-2015. The real name of the accused-appellant is also replaced with fictitious initials by reason of his relationship to the minor victim.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT AS AFFIRMED BY THE COURT OF APPEALS, UPHELD; VICTIM'S CREDIBLE TESTIMONY OUTWEIGHS ACCUSED'S DEFENSE OF DENIAL AND ALIBI. — The Court accords the trial court's factual determination utmost respect especially when the CA affirms the same. It is settled that trial courts are better hoisted to observe the demeanor and deportment of witnesses on the stand, making their assessment of a witness's credibility far superior to that of appellate tribunals. x x x The Court is persuaded that both the RTC and the CA correctly appreciated the pieces of evidence presented here. Thus, their factual findings are upheld. More important, the weight given to AAA's testimony is consistent with the long standing doctrine of upholding the credibility of a child rape victim so long as there is no evidence suggesting the possibility of her being actuated by ill motive to falsely testify against the accused. No such ill motive was attributed to AAA. x x x AAA testified about accused-appellant's usual working schedule. However, there is nothing in her testimony that removes accused-appellant from the dates and times the crimes were committed. In Our view, AAA's testimony indicates frequency: that her father "most of the time" goes to work at six o' clock in the evening and returns home at two o'clock in the afternoon of the following day. Certainly, this is not a categorical and unequivocal statement attesting to accused-appellant's absence in their home during the dates and times the crimes were committed. We also cannot give merit to acused-appellant's defense of denial and alibi. Unsubstantiated by clear and convincing evidence, denials are negative defenses, which cannot be given greater evidentiary weight than a credible witness's positive and affirmative testimony. Aside from accused-appellant himself, no other witness was introduced to corroborate his presence at the Lemery Public Market during the commission of the crimes. To be sure, accused-appellant's testimony alone should be considered self-serving and insufficient to secure an acquittal. As regards the prosecution's failure to present the medico-legal officer as witness, the CA was correct that expert testimony is merely corroborative and not essential to conviction.

2. CRIMINAL LAW; REVISED PENAL CODE *VIS-À-VIS* R.A. NO. 7610; NOMENCLATURE OF THE LASCIVIOUS CONDUCT COMMITTED BY THE ACCUSED, SIMPLIFIED; RULING IN *PEOPLE V. TULAGAN*, REITERATED; NOMENCLATURE OF THE CRIME OF LASCIVIOUS CONDUCT DEPENDS ON THE AGE OF THE VICTIM. — To avoid confusion and to conform with Our ruling in *People v. Tulagan*, We find it necessary to simplify and improve the nomenclature used by the CA in describing the offense of lascivious conduct committed by accused-appellant. As explained in *Tulagan*: **Whereas if the victim is 12 years old and under 18 years old, or 18 years old and above under special circumstances, the nomenclature of the crime should be "Lascivious Conduct under Section 5 (b) of R.A. No. 7610" with the imposable penalty of *reclusion temporal* in its medium period to *reclusion perpetua*, but it should not make any reference to the provisions of the RPC.** It is only when the victim of the sexual assault is 18 years old and above, and not demented, that the crime should be called as "Sexual Assault under paragraph 2, Article 266-A of the RPC" with the imposable penalty of *prision mayor*. With regard to acts of lasciviousness committed against children under twelve (12) years of age, *Tulagan* elucidates: x x x The same reason holds true with respect to acts of lasciviousness or lascivious conduct when the offended party is less than 12 years old or is demented. **Even if such party consents to the lascivious conduct, the crime is always statutory acts of lasciviousness. The offender will be prosecuted under Article 336 of the RPC, but the penalty is provided for under Section 5 (b) of R.A. No. 7610.**

3. ID.; ID.; PENALTY FOR LASCIVIOUS CONDUCT, CLARIFIED; IN THREE CASES FOR LASCIVIOUS CONDUCT UNDER RA 7610 WHERE THE AGGRAVATING CIRCUMSTANCE OF RELATIONSHIP WAS PROVEN, THERE IS NO NEED TO PUT THE PHRASE "WITHOUT ELIGIBILITY FOR PAROLE" IN IMPOSING THE PENALTY; REASON. — We also need to correct the penalties imposed by the CA. Under Articles 64 and 65 of the RPC, the presence of an aggravating circumstance warrants the imposition of the penalty prescribed by law in its maximum period. The imposable penalty for lascivious conduct under Section 5(b) of RA 7610 is *reclusion temporal* medium to *reclusion perpetua*. Since the aggravating circumstance of

relationship was duly proven, without any mitigating circumstance to offset it, the maximum penalty of *reclusion perpetua* should be imposed in Criminal Case Nos. 20-2007, 34-2007, and 35-2007. Also, there is no need to qualify *reclusion perpetua* with the phrase, "without eligibility for parole," because, under A.M. No. 15-08-02-SC, in cases where the death penalty is not warranted, it is understood that convicted persons penalized with an indivisible penalty are not eligible for parole.

4. ID.; ID.; PROPER PENALTY FOR QUALIFIED RAPE; THE PENALTY WAS PROPERLY QUALIFIED WITH THE PHRASE "WITHOUT ELIGIBILITY FOR PAROLE" SINCE THE RPC IMPOSES DEATH FOR QUALIFIED RAPE; AFTER CONSIDERING THE INDETERMINATE SENTENCE LAW (ISLAW), THE COURT DEEMS IT PROPER TO IMPOSE IMPRISONMENT OF FOURTEEN (14) YEARS AND EIGHT (8) MONTHS. — In the same vein, the penalty of *reclusion perpetua* meted in Criminal Case No. 32-2007 was correctly qualified with the phrase, "without eligibility for parole," since Article 266-B imposes the penalty of death for Qualified Rape. The penalty meted in Criminal Case No. 33-2007 also needs calibration. Section 5(b) of RA 7610 imposes the penalty of *reclusion temporal* medium when the victim of lascivious conduct is under twelve (12) years of age. Since the aggravating circumstance of relationship was correctly applied, the penalty should be imposed in its maximum period. We then divide *reclusion temporal* medium to three equal periods to get its maximum. x x x For purposes of applying the Indeterminate Sentence Law (ISLaw), the maximum term should be within the range of the maximum period of imposable penalty. x x x Here, while the penalty was provided by a special law, its technical nomenclature was taken from the RPC. Thus, the determination of the indeterminate sentence should be based on the rules applied for offenses punishable under the RPC. In this case, the minimum term should be taken from the penalty next lower to *reclusion temporal* medium which is *reclusion temporal* minimum. *Reclusion temporal* minimum has a period of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. Pursuant to Article 64, paragraph 7 of RPC and considering the gravity of offense committed, We deem it proper to impose as minimum term, imprisonment of fourteen (14) years and eight (8) months, which is the maximum of said penalty.

5. ID.; ID.; ID.; CIVIL LIABILITY; AWARD OF DAMAGES, INCREASED BUT ACCUSED-APPELLANT'S LIABILITY TO PAY FINE IS DELETED. — We resolve to increase the damages awarded to the victim to conform to our pronouncement in *People v. Tulagan* and *People v. Panes*. x x x To mirror *Tulagan*, accused-appellant's liability to pay fine is hereby deleted. Nevertheless, a legal interest of six percent (6%) *per annum* is imposed on all damages awarded from the date of finality of this decision until they are fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

ZALAMEDA, *J.*:

This is an appeal filed by accused-appellant XXX (accused-appellant) seeking to reverse and set aside the Decision[1] dated 21 March 2017 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 08147, which affirmed with modifications[2] the Amended Decision[3] dated 26 November 2015 rendered by Branch 5, Regional Trial Court (RTC) of Lemery, Batangas, finding him guilty of four (4) counts of lascivious conduct, as defined in Republic Act (RA) 7610, and one (1) count of rape.[4]

Antecedents

Separate Informations were filed against accused-appellant, the accusatory portions of which read:

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[1] *Rollo*, pp. 2-23; penned by Associate Justice Jhosep Y. Lopez, and concurred by Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan.

[2] *Id.* at 21-22.

[3] CA *rollo*, pp. 69-77; penned by Acting Presiding Judge Eleuerio Larisma Bathan.

[4] *Rollo*, p. 6.

Criminal Case No. 20-2007

That on or about the 7th day of March, 2007, at about 10:00 o'clock in the evening at Barangay [redacted], Municipality of [redacted], Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, and motivated by lust and lewd design, did then and there willfully, unlawfully and feloniously commit lascivious conduct on one AAA a thirteen year old minor, the daughter of the accused, by touching her breasts, with intent to abuse, humiliate, harass or degrade said AAA and to arouse and gratify his sexual desire, which acts debased, degraded and demeaned her intrinsic worth and dignity as a human being.

Contrary to law.[5]

Criminal Case No. 32-2007

That on or about the 28th day of February, 2007, at about 11:30 o'clock in the evening at Barangay [redacted], Municipality of [redacted], Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie with and have carnal knowledge of one AAA a thirteen (13) year old minor, accused's legitimate daughter, which acts debased, degraded or demeaned the intrinsic worth and dignity of said AAA, as a human being.

Contrary to law.[6]

Criminal Case No. 33-2007

That on or about the 6th day of January, 2005, at about 7:30 o'clock in the evening at Barangay [redacted], Municipality of [redacted], Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, and motivated by lust and lewd design, did then and there willfully, unlawfully and feloniously commit lascivious conduct on one AAA a (sic.) eleven (11) year old minor, the daughter of the accused, by embracing her and touching her breasts, with intent

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[5] Records (Crim. Case No. 20-2007), p. 1.

[6] Records (Crim. Case No. 32-2007), p. 1.

to abuse, humiliate, harass or degrade said AAA and to arouse and gratify his sexual desire, which acts debased, degraded and demeaned her intrinsic worth and dignity as a human being.

Contrary to law.[7]

Criminal Case No. 34-2007

That on or about the 12th day of June, 2005, at about 8:00 o'clock in the evening, at Barangay [redacted], Municipality of [redacted], Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, and motivated by lust and lewd design, did then and there willfully, unlawfully and feloniously commit lascivious conduct on one AAA a twelve (12) year old minor, the daughter of the accused, by embracing her and touching her breasts, with intent to abuse, humiliate, harass or degrade said AAA and to arouse and gratify his sexual desire, which acts debased, degraded and demeaned her intrinsic worth and dignity as a human being.

Contrary to law.[8]

Criminal Case No. 35-2007

That on or about the 20th day of August, 2005, at about 9:00 o'clock in the evening at Barangay [redacted], Municipality of [redacted], Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, and motivated by lust and lewd design, did then and there willfully, unlawfully and feloniously commit lascivious conduct on one AAA a twelve (12) year old minor, the daughter of the accused, by touching her breasts, with intent to abuse, humiliate, harass or degrade said AAA and to arouse and gratify his sexual desire, which acts debased, degraded and demeaned her intrinsic worth and dignity as a human being.

Contrary to law.[9]

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[7] Records (Crim. Case No. 33-2007), p. 1.

[8] Records (Crim. Case No. 34-2007), p. 1.

[9] Records (Crim. Case No. 35-2007), p. 1.

Upon arraignment, accused-appellant pleaded not guilty to the charges against him. After pre-trial, trial on the merits ensued.

Version of the Prosecution

The prosecution's version of the facts and its evidence were summarized in this manner:

The prosecution presented AAA, the private complainant as its lone witness. Stripped of non-essentials, AAA testified that on January 6, 2005, she was at the house of her cousin, Ate Brenda, watching television. While she was watching television, the accused, her father, came and called her. AAA approached her father who then brought her to the bathroom of her Ate Brenda's house. While inside, the accused embraced AAA and touched her breast. Thereafter, the accused gave her twenty pesos (₱20.00) with a warning not to tell anybody what he did. The accused then left.

On June 12, 2005 at around 8:00 o'clock in the evening, AAA was at home taking a bath when the accused suddenly appeared. The accused covered her mouth and warned her not to tell anybody what he is doing to her. The accused then touched her private part and her breast. Subsequently, the accused warned her again then left.

On August 20, 2005, AAA was at the back of their house watching over her five year old brother who was then taking a dump. The accused, her father, suddenly appeared. The accused ordered her sibling to go inside the house. The accused then embraced her and touched her breast and then leave (sic).

On February 28, 2007, at around 9:00 o'clock in the evening, AAA was sleeping at their house together with her other siblings. She was awakened when someone touched her shoulders. It turned out to be his (sic) father, the accused. The latter then put off the light, removed his pants and underwear. The accused then held AAA's hands and forcibly removed her shorts and panty. AAA was then forced to lie down and the accused inserted his penis into AAA's vagina and started pumping. The accused then warned her not to tell anybody of what happened. After satisfying himself, the accused left and AAA cried.

On March 7, 2007 at about 10:00 o'clock in the evening, AAA was home. The accused again fondled with AAA's breast. This time, however, AAA's mother saw it saw (sic) the latter confronted the accused. But the accused just left. After this incident, AAA told her

aunt about what her father did to her so her aunt reported the matter to their barangay captain who accompanied them to the police station. xx x[10]

Version of the Defense

For his defense, accused-appellant offered his denial and alibi, to wit:

10. Accused XXX, who was a porter at the Lemery Public Market, worked from 6:00 o'clock in the evening until 2:00 o'clock in the afternoon of the following day. Hence, on the days that he allegedly molested and raped AAA, he was, in fact, at the market, carrying fruits and vegetables with his brother.

11. With regard to the place where he allegedly molested and raped her (sic) daughter, XXX never went to the house of BBB. Also, he is a father of seven (7) children, and together with his wife, they lived in the house of his wife's cousin starting November 2006 until he was arrest (sic) in 2007. The house is measured about five (5) meters by four (4) meters and had one small bedroom. Inside the bedroom are old clothes, containers and fruit boxes. Since this could not accommodate all of XXX's family members, he sleeps outside the room, while his wife and children slept inside.[11]

Ruling of the RTC

After trial, the RTC rendered its amended decision disposing all the criminal cases filed as follows:

WHEREFORE, premises considered, this Court renders the following judgment:

1. In Criminal Case No. 20-2007 for lascivious conduct, accused, XXX is hereby found guilty beyond reasonable doubt and is hereby sentenced to suffer the penalty of ten (10) years and one (1) day of *prision mayor* as minimum to 20 years of

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[10] Records (Criminal Case No. 20-2007), p. 314.

[11] CA *rollo*, p. 49, the PAO replaced the name of the victim with fictitious initials.

reclusion temporal as maximum, and is ordered to pay AAA the amount of Twenty Thousand Pesos (₱20,000.00) as civil indemnity with a rate of 6% per annum from the time of finality of this judgment;

2. In Criminal Case No. 32-2007 for rape, accused, XXX is hereby found guilty beyond reasonable doubt and is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole, and is ordered to pay AAA the amount of Seventy Five Thousand Pesos (₱75,000.00) as civil indemnity and Seventy Five Thousand Pesos (₱75,000.00) as moral damages, both with interest at the rate of 6% per annum from the date of finality of this judgment[;]

3. In Criminal Case No. 33-2007 for lascivious conduct, accused, XXX is hereby found guilty beyond reasonable doubt and is hereby sentenced to suffer the penalty of ten (10) years and one (1) day of *prision mayor* as minimum to 20 years of *reclusion temporal* as maximum, and is ordered to pay AAA the amount of Twenty Thousand Pesos (₱20,000.00) as civil indemnity with a rate of 6% per annum from the time of finality of this judgment;

4. In Criminal Case No. 34-2007 for lascivious conduct, accused, XXX is hereby found guilty beyond reasonable doubt and is hereby sentenced to suffer the penalty of ten (10) years and one (1) day of *prision mayor* as minimum to 20 years of *reclusion temporal* as maximum, and is ordered to pay AAA the amount of Twenty Thousand Pesos (₱20,000.00) as civil indemnity with a rate of 6% per annum from the time of finality of this judgment; and

5. In Criminal Case No. 35-2007 for lascivious conduct, accused, XXX is hereby found guilty beyond reasonable doubt and is hereby sentenced to suffer the penalty of ten (10) years and one (1) day of *prision mayor* as minimum to 20 years of *reclusion temporal* as maximum, and is ordered to pay AAA the amount of Twenty Thousand Pesos (₱20,000.00) as civil indemnity with a rate of 6% per annum from the time of finality of this judgment.

SO ORDERED.[12]

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[12] Records (Crim. Case No. 20-2007), pp. 318-319; the RTC replaced the name of the victim with fictitious initials.

The RTC found AAA's testimony to be clear, convincing, and without any indication that it was rehearsed or coached. The trial court also observed that AAA had no ill motive to implicate accused-appellant for a crime he did not commit. Further, the RTC was more predisposed to believe AAA's testimony being a young and immature female victim who, despite her vulnerability and the potential embarrassment she was to suffer afterwards, still chose to testify. Finally, the RTC ruled that accused-appellant's uncorroborated denial and alibi cannot overcome the victim's positive testimony.[13]

Adamant on proving his innocence, accused-appellant filed his appeal before the CA, imputing the following errors on the trial court's part:

I. THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE DESPITE THE PROSECUTION'S FAILURE TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN HIS FAVOR AND INCREDIBILITY OF THE PRIVATE COMPLAINANT'S TESTIMONY.

II. THE COURT *A QUO* GRAVELY ERRED IN NOT GIVING CREDENCE TO ACCUSED-APPELLANT'S DEFENSE OF DENIAL.[14]

Ruling of the CA

On 21 March 2017, the CA promulgated its Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the appeal is **DENIED**. The assailed Amended Decision dated 26 November 2015 of the Regional Trial Court Lemery, Batangas Branch 5 in Criminal Case Nos. 20-2007, 32-2007, 33-2007, 34-2007, and 35-2007 is **AFFIRMED with MODIFICATIONS** *viz*:

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[13] *Rollo*, pp. 6-7.

[14] *Id.* at 9.

1. In **Criminal Case No. 20-2007** for lascivious conduct, accused, XXX is hereby found guilty beyond reasonable doubt of committing acts of lasciviousness as defined under Section 5(b), Article III of Republic Act No. 7610 in relation to Section 2(h) of its Implementing Rules and Regulations. As such, he is hereby sentenced to suffer the penalty of twenty (20) years and one (l) day as minimum to forty (40) years as maximum, and is ordered to pay AAA the following amounts: (1) ₱15,000.00 as fine, (2) ₱20,000.00 as civil indemnity, (3) ₱15,000.00 as moral damages, and (4) ₱15,000.00 as exemplary damages with a rate of 6% per annum from the time of finality of this judgment;

2. In **Criminal Case No. 32-2007** for qualified rape, accused, XXX is hereby found guilty beyond reasonable doubt of committing qualified rape as defined under Article 335 of the Revised Penal Code. As such, he is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole, and is ordered to pay AAA the following amounts: (a) ₱100,00.00 as civil indemnity; (b) ₱100,00.00 as moral damages; and (c) ₱50,000.00 as exemplary damages with interest at the rate of 6% per annum from the time of finality of this judgment;

3. In **Criminal Case No. 33-2007** for lascivious conduct, accused, XXX is hereby found guilty beyond reasonable doubt of committing acts of lasciviousness as defined under Article 336 of the Revised Penal Code, in relation to Section 5(b), Article III of Republic Act No. 7610 in relation to Section 2(h) of its Implementing Rules and Regulations. As such, he is hereby sentenced to suffer the penalty of sixteen (16) years five (5) months and eleven (11) days as minimum to seventeen (17) years and four (4) months as maximum and is ordered to pay AAA the following amounts: (1) ₱15,000.00 as fine, (2) ₱20,000.00 as civil indemnity, (3) ₱15,000.00 as moral damages, and (4) ₱15,000.00 as exemplary damages with a rate of 6% per annum from the time of finality of this judgment;

4. In **Criminal Case No. 34-2007** for lascivious conduct, accused, XXX is hereby found guilty beyond reasonable doubt of committing acts of lasciviousness as defined under Section 5(b), Article III of Republic Act No. 7610 in relation to Section 2(h) of its Implementing Rules and Regulations. As such, he is hereby sentenced to suffer the penalty of twenty (20) years and one (1) day as minimum to forty (40) years as maximum, and is ordered to pay AAA the following amounts: (1) ₱15,000.00 as fine, (2) ₱20,000.00 as civil indemnity, (3) ₱15,000.00 as moral damages, and (4) ₱15,000.00 as exemplary

damages with a rate of 6% per annum from the time of finality of this judgment; and

5. In **Criminal Case No. 35-2007** for lascivious conduct, accused, XXX is hereby found guilty beyond reasonable doubt of committing acts of lasciviousness as defined under Section 5(b), Article III of Republic Act No. 7610 in relation to Section 2(h) of its Implementing Rules and Regulations. As such, he is hereby sentenced to suffer the penalty of twenty (20) years and one (1) day as minimum to forty (40) years as maximum, and is ordered to pay AAA the following amounts: (1) ₱15,000.00 as fine, (2) ₱20,000.00 as civil indemnity, (3) ₱15,000.00 as moral damages, and (4) ₱15,000.00 as exemplary damages with a rate of 6% per annum from the time of finality of this judgment.

SO ORDERED.[15]

The CA found no error on the RTC's part when it ruled that all the elements of sexual abuse under Section 5(b), Article III of RA 7610 were present.[16] The CA explained that the prosecution was able to establish: 1) that on several occasions, accused-appellant touched AAA's breast and private parts to satisfy his sexual desires; 2) accused-appellant's relationship to AAA; and 3) AAA's minority and coverage under the provisions of RA No. 7610.[17] The CA did not believe accused-appellant's alibi, saying his defense lacked corroboration. As such, it could not overcome AAA's positive identification that he was the perpetrator.[18]

Anent the charge of qualified rape through force and intimidation, the CA ruled that the "[a]ccused-appellant's moral ascendancy and influence over AAA was sufficient to instill fear and intimidation in her mind."[19] The CA also ruled that the testimony of the physician who examined AAA was merely

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[15] *Id.* at 20-22.

[16] *Id.* at 13.

[17] *Id.*

[18] *Id.* at 14.

[19] *Id.* at 18.

corroborative, and therefore, dispensable in a prosecution for rape.[20]

Issue

The Court is now called upon to decide whether accused-appellant's guilt for the crimes charged was beyond reasonable doubt.

Accused-appellant insists on his innocence before Us by invoking the same arguments he raised before the appellate court.[21] In particular, accused-appellant challenges the credibility of AAA's testimony. He asserts that during the alleged commission of the crime, he was working as a porter at the Lemery Public Market. Accused-appellant also relies heavily on the alleged physical impossibility of committing the offenses charged, considering the size and configuration of their house and the positions the whole household takes when they go to sleep. He explained that due to the cramped space they are living in, it is impossible for him to rape AAA without her mother and siblings hearing it; accused-appellant also considers as fatal the prosecution's failure to present in evidence the testimony of the physician who medically checked AAA.[22]

Ruling of the Court

We sustain accused-appellant's conviction. Nevertheless, while the Court agrees with the legal conclusion reached by the CA, We deem it proper to clarify and simplify the nomenclature of the offense of lascivious conduct committed, as well as modify the penalty imposed upon accused-appellant, and the amount of damages awarded to AAA.

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[20] *Id.*

[21] *Id.* at 31-35, 41-43; the accused and the State both manifested that they would no longer file their respective briefs, and would adopt the briefs they filed before the CA.

[22] *Id.* at 52-53.

AAA's credible testimony outweighs accused-appellant's defenses of denial and alibi

The Court accords the trial court's factual determination utmost respect especially when the CA affirms the same. It is settled that trial courts are better hoisted to observe the demeanor and deportment of witnesses on the stand, making their assessment of a witness's credibility far superior to that of appellate tribunals.[23] Thus:

> To begin with, the accused assails the factual findings of the RTC, including its assessment of the worth of the witnesses who testified in the trial. We cannot, however, contradict the factual findings, especially because the CA, as the reviewing tribunal, affirmed them. Such findings are now entitled to great weight and respect, if not conclusiveness, for we accept that the trial court was in the best position as the original trier of the facts in whose direct presence and under whose keen observation the witnesses rendered their respective versions of the events that made up the occurrences constituting the ingredients of the offenses charged. The direct appreciation of testimonial demeanor during examination, veracity, sincerity and candor was foremost the trial court's domain, not that of a reviewing court that had no similar access to the witnesses at the time they testified. Without the accused persuasively demonstrating that the RTC and the CA overlooked a material fact that otherwise would change the outcome, or misappreciated a circumstance of consequence in their assessment of the credibility of the witnesses and of their respective versions, the Court has no ground by which to reverse their uniform findings as to the facts.[24]

The Court is persuaded that both the RTC and the CA correctly appreciated the pieces of evidence presented here. Thus, their factual findings are upheld. More important, the weight given to AAA's testimony is consistent with the long standing doctrine

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[23] See *Cruz v. People*, G.R. No. 166441, 08 October 2014, 737 SCRA 567.

[24] *People v. Taguibuya*, G.R. No. 180497, 05 October 2011, 658 SCRA 685.

of upholding the credibility of a child rape victim so long as there is no evidence suggesting the possibility of her being actuated by ill motive to falsely testify against the accused.[25] No such ill motive was attributed to AAA. During the accused's direct testimony, he testified:

> Q Mr. Witness, can you think of any reason why your child accused you for having molested her despite the fact that you have not done anything wrong as you have testified?
>
> A None ma'am.[26]

Surely, on cross-examination, AAA testified about accused-appellant's usual working schedule. However, there is nothing in her testimony that removes accused-appellant from the dates and times the crimes were committed. In Our view, AAA's testimony indicates frequency that her father "most of the time" goes to work at six o'clock in the evening and returns home at two o'clock in the afternoon of the following day.[27] Certainly, this is not a categorical and unequivocal statement attesting to accused-appellant's absence in their home during the dates and times the crimes were committed.

We also cannot give merit to accused-appellant's defense of denial and alibi. Unsubstantiated by clear and convincing evidence, denials are negative defenses, which cannot be given greater evidentiary weight than a credible witness's positive and affirmative testimony.[28] Aside from accused-appellant himself, no other witness was introduced to corroborate his presence at the Lemery Public Market during the commission of the crimes. To be sure, accused-appellant's testimony alone should be considered self-serving and insufficient to secure an acquittal. As regards the prosecution's failure to present the medico-legal officer as witness, the CA was correct that

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[25] *People v. Taguilid*, G.R. No. 181544, 11 April 2012, 669 SCRA 341.

[26] TSN dated 21 April 2010, p. 1.

[27] TSN dated 10 February 2009, p. 9.

[28] See *People v. Adajar*, G.R. No. 231306, 17 June 2019.

expert testimony is merely corroborative and not essential to conviction.[29]

The simplified nomenclature of the lascivious conduct committed by accused-appellant

To avoid confusion and to conform with Our ruling in *People v. Tulagan*,[30] We find it necessary to simplify and improve the nomenclature used by the CA in describing the offense of lascivious conduct committed by accused-appellant. As explained in *Tulagan*:

> **Whereas if the victim is 12 years old and under 18 years old, or 18 years old and above under special circumstances, the nomenclature of the crime should be "Lascivious Conduct under Section 5 (b) of R.A. No. 7610" with the imposable penalty of *reclusion temporal* in its medium period to *reclusion perpetua*, but it should not make any reference to the provisions of the RPC.** It is only when the victim of the sexual assault is 18 years old and above, and not demented, that the crime should be called as "Sexual Assault under paragraph 2, Article 266-A of the RPC" with the imposable penalty of *prision mayor*. (Emphasis supplied)

With regard to acts of lasciviousness committed against children under twelve (12) years of age, *Tulagan* elucidates:

> x x x The same reason holds true with respect to acts of lasciviousness or lascivious conduct when the offended party is less than 12 years old or is demented. **Even if such party consents to the lascivious conduct, the crime is always statutory acts of lasciviousness. The offender will be prosecuted under Article 336 of the RPC, but the penalty is provided for under Section 5 (b) of R.A. No. 7610.** (Emphasis supplied)

Considering the foregoing, accused-appellant is found guilty of the following:

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[29] *People v. Cabilida, Jr.*, G.R. No. 222964, 11 July 2018.

[30] G.R. No. 227363, 12 March 2019.

(1) In **Criminal Cases Nos. 20-2007, 34-2007, and 35-2007** - Lascivious conduct under Section 5(b) of RA 7610; and,

(2) In **Criminal Case No. 33-2007** - Acts of lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of RA 7610.

On the other hand, accused-appellant was correctly convicted of Qualified Rape in Criminal Case No. 32-2007.

The correct penalties to be imposed upon accused-appellant, and the correct amount of damages to be awarded to AAA

We also need to correct the penalties imposed by the CA. Under Articles 64 and 65 of the RPC, the presence of an aggravating circumstance warrants the imposition of the penalty prescribed by law in its maximum period.[31] The imposable

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[31] ARTICLE 64. *Rules for the Application of Penalties Which Contain Three Periods*. – In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are not mitigating or aggravating circumstances:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.

2. When only a mitigating circumstance is present in the commission of the act, they shall impose the penalty in its minimum period.

3. When only an aggravating circumstance is present in the commission of the act, they shall impose the penalty in its maximum period.

4. When both mitigating and aggravating circumstances are present, the court shall reasonably offset those of one class against the other according to their relative weight.

5. When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances.

penalty for lascivious conduct under Section 5(b) of RA 7610 is *reclusion temporal* medium to *reclusion perpetua*. Since the aggravating circumstance of relationship was duly proven, without any mitigating circumstance to offset it, the maximum penalty of *reclusion perpetua* should be imposed in Criminal Case Nos. 20-2007, 34-2007, and 35-2007. Also, there is no need to qualify *reclusion perpetua* with the phrase, "without eligibility for parole," because, under A.M. No. 15-08-02-SC, in cases where the death penalty is not warranted, it is understood that convicted persons penalized with an indivisible penalty are not eligible for parole.[32] In the same vein, the penalty of *reclusion perpetua* meted in Criminal Case No. 32-2007 was correctly qualified with the phrase, "without eligibility for parole," since Article 266-B imposes the penalty of death for Qualified Rape.

The penalty meted in Criminal Case No. 33-2007 also needs calibration. Section 5(b) of RA 7610 imposes the penalty of *reclusion temporal* medium when the victim of lascivious conduct is under twelve (12) years of age. Since the aggravating circumstance of relationship was correctly applied, the penalty should be imposed in its maximum period. We then divide *reclusion temporal* medium to three equal periods to get its maximum. Thus:

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6. Whatever may be the number and nature of the aggravating circumstances, the courts shall not impose a greater penalty than that prescribed by law, in its maximum period.

7. Within the limits of each period, the courts shall determine the extent of the penalty according to the number and nature of the aggravating and mitigating circumstances and the greater or lesser extent of the evil produced by the crime.

ARTICLE 65. *Rule in Cases in Which the Penalty is Not Composed of Three Periods*. – In cases in which the penalty prescribed by law is not composed of three periods, the courts shall apply the rules contained in the foregoing articles, dividing into three equal portions the time included in the penalty prescribed, and forming one period of each of the three portions.

[32] See *People v. Moya*, G.R. No. 228260, 10 June 2019.

Minimum	Medium	Maximum
14 years, 8 months and 1 day to 15 years, 6 months and 20 days	15 years, 6 months and 21 days to 16 years, 5 months and 10 days	16 years, five months and 11 days to 17 years and 4 months

For purposes of applying the Indeterminate Sentence Law (ISLaw), the maximum term should be within the range of the maximum period of imposable penalty. Thus, the CA correctly pegged the maximum term at seventeen (17) years and four (4) months' imprisonment. However, the CA provided for the minimum term of sixteen (16) years, five (5) months and eleven (11) days, which is still within the range of the maximum period of *reclusion temporal* medium. This is incorrect. Section 1 of the ISLaw, as amended, provides:

> SEC. 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, **the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and to a minimum which shall be within the range of the penalty** next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. (Emphasis and underscoring supplied)

Here, while the penalty was provided by a special law, its technical nomenclature was taken from the RPC. Thus, the determination of the indeterminate sentence should be based on the rules applied for offenses punishable under the RPC.[33]

In this case, the minimum term should be taken from the penalty next lower to *reclusion temporal* medium, which is *reclusion temporal* minimum. *Reclusion temporal* minimum

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[33] *Peralta v. People*, G.R. No. 221991, 30 August 2017, 838 SCRA 350.

has a period of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. Pursuant to Article 64, paragraph 7 of the RPC and considering the gravity of offense committed, We deem it proper to impose as minimum term, imprisonment of fourteen (14) years and eight (8) months, which is the maximum of said penalty.[34]

Finally, We resolve to increase the damages awarded to the victim to conform to our pronouncement in *People v. Tulagan*[35] and *People v. Panes*.[36] Thus:

Criminal Case No.	Nature of Damages Awarded	From	To
20-2007	Civil indemnity	₱20,000.00	₱75,000.00
	Moral damages	₱15,000.00	₱75,000.00
	Exemplary damages	₱15,000.00	₱75,000.00
32-2007	Civil indemnity	₱100,000.00	₱100,000.00
	Moral damages	₱100,000.00	₱100,000.00
	Exemplary damages	₱50,000.00	₱100,000.00
33-2007	Civil indemnity	₱20,000.00	₱50,000.00
	Moral damages	₱15,000.00	₱50,000.00
	Exemplary damages	₱15,000.00	₱50,000.00
34-2007	Civil indemnity	₱20,000.00	₱75,000.00
	Moral damages	₱15,000.00	₱75,000.00
	Exemplary damages	₱15,000.00	₱75,000.00
35-2007	Civil indemnity	₱20,000.00	₱75,000.00
	Moral damages	₱15,000.00	₱75,000.00
	Exemplary damages	₱15,000.00	₱75,000.00

[34] *Supra* at note 28.

[35] *Supra* at note 30.

[36] Provides for the amount of damages for convictions of Qualified Rape; G.R. No. 215730, 11 September 2017.

To mirror *Tulagan*, accused-appellant's liability to pay fine is hereby deleted. Nevertheless, a legal interest of six percent (6%) *per annum* is imposed on all damages awarded from the date of finality of this decision until they are fully paid.

WHEREFORE, the appeal is hereby **DENIED**. The Amended Decision of the Regional Trial Court in Criminal Case Nos. 20-2007, 32-2007, 33-2007, 34-2007, and 35-2007, as affirmed by the Court of Appeals in CA-G.R. CR-H.C. No. 08147, is **AFFIRMED** with further **MODIFICATIONS**. We find accused-appellant XXX **GUILTY** beyond reasonable doubt of the following:

1. **Lascivious Conduct under Section 5(b) of RA 7610** in Criminal Case No. 20-2007, and is sentenced to suffer *reclusion perpetua*. Accused-appellant is ORDERED to PAY AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages;

2. **Qualified Rape** in Criminal Case No. 32-2007, and is sentenced to suffer *reclusion perpetua* without eligibility for parole. Accused-appellant is ORDERED to PAY AAA the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages;

3. **Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of RA 7610** in Criminal Case No. 33-2007, and is sentenced to suffer an indeterminate sentence of fourteen (14) years and eight months of *reclusion temporal* as minimum, to seventeen (17) years and four (4) months of *reclusion temporal* as maximum. Accused-appellant is ORDERED to PAY AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages;

4. **Lascivious Conduct under Section 5(b) of RA 7610** in Criminal Case No. 34-2007, and is sentenced to suffer

reclusion perpetua. Accused-appellant is ORDERED to PAY AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages; and

5. **Lascivious Conduct under Section 5(b) of RA 7610** in Criminal Case No. 35-2007, and is sentenced to suffer *reclusion perpetua*. Accused-appellant is ORDERED to PAY AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

Legal interest of six percent (6%) *per annum* is imposed on all damages awarded from the date of finality of this decision until fully paid.

SO ORDERED.

Leonen (*Chairperson*) and *Carandang, JJ.*, concur.

Gesmundo, J., on leave.

Lazaro-Javier, *J.*,[**] on official leave.

[**] Designated as Additional Member of the Third Division per Special Order No. 2728.

SECOND DIVISION

[G.R. No. 180740. November 11, 2019]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **SAN MIGUEL CORPORATION,** *respondent.*

[G.R. No. 180910. November 11, 2019]

SAN MIGUEL CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; TAX REFORM ACT OF 1997; THE QUALIFYING PROVISION UNDER SECTION 1 OF REVENUE REGULATION NO. 17-99 (RR NO. 17-99) THAT THE NEW SPECIFIC TAX RATE FOR THE TAXABLE PRODUCTS SHALL NOT BE LOWER THAN THE EXCISE TAX PAID PRIOR TO JANUARY 1, 2000 WAS AN UNAUTHORIZED ADMINISTRATIVE LEGISLATION AND WAS VIOLATIVE OF THE PROVISION OF THE TAX CODE; RULING IN *COMMISSIONER OF INTERNAL REVENUE V. FORTUNE TOBACCO CORP.*, REITERATED. — *Commissioner of Internal Revenue v. Fortune Tobacco Corporation (Fortune Tobacco)* already addressed and settled the issue of the validity of RR No. 17-99. Section 1 of RR No. 17-99, which imposed a twelve percent (12%) increase on specific tax rates on distilled spirits, wines, fermented liquors, and cigars and cigarettes packed by machine pursuant to RA 8240, with the qualification "that the new specific tax rate for any existing brand of cigars, cigarettes packed by machine, distilled spirits, wines and fermented liquors shall not be lower than the excise tax that is actually being paid prior to January 1, 2000." The Court, in *Fortune Tobacco*, declared such qualification in Section 1 of RR No. 17-99 as "unauthorized administrative legislation," reasoning as follows: x x x **Section 145 mandates a new rate of excise tax for cigarettes packed by machine due to the 12% increase effective on 1 January 2000 without regard to whether the revenue collection starting from this**

period may turn out to be lower than that collected prior to this date. By adding **the qualification that the tax due after the 12% increase becomes effective shall not be lower than the tax actually paid prior to 1 January 2000,** Revenue Regulation No. 17-99 effectively imposes a tax which is the higher amount between the *ad valorem* tax being paid at the end of the three (3)-year transition period and the specific tax under paragraph C, sub-paragraph[s] (1)-(4), as increased by 12% – a situation **not supported by the plain wording of Section 145 of the Tax Code.** x x x Section 143 of the Tax Reform Act of 1997 on fermented liquor, just like Section 145 of the same Act on cigars and cigarette, provides that the specific tax rates on the taxable product shall be increased by twelve percent (12%) on January 1, 2000; and that the excise tax from any brand of the taxable product within the next three years of effectivity of RA 8240 shall not be lower than the tax due from each brand on October 1, 1996. As SMC correctly contended, the Decision in *Fortune Tobacco* applies to the present case, and the disputed provision of RR No. 17-99 – imposing the added qualification that the new specific tax rate for any existing brand of the taxable product shall not be lower than the excise tax that is actually being paid prior to January 1, 2000 – is similarly not supported by Section 143 of the Tax Reform Act of 1997.

2. **ID.; ID.; TAX REFUND/CREDIT; THE COURT ALREADY SETTLED IN A PRIOR CASE THAT SAN MIGUEL CORPORATION (SMC) IS ENTITLED TO ITS CLAIM FOR EXCESS EXCISE TAX PAYMENTS ON ITS PRODUCTS PAID FROM MAY 22, 2004 TO DECEMBER 31, 2004 COLLECTED BY THE BIR ON THE BASIS OF INVALID PROVISION OF RR NO. 17-99. —** [T]he Court had already settled in *Commissioner of Internal Revenue v. San Miguel Corporation*, which involved the same parties herein and the similar claim for refund of SMC for excess excise tax payments on its Red Horse beer product paid from May 22 to December 31, 2004 that: x x x SMC is entitled to its claim for the refund or credit of its excess excise tax payments collected by the BIR on the basis of the invalid provision under Section 1 of RR No. 17-99.

3. **ID.; ID.; ID.; THE CLAIM FOR TAX REFUND/CREDIT OF EXCESS EXCISE TAX PAYMENTS OF SMC FROM**

JANUARY TO FEBRUARY 2001 IS DISALLOWED ON THE GROUND OF PRESCRIPTION AND INSUFFICIENT EVIDENCE. — [Sections 204 and 229 of the Tax Reform Act of 1997] are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with the CIR before filing its judicial claim with the courts of law. Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is **mandatory and jurisdictional**, and thus the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time. It is worthy to stress that as for the judicial claim, tax law even explicitly provides that it be filed within two (2) years from payment of the tax "regardless of any supervening cause that may arise after payment." For excise tax on domestic products in general, the return is filed and the excise tax is paid by the manufacturer or producer before removal of the products from the place of production. Hence, the date of payment of excise tax on domestic products depends on the date of actual removal of the taxable domestic products from the place of production. SMC filed its administrative claim on January 10, 2003 through a letter to the BIR, and its judicial claim through a Petition for Review filed with the CTA First Division on February 24, 2003. Counting back from February 24, 2003, the CTA First Division determined that the reckoning date for the two (2)-year prescriptive period for this particular judicial claim of SMC was February 24, 2001 and accordingly declared that the claim of SMC for excess excise tax paid prior to said date had already prescribed. This conclusion of the CTA First Division, as affirmed by the CTA *En Banc*, is in full accord with the provisions of the Tax Reform Act of 1997 and so the Court will not disturb the same.

4. **ID.; ID.; ID.; ID.; PRINCIPLE OF *SOLUTIO INDEBITI* AS WELL AS THE SIX (6)-YEAR PRESCRIPTIVE PERIOD FOR CLAIMS BASED ON QUASI-CONTRACTS DOES NOT APPLY IN THIS CASE; EXISTING JURISPRUDENCE, CITED. —** [I]n *Commissioner of Internal Revenue v. Manila Electric Co. (Meralco)*, the Court squarely addressed the issue of which prescriptive period shall apply to a claim for tax refund of erroneously paid/remitted tax on interest income, whether the two (2)-year prescriptive period under Section 229 of the Tax Reform Act of 1997 or the six (6)-year

prescriptive period for actions based on *solutio indebiti* under Article 1145 of the Civil Code. The Court therein applied the two (2)-year prescriptive period under the Tax Reform Act of 1997, which is mandatory regardless of any supervening cause that may rise after payment and categorically declared that *solutio indebiti* was inapplicable[.] x x x Citing *Meralco*, the Court again, in *Metropolitan Bank and Trust Company v. Commissioner of Internal Revenue (Metrobank),* rejected the application to tax refund cases of the principle of *solutio indebiti* as well as the six (6)-year prescriptive period for claims based on quasi-contract. It reiterated that both administrative and judicial claims for tax refund or credit should be filed within the two (2)-year prescriptive period fixed under Section 229 of the Tax Reform Act of 1997. Although the *Meralco* and *Metrobank* cases involved erroneously paid taxes on interest income, these may still constitute jurisprudential precedents for the present case concerning excise tax, as both types of national revenue taxes are imposed and collected by virtue of the Tax Reform Act of 1997. Given that the excise taxes on the *Red Horse* beer product of SMC is imposed and collected under the Tax Reform Act of 1997, then its claim for refund or credit of said taxes illegally or erroneously collected shall logically be governed by the same law, including the applicable prescriptive period for such claim. There is no need to refer to the Civil Code provisions on quasi-contract. As already pointed out by the Court in *Meralco*, the Tax Reform Act of 1997 is a special law, and it is a basic tenet in statutory construction that between a general law and a special law, the special law prevails. *Generalia specialibus non derogant.*

5. ID.; ID.; ID.; ID.; SMC'S CLAIM TO BE EXEMPT FROM THE TWO-(2) YEAR PRESCRIPTIVE PERIOD BASED ON EQUITY IS UNTENABLE; THE UNIQUE AND SPECIAL CIRCUMSTANCES IN THE CASE OF *COMMISSIONER OF INTERNAL REVENUE V. PHILIPPINE NATIONAL BANK* DO NOT OBTAIN IN CASE AT BAR. — SMC cites *Commissioner of Internal Revenue v. Philippine National Bank (PNB)*, but the ruling of the Court in said case was based on unique factual considerations[.] x x x It is in consideration of the special circumstances that the Court, in *PNB*, suspended the application of the two (2)-year prescriptive period for reasons of equity and fairness and still granted the application of PNB for tax credit certificate in 1997. It further

ruled therein that in the strict legal viewpoint, the claim for tax credit of PNB did not proceed from, or was a consequence of overpayment of tax erroneously or illegally collected in 1991. Clearly, the factual background in *PNB* is far different from that in the case at bar and the ruling in the former could not be simply applied or extended to the latter by analogy.

6. ID.; ID.; ID.; ID.; THAT SMC AVAILED OF THE ADVANCE PAYMENT SCHEME UNDER RR NO. 2-97 WHICH IN EFFECT LEADS IT TO CONCLUDE THAT THE DATE OF THE REMOVAL OF THE PRODUCTS FROM PLACE OF PRODUCTION MAY NOT ALWAYS BE THE RECKONING POINT FOR PURPOSES OF THE TWO-YEAR PRESCRIPTIVE PERIOD IS UNTENABLE; SMC FAILED TO PROVE SUCH CLAIM. — SMC avers that the CTA First Division and the CTA *En Banc* erred in (a) failing to consider that SMC availed itself of the Advance Payment Scheme under RR No. 2-97 for its excise taxes which allows it to remove the products from the place of production and file the prescribed returns and supporting attachments even a week after the actual removal, so that the date of removal may not always be the reckoning point for purposes of prescription; and (b) denying the full amount of its claim for tax refund or credit for the month of February when the CIR presented sufficient evidence to guide the tax court in making the necessary apportionment or allocation of the amounts that had already prescribed. This contention fails to persuade. "It is a basic rule of evidence that each party must prove its affirmative allegation." The burden rests upon SMC to present evidence that its prescribed returns for the excise taxes on its Red Horse beer product for February 2001 were actually filed after the removal of the said products from the place of production or later than February 24, 2001. x x x Interestingly, even in its Petition before this Court, SMC failed to present a definitive computation of the excise taxes on its Red Horse beer product which it had paid from February 24 to 28, 2001 and which would still have been within the two (2)-year prescriptive period; and to cite the corresponding evidence on record in support thereof. Instead, it unduly placed the burden of apportionment of its February 2001 claim upon the CTA by simply and conveniently asserting that the tax court "could have determined, based on the evidence presented, the portion which had [already] prescribed."

7. ID.; ID.; ID.; ID.; ID.; SUFFICIENCY OF EVIDENCE IN DETERMINING THE AMOUNT OF REFUND IS A QUESTION OF FACT, WHICH IS NOT ALLOWED UNDER RULE 45 PETITION. — [T]he Court had previously ruled that "the sufficiency of a claimant's evidence and the determination of the amount of refund, as called for in this case, are *questions of fact*, which are for the judicious determination by the CTA of the evidence on record." It is already an established rule in this jurisdiction that only questions of law may be raised under Rule 45 of the Rules of Court. It is not this Court's function to analyze or weigh all over again the evidence already considered in the proceedings below, as its jurisdiction under Section 1, Rule 45 is limited to reviewing only errors of law that may have been committed by the lower court. The resolution of factual issues is the function of the lower courts, whose findings on these matters are received with respect. The rule finds greater significance with respect to the findings of specialized courts such as the CTA because of the very nature of its functions, which is dedicated exclusively to the resolution of tax problems and has accordingly developed an expertise on the subject, and consequently, its conclusions are not lightly set aside unless there has been an abuse or improvident exercise of authority, circumstances which this Court does not find extant herein.

APPEARANCES OF COUNSEL

The Solicitor General for Commissioner of Internal Revenue.

SMC Office of the General Counsel for San Miguel Corporation.

D E C I S I O N

HERNANDO, *J.*:

Before this Court are Petitions for Review on *Certiorari* under Rule 45 of the Rules of Court challenging the September 25, 2007 Decision[1] and November 26, 2007

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[1] *Rollo* (G.R. No. 180910), pp. 49-74; penned by Associate Justice Erlinda P. Uy with Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista,

Resolution[2] of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. E.B. Nos. 190 and 192 affirming the March 15, 2006 Decision[3] and June 6, 2006 Resolution[4] of the CTA First Division in C.T.A. Case No. 6607.

San Miguel Corporation (SMC) is a domestic corporation engaged in the manufacture of "fermented liquors for sale in the domestic and export markets. One of its products is the beer brand 'Red Horse' that comes in [one] liter and 325 ml. bottles."[5] Meanwhile, the Commissioner of Internal Revenue (CIR) is tasked with the "duty of assessing and collecting national internal revenue taxes."[6]

The Antecedents

The pertinent facts, as culled from the Petition for Review[7] of the CIR in G.R. No. 180740, are as follows:

> On January 1, 1997, Republic Act (RA) No. 8240 took effect, adopting a specific tax system instead of the *ad valorem* tax system imposed on, among others, fermented liquor. As a result, fermented liquors were specifically subjected to excise taxes in accordance with the following schedules stated in Section 140 of RA No. 8240, *viz*[.]:
>
> > SEC. 140. Fermented Liquor.– There shall be levied, assessed and collected an excise tax on beer, [lager beer], ale, porter and other fermented liquors except *tuba, basi, tapuy* and similar domestic fermented liquors in accordance with the following schedule:

Caesar A. Casanova, and Olga Palanca-Enriquez, concurring, and Presiding Justice Ernesto D. Acosta, concurring and dissenting.

[2] *Id.* at 75-81.

[3] *Id.* at 211-237; penned by Associate Justice Lovell R. Bautista with Associate Justice Caesar A. Casanova, concurring, and Presiding Justice Ernesto D. Acosta, dissenting.

[4] *Id.* at 238-241.

[5] *Id.* at 178.

[6] *Id.* at 178-179.

[7] *Rollo* (G.R. No. 180740), pp. 16-49.

(a) If the net retail price (excluding the excise tax and value-added tax) per liter of volume capacity is less than Fourteen pesos and fifty centavos (₱14.50), the tax shall be Six pesos and fifteen centavos (₱6.15) per liter;

(b) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is Fourteen pesos and fifty centavos (₱14.50) up to Twenty-two pesos (₱22.00), the tax shall be Nine pesos and fifteen centavos (₱9.15) per liter;

(c) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is more than Twenty-two pesos (₱22.00), the tax shall be Twelve pesos and fifteen centavos (₱12.15) per liter.

Variants of existing brands which are introduced in the domestic market after the effectivity of Republic Act No. 8240 shall be taxed under the highest classification of any variant of that brand.

Fermented liquor which are brewed and sold at microbreweries or small establishments such as pubs and restaurants shall be subject to the rate in paragraph (c) hereof.

The excise tax from any brand of fermented liquor within the next three (3) years from the effectivity of Republic Act No. 8240 shall not be lower than the tax which was due from each brand on October 1, 1996.

The rates of excise tax on fermented liquor under paragraphs (a), (b) and (c) hereof shall be increased by twelve percent (12%) on January 1, 2000.

x x x x x x x x x

Prior to January 1, 1997 or the effectivity of RA No. 8240, [SMC] has been paying *ad valorem* tax on Red Horse at the rate of ₱7.07 per liter.

Under [RA] No. [8424], the Tax Reform Act of 1997, Section 140 was renumbered as Section 143.

On December 16, 1999, the Secretary of Finance, upon recommendation of the Commissioner of Internal Revenue, issued Revenue Regulations No. 17-99 to implement the 12% increase on excise tax on, among others, fermented liquors by January 1, 2000. Revenue Regulations No. 17-99 provides, in part:

Section 1. New Rates of Specific Tax – The specific tax rates imposed under the following sections are hereby increased by twelve percent (12%) and the new rates to be levied, assessed, and collected, are as follows:

x x x x x x x x x

SECTION	DESCRIPTION OF ARTICLES	PRESENT SPECIFIC TAX RATE PRIOR TO JANUARY 1, 2000	NEW SPECIFIC TAX RATES EFFECTIVE JANUARY 1, 2000
143	FERMENTED LIQUORS		
	(a) Net Retail Price per liter (excluding VAT & Excise) is less than ₱14.50	₱6.15/liter	₱6.98/liter
	(b) Net Retail Price per liter (excluding VAT & Excise) is ₱14.50 up to ₱22.00	₱9.16/liter	₱10.25/liter
	(c) Net Retail Price per liter (excluding VAT & Excise) is more than ₱22.50	₱12.15/liter	₱13.61/1iter

x x x x x x x x x

Provided, however, that the new specific tax rate for any existing brand of cigars, cigarettes packed by machine, distilled spirits, wines and fermented liquors shall not be lower than the excise tax that is actually being paid prior to January 1, 2000.[8] (Emphasis supplied, citations omitted)

[8] *Id.* at 20-23.

Contending that Revenue Regulation (RR) No. 17-99 did not conform to the letter and intent of Republic Act (RA) No. 8240, SMC filed on January 10, 2003 a letter[9] with the Bureau of Internal Revenue (BIR) to claim tax refund or credit of the alleged excess excise taxes it paid on its Red Horse beer product from January 11, 2001 to December 31, 2002 in the amount of ₱94,494,801.96. Said amount represented the difference between applying the rates of ₱7.07 per liter (the rate of specific tax SMC was paying beginning January 1, 1997, which was equal to the rate of *ad valorem* tax rate it had been paying prior to the effectivity of RA 8240 on January 1, 1997), and ₱6.89 per liter (the new specific tax rate imposed under Section 145 of RA 8424, otherwise known as the Tax Reform Act of 1997, which took effect on January 1, 2000). SMC attached to its letter the following table[10] summarizing its claim:

PERIOD	TOTAL REMOVAL GL (Liters)	TAX RATE USED	TAX PAID	CORRECT TAX RATE	CORRECT TAX	OVERPAYMENT
2001 Jan. 11 to Dec. 31	234,014,850.00	7.07	1,654,484,989.50	6.89	1,612,362,316.50	42,122,673.00
2002 Jan. to Dec.	290,956,272.00	7.07	2,057,060,843.04	6.89	2,004,688,714.08	52,372,128.96
TOTAL	**524,971,122.00**		**3,711,545,832.54**		**3,617,051,030.58**	**94,494,801.96**

Without waiting for the CIR to act on its administrative claim for tax refund or credit, SMC filed a Petition for Review[11] on February 24, 2003 before the CTA, docketed as C.T.A. Case No. 6607 and raffled to its First Division.

Essentially, SMC challenged Section 1 of RR No. 17-99, which provided that "the new specific tax rate for any x x x

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[9] *Id.* at 126-128; the letter was dated January 10, 2002, but this was most likely a typographical error and should actually be dated January 10, 2003.

[10] *Id.* at 129.

[11] *Id.* at 116-124.

fermented liquors **shall not be lower** than the excise tax that is actually being paid **prior to January 1, 2000**."[12] According to SMC, Section 1 of RR No. 17-99 extended without basis the three (3)-year transitory period under RA 8240; and the specific tax rates on fermented liquors prescribed by Section 143, paragraphs (a) to (c) of the Tax Reform Act of 1997 should already apply beginning January 1, 2000.

The Ruling of the CTA First Division

The CTA First Division rendered its Decision[13] on March 15, 2006, emphasizing that the CTA First Division had already declared RR No. 17-99 invalid in *Fortune Tobacco Corporation v. Commissioner of Internal Revenue*,[14] which ruling was subsequently affirmed by the Court of Appeals.[15] The CTA First Division further held that:

> Without a doubt, the provision of R.A. No. 8240 in controversy merely mandates that the three-year transition period within which it is to be operative, starting from January 1, 1997, the date when the law took effect, expired on December 31, 1999. During the said period, the tax shall not be lower than the tax imposed for each brand on October 1, 1996. In other words, the increase adverted to in R.A. No. 8240 should not use the rate imposed at the end of the transition period as tax base. Rather, the provision should be interpreted as to mean that at the end of the transition period, an increase in the excise tax rate should have reached 12% than that imposed under the ad valorem tax scheme.
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> Applying the foregoing jurisprudence, we rule that the disputed provision of RR No. 17-99 is not consistent with the situation contemplated under the provisions of Section 143 of the 1997 NIRC, x x x.
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> x x x x x x x x x

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[12] *Id.* at 118.

[13] *Rollo* (G.R. No. 180910), pp. 211-237.

[14] CTA Case Nos. 6365 and 6383, October 21, 2002.

[15] *Commissioner of Internal Revenue v. Fortune Tobacco Corporation*, CA-G.R. SP Nos. 80675 and 83165, September 28, 2004.

It is clear from the above-quoted provision of the 1997 NIRC that the objective of the government at the end of the three-year transition period is to effect a 12% tax rate increase using as tax base the figures provided in paragraphs (a), (b) and (c) of Section 143 of the 1997 NIRC, in lieu of the tax rate being posed prior to January 1, 2000, which is the rate imposed during the transition period of three years. At most, Section 143 of the 1997 NIRC imports that the excise tax shall not be lower than the tax which is due from each brand on October 1, 1996, but which qualification is not present as to the increase by 12% on January 1, 2000 under paragraphs (a), (b) and (c) of the said section. Therefore, as correctly pointed out by petitioner, it shall be entitled to its claim for refund or issuance of a tax credit certificate for the erroneously paid excise taxes covering the period of January 11, 2001 to December 31, 2002, considering that its payment was based on the provisions of the last paragraph of Section 1 of RR No. 17-99 which was already ruled as an invalid regulation.[16]

The CTA First Division noted that per its computation, SMC paid excess excise taxes on the volume of removals of its Red Horse beer from its production plants from January 1, 2001 to December 31, 2002 in the total amount of ₱95,074,832.16, but it was only claiming tax refund or credit of the excess excise taxes it had paid from January 11, 2001 to December 31, 2002 amounting to ₱94,494,801.96.[17]

Although SMC was able to present evidence in support of its total claim for tax refund or credit, without the CIR presenting any controverting evidence, the CTA First Division disallowed the claim of SMC for ₱6,404,270.40 because it was already barred by prescription.[18] The CTA First Division explained that based on Section 229, in relation to Section 130(A)(2), of the Tax Reform Act of 1997, the reckoning point for computing the two (2)-year prescriptive period for the refund of erroneously paid taxes shall be from the date of payment of the tax or prior to the removal of the subject products from the place of production; and "[s]ince the Petition for Review was filed on

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[16] *Rollo* (G.R. No. 180740), pp. 218-219.

[17] *Id.* at 225-227.

[18] *Id.* at 227.

February 24, 2003, the two-year prescriptive period started to run on February 24, 2001 and any [claim for tax refund or credit of] excise tax payment made before February 24, 2001 had already prescribed. Evidently, the claimed excise tax overpayment for the period January 11 to 31, 2001 in the amount of ₱2,514,508.92 is barred by prescription x x x."[19]

The CTA First Division further adjudged that because the removal reports of SMC were on a monthly basis, there would be no clear way of determining which portion of the claim for the month of February 2001, amounting to ₱3,889,761.48, actually corresponded to the excess excise tax payments made from February 24, 2001 until the end of the month and would still fall within the prescriptive period of two years. Consequently, the CTA First Division simply considered the entire claim for February 2001[20] as time-barred.[21]

In sum, the CTA First Division approved SMC's claim for tax refund or credit for its excess excise tax payments from March 1, 2001 to December 31, 2002 in the amount of ₱88,090,531.56, computed thus:

Claimed Excise Tax Overpayment			₱ 94,494,801.96
Less:	Prescribed claim		
	January 11 to 31, 2001	₱ 2,514,508.92	
	February 2001	3,889,761.48	6,404,270.40
Refundable Excise Tax Overpayment			₱ 88,090,531.56[22]

Hence, the CTA First Division decreed:

IN VIEW OF ALL THE FOREGOING, [SMC's] claim is hereby **GRANTED** but in a reduced amount of ₱88,090,531.56. Accordingly, [the CIR] is **ORDERED TO REFUND or ISSUE A TAX CREDIT**

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[19] *Id.*

[20] The CTA First Division stated February 2002 in its Decision, which was an apparent typographical error as it would be more logical that the date be February 2001.

[21] *Rollo* (G.R. No. 180910), p. 227.

[22] *Id.*

CERTIFICATE in favor of [SMC] in the amount of ₱88,090,531.56 representing erroneously paid excise taxes for the period March 1, 2001 to December 31, 2002.[23]

The CIR filed a Motion for Reconsideration.[24] SMC also filed a Motion for Partial Reconsideration[25] questioning the denial of its claim for tax refund or credit of excess excise tax payment from January 11 to February 28, 2001 on the ground of prescription, arguing that under the Advance Payment or Deposit scheme authorized by Section 11.1(2)(b) of RR No. 2-97,[26] the filing of the returns and supporting documents may be submitted even a week after the actual removals.

However, in a Resolution[27] date June 6, 2006, the CTA First Division denied the motions for reconsideration of both parties. While it agreed with the assertion of SMC that "the due date of tax payment is not always the reckoning point for purposes

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[23] *Id.* at 228.

[24] Records, pp. 416-441.

[25] *Id.* at 442-449.

[26] Section 11.1(2)(b) of RR No. 2-97, which governs excise taxation on distilled spirits, wines, and fermented liquors, provides:

> SECTION 11. *Time, Manner and Place of Payment.*
> 11.1 *For Locally produced Alcohol Products.*
> x x x x x x x x x
> 2) *PAYMENT OF SPECIFIC TAX*
> x x x x x x x x x
> b) *Advance Payment or Deposit* – Every person liable to pay specific tax who is authorized to avail of the advance payment scheme may be allowed to effect removals of exciseable articles from his place of production without prior filing of the prescribed excise tax return and supporting attachments provided he has sufficient balance of deposits with the BIR to cover full payment of the excise tax due on said removals. The prescribed excise tax return and all attachments may be filed with a duly accredited bank or duly authorized collection agents not later than the first working day of the calendar week immediately after the week of actual removals. Payment of excise tax deposits shall be made by filing in triplicate a Payment Form (BIR Form No. 0605).

[27] *Rollo* (G.R. No. 180910), pp. 238-241.

of prescription[,]"[28] the CTA First Division noted that SMC did not present its excise tax returns for January 1, 2001 to February 28, 2001 to prove the dates when they were actually filed. Thus, the CTA First Division had to reckon the prescriptive period from the due date of payment of the excise tax which was before the removal of the subject products from the place of production. The CTA First Division likewise found that even though Annex 1 of Exhibit AA[29] of SMC showed a detailed schedule of its advance excise tax deposits from January 1, 2001 to December 31, 2002, the actual payments of excise tax for the months of January and February 2001 could not be ascertained from the said schedule. It added that "[n]either an apportionment of the excise tax deposits made by [SMC] for February 2001 is proper for determining how much of the total claimed excise tax payment of ₱3,889,761.48 [pertained] to removals prior to February 24, 2001."[30]

The CIR[31] and SMC[32] filed their respective Petitions for Review before the CTA *En Banc*.

The Ruling of the CTA En Banc

The CTA *En Banc*, in its assailed September 25, 2007 Decision,[33] denied the Petitions of both the CIR and SMC for lack of merit. The CTA *En Banc* affirmed the ruling of the CTA First Division that the claim of SMC for overpayment made on January 11 to 31, 2001 and February 1 to 23, 2001 was already barred by prescription based on Section 229 and

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[28] *Id.* at 240.

[29] Exhibit "AA", Report on the Result of the Procedures Performed on the Verification of the Documents in Support of the Claim for Refund/Tax Credit Certificate (TCC) of San Miguel Corporation for the Over-remitted Excise Tax on the Removal of Red Horse Beer Brand.

[30] *Rollo* (G.R. No. 180910), p. 240.

[31] *Id.* at 306-335.

[32] *Id.* at 368-391.

[33] *Id.* at 49-74.

Section 130(A)(2) of the Tax Reform Act of 1997. Since SMC failed to present proof of the exact amount it paid for the period February 1 to 23, 2001, the tribunal has no basis on how to apportion the amount of the excise tax payment corresponding to said period *vis-a-vis* the total amount of excise tax paid for February 2001, especially when SMC only presented monthly removal reports. Resultantly, the CTA *En Banc* affirmed the ruling of the CTA First Division declaring the full amount of SMC's claim for the month of February 2001 as time-barred.

The CTA *En Banc* also held that although the principle of *solutio indebiti* under Articles 2142 and 2143 of the New Civil Code applies even to the Government, nevertheless, the applicable prescriptive period is not the six (6) years provided under the new Civil Code, but the two (2) years prescribed by Section 229 of the Tax Reform Act of 1997, the latter being a special law which prevails over the New Civil Code, which is a general law.

Moreover, the CTA *En Banc* affirmed the ruling of the CTA First Division that RR No. 17-99 is invalid as Section 1 thereof increases the tax rate fixed by RA 8240, which is already beyond the authority of the BIR to issue interpretative rules; and that SMC is entitled to a refund of the overpaid excise taxes which have not yet prescribed.

Once more, the CIR filed a Motion for Reconsideration[34] while SMC filed a Motion for Partial Reconsideration[35] of the foregoing judgment which were both denied by the CTA *En Banc* in its assailed November 26, 2007 Resolution.[36]

Hence, the CIR filed a Petition for Review (on *Certiorari*)[37] before the Court, docketed as G.R. No. 180740, raising the following issues:

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[34] *Id.* at 435-445.

[35] *Id.* at 291-305.

[36] *Id.* at 75-81.

[37] *Rollo* (G.R. No. 180740), pp. 16-51.

I

WHETHER OR NOT THE CTA *EN BANC* CORRECTLY CONSTRUED AND APPLIED THE PROVISO IN SECTION 1 OF REVENUE REGULATIONS 17-99 WHEN IT RULED THAT IT IS ILLEGAL AND CONTRARY TO SECTION 143 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997.

II

WHETHER OR NOT THE CTA *EN BANC* CORRECTLY GRANTED [SMC'S] APPLICATION FOR REFUND OF THE AMOUNT OF ₱88,090,531.56 REPRESENTING EXCESS OF THE EXCISE TAX PAYMENTS MADE FOR THE PERIOD OF MARCH 1, 2001 TO DECEMBER 31, 2002.[38]

SMC similarly filed its Petition or Review (on *Certiorari*)[39] before the Court, docketed as G.R. No. 180910, assigning several errors on the part of the CTA *En Banc*, *viz.*:

A

The CTA *En Banc* committed an error of law in not applying the six-year prescriptive period under the principle of *solutio indebiti*.

B

The CTA *En Banc* committed an error of law in finding that prescription has set in under Section 229, Tax Code, considering that petitioner paid excise taxes under the Advance Payment or Deposit Scheme.

C

The CTA *En Banc* committed an error of law in failing to consider that prescription is not jurisdictional and may be suspended based on equity considerations.[40]

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[38] *Id*. at 31.

[39] *Rollo* (G.R. No. 180910), pp. 16-48.

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

These two Petitions were consolidated as both involved the same parties and subject matter, and raised interrelated issues.[41]

The fundamental issue for resolution is whether or not SMC is entitled to the full amount of its claim for tax refund/credit of excess excise taxes paid from January 11, 2001 to December 31, 2002.

The Ruling of the Court

The Court denies both Petitions for lack of merit.

It is already settled that the qualifying provision under Section 1 of RR No. 17-99 that the new specific tax rate for the taxable products shall not be lower than the excise tax paid prior to January 1, 2000 was an unauthorized administrative legislation and was violative of the provisions of the Tax Reform Act of 1997.

Commissioner of Internal Revenue v. Fortune Tobacco Corporation[42] (*Fortune Tobacco*) already addressed and settled the issue of the validity of RR No. 17-99.

Section 1 of RR No. 17-99 imposed a twelve percent (12%) increase on specific tax rates on distilled spirits, wines, fermented liquors, and cigars and cigarettes packed by machine pursuant to RA 8240, with the qualification "that the new specific tax rate for any existing brand of cigars, cigarettes packed by machine, distilled spirits, wines and fermented liquors shall not be lower than the excise tax that is actually being paid prior to January 1, 2000." The Court, in *Fortune Tobacco*,

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[41] *Rollo* (G.R. No. 180740), pp. 326-329.

[42] 581 Phil. 146, 160-166 (2008).

declared such qualification in Section 1 of RR No. 17-99 as "unauthorized administrative legislation,"[43] reasoning as follows:

> Parenthetically, Section 145 states that during the transition period, *i.e.*, within the next three (3) years from the effectivity of the Tax Code, the excise tax from any brand of cigarettes shall not be lower than the tax due from each brand on 1 October 1996. This qualification, however, is conspicuously absent as regards the 12% increase which is to be applied on cigars and cigarettes packed by machine, among others, effective on 1 January 2000. Clearly and unmistakably, **Section 145 mandates a new rate of excise tax for cigarettes packed by machine due to the 12% increase effective on 1 January 2000 without regard to whether the revenue collection starting from this period may turn out to be lower than that collected prior to this date**.
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> By adding **the qualification that the tax due after the 12% increase becomes effective shall not be lower than the tax actually paid prior to 1 January 2000**, Revenue Regulation No. 17-99 effectively imposes a tax which is the higher amount between the *ad valorem* tax being paid at the end of the three (3)-year transition period and the specific tax under paragraph C, sub-paragraph[s] (1)-(4), as increased by 12% – a situation **not supported by the plain wording of Section 145 of the Tax Code**.
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> This is not the first time that national revenue officials had ventured [into] the area of **unauthorized administrative legislation**.[44] (Emphases supplied.)

Section 143 of the Tax Reform Act of 1997 on fermented liquor,[45] just like Section 145 of the same Act on cigars and cigarettes, provides that the specific tax rates on the taxable

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[43] *Id.* at 161.

[44] *Id.*

[45] Section 143. *Fermented Liquor*.– There shall be levied, assessed and collected an excise tax on beer, lager beer, ale, porter and other fermented liquors except *tuba, basi, tapuy* and similar domestic fermented liquors in accordance with the following schedule:

(a) If the net retail price (excluding the excise tax and value-added tax) per liter of volume capacity is less than Fourteen pesos and fifty centavos (₱14.50), the tax shall be Six pesos and fifteen centavos (₱6.15) per liter;

product shall be increased by twelve percent (12%) on January 1, 2000; and that the excise tax from any brand of the taxable product within the next three years of effectivity of RA 8240 shall not be lower than the tax due from each brand on October 1, 1996. As SMC correctly contended, the Decision in *Fortune Tobacco* applies to the present case, and the disputed provision of RR No. 17-99 – imposing the added qualification that the new specific tax rate for any existing brand of the taxable product shall not be lower than the excise tax that is actually being paid prior to January 1, 2000 – is similarly not supported by Section 143 of the Tax Reform Act of 1997.

In any case, the Court had already settled in *Commissioner of Internal Revenue v. San Miguel Corporation*,[46] which involved the same parties herein and the similar claim for refund of SMC for excess excise tax payments on its Red Horse beer product paid from May 22 to December 31, 2004, that:

(b) If the net retail price (excluding the excise tax and the value-added tax) x x x per liter of volume capacity is Fourteen pesos and fifty centavos (₱14.50) up to Twenty-two pesos (₱22.00), the tax shall be Nine pesos and fifteen centavos (₱9.15) per liter;

(c) If the net retail price (excluding the excise tax and the value-added tax) per liter of volume capacity is more than Twenty-two pesos (₱22.00), the tax shall be Twelve pesos and fifteen centavos (₱12.15) per liter.

Variants of existing brands which are introduced in the domestic market after the effectivity of Republic Act No. 8240 shall be taxed under the highest classification of any variant of that brand.

Fermented liquor which are brewed and sold at micro-breweries or small establishments such as pubs and restaurants shall be subject to the rate in paragraph (c) hereof.

The excise tax from any brand of fermented liquor within the next three (3) years from the effectivity of Republic Act No. 8240 shall not be lower than the tax which was due from each brand on October 1, 1996.

The rates of excise tax on fermented liquor under paragraphs (a), (b) and (c) hereof shall be increased by twelve percent (12%) on January 1, 2000.

New brands shall be classified according to their current net retail price.

[46] 677 Phil. 219, 227-228 (2011).

Section 143 of the Tax Reform Act of 1997 is clear and unambiguous. It provides for two periods: the first is the 3-year transition period beginning January 1, 1997, the date when R.A. No. 8240 took effect, until December 31, 1999; and the second is the period thereafter. During the 3-year transition period, Section 143 provides that "the excise tax from any brand of fermented liquor ... shall not be lower than the tax which was due from each brand on October 1, 1996." After the transitory period, Section 143 provides that the excise tax rate shall be the figures provided under paragraphs (a), (b) and (c) of Section 143 but increased by 12%, without regard to whether such rate is lower or higher than the tax rate that is actually being paid prior to January 1, 200 and therefore, without regard to whether the revenue collection stating January 1, 2000 may turn out to be lower than that collected prior to said date. Revenue Regulations No. 17-99, however, **created a new tax rate** when it added in the last paragraph of Section 1 thereof, the qualification that the tax due after the 12% increase becomes effective "shall not be lower than the tax actually paid prior to January 1, 2000." As there is nothing in Section 143 of the Tax Reform Act of 1997 which clothes the BIR with the power or authority to rule that the new specific tax rate should not be lower than the excise tax that is actually being paid prior to January 1, 2000, **such interpretation is clearly an invalid exercise of the power of the Secretary of Finance to interpret tax laws and to promulgate rules and regulations necessary for the effective enforcement of the Tax Reform Act of 1997. Said qualification must, perforce, be struck down as invalid and of no effect**.

It bears reiterating that tax burdens are not to be imposed, nor presumed to be imposed beyond what the statute expressly and clearly imports, tax statutes being construed *strictissimi juris* against the government. **In case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails as said rule or regulation cannot go beyond the terms and provisions of the basic law.** It must be stressed that the objective of issuing BIR Revenue Regulations is to establish parameters or guidelines within which our tax laws should be implemented, and not to amend or modify its substantive meaning and import. (Emphases supplied, citations omitted)

Irrefragably, SMC is entitled to its claim for the refund or credit of its excess excise tax payments collected by the BIR on the basis of the invalid provision under Section 1 of RR No. 17-99.

Now the next issue for determination is the amount to be refunded or credited to SMC.

The claim for refund/credit of excess excise tax payments of SMC from January 11 to February 28, 2001 is disallowed on the grounds of prescription and insufficient evidence.

The tax credit or refund of erroneously or illegally collected taxes by the BIR is governed by the following pertinent provisions in the Tax Reform Act of 1997:[47]

Section 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes*. — The Commissioner may —

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(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty:** *Provided, however*, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

x x x x x x x x x

Section 229. *Recovery of Tax Erroneously or Illegally Collected*. — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or

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[47] Presidential Decree No. 1158, as amended, up to Republic Act No. 9504, An Act Amending Sections 22, 24, 34, 35, 51, and 79 of Republic Act No. 8424, as Amended, Otherwise known as the National Internal Revenue Code of 1997, approved on June 17, 2008.

in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, **no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment:** *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Emphases supplied.)

The aforequoted provisions are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with the CIR before filing its judicial claim with the courts of law. Both claims must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is **mandatory and jurisdictional**, and thus the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time.[48] It is worthy to stress that as for the judicial claim, tax law even explicitly provides that it be filed within two (2) years from payment of the tax "regardless of any supervening cause that may arise after payment."[49]

For excise tax on domestic products in general, the return is filed and the excise tax is paid by the manufacturer or producer before removal of the products from the place of production.[50] Hence, the date of payment of excise tax on domestic products depends on the date of actual removal of the taxable domestic products from the place of production.

SMC filed its administrative claim on January 10, 2003 through a letter to the BIR, and its judicial claim through a Petition for Review filed with the CTA First Division on February 24, 2003. Counting back from February 24, 2003, the CTA

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[48] *Commissioner of Internal Revenue v. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative*, 802 Phil. 636, 645 (2016).

[49] Tax Reform Act of 1997, Section 229.

[50] Tax Reform Act of 1997, Section 120(A)(2).

First Division determined that the reckoning date for the two (2)-year prescriptive period for this particular judicial claim of SMC was February 24,2001 and accordingly declared that the claim of SMC for excess excise tax paid prior to said date had already prescribed. This conclusion of the CTA First Division, as affirmed by the CTA *En Banc*, is in full accord with the provisions of the Tax Reform Act of 1997 and so the Court will not disturb the same.

SMC posits, however, that the principle of *solutio indebiti* applies to the Government and that under Article 1145 of the Civil Code, actions upon a quasi-contract must be filed within six (6) years.

The argument of SMC is without merit.

At the outset, the Court notes that none of the cases[51] invoked by SMC in its Petition actually involved Section 229 of the Tax Reform Act of 1997 *vis-a-vis* Article 1145 of the Civil Code.

It is true that in *Fortune Tobacco*, the Court held that the principle of *solutio indebiti* applies to the Government in matters of tax refund or credit of erroneously paid taxes and penalties:

> Finally, the Commissioner's contention that a tax refund partakes the nature of a tax exemption does not apply to the tax refund to which Fortune Tobacco is entitled. There is parity between tax refund and tax exemption only when the former is based either on a tax exemption statute or a tax refund statute. Obviously, that is not the situation here. Quite the contrary, Fortune Tobacco's claim for refund is premised on its erroneous payment of the tax, or better still the government's exaction in the absence of a law.
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[51] *Commissioner of Customs v. Philippine Phosphate Fertilizer Corporation*, 481 Phil. 31 (2004); *Commissioner of Internal Revenue v. Ilagan Electric & Ice Plant, Inc.*, 140 Phil. 62 (1969); *Guagua Electric Light Plant Co., Inc. v. Collector of Internal Revenue*, 126 Phil. 85 (1967); *Gonzalo Puyat & Sons, Inc. v. City of Manila*, 117 Phil. 985 (1963); *Belman Compañia Incorporada v. Central Bank of the Philippines*, 108 Phil. 478 (1960).

A claim for tax refund may be based on statutes granting tax exemption or tax refund. In such case, the rule of strict interpretation against the taxpayer is applicable as the claim for refund partakes of the nature of an exemption, a legislative grace, which cannot be allowed unless granted in the most explicit and categorical language. The taxpayer must show that the legislature intended to exempt him from the tax by words too plain to be mistaken.

Tax refunds (or tax credits), on the other hand, are not founded principally on legislative grace but on the legal principle which underlies all quasi-contracts abhorring a person's unjust enrichment at the expense of another. The dynamic of erroneous payment of tax fits to a tee the prototypic quasi-contract, *solutio indebiti*, which covers not only mistake in fact but also mistake in law.

The Government is not exempt from the application of *solutio indebiti*. Indeed, the taxpayer expects fair dealing from the Government, and the latter has the duty to refund without any unreasonable delay what it has erroneously collected. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, it must hold itself against the same standard in refunding excess (or erroneous) payments of such taxes. It should not unjustly enrich itself at the expense of taxpayers. And so, given its essence, a claim for tax refund necessitates only preponderance of evidence for its approbation like in any other ordinary civil case.[52] (Citations omitted)

Notably, the above discussion was limited to the issue of whether a tax refund partakes the nature of a tax exemption which shall be interpreted or applied strictly against the taxpayer. It did not address the issue of the applicable prescriptive period for a claim for tax refund/credit of erroneously paid taxes. Additionally, in *Fortune Tobacco*, the Court explicitly stated that the Tax Code itself had already recognized the principle of *solutio indebiti*, thus:

Under the Tax Code itself, apparently in recognition of the pervasive quasi-contract principle, a claim for tax refund may be based on the following: (a) erroneously or illegally assessed or collected internal revenue taxes; (b) penalties imposed without authority; and (c) any

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[52] *Commissioner of Internal Revenue v. Fortune Tobacco Corp., supra* note 42 at 166-167.

sum alleged to have been excessive or in any manner wrongfully collected.[53] (Citation omitted)

Meanwhile, in *Commissioner of Internal Revenue v. Manila Electric Co. (Meralco)*,[54] the Court squarely addressed the issue of which prescriptive period shall apply to a claim for tax refund of erroneously paid/remitted tax on interest income, whether the two (2)-year prescriptive period under Section 229 of the Tax Reform Act of 1997 or the six (6)-year prescriptive period for actions based on *solutio indebiti* under Article 1145 of the Civil Code. The Court therein applied the two (2)-year prescriptive period under the Tax Reform Act of 1997 which is mandatory regardless of any supervening cause that may arise after payment and categorically declared that *solutio indebiti* was inapplicable, ratiocinating as follows:

> In this regard, petitioner is misguided when it relied upon the six (6)-year prescriptive period for initiating an action on the ground of quasi-contract or *solutio indebiti* under Article 1145 of the New Civil Code. There is *solutio indebiti* where: (1) 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. Here, there is a binding relation between petitioner as the taxing authority in this jurisdiction and respondent MERALCO which is bound under the law to act as a withholding agent of NORD/LB Singapore Branch, the taxpayer. Hence, the **first element of *solutio indebiti* is lacking. Moreover, such legal precept is inapplicable to the present case since the Tax Code, a special law, explicitly provides for a mandatory period for claiming a refund for taxes erroneously paid.**[55] (Emphasis supplied, citation omitted).

Citing *Meralco*, the Court again, in *Metropolitan Bank and Trust Company v. Commissioner of Internal Revenue*[56]

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[53] *Id.* at 168.

[54] 735 Phil. 547 (2014).

[55] *Id.* at 559-560.

[56] 808 Phil. 575, 584-585 (2017).

(*Metrobank*), rejected the application to tax refund cases of the principle of *solutio indebiti* as well as the six (6)-year prescriptive period for claims based on quasi-contract. It reiterated that both administrative and judicial claims for tax refund or credit should be filed within the two (2)-year prescriptive period fixed under Section 229 of the Tax Reform Act of 1997.

Although the *Meralco* and *Metrobank* cases involved erroneously paid taxes on interest income, these may still constitute jurisprudential precedents for the present case concerning excise tax, as both types of national revenue taxes are imposed and collected by virtue of the Tax Reform Act of 1997. Given that the excise taxes on the *Red Horse* beer product of SMC is imposed and collected under the Tax Reform Act of 1997, then its claim for refund or credit of said taxes illegally or erroneously collected shall logically be governed by the same law, including the applicable prescriptive period for such claim. There is no need to refer to the Civil Code provisions on quasi-contract. As already pointed out by the Court in *Meralco*, the Tax Reform Act of 1997 is a special law, and it is a basic tenet in statutory construction that between a general law and a special law, the special law prevails. *Generalia specialibus non derogant*.[57]

The assertion of SMC – that nothing in Section 229 of the Tax Reform Act of 1997 supports the contention that payments of taxes imposed under an invalid revenue law or regulation falls within its scope[58] – is specious and constitutes a very literal and superficial understanding of said provision. Necessarily, the declaration by this Court in *Fortune Tobacco* that RR No. 17-99 is invalid and of no effect rendered the collection of taxes thereunder baseless and, thus, illegal. This gives the

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[57] *National Power Corporation v. Hon. Presiding Judge, Regional Trial Court, 10th Judicial Region, Branch XXV, Cagayan De Oro City*, 268 Phil. 507, 513 (1990).

[58] *Rollo* (G.R. No. 180910), p. 30.

taxpayer the right to request the return of such illegally collected taxes under Section 229 of the Tax Reform Act of 1997, provided it does so within the prescriptive period as prescribed in the same provision.

SMC's argument that its claims should be excepted from the two (2)-year prescriptive period based on equity considerations is untenable; the Court cannot resort to equity when there is clear statutory law governing the matter. Relevant herein are the following pronouncements of the Court in *Republic v. Provincial Government of Palawan*:[59]

> The Court finds the submission untenable. Our courts are basically courts of law, not courts of equity. Furthermore, for all its conceded merits, equity is available only in the absence of law and not as its replacement. As explained in the old case of *Tupas v. Court of Appeals*:
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> > Equity is described as justice outside legality, which simply means that it cannot supplant although it may, as often happens, supplement the law. We said in an earlier case, and we repeat it now, that all abstract arguments based only on equity should yield to positive rules, which [preempt] and prevail over such persuasions. Emotional appeals for justice, while they may wring the heart of the Court, cannot justify disregard of the mandate of the law as long as it remains in force. The applicable maxim, which goes back to the ancient days of the Roman jurists – and is now still reverently observed – is "*aequetas nunquam contravenit legis*." (Citations omitted)

SMC cites *Commissioner of Internal Revenue v. Philippine National Bank* (*PNB*),[60] but the ruling of the Court in said case was based on unique factual considerations, to wit: (a) respondent PNB made advance income tax payment in 1981 in the amount of ₱180,000,000.00 in response to then President Corazon C. Aquino's call to generate more revenues for national development; (b) after applying said advance income tax payment

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[59] G.R. Nos. 170867 and 185941, December 4, 2018, citing *Tupas v. Court of Appeals*, 271 Phil. 628 (1991).

[60] 510 Phil. 798, 808-816 (2005).

against its tax liabilities at the end of 1991, PNB still had a credit balance of ₱73,298,892.60; (c) PNB carried-over its credit balance to the years 1992 to 1996 but was unable to apply the same as it incurred losses and was in a net loss position for the said four years; and (d) PNB applied for tax credit certificate for the ₱73,298,892.60 only in 1997. It is in consideration of the foregoing special circumstances that the Court, in *PNB*, suspended the application of the two (2)-year prescriptive period for reasons of equity and fairness and still granted the application of PNB for tax credit certificate in 1997. It further ruled therein that in the strict legal viewpoint, the claim for tax credit of PNB did not proceed from, or was a consequence of overpayment of tax erroneously or illegally collected in 1991. Clearly, the factual background in *PNB* is far different from that in the case at bar and the ruling in the former could not be simply applied or extended to the latter by analogy.

Finally, SMC avers that the CTA First Division and the CTA *En Banc* erred in (a) failing to consider that SMC availed itself of the Advance Payment Scheme under RR No. 2-97 for its excise taxes which allows it to remove the products from the place of production and file the prescribed returns and supporting attachments even a week after the actual removal, so that the date of removal may not always be the reckoning point for purposes of prescription; and (b) denying the full amount of its claim for tax refund or credit for the month of February when the CIR presented sufficient evidence to guide the tax court in making the necessary apportionment or allocation of the amounts that had already prescribed.

This contention fails to persuade.

"It is a basic rule of evidence that each party must prove its affirmative allegation."[61] The burden rests upon SMC to present evidence that its prescribed returns for the excise taxes on its Red Horse beer product for February 2001 were actually filed

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[61] *Commissioner of Internal Revenue v. Traders Royal Bank*, 756 Phil. 175, 197 (2015).

after the removal of the said products from the place of production or later than February 24, 2001. SMC insists that the needed information could be deduced from the evidence it submitted before the CTA. However, as the CTA First Division observed:

> [S]ince the removal reports presented by [SMC] were on a monthly and not on a daily basis, this Court cannot ascertain which portion of the entire claim for the month of February 200[1] in the amount of [PhP] 3,889,761.48 corresponds to the payment made by [SMC] on February 24, 2001 and falls within the two-year prescriptive period. x x x[62]

Interestingly, even in its Petition before this Court, SMC failed to present a definitive computation of the excise taxes on its Red Horse beer product which it had paid from February 24 to 28, 2001 and which would still have been within the two (2)-year prescriptive period; and to cite the corresponding evidence on record in support thereof. Instead, it unduly placed the burden of apportionment of its February 2001 claim upon the CTA by simply and conveniently asserting that the tax court "could have determined, based on the evidence presented, the portion which had [already] prescribed."[63]

Moreover, the Court had previously ruled that "the sufficiency of a claimant's evidence and the determination of the amount of refund, as called for in this case, are *questions of fact*, which are for the judicious determination by the CTA of the evidence on record."[64] It is already an established rule in this jurisdiction that only questions of law may be raised under Rule 45 of the Rules of Court. It is not this Court's function to analyze or weigh all over again the evidence already considered in the proceedings below, as its jurisdiction under Section 1, Rule 45 is limited to reviewing only errors of law that may have been committed by the lower court. The resolution of factual issues

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[62] *Rollo* (G.R. No. 180910), p. 352.

[63] *Id*. at 34.

[64] *Fortune Tobacco Corp. v. Commissioner of Internal Revenue*, 762 Phil. 450, 460 (2015).

is the function of the lower courts, whose findings on these matters are received with respect. The rule finds greater significance with respect to the findings of specialized courts such as the CTA because of the very nature of its functions, which is dedicated exclusively to the resolution of tax problems and has accordingly developed an expertise on the subject, and consequently, its conclusions are not lightly set aside unless there has been an abuse or improvident exercise of authority,[65] circumstances which this Court does not find extant herein.

WHEREFORE, the Petitions are **DENIED**. The assailed September 25, 2007 Decision and November 26, 2007 Resolution of the Court of Tax Appeals *En Banc* are hereby **AFFIRMED**.

SO ORDERED.

Perlas-Bernabe (*Chairperson*), *Reyes, A. Jr.,* and *Zalameda*,[*] *JJ.*, concur.

Inting, J., on official leave.

SECOND DIVISION

[G.R. No. 243615. November 11, 2019]

EDWIN GEMENTIZA MATABILAS, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULE 45 PETITION, NOT THE PROPER REMEDY IN CASE AT BAR; IN CRIMINAL CASES

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[65] *Id.* at 459.

[*] Designated additional member per Special Order No. 2727 dated October 25, 2019.

WHEN THE PENALTY IMPOSED IS LIFE IMPRISONMENT, THE APPEAL SHALL BE MADE BY MERE NOTICE OF APPEAL; THE COURT TREATS THIS PETITION AS AN ORDINARY APPEAL IN THE INTEREST OF SUBSTANTIAL JUSTICE. — [T]he Court observes that petitioner made a procedural lapse in elevating the case before the Court *via* a petition for review on *certiorari* under Rule 45 of the Rules of Court (Rules). While, as a general rule, appeals in criminal cases are brought to the Court by filing such kind of petition, Section 13 (c), Rule 124 of the Rules provides that if the penalty imposed is life imprisonment, the appeal shall be made by a mere notice of appeal. Nonetheless, in the interest of substantial justice, the Court will treat this petition as an ordinary appeal in order to finally resolve the substantive issues at hand.

2. **ID.; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT ACCORDED GREAT RESPECT; INCONSISTENCIES IN THE TESTIMONY OF A WITNESS GENERALLY DOES NOT IMPAIR HIS CREDIBILITY. —** Well-entrenched is the rule that findings of facts of the trial court, including its calibration of the testimonies of witnesses, its assessment of their credibility, and attribution of probative weight, are entitled to great respect, if not conclusive effect, absent any showing that it had overlooked circumstances that would have the final outcome of the case. Moreover, this Court has repeatedly held that inconsistencies in the testimonies of witnesses do not impair their credibility provided there is consistency as to the principal occurrence of the crime as well as the identity of the accused.

3. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); CHAIN OF CUSTODY RULE; IN DANGEROUS DRUGS CASES, THE IDENTITY OF THE DRUGS, WHICH IS THE *CORPUS DELICTI*, MUST BE ESTABLISHED; EACH LINK IN THE CHAIN OF CUSTODY MUST BE ACCOUNTED FOR BY THE PROSECUTION FROM THE MOMENT OF SEIZURE UP TO PRESENTATION IN COURT AS EVIDENCE. —** In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus*

delicti of the crime. Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal. To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that "marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team." Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in the evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.

4. ID.; ID.; ID.; PROCEDURAL REQUIREMENTS IN THE INVENTORY AND PHOTOGRAPHY OF THE SEIZED DRUGS AS WELL AS THE REQUIRED WITNESSES, REITERATED.— The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: *(a)* if **prior** to the amendment of RA 9165 by RA 10640, a representative from the media *AND* the DOJ, and any elected public official; or *(b)* if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service *OR* the media. The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."

5. ID.; ID.; ID.; FOR NON-COMPLIANCE WITH THE RULE TO BE ACCEPTABLE, THE PROSECUTION MUST PROVE THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED DRUGS WERE PROPERLY PRESERVED AND THE JUSTIFIABLE GROUND WAS SHOWN. — [T]he Court has recognized that due to varying field conditions, strict compliance with the chain of custody

procedure may not always be possible. As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and valid, provided that the prosecution satisfactorily proves that: *(a)* there is a justifiable ground for non-compliance; and *(b)* the integrity and evidentiary value of the seized items are properly preserved. The foregoing is based on the saving clause found in Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640. It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses, and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.

6. ID.; ID.; ID.; FAILURE TO COMPLY WITH WITNESS REQUIREMENT MAY ALSO BE EXCUSED PROVIDED THAT THE PROSECUTION PROVED THAT THE APPREHENDING OFFICERS EXERTED GENUINE EFFORTS TO SECURE THEIR PRESENCE; WHILE EARNEST EFFORT IS EXAMINED ON A CASE-TO-CASE BASIS, MERE STATEMENTS OF UNAVAILABILITY WITHOUT SERIOUS ATTEMPTS TO CONTACT THE REQUIRED WITNESSES ARE UNACCEPTABLE. — Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances. Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.

7. ID.; ID.; ID.; THE UNJUSTIFIED ABSENCE OF THE DOJ REPRESENTATIVE IN THIS CASE LEADS TO A CONCLUSION THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE DRUGS WERE COMPROMISED, WHICH CONSEQUENTLY WARRANTS ACCUSED'S ACQUITTAL. — [I]t is incumbent upon the prosecution to account for the absence of a required witness by presenting a justifiable reason therefor or, at the very least, by showing that genuine and sufficient efforts were exerted by the apprehending officers to secure his/her presence. Here, the absence of a DOJ representative during the conduct of inventory and photography of the seized drugs was **not acknowledged by the prosecution, much less justified**. In view of such unjustified deviation from the chain of custody rule, the Court is therefore constrained to conclude that the integrity and evidentiary value of the item purportedly seized from petitioner was compromised, which consequently warrants his acquittal.

APPEARANCES OF COUNSEL

Europa, Dacanay, Cubelo, Europa & Flores Law Office for petitioner.

The Solicitor General for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated March 22, 2018 and the Resolution[3] dated October 17, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01488-MIN, which affirmed the Judgment[4] dated

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[1] *Rollo*, pp. 9-35.

[2] *Id*. at 39-63. Penned by Associate Justice Perpetua T. Atal-Paño with Associate Justices Romulo V. Borja and Walter S. Ong, concurring.

[3] *Id*. at 78-79. Penned by Associate Justice Perpetua T. Atal-Paño with Associate Justices Edgardo A. Camello and Walter S. Ong, concurring.

[4] Records, pp. 108-123. Penned by Presiding Judge Arvin Sadiri B. Balagot.

November 12, 2014 of the Regional Trial Court of Kidapawan City, Branch 17 (RTC) in Criminal Case No. 1147-2012 finding petitioner Edwin Gementiza Matabilas (petitioner) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,[5] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Information[6] filed before the RTC accusing petitioner of the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165. The prosecution alleged that at around 5:00 in the afternoon of September 6, 2012, acting on a tip received from a confidential informant, several officers of the Kidapawan City Police Station successfully conducted a buy-bust operation against petitioner at the Villanueva Subdivision in Kidapawan City, Cotabato, during which one (1) plastic sachet containing 0.05 gram of white crystalline substance was recovered from him. After the arrest, police officers immediately conducted the requisite marking, inventory,[7] and photography[8] of the seized item in the presence of petitioner himself, as well as Ruel C. Anima (Anima), a *kagawad* of Barangay Poblacion, Kidapawan City, and Romnick Cabaron (Cabaron), a member of radio station DXND. Thereafter, the seized item was brought to the Philippine National Police Provincial Crime Laboratory of the Province of Cotabato,[9] where after examination, its contents tested

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[5] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[6] Dated September 7, 2012. Records, p. 2.

[7] See Inventory of Evidence/Property dated September 6, 2012; *id*. at 11.

[8] See *id*. at 14.

[9] See Request for Laboratory Examination dated September 6, 2012; *id*. at 8.

positive[10] for methamphetamine hydrochloride or *shabu*, a dangerous drug.[11]

In defense, petitioner denied the charge against him, claiming that, at the time of the alleged incident, he was at Kidapawan City looking for potential customers of coconuts when two (2) police officers suddenly approached, conducted a futile search on his person and motorcycle, then forcibly brought him to the store of a certain Clifton Cris Simene, where they falsely made it appear that a ₱500.00 bill and a sachet containing white crystalline substance were recovered from his possession.[12]

In a Judgment[13] dated November 12, 2014, the RTC found petitioner **guilty** beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of life imprisonment and ordered him to pay a fine in the amount of ₱500,000.00.[14] Giving credence to the testimonies of the prosecution witnesses, it held that all the elements of the alleged crime had been duly established, and that there was proper compliance with the chain of custody rule.[15]

Aggrieved, petitioner moved for reconsideration,[16] which was denied in an Order[17] dated September 2, 2015. Undaunted, petitioner elevated the case to the CA via appeal,[18] arguing that the trial court erred in appreciating the testimonies of the prosecution witnesses as they allegedly contained glaring

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[10] See Chemistry Report No. PC-D-158-2012 dated September 6, 2012; *id*. at 9.

[11] See *rollo*, pp. 39-41.

[12] See *id*. at 42.

[13] Records, pp. 108-123.

[14] *Id*. at 122.

[15] *Id*. at 111-121.

[16] See motion for reconsideration dated December 2, 2014; *id*. at 126-141.

[17] *Id*. at 187-189.

[18] See Notice of Appeal dated October 10, 2015; *id*. at 190-191.

inconsistencies which indicate that they had been fabricated, and in failing to give probative weight to the testimonies of the witnesses presented by the defense. Moreover, he asserted that the arresting officers violated the mandatory requirements of the chain of custody rule.[19]

In a Decision[20] dated March 22, 2018, the CA **affirmed** petitioner's conviction.[21] It held that the alleged inconsistencies in the testimonies of the prosecution witnesses merely pertained to trivial matters which did not affect the outcome of the case, and that petitioner failed to prove that the conduct of the buy-bust operation had been fabricated. Further, it found that there was substantial compliance with the chain of custody rule considering that the prosecution was able to establish the whereabouts of the seized drugs, from the time it was seized by the police officers until it was offered as evidence in court.[22]

Undaunted, petitioner moved for reconsideration,[23] which was denied in a Resolution[24] dated October 17, 2018 for lack of merit; hence, this petition.

The Court's Ruling

At the outset, the Court observes that petitioner made a procedural lapse in elevating the case before the Court *via* a petition for review on *certiorari* under Rule 45 of the Rules of Court (Rules). While, as a general rule, appeals in criminal cases are brought to the Court by filing such kind of petition, Section 13 (c), Rule 124 of the Rules provides that if the penalty imposed is life imprisonment, the appeal shall be made by a

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[19] See Appellant's Brief dated April 30, 2016; CA *rollo*, pp. 17-46.

[20] *Rollo*, pp. 39-63.

[21] *Id*. at 62.

[22] *Id*. at 43-62.

[23] See motion for reconsideration dated April 21, 2018; *id*. at 64-76.

[24] *Id*. at 78-79.

mere notice of appeal.[25] Nonetheless, in the interest of substantial justice, the Court will treat this petition as an ordinary appeal in order to finally resolve the substantive issues at hand.

In an attempt to escape conviction, petitioner argues that he should be acquitted for the following reasons: (*a*) there were serious and glaring inconsistencies in the testimonies of the witnesses presented by the prosecution; (*b*) the courts *a quo* erred in failing to appreciate the testimonies of the witnesses offered by the defense; and (*c*) the police officers failed to comply with the mandatory witness requirement under the chain of custody rule, particularly in failing to secure the presence of a representative from the Department of Justice (DOJ) to witness the inventory of the alleged drugs.

Anent petitioner's first and second arguments, the Court finds them untenable. Well-entrenched is the rule that findings of facts of the trial court, including its calibration of the testimonies of witnesses, its assessment of their credibility, and attribution of probative weight, are entitled to great respect, if not conclusive effect, absent any showing that it had overlooked circumstances that would have affected the final outcome of the case.[26] Moreover, this Court has repeatedly held that inconsistencies in the testimonies of witnesses do not impair their credibility provided there is consistency as to the principal occurrence of the crime as well as the identity of the accused.[27]

However, such finding notwithstanding, and as will be explained hereunder, petitioner correctly pointed out that there was an unjustified deviation from the mandatory witness requirement as provided under the chain of custody rule – a specific issue left unaddressed by the courts *a quo*.

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[25] See *Ramos v. People*, 803 Phil. 775, 782 (2017); and *Antone v. People*, G.R. No. 225146, November 20, 2017, 845 SCRA 294, 300-301.

[26] *People v. Fajardo, Jr.*, 541 Phil. 345, 359 (2007), citing *People v. Ocampo*, 530 Phil. 310, 317 (2006); and *People v. Candaza*, 524 Phil. 589, 607 (2006).

[27] See *People v. Gerola*, 813 Phil. 1055, 1064-1066 (2017).

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,[28] it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.[29] Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.[30]

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[31] As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and

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[28] The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment; while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug. (See *People v. Crispo*, G.R. No. 230065, March 14, 2018; *People v. Sanchez*, G.R. No. 231383, March 7, 2018; *People v. Magsano*, G.R. No. 231050, February 28, 2018; *People v. Manansala*, G.R. No. 229092, February 21, 2018; *People v. Miranda*, G.R. No. 229671, January 31, 2018; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015] and *People v. Bio*, 753 Phil. 730,736 [2015]).

[29] See *People v. Crispo*, *id*.; *People v. Sanchez*, *id*.; *People v. Magsano*, *id*.; *People v. Manansala*, *id*.; *People v. Miranda*, *id*.; and *People v. Mamangon*, *id*. See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[30] See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

[31] See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, *supra* note 28; *People v. Sanchez*, *supra* note 28; *People v. Magsano*, *supra* note 28; *People v. Manansala, supra* note 28; *People v. Miranda*, *supra* note 28; and *People v. Mamangon*, *supra* note 28. See also *People v. Viterbo*, *supra* note 29.

confiscation of the same. In this regard, case law recognizes that "marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team."[32] Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.[33]

The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640,[34] a representative from the media *AND* the DOJ, and any elected public official;[35] or (*b*) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service[36] *OR*

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[32] *People v. Mamalumpon*, 767 Phil. 845, 855 (2015), citing *Imson v. People*, 669 Phil. 262, 270-271 (2011). See also *People v. Ocfemia*, 718 Phil. 330, 348 (2013), citing *People v. Resurreccion*, 618 Phil. 520, 532 (2009).

[33] See *People v. Tumulak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

[34] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.'" As the Court noted in *People v. Gutierrez* (see G.R. No. 236304, November 5, 2018), RA 10640 was approved on July 15, 2014. Under Section 5 thereof, it shall "take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation." RA 10640 was published on July 23, 2014 in The Philippine Star (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and Manila Bulletin (Vol. 499, No. 23; World News section, p. 6). Thus, **RA 10640 appears to have become effective on August 7, 2014**.

[35] See Section 21 (1) and (2) Article II of RA 9165 and its IRR.

[36] Which falls under the DOJ. (See Section 1 of Presidential Decree No. 1275, entitled "REORGANIZING THE PROSECUTION STAFF OF THE

the media.[37] The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."[38]

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law."[39] This is because "[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment."[40]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[41] As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is a justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved.[42] The foregoing is based on the saving

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DEPARTMENT OF JUSTICE, REGIONALIZING THE PROSECUTION SERVICE, AND CREATING THE NATIONAL PROSECUTION SERVICE" [April 11, 1978] and Section 3 of RA 10071 entitled "AN ACT STRENGTHENING AND RATIONALIZING THE NATIONAL PROSECUTION SERVICE" otherwise known as the "PROSECUTION SERVICE ACT OF 2010" [lapsed into law on April 8, 2010].)

[37] See Section 21, Article II of RA 9165, as amended by RA 10640.

[38] See *People v. Miranda*, *supra* note 28. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[39] See *People v. Miranda*, *id*. See also *People v. Macapundag,* G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215, citing *People v. Umipang*, *supra* note 30, at 1038.

[40] See *People v. Segundo*, 814 Phil. 697, 722 (2017), citing *People v. Umipang*, *id*.

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

[42] See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

clause found in Section 21 (a),[43] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[44] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[45] and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[46]

Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.[47] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[48] These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust

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[43] Section 21 (a), Article II of the IRR of RA 9165 pertinently states: "***Provided, further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/ team, shall not render void and invalid such seizures of and custody over said items.**"

[44] Section 1 of RA 10640 pertinently states: "***Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.**"

[45] *People v. Almorfe*, *supra* note 42.

[46] *People v. De Guzman*, 630 Phil. 637, 649 (2010).

[47] See *People v. Manansala*, *supra* note 28.

[48] See *People v. Gamboa*, *supra* note 30, citing *People v. Umipang*, *supra* note 30, at 1053.

operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.[49]

Notably, the Court, in *People v. Miranda*,[50] issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that "[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, *albeit* the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."[51]

In this case, there was a deviation from the witness requirement as the conduct of inventory and photography was not witnessed by a representative of the DOJ. This may be easily gleaned from the Inventory of Confiscated Drugs/Seized[52] which only confirms the presence of an elected public official, *i.e.*, Anima, and a media representative, *i.e.*, Cabaron. Such finding is further supported by the testimony of Anima on direct examination, where he mentioned that only he and Cabaron were the civilian witnesses present, to wit:

Direct Examination of Anima

[Prosecutor Mary Christine B. Prudenciado]: Besides you, were there other civilian witnesses?
[Witness Ruel C. Anima]: Romnick Cabaron, ma'am.

Q: Who is Romnick Cabaron?
A: A [reporter] or DXND Radio Station, ma'am.[53]

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[49] See *People v. Crispo*, *supra* note 28.

[50] *Supra* note 28.

[51] See *id*.

[52] Dated September 6, 2012. Records, p. 11.

[53] TSN, December 11, 2012, p. 5.

Likewise, the absence of a DOJ representative is also evident from the respective testimonies of the arresting officers, Police Officer 1 (PO1) Rolando Cabalinan, Jr. (PO1 Cabalinan) and PO1 Armand Bada[54] (PO1 Bada), who both failed to acknowledge and explain such omission, to wit:

Direct Examination of PO1 Cabalinan

[Prosecutor Mary Christine B. Prudenciado]: Below are other signatures; tell the court whose signature is the one next or below your signature?
[PO1 Cabalinan]: The signature of the witnesses and the Brgy. Kagawad, ma'am.

Q: The next signature is whose signature?
A: The signature of the media man Romnick Cabaron, ma'am.

x x x x x x x x x

Q: The next signature is whose?
A: Brgy. Kagawad Ruel Anima, ma'am.

x x x x x x x x x

Q: You summoned these two (2) witnesses and be signatories to the inventory; they were there?
A: They were called, ma'am.[55]

Direct Examination of PO1 Bada

[Prosecutor Mary Christine B. Prudenciado]: After that?
[PO1 Bada]: We went to [Simene] store for proper documentation, ma'am.

Q: What do you mean documentation?
A: By taking pictures of the evidences, ma'am together with radio newscaster Romnick Cabaron and Brgy. Kagawad Ruel Anima, ma'am.[56]

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[54] "Baja" in some parts of the records.

[55] TSN, December 4, 2012, pp. 39-40.

[56] TSN, February 18, 2013, p. 6.

Cross-Examination of PO1 Bada

[Atty. Vicente Andiano]: **During the buy-bust operation you have a representative from the Department of Justice?**
[PO1 Bada]: **I do not know, sir.**

Q: You were there during the planning?
A: Yes, sir.

Q: **But you do not know that there was no representative from the Department of Justice?**
A: **I do not know, sir.**[57]

Notably, it was even admitted by PO1 Bada on cross-examination that police officers could have easily obtained the presence of a DOJ representative since the City Prosecution Office was just near the police station, but they still nonetheless failed to do so, to wit:

Cross-Examination of PO1 Bada

[Atty. Vicente Andiano]: Do you know where the City Prosecution Office [is]?
[PO1 Bada]: Yes, sir.

Q: It's just near the police station?
A: Yes, sir.

Q: If you decided to get a representative from the DOJ it could be easier for you, would you agree with me?
A : Yes, sir.[58]

As earlier stated, it is incumbent upon the prosecution to account for the absence of a required witness by presenting a justifiable reason therefor or, at the very least, by showing that genuine and sufficient efforts were exerted by the apprehending officers to secure his/her presence. Here, the absence of a DOJ representative during the conduct of inventory and photography of the seized drugs was **not acknowledged by the prosecution, much less justified**. In view of such

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[57] TSN, February 18, 2013, p. 14; emphases supplied.

[58] TSN, February 18, 2013, p. 14.

unjustified deviation from the chain of custody rule, the Court is therefore constrained to conclude that the integrity and evidentiary value of the item purportedly seized from petitioner was compromised, which consequently warrants his acquittal.

WHEREFORE, the appeal is **GRANTED**. The Decision dated March 22, 2018 and the Resolution dated October 17, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 01488-MIN are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Edwin Gementiza Matabilas is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

Reyes, A. Jr., Hernando, and *Zalameda,*[*] *JJ.*, concur.

Inting, J., on official leave.

SECOND DIVISION

[G.R. No. 246362. November 11, 2019]

MELANIE GREFALDO *y* DE LEON, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); CHAIN OF CUSTODY RULE; ESSENTIAL IN THE PROSECUTION OF

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[*] Additional Member per Special Order No. 2727 dated October 25, 2019.

DANGEROUS DRUGS CASES TO ESTABLISH THE IDENTITY OF THE DRUGS WITH MORAL CERTAINTY; THE PROSECUTION MUST ACCOUNT FOR EVERY LINK IN THE CHAIN OF CUSTODY OF THE SEIZED DRUGS; EFFECT OF FAILURE TO COMPLY WITH THE REQUIREMENT OF MARKING AND PHOTOGRAPHY AS WELL AS THE PRESENCE OF THE REQUIRED WITNESSES. — In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal. To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that "marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team." Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody. The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: *(a)* if **prior** to the amendment of RA 9165 by RA 10640, a representative from the media *AND* the Department of Justice (DOJ), and any elected public official; or *(b)* if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service *OR* the media. The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."

2. ID.; ID.; ID.; FAILURE OF THE APPREHENDING TEAM TO STRICTLY COMPLY WITH THE RULE WOULD NOT RENDER THE SEIZURE AND CUSTODY OVER THE ITEMS VOID AS LONG AS THE JUSTIFIABLE GROUND FOR NON-COMPLIANCE WAS PROFFERED AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE ITEMS ARE PROPERLY PRESERVED. — As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law." This is because "[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment." Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible. As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: *(a)* there is a justifiable ground for non-compliance; and *(b)* the integrity and evidentiary value of the seized items are properly preserved. The foregoing is based on the saving clause found in Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640. It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses, and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.

3. ID.; ID.; ID.; NON-COMPLIANCE WITH WITNESS REQUIREMENT MAY BE PERMITTED UPON PROOF THAT THE APPREHENDING OFFICERS EXERTED GENUINE EFFORTS TO SECURE THE ATTENDANCE OF SUCH WITNESSES AND THAT FAILURE TO COMPLY WAS REASONABLE UNDER THE CIRCUMSTANCES. — Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted **genuine and sufficient efforts** to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is

for the Court to be convinced that the failure to comply was **reasonable** under the given circumstances. Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.

4. ID.; ID.; ID.; ID.; ACCEPTABLE REASONS FOR THE ABSENCE OF THE REQUIRED WITNESSES, REITERATED. — In *People v. Lim*, the Court explained that the absence of the required witnesses must be justified based on acceptable reasons 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 [and] media representative[s] 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." Likewise, it bears to stress that police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.

5. ID.; ID.; ID.; WHERE THE ABSENCE OF AN ELECTED PUBLIC OFFICIAL WAS LEFT UNACKNOWLEDGED AND THE POLICE OFFICERS FAILED TO EXERT GENUINE AND SUFFICIENT EFFORT TO SECURE THE PRESENCE OF DOJ AND MEDIA REPRESENTATIVES, THE COURT CONCLUDES THAT THE INTEGRITY AND

EVIDENTIARY VALUE OF THE ITEMS HAVE BEEN COMPROMISED, HENCE, ACQUITTAL IS IN ORDER. — In this case, there was a deviation from the witness requirement as the conduct of inventory and photography was not witnessed by any of the three (3) witnesses provided under Section 21, Article II of RA 9165. This may be easily gleaned from the Inventory Report of the seized items which only confirms the presence of PO1 Riñon and PO2 Bogay, which fact was also substantially admitted by the former on cross-examination. As earlier stated, it is incumbent upon the prosecution to account for the absence of the required witnesses by presenting a justifiable reason therefor or, at the very least, by showing that the apprehending officers exerted genuine and sufficient efforts to secure their presence. Markedly, the absence of an elected public official was left **unacknowledged**, much less justified. Meanwhile, to justify the absence of the respective representatives from the DOJ and the media, PO1 Riñon and PO2 Bogay executed a sworn written explanation explaining that they failed to procure their presence due to "lack of material time," x x x [The Court opined that] the police officers **failed to exert genuine and sufficient efforts** to comply with the witness requirement. While the arresting officers discovered petitioner's possession of illegal drugs spontaneously and without prior anticipation, they failed to provide any plausible explanation as to why the constraints of time impaired their ability to secure the proper witnesses within the period allotted under Article 125 of the Revised Penal Code; thus, it cannot be ascertained whether their actions were reasonable under the given circumstances. In fact, contrary to their sworn written explanation, the respective testimonies of PO1 Riñon and PO2 Bogay on cross-examination show that they did not even bother to attempt to contact the proper witnesses and admittedly, had no knowledge of how to do so[.] x x x In view of the foregoing, the Court is impelled to conclude that the integrity and evidentiary value of the items purportedly seized from petitioner — which constitute the *corpus delicti* of the crime charged — have been compromised; hence, petitioner's acquittal is in order.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated June 28, 2018 and the Resolution[3] dated March 28, 2019 of the Court of Appeals (CA) in CA-G.R. CR. No. 39394, which affirmed the Decision[4] dated December 6, 2016 of the Regional Trial Court of Antipolo City, Branch 97 (RTC) in Criminal Case No. 12-44012 finding petitioner Melanie Grefaldo *y* De Leon (petitioner) guilty beyond reasonable doubt of violating Section 11 of Republic Act No. (RA) 9165,[5] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Information[6] filed before the RTC accusing petitioner of the crime of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of RA 9165.

The prosecution alleged that at around 7:30 in the morning of March 22, 2012, Police Officer (PO) 1 Denver Riñon[7] (PO1

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[1] *Rollo*, pp. 11-29.

[2] *Id*. at 31-47. Penned by Associate Justice Zenaida T. Galapate-Laguilles with Associate Justices Remedios A. Salazar-Fernando and Jane Aurora C. Lantion, concurring.

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

[4] *Id*. at 69-80. Penned by Presiding Judge Marie Claire Victoria Mabutas-Sordan.

[5] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[6] See Information dated March 26, 2012; records, pp. 1-2.

[7] Also referred to as "Denver Rinon" in some parts of the records.

Riñon) and PO2 Rhene Bogay (PO2 Bogay), members of the Antipolo City Police, went to La Colina Subdivision in Barangay Mambugan, Antipolo City to investigate reports of purported illegal gambling activities in the area.[8] Thereat, they encountered petitioner, who was acting suspiciously as if she was accepting bets for *jueteng*. Upon approaching her, they saw two (2) plastic sachets containing white crystalline substance fall from her right pocket. Suspicious that the sachets contained illicit drugs, they introduced themselves as police officers to petitioner and arrested her.[9] They then seized and marked the sachets and brought petitioner to the police station in San Jose, Antipolo City, where they photographed[10] and inventoried[11] the seized items and subsequently forwarded the same to the Rizal Provincial Crime Laboratory.[12] After examination,[13] their contents tested positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.[14]

For her part, petitioner denied the charge against her and claimed that at around 5:00 o'clock in the afternoon of March 21, 2012, she was on board her motorcycle heading to her friend's house in La Colina Subdivision, when several male individuals abruptly surrounded her outside the subdivision. They forced her to board one of their motorcycles and brought her to the Antipolo City Police Station, where she was detained. It was only on March 23, 2012 during inquest proceedings that she learned of the drug-related charge against her.[15]

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[8] *Rollo*, p. 32.

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

[10] See records, p. 33.

[11] See Inventory Report dated March 22, 2012; *id*. at 24.

[12] See Request for Qualitative Examination dated March 22, 2012; *id*. at 13. See also *rollo*, p. 45.

[13] See Chemistry Report No. D-128-12 dated March 22, 2012; records, p. 21.

[14] *Rollo*, pp. 31-33.

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

In a Decision[16] dated December 6, 2016, the RTC found petitioner **guilty** beyond reasonable doubt of the crime charged, and accordingly, sentenced her to suffer the penalty of imprisonment for a period of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, eight (8) months, and one (1) day, as maximum, and to pay a fine in the amount of ₱300,000.00.[17] The trial court gave credence to the testimonies of the prosecution witnesses and found that the elements of the alleged crime had been sufficiently proven. Meanwhile, it rejected petitioner's defenses of denial and frame-up, for failure to substantiate the same.[18]

Aggrieved, petitioner appealed[19] to the CA, arguing that the trial court erred in relying on the incredulous testimonies of the prosecution witnesses and in disregarding the failure of the police officers to comply with the witness requirement under Section 21, Article II of RA 9165.[20]

In a Decision[21] dated June 28, 2018, the CA **affirmed** the ruling of the RTC.[22] It upheld the trial court's findings and found petitioner's defense untenable for lack of evidence. Anent the police officers' non-compliance with the witness requirement under RA 9165, it ruled that such was not fatal in view of the time constraints of the situation, and because the integrity and evidentiary value of the illegal drugs remained intact.[23]

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[16] *Id*. at 69-80.

[17] *Id*. at 80.

[18] *Id*. at 77-80.

[19] See Notice of Appeal dated December 9, 2016; CA *rollo*, pp. 13-14.

[20] See Brief for the Accused-Appellant dated June 9, 2017; *rollo*, pp. 50-68.

[21] *Id*. at 31-47.

[22] *Id*. at 46.

[23] *Id*. at 37-46.

Undaunted, petitioner moved for reconsideration,[24] which was denied in a Resolution[25] dated March 28, 2019; hence, the instant petition.

The Court's Ruling

The petition is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,[26] it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.[27] Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.[28]

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[24] Dated June 25, 2018. See CA *rollo*, pp. 174-180.

[25] *Rollo*, pp. 49-50.

[26] The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment; while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug. (See *People v. Crispo*, G.R. No. 230065, March 14, 2018, 859 SCRA 356, 369; *People v. Sanchez*, G.R. No. 231383, March 7, 2018, 858 SCRA 94, 104; *People v. Magsano*, G.R. No. 231050, February 28, 2018, 857 SCRA 142, 152; *People v. Manansala*, G.R. No. 229092, February 21, 2018, 856 SCRA 359, 369-370; *People v. Miranda*, G.R. No. 229671, January 31, 2018, 854 SCRA 42, 52; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018, 853 SCRA 303, 312-313; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015] and *People v. Bio,* 753 Phil. 730, 736 [2015]).

[27] See *People v. Crispo*, *id*.; *People v. Sanchez*, *id*.; *People v. Magsano*, *id*.; *People v. Manansala*, *id*.; *People v. Miranda*, *id*.; and *People v. Mamangon*, *id*. See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[28] See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[29] As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that "marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team."[30] Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.[31]

The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640,[32] a

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[29] See *People v. Año*, G.R. No. 230070, March 14, 2018, 859 SCRA 380; *People v. Crispo*, *supra* note 26; *People v. Sanchez*, *supra* note 26; *People v. Magsano*, *supra* note 26; *People v. Manansala*, *supra* note 26; *People v. Miranda*, *supra* note 26; and *People v. Mamangon*, *supra* note 26. See also *People v. Viterbo*, *supra* note 27.

[30] *People v. Mamalumpon*, 767 Phil. 845, 855 (2015), citing *Imson v. People*, 669 Phil. 262, 270-271 (2011). See also *People v. Ocfemia*, 718 Phil. 330, 348 (2013), citing *People v. Resurreccion*, 618 Phil. 520, 532 (2009).

[31] See *People v. Tumulak*, 791 Phil. 148, 160-161 (2016) and *People v. Rollo*, 757 Phil. 346, 357 (2015).

[32] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.'" As the Court noted in *People v. Gutierrez* (see G.R. No. 236304, November 5, 2018) RA 10640 was approved on July 15, 2014. Under Section 5 thereof,

representative from the media *AND* the Department of Justice (DOJ), and any elected public official;[33] or (*b*) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service[34] *OR* the media.[35] The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."[36]

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law."[37] This is because "[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment."[38]

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it shall "take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation." RA 10640 was published on July 23, 2014 in The Philippine Star (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and Manila Bulletin (Vol. 499, No. 23; World News section, p. 6). Thus, **RA 10640 appears to have become effective on August 7, 2014.**

[33] Section 21 (1) and (2) Article II of RA 9165 and its Implementing Rules and Regulations.

[34] Which falls under the DOJ. (See Section 1 of Presidential Decree No. 1275, entitled "REORGANIZING THE PROSECUTION STAFF OF THE DEPARTMENT OF JUSTICE, REGIONALIZING THE PROSECUTION SERVICE, AND CREATING THE NATIONAL PROSECUTION SERVICE" [April 11, 1978] and Section 3 of RA 10071, entitled "AN ACT STRENGTHENING AND RATIONALIZING THE NATIONAL PROSECUTION SERVICE" otherwise known as the "PROSECUTION SERVICE ACT OF 2010" [lapsed into law on April 8, 2010].)

[35] Section 21, Article II of RA 9165, as amended by RA 10640.

[36] See *People v. Miranda*, *supra* note 26. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[37] See *People v. Miranda*, *id*. See also *People v. Macapundag*, 807 Phil. 234, 244 (2017), citing *People v. Umipang*, *supra* note 28, at 1038.

[38] See *People v. Segundo*, 814 Phil. 697, 722 (2017), citing *People v. Umipang*, *supra* note 28.

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[39] As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is a justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved.[40] The foregoing is based on the saving clause found in Section 21 (a),[41] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[42] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[43] and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[44]

Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted **genuine and sufficient efforts** to secure the presence of such witnesses, albeit they eventually failed to appear. While

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

[40] See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

[41] Section 21 (a), Article II of the IRR of RA 9165 pertinently states: "***Provided*, *further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.**"

[42] Section 1 of RA 10640 pertinently states: "***Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items**."

[43] *People v. Almorfe*, *supra* note 40.

[44] *People v. De Guzman*, 630 Phil. 637, 649 (2010).

the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was **reasonable** under the given circumstances.[45] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[46] These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.[47]

Notably, the Court, in *People v. Miranda*,[48] issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that "[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."[49]

In this case, there was a deviation from the witness requirement as the conduct of inventory and photography was not witnessed by any of the three (3) witnesses provided under Section 21, Article II of RA 9165. This may be easily gleaned from the Inventory Report[50] of the seized items which only confirms

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[45] See *People v. Manansala*, *supra* note 26.

[46] See *People v. Gamboa*, *supra* note 28, citing *People v. Umipang*, *supra* note 28, at 1053.

[47] See *People v. Crispo*, *supra* note 26.

[48] *Supra* note 26.

[49] See *id*.

[50] Records, p. 8.

the presence of PO1 Riñon and PO2 Bogay, which fact was also substantially admitted by the former on cross-examination.[51] As earlier stated, it is incumbent upon the prosecution to account for the absence of the required witnesses by presenting a justifiable reason therefor or, at the very least, by showing that the apprehending officers exerted genuine and sufficient efforts to secure their presence. Markedly, the absence of an elected public official was left **unacknowledged**, much less justified.

Meanwhile, to justify the absence of the respective representatives from the DOJ and the media, PO1 Riñon and PO2 Bogay executed a sworn written explanation[52] explaining that they failed to procure their presence due to "lack of material time," which was also reiterated in their individual testimonies on cross-examination, to wit:

Cross-Examination of PO1 Riñon

> [Atty. Brend Virgilio S. Vergara]: And annexed to your inventory report is an explanation, can you enlighten us, what is this explanation all about?
>
> [PO1 Riñon]: It would explain the reason why we were not able to get a DOJ representative and the media.
>
> Q: So what is the reason why is it that a representative from the DOJ and the media is required in the preparation and conduct of the inventory of the seized items?
>
> A: Requirements po kasi iyon, kailangan ng media at saka ng DOJ representative gawa ng apo nang hindi po naming nagawa ang requirements na iyon, gumawa naman kami ng explanation **due to lack of material time** na rin po.[53]

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[51] See TSN, November 14, 2013, *id*. at 460.

[Atty. Brend Virgilio S. Vergara]: And annexed to your inventory report is an explanation, can you enlighten us, what is this explanation all about? [PO1 Riñon]: It would explain the reason **why we were not able to get a DOJ representative and the media**." (Emphasis supplied)

[52] Dated March 22, 2012; see records, p. 27.

[53] TSN, November 14, 2013; *id*. at 460. Emphasis supplied.

Cross-Examination of PO2 Bogay

> [Atty. Brend Virgilio S. Vergara]: Attached to the inventory report is an explanation, which the defense marked as Exhibit "2-A". Can you please explain to us why there is a need for an explanation in relation to the preparation of the inventory report? [PO2 Bogay]: Nung time na iyon sir, **wala na po kaming oras na makahanap ng representative sa media at DOJ**.
>
> (translation) At that time we had no time to look for a representative from the media and DOJ due to **lack of material time** sir.[54]

The Court, however, finds such explanation untenable.

In *People v. Lim*,[55] the Court explained that the absence of the required witnesses must be justified based on acceptable reasons 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 [and] media representative[s] 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."[56] Likewise, it bears to stress that police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.[57]

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[54] TSN, May 15, 2014; *id*. at 580. Emphasis supplied.

[55] See G.R. No. 231989, September 4, 2018.

[56] See *id*., citing *People v. Sipin*, G.R. No. 224290, June 11, 2018.

[57] *People v. Crispo*, *supra* note 26.

In the case at bar, it appears that the police officers **failed to exert genuine and sufficient efforts** to comply with the witness requirement. While the arresting officers discovered petitioner's possession of illegal drugs spontaneously and without prior anticipation, they failed to provide any plausible explanation as to why the constraints of time impaired their ability to secure the proper witnesses within the period allotted under Article 125 of the Revised Penal Code; thus, it cannot be ascertained whether their actions were reasonable under the given circumstances. In fact, contrary to their sworn written explanation, the respective testimonies of PO1 Riñon and PO2 Bogay on cross-examination show that they did not even bother to attempt to contact the proper witnesses and admittedly, had no knowledge of how to do so, to wit:

Cross-Examination of PO1 Riñon

[Atty. Brend Virgilio S. Vergara]: So, what is it that a representative from the DOJ should be present at that very moment when you conducted an inventory of the seized items?
[PO1 Riñon]: It was a requirement sir.

Q: Why is it a requirement?
A: It was a requirement under R.A. 9165, sir.

Q: So, what is that in the R.A. 9165 that requires DOJ representative to be present?
A: I don't know sir.

x x x x x x x x x

Q: So Mr. Witness, you said that you were not able to get the presence of a DOJ representative and media for lack of material time. My question now, **why is it that you lack time in trying to contact these persons when the incident happened in the morning?**
A: **It's our investigator's tasked [sic] to coordinate or to call a media or a representative from the DOJ.**

Q: So, as the arresting officer or as the person who signed this explanation, can you state to this Honorable Court who is that personnel or officer from the Department of Justice whom you are to contact?
A: **I have no idea** sir, maybe a lawyer.

Q: So, **you do not exactly know whom to contact?**
A: **Yes, sir.**

x x x x x x x x x

Q: So, this statement that you failed to get hold of the presence of the media and DOJ representative is false?
A: Iyong duty investigator po ang kasi...

Q: ...hindi, ikaw ang tinatanong ko kung mali kasi iyong sinasabi mo kanina di ba iyong imbestigador, e dito taliwas sa sinasabi mo na "we" kayong dalawa ang pumirma... we aren't to get hold the presence of media representative due to lack of material time, so this is wrong you mean to say, as compared to your earlier statement that it was the investigating officer who coordinated with the DOJ?
A: Yes, sir.

Q: **So, this was wrong and you know that it was made under oath?**
A: **Yes, sir.**[58]

Cross-Examination of PO2 Bogay

[Atty. Brend Virgilio S. Vergara]: Why is it that you are required to make an explanation if you failed to communicate with the DOJ representative or personnel from the media?
(No answer from the witness)

Q: You do not know the reason why?
A: Yes, sir.

Q: Who told you that you have to place an explanation if there is a failure on your part to communicate with a representative from DOJ and from the media?
(no answer from the witness)[59]

In view of the foregoing, the Court is impelled to conclude that the integrity and evidentiary value of the items purportedly seized from petitioner – which constitute the *corpus delicti* of the crime charged – have been compromised;[60] hence, petitioner's acquittal is in order.

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[58] TSN, November 14, 2013; *id*. at 460-463. Emphasis supplied.

[59] TSN, May 15, 2014; records, pp. 580-581.

[60] See *People v. Patacsil*, G.R. No. 234052, August 6, 2018.

WHEREFORE, the petition is **GRANTED**. The Decision dated June 28, 2018 and the Resolution dated March 28, 2019 of the Court of Appeals in CA-G.R. CR. No. 39394 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Melanie Grefaldo *y* De Leon is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause her immediate release, unless she is being lawfully held in custody for any other reason.

SO ORDERED.

Reyes, A. Jr., Hernando, and *Zalameda,*[*] *JJ.,* concur.

Inting, J., on official leave.

EN BANC

[A.M. No. SCC-10-14-P. November 12, 2019]
(Formerly OCA IPI No. 09-31-SCC-P)

JUDGE BENSAUDI A. ARABANI, JR., *petitioner, vs.* **RAHIM A. ARABANI, Junior Process Server, and ABDURAJI G. BAKIL, Utility Worker I, both from Shari'a Circuit Court, Maimbung, Sulu,** *respondents.*

[A.M. No. SCC-10-15-P. November 12, 2019]
(Formerly A.M. No. 06-3-03-SCC)

JUDGE BENSAUDI A. ARABANI, JR., 4th Shari'a Circuit Court, Maimbung, Sulu, *petitioner, vs.* **RODRIGO C.**

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[*] Designated Additional Member per Special Order No. 2727 dated October 25, 2019.

RAMOS, JR., Clerk of Court, 4th Shari'a Circuit Court, Maimbung, Sulu, *respondent.*

[A.M. No. SCC-11-17. November 12, 2019]
(Formerly A.M. No. 10-34-SCC)

CLERK OF COURT RODRIGO C. RAMOS, JR., Process Server Rahim A. Arabani, and Utility Worker I ABDURAJI G. BAKIL, All of 4th Shari'a Circuit Court, Maimbung, Sulu, and Utility Clerk SHELDALYN* I. MAHARAN, 5th Shari'a Circuit Court, Patikul, Sulu, *petitioners, vs.* **JUDGE BENSAUDI A. ARABANI, JR., 4th Shari'a Circuit Court, Maimbung, Sulu,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CASE; JURISDICTION OVER AN ADMINISTRATIVE CASE IS NOT LOST BY RESPONDENT'S DEMISE DURING THE PENDENCY OF HIS CASE. — Jurisdiction over an administrative case is not lost by the demise of the respondent public official during the pendency of his case. This is especially true when the respondent had already been given the opportunity to answer the complaint and substantiate his defenses, as in this case, and the fact of his death has been reported to the Court only after a decision was rendered in the administrative case against him. Thus, the Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof because a contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications.

2. ID.; ID.; ID.; HAVING BEEN FOUND GUILTY OF FREQUENT UNAUTHORIZED ABSENCES BUT THE PENALTY OF SUSPENSION MAY NO LONGER BE FEASIBLE IN VIEW OF RESPONDENT'S DEATH, THE COURT IMPOSED A FINE IN LIEU OF SUSPENSION;

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* Sherdalyn in some part of the records.

AS TO THE CHARGE AGAINST THE DECEASED RESPONDENT OF VIOLATION OF REASONABLE OFFICE RULES AND REGULATIONS, THE SAME HAD BECOME MOOT AND ACADEMIC. — [C]onsidering Rodrigo's demise, the penalty of suspension imposed on him is no longer possible. In a previous case where the respondent was similarly found guilty of frequent unauthorized absences but was no longer in the service at the time of the promulgation of the decision, the Court imposed a fine of ₱20,000.00 in lieu of suspension. The Court finds it apt to impose the same penalty here. Further, the February 21, 2017 Decision also found Rodrigo guilty of violation of reasonable office rules and regulations, a light offense punishable with reprimand for the first offense, and was accordingly sanctioned with reprimand. As reprimanding him would no longer be possible, the said charge had become moot and academic.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Before the Court is the letter[1] dated June 20, 2019 of the surviving spouse of Rodrigo Ramos, Jr. (Rodrigo): (*a*) informing the Court that Rodrigo passed away on December 5, 2016, attaching therewith an original copy of the Philippine Statistics Authority authenticated Death Certificate[2] of Rodrigo; and (*b*) imploring the Court to reduce the penalty of **suspension of six (6) months and one (1) day without pay** meted on him in its Decision[3] dated February 21, 2017 in A.M. No. SCC-10-15-P to **fine** in view of his demise.

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[1] *Rollo* (A.M. No. SCC-10-15-P), pp. 156-157.

[2] *Id*. at 158.

[3] The said Decision found Rodrigo guilty, among others, of frequent unauthorized absences, and loafing or frequent unauthorized absences from duty during regular office hours, and was accordingly suspended for six months and one (1) day without pay, with a stern warning that similar acts would be dealt with more severely. (*Id*. at 137-155. See also *Arabani, Jr. v. Arabani*, 806 Phil. 129 [2017].)

Jurisdiction over an administrative case is not lost by the demise of the respondent public official during the pendency of his case.[4] This is especially true when the respondent had already been given the opportunity to answer the complaint and substantiate his defenses,[5] as in this case, and the fact of his death has been reported to the Court only after a decision was rendered in the administrative case against him. Thus, the Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof because a contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications.[6]

However, considering Rodrigo's demise, the penalty of suspension imposed on him is no longer possible. In a previous case[7] where the respondent was similarly found guilty of frequent unauthorized absences but was no longer in the service at the time of the promulgation of the decision, the Court imposed a fine of ₱20,000.00 in lieu of suspension. The Court finds it apt to impose the same penalty here.

Further, the February 21, 2017 Decision also found Rodrigo guilty of violation of reasonable office rules and regulations, a light offense punishable with reprimand for the first offense, and was accordingly sanctioned with reprimand.[8] As reprimanding him would no longer be possible, the said charge had become moot and academic.[9]

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[4] See *Office of the Ombudsman v. Pacuribot*, G.R. No. 193336, September 26, 2018. Thus, in *Hermosa v. Paraiso* (159 Phil. 417, 419 [1975]), and *Office of the Court Administrator v. Saguyod* (429 Phil. 421, 432 [2002]), the Court proceeded to resolve therein respondents' administrative cases notwithstanding that death has already separated them from the service.

[5] See *Office of the Court Administrator v. Saguyod*, *id*. at 430.

[6] See *Office of the Ombudsman v. Pacuribot*, *supra* note 4.

[7] See *Office of the Court Administrator v. Cobarrubias*, A.M. No. P-15-3379, November 22, 2017, 845 SCRA 644, 656.

[8] See Section 22, Rule XIV of the Civil Service Rules.

[9] See *Office of the Court Administrator v. Cabato*, 804 Phil. 145, 170 and 185 (2017).

WHEREFORE, the Decision dated February 21, 2017 in A.M. No. SCC-10-15-P (Formerly A.M. No. 06-3-03-SCC) is hereby **MODIFIED**. Respondent Rodrigo Ramos, Jr. (Rodrigo) is found **GUILTY** of frequent unauthorized absences, loafing or frequent unauthorized absences from duty during regular office hours, and **FINED** in the amount of Twenty Thousand Pesos (₱20,000.00) to be taken from whatever benefits he may be entitled to under existing laws, and subject to the outcome of OCA IPI No. 11-37-SCC-P and the findings in the audit of his accounts in the Shari'a Circuit Court, Maimbung, Sulu. The charge against him for violation of reasonable office rules and regulations is **DISMISSED** for being moot and academic.

Let a copy of this Resolution be attached to the personal record of Rodrigo.

SO ORDERED.

Peralta, C.J., Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Hernando, Carandang, and *Zalameda, JJ.,* concur.

Leonen and *Caguioa, JJ.,* on official business.

Lazaro-Javier and *Inting, JJ.,* on official leave.

EN BANC

[G.R. No. 217997. November 12, 2019]

CRISTINA CATU-LOPEZ, in her capacity as Department Manager III, Administrative Department, National Tobacco Administration, *petitioner, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; COMMISSION ON AUDIT (COA); THE CONSTITUTION GRANTS COA THE POWER TO GUARD PUBLIC FUNDS AND PROPERTIES SUBJECT TO CERTAIN LIMITATIONS; ONLY WHEN THE COA ACTED WITHOUT OR IN EXCESS OF JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION THAT THE COURT HAS TO INTERVENE TO CORRECT THE COA DECISION. — The Constitution vests in the COA the broadest latitude to discharge its role as the guardian of public funds and properties. Thus, the COA was granted exclusive authority, subject to the limitations of Article IX(D), Section 2(2) of the Constitution, 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. In recognition of such constitutional empowerment, the Court has generally sustained the COA's decisions or resolutions in deference to its expertise in the implementation of the laws it has been entrusted to enforce. Only when the COA has clearly acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction has the Court intervened to correct the COA's decisions or resolutions. For this purpose, grave abuse of discretion means that there is, on the part of the COA, an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law, such as when the assailed decision or resolution rendered is not based on law and the evidence but on caprice, whim and despotism.

2. ID.; ID.; ID.; THE COURT FINDS THAT THE COA COMMITTED GRAVE ABUSE OF DISCRETION IN HOLDING PETITIONER LIABLE UNDER THE SUBJECT NOTICE OF DISALLOWANCE; THAT PETITIONER PLACED HER INITIALS IN THE DOCUMENT DOES NOT PROVE THAT SHE IS THE APPROVING OR RECOMMENDING AUTHORITY FOR THE QUESTIONED TRANSACTION; COA SHOULD HAVE PRESENTED CONCRETE PROOF THAT PETITIONER WAS DIRECTLY RESPONSIBLE. — [P]etitioner is primarily

held liable by the COA because she initialed and witnessed some of the PNs and withdrawal slips in the OCL and the Agreement. However, it is clear from the report that petitioner is not the one that approved the said transactions. She merely placed her initials therein. The liability of petitioner cannot merely be assumed or inferred based on her initialing and witnessing the transactions, or that she was designated as the chairperson of the NTA Housing Project. There must be some concrete evidence that she was directly responsible for the said transactions or that she was the approving authority therein. Manifestly, the COA failed to prove that petitioner's initials in those documents were the approving or recommending authority for the transactions in the OCL and the Agreement. No evidence was presented that petitioner's initials therein were indispensable; rather, her initials did not have any definite authority on the said transactions. In contrast, the report of the Audit Team showed that it was actually the NTA Board and the Administrator that approved the said transactions, and it was the Finance Manager that prepared the documents. Further, as pointed out by petitioner, the NTA Board stated that it was the NTA Administrator, Deputy Administrator for Support Services, and Chief of the Fund Management who were the authorized signatories for the OCL with PNB, from which the developmental loan was sourced[.] x x x COA attempts to impute liability to petitioner because she recommended the amendments to the Agreement in the NTA Housing Project, which were allegedly prejudicial to the government. According to COA, this proves the direct participation and acquiescence of petitioner to the said irregular transactions. x x x There is absolutely nothing in the records which would show that petitioner expressly recommended the said amendments. Glaringly, the COA failed to cite any document which contains petitioner's unequivocal signature or approval to the said amendments. Petitioner was not even present in the NTA Board Meeting when the purported amendments were approved. The COA's conclusion that petitioner directly participated in the said amendments is completely unsubstantiated. Rather, as stated in the Minutes of the 85th Special Meeting of the NTA, it was a certain Director Magsaysay that recommended the approval of the said amendments to the NTA Board, and petitioner was not even present during the said meeting[.] x x x COA cannot merely assume petitioner is liable without any concrete proof and it cannot merely be inferred in her designation

as chairperson of the NTA Housing Project. Indeed, the records demonstrate that petitioner was not directly responsible for the said amendments.

3. ID.; ID.; ID.; CONTRARY TO THE FINDING OF COA, THE AMENDMENT OF THE SUBJECT AGREEMENT WAS NOT AN IRREGULAR TRANSACTION; THE QUESTIONED SUPPLEMENTAL AND AMENDED AGREEMENTS WERE NOT PREJUDICIAL TO THE GOVERNMENT SINCE ALL INTEREST TO CHARGES WERE STILL PAYABLE BY THE DEVELOPERS. — The COA argues that the amendments to the Agreement in the NTA Housing Project were irregular because it made the NTA solidarily liable for the said project with the Developers, which was not contemplated in the original Agreement. In other words, the transactions under such amendment were irregular expenditures. An irregular expenditure is an expenditure incurred without adhering to established rules, regulations, procedural guidelines, policies, principles or practices that have gained recognition in law. Even assuming that petitioner had a participation in the amendment of the Agreement of the NTA Housing Project, the Court finds that it cannot be considered as an irregular transaction. x x x [E]ven though the original Agreement stated that the construction of the housing unit shall be at the total expense of the Developers without assistance from the NTA, it also provided that the NTA will apply for a developmental loan for the financing of the project. As a result, the NTA had anticipated, from the original Agreement, that it would secure a developmental loan, which would necessarily entail a monetary obligation on its part. The NTA initially secured a developmental loan in the amount of ₱25 million from the Land Bank of the Philippines. However, the terms and conditions of such loan were too stiff. Thus, it was proposed the developmental loan be taken from the existing OCL with PNB because it was not fully utilized. x x x Accordingly, the NTA had no other recourse but to amend the original Agreement and provide therein that it shall be solidarily liable with the Developers with respect to the developmental loan. Nevertheless, the Court finds that even though the Agreement was amended, it was not unfavorable to the government. It must be reiterated that the liability of the NTA was already contemplated in the original Agreement because it was tasked to secure a loan to finance the NTA Housing Project.

Further, as observed by the Ombudsman, while the Agreement was amended due to the developmental loan, it was not prejudicial to the government with respect to the payment of the interests and charges therein. x x x [A]ll the interests and charges were still payable by the Developers. Indeed, the Ombudsman correctly opined that the provision on interest payment, fees and other charges on the Development loan, which are to the account of the developer, was never amended in the contract.

4. **ID.; ID.; ID.; ID.; NEITHER WAS THE AMENDMENT WITH RESPECT TO THE MOBILIZATION FEE AN IRREGULAR TRANSACTION AS THE SAID FEE IS ALREADY COVERED BY THE INITIAL INVESTMENT OF THE DEVELOPERS AND HENCE DID NOT COME FROM THE NATIONAL TOBACCO ADMINISTRATION (NTA). —** [T]he COA failed to prove that the amendment to the Agreement, with respect to the mobilization fee, was an irregular transaction. The said amendment granted a mobilization fee equivalent to 25% of land development cost in favor of the developer. According to the COA, this was in excess of the 15% mobilization fee under P.D. No. 1594 or in the amount of ₱5,886,745.95. However, the COA failed to consider that, in the same amendment, the Developers gave an initial investment of ₱9,000,000.00 for both land development and construction of houses, which is more than enough to cover such excess amount of mobilization fee. As correctly held by the Ombudsman, the said initial investment of the Developers defeats the purpose of the charge against petitioner with respect to the mobilization fee. Consequently, ND No. 98-09 (JV) in the amount of ₱25,000,000.00 issued against petitioner for allowing the excess mobilization fee of ₱5,886,745.95 is not justified. To reiterate, the said excess mobilization fee is already covered by the initial investment of the Developers. Thus, the said amount did not come from the NTA.

5. **ID.; ID.; ID.; THE NTA HOUSING PROJECT WAS NOT DISADVANTAGEOUS TO THE GOVERNMENT SINCE THERE WERE SUFFICIENT SAFEGUARDS TO PROTECT NTA FROM LIABILITY. —** The Agreement in the NTA Housing Project was amended such that the NTA would be solidarily liable with the Developers for payment of the developmental loan. Nevertheless, there were sufficient safeguards to protect the NTA from liability, such as the creation

of a sinking fund in the form of a savings account, where all the housing loan proceeds will be deposited and applied as payment for the developmental loan by virtue of an assignment thereof in favor of PNB. This will ensure that the housing loan proceeds would go directly to the payment of the developmental loan so that the NTA would not incur any additional liability. Notably, the Ombudsman observed that the NTA Housing Project was a profitable investment[.] x x x Petitioner further presented additional evidence that the NTA Housing Project indeed earned profits for the government. x x x [A]side from its bare allegation that the NTA Housing Project was grossly disadvantageous to the government, the COA did not present any concrete evidence that the said project was a complete and utter failure and a liability to the government, or that such loss was attributable to petitioner. It could not even substantiate that the NTA Housing Project was overpriced compared to other neighboring housing projects. Indeed, without any credible evidence that the NTA Housing Project was grossly disadvantageous to the government, ND No. 98-09 (JV) in the amount of ₱25,000,000.00 cannot be charged against petitioner.

APPEARANCES OF COUNSEL

Rohbert M. Ambros for petitioner.
The Solicitor General for respondent.

D E C I S I O N

GESMUNDO, *J.*:

This is a petition for *certiorari* seeking to annul and set aside Notices of Disallowance (*ND*) No. 98-09 (JV) and 98-013 (JV), in the total amount of ₱47,287,361.11. The NDs were affirmed with modification by the Commission on Audit (*COA*) in its December 30, 2010 Decision[1] and its January 30,

[1] *Rollo*, pp. 49-57; penned by Chairman Reynaldo A. Villar, Commissioner Juanito G. Espino, Jr. and Commissioner Evelyn R. San Buenaventura; attested by Commission Secretariat, Director IV Fortunata M. Rubico.

2015 Resolution[2] docketed as Decision Nos. 2010-151 and 2015-035, respectively.

The Antecedents

In 1996, the National Tobacco Administration (*NTA*) and the Philippine National Bank (*PNB*) executed a Credit Agreement[3] to establish an Omnibus Credit Line (*OCL*) in the amount not exceeding ₱100,000,000.00. The purpose of the OCL was to provide bridge finance funding for the NTA's Aromatic Tobacco Trading and Export Trading Program (*ATTETP*) for the purchase and/or exportation of leaf tobacco. It was primarily for the benefit of tobacco traders whose tobacco produce were guaranteed to be purchased. Several tobacco traders availed the trading loans from the OCL and disbursement from the fund were approved pursuant to the ATTETP guidelines.[4]

Meanwhile, the NTA Board of Directors (*Board*) initiated and approved the NTA Housing Project for its employees under Resolution No. 220-94.[5] The housing project was initially situated at Brgy. Ampid, San Mateo, Rizal. However, on December 14, 1995, the site was moved to Brgy. San Isidro, Montalban, Rizal.[6]

A Housing Committee was created to monitor and implement the project. Cristina Catu-Lopez (*petitioner*), Department Manager III of the Administrative Department of the NTA, was designated as the Chairperson of the Housing Committee.

Two public biddings were conducted on the NTA Housing Project on April 4, 1995 and June 9, 1995. However, both

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[2] *Id*. at 238-245; penned by Chairperson Ma. Gracia M. Pulido Tan, Commissioner Heidi L. Mendoza and Commissioner Jose A. Fabia; attested by Commission Secretariat Director IV Nilda B. Plaras.

[3] *Id*. at 301-307.

[4] *Id*. at 49.

[5] *Id*. at 510.

[6] *Id*. at 516.

biddings were declared as failures. The NTA then caused the publication of an Invitation for Negotiated Contract and received several proposals. Out of the four (4) developers that submitted their proposals, PMC Construction and Consuelo Builders Corp. (*Developers*) were pre-qualified with the contract under a Joint Venture Agreement (*the Agreement*). The Notice of Award to the Developers was approved by the NTA Board in its Resolution dated February 12, 1996.[7]

In a Letter[8] dated February 19, 1996, the NTA requested the Office of the Government Corporate Counsel (*OGCC*) for the preparation of the Agreement for the NTA Housing Project. In turn, in a Letter[9] dated June 10, 1996, the OGCC forwarded the final draft of the Agreement between the NTA and the Developers.

In its June 17, 1996 Resolution,[10] the NTA Board approved and confirmed the Agreement[11] with the following amendments:

1. Granting of a Mobilization Fee equivalent to Twenty Five Percent (25%) of land development cost;
2. Initial Investment of Developers at Nine Million Pesos (₱9,000,000.00) for both on land development and construction of houses;
3. Retention Fee of Ten percent (10%) on accomplishment billing; and
4. Employee[s] [b]eneficiaries shall assume the payment for additional amenities in the amount of ₱15.00 per square meter on land development.[12]

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[7] *Id*. at 1247.

[8] *Id*. at 522.

[9] *Id*. at 523-526.

[10] *Id*. at 527.

[11] *Id*. at 875-898.

[12] *Id*. at 527.

The Agreement was then signed by the NTA and the Developers, and notarized on June 25, 1996.[13] It provided, among others, that 530 housing units for the NTA employees shall be constructed by the Developers on the land of the NTA in the total amount of ₱39,244,973.00; that the land development and construction of units shall be at the expense of the Developers;[14] that the NTA and the Developers shall immediately apply for a developmental loan from the Government Service Insurance System (*GSIS*) or other government financial institutions to pay for the land development cost of the project;[15] and the sale proceeds of each housing package shall be used as payment for the developmental loan.[16]

In his December 5, 1996 Memorandum,[17] Amante E. Siapno, the NTA Administrator, informed the NTA Board that the NTA approached the Land Bank of the Philippines for a developmental loan in the amount of ₱25,000,000.00. However, the said amount was far below the development cost of the housing project and the terms and conditions of the loan were not in harmony with the Agreement between the NTA and the Developers. Thus, it was suggested that the NTA apply for a developmental loan with the PNB since it had an existing OCL, which was not fully utilized. The OCL would be converted to a developmental loan.

In its December 6, 1996 Resolution No. 531-96,[18] the NTA Board resolved to apply for a developmental loan with the PNB for the land development cost of the NTA Housing Project.

On December 17, 1996, the Mobilization Fee of ₱10,000,000.00 as per Board Resolution No. 469-96 was released

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[13] *Id*. at 897.

[14] *Id*. at 884.

[15] *Id*. at 886.

[16] *Id*. at 888.

[17] *Id*. at 536.

[18] *Id*. at 537.

to the Developers. On February 19, 1997, the NTA partially released the amount of ₱15,000,000.00 for the NTA Housing Project to the Developers.[19]

In his August 28, 1997 Letter,[20] Victorio C. Sison, Vice President of the PNB, stated that there must be some amendments in the Agreement between the NTA and the Developers with respect to the developmental loan in the amount of ₱40,000,000.00, to wit: that the developmental loan should include the Developers as co-borrowers; that there must be a sinking fund where all housing proceeds shall be deposited as payment for the developmental loan; and that the liability of the NTA on the developmental loan is primary and absolute and not limited to the land used in the NHA Housing Project.

In its September 1, 1997 Letter,[21] the NTA Administrator responded to the PNB that the NTA shall deposit all housing proceeds to the sinking fund for the payment of the developmental loan; and that it was made clear in the Agreement that the NTA shall immediately apply for a developmental loan, thus, it understands and acknowledges such responsibility. PNB was further informed therein that during that time, there was no duly constituted NTA Board.

On September 26, 1997, the NTA executed a Supplemental Agreement[22] with the Developers to incorporate the comments of the PNB for the grant of the developmental loan. It chiefly provided that the NTA and the Developers shall apply for a developmental loan from PNB as co-borrowers;[23] and that a sinking fund shall be established where the housing proceeds shall be deposited for payment of the developmental loan.[24]

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[19] *Id*. at 286.

[20] *Id*. at 541-542.

[21] *Id*. at 543-544.

[22] *Id*. at 329-335.

[23] *Id*. at 333.

[24] *Id*.

On October 7, 1997, the NTA partially released another ₱5,000,000.00 for the NTA Housing Project.[25] On March 4, 1998, the NTA and Developers executed another Amendment Agreement.[26] It stated that the developmental loan shall not exceed ₱40,000,000.00;[27] and that the parties had agreed to be jointly and severally liable to the loan.[28] The NTA had released ₱30,000,000.00 from the developmental loan to the NTA Housing Project.[29]

In its November 3, 1998 Memorandum,[30] the Audit Team for the NTA submitted its Report[31] to the COA. With respect to the NTA Housing Project, it found that the Agreement between the NTA and the Developers were grossly disadvantageous to the government. It also observed that in the supplemental and amended agreements, the NTA assumed more liabilities and incurred additional interests and other charges totalling ₱10,185,000.00 and ₱7,773,090.31, which were paid out of the NTA corporate operating fund. The Audit Team opined that NTA was solely responsible for the developmental loan. It recommended that criminal and administrative charges be filed against the officers of the NTA, including petitioner.

Consequently, a criminal complaint for violation of Republic Act No. 3019 was filed before the Office of the Ombudsman (*Ombudsman*) docketed as OMB-0-00-1147 against the NTA Officials, including petitioner, for the alleged anomalous transactions in the NTA Housing Project.

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[25] *Id*. at 286.

[26] *Id*. at 336-338.

[27] *Id*. at 336.

[28] *Id*. at 337.

[29] *Id*. at 250.

[30] *Id*. at 248-251.

[31] *Id*. at 246-291.

In its January 3, 2005 Resolution,[32] the Ombudsman dismissed the complaint for want of probable cause. It found that the Agreement between the NTA and the Developers in the NTA Housing Project was not grossly disadvantageous to the government. The NTA did not assume more liabilities in the supplemental agreement because the interest payment, fees, and other charges on the developmental loan were chargeable against the Developers, and it was not amended. As to the mobilization fee of 25% of the land development cost, the Ombudsman ruled that there was no violation of Presidential Decree (*P.D.*) No. 1594 because this fee was sourced from the initial investment of the Developers. Thus, it necessarily defeated the said mobilization fee.

The Ombudsman emphasized that the NTA Housing Project was a profitable investment. It underscored that the Philippine Deposit Insurance Corporation (*PDIC*) bought out the outstanding loan of the NTA with the PNB, which resulted in lower interest rates, and softer terms and conditions. Thus, it did not find any criminal liability on the part of the NTA officials, including petitioner.

The Notices of Disallowance

Meanwhile, on November 13, 1998, the Audit Team issued ND Nos. 98-08 (JV), 98-09 (JV), 98-010 (JV), 98-011 (JV), 98-012 (JV), and 98-013 (JV) against the officers of NTA, including petitioner. The total amount covered by all these NDs was ₱210,617,742.11.[33] In ND No. 98-09 (JV), Promissory Note (*PN*) Nos. 082-96 (12-17-96), in the amount of ₱10,000,000.00, and 007-97 (2-19-97), in the amount of ₱15,000,000.00, were disallowed and petitioner was made liable.[34] PN No. 082-96 (12-17-96) was for the 25% mobilization fee issued in excess of that provided in P.D. No. 1594; while PN No. 007-97 (2-19-97) was for the initial payment wrongfully made to the

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[32] *Id*. at 88-116.

[33] *Id*. at 52.

[34] *Id*. at 50.

Developers because, according to the Audit Team, the NTA Housing Project was grossly disadvantageous to the government.

On the other hand, in ND No. 98-013 (JV), PN Nos. 97-1006-017, in the amount of ₱287,361.11, and 136-9801DL-040, in the amount of ₱22,000,000.00, were disallowed and petitioner was held liable.[35] Both PN were sourced from the corporate operating budget, which was used to pay the interests and charges in the developmental loan in the amounts of ₱9,974,158.90 and ₱7,773,090.00.[36]

The NTA officials, including petitioner, moved for reconsideration against the NDs. In its February 10, 2000 Letter, the Audit Team Leader (*ATL*) recommended the partial lifting of ₱24,000,000.00 each under ND Nos. 98-08 (JV) and 98-09 (JV) on account of full payment made by the availees therein. In another Letter dated October 20, 2003, the ATL re-evaluated ND No. 98-08 (JV) and lifted the ₱72,000,000.00 disallowance because it was in accordance with existing government accounting practice.[37]

As there were still remaining disallowances under the NDs, the NTA officials, including petitioner, filed a petition for review before the COA.

The COA Ruling

In its December 30, 2010 Decision, the COA lifted ND No. 98-08 (JV) amounting to ₱72,000,000.00, ND No. 98-09 (JV) insofar as the amount of ₱24,000,000.00 was concerned, and ND No. 98-011 (JV) to the extent of ₱15,373,944.45. However, the other NDs were affirmed. The COA found that there was no sufficient explanation presented to justify the transactions or rebut the findings of the ATL.[38] Thus, the NTA officials,

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[35] *Id*. at 51.

[36] *Id*. at 67.

[37] *Id*. at 55.

[38] *Id*. at 56.

including petitioner, were still held liable for the remaining NDs, in the total amount of ₱99,000,000.00.

However, petitioner and the other NTA officials were not furnished with a copy of the December 30, 2010 Decision. Then, on March 25, 2011, the COA issued a Notice of Finality of Decision. Petitioner could not file a motion for reconsideration because she had not received a copy of the said decision. Eventually, the COA admitted its failure to serve petitioner a copy of its decision. After the COA furnished petitioner a copy of its decision, petitioner filed her Motion for Reconsideration on April 11, 2011.[39]

Nevertheless, on October 11, 2012, petitioner received a copy of the COA Order of Execution dated October 8, 2012, which instructed the NTA Cashier to withhold the salaries of petitioner for the settlement of her liabilities in the December 30, 2010 COA Decision.[40]

Then, the COA discovered that the motion for reconsideration filed by petitioner was not yet heard, thus, it again admitted that its order of execution was issued without the benefit of a hearing. For a second time, petitioner was required to submit a motion for reconsideration, and the COA lifted its order of execution. Thus, petitioner submitted a second motion for reconsideration against the December 30, 2010 COA Decision.[41]

In its January 30, 2015 Resolution, the COA partly granted petitioner's motion for reconsideration. It found that petitioner did not participate in transactions covered by ND No. 98-09 (JV) on loan proceeds released to third parties in the total amount of ₱23,000,000.00; and ND No. 99-007 (JV) in the total amount of ₱2,315,014.09; thus, these disallowances were lifted.[42]

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[39] *Id*. at 1246.

[40] *Id*.

[41] *Id*.

[42] *Id*. at 68.

However, the COA still declared petitioner liable under ND No. 98-09 (JV) in the amount of ₱25,000,000.00 because she improperly allowed the excess mobilization fee of ₱5,886,745.95 and that the NTA Housing Project was grossly disadvantageous to the government. It also found that petitioner was liable under ND No. 98-013 (JV) in the amount of ₱22,287,361.11 because the NTA incurred additional interest and charges of ₱9,974,158.90 and ₱7,773,090.00, taken from the corporate operating budget, due to the supplemental and amended agreements in the NTA Housing Project. Petitioner affixed her initials therein, even though these were not approved by the NTA Board.

Hence, this petition. In her Memorandum,[43] petitioner raises the following issues:

I.

WHETHER OR NOT RESPONDENT COA ACTED CAPRICIOUSLY AND WHIMSICALLY WITHOUT REGARD TO EXISTING RULES BY GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING COA DECISION NOS. 2010-151 AND 2015-035 AFFIRMING THE NOTICES OF DISALLOWANCE NOS. 98-08(JV), 98-09(JV), 98-010(JV), 98-011(JV), 98-012(JV), 98-013(JV) AND 99-007(JV);

II.

WHETHER OR NOT RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION IN ISSUING DECISION NOS. 2010-151 AND 2015-035 BY AFFIRMING THE SUBJECT NOTICES OF DISALLOWANCE, WITH SEVERAL MODIFICATIONS, DESPITE THE DISMISSAL OF THE CASE BEFORE THE OFFICE OF THE OMBUDSMAN; AND

III.

WHETHER OR NOT RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION IN IMPLICATING

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[43] *Id*. at 1244-1257.

PETITIONER [BY] MERE AFFIXING HER INITIALS IN THE [PROMISSORY] NOTES AND WITHDRAWAL SLIPS WHICH ARE BEYOND HER OFFICIAL OR DELEGATED FUNCTIONS AND BASED MERELY ON THE ALLEGATION THAT PETITIONER RECOMMENDED FOUR (4) ADDITIONAL PROVISIONS IN THE DEVELOPMENT AGREEMENT WITHOUT ADVANCING ANY PROOF.[44]

Petitioner argues that the COA committed grave abuse of discretion when it made her initially liable for the total amount of ₱210 Million even though the OCL was only valued at ₱99 Million; that she is not liable under ND No. 98-013 (JV) because the said ₱22,287,361.11 was utilized for operational expenses, salaries of officers and utilities, which is beyond her office; that the interest payments were not approved by petitioner; that she is not liable under ND No. 98-09 (JV) because there is no evidence that she recommended the amendments to the Agreement and she was not present during the board meeting when these amendments were passed; and that the mere placing of her initials in the PNs do not automatically make her liable for the said NDs.

In its Memorandum,[45] the COA countered that petitioner failed to prove that it committed grave abuse of discretion in upholding the subject NDs; that petitioner, as chairperson of the NTA Housing Committee, exercises some form of accountability regarding the disbursements for the housing project; that her liability stems from her active participation in the release of the NTA housing project loans; that her direct participation is evidenced by her overt act of affixing her initials on the documents, which facilitated the release of the loan; that her initials signified her acquiescence to the loan transactions, irrespective of whether the same were irregular or not; and that due to the amendments of the Agreement, the NTA assumed more liabilities and such amendments were undertaken without board approval.

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[44] *Id*. at 1250.

[45] *Id*. at 1290-1306.

In her Supplement to Petitioner's Memorandum,[46] petitioner added that the COA arbitrarily insisted that she recommended the amendments to the Agreement in the NTA Housing Project but there is no evidence on record to prove it.

The Court's Ruling

The Court finds the petition meritorious.

Petitioner merely initialed and witnessed the documents

The Constitution vests in the COA the broadest latitude to discharge its role as the guardian of public funds and properties. Thus, the COA was granted exclusive authority, subject to the limitations of Article IX(D), Section 2(2) of the Constitution, 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.[47] In recognition of such constitutional empowerment, the Court has generally sustained the COA's decisions or resolutions in deference to its expertise in the implementation of the laws it has been entrusted to enforce. Only when the COA has clearly acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction has the Court intervened to correct the COA's decisions or resolutions. For this purpose, grave abuse of discretion means that there is, on the part of the COA, an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law, such as when the assailed decision or resolution rendered is not based on law and the evidence but on caprice, whim and despotism.[48]

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[46] *Id*. at 1310-1318.

[47] Article IX(D), Section 2(2) of the Constitution.

[48] *Miralles v. Commission on Audit*, 818 Phil. 380, 389-390 (2017); citations omitted.

Before a person can be held liable under a ND, it must be proven that he or she is directly responsible for the illegal, irregular, unnecessary, excessive, extravagant, or unconscionable transactions. Section 103 of Presidential Decree No. 1445 (Government Auditing Code of the Philippines) provides:

SECTION 103. General liability for unlawful expenditures. Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be **directly responsible** therefor. (emphasis supplied)

In this case, the Court finds that the COA committed grave abuse of discretion in holding petitioner liable for the remaining ND Nos. 98-09 (JV) and 98-013 (JV) even though she merely placed her initials in the documents. According to Report of the Audit Team for the NTA, petitioner was held for the following acts:

Name/Position	Extent of Participation	Particulars
Ms. Cristina C. Lopez Manager Administrative Department	For witnessing Promissory notes	12/17/96-PN#082-96 – ₱10M
	For initialing Promissory note	10/7/97-136-9710DL-017 – ₱5M
	For initialing Promissory note	1/29/98-136-9801DL-040 – ₱22M
	For initialing withdrawal slip	10/7/97 – ₱4.473M
	For initialing withdrawal slip	12/17/96 – ₱10M[49]
NTA Housing Committee		

[49] *Rollo*, p. 273.

Ms. Cristina C. Lopez Chairman	For initialing original developmental agreement, supplemental, developmental & REM & notice of award. For recommending four additional provisions in approving developmental agreement particularly provision for mobilization fee in excess of authorized mobilization under P.D. [No.] 1594	₱39.2M/₱100M REM[50]

Evidently, petitioner is primarily held liable by the COA because she initialed and witnessed some of the PNs and withdrawal slips in the OCL and the Agreement. However, it is clear from the report that petitioner is not the one that approved the said transactions. She merely placed her initials therein. The liability of petitioner cannot merely be assumed or inferred based on her initialing and witnessing the transactions, or that she was designated as the chairperson of the NTA Housing Project. There must be some concrete evidence that she was directly responsible for the said transactions or that she was the approving authority therein.

Manifestly, the COA failed to prove that petitioner's initials in those documents were the approving or recommending authority for the transactions in the OCL and the Agreement. No evidence was presented that petitioner's initials therein were indispensable; rather, her initials did not have any definite authority on the said transactions.

In contrast, the report of the Audit Team showed that it was actually the NTA Board and the Administrator that approved

[50] *Id*. at 289.

the said transactions, and it was the Finance Manager that prepared the documents.[51] Further, as pointed out by petitioner, the NTA Board stated that it was the NTA Administrator, Deputy Administrator for Support Services, and Chief of the Fund Management who were the authorized signatories for the OCL with PNB, from which the developmental loan was sourced, to wit:

> ADDENDUM TO RESOLUTION NO. 443-96
> DATED MARCH 13, 1996
>
> RESOLVED, FURTHER, that for and in behalf of the NTA, the Honorable Amante E. Siapno, Administrator and/or Atty. Amalia M. Guloy, Deputy Administrator for Support Services and Maybelen Dictaan, Chief, Fund Management Division are hereby designated as the authorized official(s) signatory of the NTA for the **subject credit line** and the corresponding Assignment of 1996 Corporate Receivables and Trust Funds, as guarantee thereof, for the PNB.[52] (emphasis supplied)

On the other hand, the COA attempts to impute liability to petitioner because she recommended the amendments to the Agreement in the NTA Housing Project, which were allegedly prejudicial to the government. According to COA, this proves the direct participation and acquiescence of petitioner to the said irregular transactions.

The Court is not convinced.

There is absolutely nothing in the records which would show that petitioner expressly recommended the said amendments. Glaringly, the COA failed to cite any document which contains petitioner's unequivocal signature or approval to the said amendments. Petitioner was not even present in the NTA Board Meeting when the purported amendments were approved.[53] The COA's conclusion that petitioner directly participated in the said amendments is completely unsubstantiated.

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[51] *Id*. at 272.

[52] *Id*. at 936.

[53] *Id*. at 415.

Rather, as stated in the Minutes of the 85th Special Meeting of the NTA,[54] it was a certain Director Magsaysay that recommended the approval of the said amendments to the NTA Board, and petitioner was not even present during the said meeting, *viz.*:

> While Director Gironella had inquired from Director Magsaysay (assigned to conduct all matters related to the housing) if every aspects of the matter was well[-]taken, **Director Magsaysay assured the other Members of the Board that everything will be transparent and she, therefore, moved for the approval and confirmation of the Agreement** entered into by and between NTA and Consuelo Builders, subject to the following amendments:
>
> 1. Granting of mobilization fee equivalent to 25% of Land Development Cost;
> 2. Initial Investment of Developers at Nine Million Pesos (₱9,000,000.00) for both Land Development and House Construction;
> 3. Retention fee of ten percent [10%] on accomplishment Billing; and
> 4. Employee beneficiaries shall assume the payment for other additional amenities in the amount of ₱15.00 per square meter on Land Development.
>
> Director Lasam seconded the motion.[55] (emphasis and underscoring supplied)

Evidently, it was not petitioner who recommended the amendments to the Agreement. Again, the COA cannot merely assume petitioner is liable without any concrete proof and it cannot merely be inferred in her designation as chairperson of the NTA Housing Project. Indeed, the records demonstrate that petitioner was not directly responsible for the said amendments.

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[54] *Id*. at 415-420.

[55] *Id*. at 419.

Amendment of the Agreement was not an irregular transaction

The COA argues that the amendments to the Agreement in the NTA Housing Project were irregular because it made the NTA solidarily liable for the said project with the Developers, which was not contemplated in the original Agreement. In other words, the transactions under such amendment were irregular expenditures. An irregular expenditure is an expenditure incurred without adhering to established rules, regulations, procedural guidelines, policies, principles or practices that have gained recognition in law.[56]

Even assuming that petitioner had a participation in the amendment of the Agreement of the NTA Housing Project, the Court finds that it cannot be considered as an irregular transaction. The original Agreement for the NTA Housing Project stated that:

> The financing scheme for the project shall be as follows:
>
> a) Construction of the Project's 530 housing units shall be at the total expense of developer without any assistance from the NTA;
>
> b) Land development costing approximately Thirty-nine [Million] Two Hundred Forty-four [Thousand] and Nine Hundred Seventy Three Pesos (₱39,244,973.00) Pesos (sic) shall be undertaken and financed as follows:
>
> x x x x x x x x x
>
> ii. NTA will immediately apply for a developmental loan (as processing thereof takes sometime) but actual availment thereof shall only be made after approximately Thirty-five percent (35%) of the developmental work has been completed by the DEVELOPER. This jibes with the initial cash infusion by the Developer in the

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[56] *Subic Bay Metropolitan Authority v. Commission on Audit*, G.R. No. 230566, January 22, 2019.

sum of Fifteen Million (₱15,000,000.00) PESOS which is roughly 37% of the total land development cost;[57]

x x x x x x x x x

a) NTA and the Developer shall apply for a developmental loan from the GSIS or other government financial institutions to pay for the land development cost of the project. The corresponding Tripartite Agreement for the Developmental Loan shall be entered into among NTA, the Developer, and the Government financial institution;[58]

Manifestly, even though the original Agreement stated that the construction of the housing unit shall be at the total expense of the Developers without assistance from the NTA, it also provided that the NTA will apply for a developmental loan for the financing of the project. As a result, the NTA had anticipated, from the original Agreement, that it would secure a developmental loan, which would necessarily entail a monetary obligation on its part.

The NTA initially secured a developmental loan in the amount of ₱25 million from the Land Bank of the Philippines. However, the terms and conditions of such loan were too stiff. Thus, it was proposed the developmental loan be taken from the existing OCL with PNB because it was not fully utilized.[59] In its Resolution dated December 6, 1996, the NTA Board approved the request to apply for the developmental loan to the PNB. In its Letter[60] dated August 28, 1997, the PNB informed the NTA that there must be an amendment of the Agreement to establish a sinking fund, where all housing loan proceeds would be deposited and applied as payment for the developmental loan, and that the NTA's liability is absolute because the developmental loan must be paid upon maturity.

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[57] *Rollo*, p. 430.

[58] *Id*. at 432.

[59] *Id*. at 536.

[60] *Id*. at 541-542.

Accordingly, the NTA had no other recourse but to amend the original Agreement and provide therein that it shall be solidarily liable with the Developers with respect to the developmental loan. Nevertheless, the Court finds that even though the Agreement was amended, it was not unfavorable to the government. It must be reiterated that the liability of the NTA was already contemplated in the original Agreement because it was tasked to secure a loan to finance the NTA Housing Project.

Further, as observed by the Ombudsman, while the Agreement was amended due to the developmental loan, it was not prejudicial to the government with respect to the payment of the interests and charges therein. The original Agreement, it explicitly provides that:

> The Developer's financial infusion to these Project are, therefore, as follows:
>
> x x x x x x x x x
>
> c) The interest, fees and other charges payable on the developmental loan.[61]

The supplemental agreement and the amended agreement did not revoke or set aside this provision. Thus, all the interests and charges were still payable by the Developers. Indeed, the Ombudsman correctly opined that the provision on interest payment, fees and other charges on the Development loan, which are to the account of the developer, was never amended in the contract.

Consequently, ND No. 98-013 (JV) in the amount of ₱22,287,361.11 issued against petitioner has no valid legal basis because the NTA did not incur additional interest and charges of ₱9,974,158.90 and ₱7,773,090.00, from the Agreement in the NTA Housing Project. Again, the interest and charges were payable by the Developers, not the NTA, based on the Agreement; this provision on interest payments was retained even in the subsequent amendments.

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[61] *Id*. at 431.

Likewise, the COA failed to prove that the amendment to the Agreement, with respect to the mobilization fee, was an irregular transaction. The said amendment granted a mobilization fee equivalent to 25% of land development cost in favor of the developer.[62] According to the COA, this was in excess of the 15% mobilization fee under P.D. No. 1594 or in the amount of ₱5,886,745.95.[63]

However, the COA failed to consider that, in the same amendment, the Developers gave an initial investment of ₱9,000,000.00 for both land development and construction of houses, which is more than enough to cover such excess amount of mobilization fee. As correctly held by the Ombudsman, the said initial investment of the Developers defeats the purpose of the charge against petitioner with respect to the mobilization fee.[64]

Consequently, ND No. 98-09 (JV) in the amount of ₱25,000,000.00 issued against petitioner for allowing the excess mobilization fee of ₱5,886,745.95 is not justified. To reiterate, the said excess mobilization fee is already covered by the initial investment of the Developers. Thus, the said amount did not come from the NTA.

The NTA Housing Project was not disadvantageous to the government

Another reason for the issuance of ND No. 98-09 (JV) against petitioner, in the amount of ₱25,000,000.00, was because payment of the NTA Housing Project was sourced from the said developmental loan and the COA argues that such project was grossly disadvantageous to the government.

The Court disagrees.

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[62] *Id*. at 527.

[63] *Id*. at 243.

[64] *Id*. at 113.

The Agreement in the NTA Housing Project was amended such that the NTA would be solidarily liable with the Developers for payment of the developmental loan. Nevertheless, there were sufficient safeguards to protect the NTA from liability, such as the creation of a sinking fund in the form of a savings account, where all the housing loan proceeds will be deposited and applied as payment for the developmental loan by virtue of an assignment thereof in favor of PNB. This will ensure that the housing loan proceeds would go directly to the payment of the developmental loan so that the NTA would not incur any additional liability.

Notably, the Ombudsman observed that the NTA Housing Project was a profitable investment, to wit:

> Furthermore, it can also be said that in 2002, economic turn around gave hope to NTA housing project. This instigated the Philippine Deposit Insurance Corporation (PDIC) to undertake the buy out of the outstanding loan of NTA with the PNB. With the take-over by the PDIC of NTA's outstanding loan with PNB, penalty charges thereon shall be condoned and the PDIC offered a lower interest rate and softer terms and conditions. Said buy out made by the PDIC would indicate that the NTA Housing Project is a profitable investment. As in fact, said development resulted to the forging of a Supplemental Memorandum of Agreement between NTA and the Developer (Consuelo Builders Corporation/PMC Construction Joint Venture) for them to provide an equitable and reasonable profit sharing scheme.[65]

Petitioner further presented additional evidence that the NTA Housing Project indeed earned profits for the government. During the implementation of the NTA Housing Project, it was able to generate sales proceeds in the total sum of ₱19,512,460.00 based on the Summary of Buyers.[66] Out of the said amount, a total of ₱11,317,336.99 was directly transferred to the benefit of NTA, as follows:

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[65] *Id*. at 110-111.

[66] *Id*. at 1214.

a. ₱5,984,000.00 from the NTA Housing Project was remitted by the Pag-IBIG Fund to the PDIC based on its certification;[67]
b. ₱4,613,091.60 was remitted to the Joint Account of the NTA and the Developers as per bank statements;[68] and
c. ₱720,245.39 was received by the NTA from direct buyers of the housing project as per certification of the NTA Chief Accountant.[69]

The remaining sales proceeds represent the amount of equity payments of the buyers, as well as the deductions made for the Pag-IBIG Fund from the respective housing loans.

In contrast, aside from its bare allegation that the NTA Housing Project was grossly disadvantageous to the government, the COA did not present any concrete evidence that the said project was a complete and utter failure and a liability to the government, or that such loss was attributable to petitioner. It could not even substantiate that the NTA Housing Project was overpriced compared to other neighboring housing projects. Indeed, without any credible evidence that the NTA Housing Project was grossly disadvantageous to the government, ND No. 98-09 (JV) in the amount of ₱25,000,000.00 cannot be charged against petitioner.

Based on the foregoing, the COA committed grave abuse of discretion since there is insufficient legal and factual basis to charge petitioner with ND Nos. 98-09 (JV) and 98-013 (JV) for the NTA Housing Project.

WHEREFORE, the petition is **GRANTED**. The COA December 30, 2010 Decision and January 30, 2015 Resolution, docketed as Decision Nos. 2010-151 and 2015-035, respectively, insofar as the liability of Cristina Catu-Lopez is concerned, are hereby **REVERSED** and **SET ASIDE**.

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[67] *Id*. at 1215.

[68] *Id*. at 1216-1220.

[69] *Id*. at 1221.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Reyes, A. Jr., Reyes, J. Jr., Hernando, Carandang, and *Zalameda, JJ.*, concur.

Leonen and *Caguioa, JJ.*, on official business.

Lazaro-Javier and *Inting, JJ.*, on wellness leave.

EN BANC

[G.R. No. 245400. November 12, 2019]

JANICE DAY E. ALEJANDRINO and MIRIAM M. PASETES, *petitioners, vs.* **COMMISSION ON AUDIT, LEILA S. PARAS, in her capacity as COA Director CGS-4; CECILIA N. CHAN, in her capacity as COA Audit Team Leader; and MANUELA E. DELA PAZ, in her capacity as COA Supervising Auditor,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PHILIPPINE NATIONAL CONSTRUCTION CORPORATION (PNCC) IS A GOVERNMENT-OWNED AND CONTROLLED CORPORATION (GOCC) DESPITE BEING ORGANIZED AND CHARTERED UNDER THE CORPORATION CODE; IT IS ALSO RECOGNIZED AS A GOCC UNDER THE ADMINISTRATIVE CODE AND EXISTING JURISPRUDENCE. — To resolve the issue of whether PNCC is a GOCC, We deem it proper to trace back the creation of PNCC as a corporate entity. As already mentioned, PNCC is formerly CDCP, a private construction firm engaged to carry on and conduct general contracting business with any private person or government entity or instrumentality including

designing, constructing and enlarging, operating and maintenance of roads. In the course of its operations, CDCP obtained loans from various Government Financing Institutions (GFIs). On February 23, 1983, President Ferdinand E. Marcos issued a LOI No. 1295, which directed the GFIs to convert all of CDCP's unpaid obligations with these financial institutions into shares of stock. The implementation of the said LOI made the GFIs' majority stockholders of PNCC. By virtue of the debt-to-equity conversion of CDCP loans, CDCP's Articles of Incorporation and By-Laws were later amended to change its corporate name from CDCP to PNCC to emphasize the National Government's shareholdings. In 1986, then President Corazon C. Aquino, pursuant to the government's privatization program, issued Presidential Proclamation No. 50 creating Asset Privatization Trust (APT), now known as the Privatization and Management Office, as trustee of the equity shares of the GFIs in PNCC. Also, pending its privatization, President Gloria Macapagal Arroyo issued Executive Order No. (EO) 331, placing PNCC under the Department of Trade and Industry.· Petitioners' contention that PNCC remains a private corporation notwithstanding the government's interest therein through the debt-to-equity conversion mandated under LOI No. 1295 does not hold water. The COA-CGS Director and the COA Commission Proper correctly ruled that PNCC is a GOCC under the direct supervision of the Office of the President, despite being organized and chartered under the Corporation Code. x x x While the Court recognized PNCC's nature as an acquired asset corporation in the case of *Pabion*, it also stated therein that PNCC may be also deemed as a GOCC under the Administrative Code. In a more recent decision, this Court has settled the issue of PNCC's character as a government-owned and controlled corporation in the case of *Strategic Alliance v. Radstock Securities*[.] x x x In the aforementioned case, the Court emphasized that PNCC is 90.3% owned by the government and could not be considered an autonomous entity just because it was incorporated under the Corporation Code. This Court sees no cogent reason to deviate from this ruling which has exhaustively discussed PNCC's nature as a government-owned corporation.

2. ID.; ID.; ID.; ID.; BEING A GOCC WITHOUT ORIGINAL CHARTER UNDER THE DIRECT SUPERVISION OF THE OFFICE OF THE PRESIDENT (OP), PNCC IS CLEARLY SUBJECT TO COMMISSION ON AUDIT'S (COA) AUDIT

AUTHORITY. — PNCC, being a government-owned corporation under the direct supervision of the Office of the President, is clearly subject to COA's audit authority. Under Section 2(1) of Article IX-D of the Constitution, the COA is vested with the power, authority and duty to examine, audit and settle the accounts of the following entities: x x x 2. GOCCs with original charters; 3. GOCCs without original charters; x x x Moreover, in *Feliciano v. COA*, the Court stressed that the determining factor for COA's exercise of audit jurisdiction is government ownership or control[.] x x x Based on the foregoing, we rule that PNCC is a GOCC without original charter but under the audit jurisdiction of COA.

3. **ID.; ID.; ID.; GOCCs ARE GENERALLY NOT ALLOWED TO ENGAGE THE LEGAL SERVICES OF PRIVATE COUNSELS; CERTAIN EXCEPTIONS ARE PROVIDED UNDER THE CIRCULARS ISSUED BY THE COA AND THE OP. —** As a general rule, GOCCs are not allowed to engage the legal services of private counsels. The OGCC is mandated by law to provide legal services to government-owned and controlled corporations. x x x However, the COA and the Office of the President have issued circulars providing for certain exceptions to the general rule. x x x The purpose of the circular is to curtail the unauthorized and unnecessary disbursement of public funds to private lawyers for services rendered to the government, which is in line with the COA's constitutional mandate to 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.

4. **ID.; ID.; ID.; ID.; THREE INDISPENSABLE CONDITIONS BEFORE A GOCC CAN HIRE A PRIVATE LAWYER; AS PNCC FAILED TO SECURE THE CONFORMITY OF THE OFFICE OF THE GOVERNMENT CORPORATE COUNSEL (OGCC) AND THE CONCURRENCE OF THE COA IN HIRING AND PAYING FOR THE SALARIES OF THE LAWYERS AS REQUIRED BY THE SAID CIRCULARS, THE COA DID NOT COMMIT GRAVE ABUSE OF DISCRETION IN ISSUING THE NOTICE OF DISALLOWANCE (ND) CORRESPONDING FOR THE SAID SALARIES. —** In *Phividec Industrial Authority v. Capitol*

Steel Corporation, there are three indispensable conditions before a GOCC can hire a private lawyer: (1) private counsel can only be hired in exceptional cases; (2) the GOCC must first secure the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case may be; and (3) the written concurrence of the COA must also be secured. Considering that PNCC is a government-owned corporation, the hiring of private lawyers is subject to the requirements mentioned above. Like the COA, we are not persuaded with petitioners' argument that the hired lawyers cannot be considered as private lawyers because they are part of PNCC's Corporate Structural Organization. The terms of the Contracts of Service clearly state that the contract between PNCC and the lawyers is one of "independent contractorship and principally for the engagement of said services and shall not be construed to give rise to any employer-employee relationship." Furthermore, the functions of the hired lawyers overlapped with the authority of the OGCC as their duties include attending court hearings and mediation, conduct of research and investigation, and handling of cases and the preparation of draft pleadings and motions to be filed with the court. Indisputably, PNCC failed to secure the conformity and acquiescence of the Government Corporate Counsel and the written concurrence of the COA in hiring and paying salaries to the four lawyers as required in the abovementioned circulars. Hence, COA did not commit grave abuse of discretion in issuing the notice of disallowance of the salaries paid to lawyers.

5. ID.; ID.; ID.; ID.; ID.; DESPITE THE COA DISALLOWANCE, THE RECIPIENT-LAWYERS ARE NOT OBLIGATED TO RETURN THE AMOUNT THEY RECEIVED IN GOOD FAITH AND ON THE BASIS OF *QUANTUM MERUIT*. — Nevertheless, despite the disallowance, the COA correctly held that the private lawyers who rendered legal services to PNCC are not required to refund the amount they received in good faith. Jurisprudence has settled that recipients or payees in good faith need not refund disallowed amounts involving salaries, emoluments, benefits, and allowances due to government employees. This is [in]accord with the ruling of the Court in the case of *Polloso v. Hon. Gangan*, where the court disallowed the disbursement of public funds to pay for the services of Atty.

Satorre without the requisite consent from the OSG or OGCC as it would allow contravention of COA Circular No. 86-255, but Atty. Satorre was held not liable to return the money already paid him. Moreover, on the basis of *quantum meruit*, the hired lawyers who have already rendered legal services may not be required to refund the amount received as payment. The reason for this is to prevent an unscrupulous client from running away with the fruits of the legal services of counsel without paying for it and also avoids unjust enrichment on the part of the client, or in this case, PNCC.

6. ID.; ID.; ID.; ID.; ID.; AS HEREIN PETITIONERS WERE NOT SHOWN TO HAVE ACTED IN BAD FAITH SINCE THEY WERE ONLY PERFORMING MINISTERIAL FUNCTIONS ASSIGNED TO THEM, THEY COULD NOT BE HELD LIABLE FOR THE DISALLOWED AMOUNT. — In the case of *MWSS v. COA* and *Uy v. MWSS and COA*, We held that although petitioners were officers of MWSS, they had nothing to do with policy-making or decision-making for the MWSS, and were merely involved in its day-to-day operations. Therein, the petitioners who were department/division managers, Officer-in-Charge-Personnel and Administrative Services and the Chief of Controllership and Accounting Section were not held personally liable for the disallowed amounts[.] x x x We note that in this case, petitioners' participation in the disallowed transactions were done while performing their ministerial duties as Head of Human Resources and Administration, and Acting Treasurer, respectively. Petitioner Alejandrino's main function is the administration of human resources and personnel services, while petitioner Pasetes certified and approved the check voucher and certified the availability of funds as the acting treasurer. It has not been shown that petitioners acted in bad faith as they were merely performing their official duties in approving the payment of the lawyers under the directive of PNCC's executive officers. Petitioners, although officers of PNCC, could not be held personally liable for the disallowed amounts as they were not involved in policy-making or decision-making concerning the hiring and engagement of the private lawyers and were only performing assigned duties which can be considered as ministerial.

APPEARANCES OF COUNSEL

Jesus P. Casila for petitioners.
The Solicitor General for respondents.

D E C I S I O N

CARANDANG, *J.*:

Challenged in this Petition for *Certiorari*[1] under Rule 64 of the Revised Rules of Civil Procedure are the Decision[2] dated December 13, 2017 and the Resolution[3] dated September 27, 2018 of the Commission on Audit (COA) in Decision No. 2017-409. The COA affirmed Notice of Disallowance[4] No. 12-004-(2011) dated August 9, 2012 issued by the COA Audit Team Leader and held the corporate officers of the Philippine National Construction Corporation (PNCC), including herein petitioners, liable to pay ₱911,580.96 representing the salaries of lawyers hired by PNCC without the written conformity and concurrence of the Office of the Government Corporate Counsel (OGCC) and the COA.

Facts of the Case

Petitioners Janice Day E. Alejandrino (Alejandrino) and Miriam M. Pasetes (Pasetes) are former executive officers of PNCC, originally named Construction and Development Corporation of the Philippines (CDCP). Alejandrino was Senior Vice-President/Head, Human Resources and Administration, while Pasetes was Vice-President/Acting Treasurer.

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[1] *Rollo*, pp. 3-21.

[2] Concurred in by Chairperson Michael G. Aguinaldo, Commissioner Jose A. Fabio and Commissioner Isabel D. Agito; *id*. at 27-35.

[3] *Id*. at 36.

[4] Issued by Audit Team Leader Cecilia N. Chan and Supervising Auditor Manuela E. Dela Paz; *id*. at 49-51.

Sometime in 2011, PNCC engaged the legal services of four private lawyers, namely, Attys. Eusebio P. Dulatas, Henry Salazar, Stephen Ivan Salinas as members of the PNCC Corporate Legal Division, and Atty. Alex Almario as Corporate Secretary.[5] Consequently, salaries were paid to them.

On September 24, 2012, the COA Audit Team issued Notice of Disallowance[6] No. 12-004-(2011) dated August 9, 2012 addressed to Atty. Luis F. Sison, President and Chief Executive Officer of PNCC, stating that the amount of ₱911,580.96, representing the salaries of the four lawyers, is disallowed in audit because their hiring was without the written conformity and acquiescence of the OGCC as well as the written concurrence of the COA, in violation of the provisions of COA Circular No. 95-011[7] and Office of the President Memorandum Circular (OP-MC) No. 9.[8] The six corporate officers of PNCC and the four lawyer-payees were held liable and were directed to settle the amount disallowed:

Name	Position/Designation	Participation
Rainer B. Butalid	Chairman	Authorized/approved the payment
Luis F. Sison	President and Chief Executive Officer	Signed the contract and authorized/approved the payment

[5] *Id.* at 37-48.

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

[7] Prohibition against employment by government agencies and instrumentalities, including government-owned or controlled corporations, of private lawyers to handle their legal cases.

[8] Prohibiting Government-Owned or Controlled Corporations (GOCCs) from Referring their Cases and Legal Matters to the Office of the Solicitor General, Private Legal Counsel or Law Firms and directing the GOCCs to Refer their Cases and Legal Matters to the Office of the Government Corporate Counsel, Unless Otherwise Authorized Under Certain Exceptional Circumstances.

Janice Day E. Alejandrino	Senior Vice-President/ Head, Human Resources and Administration	Approved the payment, facilitated and coordinated the timely acquisition, development, and administration of human resources and managed the delivery of personnel services to ensure work excellence and productivity
Miriam M. Pasetes	Vice-President/Acting Treasurer	Authorized/approved the payment, certified and approved the check voucher, and certified the availability of funds
Susan R. Vales	Assistant Vice- President/ Head, Controllership Division	Approved the payment, and certified and approved the check voucher
Anatalia C. Cardova	Head, Funds Management Department	Certified that fund is available
Alex G Almario	Senior Adviser to the Office of the Chairman	Payee
Eusebio P. Dulatas, Jr.	Head, Corporate Legal	Payee
Henry B. Salazar	Legal Officer	Payee
Stephen Ivan M. Salinas	Legal Officer	Payee

They filed an Appeal Memorandum[9] with the COA Director for Corporate Government Sector (COA-CGS) — Cluster 4 assailing the Notice of Disallowance. They argued that the COA Audit Team Leader, Cecilia Chan, erred when it assumed that PNCC is under the full audit authority of COA. They asserted that since PNCC is a corporation created in accordance with the general corporation law, it remains a private corporation notwithstanding that majority of its stocks are owned by the National Government by virtue of the debt-to-equity conversion. They asserted that PNCC is a government-acquired asset corporation and not a government-owned and controlled corporation, thus, the COA acted with grave abuse of discretion

[9] *Rollo*, pp. 52-70.

in disallowing in audit the payment of salaries to three lawyers of the PNCC Corporate Legal Division and one lawyer as corporate secretary. They maintain that the hiring of said lawyers and the payment of salaries under the service contracts was within the power and authority of the management of PNCC.

In her Answer,[10] the Audit Team Leader argued that PNCC is a government agency and is, therefore, bound to comply with the requirements of COA Circular No. 95-011 and OP-MC No. 9, Series of 1998.[11]

In a Decision[12] dated August 29, 2014, the COA-CGS Cluster 4 denied the appeal. The COA-CGS Director held that PNCC is a GOCC subject to COA's audit jurisdiction. The COA-CGS Director further noted that the functions of the hired private lawyers overlapped with the authority of the OGCC, hence, PNCC needs to comply with COA Circular No. 95-011 and OP-MC No. 9.

Petitioners elevated the case to the COA Commission Proper *via* a Petition for Review[13] reiterating their arguments.

Respondent COA partly granted the Petition for Review in its Decision[14] dated December 13, 2017, the dispositive portion of which states:

WHEREFORE, premises considered, the Petition for Review of Atty. Henry B. Salazar, et al., all of the Philippine National Construction Corporation (PNCC), is hereby **PARTLY GRANTED**. Accordingly, Commission on Audit Corporate Government Sector-Cluster 4 Decision No. 2014-06 dated August 29, 2014 which affirmed Notice of Disallowance (ND) No. 12-004-(2011) dated August 9, 2012, on the payments made by PNCC to private lawyers under Contracts of Service for calendar year 2011 in the total amount of ₱911,580.96,

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[10] Not attached to the *rollo*.

[11] *Rollo*, p. 30.

[12] *Id.* at 71-76.

[13] *Id.* at 71-76.

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

is hereby **AFFIRMED**, but the payees are no longer required to refund the amounts they received. The other persons named liable under the ND shall continue to be liable for the total amount of ₱911,580.96.[15]

The COA held that PNCC is a GOCC, under the direct supervision of the Office of the President. Thus, being a GOCC, PNCC is under the audit jurisdiction of the COA. The COA cited the case of *Feliciano v. Commission on Audit*,[16] where the Court held that the COA's audit jurisdiction extends not only to government "agencies or instrumentalities," but also to "government-owned and controlled corporations with original charters" as well as "other government-owned or controlled corporations" without original charters. As to the validity of the hiring of lawyers by PNCC under the Contracts of Service, the COA held that the payment of legal services based on individual contracts of service is irregular in the absence of the required written conformity and acquiescence of the Government Corporate Counsel and the written concurrence of the COA.

The COA, however, held that the private lawyers who rendered legal services to PNCC are not required to refund the amounts they received in good faith. However, the officers who failed to secure the written conformity and concurrence of the OGCC and the COA in hiring the lawyers are personally liable.

Petitioners filed a Motion for Partial Reconsideration[17] claiming that since the lawyers who received their salaries were not required to return the amounts they received, they should also not be required to pay since they were merely performing their functions in good faith and in accordance with the direction set by the PNCC's Board of Directors. They further asserted that the principle of *quantum meruit* should be applied since it cannot be denied that PNCC benefitted from the legal services rendered by the lawyers.

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[15] *Id.* at 34.

[16] 464 Phil. 439 (2004).

[17] *Rollo*, pp. 95-103.

The COA denied the motion in its Resolution[18] dated September 27, 2018 for lack of merit.

Hence, petitioners Alejandrino and Pasetes are now before Us alleging that the COA acted with grave abuse of discretion amounting to lack or excess of jurisdiction in holding that:

1. PNCC is a government-owned and controlled corporation and hence falls under COA's audit jurisdiction;
2. PNCC's hiring of lawyers and payment of their salaries are subject to COA audit and the hired lawyers are not organic personnel of PNCC;
3. The principle of *quantum meruit* is not applicable in this case; and
4. The PNCC officers held liable for the disallowed transaction were not in good faith in hiring and paying the lawyers.

Petitioners contend that COA has acted without or in excess of its jurisdiction or with grave abuse of discretion in holding that PNCC is a GOCC and is under COA's audit jurisdiction. They cited the case of *Philippine National Construction Corp. v. Pabion*[19] where the court held that PNCC is a government acquired asset corporation, and therefore not a GOCC.[20] Petitioners assert that since PNCC is a corporation created in accordance with the general corporation law, it is essentially a private corporation notwithstanding the government's interest therein as a result of the debt-to-equity of its loans with various government financial institution by operation of Letter of Instruction (LOI) No. 1295.[21] Petitioners further assail the ruling that petitioners and the other PNCC officers are liable for the payment made to lawyers hired by PNCC which were disallowed by the COA.

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[18] *Id*. at 36.

[19] 377 Phil. 1019 (1999).

[20] *Id*. at 1043.

[21] Directing the Measure to Expedite the Financial Rehabilitation Program of Construction and Development Corporation of the Philippines (CDCP).

In the Comment[22] filed by the respondents through the Office of the Solicitor General (OSG), they asserted that PNCC is a GOCC and is, therefore, subject to COA's audit jurisdiction. The OSG maintains that petitioners' reliance on the case of *Pabion* is misplaced since the said case did not delve on the issue of jurisdiction of COA but resolved the issue of whether the Securities and Exchange Commission may order PNCC to hold a shareholders' meeting for the purpose of electing its board of directors. Moreover, respondents claim that the determining factor for COA's exercise of audit jurisdiction is government ownership and control. According to respondents, since it is beyond dispute that the government owns the controlling or majority shares of the PNCC, it cannot evade COA's audit jurisdiction by simply claming that it is a private corporation chartered under the general corporation law. Respondents argue that the payment of legal services of the private lawyers engaged by PNCC under Contracts of Service is an irregular expense. On the other hand, respondents, through the OSG contend that PNCC is a GOCC under the direct supervision of the Office of the President. Moreover, respondents assert that PNCC is under the audit jurisdiction of COA since the determining factor is the government ownership or control.

ISSUES

Essentially, the main issues to be resolved in this petition are: 1) whether PNCC is a GOCC under the audit jurisdiction of COA; 2) whether the COA committed grave abuse of discretion in disallowing the payment of salaries of the lawyers whose services were engaged by PNCC; 3) whether petitioners are liable for the disallowed amount; and 4) whether the salaries of lawyers are irregular expense.

The Court's Ruling

To resolve the issue of whether PNCC is a GOCC, We deem it proper to trace back the creation of PNCC as a corporate

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[22] *Rollo*, pp. 113-133.

entity. As already mentioned, PNCC is formerly CDCP, a private construction firm engaged to carry on and conduct general contracting business with any private person or government entity or instrumentality including designing, constructing and enlarging, operating and maintenance of roads.[23] In the course of its operations, CDCP obtained loans from various Government Financing Institutions (GFIs). On February 23, 1983, President Ferdinand E. Marcos issued a LOI No. 1295, which directed the GFIs to convert all of CDCP's unpaid obligations with these financial institutions into shares of stock. The implementation of the said LOI made the GFIs' majority stockholders of PNCC. By virtue of the debt-to-equity conversion of CDCP loans, CDCP's Articles of Incorporation and By-Laws were later amended to change its corporate name from CDCP to PNCC to emphasize the National Government's shareholdings.

In 1986, then President Corazon C. Aquino, pursuant to the government's privatization program, issued Presidential Proclamation No. 50 creating Asset Privatization Trust (APT), now known as the Privatization and Management Office, as trustee of the equity shares of the GFIs in PNCC. Also, pending its privatization, President Gloria Macapagal Arroyo issued Executive Order No. (EO) 331, placing PNCC under the Department of Trade and Industry.

Petitioners' contention that PNCC remains a private corporation notwithstanding the government's interest therein through the debt-to-equity conversion mandated under LOI No. 1295 does not hold water. The COA-CGS Director and the COA Commission Proper correctly ruled that PNCC is a GOCC under the direct supervision of the Office of the President, despite being organized and chartered under the Corporation Code.

Under Administrative Order No. (AO) 59, Section 2(a) and (b), a GOCC is defined as follows:

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

(a) **Government-owned and/or controlled corporation, hereinafter referred to as GOCC or government corporation, is a corporation which is created by special law or organized under the corporation code in which the government, directly or indirectly, has ownership of the majority of the capital or has voting control**; provided that an acquired asset corporation as defined in the next paragraph shall not be considered as GOCC or government corporation;

(b) Acquired asset corporation is a corporation which is under private ownership, the voting or outstanding shares of which (i) were conveyed to the government or to a government agency, instrumentality or corporation in satisfaction of debts whether by foreclosure or otherwise, or (ii) were duly acquired in by the government through final judgment in a sequestration proceeding; (2) which is a subsidiary of a government corporation organized exclusively to own and manage, or lease, or operate specific physical assets acquired by a government financial institution in satisfaction of debts incurred therewith, and which in any case by law or by enunciated policy is required to be disposed of to private ownership within a specified period of time. (Emphasis ours)

A GOCC is defined under EO 292 (Administrative Code) and Republic Act No. 10149 or the GOCC Governance Act of 2011, as follows:

(13) Government-owned or controlled corporation refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock.[24]

While the Court recognized PNCC's nature as an acquired asset corporation in the case of *Pabion*, it also stated therein that PNCC may be also deemed as a GOCC under the Administrative Code.[25] In a more recent decision, this Court has settled the issue of PNCC's character as a government-

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[24] EO 292, Introductory Provisions.

[25] Instituting the "Administrative Code of 1987."

owned and controlled corporation in the case of *Strategic Alliance v. Radstock Securities*,[26] when it ruled that:

> **The PNCC is not 'just like any other private corporation precisely because it is not a private corporation' but indisputably a government owned corporation.** Neither is PNCC "**an autonomous entity**" considering that PNCC is under the Department of Trade and Industry, over which the President exercises control. To claim that PNCC is an "autonomous entity" is to say that it is a lost command in the Executive branch, a concept that violates the President's constitutional power or control over the entire Executive branch of government. (Emphasis ours)

In the aforementioned case, the Court emphasized that PNCC is 90.3% owned by the government and could not be considered an autonomous entity just because it was incorporated under the Corporation Code. This Court sees no cogent reason to deviate from this ruling which has exhaustively discussed PNCC's nature as a government-owned corporation.

PNCC, being a government-owned corporation under the direct supervision of the Office of the President, is clearly subject to COA's audit authority. Under Section 2(1) of Article IX-D of the Constitution, the COA is vested with the power, authority and duty to examine, audit and settle the accounts of the following entities:

1. The government, or any of its subdivisions, agencies and instrumentalities;
2. GOCCs with original charters;
3. GOCCs without original charters;
4. Constitutional bodies, commissions and offices that have been granted fiscal autonomy under the Constitution; and
5. Non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the government, which are required by law or the granting institution to submit to the COA for audit as a condition of subsidy or equity.

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[26] 622 Phil. 431 (2009).

Moreover, in *Feliciano v. COA*,[27] the Court stressed that the determining factor for COA's exercise of audit jurisdiction is government ownership or control, to quote:

> The Constitution vests in the COA audit jurisdiction over 'government-owned and controlled corporations with original charters' as well as 'government-owned or controlled corporations' without original charters. GOCCs with original charters are subject to COA pre-audit, while GOCCs without original charters are subject to COA post-audit. **GOCCs without original charters refer to corporations created under the Corporation Code but are owned and controlled by the government.** The nature or purpose or the corporation is not material in determining COA's audit jurisdiction. Neither is the manner of creation or a corporation, whether under a general or special law.[28] (Emphasis ours).

Based on the foregoing, we rule that PNCC is a GOCC without original charter but under the audit jurisdiction of COA. We now proceed to determine whether COA committed grave abuse of discretion in issuing the Notice of Disallowance of salaries paid to lawyers hired by PNCC.

As a general rule, GOCCs are not allowed to engage the legal services of private counsels. The OGCC is mandated by law to provide legal services to government-owned and controlled corporations.[29] Section 10, Chapter 3, Book IV, Title III of the Administrative Code provides:

> Sec. 10. Office of the Government Corporate Counsel. – **The Office of Government Corporate Counsel (OGCC) shall act as the principal law office of all government-owned or controlled corporations, their subsidiaries, other corporate off-springs and government acquired asset corporations and shall exercise control and supervision over all legal departments or divisions maintained separately and such powers and functions as are now or may**

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[27] *Supra* note 16.

[28] *Id*. at 461-462.

[29] *The Law Firm of Laguesma, Magsalin, Consulta and Gastardo v. Commission on Audit*, 750 Phil. 258, 277 (2015).

hereafter be provided by law. In the exercise of such control and supervision, the Government Corporate Counsel shall promulgate rules and regulations to effectively implement the objectives of this Office. (Emphasis ours)

However, the COA and the Office of the President have issued circulars providing for certain exceptions to the general rule.

First, COA Circular No. 95-011 dated December 4, 1995 provides:

Accordingly and pursuant to this Commission's exclusive authority to promulgate accounting and auditing rules and regulations, including for the prevention and disallowance of irregular, unnecessary, excessive and/or unconscionable expenditure or uses of public funds and property (Sec. 2-2, Art. IX-D, Constitution), public funds shall not be utilized for payment of the services of a private legal counsel or law firm to represent government agencies in court or to render legal services for them. In the event that such legal services cannot be avoided or is justified under extraordinary or exceptional circumstances, **the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case may be, and the written concurrence of the Commission on Audit shall first be secured before the hiring or employment of a private lawyer or law firm**. (Emphasis ours)

The purpose of the circular is to curtail the unauthorized and unnecessary disbursement of public funds to private lawyers for services rendered to the government, which is in line with the COA's constitutional mandate to 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.[30]

Similarly, OP-MC No. 9, requires that:

Section 1. All legal matters pertaining to government-owned or controlled corporations (GOCCs), their subsidiaries, other corporate off-springs and government acquired asset corporations shall be

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[30] *Oñate v. Commission on Audit*, 789 Phil. 260, 266 (2016).

exclusively referred to and handled by the Office of the Government Corporate Counsel (OGCC).

x x x x x x x x x

Section 3. GOCCs are likewise enjoined to refrain from hiring private lawyers or law firms to handle their cases and legal matters. But in exceptional cases, **the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case may be, and the written concurrence of the Commission on Audit shall first be secured before the hiring or employment of a private lawyer or law firm**. (Emphasis ours)

In *Phividec Industrial Authority v. Capitol Steel Corporation*,[31] there are three indispensable conditions before a GOCC can hire a private lawyer: (1) private counsel can only be hired in exceptional cases; (2) the GOCC must first secure the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case may be; and (3) the written concurrence of the COA must also be secured.[32]

Considering that PNCC is a government-owned corporation, the hiring of private lawyers is subject to the requirements mentioned above. Like the COA, we are not persuaded with petitioners' argument that the hired lawyers cannot be considered as private lawyers because they are part of PNCC's Corporate Structural Organization. The terms of the Contracts of Service clearly state that the contract between PNCC and the lawyers is one of "independent contractorship and principally for the engagement of said services and shall not be construed to give rise to any employer-employee relationship." Furthermore, the functions of the hired lawyers overlapped with the authority of the OGCC as their duties include attending court hearings and mediation, conduct of research and investigation, and handling of cases and the preparation of draft pleadings and motions to be filed with the court. Indisputably, PNCC failed to secure the conformity and acquiescence of the Government

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[31] 460 Phil. 497 (2003).

[32] *Id*. at 503.

Corporate Counsel and the written concurrence of the COA in hiring and paying salaries to the four lawyers as required in the abovementioned circulars. Hence, COA did not commit grave abuse of discretion in issuing the notice of disallowance of the salaries paid to lawyers.

Nevertheless, despite the disallowance, the COA correctly held that the private lawyers who rendered legal services to PNCC are not required to refund the amount they received in good faith. Jurisprudence has settled that recipients or payees in good faith need not refund disallowed amounts involving salaries, emoluments, benefits, and allowances due to government employees.[33] This is in accord with the ruling of the Court in the case of *Polloso v. Hon. Gangan*,[34] where the court disallowed the disbursement of public funds to pay for the services of Atty. Satorre without the requisite consent from the OSG[35] or OGCC as it would allow contravention of COA Circular No. 86-255, but Atty. Satorre was held not liable to return the money already paid him. Moreover, on the basis of *quantum meruit*, the hired lawyers who have already rendered legal services may not be required to refund the amount received as payment. The reason for this is to prevent an unscrupulous client from running away with the fruits of the legal services of counsel without paying for it and also avoids unjust enrichment on the part of the client, or in this case, PNCC.

Petitioners now assert that inasmuch as the lawyers-payees in the herein case were not required to refund the amounts received on account of good faith, the same should likewise be made applicable to them who participated in the transaction in good faith.

We find merit in petitioners' assertion.

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[33] See *Montejo v. Commission on Audit*, G.R. No. 232272, July 24, 2018.

[34] 390 Phil. 1101 (2002).

[35] *Id*. at 1111.

COA Circular No. 006-09[36] dated September 15, 2009 provides how the COA should determine the liability of a public officer in relation to audit disallowances:

> Section 16. Determination of Persons Responsible/Liable –
>
> 16.1 The Liability of public officers and other persons for audit disallowances/charges shall be determined on the basis of (a) the nature of the disallowance/charge; (b) the duties and responsibilities or obligations of officers/employees concerned; (c) the extent of their participation in the disallowed/charged transaction; and (d) the amount of damage or loss to the government.
>
> 16.2 The Liability for audit charges shall be measured by the individual participation and involvement of public officers whose duties require appraisal/assessment/collection of government revenues and receipts in the charged transaction.

In the case of *MWSS v. COA* and *Uy v. MWSS and COA*,[37] We held that although petitioners were officers of MWSS, they had nothing to do with policy-making or decision-making for the MWSS, and were merely involved in its day-to-day operations. Therein, the petitioners who were department/division managers, Officer-in-Charge — Personnel and Administrative Services and the Chief of Controllership and Accounting Section were not held personally liable for the disallowed amounts, to quote:

> The COA has not proved or shown that the petitioners, among others, were the approving officers contemplated by law to be personally liable to refund the illegal disbursements in the MWSS. While it is true that there was no distinct and specific definition as to who were the particular approving officers as well as the respective extent of their participation in the process of determining their liabilities for the refund of the disallowed amounts, we can conclude from the fiscal operation and administration of the MWSS how the process went when it granted and paid out the benefits to its personnel.

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[36] Prescribing the Use of the Rules and Regulations on Settlement of Accounts.

[37] G.R. Nos. 195105 & 220729, November 21, 2017.

We note that in this case, petitioners' participation in the disallowed transactions were done while performing their ministerial duties as Head of Human Resources and Administration, and Acting Treasurer, respectively. Petitioner Alejandrino's main function is the administration of human resources and personnel services, while petitioner Pasetes certified and approved the check voucher and certified the availability of funds as the acting treasurer. It has not been shown that petitioners acted in bad faith as they were merely performing their official duties in approving the payment of the lawyers under the directive of PNCC's executive officers. Petitioners, although officers of PNCC, could not be held personally liable for the disallowed amounts as they were not involved in policy-making or decision-making concerning the hiring and engagement of the private lawyers and were only performing assigned duties which can be considered as ministerial.

WHEREFORE, the petition for *certiorari* is **PARTIALLY GRANTED**. The Decision dated December 13, 2017 and Resolution dated September 27, 2018 of the Commission on Audit are **AFFIRMED with MODIFICATION** in that petitioners Janice Day E. Alejandrino and Miriam M. Pasetes are held not personally liable to refund the disallowed amount.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Hernando, and *Zalameda, JJ.*, concur.

Leonen and *Caguioa, JJ.*, on official business.

Lazaro-Javier and *Inting, JJ.*, on official leave.

SECOND DIVISION

[G.R. No. 204739. November 13, 2019]

SALVACION ZALDIVAR-PEREZ, *petitioner, vs.* **HON. FIRST DIVISION OF THE SANDIGANBAYAN, PEOPLE OF THE PHILIPPINES, represented by ASSISTANT SPECIAL PROSECUTOR III MA. HAZELINA TUJAN-MILITANTE, OFFICE OF THE SPECIAL PROSECUTOR, OFFICE OF THE OMBUDSMAN,** *respondents.*

SYLLABUS

POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF CASES; DEMANDS THE SWIFT RESOLUTION OR TERMINATION OF A PENDING CASE, AND IT IS DEEMED VIOLATED ONLY WHEN THE PROCEEDINGS ARE ATTENDED BY VEXATIOUS, CAPRICIOUS, AND OPPRESSIVE DELAYS.— We hold that the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled that there was no violation of petitioner Perez's right to the speedy disposition of her case. "The right to speedy disposition of cases x x x enshrined in Section 16, Article III of the Constitution x x x declares in no uncertain terms that '[a]ll persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.' [This constitutional mandate demands] the swift resolution or termination of a pending case or proceeding. The right to a speedy disposition of cases is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays. What the Constitution prohibits are unreasonable, arbitrary and oppressive delays which render rights nugatory." In *Dela Peña v. Sandiganbayan*, the Court laid down certain guidelines to determine whether the right to speedy disposition of cases has been violated x x x. After a careful review of the facts and circumstances of this case x x x, we find that petitioner Perez's right to speedy disposition of the case against her has been transgressed. *First*, as to the length of delay. x x x [A]pproximately six years had elapsed

from May 17, 2006, the time when the complaint-affidavit was filed before the OPP-Antique, until May 24, 2012, when the case was filed before the Sandiganbayan. x x x This period to conduct and complete the preliminary investigation is already excessive. Such a long delay was unreasonable and inordinate so as to constitute an outright violation of the speedy disposition of petitioner Perez's case. *Second*, as to the reason for the delay. Valid reasons for the delay identified and accepted by the Court include, but are not limited to: (1) extraordinary complications such as the degree of difficulty of the questions involved, the number of persons charged, the various pleadings filed, and the voluminous documentary and testimonial evidence on record; and (2) acts attributable to the respondents. We note that the prosecution offered no explanation regarding the delay in conducting the preliminary investigation and in its findings indicting petitioner Perez of the offense charged. x x x *Third*, with regard to the assertion or failure to assert such right by the accused. x x x [I]t is for the State to guarantee that the case is disposed within a reasonable period. Thus, it is of no moment that petitioner Perez did not file any motion before the Ombudsman to expedite the proceeding. It is sufficient that she raised the constitutional infraction prior to her arraignment before the Sandiganbayan. x x x *Fourth*, prejudice caused by the delay. There is no doubt that petitioner Perez was prejudiced by the inordinate delay in the conduct of the preliminary investigation. The lapse of six years before the filing of the Information with the Sandiganbayan placed her in a situation of uncertainty. This protracted period of uncertainty over her case caused her anxiety, suspicion, and even hostility. The inordinate delay defeats the salutary objective of the right to speedy disposition of cases, which is "to assure that an innocent person may be free from the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose." To perpetuate a violation of this right by the lengthy and unreasonable delay would result to petitioner Perez's inability to adequately prepare for her case and would create a situation where the defense witnesses were unable to recall accurately the events of the distant past, leading to the impairment of petitioner Perez's possible defense. This, we cannot countenance without running afoul to the Constitution.

APPEARANCES OF COUNSEL

Jaromay Laurente Pamaos Law Offices for petitioner.
Office of the Special Prosecutor for respondents.

D E C I S I O N

HERNANDO, *J.*:

Before this Court is a Petition for *Certiorari*[1] (under Rule 65 of the Rules of Court) with Prayer for Temporary Restraining Order assailing the August 28, 2012[2] and October 10, 2012[3] Resolutions of the Sandiganbayan in Criminal Case No. SB-12-CRM-0149, entitled *People v. Salvacion Z. Perez*, for having been rendered with grave abuse of discretion. The August 28, 2012 Resolution denied petitioner Salvacion Zaldivar-Perez's (Perez) Urgent Motion to Dismiss with Notice of Entry of Appearance and Prayer for Deferment of Arraignment, while the October 10, 2012 Resolution denied her Motion for Reconsideration.

The case stemmed from the following facts:

A Complaint-Affidavit[4] dated April 28, 2006 for Unlawful Appointment, defined and penalized under Article 244 of the Revised Penal Code (RPC), was filed on May 17, 2006 with the Office of the Provincial Prosecutor of San Jose, Antique (OPP-Antique), Department of Justice, by Numeriano Tamboong (Tamboong) against petitioner Perez, who was then the Provincial Governor of Antique. Tamboong alleged that petitioner Perez appointed Atty. Eduardo S. Fortaleza (Fortaleza) on January

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[1] *Rollo*, pp. 3-29.

[2] *Id*. at 30-38; penned by Associate Justice Efren N. De la Cruz and concurred in by Associate Justices Rodolfo A. Ponferrada and Rafael L. Lagos.

[3] *Id*. at 39-41.

[4] *Id*. at 174-177.

30, 2006 as the Provincial Legal Officer of the province despite knowing that he did not meet the minimum requirement of five (5) years in the practice of law under Section 481, Article XI, Title V of the Local Government Code of 1991.[5]

In her Counter-Affidavit[6] dated September 20, 2006, petitioner Perez argued that the appointment of Fortaleza is well-deserved because during his tenure as Provincial Legal Officer, he has been performing his duties and responsibilities with competence, honesty and integrity. She added that the position is confidential and co-terminus, thus experience can be dispensed with as provided under Rule X, Section 1(e) of the Omnibus Rules on Appointments and Other Personnel Actions under the Civil Service Commission (CSC) Memorandum Circular (MC) No. 40, Series of 1998.[7] She also averred that as Provincial Governor, she is authorized to appoint employees embraced in the Non-Career Service in the Government.

In its Resolution[8] dated August 6, 2009, the OPP-Antique ruled that there was sufficient evidence to support the existence of probable cause for Violation of Article 244 (Unlawful Appointments) of the RPC committed by petitioner Perez. It was noted that at the time of his appointment as Provincial Legal Officer, Fortaleza was a member of the Philippine Bar for only three (3) years, eight (8) months and twenty-eight (28) days, which is short of the 5-year minimum experience requirement as provided in Section 481 of the Local Government

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[5] SECTION 481. *Qualifications, Term, Powers and Duties*.– (a) No person shall be appointed legal officer unless he is a citizen of the Philippines, a resident of the local government unit concerned, of good moral character, and a member of the Philippine Bar. He must have practiced his profession for at least five (5) years in the case of the provincial and city legal officer, and three (3) years in the case of the municipal legal officer.

[6] *Rollo*, pp. 51-59.

[7] e. Appointees to confidential/personal staff must meet only the educational requirements prescribed under CSC MC l, s. 1997. The civil service eligibility, experience, training and other requirements are dispensed with.

[8] *Rollo*, pp. 181-184.

Code of 1991. In finding untenable petitioner Perez's justification that experience can be dispensed with as Fortaleza's position is confidential, the OPP-Antique opined that CSC MC No. 1, series of 1977, is a rule of general application with respect to appointment and other personnel action, thus it cannot amend a specific provision of a law. It is only the legislature that has the plenary power to repeal, abrogate or revoke existing laws. Thus, the OPP-Antique, in its August 6, 2009 Resolution, recommended that a criminal complaint for Violation of Article 244 of the RPC (Unlawful Appointments) be filed against petitioner Perez.

The original records of the case, together with the August 6, 2009 Resolution, were forwarded and received by the Deputy Ombudsman for Visayas on October 8, 2009 for approval.[9]

On October 12, 2009, the Deputy Ombudsman for Visayas endorsed[10] the August 6, 2009 Resolution, together with the records of the case, to the Preliminary Investigation, Administrative Adjudication and Review Bureau, an office under the supervision of Overall Deputy Ombudsman Orlando C. Casimiro (Deputy Ombudsman Casimiro) who has the investigative jurisdiction over the case, pursuant to the July 10, 2008 Memorandum of Ombudsman Ma. Merceditas Gutierrez (Ombudsman Gutierrez).

The initial indorsement of the Review Resolution of the said August 6, 2009 Resolution, recommending the approval of the filing of the Information against petitioner Perez for the offense complained of, was made on March 3, 2011 to Ombudsman Gutierrez.[11] As there was a change of leadership in the Office of the Ombudsman (OMB), a Review dated September 8, 2011 of the August 6, 2009 Resolution was again indorsed on September 26, 2011 by Deputy Ombudsman Casimiro to the newly appointed Ombudsman Conchita Carpio

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[9] *Id.* at 179.

[10] *Id.* at 180.

[11] *Id.* at 185.

Morales[12] who approved the said Resolution on April 24, 2012.[13] Petitioner Perez was furnished a copy of the September 8, 2011 Review on May 10, 2012.

On May 24, 2012, an Information[14] indicting petitioner Perez for Violation of Article 244 of the RPC (Unlawful Appointments) was filed before the Sandiganbayan. On May 28, 2012, the Sandiganbayan issued a Resolution directing the Bureau of Immigration to bar petitioner Perez from leaving the country without its prior approval. Petitioner Perez received a copy of the May 28, 2012 Resolution of the Sandiganbayan on May 30, 2012.

Incidentally, petitioner Perez filed a Motion for Reconsideration[15] of the September 8, 2011 Review on June 19, 2012[16] with the Office of the Overall Deputy Ombudsman who in turn indorsed the same to the OPP-Antique on June 26, 2012.

On July 3, 2012, the OPP-Antique received[17] petitioner Perez's Urgent Motion to Dismiss with Notice of Entry of Appearance and Prayer for Deferment of Arraignment dated July 2, 2012 which was set for hearing[18] on July 5, 2012. In the said Motion, petitioner Perez complained of the delay in the preliminary investigation both before the OPP-Antique and the OMB-Visayas,[19] which violated her constitutional right to a speedy disposition of the case, thus prayed for the dismissal of her case.[20] According to petitioner Perez, it took the OPP-Antique

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[12] *Id.* at 186.

[13] *Id.* at 189.

[14] *Id.* at 191-192.

[15] *Id.* at 195-210.

[16] *Id.* at 195.

[17] *Id.* at 98.

[18] *Id.* at 97.

[19] *Id.* at 92.

[20] *Id.* at 92-93.

more than three (3) years from the filing of the Affidavit-Complaint to conclude the preliminary investigation and to arrive at the Resolution dated August 6, 2009, which it indorsed to the Deputy Ombudsman for Visayas on October 8, 2009 for approval, while it took the OMB almost two (2) years from the date the Resolution of the OPP-Antique was endorsed to them up to the time the Review Resolution came out and almost three years from the date of the Resolution of the OPP-Antique to the filing of the Information before the Sandiganbayan. Petitioner Perez argued that this protracted delay in the disposition of her case was prejudicial to her rights.

On July 12,2012, the prosecution filed its Comment Opposition[21] dated July 11, 2012 to the Petitioner's Urgent Motion to Dismiss with Notice of Entry of Appearance and Prayer for Deferment of Arraignment. It argued that "there was no intentional delay on the part of the Office of the Ombudsman in the conduct of the preliminary investigation[,] neither was the proceeding attended by vexatious, capricious or oppressive delays [as] to prejudice the[petitioner] in her right to speedy disposition of her case."[22]

Ruling of the Sandiganbayan

On August 28, 2012, the Sandiganbayan issued its first assailed Resolution denying Petitioner Perez's Motion to Dismiss with Notice of Entry of Appearance and Prayer for Deferment of Arraignment for lack of merit.

While the Sandiganbayan agreed with petitioner Perez that the Constitution guarantees her right to due process and speedy disposition of her case, however, it found that based on the circumstances obtaining in this case, both the OPP-Antique and the OMB-Visayas committed no violation of petitioner Perez's aforesaid rights. The Sandiganbayan noted that although there was a long delay in the preliminary investigation of the

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[21] *Id.* at 218-225.

[22] *Id.* at 221-222.

case starting from the OPP-Antique, the record does not show that petitioner Perez had ever asserted her right to the speedy resolutions of the said preliminary investigation by following it up after she submitted her counter-affidavit or by filing any motion for the early resolution of the same both before the OPP-Antique and OMB-Visayas. It was only after the arraignment was set on July 5, 2012 that petitioner Perez filed a Motion for Reconsideration raising delay in the conduct of the preliminary investigation. Having slept on her right to speedy disposition of her case for an unreasonable and unexplained length of time, the Sandiganbayan ruled that petitioner Perez cannot now invoke violation of such right to justify the dismissal of the case as her inaction was tantamount to the waiver of her right.

As to the contention of petitioner Perez that the proceeding in this case should be deferred because of the pendency of the Motion for Reconsideration before the OMB-Visayas, the Sandiganbayan ruled that the filing of the Information with the Court on May 24, 2012 did not affect the validity of the Information as it did not deprive hero of her right to seek reconsideration of the said Resolution. Moreover, the only requirement under Section 7(a), Rule II of the Rules of Procedure of the OMB (Administrative Order No. 07, as amended) is that the Motion for Reconsideration should be filed within five (5) days from notice thereof with the OMB, or the Deputy Ombudsman as the case may be, with the corresponding leave of court in cases where the Information has already been filed in court. The prosecution alleged that petitioner Perez failed to comply with the said requirement when she filed her motion for reconsideration on the 21st day from receipt of the September 11, 2011 Review of the Resolution dated August 6, 2009. However, petitioner Perez argued that her Motion for Reconsideration was filed within the period required by law. At any rate, Section 7 (b), Rule II of the Rules of Procedure of the OMB also provides that the "filing of a motion for reconsideration/reinvestigation shall not bar the filing of the corresponding information in Court on the basis of the finding of probable cause in the resolution subject of the motion."

In the end, the Sandiganbayan ruled:

> **WHEREFORE,** in light of al1 the foregoing, the accused's *Urgent Motion to Dismiss With Notice of Entry of Appearance and Prayer for Deferment of Arraignment,* dated July 2, 2012, is hereby **DENIED** for lack of merit.
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> The arraignment of the accused is hereby set on September 27, 2012 at 8:30 in the morning.
>
> SO ORDERED.[23]

Aggrieved, petitioner Perez filed a Motion for Reconsideration of the above Resolution of the Sandiganbayan which was opposed by the prosecution for being a reiteration of her arguments in her previous motion.[24]

In its Resolution[25] dated October 10, 2012, the Sandiganbayan denied petitioner Perez's Motion for Reconsideration on the ground that the arguments set forth therein were a mere rehash or reiteration of the arguments in her Urgent Motion to Dismiss, and Reply which the Court had already judiciously considered and passed upon, except for the issue that the Information was filed by the Investigating Prosecutor without the prior written authority or approval of the Provincial or City Prosecutor or Chief State Prosecutor or the Ombudsman or his Deputy.

Hence, this Petition for *Certiorari.*

Petitioner Perez seeks to reverse and set aside the August 28, 2012 and October 10, 2012 Resolutions of the Sandiganbayan on the ground that said court gravely abused its discretion when it refused: 1) to defer the proceeding in the criminal case in light of the pending Motion for Reconsideration filed before the OMB-Visayas; 2) to dismiss the criminal case despite the fact that an Information was filed without proper authority;

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

[24] *Id.* at 39.

[25] *Id.* at 39-41.

and 3) to dismiss the criminal case despite the fact that there was undue and unjustifiable delay in the resolution of the said case by the OMB-Visayas in grave violation of her constitutional right to due process and speedy disposition of the case against her.

Petitioner Perez maintains that the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction when it refused to defer the proceeding in this case due to the pending Motion for Reconsideration before the OMB.

We hold otherwise.

The issue raised by petitioner has already been addressed by the Court in *Garcia v. Sandiganbayan*[26] where We held:

> From the filing of information, any disposition of the case such as its dismissal or its continuation rests on the sound discretion of the court, which becomes the sole judge on what to do with the case before it. Pursuant to said authority, the court takes full authority over the case, including the manner of the conduct of litigation and resort to processes that will ensure the preservation of its jurisdiction. Thus, it may issue warrants of arrest, HDOs and other processes that it deems warranted under the circumstances.
>
> In this case, the Sandiganbayan acted within its jurisdiction when it issued the HDOs against the petitioner. *That the petitioner may seek reconsideration of the finding of probable cause against her by the OMB does not undermine nor suspend the jurisdiction already acquired by the Sandiganbayan. There was also no denial of due process since the petitioner was not precluded from filing a motion for reconsideration of the resolution of the OMB. In addition, the resolution of her motion for reconsideration before the OMB and the conduct of the proceedings before the Sandiganbayan may proceed concurrently.*
>
> Moreover, the Rules of Procedure of the Office of the Ombudsman expressly provides that the filing of motion of reconsideration does not prevent the filing of information. Section 7, Rule II of Administrative Order No. 07 reads:

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[26] G.R. Nos. 205904-06, October 17, 2018.

Section 7. Motion for reconsideration

a) Only one motion for reconsideration or reinvestigation of an approved order or resolution shall be allowed, the same to be filed within five (5) days from notice thereof with the Office of the Ombudsman, or the proper Deputy Ombudsman as the case may be, with corresponding leave of court in cases where information has already been filed in court;

b) The filing of a motion for reconsideration/reinvestigation shall not bar the filing of the corresponding information in Court on the basis of the finding of probable cause in the resolution subject of the motion. (As amended by Administrative Order No. 15, dated February 16, 2000) x x x

As can be understood from the foregoing, an information may be filed even before the lapse of the period to file a motion for reconsideration of the finding of probable cause. The investigating prosecutor need not wait until the resolution of the motion for reconsideration before filing the information with the Sandiganbayan especially that his findings and recommendation already carry the stamp of approval of the Ombudsman. In any case, the continuation of the proceedings is not dependent on the resolution of the motion for reconsideration by the investigating prosecutor. In the event that, after a review of the case, the investigating prosecutor was convinced that there is no sufficient evidence to warrant a belief that the accused committed the offense, his resolution will not result to the automatic dismissal of the case or withdrawal of information already filed before the Sandiganbayan. The matter will still depend on the sound discretion of the court. Having acquired jurisdiction over the case, the Sandiganbayan is not bound by such resolution but is required to evaluate it before proceeding further with the trial and should embody such assessment in the order disposing the motion. Thus, in *Fuentes v. Sandiganbayan*, the Court emphasized:

> The court is not limited to the mere approval or disapproval of the stand taken by the prosecution. The court must itself be convinced that there is indeed no sufficient evidence against the accused and this conclusion can only be reached after an assessment of the evidence in the possession of the prosecution. What is required is the court's own assessment of such evidence. (Citations omitted, emphasis supplied)

Petitioner Perez likewise alleges that the Information filed against her should be declared null and void because it was filed without the authority of the Ombudsman or her Deputy. She argues that the Information was prepared by the Investigating Prosecutor on September 8, 2011 and sworn to on the same date or months ahead of its approval by Ombudsman Carpio Morales on April 24, 2012.

Petitioner Perez's contention is not well-taken.

As correctly found by the Sandiganbayan, the prosecution did not commit any violation considering that the Ombudsman approved the September 8, 2011 Review of the August 6, 2009 Resolution on April 24, 2012 and when it was filed on May 24, 2012, the Information bore the approval of Ombudsman Carpio Morales.

Notwithstanding the foregoing, We hold that the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled that there was no violation of petitioner Perez's right to the speedy disposition of her case.

"The right to speedy disposition of cases x x x enshrined in Section 16, Article III of the Constitution x x x declares in no uncertain terms that '[a]ll persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies' [This constitutional mandate demands] the swift resolution or termination of a pending case or proceeding. The right to a speedy disposition of cases is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays. What the Constitution prohibits are unreasonable, arbitrary and oppressive delays which render rights nugatory."[27]

In *Dela Peña v. Sandiganbayan*,[28] the Court laid down certain guidelines to determine whether the right to speedy disposition of cases has been violated, to wit:

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[27] *Salcedo v. Sandiganbayan*, G.R. Nos. 223869-960, February 13, 2019.

[28] 412 Phil. 921, 929 (2001).

The concept of speedy disposition is relative or flexible. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case. Hence, the doctrinal rule is that in the determination of whether that right has been violated, the factors that may be considered and balanced are as follows: (1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay. (Citations omitted)

After a careful review of the facts and circumstances of this case and following the above principle, We find that petitioner Perez's right to speedy disposition of the case against her has been transgressed.

First, as to the length of delay.

The records show that Tamboong's Complaint-Affidavit was filed before the OPP-Antique on May 17, 2006. On September 21, 2006, petitioner Perez filed her counter-affidavit dated September 20, 2006. On September 28, 2006, Tamboong filed his Reply-Affidavit. After finding probable cause, the OMB-Visayas issued a Resolution dated August 6, 2009 recommending that a criminal complaint for Unlawful Appointment be filed against petitioner Perez. On October 12, 2009, the August 6, 2009 Resolution was forwarded and received by the Deputy Ombudsman for Visayas for review. The initial indorsement of the Review Resolution of the August 6, 2009 Resolution was made on March 3, 2011 to Ombudsman Gutierrez. As there was a change of leadership in the OMB, a Review dated September 8, 2011 of the August 6, 2009 Resolution was again indorsed on September 26, 2011 to the newly appointed Ombudsman Carpio Morales who approved the said Review Resolution on April 24, 2012. On May 24, 2012 an Information indicting petitioner Perez for Violation of Article 244 of the RPC (Unlawful Appointments) was filed with the Sandiganbayan.

From the foregoing facts, approximately six years had elapsed from May 17, 2006, the time when the complaint-affidavit was filed before the OPP-Antique, until May 24, 2012, when the case was filed before the Sandiganbayan. The OPP-Antique

took almost three years from the filing of the Complaint-Affidavit within which to conclude the preliminary investigation and to arrive at its August 6, 2009 Resolution, while it took the OMB for Visayas more than three years from the date the August 6, 2009 Resolution was endorsed to it up to the time the Review Resolution was finalized on September 8, 2011 and approved by Ombudsman Carpio Morales on September 26, 2011. Still, it took the Ombudsman another eight months from the approval of the September 8, 2011 Review of the August 6, 2009 Resolution up to the filing of the complaint before the Sandiganbayan on May 24, 2012. This period to conduct and complete the preliminary investigation is already excessive. Such a long delay was unreasonable and inordinate so as to constitute an outright violation of the speedy disposition of petitioner Perez's case.

Second, as to the reason for the delay.

Valid reasons for the delay identified and accepted by the Court include, but are not limited to: (1) extraordinary complications such as the degree of difficulty of the questions involved, the number of persons charged, the various pleadings filed, and the voluminous documentary and testimonial evidence on record; and (2) acts attributable to the respondents.[29]

We note that the prosecution offered no explanation regarding the delay in conducting the preliminary investigation and in its findings indicting petitioner Perez of the offense charged. The charge of Unlawful Appointment based on the ground that the appointee does not possess the minimum requirement for the said position is a simple case and does not involve a complicated and complex issue that would require the painstaking scrutiny and perusal of the Ombudsman that would warrant the protracted delay. It bears stressing that this case involved only petitioner Perez and the only pleading that she filed was her Counter-Affidavit and nothing else. Clearly, the delay in this case is a disregard of the Ombudsman's Constitutional

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[29] *Magante v. Sandiganbayan,* G.R. Nos. 230950-51, July 23, 2018.

mandate to be the "protector of the people" and as such, required to act promptly on complaints filed in any form or manner against officers and employees of the Government, or of any subdivision, agency or instrumentality thereof, in order to promote efficient service.[30]

Third, with regard to the assertion or failure to assert such right by the accused.

The Court disagrees with the ratiocination of the Sandiganbayan that laches had already set in because petitioner Perez failed or neglected for an unreasonable length of time to assert her right to a speedy termination of the preliminary investigation or to file a motion for early resolution of the said investigation before the OPP-Antique. It is not for the petitioner to ensure that the wheels of justice continue to turn. Rather, it is for the State to guarantee that the case is disposed within a reasonable period. Thus, it is of no moment that petitioner Perez did not file any motion before the Ombudsman to expedite the proceeding. It is sufficient that she raised the constitutional infraction prior to her arraignment before the Sandiganbayan.[31] In *Cervantes v. Sandiganbayan*,[32] we emphatically held:

> It is the duty of the prosecutor to speedily resolve the complaint, as mandated by the Constitution, regardless of whether the petitioner did not object to the delay or that the delay was with his acquiescence provided that it was not due to causes directly attributable to him.

Similarly, we pointed out in *Coscolluela v. Sandiganbayan*,[33] that:

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[30] *Escobar v. People,* G.R. Nos. 228349 and 228353, September 19, 2018.

[31] *Id.*

[32] 366 Phil. 602, 609 (1999).

[33] 714 Phil. 55, 64 (2013), citing *Barker v. Wingo,* 407 U.S. 514 (1972).

Being the respondents in the preliminary investigation proceedings, it was not the petitioners' duty to follow up on the prosecution of their case. Conversely, it was the Office of the Ombudsman's responsibility to expedite the same within the bounds of reasonable timeliness in view of its mandate to promptly act on all complaints lodged before it. As pronounced in the case of *Baker v. Wingo*:

> A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process. (Citation omitted)

Fourth, prejudice caused by the delay.

There is no doubt that petitioner Perez was prejudiced by the inordinate delay in the conduct of the preliminary investigation. The lapse of six years before the filing of the Information with the Sandiganbayan placed her in a situation of uncertainty. This protracted period of uncertainty over her case caused her anxiety, suspicion and even hostility. The inordinate delay defeats the salutary objective of the right to speedy disposition of cases, which is "to assure that an innocent person may be free from the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose."[34] To perpetuate a violation of this right by the lengthy and unreasonable delay would result to petitioner Perez's inability to adequately prepare for her case and would create a situation where the defense witnesses were unable to recall accurately the events of the distant past, leading to the impairment of petitioner Perez's possible defenses.[35] This, we cannot countenance without running afoul to the Constitution.

Thus, in view of the foregoing, it is indubitable that petitioner Perez's constitutional right to speedy disposition of her case had been infringed. Perforce, the assailed resolutions must be

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[34] *Id.* at 65.

[35] *Id.*

set aside and the criminal case filed against petitioner Perez be dismissed.

WHEREFORE, the Petition for *Certiorari* is **GRANTED.** The August 28, 2012 and October 10, 2012 Resolutions of the Sandiganbayan in Criminal Case No. SB-12-CRM-0149 are **REVERSED and SET ASIDE.** Criminal Case No. SB-12-CRM-0149 against petitioner Salvacion Zaldivar-Perez is hereby **DISMISSED** on the ground of violation of her right to a speedy trial. The Temporary Restraining Order issued by this Court on January 16, 2013 enjoining the First Division of the Sandiganbayan, the respondents, their representatives, agents or other persons acting on their behalf from proceeding with Criminal Case No. SB-12-CRM-0149 and from executing the Resolutions dated August 28, 2012 and October 10, 2012 of the Sandiganbayan, First Division, is made **PERMANENT.**

SO ORDERED.

Perlas-Bernabe (*Chairperson*), *Reyes, A. Jr.,* and *Zalameda,*[*] *JJ.,* concur.

Inting, J., on official leave.

SECOND DIVISION

[G.R. No. 212740. November 13, 2019]

SPOUSES CELIA FRANCISCO and DANILO FRANCISCO, *petitioners, vs.* **ALBINA D. BATTUNG,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; LAW OF THE CASE; MEANS THAT THE RULING OF THE

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[*] Designated Additional Member per Special Order No. 2727 dated October 25, 2019.

APPELLATE COURT CANNOT BE DEVIATED FROM IN THE SUBSEQUENT PROCEEDINGS IN THE SAME CASE.— Law of the case is the opinion rendered on a former appeal. It dictates that whatever is once permanently established as the controlling legal rule of decision involving the same parties in the same case persists to be the law of the case regardless of the correctness on general principles so long as the facts on which such decision was premised remain to be the facts of the case before the court. Simply stated, the ruling of the appellate court cannot be deviated from in the subsequent proceedings in the same case. It applies only to the same case. x x x [T]he application of the principle of the law of the case is misplaced. While the petitioners' action for specific performance and respondent's action for unlawful detainer, which was the subject of CA G.R. SP No. 85819, involve a similar set of facts, these are two different cases. Thus, whatever ensuing incident in the petitioners' action for specific performance cannot be considered a subsequent proceeding in CA-G.R. SP No. 85819.

2. ID.; ID.; JUDGMENTS; DOCTRINE OF *RES JUDICATA*; PROVIDES THAT A FINAL JUDGMENT OR DECREE ON THE MERITS BY A COURT OF COMPETENT JURISDICTION OF THE RIGHTS OF THE PARTIES IS CONCLUSIVE ON THE RIGHTS OF THE PARTIES OR THEIR PRIVIES IN ALL LATER SUITS ON ALL POINTS AND MATTERS DETERMINED IN THE FORMER SUIT.— [T]he doctrine of *res judicata* provides that "a final judgment or decree on the merits by a court of competent jurisdiction of the rights of the parties is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in the former suit." Said final judgment becomes conclusive as to the rights of the parties and their privies and serves as an absolute bar to subsequent actions involving the same claim, demand, or cause of action. In this case, the doctrine of *res judicata* is also not applicable. While there is an identity of parties in the action for unlawful detainer and action for specific performance, there is no identity of the claims, demands, and causes of action. x x x [T]he action for unlawful detainer dealt with the issue of possession and any pronouncement on the title or ownership over the subject land is merely provisional while the action for specific performance involved the determination of the rights over the subject land of the petitioners and respondent under the Deed. Thus, the ruling in

CA G.R. SP No. 85819 is not conclusive of the rights of petitioners and respondent in the action for specific performance.

3. ID.; ID.; ID.; DOCTRINE OF FINALITY OF JUDGMENT OR IMMUTABILITY OF JUDGMENTS; PROVIDES THAT ONCE A DECISION HAS ACQUIRED FINALITY, IT BECOMES IMMUTABLE, UNALTERABLE, AND MAY NO LONGER BE MODIFIED IN ANY RESPECT.— [T]he doctrine of finality of judgment or immutability of judgments provides that once a decision has acquired finality, it becomes immutable, unalterable, and may no longer be modified in any aspect, regardless if the modification is meant to correct erroneous factual and legal conclusions and if it be made by the court that rendered it or by this Court. x x x [S]aid doctrine of finality of judgment or immutability of judgments does not apply in this case. x x x In the present case, the nature of the Deed was incidentally passed upon in the action for unlawful detainer to determine the rights of petitioners and respondent relative to the ownership of the subject land so as to determine who is entitled to possession thereto. Then again, such determination of ownership based on the Deed is provisional, thus, not a conclusive adjudication on the merits of the case. Thus, the CA was not precluded to revisit the issue on the nature of the Deed and make its ascertainment based on the facts and evidence on record.

4. ID.; ID.; APPEALS; ONLY MATTERS ASSIGNED AS ERRORS IN THE APPEAL MAY BE RESOLVED, BUT THE COURT OF APPEALS MAY REVIEW ERRORS THAT ARE NOT ASSIGNED BUT ARE CLOSELY RELATED TO OR DEPENDENT ON AN ASSIGNED ERROR AND IS GIVEN DISCRETION IF IT FINDS THAT THE CONSIDERATION OF SUCH IS NECESSARY FOR A COMPLETE AND JUST RESOLUTION OF THE CASE.— [P]etitioners argue that they were the ones who filed the partial appeal of the RTC Decision with the CA assailing only the correct amount of the balance of the purchase price, the correct interest rate, and the correct interest period. They asserted that the matter concerning the nature of the Deed as a contract of sale was not an assigned error and as such, the CA should not have considered it. Section 8, Rule 51, of the Rules of Court provides that as a general rule, only matters assigned as errors in the appeal may be resolved. As an exception thereto,

the CA may review errors that are not assigned but are closely related to or dependent on an assigned error and is given discretion if it finds that the consideration of such is necessary for a complete and just resolution of the case. Applying the foregoing to this case, the determination of the nature of the Deed was indeed necessary for the complete and just resolution of the case. After all, establishing the true nature of the Deed would set forth the contractual rights and obligations of petitioners and respondent. It would clarify who is legally vested with the ownership of the subject land. Consequently, the CA cannot be faulted for re-examining the contractual relations of petitioners and respondent based on the Deed.

5. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; SALES; CONTRACT TO SELL; AN AGREEMENT STIPULATING THAT THE EXECUTION OF THE DEED OF SALE SHALL BE CONTINGENT ON THE FULL PAYMENT OF THE PURCHASE PRICE IS A CONTRACT TO SELL.—Based on the provisions of the Deed, the CA is correct in ruling that the Deed is a contract to sell and not a contract of sale. In *Diego v. Diego*, the Court held that an agreement stipulating that the execution of the deed of sale shall be contingent on the full payment of the purchase price is a contract to sell x x x. Clause 2(b) of the Deed readily reveals that respondent shall only execute the Deed and transfer the title over the subject land in favor of petitioners upon full payment of the purchase price x x x. Resultantly, given that the ownership over the subject land was retained by respondent until full payment by "petitioners of the purchase price," the Deed is a contract to sell.

6. ID.; REPUBLIC ACT NO. 6552 (THE REALTY INSTALLMENT BUYER ACT); RIGHTS OF THE BUYER; CANNOT BE AVAILED OF WHEN THE BUYER FAILS TO DILIGENTLY AND CONSISTENTLY SATISFY THE LEGAL REQUIREMENT OF PAYING AT LEAST TWO YEARS OF INSTALLMENTS.—[P]etitioners assert that granting that the Deed was a contract to sell and given that the subject land is a residential lot and that respondent received in open court the sum of ₱107,560.00 in consideration of the Deed, RA No. 6552 would apply. Thus, they claim that before the Deed was cancelled, the following requirements under Section 3 thereof should have been complied with: (1) receipt by the buyer

of the notice of cancellation or the demand for rescission of the contract by notarial act and (2) full payment of the cash surrender value to the buyer. They point out that these requisites were not satisfied in this case. x x x In *Orbe v. Filinvest Land, Inc*., the Court emphasized that "at least two years of installments" means the "equivalent of the totality of payments **diligently or consistently made** throughout a period of two (2)years." x x x In this case, petitioners did not diligently and consistently pay at least two (2) years of monthly installments. x x x [I]nstead of paying ₱5,000.00 monthly effective March 30, 1997, they merely paid small amounts, *i.e*., ₱300.00, ₱500.00, ₱700.00, ₱1,000.00, ₱1,500.00, ₱2,000.00, or ₱2,500.00, from time to time x x x. Clearly, petitioners are unjustifiably claiming their rights under Section 2 of R.A. No. 6552. They failed to faithfully comply with the requirement of paying their monthly installments for two (2) years and yet they have the audacity to invoke Section 3. Treating the receipt by respondent in open court of the sum of ₱107,560.00 in consideration of the Deed as substantial compliance by petitioners of the provisions of Section 3 would be unfair and defiant of the purpose of RA No. 6552. It would tolerate arbitrariness on the part of the buyer when satisfying his monetary obligations to the seller.

7. ID.; CIVIL CODE; OBLIGATIONS AND CONTRACTS; SALES; CONTRACT TO SELL; THE PAYMENT BY THE BUYER OF PURCHASE PRICE IS A POSITIVE SUSPENSIVE CONDITION AND THE NON-FULFILLMENT OF WHICH IS AN EVENT THAT PREVENTS THE SELLER FROM CONVEYING TITLE TO THE BUYER, AND RENDERS THE CONTRACT TO SELL INEFFECTIVE AND WITHOUT FORCE AND EFFECT.— [P]etitioners claim that the receipt by the respondent of the sum of ₱107,650.00 constitutes partial performance of the Deed, indicating that as between the parties, the Deed was subsisting and has never been rescinded, contrary to the findings of the CA that it was ineffective and without force and effect. In *Ayala Life Assurance, Inc. v. Ray Burton Development Corporation*, the Court held that the payment by the buyer of purchase price is a positive suspensive condition and the non-fulfillment of which is an event that prevents the seller from conveying title to the buyer. Said non-payment of the purchase price renders the contract to sell ineffective and without force and effect. Therefore, a cause of action for specific performance

does not arise. Here, petitioners failed to realize that there could no longer be a performance, not even partial, of the Deed the moment that they failed to pay the purchase price of the subject land in accordance with the terms of the Deed. It is worthy to note that at the time of the receipt by the respondent of the sum of ₱107,650.00, the Deed was already without force and effect. Thus, there could have been no partial performance, let alone a cause of action for specific performance.

APPEARANCES OF COUNSEL

Glenn M. Macababbad for petitioners.
Maricris B. Culajara for respondent.

D E C I S I O N

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

This resolves a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated September 19, 2013 (Assailed Decision) and Resolution[3] dated May 13, 2014 (Assailed Resolution) issued by the Court of Appeals (CA) in CA-G.R. CV No. 93745.

Factual Antecedents

Albina D. Battung (respondent) is the owner of a parcel of land located in San Gabriel, Tuguegarao City (subject land) covered by Transfer Certificate of Title (TCT) No. 118686 of the Registry of Deeds of the Province of Cagayan. On February 25, 1997, Celia Francisco entered into a Deed of Conditional Sale of Registered Land[4] (Deed) as the buyer with

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[1] *Rollo*, pp. 12-43.

[2] Penned by Associate Justice Ramon A. Cruz and concurred in by then Associate Justice Noel G. Tijam (retired SC Justice) and Associate Justice Romeo F. Barza (retired CA Presiding Justice); *id.* at 45-68.

[3] *Id.* at 70-72.

[4] *Id.* at 99.

respondent as the seller over the subject land.[5] The Deed provides the following terms and conditions:

1. That the VENDOR is the owner of a parcel of land located at [sic] Ugac Norte now San Gabriel[,] Tuguegarao, Cagayan and hereto described as follows:

"Lot No. 4179-C-6, Psd-2-01-006109 with an area of 433 square meters more or less and still covered by TCT No. T _____ (*sic*)."

2. That the VENDOR has offered to sell the above-described land to the VENDEE, [subject] to the following terms and conditions:

a. That the amount of sale shall be THREE HUNDRED FORTY SIX THOUSAND FOUR HUNDRED PESOS (₱346,400.00), Philippine Currency, the same to be paid as follows:

aa. ₱20,000.00 shall be paid upon the execution of this instrument;

bb. ₱5,000.00 monthly effective March 30, 1997 and to so (*sic*) until the full amount of the one-half of the purchase price in the amount of ₱173,000.00 is fully paid;

cc. ₱73,000.00 shall be paid in full on or before December 30, 1999.

b. That the Deed of Absolute Sale of the above-described lot shall only be executed in favor of the vendee upon the full payment of the full (*sic*) amount of the purchase price in the amount of ₱346,400.00 and after which the title shall be transferred in the name of the vendee.

c. That all expenses for the transfer of the title in the name of the vendee shall be shouldered by the vendee without bothering the vendor of the payment of these expenses like capital gains tax, tax transfer fee and registration fees.

x x x x x x x x x[6]

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[5] *Id*. at 46.

[6] *Id*. at 99.

Respondent's Action for Unlawful Detainer with Damages and Decisions Therein

On April 2, 2003, respondent filed an action for unlawful detainer with damages[7] against Celia before the Municipal Trial Court in Cities of Tuguegarao City, Branch 2 (MTCC), docketed as Civil Case No. 2374.[8]

On January 12, 2004, the MTCC issued a Decision ordering Celia to vacate the property and consider the payment of ₱89,000.00 as rent. Celia appealed to the Regional Trial Court (RTC) of Tuguegarao City, Branch 5 (RTC Branch 5), docketed as Civil Case No. 6303. On June 23, 2004, the RTC Branch 5 affirmed the Decision of the MTCC but vacated the order that the amount of ₱89,000.00 be considered a rent. Dissatisfied, Celia filed a Petition for Review with the CA entitled "*Celia Francisco v. Albina Battung*," docketed as CA-G.R. SP No. 85819, assailing the June 23, 2004 RTC Branch 5 Decision. In a Decision dated July 31, 2006, the CA nullified and set aside the June 23, 2004 RTC Branch 5 Decision and dismissed the complaint. A Motion for Reconsideration was filed but the CA denied the same in a Resolution dated February 6, 2007. Respondent filed a petition for *certiorari* with the Court, but the same was dismissed in a Resolution dated June 6, 2007.[9]

Petitioners' Complaint for Specific Performance with Damages

On April 30, 2003, Celia and her husband Danilo Francisco (petitioners) filed a complaint for specific performance with damages against respondent before the RTC of Tuguegarao City, Branch 3 (RTC Branch 3), docketed as Civil Case No. 6153.[10]

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[7] *Id.* at 92-97.

[8] *Id.* at 51 and 91.

[9] *Id.*

[10] *Id.* at 47. See *id.* at 79-81.

In addition to the terms and conditions of the Deed, petitioners alleged that while the Deed was entered on February 25, 1997,[11] they already made an advance payment on February 22, 1997.[12] They said that after the execution of the Deed and pursuant to the terms therein, petitioners made installment payments amounting to ₱151,000.00. Subsequently, they discovered that the subject land was already titled and sold by respondent to another person. For this reason, they stopped continuing the payment agreed upon. Later on, they learned that the previous title of the subject land in the name of another person was cancelled to the effect that it reverts to its former status as a clean title. Petitioners then manifested their intention to pay their balance in the conditional sale by sending a letter to respondent informing him of their willingness to pay the balance amounting to ₱215,000.00. Nonetheless, despite due receipt of the letter, respondent failed and still fail to get the said balance.[13]

In her Answer, respondent averred that the subject land is covered by the mother title TCT No. T-41612 of the Registry of Deeds of the Province of Cagayan. She added that petitioners have only paid a total amount of ₱89,000.00 or less and that she had a hard time collecting from the petitioners.[14] She explained that she could have tolerated the delayed payments were it not for the discovery sometime in June 2001 of the cheatings committed by Celia.[15] Instead of paying, Celia asked her to affix her signature on the figure ₱5,000.00 and on the figure ₱151,000.00 that she listed in her notebook. Celia claimed that the figure were the payments she made to respondent before leaving for a vacation sometime in April 2000. Respondent refused to sign the same.[16]

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[11] *Id*.

[12] *Id*. at 48.

[13] *Id*.

[14] *Id*.

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

[16] *Id*. at 49.

Respondent further asserted that the discovery of the erroneous titling of the subject lot in the name of Ms. Ma. Victoria B. Te (Ms. Te) gave petitioners an alibi not to further pay the balance of the purchase price of one-half portion of the subject land despite the assurance that the subject land was not sold to Ms. Te and that steps were taken to correct the mistake. She also narrated that she sent a written demand dated July 2, 2001 to pay for the whole amount of ₱257,400.00 plus legal interest at 12% from January 1, 2000, the date of default, up to the time the obligation is paid. Petitioners, however, refused and continued to refuse to pay the same.[17]

Moreover, respondent clarified that petitioners only offered to pay the amount of ₱22,000,00 instead of the amount demanded. As such, she did not accept the same. She added that on November 22, 2002, an Order granting the petition for correction of title was issued and TCT No. 118688 (sic) in the name of Ms. Te was cancelled by the Registry of Deeds of Tuguegarao City. Upon the correction of Ms. Te's title, respondent gave petitioners the chance to buy the one-half portion of the lot they are occupying. Thus, on January 6, 2003, she sent a letter to them demanding the balance of the one-half portion of the subject land amounting to ₱84,000.00 plus legal interest at 12% computed from January 2000 up to the time of settlement.[18]

As a counterclaim, respondent maintained that the Deed is a contract to sell where the ownership or title is retained by the seller and is passed only upon the full payment of the purchase price. The full payment is considered a positive suspensive condition and failure of which is not a serious breach, but merely an event preventing the obligation of the vendor to convey the title from acquiring binding force. Hence, she may not be compelled to execute a deed of absolute sale in favor of petitioners as the conditions of the Deed were not satisfied.[19]

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[17] *Id*.

[18] *Id*.

[19] *Id*. at 50.

She then prayed for the dismissal of the complaint, for petitioners to vacate and clear the subject land, and for the application of the payments made by petitioners in the amount of ₱89,000.00 or less as payment of the rentals of the subject land.[20]

On November 6, 2007, petitioners filed a Motion to Consign the amount of ₱215,300.00 representing the balance of the purchase price of the subject land. They asserted that they tendered the amount of ₱215,300.00 for the purchase of the subject land on November 5, 2007 at the Barangay Hall of Caggay, Tuguegarao City, but respondent refused to accept the same.[21]

Respondent opposed the said motion and refused to accept the amount of ₱215,300.00 but expressed her willingness to accept ₱121,538.00 representing one-half of the balance of the purchase price inclusive of interest. Nevertheless, petitioners refused to tender and pay the said amount.[22]

On November 23, 2007, the RTC Branch 3 issued an Order whereby the parties agreed that petitioners shall hand one-half of ₱215,300.00, or the amount of ₱107,650.00, to respondent and the remaining portion to be deposited with the clerk of court. Respondent signed the corresponding Acknowledgment Receipt.[23]

On November 27, 2007, petitioners marked and formally offered the following documents: (1) Acknowledgment Receipt covering the amount of ₱107,650.00; (2) Official Receipt of Consignation in the RTC Branch 3 covering the same amount; (3) Official Receipt of Consignation Fee of ₱300.00; and (4) Official Receipt of Consignation Fee of ₱200.00. The RTC admitted the foregoing documentary exhibits.[24]

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[20] *Id*. at 245.

[21] *Id*. at 50.

[22] *Id*.

[23] *Id*.

[24] *Id*. at 50-51.

RTC Branch 3 Decision

On January 30, 2009, the RTC Branch 3 rendered a judgment[25] in favor of petitioners. The trial court ratiocinated that the judgment in CA-G.R. SP No. 85819, where it was ruled that the Deed was a contract of sale, is applicable in this case and binds both parties under the principle of the law of the case. The dispositive portion reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of [petitioners]:
>
> x x x x x x x x x
>
> 1. Ordering [respondent] to execute the deed of absolute sale in favor of [petitioners] covering the property subject of [the Deed], particularly Lot No. 4179-C-6, containing an area of Four Hundred Thirty-Three (433) square meters;
>
> 2. Ordering [petitioners] to pay [respondent] the unpaid balance of the purchase price amounting to Two Hundred Fifty Seven Thousand Pesos (₱257,000.00) plus interest thereon at twelve percent per *annum* effective December 30, 1999 amounting to ₱277,560.00 as of December 31, 2008 thus totaling Five Hundred Thirty-Four Thousand Five Hundred Sixty Pesos [₱534,560.00]; and; (*sic*)
>
> 3. Dismissing the counterclaim of [respondent].
>
> **SO ORDERED.**[26]

Respondent filed a Motion for Reconsideration but the same was denied in an Order dated April 27, 2009.[27]

Likewise, petitioners filed a Motion for Partial Reconsideration but the same was denied in an Order dated May 15, 2009.[28]

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[25] *Id*. at 123-133.

[26] *Id*. at 132-133.

[27] *Id*. at 52.

[28] *Id*.

Perturbed, petitioners filed a Notice of Partial Appeal which was given due course by the RTC Branch 3 in an Order dated May 25, 2009.[29]

CA Decision

On September 19, 2013, the CA rendered the Assailed Decision[30] dismissing the appeal.

The appellate court ruled that the Deed is a contract to sell and not a contract of sale[31] thereby reversing and setting aside the January 30, 2009 RTC Branch 3 Decision.[32] The dispositive position reads:

WHEREFORE, premises considered, judgment is hereby rendered:

1. [Petitioners] are ordered to vacate the subject land immediately[,] upon the finality of this decision;

2. [Respondent] is ordered to return the amount of ₱196,650.00, Philippine Currency, representing the total amount paid by [petitioners] with interest at the rate of twelve percent (12%) *per annum* upon the finality of this decision;

3. The amount of ₱107,650.00, Philippine Currency deposited with the Clerk of Court must likewise be returned to [petitioners];

4. [Petitioners] are hereby ordered to pay [respondent] ₱50,000.00, Philippine Currency by way of nominal damages.

x x x x x x x x x

SO ORDERED.[33]

Petitioners filed a Motion for Reconsideration but the CA denied the same in the Assailed Resolution.[34]

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[29] *Id*.

[30] *Id*. at 45-68.

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

[32] *Id*. at 65.

[33] *Id*.

[34] *Id*. at 70-72.

Hence, the present recourse.

Petitioners argue that the CA erred (1) when it revived the issue on the nature of the contract between the parties, considering that it has already been resolved in CA G.R. SP No. 85819, in violation of the doctrines of the principles of the law of the case, *res judicata*, and immutability of judgments; (2) when it revived the said issue by treating it as an "assigned error" thereby granting an affirmative relief in favor of respondent who did not appeal at all and rendering other issues raised by petitioners in their partial appeal moot and academic; and (3) when it ignored the provisions of Republic Act (R.A.) No. 6552, otherwise known as the "Realty Installment Buyer Act" or the "Maceda Law," by ruling that the Deed was "ineffective and without force and effect" despite the receipt by respondent in open court of the sum of ₱107,560.00 made in consideration of the Deed.[35]

On her part, respondent maintained that: (1) the issue as to the nature of the contract between the parties has not been put to rest in CA G.R. SP No. 85819 since the subject of the said case involved unlawful detainer;[36] (2) reiterating the CA, the present case is an action for specific performance and while both cases may appear to have a similar set of facts, the parties, and arguments, these have different issues which are clearly beyond the purview of the principle of the law of the case;[37] and (3) R.A. No. 6552, if at all applicable to this case, does not apply to other half of the subject land sold eventually by respondent to another person allegedly by virtue of a novation of a contract made sometime in April 2001 and with the knowledge and consent of petitioners.[38]

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

[36] *Id*. at 203.

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

[38] *Id*. at 199 and 206.

The Issues

As raised by petitioners, the following are the issues for the resolution of the Court:

I.

Whether or not the CA committed serious error of law when it revived the issue on the nature of the Deed, which issue is said to have been long resolved by another division of the CA, disregarding the doctrines of the law of the case, *res judicata*, and immutability of judgments.

II.

Whether or not the CA committed serious error of law when it revived the said issue by considering it an "assigned error" that in effect granted an affirmative relief in favor of respondent who did not appeal and rendered the other issues raised by petitioners in their partial appeal moot and academic, and leading to the complete reversal of the partially appealed RTC Branch 3 decision, in violation of Rule 51, Section 8 of the Rules of Court.

III.

Whether or not the CA committed serious error of law by allegedly ignoring the provisions of R.A. No. 6552 when it ruled that the Deed was "ineffective and without force and effect" notwithstanding that the receipt by respondent in open court of the sum of ₱107,560.00 was made in consideration of the Deed arguably indicative enough that the Deed still subsisted and has never been cancelled nor rescinded at all.

IV.

Whether or not the acceptance in the course of the proceedings by respondent of the sum of ₱107,650.00 constitutes partial performance of the Deed, indicating that as between the parties, the Deed was subsisting and has never been rescinded, contrary to the findings of the CA that it was ineffective and without force and effect.

Ruling of the Court

This Court finds the instant petition unmeritorious.

The CA was not precluded to rule on the true nature of the Deed as the principles of the law of the case, res judicata, and immutability of judgments are not applicable in this case.

As to the first issue, petitioners contend that another division of the CA in CA G.R. SP No. 85819 already ruled that the Deed was a contract of sale and not a contract to sell and as such, the principles of the law of the case, *res judicata*, and immutability of judgments bar the reopening of the issue on the real nature of the Deed.[39]

The Court is not persuaded.

Law of the case is the opinion rendered on a former appeal.[40] It dictates that whatever is once permanently established as the controlling legal rule of decision involving the same parties in the same case persists to be the law of the case regardless of the correctness on general principles so long as the facts on which such decision was premised remain to be the facts of the case before the court.[41] Simply stated, the ruling of the appellate court cannot be deviated from in the subsequent proceedings in the same case.[42] It applies only to the same case.[43]

As correctly found by the CA, the application of the principle of the law of the case is misplaced. While the petitioners' action for specific performance and respondent's action for unlawful

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[39] *Id*. at 23-30.

[40] *Sps. Sy v. Young*, 711 Phil. 444, 449 (2013).

[41] *Id*. at 449-450.

[42] *Id*.

[43] *Id*.

detainer, which was the subject of CA G.R. SP No. 85819, involve a similar set of facts, these are two different cases. Thus, whatever ensuing incident in the petitioners' action for specific performance cannot be considered a subsequent proceeding in CA G.R. SP No. 85819.

Meanwhile, the doctrine of *res judicata* provides that "a final judgment or decree on the merits by a court of competent jurisdiction of the rights of the parties is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in the former suit."[44] Said final judgment becomes conclusive as to the rights of the parties and their privies and serves as an absolute bar to subsequent actions involving the same claim, demand, or cause of action.[45]

In this case, the doctrine of *res judicata* is also not applicable. While there is an identity of parties in the action for unlawful detainer and action for specific performance, there is no identity of the claims, demands, and causes of action. As aptly noted by the CA, the action for unlawful detainer dealt with the issue of possession and any pronouncement on the title or ownership over the subject land is merely provisional while the action for specific performance involved the determination of the rights over the subject land of the petitioners and respondent under the Deed.[46] Thus, the ruling in CA G.R. SP No. 85819 is not conclusive of the rights of petitioners and respondent in the action for specific performance.

Along the same line, the doctrine of finality of judgment or immutability of judgments provides that once a decision has acquired finality, it becomes immutable, unalterable, and may no longer be modified in any aspect, regardless if the modification is meant to correct erroneous factual and legal conclusions and if it be made by the court that rendered it or by this Court.[47]

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[44] *Taganas v. Emuslan*, 457 Phil. 305, 311 (2003).

[45] *Sps. Navarra v. Liongson*, 784 Phil. 942, 957 (2016).

[46] *Rollo*, pp. 55-56.

[47] *Gadrinab v. Salamanca*, 736 Phil. 279, 292 (2014).

Similarly, said doctrine of finality of judgment or immutability of judgments does not apply in this case. In *Sps. Diu v. Ibajan*,[48] this Court held that in detainer, being a mere quieting process, the issues on real property are incidentally discussed and the court may only make an initial determination of ownership so as to resolve possession in the absence of evidence on the latter. Nonetheless, this determination of ownership is "not clothed with finality" and will not "constitute a binding and conclusive adjudication on the merits with respect to the issue of ownership."[49]

In the present case, the nature of the Deed was incidentally passed upon in the action for unlawful detainer to determine the rights of petitioners and respondent relative to the ownership of the subject land so as to determine who is entitled to possession thereto. Then again, such determination of ownership based on the Deed is provisional, thus, not a conclusive adjudication on the merits of the case. Thus, the CA was not precluded to revisit the issue on the nature of the Deed and make its ascertainment based on the facts and evidence on record.

The CA appropriately revived the issue on the true nature of the Deed, considering that the determination of the same was necessary for the complete and just resolution of the case.

With respect to the second issue, petitioners argue that they were the ones who filed the partial appeal of the RTC Decision with the CA assailing only the correct amount of the balance of the purchase price, the correct interest rate, and the correct interest period. They asserted that the matter concerning the nature of the Deed as a contract of sale was not an assigned error and as such, the CA should not have considered it.[50]

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[48] 379 Phil. 482 (2000).

[49] *Id*.

[50] *Rollo*, pp. 32-33.

Section 8, Rule 51, of the Rules of Court provides that as a general rule, only matters assigned as errors in the appeal may be resolved. As an exception thereto, the CA may review errors that are not assigned but are closely related to or dependent on an assigned error and is given discretion if it finds that the consideration of such is necessary for a complete and just resolution of the case.[51]

Applying the foregoing to this case, the determination of the nature of the Deed was indeed necessary for the complete and just resolution of the case. After all, establishing the true nature of the Deed would set forth the contractual rights and obligations of petitioners and respondent. It would clarify who is legally vested with the ownership of the subject land. Consequently, the CA cannot be faulted for re-examining the contractual relations of petitioners and respondent based on the Deed.

At this juncture, it is imperative for the Court to finally conclude the true nature of the Deed. Based on the provisions of the Deed, the CA is correct in ruling that the Deed is a contract to sell and not a contract of sale.

In *Diego v. Diego*,[52] the Court held that an agreement stipulating that the execution of the deed of sale shall be contingent on the full payment of the purchase price is a contract to sell, thus:

> It is settled jurisprudence, to the point of being elementary, that an agreement which stipulates that the seller shall execute a deed of sale only upon or after full payment of the purchase price is a ***contract to sell***, not a contract of sale. In *Reyes v. Tuparan*, this Court declared in categorical terms that **"[w]here the vendor promises to execute a deed of absolute sale upon the completion by the vendee of the payment of the price, the contract is only a contract to sell. The aforecited stipulation shows that the vendors reserved title to the subject property until full payment of the purchase price."**

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[51] *Heirs of Loyola v. Court of Appeals*, 803 Phil. 143, 155 (2017).

[52] 704 Phil. 373 (2013).

In this case, it is not disputed as in fact both parties agreed that the deed of sale shall only be executed upon payment of the remaining balance of the purchase price. Thus, pursuant to the above stated jurisprudence, we similarly declare that the transaction entered into by the parties is a contract to sell.[53] (Citation omitted)

Clause 2(b) of the Deed readily reveals that respondent shall only execute the Deed and transfer the title over the subject land in favor of petitioners upon full payment of the purchase price:

> b. That the Deed of absolute sale of the above-described lot shall only be executed in favor of the vendee upon the full payment of the full (*sic*) amount of the purchase price in the amount of ₱346,400.00 and after which the title shall be transferred in the name of the vendee.[54]

Resultantly, given that the ownership over the subject land was retained by respondent until full payment by "petitioners of the purchase price," the Deed is a contract to sell.

Petitioners cannot avail of the rights of the buyer under Section 3 of RA No. 6552 because they did not diligently and consistently satisfy the legal requirement of paying at least two (2) years of installments.

Regarding the third issue, petitioners assert that granting that the Deed was a contract to sell and given that the subject land is a residential lot and that respondent received in open court the sum of ₱107,560.00 in consideration of the Deed, RA No. 6552 would apply. Thus, they claim that before the Deed was cancelled, the following requirements under Section 3 thereof should have been complied with: (1) receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by notarial act and (2) full payment of the cash

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[53] *Id*.

[54] *Rollo*, p. 82.

surrender value to the buyer. They point out that these requisites were not satisfied in this case.[55]

RA No. 6552 expressly grants the buyer, who must have paid at least two (2) years of installments, the following rights:

> **Section 3.** In all transactions or contracts involving the sale or financing of real estate on installment payments, including residential condominium apartments but excluding industrial lots, commercial buildings and sales to tenants under Republic Act Numbered Thirty-eight hundred forty-four, as amended by Republic Act Numbered Sixty-three hundred eighty-nine, **where the buyer has paid at least two years of installments**, the buyer is entitled to the following rights in case he defaults in the payment of succeeding installments:
>
> (a) To pay, without additional interest, the unpaid installments due within the total grace period earned by him which is hereby fixed at the rate of one month grace period for every one year of installment payments made: Provided, That this right shall be exercised by the buyer only once in every five years of the life of the contract and its extensions, if any.
>
> (b) If the contract is canceled, the seller shall refund to the buyer the cash surrender value of the payments on the property equivalent to fifty per cent of the total payments made, and, after five years of installments, an additional five per cent every year but not to exceed ninety per cent of the total payments made: *Provided*, That the actual cancellation of the contract shall take place after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer.
>
> Down payments, deposits or options on the contract shall be included in the computation of the total number of installment payments made. (Emphasis supplied)

In *Orbe v. Filinvest Land, Inc.*,[56] the Court emphasized that "at least two years of installments" means the "equivalent of the totality of payments **diligently or consistently made** throughout a period of two (2) years,"

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[55] *Id.* at 35-36.

[56] G.R. No. 208185, September 6, 2017, 839 SCRA 72.

When Section 3 speaks of paying "at least two years of *installments*," it refers to the equivalent of the totality of payments diligently or consistently made throughout a period of two (2) years. Accordingly, where installments are to be paid on a monthly basis, paying "at least two years of installments" pertains to the aggregate value of 24 monthly installments. As explained in *Gatchalian Realty v. Angeles*:

It should be noted that Section 3 of R.A. 6552 and paragraph six of Contract Nos. 2271 and 2272, speak of "two years of installments." *The basis for computation of the term refers to the installments that correspond to the number of months of payments*, and not to the number of months that the contract is in effect as well as any grace period that has been given. Both the law and the contracts thus *prevent any buyer who has not been diligent in paying his monthly installments tom unduly claiming the rights provided in Section 3* of R.A. 6552. (Emphasis supplied)

The phrase "at least two years of installments" refers to value and time. It does not only refer to the period when the buyer has been making payments, with total disregard for the value that the buyer has actually conveyed. It refers to the proportionate value of the installments made, as well as payments having been made for at least two (2) years.

Laws should never be so interpreted as to produce results that are absurd or unreasonable. Sustaining petitioner's contention that spe falls within Section 3's protection just because she has been paying for more than two (2) years goes beyond a justified, liberal construction of the Maceda Law. It facilitates arbitrariness, as intermittent payments of fluctuating amounts would become permissible, so long as they stretch for two (2) years. Worse, it condones an absurdity. It sets a precedent that would endorse minimal, token payments that extend for two (2) years. A buyer could, then, literally pay loose change for two (2) years and still come under Section 3's protection.[57] (Citation omitted)

In this case, petitioners did not diligently and consistently pay at least two (2) years of monthly installments. As pointed by the CA, instead of paying ₱5,000.00 monthly effective March 30, 1997, they merely paid small amounts, *i.e.*, ₱300.00, ₱500.00,

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[57] *Id*.

₱700.00, ₱1,000.00, ₱1,500.00, ₱2,000.00, or ₱2,500.00, from time to time, thus:

> In fact, there is evidence showing that [petitioners] were unable to pay the amount due within the period fixed in the Deed. Instead of paying ₱5,000.00 monthly effective March 30, 1997 until the amount of ₱173,000.00, representing one-half (½) of the purchase price, is paid, they failed to complete it and only paid small amounts, *i.e.*, ₱300, ₱500, ₱700, ₱1,000.00, ₱1,500.00, ₱2,000.00, or ₱2,500.00, from time-to-time. [Celia] also admitted, on cross-examination, that she failed to complete the payment of ₱173,000.00 corresponding to the other half of the purchase price that fell due on December 30, 1999.[58]

Clearly, petitioners are unjustifiably claiming their rights under Section 3 of R.A. No. 6552. They failed to faithfully comply with the requirement of paying their monthly installments for two (2) years and yet they have the audacity to invoke Section 3. Treating the receipt by respondent in open court of the sum of ₱107,560.00 in consideration of the Deed as substantial compliance by petitioners of the provisions of Section 3 would be unfair and defiant of the purpose of RA No. 6552. It would tolerate arbitrariness on the part of the buyer when satisfying his monetary obligations to the seller.

There could no longer be a performance of the Deed upon petitioners' failure to pay the purchase price of the subject land in accordance with the terms of the Deed.

Anent the last issue, petitioners claim that the receipt by the respondent of the sum of ₱107,650.00 constitutes partial performance of the Deed, indicating that as between the parties, the Deed was subsisting and has never been rescinded, contrary to the findings of the CA that it was ineffective and without force and effect.

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[58] *Rollo*, p. 60.

In *Ayala Life Assurance, Inc. v. Ray Burton Development Corporation*,[59] the Court held that the payment by the buyer of purchase price is a positive suspensive condition and the non-fulfillment of which is an event that prevents the seller from conveying title to the buyer. Said non-payment of the purchase price renders the contract to sell ineffective and without force and effect.[60] Therefore, a cause of action for specific performance does not arise.[61]

Here, petitioners failed to realize that there could no longer be a performance, not even partial, of the Deed the moment that they failed to pay the purchase price of the subject land in accordance with the terms of the Deed. It is worthy to note that at the time of the receipt by the respondent of the sum of ₱107,650.00, the Deed was already without force and effect. Thus, there could have been no partial performance, let alone a cause of action for specific performance.

WHEREFORE, the petition is **DENIED**. The Decision dated September 19, 2013 and the Resolution dated May 13, 2014 of the Court of Appeals in CA-G.R. CV No. 93745 are hereby **AFFIRMED**.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Hernando*, and *Zalameda*,[*] *JJ.*, concur.

Inting, J., on official leave.

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[59] 515 Phil. 431 (2006).

[60] *Id*.

[61] *Id*.

[*] Designated as additional Member per Special Order No. 2727.

SECOND DIVISION

[G.R. No. 217360. November 13, 2019]

BDO STRATEGIC HOLDINGS, INC. (Formerly EBC STRATEGIC HOLDINGS, INC.) and BANCO DE ORO UNIBANK, INC. (Formerly EQUITABLE PCI BANK, INC.), *petitioners, vs.* **ASIA AMALGAMATED HOLDINGS CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; DEPOSITIONS; DESIGNED TO FACILITATE THE EARLY DISPOSITION OF CASES CONSISTENT WITH THE PRINCIPLE OF PROMOTING JUST, SPEEDY AND INEXPENSIVE DISPOSITION OF EVERY ACTION OR PROCEEDING, BUT THE RIGHT TO TAKE DEPOSITION HAS LIMITATIONS. — It is true that depositions are legal instruments consistent with the principle of promoting the just, speedy and inexpensive disposition of every action or proceeding. They are designated to facilitate the early disposition of cases and expedite the wheel of justice. Hence, the use of discovery is highly encouraged. However, while the petitioners are correct in contending that modes of discovery are important and encouraged, this is not absolute. It is important to be reminded that the right to take deposition, whether in a form of oral or written interrogatories, has limitations. The Rules of Court expressly provides for limitations to deposition when the examination is being conducted in bad faith or in such a manner as to annoy, embarrass, or oppress the person subject to the inquiry. Depositions are also limited when the inquiry touches upon the irrelevant or encroaches upon the recognized domain of privilege.

2. ID.; ID.; ID.; THE COURT SHALL EXERCISE JUDICIAL DISCRETION TO DETERMINE WHETHER THERE IS SUBSTANTIAL REASON TO DISALLOW A DEPOSITION, AND THE COURT'S EXERCISE OF SUCH DISCRETION WILL NOT BE SET ASIDE IN THE ABSENCE OF ABUSE, OR UNLESS THE COURT'S

DISPOSITION OF MATTERS OF DISCOVERY IS IMPROVIDENT AND AFFECTED THE SUBSTANTIAL RIGHTS OF THE PARTIES.— Under statutes and procedural rules, the court enjoys considerable leeway in matters pertaining to discovery. To be specific, Section 16 of Rule 23 of the Rules of Court clearly states that, upon notice and for good cause, the court may order for a deposition not to be taken. Clearly, the court shall exercise its judicial discretion to determine the matter of good cause. Good cause means a substantial reason — one that affords a legal excuse. In other words, it is for the court to determine whether there is a substantial reason to disallow a deposition, as in this case. Thus, the grounds for disallowing a written interrogatory are not restricted to those expressly mentioned under the Rules of Court and existing jurisprudence. It must also be emphasized that the court's exercise of such discretion will not be set aside in the absence of abuse, or unless the court's disposition of matters of discovery was improvident and affected the substantial rights of the parties. x x x Petitioners failed to establish that the disallowance by the lower court was made arbitrarily, capriciously or oppressively to warrant a reversal. On the contrary, respondent showed good cause for the disallowance. As correctly ruled by the CA, considering that the case is in the cross-examination stage already, the use of written interrogatories will not serve its purpose anymore. It cannot aid in the preparation and speedy disposition of the pending case. Instead, it will only cause further delay in the proceedings. x x x The facts which the written interrogatories want to elicit can be extracted from the continuation of the cross-examination.

3. **ID.; ID.; APPEALS; THE TRIAL COURT'S CONCLUSIONS AND FINDINGS OF FACT ARE ENTITLED TO GREAT WEIGHT AND SHOULD NOT BE DISTURBED ON APPEAL, UNLESS STRONG AND COGENT REASONS DICTATE OTHERWISE BECAUSE THE TRIAL COURT IS IN A BETTER POSITION TO EXAMINE THE REAL EVIDENCE AND THE DEMEANOR OF THE WITNESSES WHILE TESTIFYING IN THE CASE.—** Petitioners also challenge the findings of the RTC and CA that the written interrogatories were framed to "annoy, embarrass or oppress" the deponent. They, however, must be reminded that this Court is not a trier of facts. It is a fundamental and settled dictum that conclusions and findings of fact by the trial court are entitled

to great weight and should not be disturbed on appeal, unless strong and cogent reasons dictate otherwise. This is because the trial court is in a better position to examine the real evidence, as well as to observe the demeanor of the witnesses while testifying in the case. In this case, the mere allegations of petitioners that the subjects of the written interrogatories are relevant to the case and not made in bad faith, or in a manner intended to annoy, embarrass or oppress, are not sufficient bases to revisit the factual evidence involved. It is also important to remember that inquiry in written interrogatories should not only be relevant to the case, but also made in good faith and within the bounds of the law.

APPEARANCES OF COUNSEL

Tan Acut Lopez and Pison Law Offices for petitioners.

D E C I S I O N

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

Before this Court is a Petition for Review on *Certiorari*[1] taken under Rule 45 of the Rules of Court seeking to nullify the Decision[2] dated September 30, 2014 and the Resolution[3] dated March 10, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 132785.

Factual Antecedents

BDO Strategic Holdings, Inc. (formerly EBC Strategic Holdings, Inc.) and Banco De Oro Unibank, Inc. (formerly Equitable PCI Bank, Inc.) (petitioners) are corporations duly organized under the laws of the Philippines.[4] Asia Amalgamated

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[1] *Rollo*, pp. 3-38.

[2] Penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Remedios A. Salazar-Fernando and Ramon R. Garcia; *id*. at 40-52.

[3] *Id.* at 54-55.

[4] *Id*. at 127-128.

Holdings Corporation (respondent) is a holding company whose shares are listed in the Philippine Stock Exchange, and whose majority shares are owned by Mr. Jimmy Gow (Mr. Gow).[5]

On November 6, 2007, respondent filed a complaint for declaration of nullity of contract and damages against petitioners.[6]

The trial for the case started on June 1, 2010 in which Mr. Gow was presented as the first witness. The cross-examination on Mr. Gow started on January 24, 2012 and continued on April 17, 2012.[7] The cross-examination continued on the third and fourth hearing dates, September 12, 2012 and November 19, 2012, respectively.[8] However, on December 10, 2012, his cross-examination was suspended since petitioners filed a request for issuance of subpoena *duces tecum*, which was granted by the Regional Trial Court (RTC) on the same day.[9]

On December 10, 2012, petitioners insisted that respondent comply with the subpoena *duces tecum* before the cross-examination of Mr. Gow could be continued.[10] However, respondent manifested that it would file an opposition and motion to quash the subpoena.[11]

On February 1, 2013, pending petitioners' opposition to respondent's motion to quash, BDO Strategic Holdings, Inc. filed its written interrogatories addressed to respondent.[12]

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[5] *Id*. at 128.

[6] *Id*. at 41.

[7] *Id*.

[8] *Id*.

[9] *Id*.

[10] *Id*. at 43.

[11] *Id*.

[12] *Id*.

Ruling of the RTC

On April 29, 2013, the RTC issued an Order[13] resolving the motion to quash the subpoena *duces tecum* of respondent and the written interrogatories served on them. The RTC set aside the issued subpoena *duces tecum* and *ad testificandum* on the belief that it in effect would make Mr. Gow a witness for the adverse party, to wit:

ACCORDINGLY, therefore, for the foregoing reasons, the motion having merit, the same is GRANTED. The issued *Subpoena Duces Tecum* and *Ad Testificandum* is hereby ordered quashed [and/or] set aside.[14] (Emphasis in the original)

Also, the RTC denied the taking of Written Interrogatories because it would not facilitate the disposition of the case. The dispositive portion reads:

WHEREFORE, the foregoing considered, the taking of the Written Interrogatories of [petitioner BDO Strategic Holdings, Inc.] served on the plaintiff is accordingly x x x DENIED and not allowed.

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

On May 24, 2013, petitioners filed two Motions for Reconsideration regarding the quashal of the subpoena *duces tecum* and *ad testificandum*, and the disallowance of the written interrogatories.[16] However, both were denied for being without merit in an Order dated August 22, 2013.[17]

Feeling aggrieved, petitioners filed a petition for *certiorari* with an application for the issuance of a temporary restraining order and/or writ of preliminary injunction before the CA.

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[13] Penned by Presiding Judge Fortunito L. Madrona; *id.* at 93-101.

[14] *Id*. at 97.

[15] *Id*. at 101.

[16] *Id*. at 44.

[17] *Id*. at 102-103.

Ruling of the CA

In a Decision[18] dated September 30, 2014, the CA reversed the quashal of the subpoena *duces tecum* and *ad testificandum* but upheld the disallowance of the written interrogatories. The dispositive portion reads:

> **WHEREFORE**, premises considered, this Court hereby resolves that the Orders of RTC, Branch 274 of Parañaque City dated April 29, 2013 and August 22, 2013 as to the quashal of the *subpoena duces tecum* and *ad testificandum* so issued are **REVERSED** and **SET ASIDE**. Accordingly, the respondent Court is **ORDERED** to issue anew a *subpoena duces tecum* and *ad testificandum* with respect to the documents specified in the request for issuance of *subpoena duces tecum* dated December 5, 2012 of petitioners BDO and ESHI. And, as to the disallowance of the written interrogatories, the same is **AFFIRMED**. The application for preliminary injunction and/or temporary restraining order is **DENIED**.
>
> SO ORDERED.[19] (Emphasis in the original)

Still dissatisfied with the decision, petitioners filed a Motion for Partial Reconsideration[20] of the appealed decision insofar as it denied the request for written interrogatories. However, on March 10, 2015, the CA likewise denied the said motion.[21]

Hence, the instant Petition.

Issue

The sole issue to be resolved is whether the CA committed a reversible error in affirming the disallowance of the written interrogatories addressed to respondent.

The Ruling of this Court

The Petition is bereft of merit.

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[18] *Id*. at 40-52.

[19] *Id*. at 51.

[20] *Id*. at 381-396.

[21] *Id*. at 54-55.

It is true that depositions are legal instruments consistent with the principle of promoting the just, speedy and inexpensive disposition of every action or proceeding.[22] They are designed to facilitate the early disposition of cases and expedite the wheel of justice. Hence, the use of discovery is highly encouraged.

However, while the petitioners are correct in contending that modes of discovery are important and encouraged, this is not absolute. It is important to be reminded that the right to take deposition, whether in a form of oral or written interrogatories, has limitations. The Rules of Court expressly provides for limitations to deposition when the examination is being conducted in bad faith or in such a manner as to annoy, embarrass, or oppress the person subject to the inquiry.[23] Depositions are also limited when the inquiry touches upon the irrelevant or encroaches upon the recognized domains of privilege.[24]

Under statutes and procedural rules, the court enjoys considerable leeway in matters pertaining to discovery.[25] To be specific, Section 16 of Rule 23 of the Rules of Court clearly states that, upon notice and for good cause, the court may order for a deposition not to be taken. Clearly, the court shall exercise its judicial discretion to determine the matter of good cause.[26] Good cause means a substantial reason — one that affords a legal excuse.[27] In other words, it is for the court to determine whether there is a substantial reason to disallow a deposition, as in this case. Thus, the grounds for disallowing a written interrogatory are not restricted to those expressly mentioned under the Rules of Court and existing jurisprudence.

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[22] *San Luis v. Hon. Judge Rojas, et al.*, 571 Phil. 51, 72 (2008).

[23] RULES OF COURT, Rule 23, Section 18.

[24] *San Luis v. Hon. Judge Rojas, et al.*, *supra* at 70.

[25] *Producers Bank v. CA*, 349 Phil. 310, 317 (1998).

[26] *Fortune Corporation v. Court of Appeals*, 299 Phil. 356, 383 (1994).

[27] *Id*.

It must also be emphasized that the court's exercise of such discretion will not be set aside in the absence of abuse, or unless the court's disposition of matters of discovery was improvident and affected the substantial rights of the parties.[28]

Considering the foregoing, this Court finds no reason to reverse the ruling of the CA, affirming the RTC's decision to disallow the written interrogatories addressed to respondent. Petitioners failed to establish that the disallowance by the lower court was made arbitrarily, capriciously or oppressively to warrant a reversal.

On the contrary, respondent showed good cause for the disallowance. As correctly ruled by the CA, considering that the case is in the cross-examination stage already, the use of written interrogatories will not serve its purpose anymore. It cannot aid in the preparation and speedy disposition of the pending case. Instead, it will only cause further delay in the proceedings. It is worthy to note that petitioners' written interrogatories have a total of 561 questions, which composed the 16 sets of interrogatories from A to Q. The facts which the written interrogatories want to elicit can be extracted from the continuation of the cross-examination.

Petitioners also challenge the findings of the RTC and CA that the written interrogatories were framed to "annoy, embarrass or oppress" the deponent. They, however, must be reminded that this Court is not a trier of facts. It is a fundamental and settled dictum that conclusions and findings of fact by the trial court are entitled to great weight and should not be disturbed on appeal, unless strong and cogent reasons dictate otherwise.[29] This is because the trial court is in a better position to examine the real evidence, as well as to observe the demeanor of the witnesses while testifying in the case.

In this case, the mere allegations of petitioners that the subjects of the written interrogatories are relevant to the case and not

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[28] *Producers Bank v. CA*, *supra* note 25, at 317.

[29] *Id*. at 318.

made in bad faith, or in a manner intended to annoy, embarrass or oppress, are not sufficient bases to revisit the factual evidence involved. It is also important to remember that inquiry in written interrogatories should not only be relevant to the case, but also made in good faith and within the bounds of the law.[30] Thus, this Court finds no reason to reverse the finding of the CA.

WHEREFORE, premises considered, the instant Petition for Review on *Certiorari* is **DENIED**. The Decision dated September 30, 2014 and Resolution dated March 10, 2015 of the Court of Appeals in CA-G.R. SP No. 132785 are hereby **AFFIRMED**.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Hernando*, and *Zalameda*,[*] *JJ.*, concur.

Inting, J., on official leave.

SECOND DIVISION

[G.R. No. 219170. November 13, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ABC,**[1] *accused-appellant.*

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[30] *San Luis v. Hon. Judge Rojas, et al.*, *supra* note 22, at 70.

[*] Additional Member per Special Order No. 2727 dated October 25, 2019.

[1] At the victim's instance or, if the victim is a minor, that of his or her guardian, the complete name of the accused may be replaced by fictitious initials and his or her personal circumstances blotted out from the decision, resolution, or order if the name and personal circumstances of the accused may tend to establish or compromise the victims' identities; in accordance with Amended Administrative Circular No. 83-2015 (III [1] [c]) dated September 5, 2017.

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; RAPE; THE CREDIBILITY OF THE VICTIM BECOMES A CRUCIAL CONSIDERATION IN THE RESOLUTION OF RAPE CASES, AND THE TESTIMONY OF THE VICTIM PASSES THE TEST OF CREDIBILITY WHEN IT IS STRAIGHTFORWARD, CONVINCING, AND CONSISTENT WITH HUMAN NATURE AND THE ORDINARY COURSE OF THINGS, WITHOUT ANY MATERIAL OR SIGNIFICANT INCONSISTENCY.— Time and again, the Court emphasized that given its intimate nature, rape is a crime commonly devoid of witnesses. By and large, the victim will be left to testify in relation to the charge. Accordingly, the credibility of the victim becomes a crucial consideration in the resolution of rape cases. The oft-repeated rule is that the testimony of the victim passes the test of credibility when it is straightforward, convincing, and consistent with human nature and the ordinary course of things, without any material or significant inconsistency. The conviction of the accused may solely rely thereon. It is worthy to note that inconsistencies, especially when relating to trivial matters that do not change the fundamental fact of the commission of rape, do not impair the credibility of the testimony. In this regard, the trial court's assessment of the credibility of witnesses is given great weight, not to mention deemed conclusive and binding. x x x In this case, it is indubitable that the RTC found the testimony of AAA as to how ABC had carnal knowledge of her through force and intimidation credible and gave great weight to the same when it ruled for his conviction. The trial court noted that it "has no reason to doubt the testimony of [AAA] which was given in a clear and straightforward manner." As confirmed by the CA, her testimony, "given positively and candidly, conclusively established" the elements of the crime charged. Relying on the assessment of the lower courts, particularly of the RTC that was in the best position to assess the truthfulness of AAA and the veracity of her narration, the Court finds the testimony of AAA conclusive and binding.

2. ID.; ID.; ID.; ELEMENTS.— The elements of rape under Article 266-A (1)(a, b, and c) of the RPC are: (1) the offender is a man; (2) carnal knowledge of a woman; and (3) through force,

threat or intimidation; when the offended party is deprived of reason or otherwise unconscious; and by means of fraudulent machination or grave abuse of authority. x x x In *People of the Philippines v. Salvador Tulagan*, the Court interpreted the cases of *People v. Tubillo*, *People v. Abay,* and *People v. Pangilinan*, and clarified that when the offended party is 12 years old or below 18 and the charge against the accused is carnal knowledge through "force, threat or intimidation," then he will be prosecuted for rape under Article 266-A(1)(a) x x x. In the present case, the prosecution proved that ABC had carnal knowledge of AAA through force and intimidation. As narrated by AAA, he embraced her and held her breast. She also testified that he pulled down her short pants and panty and thereafter inserted his penis into her vagina. He also covered her mouth and pinned her left thigh with his left leg.

3. ID.; REPUBLIC ACT NO. 7610 (THE SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT); SEXUAL ABUSE UNDER SECTION 5(1); ELEMENTS.— [T]he elements of sexual abuse under Section 5(1) of R.A. No. 7610 are: (1) offender is a man; (2) indulges in sexual intercourse with a female child exploited in prostitution or other sexual abuse, who is 12 years old or below 18 or above 18 under special circumstances; and (3) coercion or influence of any adult, syndicate or group is employed against the child to become a prostitute.

4. ID.; REVISED PENAL CODE; RAPE; COMPLETE OR FULL PENETRATION OF THE COMPLAINANT'S PRIVATE PART OR THE RUPTURE OF THE HYMEN IS NOT NECESSARY IN RAPE CASES BECAUSE WHAT IS ESSENTIAL TO BE PROVED IS THE ENTRANCE, OR AT LEAST THE INTRODUCTION OF THE MALE ORGAN INTO THE LABIA OF THE PUDENDUM.— In his defense, ABC asserted that the Medico-Legal Report reveals no lacerations or tear in AAA's hymen x x x. Addressing the absence of lacerations or tear in AAA's hymen, well-settled is the doctrine that complete or full penetration of the complainant's private part or the rupture of the hymen is not necessary in rape cases. What is essential to be proved is "the entrance, or at least the introduction of the male organ into the *labia* of the pudendum[,]" as in this case.

5. REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; INTRINSICALLY WEAK DEFENSES THAT CANNOT PREVAIL OVER THE POSITIVE AND CREDIBLE TESTIMONY OF THE PROSECUTION WITNESS THAT THE ACCUSED COMMITTED THE CRIME.— ABC's denial of the commission of the crime and alibi cannot overthrow the testimony of AAA. It bears emphasizing that denial and alibi are intrinsically weak defenses that cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime.

6. ID.; ID.; ALIBI; TO PROSPER, THE ACCUSED MUST PROVE NOT ONLY THE FACT THAT HE WAS SOMEWHERE ELSE WHEN THE CRIME WAS COMMITTED, BUT ALSO SATISFACTORILY ESTABLISH THE PHYSICAL IMPOSSIBILITY FOR HIM TO BE AT THE CRIME SCENE AT THE TIME OF ITS COMMISSION.— [F]or the defense of alibi to convince the Court, the accused must prove not only the fact that he was somewhere else when the crime was committed, but also satisfactorily establish the physical impossibility for him to be at the crime scene at the time of its commission. Here, considering the relatively short distance between Quezon City and Antipolo City, ABC failed to show that it was physically impossible for him to be at the crime scene during its commission.

7. CRIMINAL LAW; ACT NO. 4103 (THE INDETERMINATE SENTENCE LAW), AS AMENDED; DOES NOT APPLY WHEN THE PENALTY IMPOSED IS AN INDIVISIBLE PENALTY.— [T]he Court finds that the RTC was correct in imposing the penalty of *reclusion perpetua*. The law provides that the crime of rape under Article 266-A(1) is punishable by *reclusion perpetua*. As *reclusion perpetua* is an indivisible penalty, with no minimum or maximum period, Act No. 4103, as amended, otherwise known as the "Indeterminate Sentence Law," finds no application in this case.

APPEARANCES OF COUNSEL

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

D E C I S I O N

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

On appeal is the Decision[2] dated November 28, 2013 (Assailed Decision) of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 05457, affirming with modification the Decision[3] dated February 20, 2012 of the Regional Trial Court of Quezon City (RTC) in Criminal Case No. Q-08-152344. The RTC found accused-appellant ABC guilty beyond reasonable doubt of the crime of rape in relation to Republic Act (R.A.) No. 7610 and sentenced him to suffer the penalty of *reclusion perpetua* and to pay the victim, AAA,[4] the amount of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.

Factual Antecedents

On May 30, 2008, ABC was charged before the RTC with the crime of rape in relation to R.A. No. 7610, which was eventually raffled to and heard by Branch 94.[5] The Information reads:

That on or about the 26th day of May, 2008, in Quezon City, Philippines, the above-named accused, by means of violence and

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[2] Penned by Associate Justice Jane Aurora C. Lantion and concurred in by then Associate Justice Amy C. Lazaro-Javier (now member of the Court) and Associate Justice Eduardo B. Peralta, Jr.; *rollo*, pp. 2-15.

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

[4] The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family, or household members, shall not be disclosed to protect her privacy, and fictitious initial shall, instead, be used, in accordance with *People v. Cabalquinto* (533 Phil. 703 [2006]) and the Amended Administrative Circular No. 83-2015 dated September 5, 2017.

[5] *Rollo*, p. 3.

intimidation, did then and there willfully, unlawfully, and feloniously have carnal knowledge with AAA, 14 years old, a minor, against her will and without her consent, to the damage and prejudice of the said offended party.

CONTRARY TO LAW.[6]

On November 17, 2008, ABC was arraigned and pleaded not guilty to the charge. On February 24, 2009, pre-trial was held. The parties stipulated on and admitted: (1) the jurisdiction of the court over ABC; (2) the identity of ABC; and (3) the minority of private complainant AAA. Trial on the merits ensued.[7]

The prosecution presented the following witnesses: (1) AAA; (2) BBB, mother of AAA; (3) Dr. Editha Martinez (Dr. Martinez); (4) Barangay Public Safety Officer (BPSO) Jesus Estanislao (Estanislao); and (5) BPSO Elmer Sacayan (Sacayan).[8]

The prosecution, through the Office of the Solicitor General, synthesized the testimony of AAA as follows:

On May 26, 2008, about 7:00 in the morning, private complainant AAA was sleeping alone in her room at their house in [redacted]. Around 7:45 in the morning, private complainant was awakened when she felt somebody embracing her. Private complainant panicked and called to her mother for help by shouting "Nanay!" "Nanay!" However, before she could rouse anyone to her aid, her assailant (later identified as [ABC]) covered her mouth and held her left breast with his other hand, which effectively halted her efforts to escape.

As [ABC] gripped her body as she laid sideways, private complainant felt [ABC] lowering her shorts and panty. She could not struggle against him in their position because [ABC's] leg pinned down her left thigh. Private complainant felt [ABC] inserting his penis inside her vagina. Private complainant felt pain since it was her first time

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[6] *Id*.

[7] *Id*.

[8] *Id*.

to experience sexual intercourse. She was sure that it was [ABC] who sexually assaulted her because the room was well-lighted and before he left, he turned his face to her.

After raping private complainant, [ABC] left her crying inside the room. When private complainant's grandmother, CCC arrived back home around noon time, she noticed her granddaughter crying. Upon confronting private complainant, the latter revealed that [ABC], who was their family boarder, raped her. Furious, [CCC], together with private complainant's mother, BBB, and other relatives, proceeded to the Barangay Hall, then to Police Station 8 in Quezon City, before going to Camp Crame. There, private complainant was subjected to a medico-legal examination. Private complainant and her family then proceeded to file the present case against [ABC].[9]

BBB, mother of AAA, then took the witness stand. She said that AAA has been under the care of CCC since AAA was just a child. BBB often visited AAA as she lives nearby. On May 26, 2008 she proceeded to CCC's house at [redacted]. Upon arriving at said place, she saw that there was a commotion. Her brother, DDD, was shouting that AAA was raped. They went to the Barangay Hall where AAA narrated the incident. From the Barangay Hall, they proceeded to Police Station 8 where AAA gave her statement. AAA was then made to undergo a medico-legal examination.[10]

Dr. Martinez next testified for the prosecution. She narrated that she subjected AAA to medical examination. She found no lacerations/tears in AAA's hymen but based on the background, she concluded in her Medico-Legal Report that her "medical evaluation cannot exclude sexual abuse."[11]

The prosecution also presented BPSOs Sacayan and Estanislao. BPSO Estanislao testified that on May 26, 2008, at around 10:00 in the morning, he received a telephone call

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[9] *Rollo*, p. 4.

[10] *Id.* at 4-5.

[11] *Id.* at 5.

from a female caller who told him that her granddaughter was raped. After getting the details, he and BPSO Sacayan proceeded to the place where the incident allegedly happened. Along the way, they met AAA and BBB. The BPSOs brought AAA and BBB to the Barangay Office. There, AAA disclosed that she was raped by their boarder, ABC. After a few minutes, ABC, accompanied by other barangay officials, arrived at the Barangay Office. It was then when AAA pointed to ABC as the person who raped her. The BPSO had the incident recorded in the barangay blotter. They brought AAA, BBB, and ABC to Police Station 8.[12]

After the completion of the respective testimonies of the prosecution witnesses, the prosecution formally offered the following documentary exhibits: (1) *Sinumpaang Salaysay* of AAA; (2) *Pinagsamang Salaysay* of BPSOs Sacayan and Estanislao; (3) Initial Medico-Legal Report dated May 26, 2008; (4) Birth Certificate of AAA; (5) Medico-Legal Report No. R-08-1224 dated May 29, 2008; and (6) Request for Physical and Genital Examination dated May 26, 2008.[13]

On September 21, 2010, the RTC issued an Order admitting the prosecution's documentary exhibits.[14]

For its part, the defense presented as its witness ABC, Anastacia Benzon (Benzon), and Josefa Jebulan (Jebulan).[15]

The RTC summarized ABC's testimony as follows:

> [O]n the night of May 25, 2008, [ABC] slept in their rented room in Bagumbayan, Quezon City together with his live-in partner Lorafe Tuscano. He woke up at around [6:00] in the morning and took a bath. He then proceeded to their house located at 159 San Juan St., Mayamot, Antipolo City because his mother told him to fix the wooden bed of his sister [EEE]. He boarded a bicycle and it

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[12] *Id*.

[13] *Rollo*, p. 6.

[14] *Id*.

[15] *Id*.

took him forty[-]five (45) minutes to reach their house. He arrived in their house at 7:00 in the morning. His mother, sister [EEE], nephews and nieces were in their house when he arrived. He also saw Tessie and Relyn Venzon. He started fixing [EEE]'s bed at around 8:00 a.m. He finished his work at 9:00 a.m. He received a phone call from the cousin of AAA who told him that he has an important thing to tell him. [ABC] went back to Bagumbayan and arrived at 11:30 a.m. When he arrived in Bagumbayan, AAA's cousin and a barangay official told him to proceed to the barangay office. He and his live-in partner went to the barangay office [where] he gave his statement. He was brought to the police [station] and was immediately detained.[16]

Benzon and Jebulan, both neighbors of ABC's mother, successively testified and corroborated ABC's testimony.[17]

Thereafter, the defense rested its case. No documentary exhibits were presented and formally offered.[18]

RTC Decision

On February 20, 2012, the RTC rendered a Decision[19] finding ABC guilty beyond reasonable doubt of the crime of rape in relation to R.A. No. 7610 and was sentenced to suffer the penalty of *reclusion perpetua*. The dispositive portion reads:

> WHEREFORE, premises considered, the Court finds accused ABC GUILTY beyond reasonable doubt of the crime of Rape in relation to R.A[.] 7610 and is sentenced to suffer the penalty of *Reclusion Perpetua*.
>
> [ABC] is likewise ordered to pay [AAA] ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.
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> SO ORDERED.[20]

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[16] CA *rollo*, p. 40.

[17] *Rollo*, p. 7.

[18] *Id*.

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

[20] *Id*. at 44.

ABC then appealed the RTC Decision to the CA.[21]

CA Decision

On November 28, 2013, the CA rendered the Assailed Decision affirming with modification the RTC Decision. The dispositive portion reads:

> **WHEREFORE**, the 20 February 2012 [Decision] of Branch 94, Regional Trial Court (RTC) of Quezon City is **AFFIRMED** with **MODIFICATION** as to the penalty imposed. [ABC] is found **GUILTY BEYOND REASONABLE DOUBT** for the crime of Rape in relation to Republic Act No. 7610 and is sentenced to an indeterminate prison term of fourteen (14) years and eight (8) months of *prision mayor* as minimum to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal* as maximum.
>
> The rest of the assailed Decision, including the award of ₱50,000.00 as moral damages and ₱50,000.00 civil indemnity stands.
>
> **SO ORDERED.**[22] (Emphasis in the original)

Hence, the present recourse.

On September 9, 2015, the Court issued a Resolution requiring the parties to file their respective supplemental briefs, if they so desire, within 30 days from notice, among others.[23]

In a Manifestation and Motion[24] dated January 25, 2016, the prosecution relayed that it would no longer file a supplemental brief. Likewise, in a Manifestation (In Lieu of Supplemental Brief)[25] dated February 4, 2016, ABC, through the Public Attorney's Office, relayed that he would no longer file a supplemental brief.

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[21] *Id*. at 122-124.

[22] *Rollo,* p. 14.

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

[24] *Id*. at 25-28.

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

ABC argues that (1) the RTC gravely erred in giving credence to AAA's testimony; (2) the RTC gravely erred in finding him guilty of the crime charged despite the prosecution's failure to prove his guilt beyond reasonable doubt; and (3) assuming *arguendo* that ABC is guilty of the crime charged, the RTC meted the wrong penalty and failed to apply the Indeterminate Sentence Law.[26]

Meanwhile, the prosecution maintains that (1) it was able to prove beyond reasonable doubt that ABC committed rape against AAA and as such, the RTC properly convicted him of the crime charged; (2) ABC's denial and alibi cannot prevail over AAA's positive testimony that he raped her; (3) the RTC correctly convicted ABC of rape under the Revised Penal Code (RPC); and (4) the findings of the RTC on the credibility of the witnesses should be upheld.[27]

The Issues

As raised by ABC, the following are the issues for the resolution of the Court:

I.

Whether or not the RTC gravely erred in giving credence to AAA's testimony.

II.

Whether or not the RTC gravely erred in finding him guilty of the crime charged despite the prosecution's failure to prove his guilt beyond reasonable doubt.

III.

Whether or not the RTC meted the wrong penalty and failed to apply the Indeterminate Sentence Law assuming *arguendo* that ABC is guilty of the crime charged.

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[26] CA *rollo*, p. 16.

[27] *Id*. at 77.

Ruling of the Court

The instant appeal is not meritorious.

As to the first issue, ABC contends that "[a] close scrutiny of [AAA's] narration of her alleged ordeal would reveal that it was ambiguous, unnatural, and inconsistent with human nature and the normal course of things."[28]

The Court is not persuaded.

Time and again, the Court emphasized that given its intimate nature, rape is a crime commonly devoid of witnesses.[29] By and large, the victim will be left to testify in relation to the charge.[30] Accordingly the credibility of the victim becomes a crucial consideration in the resolution of rape cases.[31] The oft-repeated rule is that the testimony of the victim passes the test of credibility when it is straightforward, convincing, and consistent with human nature and the ordinary course of things, without any material or significant inconsistency.[32] The conviction of the accused may solely rely thereon.[33] It is worthy to note that inconsistencies, especially when relating to trivial matters that do not change the fundamental fact of the commission of rape, do not impair the credibility of the testimony.[34] In this regard, the trial court's assessment of the credibility of witnesses is given great weight, not to mention deemed conclusive and binding.[35]

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[28] *Id*. at 30.

[29] *People v. Ocdol*, 741 Phil. 701, 714 (2014).

[30] *Id*.

[31] *Id*.

[32] *Id*.

[33] *Id*.

[34] *Id*.

[35] *Id*.

As explained in *People v. Sapigao, Jr.*,[36] the trial court is in the best position to evaluate the credibility of the witnesses and their testimonies because it has the unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, or attitude under examination, thus:

> It is well settled that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination. These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. For, indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness' credibility, and the trial court has the opportunity and can take advantage of these aids. These cannot be incorporated in the record so that all that the appellate court can see are the cold words of the witness contained in transcript of testimonies with the risk that some of what the witness actually said may have been lost in the process of transcribing. As correctly stated by an American court, "There is an inherent impossibility of determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there were no doubt as to the identity of the words. However artful a corrupt witness may be, there is generally, under the pressure of a skillful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed in the very nature of things cannot be transcribed upon the record, and hence they can never be considered by the appellate court."[37] (Citations omitted)

In this case, it is indubitable that the RTC found the testimony of AAA as to how ABC had carnal knowledge of her through force and intimidation credible and gave great weight to the same when it ruled for his conviction.[38] The trial court noted that it "has no reason to doubt the testimony of [AAA] which

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[36] 614 Phil. 589 (2009).

[37] *Id*. at 599.

[38] CA *rollo*, pp. 41-42.

was given in a clear and straightforward manner."[39] As confirmed by the CA, her testimony, "given positively and candidly, conclusively established" the elements of the crime charged.[40] Relying on the assessment of the lower courts, particularly of the RTC that was in the best position to assess the truthfulness of AAA and the veracity of her narration, the Court finds the testimony of AAA conclusive and binding.

Regarding the second issue, ABC reasons that his guilt was not proven beyond reasonable doubt because the elements of the crime charged against him are not present in the instant case.[41]

The Court begs to disagree.

Before delving into the issue of whether or not the elements of the crime charged are present in this case, it is indispensable to point out and clarify the crime for which ABC was tried and convicted.

The elements of rape under Article 266-A (1)(a,b, and c) of the RPC are: (1) the offender is a man; (2) carnal knowledge of a woman; and (3) through force, threat or intimidation; when the offended party is deprived of reason or otherwise unconscious; and by means of fraudulent machination or grave abuse of authority.[42]

On the other hand, the elements of sexual abuse under Section 5(1) of R.A. No. 7610 are: (1) offender is a man; (2) indulges in sexual intercourse with a female child exploited in prostitution or other sexual abuse, who is 12 years old or below 18 or above 18 under special circumstances; and (3) coercion or influence of any adult, syndicate or group is employed against the child to become a prostitute.[43]

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[39] *Id*. at 43.

[40] *Rollo*, pp. 8-9.

[41] CA *rollo*, pp. 22-29.

[42] *People of the Philippines v. Salvador Tulagan*, G.R. No. 227363, March 12, 2019.

[43] *Id*.

In *People of the Philippines v. Salvador Tulagan*,[44] the Court interpreted the cases of *People v. Tubillo*,[45] *People v. Abay*,[46] and *People v. Pangilinan*,[47] and clarified that when the offended party is 12 years old or below 18 and the charge against the accused is carnal knowledge through "force, threat or intimidation," then he will be prosecuted for rape under Article 266-A(1)(a), thus:

> x x x when the offended party is 12 years old or below 18 and the charge against the accused is carnal knowledge through "force, threat or intimidation," then he will be prosecuted for rape under Article 266-A(1)(a) of the RPC. In contrast, in case of sexual intercourse with a child who is 12 years old or below 18 and who is deemed "exploited in prostitution or other sexual abuse," the crime could not be rape under the RPC, because this no longer falls under the concept of statutory rape, and the victim indulged in sexual intercourse either "for money, profit or any other consideration or due to coercion or influence of any adult, syndicate or group," which deemed the child as one "exploited in prostitution or other sexual abuse."

Applying the foregoing jurisprudence, the CA was mistaken when it held that the conviction by the RTC of ABC was under sexual abuse under Section 5(b) of R.A. No. 7610.[48] His conviction should be for rape under Article 266-A(1).

Proceeding now to the issue of whether or not the elements of the crime of rape under Article 266-A(1) were satisfied, the Court rules in the affirmative.

In the present case, the prosecution proved that ABC had carnal knowledge of AAA through force and intimidation. As narrated by AAA, he embraced her and held her breast. She also testified that he pulled down her short pants and panty

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[44] *Supra* note 42.

[45] 811 Phil. 525 (2017).

[46] 599 Phil. 390 (2009).

[47] 676 Phil. 16 (2011).

[48] *Rollo*, p. 13.

and thereafter inserted his penis into her vagina. He also covered her mouth and pinned her left thigh with his left leg.[49]

In his defense, ABC asserted that the Medico-Legal Report reveals no lacerations or tear in AAA's hymen and that on May 26, 2008, at around 7:00 a.m., during the alleged commission of the crime, he was at his mother's house in Antipolo City.

The abovementioned arguments of ABC do not hold water.

Addressing the absence of lacerations or tear in AAA's hymen, well-settled is the doctrine that complete or full penetration of the complainant's private part or the rupture of the hymen is not necessary in rape cases. What is essential to be proved is "the entrance, or at least the introduction of the male organ into the labia of the pudendum[,]"[50] as in this case.

Likewise, ABC's denial of the commission of the crime and alibi cannot overthrow the testimony of AAA. It bears emphasizing that denial and alibi are intrinsically weak defenses that cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime.[51] Further, for the defense of alibi to convince the Court, the accused must prove not only the fact that he was somewhere else when the crime was committed, but also satisfactorily establish the physical impossibility for him to be at the crime scene at the time of its commission.[52] Here, considering the relatively short distance between Quezon City and Antipolo City, ABC failed to show that it was physically impossible for him to be at the crime scene during its commission.

With respect to the third issue, the Court finds that the RTC was correct in imposing the penalty of *reclusion perpetua*. The law provides that the crime of rape under Article 266-A(1) is

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[49] CA *rollo*, p. 41.

[50] *People v. Castillo*, 274 Phil. 940, 946 (1991).

[51] *People v. Pilpa*, G.R. No. 225336, September 5, 2018.

[52] *Id*.

punishable by *reclusion perpetua*.[53] As *reclusion perpetua* is an indivisible penalty, with no minimum or maximum period, Act No. 4103, as amended, otherwise known as the "Indeterminate Sentence Law," finds no application in this case.[54]

As to civil indemnity and damages, the Court awards civil indemnity of ₱75,000.00, moral damages of ₱75,000.00, and exemplary damages of ₱75,000.00 pursuant to prevailing jurisprudence.[55]

WHEREFORE, the appeal is **DISMISSED**. The Decision dated February 20, 2012 of the Regional Trial Court of Quezon City in Criminal Case No. Q-08-152344 is **AFFIRMED** with **MODIFICATIONS**. We find accused-appellant ABC guilty beyond reasonable doubt of the crime of rape as defined under paragraph 1, Article 266-A of the Revised Penal Code and is sentenced to suffer the penalty of *reclusion perpetua*. Accused-appellant is ordered to pay the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. All the amounts of damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of judgment until fully paid.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Hernando*, and *Zalameda*,[*] *JJ.*, concur.

Inting, J., on official leave.

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[53] REVISED PENAL CODE, Article 266-B.

[54] *People v. Ducay*, 747 Phil. 657, 671 (2014).

[55] *People v. Jugueta*, 783 Phil. 806, 849 (2016).

[*] Designated as additional Member per Special Order No. 2727.

SECOND DIVISION

[G.R. No. 241329. November 13, 2019]

MARYLOU B. TOLENTINO, *petitioner, vs.* **PHILIPPINE POSTAL SAVINGS BANK, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; IT IS UNNECESSARY TO REMAND A CASE TO THE LOWER COURT WHEN THE APPELLATE COURT MAY PROCEED WITH THE RESOLUTION OF THE CASE ON THE BASIS OF THE RECORDS BEFORE IT.— When there was no trial on the merits and the judgment of the trial court is later reversed on appeal, it is necessary to remand the case for further proceedings. This is consistent with the requirements of due process, as the remand would allow the parties to present evidence on the merits of the case. Conversely, it is unnecessary to remand the case to the lower court when the appellate court may proceed with the resolution of the case on the basis of the records before it. x x x Thus, when the parties have submitted and presented evidence essential for the resolution of the dispute, the interest of justice is better served when the court proceeds with the determination of the parties' rights and obligations. In such cases, remanding the case back to the lower court would only pointlessly repeat the proceedings, and subject the parties to an unreasonably long delay in the resolution of the controversy. Here, Marylou appealed the decision of the RTC of Manila, which dismissed her complaint for lack of cause of action, *via* a notice of appeal under Rule 41 of the Rules of Court. As an ordinary appeal, the records of the trial court were elevated to the CA. These records include the parties' evidence duly offered and presented to the trial court, together with the parties' pleadings and the corresponding orders of the RTC. Furthermore, the records show that the RTC of Manila conducted a trial on the merits of Marylou's complaint for the collection of a sum of money from PPSBI. x x x [A]fter the CA reversed the decision of the trial court, there was nothing to remand for further proceedings. The RTC of Manila has already tried the case on the merits, received the evidence, and rendered a decision on

the basis of the evidence before it. Nothing else is left for the parties to do before the trial court. The CA, therefore, should have proceeded to resolve the remaining issues, rather than remanding the case back to the trial court. The Court has always adhered to the principle of settling controversies in a single proceeding. In line with this, and in the interest of the expedient disposition of cases, the Court deems it prudent to resolve the pending issues rather than remanding the case back to the CA.

2. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; THE TERMS AND CONDITIONS OF THE CONTRACT PRIMARILY DETERMINE THE TRUE NATURE OF THE TRANSACTION.— Article 2047 of the Civil Code of the Philippines states that a guarantor binds himself to the creditor to fulfill the obligation of the debtor, in case the latter should fail to do so. Thus, it is only when the debtor fails to comply with the obligation that the guarantor becomes liable. However, even if the parties use the word "guaranty" in a contract, it does not necessarily mean that a contract of guaranty exists between the parties. A guaranty is never presumed; the law requires a guaranty to be express, and may only extend to what the parties stipulated therein. It is well settled that a contract is what the law defines it to be, and not what the contracting parties call it. The terms and conditions of the contract primarily determine the true nature of the transaction. x x x From the text of the Deed of Assignment, as well as that of the letter date June 3, 1996, the intention of the parties is clear. **Enrique, as the assignor, transferred all of his rights to a portion of the loan, initially obtained from PPSBI, to Marylou, as the assignee**. This holds true notwithstanding the use of the word "guarantee" in the Deed of Assignment. Nothing in the language of the deed and the letter binds PPSBI to pay Enrique's debt to Marylou in the event that Enrique should fail to do so. On the contrary, the express undertaking of the parties in the deed is the direct assignment and transfer of the loan proceeds from PPSBI (in the amount of ₱1,500,000.00) to Marylou, as payment for Enrique's debt to Marylou in the same amount. PPSBI, for its part, explicitly agreed to remit this amount directly to Marylou. It did not condition the release of the amount on Enrique's failure to pay the loan he obtained from Marylou. **Furthermore, PPSBI expressly stipulated that any amount necessary to fully settle Enrique's debt to Marylou should only be for the account**

of Enrique. This is undoubtedly contrary to the nature of a contract of guaranty. Thus, the true nature of the transaction among the parties is the assignment of Enrique's loan proceeds in the amount of ₱1,500,000.00 to Marylou.

3. MERCANTILE LAW; CORPORATION LAW; CORPORATION CODE; PRIVATE CORPORATIONS; DOCTRINE OF APPARENT AUTHORITY; IF A CORPORATION KNOWINGLY PERMITS ITS OFFICER TO PERFORM ACTS WITHIN THE SCOPE OF AN APPARENT AUTHORITY, HOLDING HIM OUT TO THE PUBLIC AS POSSESSING POWER TO DO THOSE ACTS, THE CORPORATION WILL, AS AGAINST ANY PERSON WHO HAS DEALT IN GOOD FAITH WITH THE CORPORATION THROUGH SUCH AGENT, BE ESTOPPED FROM DENYING SUCH AUTHORITY.— From the language of the Deed of Assignment, and the contemporaneous and subsequent actions of the contracting parties, the transaction was for the assignment of Enrique's loan proceeds to Marylou. It is not a contract of loan. As a contract within the authorized functions of the bank, PPSBI cannot now claim that the actions of Amante only bind him in his personal capacity. Under the doctrine of apparent authority, Marylou can rightfully rely on the representations of Amante when he sent the June 3, 1996 letter, and thereafter, when he signified his conformity to the Deed of Assignment. To quote the Court's ruling in *Games and Garments Developers, Inc. v. Allied Banking Corporation*: x x x Of particular relevance herein are our pronouncements in *BPI Family Savings Bank, Inc. v. First Metro Investment Corporation,* citing *Prudential Bank v. Court of Appeals* and *Francisco v. Government Service Insurance System:* **We have held that if a corporation knowingly permits its officer, or any other agent, to perform acts within the scope of an apparent authority, holding him out to the public as possessing power to do those acts, the corporation will, as against any person who has dealt in good faith with the corporation through such agent, be estopped from denying such authority.** x x x In this case, it is evident that the representations of Amante were made in the course of PPSBI's normal business, and pursuant to his functions as the PPSBI Loans and Evaluations Manager. As the Loans and Evaluations Manager, he was one of the officers responsible for recommending

the approval of the initial loan obtained by Enrique on behalf of Shekinah Construction. Marylou may, therefore, safely assume that his representations were made in pursuant to, and under the authority of PPSBI. If the Court were to rule otherwise, the public's faith in the banking system would be eroded, and the fiduciary relationship of banks with the public would be rendered nugatory.

4. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; INTEREST; SHALL NOT BE DUE UNLESS IT HAS BEEN EXPRESSLY STIPULATED IN WRITING.— As a rule, interest shall not be due unless it has been expressly stipulated in writing. Since there was no stipulation as to interest in the Deed of Assignment between Marylou and Enrique, the Court cannot impose interest on the amount due from PPSBI.

APPEARANCES OF COUNSEL

Conrado C. Marquez for petitioner.

Overseas Filipino Bank Legal Service Department for respondent.

D E C I S I O N

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

This is a petition for review on *certiorari*[1] which seeks to reverse and set aside the Decision[2] dated July 20, 2017 and Resolution[3] dated August 8, 2018 of the Court of Appeals (CA) in CA-G.R. CV No. 103054, insofar as it ordered the remand of the case to the Regional Trial Court (RTC) of Manila for further proceedings.

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[1] *Rollo*, pp. 3-16.

[2] Penned by Associate Justice Maria Elisa Sempio Diy, with Associate Justices Mariflor P. Punzalan Castillo and Florito S. Macalino, concurring; *id*. at 20-35.

[3] Penned by Associate Justice Maria Elisa Sempio Diy, with Associate Justices Mariflor P. Punzalan Castillo and Victoria Isabel A. Paredes, concurring; *id*. at 64-69.

Factual Antecedents

This case started on August 2, 2000, when petitioner Marylou B. Tolentino (Marylou) filed a complaint[4] for the collection of a sum of money against respondent Philippine Postal Savings Bank, Inc. (PPSBI). In this complaint, she alleged that Enrique Sanchez (Enrique), on behalf of Shekinah Construction, obtained a loan from PPSBI on February 28, 1996, in the amount of ₱3,500,000.00, for the purpose of developing a low-cost housing project. The loan stipulated that PPSBI shall initially release 50% of the loan to Enrique, with the remaining balance to be released upon the completion of a certain percentage of the housing project.[5]

At that time, Marylou was in the business of short-term private lending. In order to hasten the completion of the project, Enrique requested to borrow the amount of ₱1,600,000.00 from Marylou. However, Marylou agreed to lend only ₱1,500,000.00, payable in 60 days at five percent (5%) interest per month.[6]

On June 3, 1996, the PPSBI Loans and Evaluations Manager, Amante A. Pring (Amante), issued a letter stating that PPSBI would remit the amount of ₱1,500,000.00 in favor of Marylou within 60 days from her loan to Enrique. Later, or on June 11, 1996, Enrique and Marylou executed a Deed of Assignment, with the conformity of Amante, acting on behalf of PPSBI, in which Enrique agreed to assign the loan proceeds of Shekinah Construction to Marylou. Thereafter, Marylou released the amount of ₱1,500,000.00 to Enrique. The amount of ₱150,000.00 was deducted from the amount, representing the five percent (5%) interest earlier agreed upon.[7]

Upon the lapse of 60 days, PPSBI did not pay the agreed amount to Marylou. Marylou further learned that PPSBI

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[4] Records, Vol. I, pp. 1-8 .

[5] *Id*. at 2. See also *id*. at 113-120.

[6] *Id*. at 2-4.

[7] *Ibid*.

allegedly released the amount of ₱1,500,000.00 to Enrique — not to her. Marylou demanded payment from PPSBI but her request remained unheeded. Thus, she filed the complaint subject of the present petition.[8]

On September 6, 2000, PPSBI filed a motion to dismiss the complaint for lack of cause of action. It argued that under Section 74 of Republic Act (R.A.) No. 337,[9] PPSBI cannot act as a guarantor of Enrique. For this reason, PPSBI asserted that it could not have authorized Amante to enter into an agreement designating PPSBI as the guarantor of Enrique's loan. Any contract that Amante entered into was made in his own personal capacity, which cannot bind the bank.[10]

In an Order[11] dated October 27, 2000, the trial court denied PPSBI's motion to dismiss. The trial court ruled that the substance of the agreement between the parties is controlling, and that the supposed absence of authority on the part of Amante is an affirmative defense that should be resolved only after trial.[12]

Following the denial of this motion, PPSBI filed an answer reiterating its arguments in the motion to dismiss. On March 5, 2001, PPSBI also filed a third-party complaint against Amante and Enrique, praying for indemnity, subrogation, and any other relief against Marylou.[13]

On July 19, 2005, Amante filed an answer to the third-party complaint. He argued that he entered into the transaction with

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[8] *Id*. at 15.

[9] AN ACT REGULATING BANKS AND BANKING INSTITUTIONS AND FOR OTHER PURPOSES (Approved: July 24, 1948).

[10] Records, Vol. I, pp. 32-35.

[11] Rendered by Judge Mario O. Guariña III; *id*. at 51.

[12] *Id*.

[13] *Id*. at 105-127.

Marylou as a representative of the bank, and that PPSBI was aware of the agreement between Enrique and Marylou.[14]

Ruling of the RTC

On July 16, 2013, the trial court issued a Decision[15] dismissing Marylou's complaint for lack of cause of action:

> WHEREFORE, premises considered, Civil Case No. 00-98230 is hereby DISMISSED for the apparent lack of cause of action by [petitioner Marylou] against [respondent PPSBI]. All counterclaims are, likewise, dismissed. The Third[-]Party Complaint subsequently filed by [PPSBI] against [Amante] and [Enrique] is, likewise, DISMISSED. With costs against the parties.
>
> SO ORDERED.[16]

The trial court held that as a guarantor, PPSBI enjoyed the benefit of excussion. For this reason, Marylou may only compel PPSBI to pay after the exhaustion of all legal remedies against Enrique. Marylou's motion for reconsideration was also denied in the trial court's Order dated February 17, 2014.[17]

Aggrieved, Marylou appealed to the CA pursuant to Rule 41 of the Rules of Court.[18] The appeal was given due course in an Order[19] dated March 18, 2014.

In her appeal, Marylou argued that the denial of PPSBI's motion to dismiss was final and executory and, as such, may not be modified by the trial court. Marylou further claimed that her agreement with PPSBI was not one of guaranty, but an explicit obligation on the part of PPSBI to release the loan proceeds to her. Considering that there was no loan obligation,

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[14] *Id*. at 341-343.

[15] Rendered by Presiding Judge Felicitas O. Laron-Cacanindin; records, Vol. II, pp. 467-473.

[16] *Id*. at 473.

[17] *Id*. at 472.

[18] *Id*. at 524-525.

[19] *Id*. at 529.

Marylou contended that the benefit of excussion was not applicable to PPSBI.[20]

Ruling of the CA

In a Decision[21] dated July 20, 2017, the CA considered the appeal partly meritorious:

> WHEREFORE, premises considered, the appeal is GRANTED. The Decision dated July 16, 2013 of Branch 17, [RTC] of Manila in Civil Case No. 00-98230 is SET ASIDE insofar as the dismissal of the same for apparent lack of cause of action is concerned. Thus, **a REMAND of this case to the lower court is necessary for trial to ensue and for proceedings to continue with dispatch in order to determine the liability of [PPSBI] to [Marylou].**
>
> The dismissal of the Third-Party Complaint filed by [PPSBI] against [Amante] and [Enrique] is AFFIRMED.
>
> SO ORDERED.[22] (Emphasis ours)

Marylou remained unsatisfied with the decision of the CA and, thus, moved for its partial reconsideration.[23] She asked the CA to reconsider its decision insofar as it ordered the remand of the case to the trial court. According to Marylou, it was the duty of the CA to decide the case on the merits. Instead of remanding the case back to the trial court for further proceedings, Marylou was of the position that the CA should have proceeded to determine the liability of PPSBI relative to the evidence available in the records.[24] Marylou prayed for the CA to order the release of ₱1,500,000.00, representing the principal amount of the loan assigned to her, and the payment of interest, moral and exemplary damages, attorney's fees, and costs of suit.[25]

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[20] CA *rollo*, pp. 58-66.

[21] *Rollo*, pp. 20-35.

[22] *Id*. at 35.

[23] *Id*. at 36-47.

[24] *Id*. at 42-44.

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

PPSBI, for its part, likewise filed a motion for reconsideration.[26]

In a Resolution[27] dated August 8, 2018, the CA found both motions without merit:

> WHEREFORE, in view of the foregoing premises, this Court resolves to:
>
> 1) NOTE both [PPSBI's] Comment/Opposition (on the Partial Motion for Reconsideration Filed by the Plaintiff-Appellant) filed on August 24, 2017 and [Marylou's] Comment/Opposition (to Defendant/Third-Party Plaintiff-Appellee PPSBI's motion for reconsideration) filed on September 25, 2017;
>
> 2) NOTE both the returned copies of Our July 20, 2017 Decision and August 30, 2017 Minute Resolution addressed to [Enrique] and with postal notations "RTS MOVED 8/1/17" and "Addressee MOVED 9/13/17", respectively;
>
> 3) NOTE the CMIS verification report dated March 21, 2018 stating that "no comment on the MR has been filed by third party"; and
>
> 4) DENY both [Marylou's] Partial Motion for Reconsideration and [PPSBI's] Motion for Reconsideration for lack of merit.
>
> SO ORDERED.[28]

From the adverse decision of the CA, Marylou filed the present petition with the Court. She argues that the CA should have decided on the merits of her action against PPSBI, as the pieces of evidence are part of the records of the case elevated to the appellate court. Marylou believes that remanding the case back to the trial court would be an unnecessary waste of time and resources.[29]

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[26] *Id*. at 64.

[27] *Id*. at 64-69.

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

[29] *Id*. at 10-13.

Ruling of the Court

The Court finds the present petition meritorious.

It was unnecessary for the CA to remand the case to the RTC for further proceedings.

When there was no trial on the merits and the judgment of the trial court is later reversed on appeal, it is necessary to remand the case for further proceedings. This is consistent with the requirements of due process, as the remand would allow the parties to present evidence on the merits of the case.[30]

Conversely, it is unnecessary to remand the case to the lower court when the appellate court may proceed with the resolution of the case on the basis of the records before it. As the Court held in *Philippine National Bank v. International Corporate Bank*:[31]

> We have time and again laid down the rule that the remand of the case to the lower court for further reception of evidence is no longer necessary where this Court is in a position to resolve the dispute based on the records before it. In a number of cases, the Court, in the public interest and for the expeditious administration of justice, has resolved actions on the merits instead of remanding them to the trial court for further proceedings, such as where the ends of justice would not be subserved by the remand of the case.[32] (Citation omitted)

Thus, when the parties have submitted and presented evidence essential for the resolution of the dispute, the interest of justice is better served when the court proceeds with the determination of the parties' rights and obligations. In such cases, remanding the case back to the lower court would only pointlessly repeat the proceedings, and subject the parties to an unreasonably long delay in the resolution of the controversy.[33]

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[30] See *Sps. Morales v. CA*, 349 Phil. 262, 274-275 (1998).

[31] 276 Phil. 551 (1991).

[32] *Id*. at 559-560.

[33] *Escudero v. Judge Dulay*, 241 Phil. 877, 886-887 (1988); and *Lianga Bay Logging Co., Inc. v. CA*, 241 Phil. 367, 377-378 (1988).

Here, Marylou appealed the decision of the RTC of Manila, which dismissed her complaint for lack of cause of action, *via* a notice of appeal under Rule 41 of the Rules of Court. As an ordinary appeal, the records of the trial court were elevated to the CA. These records include the parties' evidence duly offered and presented to the trial court, together with the parties' pleadings and the corresponding orders of the RTC.

Furthermore, the records show that the RTC of Manila conducted a trial on the merits of Marylou's complaint for the collection of a sum of money from PPSBI. **While PPSBI initially filed a motion to dismiss for lack of cause of action, the trial court did not grant this motion, and instead, proceeded with the hearing of the case.** For this reason, the evidence of the parties already formed part of the records by the time the trial court rendered its Decision dated July 16, 2013. This holds especially true in this case where the trial court held that Marylou did not have a cause of action against PPSBI. The determination as to the existence (or non-existence) of the cause of action may only be resolved during a trial on the merits — not in a preliminary hearing.[34]

Verily, after the CA reversed the decision of the trial court, there was nothing to remand for further proceedings. The RTC of Manila has already tried the case on the merits, received the evidence, and rendered a decision on the basis of the evidence before it. Nothing else is left for the parties to do before the trial court.

The CA, therefore, should have proceeded to resolve the remaining issues, rather than remanding the case back to the trial court. The Court has always adhered to the principle of settling controversies in a single proceeding.[35] In line with this, and in the interest of the expedient disposition of cases,

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[34] See *Aquino, et al. v. Quiazon, et al.*, 755 Phil. 793, 809 (2015); see also *San Miguel Properties, Inc. v. BF Homes, Inc.,* 765 Phil. 672, 702 (2015).

[35] *Ching v. CA*, 387 Phil. 28, 42 (2000).

the Court deems it prudent to resolve the pending issues rather than remanding the case back to the CA.

PPSBI did not guarantee the debt of Enrique to Marylou.

The trial court held that Marylou had no cause of action against PPSBI. This was premised on the finding that PPSBI was the guarantor of Enrique's loan from Marylou. The RTC of Manila thus ruled that PPSBI enjoys the benefit of excussion, and without evidence that Marylou exhausted all available remedies against Enrique, Marylou cannot collect from PPSBI.[36]

On the other hand, the CA ruled that the true intention of the parties is not a contract of guaranty. To be more precise, the contract was an assignment of Enrique's loan to Marylou. PPSBI does not enjoy the benefit of excussion, and Marylou has a cause of action against PPSBI.[37]

The Court agrees with the CA.

Article 2047 of the Civil Code of the Philippines states that a guarantor binds himself to the creditor to fulfill the obligation of the debtor, in case the latter should fail to do so. Thus, it is only when the debtor fails to comply with the obligation that the guarantor becomes liable. However, even if the parties use the word "guaranty" in a contract, it does not necessarily mean that a contract of guaranty exists between the parties. A guaranty is never presumed; the law requires a guaranty to be express, and may only extend to what the parties stipulated therein.[38]

It is well settled that a contract is what the law defines it to be, and not what the contracting parties call it.[39] The terms

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[36] Records, Vol. II, p. 472.

[37] CA *rollo*, pp. 261-262.

[38] CIVIL CODE OF THE PHILIPPINES, Article 2055.

[39] *Ace Foods, Inc. v. Micro Pacific Technologies Co., Ltd.*, 723 Phil. 742,750 (2013).

and conditions of the contract primarily determine the true nature of the transaction. The ruling in *Legaspi v. Spouses Ong*[40] is instructive, to wit:

> We have consistently decreed that the nomenclature used by the contracting parties to describe a contract does not determine its nature. Decisive for the proper determination of the true nature of the transaction between the parties is the intent of the parties, as shown not necessarily by the terminology used in the contract but by all the surrounding circumstances, such as the relative situations of the parties at that time; the attitudes, acts, conduct, and declarations of the parties; the negotiations between them leading to the deed; and generally, all pertinent facts having a tendency to fix and determine the real nature of their design and understanding.[41] (Citations omitted)

In this case, the Deed of Assignment, executed on June 11, 1996 between Enrique and Marylou, reads as follows:

> WHEREAS, [Enrique, referred to as the ASSIGNOR] is the beneficiary/payee of the loan proceeds of [PPSBI], in the sum of PESOS: THREE MILLION FIVE HUNDRED THOUSAND (₱3,500,000.00) as embodied in said bank advise dated 23 March 1996, a xerox copy of which is hereto attached as Annex "A" and forming part of this contract[.]
>
> WHEREAS, as of date the sum of PESOS: ONE MILLION SEVEN HUNDRED FIFTY THOUSAND (₱1,750,000.00) has already been released to [Enrique] and the latter has sought the financial assistance of [Marylou, referred to as the ASSIGNEE] for PESOS: ONE MILLION FIVE HUNDRED THOUSAND (₱1,500,000.00) to hasten the completion of the low-cost housing project in Malolos, Bulacan.
>
> WHEREAS, [PPSBI] guaranteed [Enrique] through [Amante], Loan & Evaluation Manager, that the amount of ₱1.5M shall be [withheld] and instead will be released to her within 60 days from the date of this document, a copy of said letter of guaranty is hereto attached as Annex "B" and forming part of this contract.

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[40] 498 Phil. 167 (2005).

[41] *Id*. at 182.

NOW THEREFORE, for and in consideration of [Marylou] having extended financial assistance to [Enrique], [Enrique] hereby assigns, **transfers and cedes and by these presents have assigned, transferred and ceded unto and in favor of [Marylou], her heirs and successors all of the assigned right to receive the loan proceeds of SHEKINAH CONSTRUCTION thru herein [Enrique] the total sum of PESOS: ONE MILLION FIVE HUNDRED THOUSAND ONLY (₱1,500,000.00)**.[42] (Emphasis ours)

In conjunction with the Deed of Assignment, PPSBI previously sent a letter dated June 3, 1996 to Marylou, which states:

As of to date (*sic*), ₱1.75M was already released and to speed up the construction works, [Enrique], the proponent, informed us that he is availing of financial assistance from you for [₱1.5M] which approximates the unreleased portion of the loan.

Since the amount requested from you shall be used for the said project, we shall be withholding for remittance to you the amount of Pesos: ONE MILLION FIVE HUNDRED THOUSAND ONLY (₱1,500,000.00) within 60 days from the release of the loan from you.

It is also understood that any amount in excess of the amount to be paid to fully settle the loan with you shall be for the account of the borrower.[43] (Emphasis ours)

Both Enrique and Marylou signified their conformity to the June 3, 1996 letter of PPSBI.[44] Amante, on behalf of PPSBI, also conformed to the Deed of Assignment between Enrique and Marylou.[45]

From the text of the Deed of Assignment, as well as that of the letter dated June 3, 1996, the intention of the parties is clear. **Enrique, as the assignor, transferred all of his rights**

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[42] Records, Vol. I, p. 13.

[43] *Id*. at 12.

[44] *Ibid*.

[45] *Id*. at 14.

to a portion of the loan, initially obtained from PPSBI, to Marylou, as the assignee. This holds true notwithstanding the use of the word "guarantee" in the Deed of Assignment. Nothing in the language of the deed and the letter binds PPSBI to pay Enrique's debt to Marylou in the event that Enrique should fail to do so. On the contrary, the express undertaking of the parties in the deed is the direct assignment and transfer of the loan proceeds from PPSBI (in the amount of ₱1,500,000.00) to Marylou, as payment for Enrique's debt to Marylou in the same amount.

PPSBI, for its part, explicitly agreed to remit this amount directly to Marylou. It did not condition the release of the amount on Enrique's failure to pay the loan he obtained from Marylou. **Furthermore, PPSBI expressly stipulated that any amount necessary to fully settle Enrique's debt to Marylou should only be for the account of Enrique**. This is undoubtedly contrary to the nature of a contract of guaranty. Thus, the true nature of the transaction among the parties is the assignment of Enrique's loan proceeds in the amount of ₱1,500,000.00 to Marylou.

PPSBI is liable to Marylou for the loan proceeds in the amount of ₱1,500,000.00.

Since there is no contract of guaranty, there is no merit in the argument of PPSBI that banks are prohibited from entering into contracts of guaranty under Section 74 of R.A. No. 337 (or the "General Banking Act," then the prevailing law governing banks and other financial institutions). Similarly, PPSBI's argument that the contract violates Section 39 of R.A. No. 337, which prohibits banks from granting loans to projects outside the loan agreement, is untenable. From the language of the Deed of Assignment, and the contemporaneous and subsequent actions of the contracting parties, the transaction was for the assignment of Enrique's loan proceeds to Marylou. It is not a contract of loan.

As a contract within the authorized functions of the bank, PPSBI cannot now claim that the actions of Amante only bind

him in his personal capacity. Under the doctrine of apparent authority, Marylou can rightfully rely on the representations of Amante when he sent the June 3, 1996 letter, and thereafter, when he signified his conformity to the Deed of Assignment. To quote the Court's ruling in *Games and Garments Developers, Inc. v. Allied Banking Corporation*:[46]

> **Allied Bank cannot now disclaim any liability under the letters dated August 22, 1996 and January 27, 1997 by simply averring that Mercado had no authority to issue the same.** With our ruling that the letters dated August 22, 1996 and January 27, 1997 did not constitute contracts of guaranty prohibited under Section 74 of the General Banking Act, there is no more basis for the argument of Allied Bank that Mercado had no authority or acted beyond his authority as Branch Manager in issuing said letters in the course of facilitating and processing Bienvenida's loan with real estate mortgage.

Of particular relevance herein are our pronouncements in *BPI Family Savings Bank. Inc. v. First Metro Investment Corporation*, citing *Prudential Bank v. Court of Appeals* and *Francisco v. Government Service Insurance System*:

> **We have held that if a corporation knowingly permits its officer, or any other agent, to perform acts within the scope of an apparent authority, holding him out to the public as possessing power to do those acts, the corporation will, as against any person who has dealt in good faith with the corporation through such agent, be estopped from denying such authority.** We reiterated this doctrine in *Prudential Bank vs. Court of Appeals*, thus:
>
> > A bank holding out its officers and agent as worthy of confidence will not be permitted to profit by the frauds they may thus be enabled to perpetrate in the apparent scope of their employment; nor will it be permitted to shirk its responsibility for such frauds, even though no benefit may accrue to the bank therefrom. Accordingly, a banking corporation is liable to innocent third persons where the representation is made in the course of its business

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[46] 763 Phil. 573 (2015).

> by an agent acting within the general scope of his authority even though the agent is secretly abusing his authority and attempting to perpetrate a fraud upon his principal or some other person for his own ultimate benefit.
>
> x x x x x x x x x

In *Prudential Bank*, wherein we particularly applied the doctrine of apparent authority to banks, we stressed that the "[a]pplication of these principles is especially necessary because banks have a fiduciary relationship with the public and their stability depends on the confidence of the people in their honesty and efficiency. Such faith will be eroded where banks do not exercise strict care in the selection and supervision of its employees, resulting in prejudice to their depositors."[47] (Citations omitted and emphasis ours)

In this case, it is evident that the representations of Amante were made in the course of PPSBI's normal business, and pursuant to his functions as the PPSBI Loans and Evaluations Manager. As the Loans and Evaluations Manager, he was one of the officers responsible for recommending the approval of the initial loan obtained by Enrique on behalf of Shekinah Construction.[48] Marylou may, therefore, safely assume that his representations were made in pursuant to, and under the authority of PPSBI. If the Court were to rule otherwise, the public's faith in the banking system would be eroded, and the fiduciary relationship of banks with the public would be rendered nugatory.

Considering that Enrique effectively assigned the loan proceeds to Marylou, PPSBI should have released the amount of ₱1,500,000.00 to Marylou, even if she did not make a prior demand for the payment of the loan from Enrique.

As a rule, interest shall not be due unless it has been expressly stipulated in writing.[49] Since there was no stipulation as to interest in the Deed of Assignment between Marylou and Enrique, the

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[47] *Id*. at 601-604.

[48] Records, Vol. I, pp. 113-115.

[49] CIVIL CODE OF THE PHILIPPINES, Article 1956.

Court cannot impose interest on the amount due from PPSBI. Nonetheless, legal interest at the rate of six percent (6%) *per annum* shall be due on the judgment of the Court awarding a sum of money, consistent with the Court's ruling in *Nacar v. Gallery Frames, et al.*[50]

Finally, there being no evidence of fraud or bad faith on the part of PPSBI, the Court cannot award moral and exemplary damages in favor of Marylou.

WHEREFORE, premises considered, the present petition for review on *certiorari* is **PARTIALLY GRANTED**. The Decision dated July 20, 2017 and Resolution dated August 8, 2018 of the Court of Appeals in CA-G.R. CV No. 103054 are hereby **REVERSED** and **SET ASIDE**, insofar as it ordered the remand of the case to the Regional Trial Court of Manila for further proceedings.

Respondent Philippine Postal Savings Bank, Inc. is **DIRECTED** to pay petitioner Marylou B. Tolentino the amount of ₱1,500,000.00, representing the loan proceeds assigned by Enrique Sanchez to Marylou B. Tolentino. A legal interest of six percent (6%) *per annum* shall likewise be imposed on the total judgment award from the finality of this Decision until its full satisfaction.

No further costs.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Hernando,* and *Zalameda,*[*] *JJ.,* concur.

Inting, J., on official leave.

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[50] 716 Phil. 267, 279 (2013).; see also *Sps. Abella v. Sps. Abella*, 763 Phil. 372, 384 (2015).

[*] Designated additional Member per Special Order No. 2727 dated October 25, 2019.

EN BANC

[G.R. No. 205389. November 19, 2019]

SOCRATES C. FERNANDEZ, in his capacity as Mayor of the City of Talisay, *petitioner, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; PROCEDURAL DUE PROCESS; THERE IS NO DENIAL OF PROCEDURAL DUE PROCESS WHERE THE OPPORTUNITY TO BE HEARD EITHER THROUGH ORAL ARGUMENTS OR THROUGH PLEADINGS IS ACCORDED.— [I]t has been ruled time and again that the essence of due process is the *opportunity to be heard*. In administrative proceedings, the parties are heard when they are accorded a *fair and reasonable opportunity* to explain their case or are given the chance to have the ruling complained of reconsidered. Further, it is settled that there is no denial of procedural due process where the opportunity to be heard either through oral arguments or through pleadings is accorded. In this case, petitioner and the other persons named liable in the NDs were accorded the opportunity to be heard when their appeal was given due course and decided on its merits by the Commission Proper. They were also able to file a motion for reconsideration of the denial of their appeal which the Commission Proper likewise duly considered before ruling to deny it with finality. Evidently, petitioner and all the persons liable under the NDs were not deprived of due process.

2. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION, DEFINED; THE BURDEN LIES ON 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.— 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 of personal hostility; it 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 lies on 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. In this case, the Court finds no grave abuse of discretion on the part of the COA in issuing the questioned NDs. The oft-repeated rule is that findings of administrative agencies are accorded not only respect but also finality when the decision or order is not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. Here, the COA merely discharged its duties and acted within the bounds of the law.

3. POLITICAL LAW; REPUBLIC ACT NO. 9184 (THE GOVERNMENT PROCUREMENT REFORM ACT); COMPETITIVE BIDDING; ALL PROCUREMENT SHALL BE DONE THROUGH COMPETITIVE BIDDING, EXCEPT IN CASES WHERE RESORT TO ALTERNATIVE METHODS OF PROCUREMENT MAY BE ALLOWED TO PROMOTE ECONOMY AND EFFICIENCY.— Republic Act No. (RA) 9184 or the "*Government Procurement Reform Act*" requires that all procurement shall be done through competitive bidding, except in cases where resort to alternative methods of procurement may be allowed to promote economy and efficiency. x x x As held by the COA, the investigating team found nothing in the records that would show that the Software Development Agreements (SDAs) or the project proposals were executed, approved, and signed by the City Mayor concerned only after there had been public biddings conducted for the purpose. On the contrary, the investigating team observed circumstances strongly indicating that public biddings were not actually conducted for the entire computerization project. x x x Thus, the COA upheld the investigating team's conclusion that the SDAs could not have been the result of the purported bidding. x x x Beyond doubt, the COA was correct in concluding that no public biddings were conducted for the computerization project. Anent the contention that the City of Talisay validly resorted to direct contracting as an alternative method of procurement, the Court finds it to be unworthy of consideration. It is evident that such claim is a mere afterthought.

4. ID.; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 7160 (THE LOCAL GOVERNMENT CODE OF 1991); USE OF APPROPRIATIONS, FUNDS AND SAVINGS; FUNDS SHALL BE AVAILABLE EXCLUSIVELY FOR THE SPECIFIC PURPOSE FOR WHICH THEY HAVE BEEN APPROPRIATED EXCEPT WHEN THE LOCAL CHIEF EXECUTIVE IS AUTHORIZED BY ORDINANCE TO AUGMENT ANY ITEM IN THE APPROVED ANNUAL BUDGET FROM SAVINGS IN OTHER ITEMS WITHIN THE SAME EXPENSE CLASS.— The COA x x x observed the lack of an appropriation ordinance for the realignment of funds. This contravenes RA 7160 or the "Local Government Code (LGC) of 1991," which entails the passage of an ordinance in order for a local government to realign its budget. x x x As stated in Section 336 of the LGC, the general rule is that funds shall be available exclusively for the specific purpose for which they have been appropriated. The exception to this is when the local chief executive is *authorized by ordinance* to augment any item in the approved annual budget from savings in other items within the same expense class. In other words, Section 336 of the LGC requires an implementing ordinance so that the local chief executive can augment items in the annual budget of the local government unit. Thus, the appropriation ordinance of a given fiscal year must expressly authorize the local chief executive before he can make augmentations in that particular year, or at the very least, he must be authorized by ordinance before he can make augmentations. x x x It must also be emphasized that the power of the local chief executive to augment items under Section 336 of the LGC is a mere exception to the general rule that funds shall be available exclusively for the specific purpose for which they have been appropriated. "*Exceptions are strictly construed and apply only so far as their language fairly warrants, with all doubts being resolved in favor of the general proviso rather than the exception*." Being an exception to the general rule, an augmentation or realignment must strictly comply with all the requirements for its validity. One such requirement is that the local chief executive must be authorized by an ordinance. While ordinances are laws and possess a general and permanent character, resolutions are mere declarations of the sentiment or opinion of a lawmaking body on a specific matter and are temporary in nature. As opposed to ordinances, a resolution cannot confer rights and no rights can be inferred therefrom.

5. ID.; ID.; ADMINISTRATIVE AGENCIES; FINDINGS OF FACT OF ADMINISTRATIVE AGENCIES ARE GENERALLY ACCORDED GREAT RESPECT, IF NOT FINALITY, BY THE COURTS BECAUSE BY REASON OF THEIR SPECIAL KNOWLEDGE AND EXPERTISE OVER MATTERS FALLING UNDER THEIR JURISDICTION, THEY ARE IN A BETTER POSITION TO PASS JUDGMENT THEREON.— [T]he findings of fact of administrative agencies are generally accorded great respect, if not finality, by the courts. Such findings must be respected as long as they are supported by substantial evidence, even if such evidence is not overwhelming or even preponderant. By reason of their special knowledge and expertise over matters falling under their jurisdiction, administrative agencies are in a better position to pass judgment thereon.

6. ID.; REPUBLIC ACT NO. 9184 (THE GOVERNMENT PROCUREMENT REFORM ACT); COMPETITIVE BIDDING; THE PROCURING ENTITY SHALL, IN ALL INSTANCES, ENSURE THAT THE APPROVED BUDGET FOR THE CONTRACT REFLECTS THE MOST ADVANTAGEOUS PREVAILING PRICE FOR THE GOVERNMENT.— As found by the COA, the *lowest* price per liter of the liquid fertilizer, as offered in the alleged bidding and purchase by the City of Talisay, was ₱900.00. On the other hand, the *highest* selling price per liter, obtained by the ATL through canvass and actual purchase from Pacifica Agrivet, was ₱171.00 per liter plus 10% thereof, or ₱188.10. Hence, there appears a considerably huge unit overprice of ₱711.90, which the Court cannot brush aside. It is a declared policy of the State that "*all resources of the government shall be managed, expended or utilized in accordance with law and regulations, and safeguarded against loss or wastage through illegal or improper disposition, with a view to ensuring efficiency, economy and effectiveness in the operations of government.*" Corollary thereto, RA 9184 requires that the procuring entity shall, in all instances, ensure that the approved budget for the contract reflects the most advantageous prevailing price for the government. Apparently, the City of Talisay failed in abiding by the mandate of the law. Consequently, ND No. 2007-002 dated July 23, 2007, disallowing the overprice in the purchase of liquid fertilizers in the amount of ₱2,372,762.70, should be sustained.

7. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF GOOD FAITH IN THE DISCHARGE OF OFFICIAL DUTIES; FAILS IN THE PRESENCE OF AN EXPLICIT RULE THAT IS VIOLATED AND THE OFFICIAL OR EMPLOYEE FOUND TO BE DIRECTLY RESPONSIBLE THEREFOR SHALL BE PERSONALLY LIABLE.— As a rule, public officials are entitled to the presumption of good faith in the discharge of official duties. Good faith is a state of mind which denotes "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render the transaction unconscientious." The lack of any showing of bad faith or malice also gives rise to a presumption of regularity in the performance of official duties. However, this presumption fails in the presence of an explicit rule that was violated. Section 103 of Presidential Decree No. 1445 declares that expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor. The public official's personal liability arises only if the expenditure of government funds was made in violation of law. In this case, in view of violations of the LGC and RA 9184, the presumption of good faith in the discharge of official duties in favor of petitioner and the other persons liable under the assailed NDs fails. Hence, they should be held personally liable for the disallowed amounts.

8. CIVIL LAW; CIVIL CODE; HUMAN RELATIONS; UNJUST ENRICHMENT; PRINCIPLE OF *QUANTUM MERUIT*; IN AN ACTION FOR WORK AND LABOR, PAYMENT SHALL BE MADE IN THE AMOUNT REASONABLY DESERVED, AS IT IS UNJUST FOR A PERSON TO RETAIN ANY BENEFIT WITHOUT PAYING FOR IT.— Petitioner herein does not pray for exclusion from personal liability. In fact, he filed the instant petition in representation of all the persons named liable in the NDs. Moreover, he does not claim that he has no prior knowledge regarding the conduct of the bidding processes. Accordingly, the Court holds him and the other persons named in the NDs accountable for the disallowed amounts. Public officials who are directly responsible for, or

participated in making the illegal expenditures, as well as those who actually received the amounts therefrom shall be solidarily liable for their reimbursement. However, the Court cannot dismiss the fact that PowerDev had already done a substantial amount of work in relation to the computerization project, which ultimately redounded to the benefit of the city government. x x x Unarguably, the local government of the City of Talisay and the citizens therein benefited from the computerization project. In the interest of substantial justice and equity, and in conformity with the principle of *quantum meruit*, PowerDev should be compensated for the use of its resources up to the extent of the actual work it performed and services it rendered. Otherwise, the government would be unjustly enriched at the expense of PowerDev. Under the principle of *quantum meruit*, in an action for work and labor, payment shall be made in the amount reasonably deserved, as it is unjust for a person to retain any benefit without paying for it. To deny PowerDev of compensation for the use of its equipment and services would be tantamount to injustice, which the Court cannot countenance. Accordingly, while the lack of the required ordinance and the failure to observe the proper procedure for the public bidding necessitated the disallowance of the payments for the computerization project, personal liability should not attach to petitioner and the other persons named liable under the NDs up to the extent of the benefit that the government of the City of Talisay has derived from the project.

APPEARANCES OF COUNSEL

Owen Y. Algoso for petitioner.
The Solicitor General for respondent.

D E C I S I O N

INTING, *J.*:

Before the Court is a Petition for *Certiorari*[1] under Rule 64 in relation to Rule 65 of the Rules of Court seeking to set aside

[1] *Rollo*, pp. 3-24.

Decision No. 2012-042[2] dated April 23, 2012 and Resolution (Decision No. 2012-267)[3] dated December 28, 2012 of the Commission on Audit (COA).

The Antecedents

The present case involves two contracts entered into by the City Government of Talisay, Province of Cebu, to wit: 1) the *computerization project*, which took place in 2002 to 2003, during the term of Eduardo R. Gullas as Mayor of Talisay City; and 2) the *purchase of liquid fertilizers*, which took place in 2005 to 2006, during the term of Socrates C. Fernandez (petitioner) as Mayor of Talisay City.

The computerization project

The City of Talisay, after allegedly conducting a public bidding, awarded its computerization project to PowerDev Corporation (PowerDev).[4] The project covered the following areas:

1) Business Licensing, Integration of Real Property Assessment;
2) Personnel Information System;
3) Government Payroll System;
4) Automated Timekeeping System;
5) Project Monitoring System;
6) Building, Electrical and Water Permit Application System;
7) Software Development for Local Civil Registrar Information System;
8) Timekeeping System for Job Order Employees; and
9) Local Area Network.[5]

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[2] *Id.* at 26-36.

[3] *Id.* at 37-41.

[4] *Id.* at 26.

[5] *Id.*

However, the Audit Team Leader (ATL) of the COA, Talisay City, questioned the foregoing project. Having found deficiencies, including lack of the required documents, the ATL issued Audit Observation Memorandum (AOM) Nos. 2004-001 and 2005-001, dated December 21, 2004 and February 9, 2005, respectively.[6] As a consequence, the then Regional Cluster Director (RCD), Regional Legal and Adjudication Office (RLAO), COA Regional Office No. VII suspended the payments for the project by issuing four Notices of Suspension (NS), all dated February 27, 2006, to wit:

1) NS No. 2004-001-100-(2004) L2-06-159-00-008;
2) NS No. 2004-002-100-00-(2004) L2-06-159-00-009;
3) NS No. 2004-003-100-(2004) L2-06-159-00-010; and
4) NS No. 2005-004-100-(2004) L2-06-159-00-011.[7]

The suspensions matured into disallowances due to non-compliance with the requirements embodied in the Notices of Suspension.[8] Accordingly, the then RCD, RLAO, COA Regional Office No. VII issued the following Notices of Disallowance (ND), all dated April 23, 2007:

1) ND No. 2004-001-100-(2004) L2-07-159-00-006 for ₱8,500,000.00;[9]
2) ND No. 2004-002-100-(2004) L2-07-159-00-007 for ₱613,440.00;[10]
3) ND No. 2004-003-100-(2004) L2-07-159-00-008 for ₱10,086,560.00;[11] and

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[6] *Rollo*, p. 27.

[7] *Id.*

[8] *Id.*

[9] *Rollo*, pp. 42-43.

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

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

4) ND No. 2005-004-100-(2004) L2-07-159-00-009 for ₱7,788,000.00.[12]

The purchase of liquid fertilizers

The ATL also questioned the price of 3,333 bottles of liquid fertilizer purchased by the City of Talisay at ₱900.00 per liter or a total of ₱2,999,700.00.[13] The highest price obtained by the ATL through canvass and actual purchase from Pacifica Agrivet was ₱171.00 per liter plus 10% thereof, or ₱188.10. Thus, the unit overprice was ₱711.90.[14]

As a consequence, the ATL issued AOM No. 06-001 dated November 8, 2006.[15] Subsequently, the ATL issued ND No. 2007-002 dated July 23, 2007, disallowing the amount of ₱2,372,762.70 (or the unit overprice of ₱711.90 multiplied by 3,333 units).[16]

The COA's Ruling

On account of the audit findings, a special audit team was constituted to conduct an investigation of the above contracts under the COA Legal and Adjudication Sector (LAS) Office Order No. 2007-S-009 dated September 10, 2007.[17]

Pending review of the Special Investigation Report, the persons held liable under the five NDs, through counsel, filed an appeal dated December 21, 2007.[18] Aside from petitioner, the persons named liable under the NDs were the other signatories, the Bids and Awards Committee (BAC) members,

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

[13] *Id.* at 27.

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Rollo*, pp. 51-54.

and the payee. Their appeal was addressed to the Regional Legal and Adjudication Director of COA Regional Office No. VII.

On June 3, 2009, the Regional Director of COA Regional Office No. VII transmitted the appeal to the Team Leader of the special investigation team for appropriate action.[19]

On April 23, 2012, the COA rendered the assailed Decision No. 2012-042[20] dated April 23, 2012, denying the appeal and affirming the subject disallowances. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, the instant appeal is DENIED for lack of merit. ND Nos. 2004-001-100-(2004) L2-07-159-00-006 for ₱8,500,000.00; 2004-002-100-(2004) L2-07-159-00-007 for ₱613,440.00; 2004-003-100-(2004) L2-07-159-00-008 for ₱10,086,560.00; and 2005-004-100-(2004) L2-07-159-00-009 for ₱7,788,000.00, all dated April 23, 2007; and ND No. 2007-002 dated July 23, 2007, disallowing the amount of ₱2,372,762.70, are hereby AFFIRMED.[21]

Aggrieved, the persons liable under the five NDs, through counsel, filed a Motion for Reconsideration.[22] Having found no merit in the Motion for Reconsideration, the COA denied it with finality in the assailed Resolution (Decision No. 2012-267)[23] dated December 28, 2012. Accordingly, the COA affirmed Decision No. 2012-042 dated April 23, 2012.

Hence, petitioner filed the instant petition for *certiorari* in representation of all the persons named liable in the NDs issued by the COA. Among those so named are former City Mayor Eduardo R. Gullas, Viluzminda G. Villarante, Emma L. Macuto, Edgar M. Mabinay, Atty. Aurora Econg, Joan L. Vebar, Audie B. Bacasmas, and Emely S. Cabrera (collectively, Gullas, *et al.*).

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[19] *Id.* at 27-28.

[20] *Id.* at 26-36.

[21] *Id.* at 35.

[22] *Id.* at 55-63.

[23] *Id.* at 37-41.

On November 20, 2018, Gullas, *et al.*, through counsel, filed a Motion for Severance[24] with the Court, praying that the case involving the computerization project be re-docketed as a separate petition.

In the Court's Resolution[25] dated March 19, 2019, the Motion for Severance was denied for lack of merit. Subsequently, Gullas, *et al.* filed a Motion for Reconsideration,[26] but this was likewise denied in the Court's Resolution[27] dated August 6, 2019.

The Issues

The present petition raises the following assignment of errors:

I

RESPONDENT COMMISSION ON AUDIT (COA) DEPRIVED PETITIONER AND THE OTHER PERSONS NAMED LIABLE IN THE NOTICE OF DISALLOWANCE (ND) [OF] THEIR RIGHT TO DUE PROCESS WHEN THEIR APPEAL ADDRESSED TO THE DIRECTOR OF THE LEGAL AND ADJUDICATION SECTOR OF COA REGIONAL OFFICE NO. VII WAS NOT DECIDED BY SAID OFFICIAL BUT FORWARDED TO THE COMMISSION PROPER.

II

RESPONDENT ERRED IN DISALLOWING THE PAYMENTS MADE BY THE CITY OF TALISAY TO POWERDEV FOR ITS INFORMATION TECHNOLOGY PROJECT.

III

RESPONDENT ERRED IN HOLDING [HEREIN] PETITIONER AND OTHER PERSONNEL OF THE CITY OF TALISAY [LIABLE] FOR THE ALLEGED OVERPRICING IN THE PURCHASE OF LIQUID FERTILIZERS.[28]

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[24] *Id.* at 397-402.

[25] *Id.* at 405-406.

[26] *Id.* at 407-413.

[27] *Id.* at 416-417.

[28] *Id.* at 8.

The Court's Ruling

The petition lacks merit.

The Court finds that petitioner and the other persons held liable under the NDs were not deprived of due process, and the COA did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the questioned NDs. However, with respect to the computerization project, the persons held liable thereunder are relieved of personal liability up to the extent of the benefit that the City of Talisay has derived from the project.

I. Petitioner and the other persons named in the NDs were not deprived of due process.

Under the then 1997 Revised Rules of Procedure of the COA,[29] an aggrieved party may appeal from an order or decision or ruling rendered by the Auditor embodied in a report, memorandum, letter, NDs and charges, Certificate of Settlement and Balances, to the Director who has jurisdiction over the agency under audit.[30] In turn, the party aggrieved by a final order or decision of the Director may appeal to the Commission Proper.[31]

Pending the resolution of the appeal, which was filed before the Regional Legal and Adjudication Director in December 2007, the 2009 Revised Rules of Procedure of the COA (2009 Revised Rules of COA)[32] took effect. Under these Rules, the pertinent provisions on appeal substantially remained the same. Section 1, Rule V of the 2009 Revised Rules of COA states

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[29] Approved on January 23, 1997.

[30] Section 1, Rule V of the 1997 Revised Rules of Procedure of the Commission on Audit.

[31] Section 1, Rule VI of the 1997 Revised Rules of Procedure of the Commission on Audit.

[32] Approved on September 15, 2009.

that "*an aggrieved party may appeal from the decision of the Auditor to the Director who has jurisdiction over the agency under audit*." In turn, Section 7, Rule V of the 2009 Revised Rules of COA provides:

> Sec. 7. *Power of Director on Appeal*. – The Director may affirm, reverse, modify or alter the decision of the Auditor. If the Director reverses, modifies or alters the decision of the Auditor, the case shall be elevated directly to the Commission Proper for automatic review of the Directors' decision. The dispositive portion of the Director's decision shall categorically state that the decision is not final and is subject to automatic review by the CP.

In this case, however, observance of the aforementioned rules of procedure was impracticable. Here, the investigation of the case was conducted by a special team of auditors, and this team was headed by Atty. Roy L. Ursal (Ursal), the Regional Director himself.[33] Through LAS Office Order No. 2007-S-009, Director Ursal, Atty. Federico E. Dinapo, Jr., Atty. Marites E. Banzali, and Ma. Jocelyn N. Merencillo were deputized to act for and in behalf of the COA in the investigation of the case.[34] Certainly, the direct referral to the Commission Proper of the decision appealed from, rendered by the special audit team headed by Director Ursal himself, was appropriate under the circumstances.

At any rate, it has been ruled time and again that the essence of due process is the *opportunity to be heard*.[35] In administrative proceedings, the parties are heard when they are accorded a *fair and reasonable opportunity* to explain their case or are given the chance to have the ruling complained of reconsidered.[36] Further, it is settled that there is no denial of procedural due

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[33] *Rollo*, p. 81.

[34] *Id.*

[35] *Fontanilla v. The Commissioner Proper, COA*, 787 Phil. 713, 726 (2016).

[36] *Id.*

process where the opportunity to be heard either through oral arguments or through pleadings is accorded.[37]

In this case, petitioner and the other persons named liable in the NDs were accorded the opportunity to be heard when their appeal was given due course and decided on its merits by the Commission Proper. They were also able to file a motion for reconsideration of the denial of their appeal which the Commission Proper likewise duly considered before ruling to deny it with finality. Evidently, petitioner and all the persons liable under the NDs were not deprived of due process.

II. The COA did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the questioned NDs.

By *grave abuse of discretion* is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction.[38] 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; it 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.[39] The burden lies on 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.[40]

In this case, the Court finds no grave abuse of discretion on the part of the COA in issuing the questioned NDs. The oft-

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[37] *Vivo v. Phil. Amusement and Gaming Corporation*, 721 Phil. 34, 41 (2013).

[38] *Career Service Executive Board, represented by its Executive Director, Maria Anthonette Velasco-Allones v. COA, et al.*, G.R. No. 212348, June 19, 2018.

[39] *Id.*

[40] *Id.*

repeated rule is that findings of administrative agencies are accorded not only respect but also finality when the decision or order is not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion.[41] Here, the COA merely discharged its duties and acted within the bounds of the law.

A. The COA did not err in disallowing the payments made by the City of Talisay to PowerDev for its computerization project.

Republic Act No. (RA) 9184 or the "*Government Procurement Reform Act*" requires that all procurement shall be done through competitive bidding, except in cases where resort to alternative methods of procurement may be allowed to promote economy and efficiency.[42] RA 9184 pertinently provides:

ARTICLE IV
COMPETITIVE BIDDING

Sec. 10. Competitive Bidding. – All Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act.

x x x x x x x x x

ARTICLE XVI
ALTERNATIVE METHODS OF PROCUREMENT

Sec. 48. Alternative Methods. – Subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided in this Act, the Procuring Entity may, in order to promote economy and efficiency, resort to any of the following alternative methods of Procurement:

(a) Limited Source Bidding, otherwise known as Selective Bidding x x x;

(b) Direct Contracting, otherwise known as Single Source Procurement x x x;

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[41] *Buisan, et al. v. Commission on Audit, et al.*, 804 Phil. 679, 695 (2017).

[42] Section 10, Article IV, in relation to Article XVI, of Republic Act No. (RA) 9184.

(c) Repeat Order x x x;

(d) Shopping x x x; or

(e) Negotiated Procurement x x x.

As held by the COA, the investigating team found nothing in the records that would show that the Software Development Agreements (SDAs) or the project proposals were executed, approved, and signed by the City Mayor concerned only after there had been public biddings conducted for the purpose.[43] On the contrary, the investigating team observed circumstances strongly indicating that public biddings were not actually conducted for the entire computerization project. Further, the COA noted the investigating team's observation that the SDAs and the project proposals, which were attached to certain disbursement vouchers (DVs), were executed prior to the dates of the alleged advertisement and bidding.[44] Thus, the COA upheld the investigating team's conclusion that the SDAs could not have been the result of the purported bidding.

In his petition, petitioner strongly insists that "the bidding process and the disbursement of the expense for the Information Technology Project of the City of Talisay were all done in accordance with law and at no disadvantage to the government whatsoever."[45] Quite the contrary, however, he admits in his Memorandum[46] that the City of Talisay directly contracted with PowerDev. He asserts that "[t]he choice of directly contracting with PowerDev brought advantages to the City as it expedited the process, and most importantly is that the desired and much needed automation of its processes were accomplished in a short period of time."[47] He adds that "by contracting directly with PowerDev, [he] was able to save time, resources and costs

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[43] *Rollo*, p. 29.

[44] *Id.*

[45] *Rollo*, p. 14.

[46] *Id.* at 213-249.

[47] *Id.* at 225.

in producing the much needed automation, complying with the 3rd requirement of the aforesaid rule, that the 'method chosen promotes economy and efficiency, and that the most advantageous price for the government is obtained.'"[48]

Beyond doubt, the COA was correct in concluding that no public biddings were conducted for the computerization project. Anent the contention that the City of Talisay validly resorted to direct contracting as an alternative method of procurement, the Court finds it to be unworthy of consideration. It is evident that such claim is a mere afterthought. Also, if it was indeed the intention of the City of Talisay to resort to direct contracting, it remains questionable that all the SDAs and project proposals were supported by bidding documents, including Advertisement to Bid, Abstract of Bids/Canvass, TWG Resolutions, and BAC Minutes.[49] These documents were not necessary in direct contracting as this method of procurement "does not require elaborate Bidding Documents because the supplier is simply asked to submit a price quotation or a *pro-forma* invoice together with the conditions of sale, which offer may be accepted immediately or after some negotiations."[50] In addition, petitioner has not clearly shown any of the allowed conditions for direct contracting, to wit:

(a) Procurement of Goods of proprietary nature, which can be obtained only from the proprietary source, i.e. when patents, trade secrets and copyrights prohibit others from manufacturing the same item;

(b) When the Procurement of critical components from a specific manufacturer, supplier or distributor is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of his contract; or,

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[48] *Id.*

[49] *Rollo*, p. 29.

[50] Section 48(b), Article XVI of RA 9184.

(c) Those sold by an exclusive dealer or manufacturer, which does not have subdealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the Government.[51]

The COA also observed the lack of an appropriation ordinance for the realignment of funds. This contravenes RA 7160 or the "Local Government Code (LGC) of 1991," which entails the passage of an ordinance in order for a local government to realign its budget. The pertinent provisions are Sections 336 and 346 thereof, which provide:

Sec. 336. *Use of Appropriations Funds and Savings*. – Funds shall be available exclusively for the specific purpose for which they have been appropriated. No ordinance shall be passed authorizing any transfer of appropriations from one item to another. However, the local chief executive or the presiding officer of the *sanggunian* concerned may, by ordinance, be authorized to augment any item in the approved annual budget for their respective offices from savings in other items within the same expense class of their respective appropriations.

Sec. 346. *Disbursements of Local Funds and Statement of Accounts*. – Disbursement shall be made in accordance with the ordinance authorizing the annual or supplemental appropriations without the prior approval of the *sanggunian* concerned. Within thirty (30) days after the close of each month, the local accountant shall furnish the *sanggunian* with such financial statements as may be prescribed by the COA. In the case of the year-end statement of accounts, the period shall be sixty (60) days after the thirty-first (31st) of December.

Petitioner argues that the passage of an ordinance had been rendered moot as the funds were already realigned and disbursed. Through the Executive Orders (EOs)[52] issued by petitioner and

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[51] Section 50, Article XVI of RA 9184.

[52] *Rollo*, p. 32. These Executive Orders (EO) are as follows:

a. EO No. 2004-06 dated 14 April 2004, signed by Mayor Gullas realigning the amount of ₱3.8M from Account No. 208 – Other Structures; Traffic Signals and Accessories to Account No. 215;

former City Mayor Gullas, funds were taken from the savings from various items in the city budget and the 20% Development Fund and transferred to Information Technology Equipment and Software.[53] In view thereof, petitioner contends that the only proper act that the *Sangguniang Panlungsod* (SP) could make was to pass a resolution ratifying the realignment of funds. Thus, he asserts that the passage of SP Resolution No. 2006-79 for the ratification of the realignment of funds has the same effect as that of an appropriation ordinance.

In his memorandum, petitioner also avers that the SP, through 3rd SP Resolution No. 2009-105 and 1st SP Resolution No. 2001-45, granted him and Gullas, respectively, the authority to represent the City of Talisay "in all contracts and memoranda of agreement made pursuant to a law or ordinance."[54] He argues that by virtue of these Resolutions, he and Gullas were legally authorized to proceed with the execution of the SDAs.

The foregoing arguments are untenable.

As stated in Section 336 of the LGC, the general rule is that funds shall be available exclusively for the specific purpose for which they have been appropriated. The exception to this is when the local chief executive is *authorized by ordinance* to augment any item in the approved annual budget from savings in other items within the same expense class. In other words, Section 336 of the LGC requires an implementing ordinance so that the local chief executive can augment items in the annual

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b. EO No. 2004-21 dated 10 September 2004, signed by Mayor Fernandez realigning the amount of ₱1.090M from the 20% Development Fund and ₱5.634M from the General Fund;

c. EO No. 2004-21A dated 6 October 2004, signed by Mayor Fernandez realigning the amount of ₱3.850M;

d. EO No. 2004-37 dated 5 November 2004, realigning the amount of ₱3M;

e. EO No. 2004-42 dated 15 December 2004, signed by Mayor Fernandez realigning the amount of ₱1.9M from the 20% Development Fund.

[53] *Id.* at 32.

[54] *Id.* at 271-272.

budget of the local government unit. Thus, the appropriation ordinance of a given fiscal year must expressly authorize the local chief executive before he can make augmentations in that particular year, or at the very least, he must be authorized by ordinance before he can make augmentations.[55]

In this case, 3rd SP Resolution No. 2009-105 and 1st SP Resolution No. 2001-45, which purportedly granted petitioner and Gullas the authority to represent the City of Talisay in all contracts and memoranda of agreement made pursuant to a law or ordinance, do not have the force of the required ordinance that must expressly authorize the local chief executive to make augmentations or realignments in the city budget. Likewise, SP Resolution No. 2006-79, purportedly ratifying the realignment of funds to finance the computerization project through the aforesaid EOs issued by petitioner and Gullas, has no curative effect.

It must also be emphasized that the power of the local chief executive to augment items under Section 336 of the LGC is a mere exception to the general rule that funds shall be available exclusively for the specific purpose for which they have been appropriated. "*Exceptions are strictly construed and apply only so far as their language fairly warrants, with all doubts being resolved in favor of the general proviso rather than the exception.*"[56] Being an exception to the general rule, an augmentation or realignment must strictly comply with all the requirements for its validity. One such requirement is that the local chief executive must be authorized by an ordinance.

While ordinances are laws and possess a general and permanent character, resolutions are mere declarations of the sentiment or opinion of a lawmaking body on a specific matter and are temporary in nature.[57] As opposed to ordinances, a

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[55] *Verceles v. COA*, 794 Phil. 629, 656 (2016).

[56] *Id.* at 657.

[57] *Land Bank of the Philippines v. Cacayuran*, 709 Phil. 819, 830 (2013) citing *Municipality of Parañaque v. V.M. Realty Corporation*, 354 Phil. 684, 691-695 (1998).

resolution cannot confer rights and no rights can be inferred therefrom.[58]

In view thereof, ND No. 2004-001-100-(2004) L2-07-159-00-006 in the amount of ₱8,500,000.00, ND No. 2004-002-100-(2004) L2-07-159-00-007 in the amount of ₱613,440.00, ND No. 2004-003-100-(2004) L2-07-159-00-008 in the amount of ₱10,086,560.00, and ND No. 2005-004-100-(2004) L2-07-159-00-009 in the amount of ₱7,788,000.00, all dated April 23, 2007, covering the disallowed disbursements for the computerization project, should be upheld.

B. The COA also did not err in disallowing the overprice in the purchase of liquid fertilizers.

As found by the COA, the investigation of the special audit team revealed irregularities attending the bidding process. Thus:

1. The City of Talisay submitted two (2) different sets of BAC Minutes for the same BAC meeting allegedly held on 16 December 2005.

The first BAC Minutes [dated December 16, 2005], which was attached to support DV No. [sic] DV No. 300-0512-2510 for the payment to Gracias Industries does not include in the listing of the lowest bidders, the name Gracias Industries. Instead, it lists as lowest bidder for liquid fertilizer Joseth Trading. This is the last entry of bidders on the second page and signed by Geralie P. Alob, the designated recorder of the BAC meeting.

Subsequently, the City of Talisay submitted a folder of documents in support of its defense against the disallowance. This time, it submitted another BAC Minutes [likewise dated December 16, 2005], but instead of Joseth Trading as the lowest bidder recorded therein, it was Gracias Industries already. Also, this time, the lowest bidder for the liquid fertilizer is not anymore the last entry of the BAC minutes, but an additional five (5) entries of lowest bidders for different products and services were included, which did not appear in the BAC minutes attached to the DV.

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[58] *Land Bank of the Philippines v. Cacayuran, supra* at 830.

The team hereby puts in issue the authenticity of the said two BAC Minutes. This discrepancy, if not satisfactorily explained by the City of Talisay, including its Designated Recorder of the BAC meeting, raises serious doubt as to the authenticity of these particular bidding documents and of the alleged bidding itself.[59]

Petitioner argues that the foregoing finding is terribly flawed because it is not duly supported by evidence and it failed to properly consider the facts surrounding the purchase. He asserts that it was the Department of Agriculture (DA), which approached the City of Talisay and informed it that there was an on-going government project on the distribution of fertilizers to qualified beneficiaries, and that the funds therefor were already available. He adds that all that the City of Talisay had to do was to identify potential beneficiaries and conduct a bidding for the potential suppliers.

Petitioner also asserts that neither he nor any personnel from the City of Talisay was informed of and witnessed the alleged testing conducted by the COA Technical Services Offices, which concluded that the price of the liquid fertilizers purchased was bloated and that the contents thereof were not within the specified label in the bottle.

Further, petitioner denies the COA's claim that there were two sets of minutes of the December 16, 2005 BAC meeting. He asserts that the minutes of the BAC meeting which was submitted on December 21, 2007 to the Regional Director of COA Regional Office No. VII was the complete minutes of the BAC meeting held on December 16, 2005. Thus, he claims that the minutes attached to DV No. 300-0512-2510 was an incomplete one; and as borne out by the complete minutes, Gracias Industries who participated in the bidding and offered the lowest bid was awarded the contract.

Additionally, petitioner argues that the matter of whether the price of the lowest bidder is higher than the price of other suppliers in the market who did not participate in the bidding

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[59] *Rollo*, pp. 34-35.

is already beyond the scope of responsibility of the BAC. Hence, petitioner maintains that the members of the BAC of the City of Talisay and other personnel who participated in the transaction cannot be held liable for the alleged overpricing especially in the absence of any proof or evidence of wrongdoing on the part of the BAC.

The Court is not persuaded.

At this juncture, it bears to emphasize that the findings of fact of administrative agencies are generally accorded great respect, if not finality, by the courts.[60] Such findings must be respected as long as they are supported by substantial evidence, even if such evidence is not overwhelming or even preponderant.[61] By reason of their special knowledge and expertise over matters falling under their jurisdiction, administrative agencies are in a better position to pass judgment thereon.[62]

In *Delos Santos, et al. v. Commission on Audit*,[63] the Court declared:

> At the outset, it must be emphasized that the CoA is endowed with enough latitude to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds. It is tasked to be vigilant and conscientious in safeguarding the proper use of the government's, and ultimately the people's, property. The exercise of its general audit power is among the constitutional mechanisms that gives life to the check and balance system inherent in our form of government.
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> Corollary thereto, it is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created, such as the CoA, not only on the basis of the doctrine of separation of powers but also for their presumed

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[60] *Paraiso-Aban v. Commission on Audit* (Resolution), 777 Phil. 730, 737 (2016).

[61] *Id.*

[62] *Id.*

[63] 716 Phil. 322 (2013).

expertise in the laws they are entrusted to enforce. Findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. It is only when the CoA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, that this Court entertains a petition questioning its rulings. x x x[64]

In this case, the COA cannot be faulted for upholding the disallowance of the amount representing the overprice in the purchase of the liquid fertilizers as its special audit team merely based its reports and recommendations on the discrepancies found in the bidding documents submitted by petitioner. Besides, regardless of whether the City of Talisay was indeed merely acting under the direction of the DA, and of whether the bidding documents submitted by petitioner were authentic, it cannot be denied that there was irresponsibility and lack of prudence on the part of the City of Talisay when it neglected to determine the prevailing price of the liquid fertilizer. It patently took the risk of not getting the most advantageous price for the government.

As found by the COA, the *lowest* price per liter of the liquid fertilizer, as offered in the alleged bidding and purchased by the City of Talisay, was ₱900.00. On the other hand, the *highest* selling price per liter, obtained by the ATL through canvass and actual purchase from Pacifica Agrivet, was ₱171.00 per liter plus 10% thereof, or ₱188.10. Hence, there appears a considerably huge unit overprice of ₱711.90, which the Court cannot brush aside.

It is a declared policy of the State that "*all resources of the government shall be managed, expended or utilized in accordance with law and regulations, and safeguarded against loss or wastage through illegal or improper disposition, with a view to ensuring efficiency, economy and effectiveness in*

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[64] *Id.* at 332-333.

the operations of government."[65] Corollary thereto, RA 9184 requires that the procuring entity shall, in all instances, ensure that the approved budget for the contract reflects the most advantageous prevailing price for the government.[66] Apparently, the City of Talisay failed in abiding by the mandate of the law.

Consequently, ND No. 2007-002 dated July 23, 2007, disallowing the overprice in the purchase of liquid fertilizers in the amount of ₱2,372,762.70, should be sustained.

III. Good faith as a defense to avoid liability is unavailing under the circumstances; however, the liability of the persons held accountable under the computerization project shall be reduced inasmuch as the City of Talisay has derived benefits from the software and equipment installed by PowerDev.

As a rule, public officials are entitled to the presumption of good faith in the discharge of official duties.[67] Good faith is a state of mind which denotes "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render the transaction unconscientious."[68]

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[65] Section 2 of Presidential Decree No. 1445 otherwise known as the "Government Auditing Code of the Philippines."

[66] Section 36, Article X of RA 9184.

[67] *Blaquera v. Hon. Alcala*, 356 Phil. 678, 765 (1998).

[68] *Development Bank of the Philippines vs. Commission on Audit*, G.R. No. 221706, March 13, 2018.

The lack of any showing of bad faith or malice also gives rise to a presumption of regularity in the performance of official duties.[69] However, this presumption fails in the presence of an explicit rule that was violated.[70]

Section 103 of Presidential Decree No. 1445 declares that expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor. The public official's personal liability arises only if the expenditure of government funds was made in violation of law.[71]

In this case, in view of violations of the LGC and RA 9184, the presumption of good faith in the discharge of official duties in favor of petitioner and the other persons liable under the assailed NDs fails. Hence, they should be held personally liable for the disallowed amounts.

In *Verceles, Jr. v. COA*,[72] Leandro B. Verceles, Jr. (Verceles), who was then the Provincial Governor of Catanduanes, was found personally liable because his acts of: (1) making augmentations without prior authority; and (2) entering into a contract on behalf of the province without requisite authority were in violation of the LGC.[73] The Court held that Verceles' reliance on, among others, the opinion of the Department of Interior and Local Government, could not exculpate him from his personal liability.[74] It declared that Section 336 of the LGC and Section 26 of the Province's appropriation ordinance in CY 2002, in clear and precise language, required the authority

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[69] *Blaquera v. Alcala, supra* at 765.

[70] *Sambo, et al. v. Commission on Audit*, 811 Phil. 344, 357 (2017).

[71] *Verceles, Jr. v. Commission on Audit, supra* note 55 at 660.

[72] *Supra* note 55.

[73] *Id.* at 660.

[74] *Id.*

from the *Sangguniang Panlalawigan* before the governor could make augmentations or realignments of funds.[75]

In the instant case, Atty. Aurora Econg, the City Legal Officer of Talisay, erroneously construed Sections 336 and 346 of the LGC by contending that the augmentation or realignment of the city budget may be done through the City Mayor's mere issuance of an EO.[76] As in the aforementioned case of Verceles, reliance on such erroneous construction should similarly not absolve the persons held liable under the NDs relating to the computerization project. Moreover, there was violation of RA 9184, specifically Section 10, Article IV in relation to Article XVI thereof, in view of the failure to conduct the required competitive bidding or the failure to show circumstances justifying the resort to any of the alternative methods of procurement. Evidently, the patent violations of the LGC and of the procurement requirements under RA 9184 negated the presumptions of good faith and regularity in the performance of official duties in favor of petitioner and the other persons liable under the NDs.

As to the purchase of liquid fertilizers, good faith is likewise absent considering that the City of Talisay disregarded Section 36, Article X of RA 9184 by neglecting to obtain the most advantageous price for the government. The alleged *lowest* price of ₱900 per unit as offered in the alleged bidding is remarkably excessive and unreasonable considering that the *highest* price obtained through canvass and actual purchase by the ATL from Pacifica Agrivet was only ₱188.10 per unit. Further, the Court notes the COA's finding of irregularity with respect to the bidding documents submitted by petitioner which raise doubts as to their authenticity as well as the authenticity of the bidding itself. In this regard, the Court finds that petitioner and the other persons named liable for the overpriced liquid fertilizers were not in good faith while discharging their official duties.

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[75] *Id.*

[76] *Rollo*, p. 33.

It is worthy to note the ruling in *Joson III v. COA*,[77] where Tomas N. Joson III (Joson) assailed the denial by the COA of his petition for exclusion from liability for the disallowed amount. The Court pronounced that Joson, being the head of the procuring entity and the Governor of Nueva Ecija, is not automatically the party ultimately liable for the disallowed amount. It declared that he cannot be held liable simply because he was the final approving authority of the transaction in question and that the employees/officers who processed the same were under his supervision. Thus:

> The payments to A.V.T. Construction was disallowed by COA for the reason that the pre-qualification or eligibility checklist using the "pass/fail" criteria, the Net Financial Contracting Capacity (NFCC), and Technical Eligibility documents are missing.
>
> It is well to note that the missing documents, the eligibility checklist using the pass/fail criteria, the NFCC and the technical eligibility documents, pertain to the pre-qualification stage of the bidding process.
>
> Under R.A. No. 9184, the determination of whether a prospective bidder is eligible or not falls on the BAC. The BAC sets out to determine the eligibility of the prospective bidders based on their compliance with the eligibility requirements set forth in the Invitation to Bid and their submission of the legal, technical and financial documents required under Sec. 23.6, Rule VIII of the Implementing Rules and Regulations of R.A. No. 9184.
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> Thus, the presence of the eligibility checklist, the NFCC and the technical eligibility documents are the obligations and duties of the BAC. The absence of such documents are the direct responsibility of the BAC. Petitioner had no hand in the preparation of the same. He cannot therefore be held liable for its absence.[78]

Under the circumstances of the present case, however, the Court is not inclined to apply the same ruling. Petitioner herein does not pray for exclusion from personal liability. In fact, he filed the instant petition in representation of all the persons

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[77] G.R. No. 223762, November 7, 2017, 844 SCRA 220.

[78] *Id.* at 233-235.

named liable in the NDs. Moreover, he does not claim that he has no prior knowledge regarding the conduct of the bidding processes. Accordingly, the Court holds him and the other persons named in the NDs accountable for the disallowed amounts. Public officials who are directly responsible for, or participated in making the illegal expenditures, as well as those who actually received the amounts therefrom shall be solidarily liable for their reimbursement.[79]

However, the Court cannot dismiss the fact that PowerDev had already done a substantial amount of work in relation to the computerization project, which ultimately redounded to the benefit of the city government. As manifested by petitioner, almost all of the systems installed by PowerDev are still fully operational and are being used by the City of Talisay;[80] others were operational for a certain period of time, but were discontinued in view of the suspension notice, resulting in the breakdown of the software programs.[81]

Below is the alleged summary of the status[82] of the software and equipment installed by PowerDev in the different departments of the City of Talisay:

Software	Status
1. Tricycle Franchise System (City Permits and Licensing Section)	– Completely installed and fully operational until the present.
2. Real Property Tax Assessment System (City Assessor[']s Office)	– Completely installed but no longer used as of the present due to the introduction of the new assessment manual when Talisay used the new PIN (Property Index No.) replacing the PIN

[79] *Sambo, et al. v. Commission on Audit, supra* note 70 at 355.

[80] As of the date of the petition.

[81] *Rollo*, p. 15.

[82] As of the date of the petition.

	used when Talisay was still a municipality.
3. Personnel Information System (Human Resource Division)	– Completely installed and operational until the present except for the programs on Service Records and Leave Benefits and Privileges.
4. Automated Timekeeping System (Human Resource Division)	– Completely installed and fully operational until the present.
5. Hardware and Software for Timekeeping for Job Order Employees (Human Resource Division)	– Completely installed and fully operational until the present.
6. Government Payroll System (Accounting Office)	– Completely installed and fully operational until the present
7. Project Monitoring System (Office of the City Engineer)	– Completely installed and was operational for a certain period of time but no longer operational as of the present due to the lack of software modifications, repair, maintenance and upgrading.
8. Building, Electrical and Water Permit Application System (Office of the City Engineer)	– Completely installed and was operational for a certain period but no longer operational as of the present due to the significant updates in the National Building Code (P.D. 1096), lack of software modifications, repair, maintenance and upgrading.
9. Local Civil Registrar Information System	– Completely installed and was in the process of revision and upgrading to conform to the updates of printing and annotations but was halted due to the termination of the agreement with [the] contractor. System is still running until the

	present but is used only for queries and verification of birth records.
10. Local Area Network (LAN) Installation and Cabling	– Completely installed and fully operational until the present. Only four departments are using the LAN as of the present, these are: City Assessor's Office and City Treasurer's Office; and Human Resource Division and Accounting Office.
11. E-Procurement System (General Services Office)	– Completely installed and full[y] operational until the year 2009. No longer used as of the present due to lack of repair, maintenance and upgrading.[83]

Unarguably, the local government of the City of Talisay and the citizens therein benefited from the computerization project. In the interest of substantial justice and equity, and in conformity with the principle of *quantum meruit*, PowerDev should be compensated for the use of its resources up to the extent of the actual work it performed and services it rendered. Otherwise, the government would be unjustly enriched at the expense of PowerDev.

Under the principle of *quantum meruit*, in an action for work and labor, payment shall be made in the amount reasonably deserved, as it is unjust for a person to retain any benefit without paying for it.[84] To deny PowerDev of compensation for the use of its equipment and services would be tantamount to injustice, which the Court cannot countenance. Accordingly, while the lack of the required ordinance and the failure to observe the proper procedure for the public bidding necessitated the

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[83] *Rollo*, pp. 15-16.

[84] *Philippine Science High School-Cagayan Valley Campus v. Pirra Construction Enterprises*, G.R. No. 204423, September 14, 2016, 803 SCRA 137, 160.

disallowance of the payments for the computerization project, personal liability should not attach to petitioner and the other persons named liable under the NDs up to the extent of the benefit that the government of the City of Talisay has derived from the project.

WHEREFORE, the petition for *certiorari* is **DISMISSED**. Decision No. 2012-042 dated April 23, 2012 and Resolution (Decision No. 2012-267) dated December 28, 2012 of the Commission on Audit are **AFFIRMED**. Thus:

1) ND No. 2007-002 dated July 23, 2007 disallowing the overprice of ₱2,372,762.70 in the purchase of liquid fertilizers is AFFIRMED.

2) ND No. 2004-001-100-(2004) L2-07-159-00-006 of ₱8,500,000.00, ND No. 2004-002-100-(2004) L2-07-159-00-007 of ₱613,440.00, ND No. 2004-003-100-(2004) L2-07-159-00-008 of ₱10,086,560.00, and ND No. 2005-004-100-(2004) L2-07-159-00-009 of ₱7,788,000.00, all dated April 23, 2007, disallowing the payments for the computerization project, are also AFFIRMED.

However, the Commission on Audit is hereby DIRECTED to determine and ascertain with dispatch, on a *quantum meruit* basis, the total compensation due to PowerDev Corporation for the software and equipment it installed in the different departments of the City of Talisay which redounded to the benefit of the local government. Based on such determination by the Commission on Audit, PowerDev Corporation is DIRECTED to return the difference between the total amount it received from the City of Talisay and the *quantum meruit* price, if any.

This pronouncement is without prejudice to the filing of appropriate administrative or criminal charges against the officials responsible for the illegal disbursements.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Hernando, Carandang, and *Zalameda, JJ.*, concur.

Leonen and *Caguioa, JJ.*, on official business.

Lazaro-Javier, J., on leave.

EN BANC

[G.R. No. 238676. November 19, 2019]

ELAINE E. NAVARRO and RAUL L. OROZCO, *petitioners, vs.* **COMMISSION ON AUDIT CENTRAL OFFICE, COMMISSION ON AUDIT REGIONAL OFFICE NO. XIII,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF CASES; NOT ONLY AFFORDED TO THE ACCUSED IN CRIMINAL PROCEEDINGS BUT EXTENDS TO ALL PARTIES IN ALL CASES PENDING BEFORE JUDICIAL, QUASI-JUDICIAL AND ADMINISTRATIVE BODIES.— Section 16, Article III of the 1987 Constitution guarantees that all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial and administrative bodies. This constitutional right is not only afforded to the accused in criminal proceedings but extends to all parties in all cases pending before judicial, quasi-judicial and administrative bodies — any party to a case can demand expeditious action from all officials who are tasked with the administration of justice.

2. ID.; ID.; ID.; ID.; CONSIDERED A FLEXIBLE CONCEPT DEPENDENT ON THE FACTS AND CIRCUMSTANCES OF A PARTICULAR CASE AND THERE ARE FACTORS TO BE CONSIDERED AND WEIGHED IN DETERMINING

WHETHER THE RIGHT IS VIOLATED.— [T]he right to a speedy disposition of cases is not an iron-clad rule such that it is a flexible concept dependent on the facts and circumstances of a particular case. Thus, it is doctrinal that in determining whether the right to speedy disposition of cases [is violated], the following factors are considered and weighed: (1) length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.

3. **ID.; ID.; ID.; ID.; TO CONTRADICT THE CLAIM OF DENIAL OF THE RIGHT TO SPEEDY DISPOSITION OF CASES, IT IS INCUMBENT UPON THE STATE TO PROVE THAT THE DELAY IS REASONABLE, OR THAT THE DELAY IS NOT ATTRIBUTABLE TO IT.—** In the present case, it is undisputed that it took more than seven years from the time AOM No. DepEdRO13-2009-003 was issued on February 17, 2009, until the COA promulgated its November 9, 2016 Decision against petitioners. Particularly, it took more than five years from the time the case was elevated to the COA for automatic review before a decision was rendered on November 9, 2016. Thus, the length of delay is not in doubt. In responding to petitioners' claim of denial of the right to speedy disposition of cases, the COA merely brushed it aside and claimed that they failed to show that the delay was vexatious or oppressive. It must be remembered, however, that it is incumbent upon the State to prove that the delay was reasonable, or that the delay was not attributable to it. In other words, it is not for the party to establish that the delay was capricious or oppressive as it is the government's burden to attest that the delay was reasonable under the circumstances or that the private party caused the delay. Here, the COA miserably failed to establish that the delay of more than seven years was reasonable or that petitioners caused the same. It erroneously shifted the burden to petitioners.

4. **ID.; ID.; ID.; ID.; SERVES TO ENSURE THAT CITIZENS ARE FREE FROM ANXIETY AND UNNECESSARY EXPENSES BROUGHT ABOUT BY PROTRACTED LITIGATIONS.—** [T]he right to speedy disposition of cases serves to ensure that citizens are free from anxiety and unnecessary expenses brought about by protracted litigations. In the present case, the ND holds petitioners solidarily liable to refund the ₱18,298,789.50 covering the disallowed purchase of reference materials. Surely, the substantial amount involved

is a Sword of Damocles hovering over petitioners' heads subjecting them to constant distress and worry. As such, the COA should have been more circumspect in observing petitioners' rights to speedy disposition of cases and not to set it aside trivially. It should have addressed the allegations of delay more concretely and assuage petitioners' concerns that the delay was not due to vexation, oppression or caprice, or that the cause of delay was not attributable to COA.

APPEARANCES OF COUNSEL

Reserva-Filoteo Law Office for petitioner.
The Solicitor General for respondents.

D E C I S I O N

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

This petition for *certiorari* under Rule 64 of the Revised Rules of Court seeks to reverse and set aside the November 9, 2016 Decision[1] and October 26, 2017 Resolution[2] of the Commission on Audit (COA) which affirmed the Notice of Disallowance (ND) No. 09-005-101-(08).[3]

Factual background

In his October 4, 2007 Letter,[4] Representative Francisco T. Matugas (Rep. Matugas) of the First District of Surigao del Norte requested from then President Gloria Macapagal-Arroyo (President Macapagal-Arroyo) financial assistance in the amount of ₱8 Million. The said amount was for the purchase of textbooks and other instructional materials to be used in the primary and secondary schools in Siargao Island. In the same vein,

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[1] Concurred in by Chairperson Michael G. Aguinaldo, Commissioners Jose A. Fabia and Commissioner Isabel D. Agito; *rollo*, pp. 32-40.

[2] *Id*. at 41.

[3] *Id*. at 87-88.

[4] *Id*. at 56.

Representative Guillermo A. Romarate, Jr. (Rep. Romarate) of the Second District of Surigao del Norte, in his November 26, 2007 Letter,[5] requested ₱8 Million from President Macapagal-Arroyo for the purchase and procurement of textbooks and other instructional materials. Both letters contained the handwritten approval of then Department of Education (DepEd) Secretary Jesli A. Lapus (Sec. Lapus).

In March and July 2008, the corresponding Sub-Allotment Release Orders were issued for the acquisition of supplementary and reference materials. Thus, in 2008, the DepEd Caraga Regional Office, Butuan City, purchased instructional materials amounting to ₱18,298,789.50.[6]

Thereafter, on February 17, 2009, the COA issued Audit Observation Memorandum (AOM) No. DepEdRO13-2009-003.[7] It noted that the procurement of the supplementary and reference materials amounting to ₱18,298,789.50 was irregular because it was contrary to DECS Order (D.O.) No. 25 series of 1999, and D.O. Nos. 38 and 52 Series of 2007, which imposed a moratorium on the procurement of supplementary and reference materials. Isabelita M. Borres (Borres), Regional Director of the DepEd Caraga Regional Office, replied that Sec. Lapus himself authorized the purchase of the said materials as evidenced by the scribbled notes bearing his initials found on the letters of Rep. Matugas and Rep. Romarate. In addition, she noted that Executive Secretary Eduardo Ermita approved the request of Rep. Matugas for the release of additional funds.[8]

On May 18, 2009, the COA issued Notice of Suspension No. 09-003-101-(08)[9] reiterating its findings in AOM No. DepEdRO13-2009-003. The ₱18,298,789.50 was suspended in

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[5] *Id*. at 57.

[6] *Id*. at 7.

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

[8] *Id*. at 65.

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

audit because the DepEd had ordered a moratorium on the procurement of supplementary and reference materials. The COA reminded that the practice of procuring supplementary and reference materials should be stopped until the moratorium is lifted. Eventually, the COA issued ND No. 09-005-101-(08) after the Notice of Suspension had not been settled or acted upon. It ordered Regional Accountant Elaine E. Navarro and Chief Administrative Officer Raul L. Orozco (petitioners), among others, to refund the ₱18,298,789.50 used in procuring the supplementary and reference materials.

Petitioners appealed the ND to the COA Regional Office No. XIII (COA-RO).

COA-RO Decision

In its August 23, 2011 Decision,[10] the COA-RO partially granted petitioners' appeal. It pointed out that ₱7,259,676.10 worth of reference or instructional materials were included in the list of materials allowed to be procured under D.O. Nos. 52 series of 2007, 112 series of 2009 and 111 series of 2010. The COA-RO ruled:

> In view of the foregoing we hereby grant in part the herein appeal and reduce the audit disallowance under Notice of Disallowance No. 09-005-101 (08) dated October 19, 2009 to ₱11,039,113.40.
>
> This Decision, however, is not yet final and subject to automatic review by the Commission Proper, Commission on Audit, Commonwealth Avenue, Quezon City, within the remaining of the six (6) months period to appeal, pursuant to Section 7, Rule V of the 2009 COA Revised Rules on Procedures.[11]

The COA-RO decision was elevated to the COA for automatic review.

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[10] Issued by Regional Director Atty. Roy L. Ursal; *id*. at 83-86.

[11] *Id*. at 86.

Assailed COA Decision

In its November 9, 2016 Decision, the COA reversed the COA-RO Decision and reinstated the full amount disallowed in ND No. 09-005-101-(08). It reiterated that existing DepEd issuances clearly prohibit the procurement of books and instructional materials that are not included in the List of Textbooks and Teacher's Manuals attached in D.O. No. 52, series of 2007. The COA observed that the COA-RO erred in reducing the amount disallowed on the basis of D.O. No. 112, series of 2009 because the reference materials were procured prior to the issuance of the said order. It highlighted that the individuals who undertook the procurement activities could not have decided what books to purchase based on a list made on a future date. The COA Decision read:

> **WHEREFORE**, premises considered, Commission on Audit Regional Office XIII Decision No. 2011-032 dated August 23, 2011 is hereby **DISAPPROVED** insofar as it had reduced the disallowance by the amount of ₱7,259,676.10. Accordingly, Notice of Disallowance (ND) No. 09-005-101 (08) dated October 19, 2009 in the amount of ₱18,298,789.50 is hereby **AFFIRMED**.[12]

Petitioners moved for reconsideration but it was denied by the COA in its October 26, 2017 Resolution.

Hence, this present petition raising the following issues:

Issues

I

WHETHER THE COA COMMISSION PROPER GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF ITS JURISDICTION WHEN IN (SIC) RENDERED A DECISION IN GROSS VIOLATION OF PETITIONERS' RIGHT TO SPEEDY DISPOSITION OF CASES;

II

WHETHER THE COA COMMISSION PROPER GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR IN

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[12] *Id*. at 39.

EXCESS OF ITS JURISDICTION WHEN IN (SIC) SUSTAINING NOTICE OF DISALLOWANCE NO. 09-005-101-(08) IN TOTAL DISREGARD TO THE DEFENSES RAISED BY PETITIONERS; AND

III

WHETHER THE COA COMMISSION PROPER GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF ITS JURISDICTION WHEN IT INCLUDED PETITIONERS AS AMONG THOSE RESPONSIBLE FOR THE DISALLOWANCE IN BLATANT DISREGARD TO THE EXTENT OF HER PARTICIPATION TO THE TRANSACTION.[13]

Petitioners argue that the COA violated their rights to speedy disposition of cases. They highlight that the proceedings before the COA-RO took more than two years and six months from the issuance of AOM No. DepEdRO13-2009-003 on February 17, 2009. Likewise, petitioners note that it took five years and three months before the COA rendered its November 9, 2016 Decision from the time the COA-RO Decision was elevated for automatic review. Thus, petitioners believe they suffered inordinate delay as the COA resolved their case only after seven years and nine months have lapsed. In addition, they surmise that the procurement of reference materials was valid considering that Sec. Lapus himself authorized it. Finally, they contend that they should be excused from refunding the disallowed amount because of their limited participation in the transaction. Petitioners bewail that they only came into the picture after the procurement had been made and its delivery effected.

In its Comment[14] dated August 22, 2018, the COA countered that the petitioners merely alleged a delay in the disposition of the case without showing that it was vexatious, capricious or oppressive. It elucidates that the right to speedy disposition of cases is flexible and due regard must be given to the circumstances. The COA reiterated that the disallowance of

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[13] *Id*. at 12-13.

[14] *Id*. at 110-119.

the procurement of reference materials was justified in view of the moratorium on the purchase of supplementary and reference materials. Thus, it posited that it did not act with grave abuse of discretion because its decision was based on existing rules and regulations.

In their Reply[15] dated October 7, 2019, petitioners insisted that their constitutional rights to speedy disposition of cases had been violated. They argued that respondents had the burden of proving that their right to speedy disposition of cases had not been transgressed. Further, petitioners assailed that D.O. No. 52, Series of 2007, authorized the procurement of supplementary and reference materials. In addition, they lamented there were irregularities in the performance of their functions in relation to the disallowed disbursement. Petitioners highlighted that Navarro's certification as an accountant was in order considering that the transaction was duly supported by pertinent papers and documents, and that there were available funds for the disbursement. They also pointed out that Orozco's certification as the Chief Administrative Officer, that the charges to the appropriations were necessary and legal, was above board as disbursements were done with the imprimatur of the DepEd Secretary.

The Court's Ruling

The petition is meritorious.

Burden of proof in violation of the right to speedy disposition of cases.

Section 16, Article III of the 1987 Constitution guarantees that all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial and administrative bodies. This constitutional right is not only afforded to the accused in criminal proceedings but extends to all parties in all cases pending before judicial, quasi-judicial and

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[15] *Id*. at 146-157.

administrative bodies – any party to a case can demand expeditious action from all officials who are tasked with the administration of justice.[16]

Nevertheless, the right to a speedy disposition of cases is not an iron-clad rule such that it is a flexible concept dependent on the facts and circumstances of a particular case.[17] Thus, it is doctrinal that in determining whether the right to speedy disposition of cases, the following factors are considered and weighed: (1) length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.[18]

In the present case, it is undisputed that it took more than seven years from the time AOM No. DepEdRO13-2009-003 was issued on February 17, 2009, until the COA promulgated its November 9, 2016 Decision against petitioners. Particularly, it took more than five years from the time the case was elevated to the COA for automatic review before a decision was rendered on November 9, 2016. Thus, the length of delay is not in doubt.

In responding to petitioners' claim of denial of the right to speedy disposition of cases, the COA merely brushed it aside and claimed that they failed to show that the delay was vexatious or oppressive. It must be remembered, however, that it is incumbent upon the State to prove that the delay was reasonable, or that the delay was not attributable to it.[19] In other words, it is not for the party to establish that the delay was capricious or oppressive as it is the government's burden to attest that the delay was reasonable under the circumstances or that the private party caused the delay. Here, the COA miserably failed to establish that the delay of more than seven years was reasonable

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[16] *Coscolluela v. Sandiganbayan*, 714 Phil. 55, 61 (2013).

[17] *The Ombudsman v. Jurado*, 583 Phil. 132, 149 (2008).

[18] *Capt. Roquero v. The Chancellor of UP-Manila*, 628 Phil. 628, 640 (2010).

[19] *People v. Sandiganbayan*, 723 Phil. 444, 491 (2013).

or that petitioners caused the same. It erroneously shifted the burden to petitioners.

In addition, the right to speedy disposition of cases serves to ensure that citizens are free from anxiety and unnecessary expenses brought about by protracted litigations.[20] In the present case, the ND holds petitioners solidarily liable to refund the ₱18,298,789.50 covering the disallowed purchase of reference materials. Surely, the substantial amount involved is a Sword of Damocles hovering over petitioners' heads subjecting them to constant distress and worry. As such, the COA should have been more circumspect in observing petitioners' rights to speedy disposition of cases and not to set it aside trivially. It should have addressed the allegations of delay more concretely and assuage petitioners' concerns that the delay was not due to vexation, oppression or caprice, or that the cause of delay was not attributable to COA.

WHEREFORE, the Petition is **GRANTED** on account of the violation of petitioners Elaine E. Navarro and Raul L. Orozco's constitutional rights to the speedy disposition of cases.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Reyes, A. Jr., Gesmundo, Carandang, Inting, and *Zalameda, JJ.*, concur.

Leonen and *Caguioa, JJ.*, on official business.

Lazaro-Javier and *Hernando, JJ.*, on leave.

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[20] *People v. Sandiganbayan 5th Division*, 791 Phil. 37, 61 (2016).

SECOND DIVISION

[G.R. No. 222348. November 20, 2019]

JHEROME G. ABUNDO, *petitioner vs.* **MAGSAYSAY MARITIME CORPORATION, GRAND CELEBRATION LDA and/or MARLON ROÑO,**[*] *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE FACTUAL FINDINGS OF ADMINISTRATIVE AGENCIES WHICH HAVE ACQUIRED EXPERTISE IN MATTERS WITHIN THEIR JURISDICTION, WHEN SUPPORTED BY EVIDENCE ON RECORD, ARE ACCORDED RESPECT IF NOT FINALITY, AND ARE CONSIDERED BINDING ON THE SUPREME COURT; EXCEPTION.— There is no question that as a general rule, findings of fact of an administrative agency (like the Labor Arbiters and the NLRC), which has acquired expertise in the particular field of its endeavor, are accorded great weight on appeal. This Court is consistent in ruling that the factual findings and conclusions of the NLRC are generally accorded not only great weight and respect but even clothed with finality and deemed binding on this Court as long as they are supported by substantial evidence. Judicial review of labor cases does not go beyond the evaluation of the sufficiency of the evidence upon which its labor officials' findings rest. The factual findings of the NLRC affirming those of the Labor Arbiter, who are deemed to have acquired expertise in matters within their jurisdiction, when sufficiently supported by evidence on record, are accorded respect if not finality, and are considered binding on this Court. However, the rule, is not absolute and admits of certain well-recognized exceptions. Thus, when the findings of fact of the Labor Arbiter and the NLRC are not supported by substantial evidence or their judgment was based on a misapprehension of facts, the appellate court may make an independent evaluation of the facts of the case, which procedure the CA adopted in this case.

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

2. ID.; ID.; ID.; PETITION FOR REVIEW ON *CERTIORARI*; SHOULD COVER ONLY QUESTIONS OF LAW; EXCEPTION.— The Rules of Court requires that only questions of law should be raised in petitions filed under Rule 45. As a rule, this Court is not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below. Petitions for review on *certiorari* should cover only questions of law as this Court is not a trier of facts. However, the rules do admit exceptions such as when the CA's judgment is based on misapprehension of facts and that it overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion.

3. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA); POEA-STANDARD EMPLOYMENT CONTRACT; SHOULD BE READ HAND IN HAND WITH THE LABOR CODE AND THE AMENDED RULES ON EMPLOYEE COMPENSATION IN RESOLVING DISABILITY COMPENSATION CASES.— To arrive at a judicious resolution of the present controversy, this Court deemed it proper to apply: a) Section 20(A)(3) of the POEA-SEC; b) Article 198 [192](c)(1), Chapter VI, Title II, Book IV of the Labor Code; and c) the Amended Rules on Employee Compensation (AREC) implementing Title II, Book IV of the Labor Code. x x x The POEA-SEC should never be read in isolation with other laws such as the provisions of the Labor Code on disability and the AREC. Otherwise, the disability rating of the seafarer will be completely at the mercy of the company-designated physician, without redress, should the latter fail or refuse to give one. It must be emphasized that the POEA-SEC is not the only contract between the parties that governs the determination of the disability compensation due the seafarer. The POEA-SEC should be read hand in hand with the Labor Code and the AREC in resolving disability compensation cases.

4. ID.; ID.; ID.; COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS; RULE ON THIRD-DOCTOR-REFERRAL; INAPPLICABLE WHEN THE COMPANY-DESIGNATED PHYSICIAN FAILS TO ISSUE A FINAL AND CATEGORICAL ASSESSMENT AS TO THE SEAFARER'S DISABILITY WITHIN THE 120/240-DAY PERIOD, IN WHICH CASE, THE SEAFARER SHALL BE CONSIDERED PERMANENTLY

DISABLED BY OPERATION OF LAW.— There is no question that the referral to a third doctor as provided in Section 20(A)(3) of the POEA-SEC is mandatory in case there are disagreements made by the company-designated physician and the seafarer's chosen physician as to the seafarer's medical condition. This Court in the recent cases of *Murillo v. Philippine Transmarine Carriers, Inc.* and *Dionio v. Trans-Global Maritime Agency, Inc.*, reiterated the settled rule that the referral to a third doctor is mandatory, and that the seafarer's failure to abide thereby is a breach of the POEA-SEC which makes the assessment of the company-designated physician final and binding. However, our jurisprudence is replete with cases which pronounce that before a seafarer should be compelled to initiate referral to a third doctor, there must first be a final and categorical assessment made by the company-designated physician as to the seafarer's disability within 120/240-day period. Otherwise, the seafarer shall be considered permanently disabled by operation of law. x x x In the case at bench, the disability grading that Dr. Go, the company-designated doctor, issued was merely an interim assessment and not a final and categorical finding. If it were otherwise, Dr. Go would not have advised the petitioner to continue his rehabilitation. Also, Dr. Lao's subsequent medical report cannot be considered as final assessment as he merely suggested a disability grading. Dr. Lao was not the designated doctor who medically evaluated the petitioner's condition. His report is merely a suggestion subject for evaluation by Dr. Lim, the medical coordinator. x x x Records reveal that petitioner remained incapacitated to resume sea duties even after the company-designated doctor evaluated his medical condition. This means that the petitioner had to still undergo medical treatment even after being seen by the company-designated physician. Obviously, even after the lapse of the maximum 240-day period there was still no final assessment made by the company-designated doctor as to the petitioner's disability. With Dr. Go's failure to issue a final and definite assessment of petitioner's condition within the 240-day period, petitioner was thus deemed totally and permanently disabled. It is apparent that petitioner's disability and incapacity to resume working continued for more than 240 days. Consequently, the absence of a final assessment by the company-designated physician makes the rule on third-doctor-referral inapplicable in the instant

case. The failure of the company-designated physician to issue a final assessment and disability grading within the 240-day period made the petitioner's disability total and permanent even without evaluation by a third doctor. Evidently, there is no need for the petitioner to initiate the referral to a third doctor for him to be entitled to permanent disability benefits.

5. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; DAMAGES; ATTORNEY'S FEES; AWARDED WHEN A PARTY IS FORCED TO LITIGATE TO PROTECT HIS RIGHT AND INTEREST.— [C]onsidering that the petitioner was forced to litigate to protect his right and interest, he is entitled to a reasonable amount of attorney's fees pursuant to Article 2208(8) of the Civil Code. However, this Court notes that petitioner failed to prove that the respondents acted in gross and evident bad faith in refusing to satisfy his demands. Records show that the respondents offered to pay the petitioner disability benefits corresponding to a Grade 10 disability which is obviously way below the amount for permanent/total disability. Thus, this Court finds the award of attorney's fees in the amount of US$1,000 as reasonable.

APPEARANCES OF COUNSEL

Tolentino & Bautista Law Offices for petitioner.
Del Rosario and Del Rosario Law Offices for respondents.

D E C I S I O N

INTING, *J.*:

Before this Court is a petition for review[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated June 10, 2015 and Resolution[3] dated January 14, 2016 of the Court of Appeals

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[1] *Rollo*, pp. 28-80.

[2] *Id.* at 9-22; penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Remedios A. Salazar-Fernando and Ramon A. Cruz, concurring.

[3] *Id.* at 24-25.

(CA) in CA-G.R. SP No. 136759, which reversed and set aside the Decision[4] dated April 23, 2014 of the National Labor Relations Commission (NLRC) in NLRC LAC No. (OFW M) 01-000051-14 and NLRC NCR Case No. (M) 06-08397-13.

Antecedents

As culled from the records, the pertinent facts are as follows:

Jherome G. Abundo (petitioner) was formerly employed as Able Seaman on board the vessel "Grand Celebration-D/E" (Grand Celebration). On the other hand, Magsaysay Maritime Corporation is a licensed manning agent of its principal, Grand Celebration LDA (collectively, respondents).[5]

On April 25, 2012, the petitioner was engaged by the respondents as Able Seaman for eight months. On May 8, 2012, he departed from the Philippines and embarked the vessel *Grand Celebration*.[6]

On December 15, 2012, while the petitioner was securing a lifeboat, a metal block snapped and hit his right forearm. First aid was immediately administered on the petitioner at the ship's infirmary. Then, the petitioner was sent to a hospital in Brazil. In the hospital, a posterior splint was applied on the affected area to immobilize it and prevent further injury.[7]

After consultation with the doctor assigned in the vessel, the petitioner was recommended for repatriation. When he was fit to travel, the petitioner was medically repatriated on January 7, 2013. Upon arrival, the petitioner was referred to a company-designated physician, who immediately ordered an

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[4] *Id.* at 152-165; penned by Commissioner Isabel G. Panganiban-Ortiguerra with Presiding Commissioner Joseph Gerard E. Mabilog and Commissioner Nieves E. Vivar-De Castro, concurring.

[5] *Id.* at 29.

[6] *Id.* at 153.

[7] *Id.*

X-ray. The X-ray revealed an overriding fracture, fragment at the distal 3rd shaft of the right radius.[8]

Subsequently, the petitioner underwent a treatment procedure for open reduction and internal fixation with plate replacement and screws of the fractured right distal radius. After his discharge from the hospital, the petitioner was then made to undergo physiotherapy to improve the function of his right arm.[9]

On April 22, 2013, the company-designated physician noted: 1) weak grip, right; 2) paresthesia on the right thumb; and 3) left wrist pain upon extreme movements. The petitioner was advised to continue the rehabilitation. Dr. Esther G. Go (Dr. Go), the company-designated doctor, issued an interim assessment of Grade 10 disability which was noted by the company medical coordinator, Dr. Robert D. Lim (Dr. Lim), thus:

x x x x x x x x x

Patient complained of left wrist pain upon extreme movements.

There is weak grip, right.

There is also paresthesia on the right thumb.

He was advised to continue his rehabilitation.

His interim assessment is Grade 10 - ankylosis of the left wrist in normal position.[10]

Further, on April 26, 2013, Dr. Ramon Lao (Dr. Lao), a company surgeon, suggested a Grade 10 disability due to ankylosed wrist.[11]

Meanwhile, the petitioner sought an independent doctor, Dr. Rogelio P. Catapang (Dr. Catapang), an orthopaedic surgery and traumatic flight surgeon who made the following findings:

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[8] *Rollo*, pp. 11, 397.

[9] *Id.* at 154, 436.

[10] *Id.* at 438.

[11] *Id.* at 439.

Mr. Abundo continues to have weakness and pain of the right extremity despite continuous physiotherapy. Range of motion is restricted particularly in supination. Because his grip is weak, he is unable to lift heavy objects, the kind of work seaman are expected to perform. He has lost his pre-injury capacity and is UNFIT to work back at his previous occupation.

x x x x x x x x x

In addition, excessive forces associated with throwing and swinging activities may aggravate the present condition, the patient sustained his injury following a direct trauma to his arm; although he has received first aid the first definitive treatment was immediately done. The signs and symptoms associated with these injuries are directly related to the degree of severity. There may or may not be any visible or palpable deformity. Point tenderness is normally present at the site of injury, and may remain. The patient has demonstrated a limited range of motion, weakness of the hand in the affected side and an increase in pain at the involved site with attempted movements.

Mr. Abundo's pre-injury job requires that he operates some machines and lift heavy objects. He may also be required to use tools to adjust nuts, bolts and screws on some occasions. Mr. Abundo claimed that he can no longer perform these functions because he no longer has the strength in his right hand.

Mr. Abundo, with his present condition, he will not be able to perform his pre-injury work because of the physical demands it entails. Some [restriction] must be placed on his work activities. This is in order to prevent the impending late sequelae of his current condition. He presently does not have the physical capacity to return to the type of work he was performing at the time of the injury. He is therefore, UNFIT in any capacity for further strenuous duties.[12]

With these findings, the petitioner demanded from the respondents the maximum benefit under the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) and claimed to be suffering from permanent disability. Instead of granting permanent disability benefits, the respondents offered US$10,075.00, an amount equivalent to a

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[12] *Id.* at 415.

Grade 10 disability. As a result, the petitioner filed a labor complaint against the respondents seeking the payment of sickness allowance, permanent and total disability benefits, moral and exemplary damages, and attorney's fees.

For their part, the respondents argued: (1) that the petitioner failed to prove that he is suffering from total and permanent disability; (2) that he failed to observe the conflict-resolution procedure in the POEA-SEC which is to refer to a third doctor to settle the conflicting findings between the company-designated physician and that of the petitioner's chosen physician; and (3) that the petitioner is not entitled to his claims including moral and exemplary damages and attorney's fees.

The Ruling of the Labor Arbiter

In the Decision[13] dated October 30, 2013, Labor Arbiter Virginia T. Luyas-Azarraga (Labor Arbiter) ruled in favor of the petitioner. The Labor Arbiter found that the petitioner's disability is permanent and total based on the pieces of evidence presented. She explained that even after the company-designated physician gave an interim assessment of the petitioner's medical condition under Grade 10 disability, the petitioner was still undergoing rehabilitation.[14] The Labor Arbiter opined that total disability does not mean absolute helplessness. Thus, she concluded that in disability compensation, it is not the injury which is compensated but rather the incapacity to work resulting in the impairment of one's earning capacity.[15] For these reasons, the Labor Arbiter deemed it wise to award to the petitioner US$60,000.00 representing the maximum coverage for disability benefit under the POEA-SEC. The Labor Arbiter, likewise, awarded 10% attorney's fees to the petitioner. The dispositive portion of the Decision reads:

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[13] *Id.* at 105-111; penned by Labor Arbiter Virginia T. Luyas-Azarraga.

[14] *Id.* at 110.

[15] *Id.* at 111.

WHEREFORE, PREMISES CONSIDERED, judgment is rendered ordering respondents, jointly and severally to pay complainant Sixty Thousand U.S. Dollars (U.S. $60,000.00) or its peso equivalent at the time of payment, plus 10% of the total award as attorney's fees.

All other claims are dismissed for lack of merit.

SO ORDERED.

Undaunted, the respondents appealed to the NLRC.

The Ruling of the NLRC

On April 23, 2014, the NLRC promulgated a Decision[16] affirming the Labor Arbiter's ratiocination. The NLRC echoed the Labor Arbiter's findings that the petitioner was not restored to his pre-injury condition and his injury made him unable to perform his customary work as a seafarer. Moreover, the NLRC ruled that while it has been held that failure to resort to a third doctor will render the company doctor's diagnosis controlling, it is not the automatic consequence. The NLRC explained that resort to a third doctor is merely directory and not mandatory.[17] It disposed the case as follows:

WHEREFORE, premises considered, the appeal is hereby DENIED and the assailed Decision affirmed.

SO ORDERED.[18]

Subsequently, the respondents filed a motion for reconsideration which was denied by the NLRC.

Aggrieved, the respondents filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA.

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[16] *Id.* at 152-165.

[17] *Id.* at 161.

[18] *Id.* at 164.

The Ruling of the CA

On June 10, 2015, the CA promulgated the assailed Decision[19] granting the petition and reversing the NLRC's ruling, to wit:

> WHEREFORE, premises considered, the instant Petition for *Certiorari* is GRANTED such that the assailed decision and resolution dated 23 April 2014 and 16 June 2014 respectively, both rendered by the National Labor Relations Commission Sixth Division are hereby REVERSED and SET ASIDE. Private respondent Jherome G. Abundo is awarded US$10,075.00 or its Philippine Peso equivalent as his disability benefit. Lastly, the prayer for temporary restraining order and/or preliminary injunction is DENIED for being moot.
>
> SO ORDERED.[20]

The CA held that referral to a third doctor is mandatory.[21] It ruled that it is the obligation of the seafarer to notify the concerned employer of his intention to settle the issue through the appointment of a third doctor.[22] The CA upheld the assessment of Dr. Go, the company-designated physician, stating that the petitioner suffers from Grade 10 disability.[23]

Likewise, the CA clarified that the 120/240-day period could no longer be made as basis for the assessment of the disability grade but the actual disability grade given by the company-designated physician or the third independent physician pursuant to Section 20(A)(6) of the POEA-SEC. Applying Section 20(A)(6) of the POEA-SEC, the CA stated that the disability shall be based on the disability grading provided under Section 32 of the POEA-SEC which grants a disability award of US$10,075.00.[24]

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[19] *Id.* at 9-22.

[20] *Id.* at 21.

[21] *Id.* at 17.

[22] *Id.* at 18.

[23] *Id.* at 19.

[24] *Id.* at 19-21.

Finally, the CA denied the petitioner's prayer for attorney's fees. It declared that the respondents are well within their rights to deny the petitioner's claim for permanent and total disability benefit.[25]

The petitioner moved for reconsideration which was denied by the CA in its assailed Resolution[26] dated January 14, 2016.

Undeterred, the petitioner comes before this Court raising the following grounds, to wit:

A. The Court of Appeals was in error when it reversed the NLRC's Decision as the NLRC did not act with grave abuse of discretion since its decision is based on substantial evidence.

B. The Court of Appeals committed a serious mistake when it failed to uphold the evaluation made by the NLRC.

C. The Court of Appeals was in error in its application of the POEA-SEC conflict-resolution procedure regarding the third physician referral.

D. The Court of Appeals seriously erred when they failed to uphold that it is by operation of law that the petitioner is considered a totally and permanently disabled, and as such, the "*third physician referral rule*" finds no application in the instant case.[27]

The basic contention of the petitioner is that he was permanently disabled as a result of the injuries he suffered while working as a seafarer. He maintains that disability should be based on one's incapacity to work. The petitioner asserts that since he was unable to engage in a gainful employment even after the statutory 120/240-day period, he is entitled to permanent disability benefits.[28]

The petitioner also contends that the third-doctor-referral provision is not applicable because it was by operation of law that he became permanently disabled. He avers that the

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[25] *Id.* at 21.

[26] *Id.* at 24-25.

[27] *Id.* at 35-36.

[28] *Id.* at 57-61.

assessment of the company-designated physician is merely an interim one, and not a final and categorical evaluation as to his disability. He insists that the failure of the company-designated physician to submit a final and categorical disability assessment within the 120/240-day period conclusively presumes that he is permanently disabled. Lastly, the petitioner argues that the temporary disability assessment of the company-designated physician is not controlling in awarding disability benefits.

In their Comment[29] dated June 30, 2016, the respondents emphasize that the absence of findings coming from a third doctor makes the certification of the company-designated physician controlling in determining the disability grading of the petitioner's injury. Accordingly, the findings of the company-designated physician should prevail.

Moreover, the respondents submit that the mere lapse of 120/240-day period does not automatically vest an award of permanent disability benefits upon the petitioner. They argue that the degree of disability must still be determined by a competent and reliable physician.

Lastly, the respondents claim that there is absolutely no basis for this Court to award attorney's fees in the absence of bad faith on their part in denying the petitioner's demand for permanent disability benefits.

Our Ruling

This Court grants the petition.

In a nutshell, the main issue in this case is whether the petitioner is entitled to permanent and total disability benefits. The parties' disagreement lies on the degree of disability and the amount of benefits that the petitioner is entitled.

At the outset, this Court must address the petitioner's argument that the CA went beyond its jurisdiction when it re-evaluated the factual findings of the Labor Arbiter and the NLRC.

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[29] *Id.* at 659-691.

There is no question that as general rule, findings of fact of an administrative agency (like the Labor Arbiters and the NLRC), which has acquired expertise in the particular field of its endeavor, are accorded great weight on appeal. This Court is consistent in ruling that the factual findings and conclusions of the NLRC are generally accorded not only great weight and respect but even clothed with finality and deemed binding on this Court as long as they are supported by substantial evidence.[30] Judicial review of labor cases does not go beyond the evaluation of the sufficiency of the evidence upon which its labor officials' findings rest.[31] The factual findings of the NLRC affirming those of the Labor Arbiter, who are deemed to have acquired expertise in matters within their jurisdiction, when sufficiently supported by evidence on record, are accorded respect if not finality, and are considered binding on this Court.[32]

However, the rule, is not absolute and admits of certain well-recognized exceptions. Thus, when the findings of fact of the Labor Arbiter and the NLRC are not supported by substantial evidence or their judgment was based on a misapprehension of facts, the appellate court may make an independent evaluation of the facts of the case, which procedure the CA adopted in this case.[33]

In the instant case, the CA was acting within its jurisdiction when, on *certiorari*, it did not merely adopt the factual findings of the Labor Arbiter and the NLRC, but reversed the latter's ruling that the third-doctor-referral rule is merely directory and

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[30] *Peckson v. Robinson Supermarket Corp., et al.*, 713 Phil. 471, 479 (2013), citing *Acebedo Optical v. National Labor Relations Commission*, 554 Phil. 524, 541 (2007).

[31] *Id.* at 486.

[32] *Dela Rosa v. Michaelmar Philippines, Inc.*, 66 Phil. 154, 165 (2011), citing *Bolinao Security and Investigation Service, Inc. v. Toston*, 466 Phil. 153, 160-161 (2004).

[33] *AMA Computer College-East Rizal, et al. v. Ignacio*, 608 Phil. 436, 453 (2009) citing *San Miguel Corporation v. Aballa*, G.R. No. 149011, June 8, 2005, 461 SCRA 392, 415.

not a mandatory procedure. The NLRC's ruling is clearly erroneous considering the plethora of doctrinal jurisprudence stating that the third-doctor-referral provision is mandatory. Thus, the CA acted within its jurisdiction when a petition for *certiorari* was filed before it.

The Rules of Court requires that only questions of law should be raised in petitions filed under Rule 45.[34] As a rule, this Court is not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below.[35]

Petitions for review on *certiorari* should cover only questions of law as this Court is not a trier of facts.[36] However, the rules do admit exceptions[37] such as when the CA's judgment is based on misapprehension of facts and that it overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion.

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[34] RULES OF COURT, Rule 45, Section 1.

[35] *Republic v. De Borja*, G.R. No.187448, January 9, 2017, 814 SCRA 10, 18.

[36] See *Heirs of Mariano v. City of Naga*, G.R. No. 197743, March 12, 2018.

[37] As provided in *Twin Towers Condominium Corp. v. Court of Appeals*, 446 Phil. 280, 310 (2003), the following are the exceptions: (a) where there is grave abuse of discretion; (b) when the finding is grounded entirely on speculations, surmises or conjectures; (c) when the inference made is manifestly mistaken, absurd or impossible; (d) when the judgment of the Court of Appeals was based on a misapprehension of facts; (e) when the factual findings are conflicting; (f) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same are contrary to the admissions of both appellant and appellee; (g) when the Court of Appeals manifestly overlooked certain relevant fact not disputed by the parties and which, if properly considered, would justify a different conclusion; and, (b) where the findings of fact of the Court of Appeals are contrary to those of the trial court, or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioner are not disputed by the respondent, or where the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.

Although the CA was correct in highlighting that referral to a third doctor is mandatory, it however, overlooked the fact that there was no final and categorical assessment and conclusion made by the company-designated physicians. It likewise misapprehended the fact that the company doctors' assessment is not yet a final conclusion as to the petitioner's disability, and that, there is no need to consult a third doctor in order to settle the issue. With the foregoing, this Court is compelled to revisit the factual circumstances of the instant case. In other words, the Court will re-evaluate the factual findings of the labor officials and the CA. It is crystal clear that the exception, rather than the general rule, applies in the present case.

To arrive at a judicious resolution of the present controversy, this Court deemed it proper to apply: a) Section 20(A)(3) of the POEA-SEC; b) Article 198 [192](c)(1), Chapter VI, Title II, Book IV of the Labor Code; and c) the Amended Rules on Employee Compensation (AREC) implementing Title II, Book IV of the Labor Code.

Section 20(A)(3) of the POE-SEC provides:

Section 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

3. x x x x x x x x x

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.

The POEA-SEC should never be read in isolation with other laws such as the provisions of the Labor Code on disability and the AREC. Otherwise, the disability rating of the seafarer will be completely at the mercy of the company-designated physician, without redress, should the latter fail or refuse to give one.[38] It must be emphasized that the POEA-SEC is not

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[38] *Carcedo v. Maine Marine Philippines, Inc., et al.*, 758 Phil. 166, 184 (2015).

the only contract between the parties that governs the determination of the disability compensation due the seafarer.[39] The POEA-SEC should be read hand in hand with the Labor Code and the AREC in resolving disability compensation cases.

Article 198[192](c)(1), Chapter VI, Title II, Book IV of the Labor Code instructs, thus:

> Art. 198 [192]. Permanent and total disability. –
>
> x x x x x x x x x
>
> (c) The following disabilities shall be deemed total and permanent:
>
> (1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules[.]

In addition, Section 2(b) of Rule VII of the AREC defines disability as follows:

> Sec. 2. Disability. – x x x.
>
> (b) A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules.

Likewise, Section 2, Rule X of the AREC reads:

> Sec. 2. Period of entitlement. – (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

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[39] *Id.*

There is no question that the referral to a third doctor as provided in Section 20(A)(3) of the POEA-SEC is mandatory in case there are disagreements made by the company-designated physician and the seafarer's chosen physician as to the seafarer's medical condition. This Court in the recent cases of *Murillo v. Philippine Transmarine Carriers, Inc.*[40] and *Dionio v. Trans-Global Maritime Agency, Inc.*,[41] reiterated the settled rule that the referral to a third doctor is mandatory, and that the seafarer's failure to abide thereby is a breach of the POEA-SEC which makes the assessment of the company-designated physician final and binding.

However, our jurisprudence is replete with cases which pronounce that before a seafarer should be compelled to initiate referral to a third doctor, there must first be a final an categorical assessment made by the company-designated physician as to the seafarer's disability within 120/240-day period. Otherwise, the seafarer shall be considered permanently disabled by operation of law.

In *Sunit v. OSM Maritime Services, Inc., et al.* (*Sunit*),[42] this Court, citing *Kestrel Shipping Co., Inc., et al. v. Munar*,[43] ruled that the assessment of the company-designated physician of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days must be definite for it to be controlling in determining the medical condition of the seafarer, to wit:

> We point to our discussion in Kestrel Shipping Co., Inc. *v.* Munar, underscoring that the assessment of the company-designated physician of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days must be definite, *viz*.:
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> Moreover, the company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent

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[40] G.R. No. 221199, August 15, 2018.

[41] G.R. No. 217362, November 19, 2018.

[42] 806 Phil. 505 (2017).

[43] 702 Phil. 717 (2013).

disability within the period of 120 or 240 days. That should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled.[44] (Emphasis and underscoring omitted.)

Moreover, in *Sunit*, this Court stressed:

A final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered.[45]

This Court likewise held in *Carcedo v. Maine Marine Philippines, Inc.(Carcedo)*,[46] that failure of the company-designated doctor to issue a final assessment made the disability of the seafarer therein permanent and total, thus:

We cannot agree with the Court of Appeals and the Labor Arbiter that the 24 March 2009 disability assessment made by Dr. Cruz was definitive. To our mind, the said disability assessment was an interim one because Carcedo continued to require medical treatments even after 24 March 2009. He was confined in the hospital from 20 April 2009 to 6 June 2009, where he underwent serial debridements, curettage, sequestrectomy and even amputation of the right first metatarsal bone. He was certainly still under total disability, albeit temporary at that time.

His discharge from the hospital was 137 days from repatriation. Following the Court's rulings in Vergara and Kestrel, since Carcedo required further medical treatments beyond the 120 day period, (sic) his total and temporary disability was extended. The company-designated physician then had until 240 days from repatriation to give the final assessment.

x x x x x x x x x

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[44] *Supra* note 42, at 517.

[45] *Id.* at 519.

[46] 758 Phil. 166 (2015).

Here, the company-designated physician failed to give a definitive impediment rating of Carcedo's disability beyond the extended temporary disability period, after the 120-day period but less than 240 days. By operation of law, therefore, Carcedo's total and temporary disability lapsed into a total and permanent disability.[47] (Italics supplied.)

Furthermore, in *Fil-Pride Shipping Co., Inc., et al. v. Balasta*,[48] this Court instructed that the company-designated physician must arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days, otherwise, the seafarer's medical condition remains unresolved and the latter shall be deemed totally and permanently disabled. This Court ruled in this wise:

> The company-designated physician must arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days, pursuant to Article 12(c)(1) of the Labor Code and Rule X, Section 2 of the AREC. If he fails to do so and the seafarer's medical condition remains unresolved, the latter shall be deemed totally and permanently disabled.[49]

In the case at bench, the disability grading that Dr. Go, the company-designated doctor, issued was merely an interim assessment and not a final and categorical finding. If it were otherwise, Dr. Go would not have advised the petitioner to continue his rehabilitation. Also, Dr. Lao's subsequent medical report cannot be considered as final assessment as he merely suggested disability grading. Dr. Lao was not the designated doctor who medically evaluated the petitioner's condition. His report is merely a suggestion subject for evaluation by Dr. Lim, the medical coordinator.

This Court pronounced in *Belchem Philippines, Inc./United Philippine Lines, et al. v. Zafra, Jr.*,[50] that a mere "suggestive"

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[47] *Id.* at 183-184.

[48] 728 Phil. 297 (2014).

[49] *Id.* at 312.

[50] 759 Phil. 514 (2015).

disability grading will not suffice as final and definitive medical assessment, thus:

> In this case, petitioners seek the Court's attention to the "final" assessment, dated April 19, 2010, issued by the attending physician, which was earlier quoted.
>
> To the petitioners, this assessment forecloses any claim that Zafra's injury is total or one that incapacitates the employee to continue performing his work. They treat it as the certification required under Section 20(B)(3) of the POEA-SEC as it contained his degree of disability and fitness to resume sea duties.
>
> The statement, however, is clearly devoid of any definitive declaration as to the capacity of Zafra to return to work or at least a categorical and final degree of disability. As pointed out by the CA, all the medical certificates found in the record merely recited his medical history and, worse it made no mention as to whether the seafarer was even capable of resuming work. *In fact, it was* ***merely a suggestion*** *coming from the attending doctor and not from the company-designated physician, as if the letter was written while the process of evaluation was still being completed*. To stress, Section 20(B)(3) of the POEA-SEC requires the declaration of fit to work or the degree of permanent disability by the company-designated physician and not by anyone else. Here, it was only Dr. Chuasuan, Jr. who signed the suggested assessment, addressing the letter solely to Dr. Lim, the company-designated physician. Taken in this context, no assessment, definitive in character, from the company-designated physician's end was issued to reflect whether Zafra was fit or unfit to resume duties within the 120/240-day period, as the case may be. Thus, the Court deems him unfit to resume work on board a sea vessel.[51] (Emphasis supplied; italics supplied.)

Records reveal that petitioner remained incapacitated to resume sea duties even after the company-designated doctor evaluated his medical condition. This means that the petitioner had to still undergo medical treatment even after being seen by the company-designated physician. Obviously, even after the lapse of the maximum 240-day period there was still no final assessment made by the company-designated doctor as to the petitioner's

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[51] *Id.* at 527-528.

disability. With Dr. Go's failure to issue a final and definite assessment of petitioner's condition within the 240-day period, petitioner was thus deemed totally and permanently disabled. It is apparent that petitioner's disability and incapacity to resume working continued for more than 240 days.

Consequently, the absence of a final assessment by the company-designated physician makes the rule on third-doctor-referral inapplicable in the instant case. The failure of the company-designated physician to issue a final assessment and disability grading within the 240-day period made the petitioner's disability total and permanent even without evaluation by a third doctor. Evidently, there is no need for the petitioner to initiate the referral to a third doctor for him to be entitled to permanent disability benefits. In *Carcedo*, this Court decreed that the rule on third doctor referral is not applicable if there is no definitive disability assessment made by the company-designated physician, thus:

> In this case, the third-doctor-referral provision did not find application because of the lack of a definitive disability assessment by the company-designated physician. x x x[52]

Considering the absence of definitive disability assessment made by the company-designated physician, it was by operation of law that the petitioner became permanently disabled.

Viewed in this light, the CA erred in upholding the interim assessment of Dr. Lao over that of Dr. Catapang on the basis of the petitioner's failure to seek medical opinion from a third doctor as provided under the POEA-SEC. It erroneously applied the provisions of the POEA-SEC in isolation with other laws such as the Labor Code and the AREC. The CA should have widened its spectrum in deciding the case and applied the Labor Code provisions on disability benefits. Applying the 2010 POEA-SEC, the Labor Code provisions on permanent disability and the AREC *vis-a-vis* the several jurisprudence concerning seafarer's disability compensation, this Court holds that the

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[52] *Carcedo v. Maine Marine Philippines, Inc., supra* note 38 at 189.

petitioner is, by operation of law, permanently disabled to work as a seafarer.

Lastly, considering that the petitioner was forced to litigate to protect his right and interest, he is entitled to a reasonable amount of attorney's fees pursuant to Article 2208(8) of the Civil Code.[53] However, this Court notes that petitioner failed to prove that the respondents acted in gross and evident bad faith in refusing to satisfy his demands. Records show that the respondents offered to pay the petitioner disability benefits corresponding to a Grade 10 disability which is obviously way below the amount for permanent/total disability. Thus, this Court finds the award of attorney's fees in the amount of US$1,000 as reasonable.[54]

WHEREFORE, the petition is **GRANTED**. The Decision dated June 10, 2015 and Resolution dated January 14, 2016 of the Court of Appeals in CA-G.R. SP No. 136759 are **REVERSED** and **SET ASIDE**. The Respondents are ordered to jointly and severally pay petitioner Jherome G. Abundo the amount of US$60.000 or its equivalent amount in Philippine currency at the time of payment, representing total and permanent disability benefits, plus US$1,000, or its equivalent in Philippine currency, as attorney's fees.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Reyes, A. Jr.*, and *Zalameda*,[**] *JJ.*, concur.

Hernando, J., on leave.

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[53] Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
x x x x x x x x x
(8) In actions for indemnity under workmen's compensation and employer's liability laws.

[54] *Sunit v. OSM Maritime Services, Inc., et al., supra* note 42 at 524.

[**] Designated additional member per Special Order No. 2724 dated October 25, 2019.

SECOND DIVISION

[G.R. No. 224223. November 20, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NORMAN ANGELES *y* MIRANDA,** *accused-appellant.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; PRESUMPTION OF INNOCENCE; PROOF BEYOND REASONABLE DOUBT, OR THAT QUANTUM OF PROOF SUFFICIENT TO PRODUCE A MORAL CERTAINTY AS TO CONVINCE AND SATISFY THE CONSCIENCE OF THOSE WHO ACT IN JUDGMENT IS INDISPENSABLE TO OVERTURN THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE.— The appellant was charged with an offense involving a 0.05 gram of *shabu*, defined and punished under Section 5, Article II of RA 9165. In any criminal prosecution, the accused is to be presumed innocent unless proven guilty beyond reasonable doubt. No less than our Constitution under paragraph 2 of Section 14, Article III mandates that the accused shall be presumed innocent until the contrary is proved. In addition, Section 2, Rule 134 of the Rules of Court specifically provides that "[*i*]*n a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt."* In resolving a criminal case, the burden of proof rests with the prosecution, which must rely on the strength of its own evidence and not on the weakness of the defense. Proof beyond reasonable doubt, or that quantum of proof sufficient to produce a moral certainty as to convince and satisfy the conscience of those who act in judgment is indispensable to overturn the constitutional presumption of innocence. In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt.

2. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); DRUG CASES; THERE SHOULD BE A STRICTER

COMPLIANCE WITH THE RULES WHEN THE AMOUNT OF THE DANGEROUS DRUG IS MINUTE DUE TO THE POSSIBILITY THAT THE ITEM SEIZED COULD BE TAMPERED.— In deciding cases involving minuscule amounts of illegal drugs, courts are reminded to exercise a higher level of scrutiny. The Court mandated that there should be stricter compliance with the rules when the amount of the dangerous drug is minute due to the possibility that the seized item could be tampered. In the case at bench, the seized plastic sachet of *shabu* is 0.05 gram; thus, the Court has every reason to carefully scrutinize whether the law enforcers complied with the procedures outlined by the law. The Court is aware that, in some instances, law enforcers resort to the practice of planting evidence to extract information from or even to harass civilians. The Court has repeatedly been issuing warnings to trial courts to exercise extra vigilance in trying drug cases, lest an innocent person is made to suffer the unusually severe penalties for drug offenses.

3. ID.; ID.; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— To successfully prosecute a case for illegal sale of dangerous drugs the following elements must be proven beyond reasonable doubt: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. The delivery of the illicit drugs to the *poseur*-buyer and the receipt of the marked money by the seller successfully consummate the buy-bust transaction. What is material, therefore, is the proof that the transaction transpired, coupled with the presentation in court of the *corpus delicti*, as evidence.

4. ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; CHAIN OF CUSTODY REQUIREMENT; THE SPECIFIC PROCEDURAL REQUIREMENTS MUST BE OBSERVED IN CASES INVOLVING DANGEROUS DRUGS, FOR IT MUST BE SHOWN BY THE STATE THAT THE IDENTITY AND INTEGRITY OF THE DANGEROUS DRUG HAVE BEEN PRESERVED BECAUSE THE DANGEROUS DRUG ITSELF CONSTITUTES THE *CORPUS DELICTI* OF THE OFFENSE.—In cases involving dangerous drugs, the dangerous drug itself constitutes the *corpus delicti*; thus, its identity and integrity must be shown by the State to have been preserved. Consequently, the prosecution has to account for all the links in the chain of custody of the dangerous drug, from the moment

of seizure from the accused until it is presented in court as proof of *corpus delicti*. Hence, the necessity of observing the chain of custody requirement under Section 21, Article II of RA 9165, and its Implementing Rules and Regulations (IRR). These specific procedural requirements must be followed by the law enforcers and the prosecution must adduce evidence that has to be observed in proving the elements of the defined offense. The intention of the law is to prevent abuse by the law enforcers who have all the power and control during an operation.

5. ID.; ID.; ID.; ID.; THE PURPOSE THEREOF IS TO ENSURE THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PRESERVED, SO MUCH SO THAT UNNECESSARY DOUBTS AS TO THE IDENTITY OF THE EVIDENCE ARE REMOVED.— Section 1(b) of Dangerous Drugs Board Regulation No. 1[,] Series of 2002 which implements RA 9165, provides for the definition of *chain of custody* x x x. The purpose of the chain of custody requirement is to ensure that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed. To avoid any doubt, the prosecution must show the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence. This includes testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. Under Section 3 of Dangerous Drugs Board Regulation No. 2, Series of 2003, chain of custody refers to procedures to account for each specimen by tracking its handling and storage from point of collection to final disposal. These procedures require that the applicant's identity is confirmed and that a Custody and Control Form is used from the time of the collection of the specimen to receipt by the forensic chemist in the laboratory. Within the laboratory, appropriate chain of custody records must

account for the samples until disposal. Section 6 thereof, requires laboratory personnel to document the chain of custody each time a specimen is handled or transferred until its disposal; the board regulation also requires identification of the individuals in this part of the chain.

6. ID.; ID.; ID.; MARKING, PHYSICAL INVENTORY, AND PHOTOGRAPHY OF CONFISCATED DRUGS; REQUIREMENTS; NON-COMPLIANCE THEREWITH VIOLATES THE CHAIN OF CUSTODY AND RESULTS IN THE FAILURE OF THE PROSECUTION TO PROVE THE *CORPUS DELICTI* OF THE OFFENSE CHARGED.— [A]s part of the chain of custody, the law requires that the marking, physical inventory, and photography of the confiscated drugs must be conducted immediately after seizure, although jurisprudence recognized that "marking upon immediate confiscation contemplated even marking at the nearest police station or office of the apprehending team." Moreover, the law directs that the inventory and photography be done in the presence of the accused from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if *prior* to the amendment of RA 9165 by RA 10640, a representative from the media *and* the Department of Justice (DOJ), *and* any elected public official; or (b) if *after* the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service (NPS) *or* the media. Evidently, before the amendment of RA 9165, three witnesses are required to be present during inventory and photography of the seized items. After such amendment, only two witnesses are required to be present, it could either be an elected public official and representative of the NPS or a representative from the media. The presence of these witnesses is intended to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence. x x x Here, the prosecution utterly failed to prove the *corpus delicti* of the offense charged. The law enforcers ignored the requirements provided under Section 21 of RA 9165. They violated the chain of custody by failing to comply with the witness requirements under Section 21 of RA 9165. Records reveal that only a media representative witnessed the alleged inventory of the seized *shabu*. Likewise, it is apparent that not a single photograph of the seized sachet

of 0.05 gram of *shabu* was presented. The records are bereft of any slight indication that photographs of the sachet of *shabu* were duly taken during inventory. It can also be noted that PO1 Paran and PO1 Bilog did not even state in their *Sinumpaang Salaysay* both dated October 27, 2012, that they conducted an inventory of the seized item. PO1 Paran's statements in the *Sinumpaang Salaysay* were inconsistent with his testimonies in open court that he himself conducted the inventory of the 0.05 gram of *shabu* in the presence of the media representative.

7. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTIES; CANNOT PREVAIL OVER THE CONSTITUTIONAL RIGHT OF THE ACCUSED TO BE PRESUMED INNOCENT AND CANNOT ITSELF CONSTITUTE PROOF BEYOND REASONABLE DOUBT.— With the prosecution's pieces of evidence pointing to the appellant's acquittal, the Court is given sufficient reasons to put into serious question the identity of the illegal drug item allegedly seized from the appellant. The theory presented by the prosecution created doubts on the appellant's guilt. Thus, all of the prosecution's statements claiming that the chain of custody was followed cannot be given credence. While the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the appellant to be presumed innocent and cannot itself constitute proof beyond reasonable doubt. This presumption of regularity remains just like a presumption disputable by contrary proof, which if challenged by evidence, cannot be regarded as the binding truth.

8. ID.; ID.; ID.; ID.; CANNOT ARISE WHEN THERE ARE BLATANT VIOLATIONS COMMITTED BY THE AGENTS OF LAW.— The Court x x x disagrees with the RTC and CA rulings that the police officers regularly performed their duty during the buy-bust operation. x x x By failing to follow even the simplest witness requirement under Section 21 and the questionable inventory of the seized item, the police officers cannot be presumed to have regularly exercised their duties during the buy-bust operation. The blatant violations committed by these agents of law cannot be countenanced. Otherwise, the Court will be giving these law enforcers a license to abuse their power

and authority, defeating the purpose of the law, violating human rights and eroding the justice system in this country.

9. ID.; CRIMINAL PROCEDURE; JUDGMENT; WHERE THE CIRCUMSTANCES SHOWN TO EXIST YIELD TWO OR MORE INFERENCES, ONE OF WHICH IS CONSISTENT WITH THE PRESUMPTION OF INNOCENCE WHILE THE OTHER OR OTHERS MAY BE COMPATIBLE WITH THE FINDING OF GUILT, THE COURT MUST ACQUIT THE ACCUSED FOR THE EVIDENCE DOES NOT THEN FULFILL THE TEST OF MORAL CERTAINTY AND IS INSUFFICIENT TO SUPPORT A JUDGMENT OF CONVICTION.— The evidence of the appellant may be weak and uncorroborated, nevertheless, this cannot be used to advance the cause of the prosecution as its evidence must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense. Well-entrenched is the rule that where the circumstances shown to exist yield two or more inferences, one of which is consistent with the presumption of innocence while the other or others may be compatible with the finding of guilt, the Court must acquit the accused for the evidence does not then fulfill the test of moral certainty and is insufficient to support a judgment of conviction.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Hermes A. Dichosa for accused-appellant.

D E C I S I O N

INTING, *J.*:

This is an appeal[1] from the Court of Appeals (CA) Decision[2] dated May 22, 2015 in CA-G.R. CR-HC No. 06678, which

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[1] *Rollo,* pp. 12-13.

[2] *Id.* at 2-11; penned by Associate Justice Agnes Reyes-Carpio with Associate Justices Rosmari D. Carandang (now a member of the Court) and Maria Elisa Sempio Diy, concurring.

affirmed the Decision[3] dated January 30, 2014 of Branch 67, Regional Trial Court (RTC), Binangonan, Rizal, finding Norman Angeles *y* Miranda (appellant) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. (RA) 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

The appellant was charged in an Information[4] for the Illegal Sale of Dangerous Drugs, as follows:

> That on or about the 26th day of October 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 PO1 Raul G. Paran, 0.05 gram of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet, which substance was found positive to the test of Methamphetamine Hydrochloride, also known as "*shabu*," a dangerous drug, in consideration of the amount of Php200.00, in violation of the above-cited law.
>
> CONTRARY TO LAW.[5]

On November 22, 2012, the appellant entered a plea of not guilty to the offense charged.[6] After the termination of the pre-trial, trial on the merits ensued.

Version of the Prosecution

On October 26, 2012, at around 9:30 p.m., the Philippine National Police (PNP) received an information from a confidential informant (CI) that the appellant is engaged in selling illegal drugs in Brgy. Layunan, Binangonan, Rizal. The information was recorded in a blotter and reported to the

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[3] CA *rollo,* pp. 14-15; rendered by Presiding Judge Dennis Patrick Z. Perez.

[4] Records, p. 1.

[5] *Id.*

[6] *Id.* at 73.

Officer-in-Charge (OIC), who then ordered Police Officer I Raul Paran (POl Paran) and POl Rommel Bilog (PO1 Bilog) to verify the report and conduct a buy-bust operation.[7]

After the police officers prepared the marked money and assembled the buy-bust team, they proceeded to the target area. Upon arrival at Valencia St., Brgy. Layunan, Binangonan, Rizal, PO1 Paran and the CI bought ₱200.00 worth of *shabu* from *alias* "Norman," who handed a plastic sachet to the CI.[8] Thereafter, PO1 Paran executed the pre-arranged signal and introduced himself as a police officer to the appellant. PO1 Bilog rushed to the area and assisted PO1 Paran in arresting the appellant. PO1 Paran confiscated the marked money from the appellant and recovered the sachet of white crystalline substance from the CI. POl Paran marked the sachet with the marking "NOR." The police officers then conducted an inventory in the presence of a media representative, Tata Rey Abella of DWDO Radio.[9] After which, they brought the appellant to the police station and detained him. PO1 Paran personally brought the seized plastic sachet of white crystalline substance to the crime laboratory. After the laboratory examination, the forensic chemist found the specimen positive for 0.05 gram of Methamphetamine Hydrochloride or *shabu*, an illegal drug.[10]

Version of the Defense

The appellant interposed the defense of denial.

Appellant insisted that no buy-bust operation took place. He testified that on October 26, 2012, between 8:00 p.m. to 9:00 p.m., he was lying in his bed when he noticed three men inside their compound.[11] A man suddenly pointed a gun at him,

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[7] TSN, May 15, 2013, pp. 4-5.

[8] *Id.* at 8.

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

[10] Records, p. 37.

[11] CA *rollo,* p. 24.

frisked him, searched his house, and arrested him without any valid reason.[12] Appellant asserted that he was illegally charged, tried, and convicted for an offense that he never committed.

The Ruling of the RTC

The RTC found the appellant guilty beyond reasonable doubt of illegal sale of 0.05 gram of *shabu*, sentenced him to suffer life imprisonment, and ordered him to pay a fine of ₱500,000.00. The dispositive portion of the Decision reads:

> In light of the above, we find the accused Norman Angeles GUILTY beyond reasonable doubt of violating Section 5, Article II, R.A. No. 9165 and sentence him to suffer a penalty of life imprisonment and to pay a fine of ₱500,000.00. 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.
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> SO ORDERED.[13]

The RTC ruled that the testimonies of the prosecution witnesses do not suffer any discrepancy; thus, they should be given full weight and credit. It further found that all the elements of illegal sale of dangerous drugs were proven by the prosecution beyond reasonable doubt, and that the chain of custody over the seized sachet with *shabu* was properly established.

Unfazed, the appellant appealed to the CA.

In the Appellant's Brief,[14] the appellant argued that the chain of custody was broken from the beginning when the prosecution failed to present the CI. The appellant insisted that the prosecution should have presented the CI, who handed over the sachet of *shabu* to POl Paran for marking purposes. Accordingly, the first link to the chain of custody was

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[12] TSN, August 14, 2013, pp. 5-6.

[13] CA *rollo,* p.15.

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

immediately broken.[15] The appellant likewise faulted the police officers for failing to comply with the requirements under Section 21, Article II of RA 9165, and to provide an explanation for the noncompliance thereto.[16] Further, he maintained that the operation was not a valid entrapment, but an instigation which is proscribed by the law.[17]

On the other hand, the Office of the Solicitor General (OSG) pointed out in the Appellee's Brief[18] that the chain of custody was never broken. It asserted that it is common knowledge and practice that law enforcement agencies do not allow their confidential informants to be presented in court since it will expose their cover and identities; thus, the agency will lose their assets.[19] It highlighted that the testimonies of the prosecution witnesses are more than sufficient to prove that an illegal sale of *shabu* took place. Moreover, the OSG maintained that all the elements of the offense charged were proven with moral certainty. It argued that the operation was a valid buy-bust operation, and not an instigation.[20] Accordingly, the act of the operatives in asking the appellant if he has *shabu* for sale and purchasing it from the latter is not an instigation.

The Ruling of the CA

On June 10, 2015, the CA dismissed the appeal for lack of merit. The CA agreed with the RTC that the chain of custody was never broken despite the non-presentation of the CI. It upheld the credibility of the prosecution witnesses' testimonies[21] that established the chain of custody of the subject seized sachet of *shabu* — from its confiscation from the appellant until it was forwarded to the crime laboratory. Also, it ruled that the

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[15] *Id.* at 26.

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

[17] *Id.* at 35-36.

[18] *Id*. at 64-82.

[19] *Id*. at 70.

[20] *Id.* at 78-80.

[21] *Rollo,* p. 8.

operation was not an instigation, and that the appellant was caught *in flagrante delicto* during a valid entrapment operation.[22] The CA disposed of the case as follows:

> WHEREFORE, the appeal is DISMISSED. The Decision dated January 30, 2014 is AFFIRMED with MODIFICATION in that accused-appellant is not eligible for parole. The Decision is affirmed in all other respects.
>
> SO ORDERED.[23]

Aggrieved, the appellant appealed to the Court.[24]

Our Ruling

The Court grants the appeal.

The main issues in the case hinge on the determination of whether the elements of illegal sale of dangerous drugs were all satisfied, and whether the integrity and evidentiary value of the sachet containing *shabu* were duly preserved by complying with the requirements provided under Section 21, Article II of RA 9165.

The appellant was charged with an offense involving a 0.05 gram of *shabu*, defined and punished under Section 5, Article II of RA 9165. In any criminal prosecution, the accused is to be presumed innocent unless proven guilty beyond reasonable doubt. No less than our Constitution under paragraph 2 of Section 14, Article III mandates that the accused shall be presumed innocent until the contrary is proved. In addition, Section 2, Rule 134 of the Rules of Court specifically provides that "[*i*]*n a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt*."

In resolving a criminal case, the burden of proof rests with the prosecution, which must rely on the strength of its own

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

[23] *Id.* at 10.

[24] *Id.* at 12-13.

evidence and not on the weakness of the defense.[25] Proof beyond reasonable doubt, or that quantum of proof sufficient to produce a moral certainty as to convince and satisfy the conscience of those who act in judgment is indispensable to overturn the constitutional presumption of innocence.[26]

In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt.[27]

In *People v. Guerrero*[28] the Court discussed:

> x x x "by the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great." Thus, while it is true that a buy-bust operation is legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors, the law nevertheless requires strict compliance with procedures laid down by it to ensure that rights are safeguarded.[29]

In deciding cases involving minuscule amounts of illegal drugs, courts are reminded to exercise a higher level of scrutiny.[30] The Court mandated that there should be stricter compliance with the rules when the amount of the dangerous drug is minute due to the possibility that the seized item could be tampered.[31] In the case at bench, the seized plastic sachet of *shabu* is

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[25] *People v. Battung,* G.R. No. 230717, June 20, 2018.

[26] *People v. Abdula,* G.R. No. 212192, November 21, 2018.

[27] *People v. Malabanan,* G.R. No. 241950, April 10, 2019 citing *People v. Suan,* 627 Phil. 174, 188 (2010).

[28] G.R. No. 228881, February 6, 2019.

[29] *Id.* Citations omitted. Emphasis and underscoring omitted.

[30] *People v. Tumangong*, G.R. No. 227015, November 26, 2018 citing *People v. Caiz,* 630 Phil. 637, 655 (2010).

[31] *People v. Tumangong, supra*.

0.05 gram; thus, the Court has every reason to carefully scrutinize whether the law enforcers complied with the procedures outlined by the law. The Court is aware that, in some instances, law enforcers resort to the practice of planting evidence to extract information from or even to harass civilians.[32] The Court has repeatedly been issuing warnings to trial courts to exercise extra vigilance in trying drug cases, lest an innocent person is made to suffer the unusually severe penalties for drug offenses.[33]

To successfully prosecute a case for illegal sale of dangerous drugs the following elements must be proven beyond reasonable doubt: (l) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.[34] The delivery of the illicit drugs to the *poseur*-buyer and the receipt of the marked money by the seller succesfully consummate the buy-bust transaction.[35] What is material, therefore, is the proof that the transaction transpired, coupled with the presentation in court of the *corpus delicti*, as evidence.[36]

In cases involving dangerous drugs, the dangerous drug itself constitutes the *corpus delicti*; thus, its identity and integrity must be shown by the State to have been preserved.[37] Consequently, the prosecution has to account for all the links in the chain of custody of the dangerous drug, from the moment of seizure from the accused until it is presented in court as proof of *corpus delicti.*[38] Hence, the necessity of observing

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[32] *People v. Bricero,* G.R. No. 218428, November 7, 2018 citing *People v. Daria, Jr.*, 615 Phil. 744, 767 (2009).

[33] *People v. Bricero, supra* citing *Sales v. People*, 602 Phil. 1047, 1053 (2009).

[34] *People v. Yagao*, G.R. No. 216725, February 18, 2019.

[35] *People v. Sipin*, G.R. No. 224290, June 11, 2018.

[36] *Id*.

[37] *Casona v. People,* G.R. No. 179757, September 13, 2017, 839 SCRA 448, 558.

[38] *Id*.

the chain of custody requirement under Section 21, Article II of RA 9165, and its Implementing Rules and Regulations (IRR). These specific procedural requirements must be followed by the law enforcers and the prosecution must adduce evidence that has to be observed in proving the elements of the defined offense. The intention of the law is to prevent abuse by the law enforcers who have all the power and control during an operation.

Section 1 (b) of Dangerous Drugs Board Regulation No. 1 Series of 2002 which implements RA 9165, provides for the definition of *chain of custody*, *viz.*:

> Sec. 1. Definition of Terms – 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 records 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 the time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition. (Italics supplied)

The purpose of the chain of custody requirement is to ensure that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed.[39] To avoid any doubt, the prosecution must show the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence.[40] This includes testimony about every link in the chain, from the moment the item was picked up to the time it is offered

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[39] *People v. Alboka,* G.R. No. 212195, February 21, 2018, 856 SCRA 252, 270 citing *People v. Ismael,* G.R. No. 208093, February 20, 2017, 818 SCRA 122. See also *People v. Andrada,* G.R. No. 232299, June 20, 2018.

[40] *People v. Belmonte,* G.R. No. 224588, July 4, 2018.

into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain.[41] These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[42]

Under Section 3 of Dangerous Drugs Board Regulation No. 2, Series of 2003,[43] chain of custody refers to procedures to account for each specimen by tracking its handling and storage from point of collection to final disposal. These procedures require that the applicant's identity is confirmed and that a Custody and Control Form is used from the time of the collection of the specimen to receipt by the forensic chemist in the laboratory. Within the laboratory, appropriate chain of custody records must account for the samples until disposal. Section 6 thereof, requires laboratory personnel to document the chain of custody each time a specimen is handled or transferred until its disposal; the board regulation also requires identification of the individuals in this part of the chain.

In *People v. Sipin*,[44] the Court reiterated the links that must be established in the chain of custody in a buy-bust operation, to wit:

> The links that must be established in the chain of custody in a buy-bust situation, are as follows: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officers; the turn-over of the illegal drug seized to the investigating officer; (3) the turn-over by the investigating officer of

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[41] *Mallillin v. People,* 576 Phil. 576, 587 (2008).

[42] *Id.*

[43] Implementing Rules and Regulations Governing Accreditation of Drug Testing Laboratories in the Philippines.

[44] *Supra* note 35.

the illegal drug to the forensic chemist for laboratory examination; and (4) the turn-over and submission of the illegal drug from the forensic chemist to the court.[45]

To ensure the establishment of the chain of custody, Section 21(1), Article II of RA 9165 specifies that:

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.* – x x x

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

x x x x x x x x x

Complementing the foregoing rule, Section 21(a) of the Implementing Rules and Regulations (IRR) of RA 9165 provides:

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.* – x x x

(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

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[45] *Id.* citing *People v. Amaro,* 786 Phil. 139, 148 (2016).

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. (Italics supplied)

On July 15, 2014, RA 10640[46] amended RA 9165 as follows:

The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equiptment shall, immediately after seizure and confiscation, conduct physical inventory of the seized items and photograph the same *in the presence of the accused* or the persons from whom such items were confiscated and/or seized or his/her representative or counsel, *with an elected public official and a representative of the National Prosecution Service or the media* who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over the said items. (Italics Supplied)

From the foregoing rules, it is crystal clear that as part of the chain of custody, the law requires that the marking, physical inventory, and photography of the confiscated drugs must be conducted immediately after seizure, although jurisprudence recognized that "marking upon immediate confiscation contemplated even marking at the nearest police station or office of the apprehending team."[47]

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[46] 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.

[47] *People v. Alconde,* G.R. No. 238117, February 4, 2019 citing *People v. Mamalumpon*, 767 Phil. 845, 855 (2015).

Moreover, the law directs that the inventory and photography be done in the presence of the accused from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if *prior* to the amendment of RA 9165 by RA 10640, a representative from the media *and* the Department of Justice (DOJ), *and* any elected public official;[48] or (b) if *after* the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service (NPS) *or* the media.[49] Evidently, before the amendment of RA 9165, three witnesses are required to be present during inventory and photography of the seized items. After such amendment, only two witnesses are required to be present, it could either be an elected public official and representative of the NPS or a representative from the media. The presence of these witnesses is intended to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.[50]

In *People v. Tomawis,*[51] the Court explained the rationale of the law in requiring the presence of these witnesses, thus:

> The presence of the witnesses from the DOJ, media and from public elective office is necessary against the possibility of planting, contamination, or loss of the seized drugs. Using the language of the Court in *People v. Mendoza*, without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-bust conducted under the regime of RA 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that were evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.

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[48] Section 21(1) and (2), Article II of RA 9165.

[49] Section 2l, Article II of RA 9165, as amended by RA 10640.

[50] *People v. Alconde, supra* note 47.

[51] G.R. No. 228890, April 18, 2018.

The presence of the three witnesses must be secured not only during inventory but more importantly **at the time of the warrantless arrest**. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so – and "calling in them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished – does not achieve the purpose of the law in having these witnesses prevent or insulate against planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation."[52] (Emphasis in the original; citations omitted)

Here, the prosecution utterly failed to prove the *corpus delicti* of the offense charged. The law enforcers ignored the requirements provided under Section 21 of RA 9165. They violated the chain of custody by failing to comply with the witness requirements under Section 21 of RA 9165. Records reveal that only a media representative witnessed the alleged inventory of the seized *shabu*.[53] Likewise, it is apparent that not a single photograph of the seized sachet of 0.05 gram of *shabu* was presented. The records are bereft of any slight indication that photographs of the sachet of *shabu* were duly taken during inventory.

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[52] *Id.*

[53] Records, p. 44.

It can also be noted that POl Paran and POl Bilog did not even state in their *Sinumpaang Salaysay*[54] both dated October 27, 2012, that they conducted an inventory of the seized item. POl Paran's statements in the *Sinumpaang Salaysay* were inconsistent with his testimonies in open court that he himself conducted the inventory of the 0.05 gram of *shabu* in the presence of the media representative.[55]

Indubitably, the appellant should not be deprived of his freedom. With the prosecution's pieces of evidence pointing to the appellant's acquittal, the Court is given sufficient reasons to put into serious question the identity of the illegal drug item allegedly seized from the appellant. The theory presented by the prosecution created doubts on the appellant's guilt. Thus, all of the prosecution's statements claiming that the chain of custody was followed cannot be given credence.

While the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the appellant to be presumed innocent and cannot itself constitute proof beyond reasonable doubt.[56] This presumption of regularity remains just like a presumption disputable by contrary proof, which if challenged by evidence, cannot be regarded as the binding truth.[57]

The Court likewise disagrees with the RTC and CA rulings that the police officers regularly performed their duty during the buy-bust operation. The Court in *People v. Sipin*[58] emphasized, thus:

> Invocation of the disputable presumptions that the police officers regularly performed their official duty and that the integrity of the evidence is presumed to be preserved, will not suffice to uphold

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[54] *Id.* at 7-8, 9-10.

[55] TSN, May 15, 2013, p. 9.

[56] *People v. Cantalejo,* 604 Phil. 658, 668 (2009).

[57] *Id.*

[58] *Supra* note 35.

appellant's conviction. Judicial reliance on the presumptions of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally flawed because the lapses themselves are affirmative proofs of irregularity. The presumption may only arise when there is a showing that the apprehending officers/team followed the requirements of Section 21 or when the saving clause found in IRR is successfully triggered.[59] (Citations omitted.)

By failing to follow even the simplest witness requirement under Section 21 and the questionable inventory of the seized item, the police officers cannot be presumed to have regularly exercised their duties during the buy-bust operation. The blatant violations committed by these agents of law cannot be countenanced. Otherwise, the Court will be giving these law enforcers a license to abuse their power and authority, defeating the purpose of the law, violating human rights and eroding the justice system in this country.

Although it is well-settled that non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses,[60] records disclose that no plausible explanation was forwarded by the prosecution as to why no representative from the National Prosecution Service nor an elected public official was not present during the inventory and photography of the confiscated *shabu.* Neither was it proven by the prosecution that the police officers exerted genuine and sufficient efforts to secure the presence of the required witnesses. The failure to follow the witness requirements under Section 21 was completely ignored and was left unjustified by the prosecution.

Furthermore, there were no statements on how the item was preserved. The records of the case are bereft of any evidence showing that the sachet of 0.05 gram of *shabu* was preserved and was not substituted or contaminated. There is no assurance

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[59] *Id.*

[60] *People v. Alconde, supra* note 47 citing *People v. Manansala,* G.R. No. 229092, February 21, 2018.

that the sachet of *shabu* tested in the laboratory is the same sachet of dangerous drug allegedly confiscated from the appellant. Likewise, the records also do not indicate: (1) how the sachet was handled after the laboratory examination; (2) what container was used to safely keep the seized item; (3) where the seized items were stored to prevent contamination and substitution; and (4) the identity of the person who had the custody of the specimen before its presentation in court. Evidently, the integrity and evidentiary value of the seized sachet of *shabu* were never preserved.

The evidence of the appellant may be weak and uncorroborated, nevertheless, this cannot be used to advance the cause of the prosecution as its evidence must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense.[61] Well-entrenched is the rule that where the circumstances shown to exist yield two or more inferences, one of which is consistent with the presumption of innocence while the other or others may be compatible with the finding of guilt, the Court must acquit the accused for the evidence does not then fulfill the test of moral certainty and is insufficient to support a judgment of conviction.[62]

There is no question that drug addiction has been invariably denounced as an especially vicious crime, and one of the most pernicious evils that crept into our society; however, in the rightfully vigorous campaign of the government to eradicate the hazards of drug use and trafficking, it cannot be permitted to run roughshod over an accused's right to be presumed innocent until proven to the contrary, and neither can it shirk from its corollary obligation to establish such guilt beyond reasonable doubt. Here, the prosecution failed to meet the required quantum of evidence sufficient to support a conviction, in which case, the constitutional presumption of innocence prevails.

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[61] *People v. Santos, Jr.*, 562 Phil. 458, 473 (2007).

[62] *Id.*

All told, considering the non-compliance with the rules and that the prosecution's evidence utterly failed to overcome the presumption of innocence of the appellant, the Court cannot, but acquit him on the ground of reasonable doubt.

WHEREFORE, the petition is **GRANTED.** The Decision dated May 22, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06678 is **REVERSED** and **SET ASIDE.** The appellant is hereby **ACQUITTED** and is ordered immediately **RELEASED** from detention, unless he is detained for some other lawful cause. Let entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, New Bilibid Prison, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is **ORDERED** to **REPORT** to this Court the action taken hereon within five days from receipt of this Decision.

SO ORDERED.

Perlas-Bernabe (*Chairperson*), *Reyes, A. Jr.,* and *Zalameda,*[*] *JJ.,* concur.

Hernando, J., on leave.

SECOND DIVISION

[G.R. No. 229661. November 20, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NASSER LUMINDA *y* EDTO,** *accused-appellant.*

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[*] Designated additional member per Special Order No. 2724 dated October 25, 2019.

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.—** In order to secure the conviction of an accused charged with IllegaI Sale of Dangerous Drugs, the prosecution must prove: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment.

2. **ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; TO ENSURE THE INTEGRITY OF THE SEIZED DRUG ITEM, THE PROSECUTION MUST ACCOUNT FOR EACH LINK IN ITS CHAIN OF CUSTODY.—** [T]o remove any unnecessary doubt on the identity of the dangerous 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 factual circumstances of the case tell us that the buy-bust operation happened on June 21, 2011. At that time, the effective law enumerating the requirements of the chain of custody rule was Section 21, Article II of RA 9165. x x x To supplement the x x x provision, [is] Section 21(a) of the Implementing Rules and Regulations (IRR) of RA 9165 x x x. [T]o ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody, to wit: *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.

3. **ID.; ID.; ID.; PHYSICAL INVENTORY AND PHOTOGRAPHY OF SEIZED ITEMS; REQUIREMENTS; NON-COMPLIANCE THEREWITH IS EXCUSABLE WHEN THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED, BUT THE PROSECUTION MUST PROVIDE A CREDIBLE JUSTIFICATION FOR THE ARRESTING OFFICERS' FAILURE TO COMPLY WITH THE PROCEDURE OUTLINED IN THE LAW.—** [U]nder the original

provision of Section 21 and its IRR, the apprehending team was required to conduct a physical inventory and photographing of the seized items immediately after their seizure and consfication in the presence of **no less than** three witnesses, namely: (1) a representative from the media; (2) a representative from the Department of Justice (DOJ); **and** (3) any elected public official. They must sign the inventory and be furnished with their own copy thereof. It follows therefore that the so-called insulating witnesses should already be physically present at the time of apprehension, a requirement that should easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. And while non-compliance with the requirements is excusable, this only applies when the integrity and evidentiary value of the seized items were properly preserved. The prosecution must provide a credible justification for the arresting officers' failure to comply with the procedure outlined in Section 21, Article II of RA 9165. x x x Based on the x x x testimonies, it is readily apparent that there are several breaches in the chain of custody. *First*, the venue of the inventory was not properly complied with. x x x In the present case, both the marking and the inventory were conducted in Camp Karingal, without any explanation as to the distance from the nearest police station or nearest office of the apprehending team. x x x *Second*, both PO2 Cabling and PO2 Nepuscua admitted that there was neither a representative from the DOJ nor a barangay official during the conduct of the post-operation procedures. And yet, the prosecution was silent on why the required witnesses were unavailable. x x x *Third*, as We review the submissions of the prosecution and the defense, the Court finds that among the people who came into direct contact with the seized drug item, only PO2 Cabling actually testified to identify it. The testimony of the forensic chemist PCI Martinez was dispensed with. x x x What is clear x x x is the lack of stipulations required for the proper and effective dispensation of the testimony of the forensic chemist. x x x The prosecution also failed to present the investigator, PO1 Cagurungan, as well as the evidence custodian, or the person to whom the alleged seized *shabu* was delivered after the laboratory examination. The evidence custodian, in particular, could have testified on the circumstances under which he or she received the item, what he or she did with them during the time that the items were in his or her custody,

or what happened during the time that the items were transferred to the trial court. The absence of the testimony of the evidence custodian obviously presents a break in the links in the chain of custody of the evidence. Without the testimonies and stipulations stating the details on when and how the seized sachet of *shabu* was brought from the crime laboratory to the court, and the specifics on who actually delivered and received the same from the crime laboratory to the court, it cannot be ascertained whether the seized item presented in evidence was the same one confiscated from appellant upon his arrest.

4. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE CONDUCT OF POLICE DUTY; CANNOT OVERTHROW THE PRESUMPTION OF INNOCENCE OF THE ACCUSED IN THE ABSENCE OF PROOF BEYOND REASONABLE DOUBT.— Selling drugs is a vicious crime that often breeds other crimes. It is not what one might call a "contained" crime whose consequences are limited to that crime alone. Nevertheless, it is startling how the necessity of preserving the *corpus delicti* in this case and complying with the simple requirement with regard to the number and identity of the witnesses enumerated by the law can be glossed over and excused. It cannot be stressed enough that the burden of proving the guilt of the appellant lies on the strength of the evidence of the prosecution. Even if We presume that our law enforcers performed their assigned duties beyond reproach, the Court cannot allow the presumption of regularity in the conduct of police duty to overthrow the presumption of innocence of the accused in the absence of proof beyond reasonable doubt.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

INTING, *J.*:

The Court supports the serious efforts of the government in its campaign against the menace of prohibited drugs.

The merchants of all prohibited drugs, from the rich and powerful syndicates to the individual street pushers, must be hounded relentlessly and punished to the full extent of the law. Even so, we must be watchful against the conviction of alleged drug-pushers on the basis of less than satisfactory evidence of their guilt. Such evidence may be the result only of an excess of zeal or lack of deference for constitutional rights. In such cases, the accused is entitled to be acquitted on the ground of reasonable doubt.[1]

Nasser Luminda *y* Edto (appellant) was charged with violation of Section 5, Article II of Republic Act No. (RA) 9165 or the Illegal Sale of Dangerous Drugs as stated in the Information, *viz.*:

> That on or about the 21st day of June 2011 in Quezon City, Philippines, the above-named accused, without any lawful authority, did then and there, willfully, unlawfully and knowingly sell, trade, administer, disperse, deliver, give away to another, distribute, dispatch in transit or transport, or act as broker in the said transaction, one (1) heat sealed plastic sachet containing zero point ten (0.10) grams of white crystalline substance containing Methamphetamine Hydrochloride, a dangerous drug.
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> CONTRARY TO LAW.[2]

Appellant pleaded "not guilty" to the charge against him and trial on the merits ensued.

The prosecution anchored its case on the testimony of Police Officer II Zaldy Cabling (PO2 Cabling), summarized as follows:

On June 21, 2011, a confidential informant went to the District Anti-Illegal Drugs-Special Operations Task Group (DAID-SOTG) of the Quezon City Police District and informed Police Chief Inspector Richard Ian T. Ang (PCI Ang) about the illegal

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[1] See *People v. Labarias*, 291 Phil. 511, 518 (1993) and *People v. Manalansan*, 267 Phil. 651, 658 (1990).

[2] Records, p. 1.

activities of a certain person in the area of Philcoa and Commonwealth, Quezon City.[3] Acting on such information, PCI Ang formed a buy-bust team wherein PO2 Cabling was designated as the buyer and PO2 Benjamin Nepuscua (PO2 Nepuscua) as the back-up arresting officer. A ₱500.00-bill was also prepared as a marked money with the initials "ZC."[4]

At around 9:20 p.m., the buy-bust team arrived at Jollibee, Philcoa, Quezon City. The confidential informant and PO2 Cabling proceeded in front of Jollibee, while PO2 Nepuscua went inside and posed as a customer. Later, the confidential informant approached the appellant, introduced PO2 Cabling, and whispered to him that the latter was going to buy ₱500.00 worth of *shabu*. The appellant took out something from his pocket and handed it to PO2 Cabling. On the other hand, PO2 Cabling, while handing to appellant the marked money, removed his cap, the pre-arranged signal. Immediately, the back-up police officers arrested the appellant. PO2 Nepuscua recovered from him the buy-bust money. As the rain was pouring heavily that night, the buy-bust team decided to proceed to their office and mark the evidence (seized item) thereat.[5]

At the office, the police officers marked the seized item in the presence of the investigator, PO1 Warlito P. Cagurungan (PO1 Cagurungan) and media representative, Rey Argana of Police Files Tonite. Appellant was also present during the conduct of the inventory, but he refused to sign the document. Meanwhile, PO2 Cabling turned over the seized item to PO1 Cagurungan and signed the Chain of Custody Form.[6] PO1 Cagurungan prepared the Arrest and Booking Sheet,[7] Request for Drug Test/Dependency Examination,[8] Request for Laboratory

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[3] *Rollo*, p. 3.

[4] *Id.*

[5] *Id.* at 4.

[6] Records, p. 169.

[7] *Id.* at 171.

[8] *Id.* at p. 176.

Examination[9] and Physical Examination.[10] He also took a photograph[11] of appellant and the seized item. Thereafter, PO2 Cabling and PO1 Cagurungan brought the appellant and the seized item to the crime laboratory for examination. The result of the laboratory examination conducted by PCI Maridel Rodis Martinez, the Forensic Chemist, showed that the seized item of white crystalline substance was positive for the presence of *shabu*, an illegal drug.

For his defense, appellant recalled that on June 21, 2011, at around 9:00 a.m., he was in Kalayaan Plaza arranging his merchandise of compact discs (CDs) and wallets when three police officers in uniform approached and arrested him. They boarded him in a vehicle that later cruised around Quezon City Circle, and demanded the amount of ₱60,000.00 for his release. When he told them that he did not have such amount, they brought and detained him at the police station. There, the police officers instructed him to point at a plastic sachet containing *shabu* and a ₱500.00-bill placed on top of a table. He initially refused, but one of the police officers hit him with the head of a gun. Afterwards, he was again hit with the butt of an armalite on his right shoulder before going to the City Hall.[12]

On January 13, 2015, the RTC rendered its Judgment[13] finding appellant guilty beyond reasonable doubt of the offense charged in the Information. The *fallo* of which reads:

> WHEREFORE, IN THE LIGHT OF THE FOREGOING, judgment is hereby rendered ordering the CONVICTION of accused NASSER LUMINDA *y* [EDTO] for the offense charged and is hereby sentenced to suffer the penalty of Life Imprisonment and to pay a fine of ₱500,000.00.

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[9] *Id.* at p. 177.

[10] *Id.* at 178.

[11] *Id.* at 181.

[12] *Rollo*, p. 5.

[13] CA *rollo*, pp. 55-65. Penned by Presiding Judge Fernando T. Sagun, Jr.

As the accused is a detention prisoner, his period of detention shall be properly credited in his favor in strict conformity with the provision of the rules.

The dangerous drugs submitted as evidence in this case is hereby ordered to be transmitted to the Philippine Drug Enforcement Agency (PDEA), for destruction and/or disposition in strict conformity with the provisions of our laws, rules and regulations on the matter.

Let the Mittimus and necessary documents be prepared for the immediate transfer of the custody of accused to the Bureau of Corrections, National Bilibid Prisons in Muntinlupa City, pursuant to OCA Circular No. 4-92-A.

SO ORDERED.[14]

On appeal, the CA affirmed *in toto* the Judgment of the RTC.

The Public Attorney's Office (PAO) manifested appellant's intent to appeal in a Notice of Appeal[15] dated May 11, 2016.

The Office of the Solicitor General (OSG) filed a Manifestation (In Lieu of Supplemental Brief)[16] on August 3, 2017 which stated that it will no longer submit a Supplemental Brief considering that the appellee's brief filed before the CA adequately discussed its arguments on the merits of the case. The Special and Appealed Cases Service of the PAO likewise filed a Manifestation (In Lieu of Supplemental Brief)[17] on August 10, 2017 stating that it is also adopting the issues and arguments in the Appellant's Brief[18] which was submitted before the CA.

In the Appellant's Brief filed with the CA, the PAO submitted three assignment of errors, to wit:

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[14] *Id.* at 64-65.

[15] *Id.* at 114-115.

[16] *Rollo*, pp. 25-26.

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

[18] CA *Rollo*, pp. 34-53.

1. THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE THAT THE POLICE CONDUCTED A VALID ENTRAPMENT OPERATION AGAINST HIM.
2. THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROCEDURAL LAPSES ON THE PART OF THE POLICE OFFICERS IN THE CUSTODY OF THE ALLEGEDLY SEIZED ILLEGAL DRUG.
3. THE COURT A QUO GRAVELY ERRED IN ADMITTING IN EVIDENCE THE ALLEGEDLY SEIZED ILLEGAL DRUG DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH EVERY LINK IN THE CHAIN OF CUSTODY.[19]

Further, the PAO pointed out in the Appellant's Brief the following irregularities: *first*, the seized illegal drug allegedly recovered from the appellant was not marked at the place of seizure but in Camp Karingal; and that the police officers cited the heavy rainfall in the area at that time and the possibility of commotion in Jollibee for their failure to immediately mark the evidence;[20] *second*, during the inventory of the item, only a representative from the media was present, while the other witnesses required by the law were absent.[21]

There is merit in the present appeal.

We focus on the identity and integrity of the drug allegedly seized from the appellant.

In order to secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, the prosecution must prove: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment.[22] More so, to remove any unnecessary doubt

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[19] *Id.* at 36.

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

[21] *Id.* at 49.

[22] *People v. Dela Torre*, G.R. No. 238519, June 26, 2019 citing *People v. Sumili*, 753 Phil. 342, 348 (2015).

on the identity of the dangerous 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.[23]

The factual circumstances of the case tell us that the buy-bust operation happened on June 21, 2011. At that time, the effective law enumerating the requirements of the chain of custody rule was Section 21, Article II of RA 9165. It states:

> 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 supplied; underscoring supplied.)

To supplement the above-quoted provision, Section 21(a) of the Implementing Rules and Regulations (IRR) of RA 9165 provides that:

> Sec. 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursor and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. – x x x

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[23] *People v. Dela Torre, supra*.

(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 warranties seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. (Emphasis supplied.)

Simply put, to ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody, to wit: *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.[24]

In addition, under the original provision of Section 21 and its IRR, the apprehending team was required to conduct a physical inventory and photographing of the seized items immediately after their seizure and confiscation in the presence of **no less than** three witnesses, namely: (1) a representative from the media; (2) a representative from the Department of Justice (DOJ); **and** 3) any elected public official. They must sign the inventory and be furnished with their own copy thereof.[25] It

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[24] *People v. Banding*, G.R. No. 233470, August 14, 2019 citing *People v. Nandi*, 639 Phil. 134 (2010).

[25] *People v. Refe*, G.R. No. 233697, July 10, 2019.

follows therefore that the so-called insulating witnesses should already be physically present at the time of apprehension, a requirement that should easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.[26] And while non-compliance with the requirements is excusable, this only applies when the integrity and evidentiary value of the seized items were properly preserved. The prosecution must provide a credible justification for the arresting officers' failure to comply with the procedure outlined in Section 21, Article II of RA 9165.[27]

Here, the prosecution witness PO2 Cabling narrated:

ACP FLOR

Q: You said that you were introduced by the confidential informant to alias Buboy, how did the confidential informant introduce you to him?

A: The confidential informant introduced me to alias Buboy that I am going to buy drugs worth Php500.00, sir.[28]

x x x x x x x x x

Q: What was the reply of alias Buboy?

A: After that alias Nasser glanced around and then he took something from his pocket and handed it to me, sir.

Q: What was it that alias Buboy took out from his pocket which he handed over to you?

A: He took the shabu worth Php500.00 and gave it to me, sir.

Q: After he gave it to you, what happened next?

A: After I gave him the Php500.00 and when it was being handed to alias Buboy, I then simultaneously executed the pre-arranged signal to the group, sir.

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[26] *People v. Manabat*, G.R. No. 242947, July 17, 2019.

[27] *People v. Refe, supra* note 25 citing *People v. Barte*, 806 Phil. 533, 544 (2017).

[28] TSN, March 22, 2012, p. 18.

Q: What was the pre-arranged signal that you executed?

A: I removed my cap, sir.

Q: The Php500.00 that you were referring to was the same exhibit that we marked before, Mr. Witness?

A: Yes, sir.[29]

x x x x x x x x x

ACP FLOR: Submitted before this Honorable Court is a plastic sachet containing white crystalline substance, which was submitted by the Forensic Chemist. Your Honor, it appears that the plastic sachet is contained in a transparent plastic bag.

ATTY. LAURON: Yes, Your Honor, and we could see the contents of the small plastic bag, only one specimen.

COURT: With only one specimen inside?

ATTY. LAURON: Yes, Your Honor.

ACP FLOR: (to the witness)

Q: I'm showing you this plastic sachet, what is the relation of this plastic sachet to the sachet that you removed from the accused during the buy-bust operation?

A: That's the one I recovered, sir.

Q: Why did you say that this is the same plastic sachet?

A: I have my markings, sir.

Q: Where did you place these markings that you were referring to?

A: On the plastic sachet, sir.

Q: Can you read for the record what was the marking that you placed on this sachet?

A: ZC-NL-6-21-11, sir.[30]

x x x x x x x x x

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[29] TSN, March 22, 2012, pp. 19-20.

[30] *Id.* at 21-22.

Q: Where did you mark that plastic sachet, Mr. Witness?

A: We marked it at the Police Station because we were not able to mark in front of Jollibee due to heavy rain, sir.[31] (Emphasis supplied.)

x x x x x x x x x

Q: Who recovered the buy-bust money?

A: PO2 Nepuscua, sir.

Q: From whom did you recover the buy-bust money?

A: From Nasser, sir.

Q: After the arrest of alias Buboy and the recovery of the items, what happened next?

A: After recovery, I conducted body search and informed him of his rights, sir.

Q: What happened next, Mr. Witness?

A: We were about to mark but the rain was pouring hard so we were forced to go to the station, sir.

Q: Who's in custody of the sachet from the place of arrest up to the station?

A: I, sir.[32] (Emphasis supplied.)

Furthermore,

Q: You also testified that you could not make the markings because it was already raining?

A: Yes, sir.

Q: You could not make the findings inside the Jollibee where they have tables and other things?

A: We were trying to avoid any problem and we were also avoiding the commotion in Jollibee that's why we decided to proceed to our office, sir.

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[31] *Id.* at 22.

[32] *Id.* at 24-25.

Q: What do you mean problem or commotion, what do you mean?

A: From what I know, in arrests being made, sometimes there are commotion that happen and the rain also started to fall heavily that's why we decided to go to our office, sir.

Q: Now, you could have easily made these markings inside the restaurant and you were cops. Are you telling us that you cannot control the people, the diners of Jollibee?

x x x x x x x x x

A: When we make arrest, we consider primarily the security and welfare of everyone, sir.[33] (Emphasis supplied)

PO2 Nepuscua also testified as a member of the buy-bust operation team:

ATTY. LAURON:

Q: Aside from not having an elected official and DOJ representative to witness the inventory taking, do you have any evidence whatsoever that could show this Ray Agana has any sort of certification that will prove that he is actually a media practitioner like a machine copy of his identification card. Do you have one?

A: I remember, sir that we secured the xerox copy of his ID.

Q: Where is it?

A: It's the Investigator sir that compiled all the documents.[34]

Based on the foregoing testimonies, it is readily apparent that there are several breaches in the chain of custody.

First, the venue of the inventory was not properly complied with.

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[33] TSN, June 18, 2013, pp. 77-79.

[34] TSN, March 18, 2014, p. 137.

In *People v. Cañete*,[35] the Court interpreted the phrase "immediately after seizure and confiscation" to mean that both the physical inventory and photographing of the seized items must be conducted at the place of apprehension and in the presence of the required witnesses, who shall sign the copies of the inventory and be given a copy thereof. This also means that the required witnesses should already be physically present at the time of the conduct of the physical inventory of the seized items. Although the IRR allows alternative places for the conduct and photographing of the seized drugs, the requirement of having the three required witnesses to be physically present at the time or near the place of apprehension is not dispensed with. Accordingly, it is at the time of arrest that their presence is most needed in order to guard against the police practice of planting evidence.[36]

In the present case, both the marking and the inventory were conducted in Camp Karingal, without any explanation as to the distance from the nearest police station or nearest office of the apprehending team. The only explanation given was that the police officers were simply avoiding any unrest or disturbance in Jollibee. To the Court's mind, though, neither the heavy rainfall nor the possibility of commotion in the area will justify the deviation. Any untoward incident is, at best, speculative.[37] In fact, in one case, the Court considered as a hollow excuse the explanation of the apprehending officer who conducted the inventory at the nearest police station because he was the "only one" in the area and that "there were many persons there."[38] In the same way, in *People v. Sood*[39] and *People v. Cornel* (*Cornel*),[40]

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[35] G.R. No. 242018, July 3, 2019 citing *People v. Musor*, G.R. No. 231843, November 7, 2018.

[36] *Id.*

[37] *People v. Dela Torre*, G.R. No. 225789, July 29, 2019.

[38] *People v. Mola*, G.R. No. 226481, April 18, 2018, 862 SCRA 112, 124.

[39] G.R. No. 227394, June 6, 2018, 865 SCRA 368.

[40] G.R. No. 229047, April 16, 2018, 861 SCRA 267.

the Court ruled that the buy-bust team's excuse of the existence of a commotion was not a justifiable reason for failing to conduct the inventory at the place of seizure. In *Cornel*, especially, the Court pointed out that seven armed members of the buy-bust team could have easily contained any commotion; thus, they should have been able to conduct the marking and inventory at the place of seizure.

Second, both PO2 Cabling and PO2 Nepuscua admitted that there was neither a representative from the DOJ nor a barangay official during the conduct of the post-operation procedures. And yet, the prosecution was silent on why the required witnesses were unavailable. The prosecution could have easily asserted and proved that: (1) the media representatives were not available at that time or that the police operatives had no time to alert the media due to the immediacy of the operation they were about to undertake, especially if it is done in remote areas; (2) the police operatives, with the same reason, failed to find an available representative of the National Prosecution Service; or (3) the police operative, due to time constraints brought about by the urgency of the operation to be undertaken and in order to comply with the provisions of Article 125[41] of the Revised Penal Code (RPC) in the timely delivery of prisoners, were not able to comply with all the requisites set forth in

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[41] Art. 125. Delay in the delivery of detained persons to the proper judicial authorities. – The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of: twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent and thirty-six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, or their equivalent.

In every case, the person detained shall be informed of the cause of his detention and shall be allowed upon his request, to communicate and confer at any time with his attorney or counsel. (As amended by Executive Order Nos. 59 and 272, Nov. 7, 1986 and July 25, 1987, respectively).

Section 21, Article II of RA 9165.[42] In *People v. Sarip* (*Sarip*),[43] the Court elaborated:

The prosecution never alleged and proved that the presence of the required witnesses was not obtained for any of the following reasons, 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 elected public official within the period require 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.

Earnest effort to secure the attendance of the necessary witnesses must also be proven as held in *People v. Ramos*, thus:

It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that **the prosecution must show that earnest efforts were employed in contacting the representative enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance.** These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they

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[42] *People v. Sarip*, G.R. No. 231917, July 8, 2019 citing *People v. Angelita Reyes, et al.*, G.R. No. 219953, April 23, 2018.

[43] G.R. No. 231917, July 8, 2019.

have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing fully well that they would have to strictly comply with the set procedure prescribed in section 21 of RA 9165. As such, **police officers are compelled not only to state the reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable**.[44] (Emphasis supplied. Citations omitted.)

The Court in *Sarip* acquitted the accused on the ground of the prosecution's non-observance of the three-witness rule coupled with its failure to provide justification therefor. The case at bar suffers from the same infirmity. An examination of the records reveals that the inventory[45] as well as the photographing of the seized item was made in the presence of only one witness, Rey Argaga of Police Files Tonite. While the arresting officer, PO2 Nepuscua and seizing officer, PO2 Cabling were present, there were no elective official and a DOJ representative. Noticeably, the prosecution had failed to acknowledge this fact, much less provide a justification for it.

Third, as We review the submissions of the prosecution and the defense, the Court finds that among the people who came into direct contact with the seized drug item, only PO2 Cabling actually testified to identify it. The testimony of the forensic chemist PCI Martinez was dispensed with. In its Order[46] dated June 18, 2013, the RTC enumerated the stipulations agreed upon by the parties, *viz.*:

In order to abbreviate the proceedings, the counsels for the parties decided to enter into stipulation/admission of facts as regards the proposed testimony of Police Chief Inspector Maridel Rodis Martinez, and these are as follows:

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[44] *Id.*

[45] See Receipt/Inventory of Property Seized, records, p. 170.

[46] *Id.* at 132-133.

1. That Police Chief Inspector Maridel Rodis Martinez was the duly designated Forensic Chemist in this instant case;
2. That she received the Request for Laboratory Examination dated June 21, 2011 together with the object evidence from PO1 Warlito Cagurungan on June 21, 2011;
3. That thereafter, she conducted forensic examination on the said object evidence that she received and thereafter came up with Initial Laboratory Report No. D-136-11 and Final Chemistry Report No. D-136-11;
4. The due execution, authenticity, as well as the contents of the Initial Laboratory Report and the Final Chemistry Report;
5. That she can identify the object evidence that she received and examined if shown to her at the witness stand.
6. That she was the one who personally turned over the custody of the object evidence to the Court;
7. That she was not one of the alleged seizing/arresting officer;
8. That she has no personal knowledge as to the alleged arrest and seizure;
9. That she has no personal knowledge as to the source or origin of the allegedly seized object evidence;
10. That she did not conduct quantitative examination on the alleged object evidence as shown in the records.

What is clear from the foregoing is the lack of stipulations required for the proper and effective dispensation of the testimony of the forensic chemist. In *People v. Pajarin, et al.*,[47] the Court reminded that in case of a stipulation by the parties to dispense with the attendance and testimony of the forensic chemist, it should be stipulated that the forensic chemist would have testified that he had taken the precautionary steps required in order to preserve the integrity and evidentiary value of the seized item. These steps include: (1) that the forensic chemist received the seized article as marked, properly sealed, and intact; (2) that he resealed it after examination of the content;

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[47] 654 Phil. 461, 466 (2011).

and (3) that he placed his own marking on the same to ensure that it could not be tampered pending trial.[48]

Here, the stipulations between the prosecution and the defense did not cover the manner the specimen was handled before it came in the possession of PCI Martinez and after it left her possession. In fact, they only referred to the analytic results of the laboratory examination on the specimen without mentioning how it was handled. The prosecution also failed to present the investigator, PO1 Cagurungan, as well as the evidence custodian, or the person to whom the alleged seized *shabu* was delivered after the laboratory examination. The evidence custodian, in particular, could have testified on the circumstances under which he or she received the item, what he or she did with them during the time that the items were in his or her custody, or what happened during the time that the items were transferred to the trial court. The absence of the testimony of the evidence custodian obviously presents a break in the links in the chain of custody of the evidence.[49] Without the testimonies and stipulations stating the details on when and how the seized sachet of *shabu* was brought from the crime laboratory to the court, and the specifics on who actually delivered and received the same from the crime laboratory to the court, it cannot be ascertained whether the seized item presented in evidence was the same one confiscated from appellant upon his arrest.[50]

Selling drugs is a vicious crime that often breeds other crimes. It is not what one might call a "contained" crime whose consequences are limited to that crime alone. Nevertheless, it is startling how the necessity of preserving the *corpus delicti* in this case and complying with the simple requirement with regard to the number and identity of the witnesses enumerated by the law can be glossed over and excused. It cannot be stressed enough that the burden of proving the guilt of the appellant lies

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[48] *Id.* See also *People v. Ubungen*, G.R. No. 225497, July 23, 2018.

[49] *People v. Orcullo*, G.R. No. 229675, July 8, 2019.

[50] *People v. Mola, supra* note 38.

on the strength of the evidence of the prosecution. Even if We presume that our law enforcers performed their assigned duties beyond reproach, the Court cannot allow the presumption of regularity in the conduct of police duty to overthrow the presumption of innocence of the accused in the absence of proof beyond reasonable doubt.[51]

WHEREFORE, the Court **GRANTS** the appeal. The Decision dated April 15, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 07402, which affirmed the Judgment dated January 13, 2015 of Branch 78, Regional Trial Court, Quezon City in Criminal Case No. Q-11-170890 finding Nasser Luminda *y* Edto guilty of violating Section 5, Article II of Republic Act No. 9165 is **REVERSED AND SET ASIDE**. Nasser Luminda *y* Edto is hereby **ACQUITTED** on reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause.

Let a copy of this Resolution be sent to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is **DIRECTED** to **REPORT** the action he has taken to this Court within five days from receipt of this Resolution.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Reyes, A. Jr.*, and *Zalameda*,[*] *JJ.*, concur.

Hernando, J., on leave.

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[51] *People v. Orcullo, supra.*

[*] Designated additional member per Special Order No. 2724 dated October 25, 2019.

SECOND DIVISION

[G.R. No. 232339. November 20, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JEFFERSON MARON *y* EMPLONA, JONATHAN ALMARIO *y* CAYGO and NESTOR BULAHAN *y* GUTIERREZ,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; MURDER; ELEMENTS. — Article 248 of the Revised Penal Code (RPC) defines the crime of Murder x x x The elements of Murder are: (1) that a person was killed; (2) that the accused killed him; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide.

2. REMEDIAL LAW; EVIDENCE; TESTIMONIES; IDENTIFICATION OF APPELLANTS AS PERPETRATORS OF THE CRIME, UPHELD. — [I]n *Avelino v. People*, the Court explained that, "the light from the stars or the moon, an oven, or a wick lamp or *gasera* can give ample illumination to enable a person to identify or recognize another" and that "the headlights of a car or a jeep are sufficient to enable eyewitnesses to identify appellants at the distance of four to ten meters." Here, Alma's testimony identifying appellants as the perpetrators of the crime is credible since aside from the illumination provided by the electric post, Alma was already aware of appellants' presence who were already near her and Michael while they were still talking for ten minutes.

3. CRIMINAL LAW; REVISED PENAL CODE; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; ELEMENTS; IT IS NOT ENOUGH THAT THE ATTACK WAS SUDDEN, UNEXPECTED AND WITHOUT WARNING; THERE MUST BE A SHOWING THAT THE MODE OF ATTACK WAS CONSCIOUSLY ADOPTED. — In order for treachery to quality murder, the following elements must be established: (1) the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity

to defend himself or to retaliate; and (2) said means, methods or forms of execution were deliberately or consciously adopted by the assailant. Thus, it is not enough for the prosecution to show that the attack was sudden, unexpected and without warning. Rather, there must be a showing that the mode of attack was consciously adopted and that the accused made "some preparation to kill the deceased in a manner as to insure the execution of the crime or to make it impossible or hard for the person attacked to defend himself or retaliate."

4. ID.; ID.; ID.; ID.; EMPLOYING MEANS TO WEAKEN THE DEFENSE; CASE AT BAR. — Employing means to weaken the defense as a qualifying circumstance in murder is also found under Article 14(15) of the RPC as an aggravating circumstance, to wit: Art. 14. *Aggravating circumstances*. – The following are aggravating circumstances: x x x 15. That advantage be taken of superior strength, or means be employed to weaken the defense. x x x [I]n determining whether the qualifying circumstance of employing means to weaken the defense is present in this case, the Court shall be guided by the same standard in determining the presence of abuse of superior strength, *i.e.*, "notorious inequality of forces between the victim and the aggressor/s that is plainly and obviously advantageous to the aggressor's and purposely selected or taken advantage of to facilitate the commission of the crime." Here, Alma's testimony is clear as to how appellants stabbed Michael successively using their respective weapons. The fact that Michael was unarmed, that he was ganged up by appellants, and that the latter were equipped with and took advantage of their respective knives and *kawit* in inflicting fatal wounds on Michael, show a notorious inequality of forces which was obviously advantageous to the appellants.

5. ID.; ID.; ID.; PENALTY AND DAMAGES; IN THE ABSENCE OF ANY AGGRAVATING CIRCUMSTANCE, THE PENALTY FOR MURDER IS *RECLUSION PERPETUA*; THE AWARD OF CIVIL INDEMNITY, MORAL DAMAGES, AND EXEMPLARY DAMAGES SHOULD BE ₱75,000.00 EACH. — Anent the penalty, the Court finds the CA's imposition of the penalty of *reclusion perpetua* correct. However, there is a need to clarify the basis for the penalty because the CA erroneously awarded civil indemnity, moral damages, and exemplary damages in the amount of ₱100,000.00 each. In *People v. Jugueta* (*Jugueta*),

the rule is that civil indemnity, moral damages, and exemplary damages to be awarded shall be ₱100,000.00 each where the penalty imposed is death but reduced to *reclusion perpetua* because of Republic Act No. 9346, otherwise known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines." Here, treachery should not be appreciated anymore as an aggravating circumstance. But with the appreciation of the qualifying circumstance of employing means to weaken the defense of the victim, the crime committed is Murder. Thus, in the absence of any aggravating circumstance, the penalty that must be imposed on the appellants is *reclusion perpetua* and not death. Following *Jugueta*, the award of civil indemnity, moral damages, and exemplary damages, where the penalty imposed is *reclusion perpetua* other than the above-stated rule, should be ₱75,000.00 each.

6. ID.; ID.; ID.; ID.; LOSS OF EARNING CAPACITY; COMPUTATION. — [As to] the loss of earning capacity, it is computed as follows: Net Earning Capacity = Life expectancy x [Gross Annual Income - Living Expenses] = [2/3 (80 - age at death)] x [GAI - [50% of GAI]]

APPEARANCES OF COUNSEL

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

D E C I S I O N

INTING, *J.*:

This is an appeal from the Decision[1] dated September 5, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07451, which affirmed with modification the Decision[2] dated November 4, 2014, of Branch 32, Regional Trial Court (RTC), San Pablo City, Laguna in Criminal Case No. 17492 SP(10).

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[1] *Rollo*, pp. 2-13; penned by Associate Justice Carmelita Salandanan Manahan with Associate Justices Japar B. Dimaampao and Franchito N. Diamante, concurring.

[2] CA *rollo*, pp. 39-55; rendered by Presiding Judge Agripino G. Morga.

Antecedents

In an Information[3] filed on January 6, 2010, Jefferson Maron *y* Emplona (Maron), Jonathan Almario *y* Caygo (Almario) and Nestor Bulahan *y* Gutierrez (Bulahan) (collectively, appellants) were indicted for the crime of Murder under Article 248 of the Revised Penal Code (RPC), allegedly committed as follows:

> That on or about January 04, 2010, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, with intent to kill, with evident premeditation and treachery and employing means to weaken the defense, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully, and feloniously repeatedly stab one MICHAEL A. CLARIANES with three (3) different bladed weapons, with which the accused were then conveniently provided, thereby inflicting stab wounds upon the person of said Michael A. Clarianes which caused his immediate death.
>
> CONTRARY TO LAW.[4]

Upon arraignment, the appellants pleaded not guilty.[5] Thus, trial ensued.

As culled from the records, the version for the prosecution is as follows:

> On 4 January 2010, at around 10:00 p.m., while Michael Clarianes ("Michael") and Alma Exconde ("Alma") were seated on a bench and engaged in a conversation, three (3) male persons on board a motorcycle arrived near the shores of Sampaloc Lake, Brgy. 5-A, San Pablo City. Two (2) of them alighted from the motorcycle, one went in front of Michael and Alma and urinated along the banks of the lake, while the other went behind a coconut tree nearby. The former then told his companions, "pare, tawagan natin si pare." One of his companions replied, "siguro'y tulog na pero tawagan na din natin."

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[3] Records, p. 1.

[4] *Id.*

[5] *Rollo*, p. 3.

Ten minutes later, the man who urinated suddenly approached Alma and pointed a knife to her neck. Likewise, the person who hid behind the coconut tree approached Michael and pointed a knife at him. The men then announced, "holdap ito ilabas na ninyo ang inyong cellphone pera at alahas at hindi kayo mamamatay wag lang kayong maingay."

Thereafter, the person who stayed at the motorcycle approached Michael and Alma, brandishing a "*kawit*." Michael cried for help and attempted to fight. The three men, however, repeatedly stabbed Michael until he slumped on the ground lifeless. Alma sought help but nobody came to help them. After stabbing Michael, the three persons scampered away, prompting Alma to once again ask for help. Minutes later, a mobile patrol arrived. Michael was brought to Ace Funeral Homes where he was pronounced dead.

x x x x x x x x x[6]

As for the version of the defense:

On the other hand, accused-appellants denied the charges against them and interposed their respective alibis.

Maron, a construction worker, testified that in the evening of 4 January 2010, he was at their house at Brgy. San Lucas I, San Pablo City with his parents, aunt, and six siblings. He allegedly watched the television before going to bed at around 11:00 p.m. The following morning, PO2 Sacdalan came to Maron's house and bought the latter to the police station to line up in front of a lady witness who identified him as one of the assailants of Michael.

Almario claims to be a magkakawit ng niyog and a co-worker of the father of his co-accused Bulahan. He testified that on 4 January 2010, at around 7:00 p.m., he and his two children were at their house located near Brion Subdivision, Brgy. San Lucas I, San Pablo City. After dinner, they went to bed and rested. At around 10:00 a.m. of the following day, while he was taking a bath, five police officers led by PO2 Sacdalan went to the house, handcuffed and arrested him. He was then brought to the police station where he was told to stand in a police line-up. He was identified by Alma as one of the persons who stabbed Michael.

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

Bulahan testified that he was a helper at Siete-Tres, a small canteen located in front of Seven Eleven along Maharlika Highway, San Pablo City. On 4 January 2010, he reported for work at 8:00 a.m. and went home together with his wife Andrea Balino at 8:00 p.m. After having dinner at home, he, his wife, and his parents went to sleep. The next day, he went to work at 6:00 a.m. At around 10:00 a.m. of 5 January 2010, several policemen arrived and arrested him. He was brought to a police van where he saw Almario, Maron, his wife and a certain Pale. They proceeded to the police station and were asked to stand in a police line-up.[7]

The Postmortem Examination Report[8] revealed that Michael A. Clarianes' (Michael) death was caused by the stab wounds in the body involving the left lung and great vessels, to wit:

1. lacerated wound – 5 cm x 1 cm x 0.5 cm, head, parietal area, right
2. lacerated wound – 4 cm x 2.5 cm x 0.5 cm head, mid-frontal area
3. stab wound – 5 cm x 2 cm x 9 cm chest, left, anterior axillary line in between the 2nd and 3rd ribs, directed postero-medially, penetrating the upper lobe of the lung, left and the aorta
4. stab wound – 5 cm x 2 cm x 11 cm chest, lateral axillary line, directed postero-medially, penetrating the upper lobe of the lung, left and the interior vena cava
5. stab wound – 5 cm x 2 cm abdomen, lower quadrant, left, hitting and exposing the small intestines.

CAUSE OF DEATH: STAB WOUNDS IN THE BODY INVOLVING THE LEFT LUNG AND GREAT VESSELS.[9]

At the time of the incident, Michael was 27 years old and employed on probationary status by Hesper's Garment Corporation, receiving a daily salary of ₱293.00.[10]

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[7] *Id.* at 4-5.

[8] Exhibit "D", folder of exhibits, p. 5.

[9] *Id.*

[10] *Rollo*, p. 4.

Ruling of the RTC

In its Decision[11] dated November 4, 2014, the RTC found appellants guilty beyond reasonable doubt of the crime of Murder.[12]

The RTC ruled that Alma Exconde (Alma) positively identified the appellants as the persons who repeatedly stabbed Michael in the evening of January 4, 2010, near Sampaloc Lake, Brgy. 5-A, San Pablo City.[13]

The RTC also explained that during cross-examination, Alma further clarified how she was able to recognize the faces of the three assailants and reiterated the details of the incident.[14] Alma narrated the distance of the appellants from her, and what the appellants were wearing, thus:

Q: Madam Witness, in that place where you went together with Michael Clarianes, at 10:00 p.m., were there other people around that place?
A: None, there were other persons who passed by but none actually was there at the place of the incident, sir.

Q: Am I correct to say, Madam Witness, that when you arrived there, the accused were not yet there?
A: Yes, sir.

Q: You mentioned a while ago an electric post, which is eight (8) meters from your place?
A: Yes, sir.

Q: And you also mentioned that there were trees around?
A: Yes, sir.

Q: Do you recall which are taller, the electric post or the trees?
A: The trees were taller than the electric post, sir.

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[11] CA *rollo*, pp. 39-55.

[12] *Id.* at 54.

[13] *Id.* at 45.

[14] *Id.* at 49.

Q: What kind of trees are you referring to?
A: I think it is Mahogany, sir.

Q: Do you recall whether these trees have many leaves?
A: Yes, sir.

Q: Madam Witness, you mentioned the first one of the accused in this case urinated, how far from you?
A: One and a half (1 & 1/2) meters, sir.

Q: How about the second accused whom you mentioned stayed near the motorcycle, how far was he from you?
A: At that post, estimated to be about four (4) meters sir.

Q: How about the other person whom you mentioned, who stayed behind the tree, how far was he from you at that time?
A: About one (1) meter, sir.

Q: The first accused was in front of you, which you said one and a half (1 & ½) meters as you mentioned, do you recall what he wore?
A: A white t-shirt, sir.

Q: Was he wearing short pants?
A: Short pants, sir.

Q: How about the second accused, four (4) meters away from you, and near the motorcycle, do you recall what he wore?
A: White t-shirt and short pants sir.

Q: And how about the third accused?
A: Colored t-shirt and short pants, sir.

Q: Madam Witness, you mentioned a while ago that from the arrival of the three (3) accused, you noticed.... I will withdraw that, Your Honor. You mentioned a while ago that there was something wrong when these three (3) accused arrived, surrounding you and yet you mentioned that you suspected something will happen and you still talking for ten (10) minutes?
A: Yes, sir.

Q: In this case, you were talking, you and Michael Clarianes, did the three (3) persons stay in the place where they positioned themselves in that place they stayed there?
A: The male person who urinated, walked to and from, the place near us, as if they were bothered by something, sir.

Q: How about the accused in the motorcycle?
A: Almario did not leave and stayed in the motorcycle, sir.

Q: How about the third person?
A: He stayed near the coconut tree, sir.

Q: If he is behind the coconut tree, can you see his face?
A: Yes, sir.[15]

The RTC further ruled that the third, fourth, and fifth stab wounds of Michael: two on the chest, and one on the abdomen were fatal as described in the *Postmortem* Examination Report.[16] It further ruled that the attack on Michael was sudden; thus, it provided him with no opportunity to be able to defend himself from the moment Maron approached Alma and Michael, pointed his knife at Alma, announced "hold-up," and up to the time that Bulahan poked his knife at Michael and appellants repeatedly stabbed Michael.[17]

Lastly, based on the evidence presented by the prosecution, the RTC awarded Michael's heirs ₱1,230,600.00 representing his loss of earning capacity and ₱54,000.00 for his funeral and burial expenses.[18] The RTC then awarded civil indemnity, moral damages, and exemplary damages to Michael's heirs.[19]

The RTC disposed as follows:

WHEREFORE, premises considered, judgment is hereby rendered FINDING all three accused JEFFERSON MARON *y* EMPLONA, JONATHAN ALMARIO *y* CAYGO and NESTOR BULAHAN *y* GUTIERREZ, GUILTY beyond reasonable doubt of the crime of murder as charged in the Information, and hereby IMPOSES on them the penalty of *Reclusion Perpetua*, with all the accessory penalties, and to pay the heirs of victim Michael Clarianes the following:

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[15] TSN, May 20, 2010, pp. 7-9.

[16] CA *rollo*, pp. 51-52.

[17] *Id.* at 52.

[18] *Id.* at 53-54.

[19] *Id.* at 54.

a. ₱50,000.00, as civil indemnity;
b. ₱54,000.00, as actual and compensatory damages;
c. ₱50,000.00, as moral damages;
d. ₱25,000.00, as exemplary damages;
e. ₱1,230,600.00, as and for loss of earning capacity of the victim; and
f. Costs of the suit.

The three accused are hereby ordered committed to the National Bilibid Prisons immediately.

SO ORDERED.[20]

Ruling of the CA

On appeal, the CA denied the appeal and affirmed the RTC Decision with modification only as to the monetary awards in its Decision[21] dated September 5, 2016.

The CA disposed as follows:

WHEREFORE, premises considered, the appeal is DISMISSED. The Decision dated 4 November 2014 of the Regional Trial Court, Branch 32 of San Pablo City in Criminal Case No. 17492-SP(10) is AFFIRMED with the following MODIFICATIONS:

All accused-appellants JEFFERSON MARON *y* EMPLONA, JONATHAN ALMARIO *y* CAYGO and NESTOR BULAHAN *y* GUTIERREZ are found GUILTY beyond reasonable doubt of the crime of murder defined under Article 248 of the Revised Penal Code, attended by the aggravating circumstance of treachery, and sentences each of them to suffer the penalty of *reclusion perpetua*, without eligibility for parole under RA 9346. They are ordered to pay solidarily the heirs of victim Michael Clarianes the following:

a. Php 100,000.00 as civil indemnity;
b. Php 54,000.00 as actual and compensatory damages;
c. Php 100,000.00 as moral damages;
d. Php 100,000.00 as exemplary damages;

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[20] *Id.* at 54-55.

[21] *Rollo*, pp. 2-13.

e. Php 1,230,600.00 for loss of earning capacity of the victim; and
f. Costs of the suit.

They are likewise ordered to pay the interest rate of six percent (6%) per annum from the time of finality of this decision until fully paid, to be imposed on all awards and damages.

SO ORDERED.[22]

Hence, this appeal.[23]

In a Resolution[24] dated August 14, 2017, the Court required the parties to file their Supplemental Briefs. However, the parties filed their Manifestation (In Lieu of Supplemental Brief)[25] stating therein their intent to adopt their respective Appellant's and Appellee's Briefs filed before the CA as their Supplemental Briefs.

Our Ruling

We deny the appeal.

Article 248 of the Revised Penal Code (RPC) defines the crime of Murder as follows:

Art. 248 *Murder*. – Any person, who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity;

x x x x x x x x x

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

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

[24] *Id.* at 19.

[25] *Id.* at 21-24, 28-30.

The elements of Murder are: (1) that a person was killed; (2) that the accused killed him; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide.[26]

All of the elements of Murder are present in this case. Alma, the prosecution witness, positively identified appellants. She also described in her testimony how appellants ganged up on Michael and stabbed him to death, thus:

DIRECT EXAMINATION BY PROS. OSCAR T. CO:

x x x x x x x x x

Q: So, after one of them, I will withdraw that. So, while they were doing that, do you recall what happened next, if any?

A: After we were talking for about ten (10) minutes, Jefferson Maron urinated at the lake and then he approached me and poked a knife on my leeg and the person who was near the tree poked a knife to Michael. The person who urinated in front of us told us, hold-up, and demanded for our money. The person who standing before the motorcycle holding a karet and swayed it in front of us, sir.

Q: While doing this, while poking the knife at you and Michael Clarianes, what if any you did?

A: Michael Clarianes shouted, "tulong," we were being hold-up, so the three (3) accused ganged up on Michael sir.

Q: What these three (3) accused did to Michael Clarianes?

A: Walang awa po nilang pinagsasaksak at pinatay si Michael Clarianes, sir.

Q: Did you see them stabbed Michael Clarianes, each of them?

A: Yes, sir.

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[26] *Aguilar v. Department of Justice*, 717 Phil. 789, 801-802 (2013) citing *People v. Dela Cruz*, 626 Phil. 631, 639 (2010).

COURT

Q: Who first stabbed Michael Clarianes?

A: I cannot recall who first stabbed Michael Clarianes but what I know that the person who approached me and poked a knife on my neck stabbed Michael Clarianes, Your Honor.

Q: How about the one who went near Michael Clarianes, what did you see him doing?

A: I saw that he hit with his karet Michael's head and slashed his stomach with a karet, Your Honor.

Q: And after you saw the three (3) accused stabbed Michael Clarianes, what else did you do?

A: I shouted for help. I said "tulong" for two (2) times, "my companion was being killed, and there was a man but he was just looking for us, Your Honor."

Q: When the accused ran away, where was Michael Clarianes at that time?

A: He was already lying down and dead, Your Honor.[27]

In their appeal, appellants questioned the presence of the second element. They argued that Alma could not have seen their faces since, coupled with the suddenness and brevity of the attack, there was no sufficient illumination to allow Alma to identify the perpetrators of the crime.[28] They also argued that based on Alma's testimony, the area was covered with mahogany trees, which were heavy with foliage; thus, the only source of light which came from the overhanging electric post would have cast shadows over the faces of Michael's attackers.[29]

However, in *Avelino v. People*,[30] the Court explained that, "the light from the stars or the moon, an oven, or a wick lamp

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[27] TSN, May 20, 2010, pp. 3-4.

[28] CA *rollo*, p. 34.

[29] *Id.*

[30] 714 Phil. 322 (2013).

or *gasera* can give ample illumination to enable a person to identify or recognize another" and that "the headlights of a car or a jeep are sufficient to enable eyewitnesses to identify appellants at the distance of four to ten meters."[31]

Here, Alma's testimony identifying appellants as the perpetrators of the crime is credible since aside from the illumination provided by the electric post, Alma was already aware of appellants' presence who were already near her and Michael while they were still talking for ten minutes.

As to the third element of Murder, the Court needs to clarify the qualifying circumstance present which would qualify the crime committed by appellants to murder.

Contrary to the ruling of the RTC and the CA, the Court finds that the killing of Michael was not attended by treachery.

In *People v. Enriquez, Jr.*,[32] the Court explained that, "(t)here is treachery when the offender commits any of the crimes against persons, employing means and methods or forms in the execution thereof which tend to directly and specially ensure its execution x x x."[33] Further, "(t)he essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself and thereby ensuring its commission without risk of himself."[34]

In order for treachery to qualify murder, the following elements must be established: (1) the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or to retaliate; and (2) said means, methods or forms of execution were deliberately or consciously adopted by the assailant.[35]

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[31] *Id.* at 331-332 (2013) citing *People v. Sabalones*, 356 Phil. 255, 293 (1998).

[32] G.R. No. 238171, June 19, 2019.

[33] *Id.*, citing *People v. Duran, Jr.*, G.R. No. 215748, November 20, 2017, 845 SCRA 188, 211.

[34] *Id.*, citing *People v. Escote, Jr.*, 448 Phil. 749, 786 (2003).

[35] *Id.*, citing *People v. Duran, Jr., supra.*

Thus, it is not enough for the prosecution to show that the attack was sudden, unexpected and without warning.[36] Rather, there must be a showing that the mode of attack was consciously adopted and that the accused made "some preparation to kill the deceased in a manner as to insure the execution of the crime or to make it impossible or hard for the person attacked to defend himself or retaliate."[37]

Here, the RTC and the CA erroneously ruled that the killing of Michael was attended by treachery. It cannot be said that Michael did not expect that he would be stabbed by appellants since the latter already announced "hold-up" while Maron and Bulahan were poking their knives at Alma and Michael, and while Almario was brandishing his *kawit*[38] in front of them. Michael also had the opportunity to shout for help.[39] Further, there is no showing that appellants made some preparations to kill Michael in the said manner since Alma's testimony shows that appellants originally planned to rob them.[40]

However, the Court finds that appellants are still guilty of murder since the killing of Michael was attended by the qualifying circumstance of employing means to weaken the defense.

Employing means to weaken the defense as a qualifying circumstance in murder is also found under Article 14(15) of the RPC as an aggravating circumstance, to wit:

Art. 14. *Aggravating circumstances*. – The following are aggravating circumstances:

x x x x x x x x x

15. That advantage be taken of superior strength, or means be employed to weaken the defense.

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[36] *Id.*, citing *People v. Sabanal*, 254 Phil. 433, 436-437 (1989).

[37] *People v. Kalipayan*, G.R. No. 229829, January 22, 2018.

[38] Referred to as "*karet*" in some parts of the TSN.

[39] *Rollo*, p. 4.

[40] *Id.*

In *People v. Revillame*,[41] the Court quoted *People v. Cabiling* (*Cabiling*),[42] which in turn explained and adopted Cuello Calon's view on the appreciation of abuse of superior strength or employing means to weaken the defense. The Court in *Cabiling* discussed:

> To take advantage of superior strength means to purposely use excessive force out of proportion to the means of the defense available to the person attacked. According to Cuello Calon, it is: "'*Abuse of superior numbers or employment of means to weaken the defense*' (Art. 10, 8.a.). This circumstance greatly resembles *alevosia* when placed in a situation of advantage over those on whom it is employed, such that one is confused for the other. This circumstance should always be considered whenever there is a *notorious inequality of forces* between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime. To properly appreciate it, not only is it necessary to evaluate the physical conditions of the protagonists of opposing forces and the arms or objects employed by both sides, but it is also necessary to analyze the incidents and episodes constituting the development of the event. There is no need for previous agreement among the aggressors." Thus in *People v. Verzo*, this Court held that there was abuse of superior strength which qualified the killing where three of the defendants were wielding bolos, whereas the victim was unarmed and trying to flee.[43] (Citations omitted.)

Further, in *People v. Loreto*,[44] the Court ruled that there are no fixed and invariable rules regarding abuse of superior strength or employing means to weaken the defense.[45] The Court explained:

> x x x Article 14, paragraph 15 of the Revised Penal Code provides that a crime against persons is aggravated by the accused taking

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[41] 300 Phil. 698 (1994).

[42] 165 Phil. 887 (1976).

[43] *Id.* at 906-907.

[44] 446 Phil. 592 (2003).

[45] *Id.* at 611.

advantage of superior strength. *There are no fixed and invariable rules regarding abuse of superior strength or employing means to weaken the defense of the victim.* Superiority does not always mean numerical superiority. Abuse of superiority depends upon the relative strength of the aggressor *vis-a-vis* the victim. There is abuse of superior strength even if there is only one malefactor and one victim. *Abuse of superiority is determined by the excess of the aggressor's natural strength over that of the victim, considering the position of both and the employment of means to weaken the defense*, although not annulling it. The aggressor must have advantage of his natural strength to insure the commission of the crime.[46] (Italics supplied.)

Following the discussion of Cuello Calon in *Cabiling*,[47] abuse of superior strength and employment of means are taken as one and the same aggravating circumstance. Further, it appears that employment of means to weaken the defense is, at the very least, subsumed under the qualifying circumstance of abuse of superior strength.

Thus, in determining whether the qualifying circumstance of employing means to weaken the defense is present in this case, the Court shall be guided by the same standard in determining the presence of abuse of superior strength, *i.e.*, "notorious inequality of forces between the victim and the aggressor/s that is plainly and obviously advantageous to the aggressor's and purposely selected or taken advantage of to facilitate the commission of the crime."[48]

Here, Alma's testimony is clear as to how appellants stabbed Michael successively using their respective weapons. The fact that Michael was unarmed, that he was ganged up by appellants, and that the latter were equipped with and took advantage of their respective knives and *kawit* in inflicting fatal wounds on Michael, show a notorious inequality of forces which was obviously advantageous to the appellants.

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[46] *Id.*

[47] *Supra* note 42.

[48] *People v. Dimapilit*, G.R. No. 210802, August 9, 2017, 836 SCRA 514, 544.

Anent the penalty, the Court finds the CA's imposition of the penalty of *reclusion perpetua* correct. However, there is a need to clarify the basis for the penalty because the CA erroneously awarded civil indemnity, moral damages, and exemplary damages in the amount of ₱100,000.00 each.

In *People v. Jugueta* (*Jugueta*),[49] the rule is that civil indemnity, moral damages, and exemplary damages to be awarded shall be ₱100,000.00 each where the penalty imposed is death but reduced to *reclusion perpetua* because of Republic Act No. 9346, otherwise known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines."[50]

Here, as discussed above, treachery should not be appreciated anymore as an aggravating circumstance. But with the appreciation of the qualifying circumstance of employing means to weaken the defense of the victim, the crime committed is Murder. Thus, in the absence of any aggravating circumstance, the penalty that must be imposed on the appellants is *reclusion perpetua* and not death. Following *Jugueta*, the award of civil indemnity, moral damages, and exemplary damages, where the penalty imposed is *reclusion perpetua* other than the above-stated rule, should be ₱75,000.00 each.[51]

There is also a need to modify the loss of earning capacity which is computed as follows:

Net Earning Capacity = Life expectancy x [Gross Annual Income – Living Expenses]

= [2/3 (80 - age at death)] x [GAI – [50% of GAI]][52]

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[49] *People v. Jugueta*, 783 Phil. 806 (2016).

[50] *Id.* at 847.

[51] *Id.* at 849.

[52] *Sps. Enriquez v. Isarog Line Transport, Inc., et al.*, 800 Phil. 145, 150 (2016).

Michael's Contract of Employment[53] shows that he was supposed to work for six days a week and eight hours per day. Thus, Michael's gross income should be computed by multiplying his daily wage of ₱293.00 by 24 days, the number of days Michael is working per month. The resulting gross income per month, *i.e.*, ₱7,032.00, shall then be multiplied by 12 to get the annual gross income which is ₱84,384.00.

Using the settled formula, Michael's loss of earning capacity is ₱1,490,784.00, computed as follows:

Net Earning Capacity = Life expectancy x [Gross Annual Income - Living Expenses]

= [2/3 (80 - age at death)] x [GAI - [50% of GAI]]
= [2/3 (80 - 27)] x ₱84,384-P42,192
= [2/3 (53)] x ₱42, 192.00
= **₱1,490,784.00**

Lastly, the Court affirms the award of actual or compensatory damages in the amount of ₱54,000.00 since this amount is based on the Funeral Contract of Gliceria Clarianes, Michael's wife, with Ace Funeral Homes.[54]

WHEREFORE, the Court **AFFIRMS** the Decision dated September 5, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 07451 finding appellants Jefferson Maron *y* Emplona, Jonathan Almario *y* Caygo and Nestor Bulahan *y* Gutierrez guilty beyond reasonable doubt of the crime of Murder defined and penalized under Article 248 of the Revised Penal Code, sentencing them to suffer the penalty of *reclusion perpetua*.

However, the monetary awards of the Court of Appeals are **MODIFIED** such that the appellants are ordered to pay the surviving heirs of Michael A. Clarianes actual and compensatory damages in the amount of ₱54,000.00; civil indemnity, moral

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[53] Exhibit "K", folder of exhibits, p. 11.

[54] Exhibit "H", folder of exhibits, p. 7.

damages, and exemplary damages in the amount of ₱75,000.00 each; and for loss of earning capacity of the victim in the amount of ₱1,490,784.00. All monetary awards shall earn legal interest the rate of 6% *per annum* from the date of finality of the decision until fully paid.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Reyes, A. Jr.*, and *Zalameda*,* *JJ.*, concur.

Hernando, J., on leave.

SECOND DIVISION

[G.R. No. 233802. November 20, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ANNABELLE BACULIO *y* OYAO and FLOYD JIM ORIAS *y* CARVAJAL,** *accused,* **ANNABELLE BACULIO *y* OYAO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS. — Well-settled is the rule that to sustain a conviction for Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165, the following elements must first be established: (1) proof that the transaction or sale took place; and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence. x x x The *corpus delicti* of the

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* Designated additional member per Special Order No. 2724 dated October 25, 2019.

offenses of illegal sale and illegal possession of dangerous drugs is the dangerous drugs seized from the accused, thus, it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved. It must be established that the subject of the sale which was acquired from the accused-appellants during the buy-bust operation must be the exact same item presented before the court. This is where the chain of custody requirement in drugs cases comes into play to ensure that doubts concerning the identity of the seized drugs are removed.

2. ID.; ID.; CHAIN OF CUSTODY RULE. — Under Section 21(1), Article II of RA 9165, the physical inventory and photographing shall, immediately after seizure and confiscation, be done 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. Moreover, 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. x x x [S]ince the incidents herein occurred prior to [its amendment under] RA 10640, Section 21(1), Article II of RA 9165 as originally worded still applies.

3. ID.; ID.; ID.; SAVING CLAUSE IN CASE OF NON-COMPLIANCE; APPLICATION. — While the Court recognizes that strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible under varied field conditions, and testimony about a perfect chain is not always possible to obtain, jurisprudence specifically requires a more exacting standard before narcotic substances are accepted as evidence. The saving clause 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. Indubitably, the rules require more than a statement by the apprehending officers of a justifiable ground for non-compliance. This ground must also be clearly indicated in their sworn affidavit, coupled with

statements as to how the integrity of the seized item was preserved. With greater reason, a more rigid adherence to Section 21 must be observed in cases where the quantity of illegal drugs seized is minuscule, as in the instant case, since it is highly susceptible to planting, tampering, or alteration.

4. **ID.; ID.; ID.; ABSENCE OF THE REQUIRED WITNESSES; PROSECUTION MUST ADDUCE JUSTIFIABLE REASON FOR THIS FAILURE OR A SHOWING OF ANY GENUINE AND SUFFICIENT EFFORT TO SECURE THE REQUIRED WITNESSES. —** While the absence of the required witnesses under Section 21, Article II of RA 9165 does not *per se* render the confiscated items inadmissible, the prosecution must adduce a justifiable reason for this failure or a showing of any genuine and sufficient effort to secure the required witnesses. The presence of these personalities and the immediate marking and conduct of physical inventory after seizure and confiscation in full view of the accused and the required witnesses cannot be brushed aside as a simple procedural technicality.

5. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; ACCUSED WHO DID NOT APPEAL BENEFITS FROM THE FAVORABLE JUDGMENT OBTAINED BY THE CO-ACCUSED WHO INSTITUTED AN APPEAL. —** [I]n view of the numerous gaps in the chain of custody in violation of the exacting standards laid down in Section 21, Article II of RA 9165 and the resulting doubt as to the identity of the drugs allegedly seized from Baculio and Orias, the Court is constrained to acquit them of the offense of illegal sale of dangerous drugs punishable under Section 5, Article II of RA 9165. In line with the doctrine that an accused who did not appeal benefits from a judgment obtained by one who instituted an appeal, if the same are favorable and applicable to him/her, Orias should necessarily benefit from the acquittal of Baculio.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

INTING, *J.*:

This is an appeal from the Decision[1] dated June 22, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01368-MIN, which affirmed the Consolidated Judgment[2] dated October 7, 2014 of Branch 40, Regional Trial Court (RTC), Cagayan de Oro City in Criminal Case Nos. 2009-279 and 2009-280 which found accused-appellant Annabelle Baculio *y* Oyao (Baculio) and accused Floyd Jim Orias *y* Carvajal (Orias) guilty beyond reasonable doubt of the offense of Illegal Sale of Dangerous Drugs in violation of Section 5, Article II of Republic Act No. (RA) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.[3]

Antecedents

Baculio and Orias were charged with violation of Section 5, Article II of RA 9165, in an Information[4] dated April 3, 2009 which reads as follows:

Criminal Case No. 2009-280

That on April 1, 2009, at about 9:00 o'clock in the evening, more or less, at Lower Bantiles, Bugo, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, that above-named accused, conspiring, confederating and mutually helping one another, without being authorized by law, did then and there willfully, unlawfully and criminally have in their possession, sell, deliver, custody and control one (1) heat-sealed transparent plastic [sachet]

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[1] *Rollo*, pp. 3-16; penned by Associate Justice Ruben Reynaldo G. Roxas with Associate Justices Edgardo A. Camello and Rafael Antonio M. Santos, concurring.

[2] CA *rollo*, pp. 40-52; penned by Presiding Judge Ma. Corazon B. Gaite-Llanderal.

[3] *Id.* at 51.

[4] Records, p. 1.

containing white crystalline substance of methamphetamine [hydrochloride] locally known as *shabu*, a dangerous drug weighing [0.19 gram] and sold it to a poseur[-]buyer of PDEA, CDO, for a consideration of ₱500.00, marked money with serial number AA541660, accused knowing the same to be a dangerous drug.

Contrary to and in violation of Section 5, Article II of RA 9165.[5]

Baculio was further charged with violation of Section 11, Article II of the same law in an Information filed on even date, *viz.*:

Criminal Case No. 2009-279

That on April 1, 2009, at about 9:00 o'clock in the evening, more or less, at Lower Bantiles, Bugo, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there wilfully, unlawfully and criminally possess and have under her control one (1) heat-sealed transparent plastic sachet containing white crystalline substance of methamphetamine hydrochloride, locally known as *shabu*, a dangerous drug weighing 0.22 gram, which after a confirmatory test conducted by the PNP Crime Laboratory, was found positive of the presence of methamphetamine hydrochloride and ephedrine, respectively, accused knowing the same to be a dangerous drug.

Contrary to and in violation of Section 11, of Article II of RA 9165.[6]

On July 21, 2009, Orias and Baculio, assisted by their counsel *de parte*, entered their pleas of not guilty to the charge of illegal sale of dangerous drugs.[7] On October 23, 2009, Baculio entered his plea of not guilty to the charge of illegal possession of dangerous drugs.[8]

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[5] *Id.*

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

[7] Records, p. 32.

[8] *Id.* at 45.

Version of the Prosecution

On April 1, 2009, a team, composed of Philippine Drug Enforcement Agency (PDEA) Regional Office 10 operatives, was formed to conduct a buy-bust operation, per instruction of PDEA Deputy Regional Director Senior Police Officer III Benjamin S. Amacanin (SPO3 Amacanin) on the basis of a tip regarding the drug peddling activities of Orias and Baculio of Bugo, Bantiles, Cagayan de Oro City.[9] During the briefing, Investigating Officer I Elvis Taghoy, Jr. (IO1 Taghoy) was designated as *poseur*-buyer, while IO1 Paul G. Avila (IO1 Avila) was tasked as the arresting officer. The rest of the team served as his back-up. The team prepared and marked a ₱500.00-bill as the buy-bust money in the operation.[10]

In the evening of the same day, after coordinating with the Cagayan de Oro City Police Office Precinct 85, the team, accompanied by the confidential informant, proceeded to the target area. IO1 Avila, IO1 Taghoy and the confidential informant then walked towards the house of Orias. IO1 Avila remained in an area about 10 meters away. The confidential informant knocked on the gate which was answered by Orias. Orias invited the confidential informant and IO1 Taghoy inside.[11]

Inside the house, IO1 Taghoy saw three men, who were later identified as Norberto Baslon (Baslon), Ronie Montederamos (Montederamos) and Gerry Villarmino (Villarmino), sniffing *shabu*, while Baculio was seated on the sofa.[12] IO1 Taghoy and the confidential informant sat down beside Orias. Then, the confidential informant asked Orias if they could purchase *shabu*.[13] Orias answered in the positive and demanded ₱500.00 from IO1 Taghoy. The latter handed

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[9] *Rollo*, p. 6.

[10] *Id.*

[11] *Id.*

[12] *Id.* at 6-7.

[13] TSN, March 11, 2011, p. 10.

the ₱500.00 bill to Orias, who then handed the money to Baculio.[14] Baculio then took out from her right pocket two heat-sealed plastic sachets containing white crystalline substance suspected to be *shabu*; she handed one sachet to Orias, who in turn, gave it to IO1 Taghoy.[15]

After examining the contents of the sachet, IO1 Taghoy executed the pre-arranged signal, putting his hand in his pocket to make a missed call to IO1 Avila through his cellphone. IO1 Avila and the rest of the team arrived, introduced themselves as PDEA agents, and ordered the people therein to lie face on the floor.[16] IO1 Nestle Carin (IO1 Carin) frisked Baculio and recovered from her the marked money and a sachet of *shabu*.[17]

These were turned over to IO1 Avila, who then proceeded to the physical inventory and marking of the seized items. IO1 Avila marked the sachet bought by IO1 Taghoy as "PGA-BB" and the sachet recovered from Baculio as "PGA-1; he also marked the six sachets containing residue recovered from the buy-bust operation as "PGA-2" to "PGA-7." Nelson Jumilla (Jumilla), a *barangay kagawad*, Luz Boro, a *barangay tanod*, and Richard de la Cruz, a member of the media witnessed the physical inventory and marking in the presence of Orias and Baculio in Orias' house.[18] Jumilla saw the seized sachets of *shabu* and the marked ₱500.00-bill on top of a table; and Orias, Baculio, and three others who were all handcuffed.[19] Pictures were, likewise, taken during the operation and in the PDEA office where the team brought the arrested persons. At the PDEA office, IO1 Avila prepared the letter-request. He and IO1 Taghoy brought the arrested persons and the seized sachets

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[14] *Id.* at 11.

[15] *Id.* at 12.

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

[17] *Id.* at 15.

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

[19] TSN, June 8, 2012, p. 6.

with suspected *shabu* to the PNP Crime Laboratory for examination.[20]

Forensic Chemist PSI Charity Peralta Caceres examined the seized sachets and positively identified the contents thereof as methamphetamine hydrochloride (*shabu*), a dangerous drug.[21] Orias and Baculio also tested positive for the presence of dangerous drugs.[22]

Version of the Defense

Denying the charges against them, Orias and Baculio presented their own version of facts.

According to Orias, he worked as a bodybuilding instructor at the Body Fitness Center located in front of Del Monte Philippines, Bugo, Cagayan de Oro City and worked from Monday to Saturday from 7:00 a.m. to 8:00 p.m.[23] On April 1, 2009, Orias went home from work at around 9:00 p.m. and saw Baculio, Villamino, Montederamos and Buslon in his house. Baculio was there to get her bicycle. Orias told Baculio to wait for him since he wanted to rest and drink beer.[24]

As he was about to get beer, Orias heard a commotion and a loud banging sound coming from someone kicking the door. Suddenly, a group of six to seven men entered his house through the front and back doors. The group told them that they were being arrested and ordered them to lie face down. The group, who were later identified as PDEA agents, were armed and pointed their guns towards them.[25]

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[20] TSN, March 11, 2011, pp. 18-19.

[21] Records, p. 7.

[22] *Id.* at 8.

[23] TSN, March 31, 2014, pp. 4-5.

[24] *Id.* at 7.

[25] *Id.* at 7-8.

One agent then handcuffed Orias, who was flat on the floor. The agent stomped Orias' back to prevent him from looking at the faces of the PDEA agents. One of the agents also handcuffed Baculio and punched her in the stomach. Another agent hit Montederamos on the head with a firearm.[26]

Thereafter, the PDEA agents ordered them to stand up and accused them of possession of dangerous drugs, which were placed on top of a table.[27] Orias denied possessing any *shabu*.[28] The PDEA agents then questioned them about the money.[29]

On the other hand, Baculio testified that in the evening of April 1, 2009, she went to the house of Orias to get her bicycle.[30] While Orias was getting the bicycle from the *bodega*, she heard a noise coming from someone kicking a gate.[31] Thereafter, a group of armed men went inside Orias' house, pointed their guns at them, and ordered them to lie face down. One man was struck with an armalite on his face because of his defiance.

One of the men approached Baculio, who was sitting on a sofa, and told her to stand up. Then he frisked Baculio and touched her on the chest. Immediately, Baculio pushed him away. He retaliated by punching her on the left side of her abdomen, and pushed her to the floor to lie down.[32] The men then searched the house of Orias. After 10 minutes, they ordered them to sit on the sofa.[33] The men brought Villamino, who was in handcuffs, to the sofa. A certain Reycitez then placed items on top of the table and took photographs.[34]

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[26] *Id.* at 9.

[27] *Id.* at 10.

[28] *Id.* at 11.

[29] *Id.*

[30] TSN, June 24, 2013, p. 3.

[31] *Id.* at 4.

[32] *Id.*

[33] TSN, June 24, 2013, p. 5.

[34] *Id.*

Thereafter, a woman arrived and requested Baculio to stand up. She requested Baculio to remove her belt bag, bracelet, two cellphones, and wallet.[35] Baculio denied that any dangerous drug was taken from her.

After a while, a *barangay kagawad* arrived and took photographs of them with the items on the table.

Baculio also stated that the PDEA agents brought them to the PDEA office where she was told that if she would cooperate and produce ₱100,000.00, she can be released immediately.[36] Because she believed that she did not commit any crime, she refused to give in to their demand.[37]

Ruling of the RTC

In its Consolidated Judgment[38] dated October 7, 2014, the RTC acquitted Baculio of the crime of possession of dangerous drugs for insufficiency of evidence. However, it found Orias and Baculio guilty beyond reasonable doubt for violating Section 5, Article II of RA 9165.

The RTC found that the *poseur*-buyer positively identified Orias and Baculio as the persons from whom he was able to purchase ₱500.00 worth of *shabu*[39] and that the PDEA agents properly preserved and identified the seized items from the time of their confiscation up to the time of their submission in court.[40] The seized prohibited drug from the seller was likewise positively identified by IO1 Taghoy as the subject and consideration for the sale. The RTC further observed that the defense failed to offer evidence that the arresting officers were improperly motivated to falsely impute a crime against them.

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[35] TSN, June 24, 2013, p. 6.

[36] *Id.*

[37] TSN, June 24, 2013, p. 7.

[38] CA *rollo*, pp. 40-52.

[39] *Id.* at 45.

[40] *Id.* at 46.

Lastly, the RTC ruled that the chain of custody of the seized prohibited drug was observed since IO1 Taghoy (who bought the prohibited drug in the buy-bust operation), IO1 Avila (who marked, inventoried, and delivered it to the crime laboratory for examination), and the forensic chemist were presented in court.[41]

The dispositive portion of the Consolidated Judgment states:

WHEREFORE, all the foregoing premises considered, the court hereby rules as follows:

1. In Crim. Case No. 2009-280, accused Floyd Jim C. Orias and Annabelle O. Baculio are found GUILTY beyond reasonable doubt of having committed the offense charged in the information (violation of Section 5, Article II of R.A. 9165). They are hereby sentenced to suffer the penalty of life imprisonment and to pay a fine in the amount of FIVE HUNDRED THOUSAND PESOS (₱500,000.00) each, without subsidiary imprisonment in case of insolvency; and

2. In Crim. Case No. 2009-279, accused Annabelle O. Baculio is ordered ACQUITTED of the crime of Violation of Section 11, Par. 2(3), Article II of R.A. No. 9165, for failure of the prosecution to prove her guilt beyond reasonable doubt.

The period of their preventive detention shall be credited in their favor. The sachets of *shabu* are hereby ordered forfeited in favor of the government for proper disposal in accordance with the rules.

SO ORDERED.[42]

Dissatisfied with the RTC's verdict, Baculio and Orias appealed to the CA.[43]

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[41] *Id.*

[42] *Id.* at 51.

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

Ruling of the CA

The CA denied the appeal in its Decision[44] dated June 22, 2017.

The CA ruled that Orias was validly apprehended *in flagrante delicto* as a result of a buy-bust operation as he was caught in the act of selling *shabu* in the presence of *poseur*-buyer, IO1 Taghoy.[45]

As to the chain of custody, the CA found that the totality of evidence presented by the prosecution led to the preservation and integrity of the seized items, which were positively identified by the prosecution to be the same items confiscated from Baculio and Orias.[46] It ratiocinated further that the absence of the *barangay* official and the other required witnesses during the buy-bust operation was not fatal as their presence is only required during the inventory.[47] It downplayed the lack of a representative from the National Prosecution Service (NPS) since the evidence on record shows that the integrity of the seized items was properly preserved eliminating doubt as to their integrity and evidentiary value.[48]

The CA disposed as follows:

WHEREFORE, premises considered, the instant appeal is DENIED for lack of merit. The Consolidated Judgment dated 20 November 2014 of the Regional Trial Court, Branch 40, Cagayan de Oro City, convicting him of the crime of violation of Section 5, Article II of Republic Act No. 9165 is AFFIRMED *in toto*.

SO ORDERED.[49]

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[44] *Rollo*, pp. 3-16.

[45] *Id.* at 10.

[46] *Id.* at 13-l4.

[47] *Id.* at 14.

[48] *Id.*

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

Hence, this appeal.[50]

The parties manifested that they are adopting the issues and arguments raised in their respective Appellant's and Appellee's Briefs[51] filed before the CA instead of filing Supplemental Briefs before the Court.[52]

The primordial issue brought to the Court for resolution is whether or not the chain of custody over the seized item was duly observed in accordance with Section 21, Article II of RA 9165.

Our Ruling

The appeal is meritorious.

Well-settled is the rule that to sustain a conviction for Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165, the following elements must first be established: (1) proof that the transaction or sale took place; and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.[53]

In this case, Baculio and Orias question the appreciation of the presence of the *corpus delicti* by the lower court. The *corpus delicti* of the offenses of illegal sale and illegal possession of dangerous drugs is the dangerous drugs seized from the accused;[54] thus, it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved. It must be established that the subject of the sale which was acquired from the accused-appellants during the buy-bust operation must be the exact same item presented before the court. This is where the chain of custody requirement

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[50] *Id.* at 17-18.

[51] CA *rollo*, pp. 14-39, 63-84.

[52] *Rollo*, p. 36.

[53] See *People v. Dela Cruz*, 744 Phil. 825 (2014).

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

in drugs cases comes into play to ensure that doubts concerning the identity of the seized drugs are removed.[55]

Under Section 21(1), Article II of RA 9165, the physical inventory and photographing shall, immediately after seizure and confiscation, be done 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. Moreover, 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.

The Court notes that RA 10640 amended RA 9165 by modifying Section 21(1) thereof, which, among others, reduced the required witnesses to the physical inventory and photographing of the seized drugs to two: an elected public official and a representative of the NPS or the media during the physical inventory. Nevertheless, since the incidents herein occurred prior to RA 10640, Section 21(1), Article II of RA 9165 as originally worded still applies.[56]

Baculio disputes the integrity of the *corpus delicti* and the various non-compliance by the apprehending officers with Section 21, Article II of RA 9165, to wit: (a) the item which was allegedly the subject of the sale was not immediately marked after confiscation at the place of arrest; (b) there was no witness from the DOJ; (c) the mandatory witnesses were not present during the actual conduct of the operation; and (d) there is no evidence as to the identity of the person who had custody and safekeeping of the seized items after examination pending presentation in court.

To justify the foregoing acts, the Office of the Solicitor General (OSG) alludes to the saving clause as contained in the

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[55] *Mallillin v. People*, 576 Phil. 576, 587 (2008).

[56] See *People v. Tampus*, G.R. No. 221434, February 6, 2019.

Implementing Rules and Regulations (IRR) of RA 9165 which essentially allows non-compliance with Section 21, Article II of RA 9165 so as not to automatically render void and invalid the seizure and custody of the seized items under justifiable grounds as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team.

While the Court recognizes that strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible under varied field conditions,[57] and testimony about a perfect chain is not always possible to obtain,[58] jurisprudence specifically requires a more exacting standard before narcotic substances are accepted as evidence.[59] The saving clause 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.[60] Indubitably, the rules require more than a statement by the apprehending officers of a justifiable ground for non-compliance.[61] This ground must also be clearly indicated in their sworn affidavit, coupled with statements as to how the integrity of the seized item was preserved.[62] With greater reason, a more rigid adherence to Section 21 must be observed in cases where the quantity of illegal drugs seized is minuscule, as in the instant case, since it is highly susceptible to planting, tampering, or alteration.[63]

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[57] *People v. Crispo*, G.R. No. 230065, March 14, 2018, 899 SCRA 356, 369.

[58] *Mallillin v. People, supra* note 55.

[59] *People v. Andrada*, G.R. No. 232299, June 20, 2018, 867 SCRA 484, 496-497.

[60] *People v. dela Rosa*, G.R. No. 230228, December 13, 2017, 849 SCRA 146, 163.

[61] *People v. Sarip*, G.R. No. 231917, July 8, 2019.

[62] *Id.*

[63] *Id.*

Based on the records of the case, the provisions of Section 21 were not observed. Although both IO1 Avila and IO1 Taghoy testified that there was a marking of the evidence, there was no definite statement as to where the marking of the seized items took place. There is nothing in their Joint Affidavit that point to the actual place of marking. The testimonies of the arresting officers, IO1 Avila and IO1 Taghoy, failed to explicitly demonstrate as to what point during the arrest and the exact place where the marking of the seized items was undertaken.[64]

In *People v. Gonzales*,[65] as cited in *People v. Ismael*,[66] the Court emphasized that the marking of the dangerous drugs immediately upon their confiscation or recovery is indispensable in the preservation of their integrity and evidentiary value.[67] This is because succeeding handlers of dangerous drugs or related items will use the marking as reference.[68] In addition, this marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting or contamination of evidence.[69]

More importantly, the testimonies of the prosecution witnesses disclosed that there was non-compliance as to the presence of the mandatory witnesses to the inventory as decreed under Section 21(1), Article II of RA 9165. Specifically, the prosecution witnesses testified that a *barangay kagawad*, a *barangay tanod*, and a media representative witnessed the inventory of the seized items. However, their testimonies and the records

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[64] TSN, September 23, 2011, pp. 10-11; TSN, March 11, 2011, p. 18.

[65] 708 Phil. 121 (2013).

[66] 806 Phil. 21 (2017).

[67] *People v. Gonzales, supra* note 65, at 131.

[68] *Id.*

[69] *Id.* citing *People v. Alejandro*, G.R. No. 176350, August 10, 2011, 655 SCRA 279, 289-290.

do not show that all the mandatory witnesses required during the conduct of the inventory, *i.e.*, a representative from the DOJ, were present.

Further, there was even no recognition of the commission of the procedural lapses, or any justification provided by the apprehending officers for non-compliance with the chain of custody rule, particularly the blunder as to the absence of a representative from the NPS:

Direct testimony of IO1 Avila:

[Q] After you prepared this inventory, what did you do to that inventory?
[A] I let them to witness the inventory and let them signed.

[Q] Who signed the inventory?
[A] The barangay kagawad and myself.

x x x x x x x x x

[Q] Now, there is here a name and signature over printed name Barangay Kagawad Nelson Jumilla, were you present when he signed this inventory?
[A] Yes.

[Q] How about this person Luz P. Boro, who is this Luz Boro?
[A] She was also there. I think she was the tanod.

[Q] How about this Richard Dela Cruz?
[A] A member of the Media.

[Q] Media of what?
[A] I cannot remember.[70]

Testimony on Cross Examination of IO1 Taghoy:

[Q] Were you able to see that inventory prepared by officer Avila?
[A] Yes.

x x x x x x x x x

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[70] TSN, September 23, 2011, pp. 10-11.

[Q] There is here a name under witness to seizure and inventory Kagawad Nelson J. Jumilla, and a signature over it, who is this Kagawad Nelson Jumilla?
[A] Kagawad of Bantiles Bugo.

[Q] Did you see him affix his signature on this document?
[A] Yes.

[Q] How about this Luz Boro and a signature over it?
[A] I am [not] sure sir.[71]

While the absence of the required witnesses under Section 21, Article II of RA 9165 does not *per se* render the confiscated items inadmissible,[72] the prosecution must adduce a justifiable reason for this failure or a showing of any genuine and sufficient effort to secure the required witnesses.[73] The presence of these personalities and the immediate marking and conduct of physical inventory after seizure and confiscation in full view of the accused and the required witnesses cannot be brushed aside as a simple procedural technicality.[74]

Deplorably, the prosecution did not even bother to explain as to why the presence of a representative from the DOJ was not secured during the conduct of the inventory. This loophole casts doubt on the identity and integrity of the drugs seized from Baculio and Orias.

In like manner, the prosecution failed to describe in their admission/stipulation the person who had custody of the seized prohibited drug and how the dangerous drug was handled for safekeeping to preserve its identity and integrity from the examination in the laboratory until its presentation to the court as evidence.

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[71] TSN, March 11, 2011, p. 17.

[72] *People v. Crispo, supra* note 57.

[73] *Id.*

[74] *People v. De la Victoria*, G.R. No. 233325, April 16, 2018, 861 SCRA 305, 322.

Anent the lack of witnesses during the entrapment operations the OSG contends that RA 9165 only requires the presence of an elected public official, media representative, and a member of the DOJ during the inventory of the seized items and not in the conduct of the entrapment operations. To require otherwise would put in jeopardy the lives of the required witnesses who are not trained to protect themselves unlike law enforcement officers.

This issue is not novel. In *People v. Reyes*,[75] the Court ruled that there is substantial gap in the chain of custody in the absence of any representative of the media or of the DOJ, and of the elected public official during the buy-bust operation and at the time of the confiscation of the dangerous drugs from the accused in the area of operation. It was explained therein that the objective of requiring their presence during the buy-bust operation and at the time of the recovery or confiscation of the dangerous drugs from the accused in the area of operation was to ensure against planting of evidence and frame-up.[76] This was upheld in the latest case of *People v. Tanes y Belmonte*,[77] wherein the Court, expounded in this wise:

> The RTC cannot thus be faulted for relying on the clear and unequivocal ruling made in *Jehar Reyes* because unless overturned, the same remains good case law. To the contrary, *Jehar Reyes* has even been cited by the Court in at least six cases subsequent to it, one of which is *People v. Sagana*, wherein the Court made similar findings regarding the three-witness rule. Citing *Jehar Reyes*, the Court therein held:
>
> > Similarly, none of the required third-party representatives was present during the seizure and inventory of the dangerous articles. **Their presence *in buy-bust operations and seizure of illicit articles* in the place of operation would supposedly guarantee "against planting of evidence and frame-up."** In other words, they are "necessary to insulate the apprehension and

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[75] G.R. No. 199271, October 19, 2016, 806 SCRA 513.

[76] *Id.* at 534-535.

[77] G.R. No. 240596, April 3, 2019.

incrimination proceedings from any taint of illegitimacy or irregularity."[78] (Emphasis in the original)

Thus, in view of the numerous gaps in the chain of custody in violation of the exacting standards laid down in Section 21, Article II of RA 9165 and the resulting doubt as to the identity of the drugs allegedly seized from Baculio and Orias, the Court is constrained to acquit them of the offense of illegal sale of dangerous drugs punishable under Section 5, Article II of RA 9165. In line with the doctrine that an accused who did not appeal benefits from a judgment obtained by one who instituted an appeal, if the same are favorable and applicable to him/her,[79] Orias should necessarily benefit from the acquittal of Baculio.

Consequently, a discussion on the other issues raised herein by Baculio would be an exercise in futility.

WHEREFORE, in view of the foregoing, the appeal is **GRANTED**. The Decision dated June 22, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 01368-MIN insofar as convicting Annabelle Baculio *y* Oyao and Floyd Jim Orias *y* Carvajal in Crim. Case No. 2009-280 for violation of Section 5, Article II of Republic Act No. 9165 is hereby **REVERSED** and **SET ASIDE**. Annabelle Baculio *y* Oyao and Floyd Jim Orias *y* Carvajal are hereby **ACQUITTED** of the offense of Illegal Sale of Dangerous Drugs for failure of the prosecution to prove their guilt beyond reasonable doubt. They are ordered **IMMEDIATELY RELEASED** from detention unless they are otherwise legally confined for another cause.

Let a copy of this Resolution be sent to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is **DIRECTED** to **REPORT** the action he has taken to this Court within five days from receipt of this Resolution.

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[78] *Id.*

[79] *People v. Cabaya*, 411 Phil. 616-631 (2001).

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Reyes, A. Jr.*, and *Zalameda*,[*] *JJ.*, concur.

Hernando, J., on leave.

SECOND DIVISION

[G.R. No. 240776. November 20, 2019]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **HONORABLE SANDIGANBAYAN (FIRST DIVISION), JULIUS CAESAR FALAR HERRERA, CESAR TOMAS MOZO LOPEZ, AMALIA REYES TIROL, ESTER CORAZON JAMISOLA GALBREATH, ALFONSO RAFOLS DAMALERIO II, MA. FE CAMACHO-LEJOS, JOSIL ESTUR TRABAJO,[*] ASTER APALISOK[**]-PIOLLO, BRIGIDO ZAPANTA IMBOY, and JANE CENSORIA DEL ROSARIO CAJES-YAP,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; WHEN PRESENT. — The essential issue for the Court's resolution is whether or not the SB committed grave abuse of discretion in

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[*] Designated additional member per Special Order No. 2724 dated October 25, 2019.

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

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

quashing the Information, and accordingly, dismissing the case against respondents on the ground of inordinate delay. The petition is meritorious. There is grave abuse of discretion when: (1) an act is done contrary to the Constitution, law, or jurisprudence; or (2) it is executed whimsically, capriciously, or arbitrarily out of malice, ill-will, or personal bias.

2. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF CASES; EXTENDS TO ALL PARTIES IN ALL CASES. — Section 16, Article III of the Constitution guarantees every person's right to speedy disposition of his cases before all judicial, quasi-judicial, or administrative bodies. This constitutional right is not limited to the accused in criminal proceedings but extends to all parties in all cases, be it civil or administrative in nature, as well as in all proceedings, either judicial or quasi-judicial.

3. ID.; ID.; ID.; ID.; ID.; DOES NOT DEAL PRIMARILY WITH SPEED, AND DELAY, WHEN REASONABLE UNDER THE CIRCUMSTANCES; FACTORS TO CONSIDER. — Section 12, Article XI of the Constitution and Section 13 of RA 6770 specifically commands the Office of the Ombudsman (OMB) and his or her deputies to act promptly on all complaints brought before his/her Office. To be sure, neither the Constitution nor RA 6770 provides for a specific period within which to measure promptness, and corollary thereto, determine whether the right to speedy disposition of cases is violated. The administration of justice, however, does not deal primarily with speed, and delay, when reasonable under the circumstances, does not by itself violate said right. Accordingly, it has been held that a mere mathematical reckoning of the time involved is not sufficient to rule that there was inordinate delay as it requires a consideration of a number of factors, including a consideration of the conduct of both the prosecution and the defendant. **These factors include: the length of delay, the reason for delay, the defendant's assertion or non-assertion of his or her right, and the prejudice to the defendant as a result of the delay**.

4. ID.; ID.; ID.; ID.; ID.; A CASE IS DEEMED INITIATED UPON THE FILING OF A FORMAL COMPLAINT PRIOR TO THE CONDUCT OF A PRELIMINARY INVESTIGATION; RIGHT TO SPEEDY DISPOSITION OF CASES MUST BE

TIMELY RAISED THROUGH AN APPROPRIATE MOTION; CASE AT BAR. — In the fairly recent case of *Cagang v. Sandiganbayan* (*Cagang*), the Court clarified that the period taken for fact-finding investigations prior to the filing of the formal complaint shall not be included in the determination of whether there has been inordinate delay considering that fact-finding investigations are not yet adversarial proceedings against the accused. Thus, it is settled that **a case is deemed initiated upon the filing of a formal complaint prior to the conduct of a preliminary investigation**, x x x Applying the foregoing, the Court finds that respondents' right to the speedy disposition of cases has not been violated. Preliminarily, it is undisputed that the complaint against respondents was filed with the OMB on November 6, 2014 and it was only thereafter that they were required to respond to the charges and participate in the investigation. Prior thereto, respondents were not subjected to any adversarial proceeding even when the fact-finding investigation began as early as 2012. As records disclose, the period prior to the filing of the complaint entailed only the determination of facts and the personalities involved, including the gathering of evidence, but without involving any of the respondents in said investigation proceedings. Thus, consistent with *Cagang*, the reckoning point in this case when delay started to run was on November 6, 2014, when the **case was deemed initiated upon the filing of a formal complaint prior to the conduct of a preliminary investigation.** Proceeding from said reckoning point, the Court finds no inordinate delay in the conduct and termination of the preliminary investigation by the OMB. x x x Moreover, it is significant to note that respondents have not asserted their right to speedy disposition of cases during the period [from the filing of the Complaint up to the filing of Information before the Sandiganbayan] x x x As the Court held in *Cagang*, the right to speedy disposition of cases, same as the right to speedy trial, must be timely raised through an appropriate motion, failing in which, he or she is deemed to have acquiesced to the delay and thus, has waived these rights, as in this case.

APPEARANCES OF COUNSEL

Jacinto Magtanong Esguerra & Uy Law Offices for respondent Jane Censoria Del Rosario Cajes-Yap.

J.F. Capistrano Law Office for respondents Cesar Tomas Mozo Lopez, *et al*.

Georgia May L. Herrera for respondent Julius Caesar Falar Herrera.

Valdez Gomez & Associates for respondents Amalia R. Tirol, *et al*.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for *certiorari*[1] are the Resolutions dated March 16, 2018,[2] April 17, 2018,[3] and June 4, 2018[4] of the Sandiganbayan (SB) in Crim. Case No. SB-17-CRM-2200 which dismissed the criminal case against respondents Julius Caesar Falar Herrera (Herrera), Cesar Tomas Mozo Lopez (Lopez), Amalia Reyes Tirol (Tirol), Ester Corazon Jamisola Galbreath (Galbreath), Alfonso Rafols Damalerio II (Damalerio II), Ma. Fe Camacho-Lejos (Camacho-Lejos), Josil Estur Trabajo (Trabajo), Aster Apalisok-Piollo (Apalisok-Piollo), Brigido Zapanta Imboy (Imboy), and Jane Censoria Del Rosario Cajes-Yap (Cajes-Yap; collectively, respondents) for violation of their right to speedy disposition of cases.

The Facts

The instant case stemmed from a complaint[5] filed on November 6, 2014 by the Field Investigation Office (FIO) of the Office of the Ombudsman (OMB) for violation of Section 3

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[1] *Rollo*, pp. 9-51.

[2] *Id*. at 60-70. Penned by Associate Justice Efren N. De La Cruz with Associate Justices Geraldine Faith A. Econg and Edgardo M. Caldona, concurring.

[3] *Id*. at 72-81.

[4] *Id*. at 83-86.

[5] Dated October 14, 2014. However, only two (2) pages are attached to the *rollo* (see *id*. at 113-114).

(e) and (g)[6] of Republic Act No. (RA) 3019,[7] as well as for Gross Neglect of Duty, Inefficiency, and Incompetence in the Performance of Official Duty and Conduct Prejudicial to the Best Interest of the Service, under Section 46, Rule 10 of the Revised Rules on Administrative Cases in the Civil Service, against twenty-five (25) public officials of the Province of Bohol,[8] including herein respondents.[9] The complaint was filed in connection with the alleged irregularities in the procurement of one-unit hydraulic excavator with breaker in 2006 and various heavy equipment in 2009, in which the opening and negotiation fees of the Letter of Credit (LC) for the said procurement in the amount of ₱274,024.32 were charged to the Land Bank Account of the Province of Bohol pursuant to Sangguniang Panlalawigan Resolution No. 2009-226. The complaint alleged

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[6] Section 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

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(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

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

x x x x x x x x x

[7] Entitled "ANTI-GRAFT AND CORRUPT PRACTICES ACT," approved on August 17, 1960.

[8] See *rollo*, pp. 14-15.

[9] Respondents were charged in the following capacities: Herrera as Vice-Governor and Lopez, Amalia Reyes Tirol, Ester Corazon Jamisola Galbreath, Alfonso Rafols Damalerio II, Ma. Fe Camacho-Lejos, Josil Estur Trabajo, Aster Apalisok-Piollo, Brigido Zapanta Imboy, and Jane Censoria Del Rosario Cajes-Yap as Sangguniang Panlalawigan Members. See *id*. at 14.

that the payment of such fees is prohibited under Section 42.5[10] of the Implementing Rules and Regulations-Part A of RA 9184[11] and Memorandum Order No. 213, Series of 2006[12] issued by the Office of the President.[13]

On December 11, 2014, the OMB issued an Order[14] directing respondents *a quo* to submit their counter-affidavits. Complying thereto, they filed their respective counter-affidavits on February 16, 18, and 20, 2015.[15]

In a Resolution[16] approved on December 6, 2016, the OMB found probable cause to indict respondents for violation of Section 3 (e) of RA 3019, but dismissed the complaint as against the other public officials.[17] Aggrieved, respondents separately moved for reconsideration, but was denied in an Order[18] dated

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[10] Section 42. Contract Implementation and Termination

x x x x x x x x x

42.5. Procuring entities may issue a letter of credit in favor of a local or foreign suppliers; Provided, that, no payment on the letter of credit shall be made until delivery and acceptance of the goods as certified to by the procuring entity in accordance with the delivery schedule provided for in the contract; Provided further, that, the cost for the opening of letter of credit shall be for the account of the local or foreign supplier and to be so stated in the bidding documents.

[11] Entitled "AN ACT PROVIDING FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION OF THE PROCUREMENT ACTIVITIES OF THE GOVERNMENT AND FOR OTHER PURPOSES," approved on January 10, 2003.

[12] Entitled "APPROVING AMENDMENTS TO SECTIONS 42.5, 54.2 (B) (D), AND 61.1 OF THE IMPLEMENTING RULES AND REGULATIONS PART A (IRR-A) OF REPUBLIC ACT NO. 9184" (May 8, 2006).

[13] See *rollo*, pp. 14-15.

[14] Only page 4 is attached to the *rollo* (see *id*. at 115). See also *id*. at 15.

[15] See *id*. at 15-16 and 35-36.

[16] Dated November 24, 2015. Only page 25 is attached to the *rollo* (see *id*. at 116).

[17] See *id*. at 16-17.

[18] Not attached to the *rollo*.

March 7, 2017.[19] Accordingly, the OMB filed the Information[20] against respondents before the SB on December 1, 2017 docketed as Crim. Case No. SB-17-CRM-2200.

Thereafter, the criminal case was set for arraignment and pre-trial on January 26, 2018.[21] However, Cajes-Yap moved for postponement of the pre-trial on the ground that she just filed a Motion to Dismiss/Quash Information[22] on January 26, 2018 for violation of her right to speedy disposition of cases and speedy trial. She pointed out in her motion to dismiss that the investigation took more or less six (6) years before the OMB issued the resolution on the complaint on December 6, 2016 and filed the Information on December 1, 2017.[23]

Meanwhile, on January 31, 2018, Tirol, Galbreath, Imboy, Camacho-Lejos, and Apalisok-Piollo also filed a Motion to Dismiss[24] essentially echoing Cajes-Yap's argument as regards the inordinate delay in the investigation and filing of the Information. They added that the fact-finding investigation should not be deemed separate from the preliminary investigation.[25]

Responding to the two (2) motions to dismiss, the prosecution argued in its Consolidated Comment/Opposition,[26] dated February 5, 2018, that only three (3) years and twenty-five (25) days had elapsed from the filing of the complaint for preliminary investigation on November 6, 2014 up to the filing of the Information on December 1, 2017. Hence, there was no

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[19] See *rollo*, p. 17.

[20] Not attached to the *rollo*, but see *id*. at 17.

[21] See *id*. at 18.

[22] Dated January 24, 2018. *Id*. at 87-101.

[23] See *id*. at 93.

[24] Dated January 29, 2018. *Id*. at 102-112.

[25] See *id*. at 104-106.

[26] *Id*. at 117-126.

oppressive delay. If there was any, it claimed that the delay is reasonable as the case involves twenty-five (25) respondents *a quo*, and the evaluation and study of the entire case records will take some time to complete.[27]

Subsequently, Lopez and Damalerio II,[28] later joined by Trabajo,[29] as well as Herrera,[30] filed their respective motions to dismiss. Together, they echoed the discussions in the earlier-filed Motions to Dismiss, adding that the OMB's inordinate delay in the filing of the Information against them deprived the SB of its jurisdiction to take cognizance of the same.[31] For its part, the OMB adopted its February 5, 2018 comment/opposition in response to these motions.[32]

The SB Ruling

In a Resolution[33] dated March 16, 2018, the SB found the motions filed by Cajes-Yap, *et al.* partly meritorious, finding that the OMB indeed committed inordinate delay in the conduct of the preliminary investigation. Particularly, it pointed out that, contrary to the prosecution's claim, records show that the fact-finding investigation began in 2012 and thus, it took the OMB almost six (6) years to complete the fact-finding and preliminary investigation before it filed the Information on December 1, 2017.[34] Moreover, it noted that the prosecution

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[27] See *id*. at 121-124.

[28] See Lopez and Damalerio's Motion to Dismiss dated February 19, 2018; *id*. at 127-143.

[29] *Id*. at 18.

[30] See Herrera's Motion to Dismiss dated February 22, 2018; *id*. at 147-151.

[31] See *id*. at 130-142 and 148-150.

[32] See *id*. at 19.

[33] *Id*. at 224-234.

[34] *Id*. at 66. The Sandiganbayan listed the following documents which it used as basis to conclude that the investigation began earlier than 2014

did not provide any plausible explanation for the delay. Thus, it dismissed the case as against them for violation of their constitutional right to a speedy disposition of their case.[35]

Subsequently, in a Resolution[36] dated April 17, 2018, the SB granted the motions filed by Lopez and Damalerio II, as adopted by Trabajo and Herrera, and accordingly, dismissed the case as against them on the same grounds.[37]

In view of the foregoing, the OMB filed separate motions for reconsideration which were, however, denied by the SB in a Resolution[38] dated June 4, 2018, holding that the right to speedy disposition of cases covers not only the period within which the preliminary investigation was conducted, but also all stages to which the accused was subjected, even including the fact-finding investigations conducted prior to the preliminary investigation proper.[39]

Hence, the present petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the SB committed grave abuse of discretion in quashing

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as claimed by the OMB: (1) Letter dated March 16, 2012 from the Philippine National Bank, which the Ombudsman received on April 12, 2012, in response to the latter's request for certified true copies of (a) the LC involving the purchase of the Volvo Hydraulic Excavator and (b) a Certification under oath stating whether or not the amount of ₱9,723,998.15 was debited from the account of the provincial government of Bohol for the opening of the LC; and (2) Letter, dated May 9, 2012, of the CMI, which the Ombudsman received on May 15, 2012, in response to the subpoena issued by the Ombudsman General Investigation Bureau, with enclosed photocopies of documents in relation to the procurement of the excavator, *i.e.,* bidding documents, invoices, purchase requests, notice of award, among others.

[35] See *id*. at 228-234.

[36] *Id*. at 236-245.

[37] *Id*. at 244.

[38] *Id*. at 247-250.

[39] *Id*. at 249.

the Information, and accordingly, dismissing the case against respondents on the ground of inordinate delay.

The Court's Ruling

The petition is meritorious.

There is grave abuse of discretion when: (1) an act is done contrary to the Constitution, law, or jurisprudence; or (2) it is executed whimsically, capriciously, or arbitrarily out of malice, ill-will, or personal bias.[40] As will be shown below, the SB was guilty of grave abuse of discretion when it dismissed the criminal cases against respondents on the ground of inordinate delay.

Section 16, Article III of the Constitution guarantees every person's right to speedy disposition of his cases before all judicial, quasi-judicial, or administrative bodies. This constitutional right is not limited to the accused in criminal proceedings but extends to all parties in all cases, be it civil or administrative in nature, as well as in all proceedings, either judicial or quasi-judicial.[41] In this regard, Section 12,[42] Article XI of the Constitution and Section 13[43] of

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[40] See *Information Technology Foundation of the Philippines v. Commission on Elections*, 464 Phil. 173, 190 (2004); citations omitted.

[41] See *Revuelta v. People*, G.R. No. 237039, June 10, 2019, citing *Inocentes v. People*, 789 Phil. 318, 333-334 (2016).

[42] Section 12. The Ombudsman and his Deputies, as protectors of the people, **shall act promptly on complaints filed in any form or manner** against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof. (Emphasis supplied)

[43] Section 13. *Mandate.* — The Ombudsman and his Deputies, as protectors of the people, **shall act promptly on complaints filed in any form or manner** against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people. (Emphasis supplied)

RA 6770[44] specifically commands the OMB and his or her deputies to act promptly on all complaints brought before his/her Office.

To be sure, neither the Constitution nor RA 6770 provides for a specific period within which to measure promptness, and corollary thereto, determine whether the right to speedy disposition of cases is violated. The administration of justice, however, does not deal primarily with speed, and delay, when reasonable under the circumstances, does not by itself violate said right.[45]

Accordingly, it has been held that a mere mathematical reckoning of the time involved is not sufficient to rule that there was inordinate delay as it requires a consideration of a number of factors, including a consideration of the conduct of both the prosecution and the defendant.[46] **These factors include: the length of delay, the reason for delay, the defendant's assertion or non-assertion of his or her right, and the prejudice to the defendant as a result of the delay**.[47]

In the fairly recent case of *Cagang v. Sandiganbayan* (*Cagang*),[48] the Court clarified that the period taken for fact-

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[44] Entitled "AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN, AND FOR OTHER PURPOSES," approved on November 17, 1989.

[45] See *The Ombudsman v. Jurado*, 583 Phil. 132, 145 (2008), where the Court held: "Just like the constitutional guarantee of 'speedy trial,' 'speedy disposition of cases' is a flexible concept. It is consistent with delays and depends upon the circumstances."

[46] See *Cagang v. Sandiganbayan*, G.R. Nos. 206438, 206458, and 210141-42, July 31, 2018.

[47] See *Revuelta v. People*, *supra* note 41; *Cagang v. Sandiganbayan*, *supra* note 46, citing *Barker v. Wingo*, 407 U.S. 514 (1972) in *Martin v. Ver*, 208 Phil. 658, 664 (1983); *Magante v. Sandiganbayan*, G.R. Nos. 230950-51, July 23, 2018; and *The Ombudsman v. Jurado*, *supra* note 45, at 145, citing *Dela Peña v. Sandiganbayan*, 412 Phil. 921, 929 (2001).

[48] *Supra* note 46.

finding investigations prior to the filing of the formal complaint shall not be included in the determination of whether there has been inordinate delay considering that fact-finding investigations are not yet adversarial proceedings against the accused. Thus, it is settled that **a case is deemed initiated upon the filing of a formal complaint prior to the conduct of a preliminary investigation**, to wit:

> **When an anonymous complaint is filed or the Office of the Ombudsman conducts a *motu proprio* fact-finding investigation, the proceedings are not yet adversarial. Even if the accused is invited to attend these investigations, this period cannot be counted since these are merely preparatory to the filing of a formal complaint. At this point, the Office of the Ombudsman will not yet determine if there is probable cause to charge the accused.**
>
> This period for case build-up cannot likewise be used by the Office of the Ombudsman as unbridled license to delay proceedings. If its investigation takes too long, it can result in the extinction of criminal liability through the prescription of the offense.
>
> **Considering that fact-finding investigations are not yet adversarial proceedings against the accused, the period of investigation will not be counted in the determination of whether the right to speedy disposition of cases was violated**. Thus, this Court now holds that for the purpose of determining whether inordinate delay exists, a case is deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the preliminary investigation. In *People v. Sandiganbayan, Fifth Division* [723 Phil. 444 (2013)], the ruling that fact-finding investigations are included in the period for determination of inordinate delay is abandoned.[49] (Emphases supplied)

Applying the foregoing, the Court finds that respondents' right to the speedy disposition of cases has not been violated.

Preliminarily, it is undisputed that the complaint against respondents was filed with the OMB on November 6, 2014 and it was only thereafter that they were required to respond to the charges and participate in the investigation. Prior thereto,

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[49] *Id*.

respondents were not subjected to any adversarial proceeding even when the fact-finding investigation began as early as 2012. As records disclose, the period prior to the filing of the complaint entailed only the determination of facts and the personalities involved, including the gathering of evidence, but without involving any of the respondents in said investigation proceedings. Thus, consistent with *Cagang*, the reckoning point in this case when delay started to run was on November 6, 2014, when the **case was deemed initiated upon the filing of a formal complaint prior to the conduct of a preliminary investigation.**

Proceeding from said reckoning point, the Court finds no inordinate delay in the conduct and termination of the preliminary investigation by the OMB. Records show that upon the filing of the complaint by the FIO on **November 6, 2014**, the OMB immediately directed the twenty-five (25) respondents *a quo* to file their respective counter-affidavits. Said respondents *a quo*, however, complied with the Order only on February 16, 18, and 20, 2015. Thereafter, the OMB issued the probable cause Resolution from which respondents subsequently sought reconsideration. The OMB, however, denied said motions in the Order dated March 7, 2017 and on **December 1, 2017**, it filed the Information. Thus, only a period of three (3) years and twenty-five (25) days has elapsed from the filing of the complaint up to the filing of the Information before the SB. During this period, the OMB had to investigate and provide all twenty-five (25) respondents *a quo* with sufficient opportunity to study the evidence against them and respond to the charges. It also had to review numerous records and documents relative to the charges involving several purchase transactions of heavy equipment in two (2) separate years, *i.e.*, 2006 and 2009, and arrive at the probable cause resolution. All the while, the preliminary investigation of the criminal case ran parallel to the adjudication of the counterpart administrative case. Given these circumstances, the Court is hard-pressed to consider the period as vexatious, capricious, or oppressive to respondents to warrant the dismissal of the case on the ground of inordinate delay.

Moreover, it is significant to note that respondents have not asserted their right to speedy disposition of cases during said period. Indeed, records show that respondents were fully aware of the conduct of the preliminary investigation through the filing of their counter-affidavits, as well as their subsequent motions for reconsideration from the OMB's probable cause Resolution. Despite the pendency of the case before the OMB since 2014, however, respondents only invoked said right after the Information was already filed with the SB on December 1, 2017. As the Court held in *Cagang*, the right to speedy disposition of cases, same as the right to speedy trial, must be timely raised through an appropriate motion, failing in which, he or she is deemed to have acquiesced to the delay and thus, has waived these rights,[50] as in this case.

All told, there was no inordinate delay committed by the OMB that transgressed respondents' right to a speedy disposition of their case. Accordingly, the Court finds that the SB gravely abused its discretion in granting respondents' motion to dismiss/quash the Information and in dismissing the case against them.

WHEREFORE, the petition for *certiorari* is **GRANTED**. The Resolutions dated March 16, 2018, April 17, 2018, and June 4, 2018 of the Sandiganbayan (SB) in Crim. Case No. SB-17-CRM-2200 are hereby **ANNULLED** and **SET ASIDE** for having been issued with grave abuse of discretion. Accordingly, Crim. Case No. SB-17-CRM-2200 is **REMANDED** to the SB which is hereby **DIRECTED** to resolve the same with due and deliberate dispatch.

SO ORDERED.

Reyes, A. Jr., Inting, and *Zalameda,*[***] *JJ.,* concur.

Hernando, J., on leave.

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[50] See *People v. Sandiganbayan*, G.R. Nos. 233557-67, June 19, 2019; *Doroteo v. Sandiganbayan*, G.R. Nos. 232765-67, January 16, 2019; and *Magante v. Sandiganbayan*, *supra* note 47, citing *Dela Peña v. Sandiganbayan*, *supra* note 47, at 932.

[***] Designated Additional Member per Special Order No. 2727 dated October 25, 2019.

SECOND DIVISION

[G.R. No. 241602. November 20, 2019]

ROMEO ASIS *y* BRIONES, *petitioner*, *vs.* **PEOPLE OF THE PHILIPPINES,** *respondent*.

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL POSSESSION OF DANGEROUS DRUGS; IT IS ESSENTIAL THAT THE IDENTITY OF THE DANGEROUS DRUG BE ESTABLISHED WITH MORAL CERTAINTY. — In cases for Illegal Possession of Dangerous Drugs under RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.

2. ID.; ID.; CHAIN OF CUSTODY RULE; PROCEDURE AND REQUISITES THAT MUST BE COMPLIED WITH. — To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that "[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team." Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody. The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely:

(*a*) if **prior** to the amendment of RA 9165 by RA 10640, a representative from the media *AND* the DOJ, and any elected public official; or (*b*) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service *OR* media. The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."

3. ID.; ID.; ID.; AS A RULE, STRICT COMPLIANCE IS ENJOINED; SAVING CLAUSE IN CASE OF NON-COMPLIANCE. — As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded not merely as a procedural technicality but as a matter of substantive law. x x x Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible. As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is a justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved. x x x It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses, and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.

4. ID.; ID.; ID.; WITNESS REQUIREMENT; NON-COMPLIANCE MAY BE PERMITTED IF PROVEN THAT THE APPREHENDING OFFICERS EXERTED GENUINE AND SUFFICIENT EFFORTS TO SECURE THE PRESENCE OF THE WITNESSES. — Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances. Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated February 22, 2018 and the Resolution[3] dated August 16, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 38783, which affirmed the Judgment[4] dated May 18, 2016 of the Regional Trial Court of Daet, Camarines Norte, Branch 41 (RTC) in Crim. Case No. 13693, finding petitioner Romeo Asis *y* Briones guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. (RA) 9165,[5] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Information[6] filed before the RTC charging petitioner with the crime of Illegal Possession of Dangerous Drugs. The prosecution alleged that after surveillance activities regarding the rampant proliferation of illegal drug activities in Purok 6, Barangay Luklukan Sur, Jose Panganiban, Camarines Norte, operatives of the Philippine Drug

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[1] *Rollo*, pp. 11-26.

[2] *Id.* at 30-46. Penned by Associate Justice Ramon M. Bato, Jr. with Associate Justices Ramon A. Cruz and Pablito A. Perez, concurring.

[3] *Id.* at 48-48-A.

[4] *Id.* at 67-74. Penned by Presiding Judge Arnel A. Dating.

[5] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[6] See records, p. 1.

Enforcement Agency (PDEA) applied for and obtained a total of four (4) search warrants against, *inter alia*, petitioner. Thus, on February 18, 2009, the PDEA operatives successfully implemented one (1) of the search warrants at petitioner's house in the presence of Barangay Chairman Ranilo Jerez, Sr., Barangay Kagawad Salvador Alvarez, and media representative Jonathan Magistrado[7] of ABS-CBN Naga. As the said search yielded a plastic sachet containing white crystalline substance which the PDEA operatives suspected as *shabu*, they arrested petitioner and marked, inventoried,[8] and photographed the seized item in the presence of petitioner and the aforementioned witnesses. Thereafter, petitioner and the seized item were brought to the PDEA Regional Office where the required documentations were processed. Finally, the seized item was brought to the crime laboratory where, after examination,[9] the contents thereof yielded positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.[10]

In defense, petitioner denied the charges against him, claiming instead that at the time he was arrested, he was just sleeping with his family inside their house when PDEA operatives suddenly arrived and forced themselves therein. They were then instructed to go outside the house while their house was searched. According to petitioner, he did not see where the PDEA operatives supposedly recovered the plastic sachet containing *shabu* as he was sure that he was not keeping any inside their house.[11]

In a Judgment[12] dated May 18, 2016, the RTC found petitioner guilty beyond reasonable doubt of the crime charged, and

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[7] "Mihistrado" in some parts of the record.

[8] See Certificate of Inventory dated February 18, 2009; records, p. 7.

[9] See Chemistry Report No. D-14-2009 dated February 19, 2009; *id.* at 10.

[10] See *rollo*, pp. 30-35 and 69-71.

[11] See *id.* at 35-36 and 71-72.

[12] *Id.* at 67-74.

accordingly, sentenced him to suffer the penalty of imprisonment for an indeterminate period of nineteen (19) years, eleven (11) months, and twenty-nine (29) days, as minimum, to twenty (20) years, as maximum, and to pay a fine in the amount of ₱300,000.00.[13] The RTC found that the prosecution, through the testimonial and documentary evidence it presented, had established beyond reasonable doubt that petitioner indeed kept *shabu* within the confines of his home. Relatedly, the RTC also opined that the integrity and evidentiary value of the *shabu* seized from petitioner's house were preserved.[14] Aggrieved, petitioner appealed[15] to the CA.

In a Decision[16] dated February 22, 2018, the CA affirmed the RTC ruling with modification, adjusting the period of imprisonment imposed on petitioner to twelve (12) years and one (1) day, as minimum, to fourteen (14) years and one (1) day, as maximum.[17] It held that the prosecution had proven the existence of all the elements of the crime charged, and that, despite the absence of a Department of Justice (DOJ) representative during the conduct of the search and the eventual inventory and photography of the seized item, its integrity and evidentiary value were nevertheless preserved.[18]

Undaunted, petitioner moved for reconsideration[19] but was denied in a Resolution[20] dated August 16, 2018; hence, this petition seeking that his petition be overturned.

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

[14] See *id.* at 72-73.

[15] See Brief for the Accused-Appellant dated October 12, 2016; *id.* at 49-66.

[16] *Id.* at 30-46.

[17] *Id.* at 45.

[18] See *id.* at 38-41.

[19] See Motion for Reconsideration dated March 21, 2018; *id.* at 96-101.

[20] *Id.* at 48-48-A.

The Court's Ruling

The petition is meritorious.

In cases for Illegal Possession of Dangerous Drugs under RA 9165,[21] it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.[22] Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.[23]

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[24] As

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[21] The elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug. (See *People v. Crispo*, G.R. No. 230065, March 14, 2018, 859 SCRA 356, 369; *People v. Sanchez*, G.R. No. 231383, March 7, 2018, 858 SCRA 94, 104; *People v. Magsano*, G.R. No. 231050, February 28, 2018, 857 SCRA 142, 152; *People v. Manansala*, G.R. No. 229092, February 21, 2018, 856 SCRA 359, 369-370; *People v. Miranda*, G.R. No. 229671, January 31, 2018, 854 SCRA 42, 52; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018, 853 SCRA, 303, 313; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015] and *People v. Bio*, 753 Phil. 730, 736 [2015]).

[22] See *People v. Crispo, id.*; *People v. Sanchez, id.*; *People v. Magsano, id.*; *People v. Manansala, id.* at 370; *People v. Miranda, id.* at 53; and *People v. Mamangon, id.* See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[23] See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

[24] See *People v. Año*, G.R. No. 230070, March 14, 2018, 859 SCRA 381, 389; *People v. Crispo, supra* note 21; *People v. Sanchez, supra* note 21; *People v. Magsano, supra* note 21, at 153; *People v. Manansala, supra* note 21, at 370; *People v. Miranda, supra* note 21, at 53; and *People v. Mamangon, supra* note 22. See also *People v. Viterbo, supra* note 22.

part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that "[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team."[25] Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.[26]

The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640,[27] a representative from the media *AND* the DOJ, and any elected public official;[28] or (*b*) if **after** the amendment of RA 9165 by

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[25] *People v. Mamalumpon*, 767 Phil. 845, 855 (2015), citing *Imson v. People*, 669 Phil. 262, 271 (2011). See also *People v. Ocfemia*, 718 Phil. 330, 348 (2013), citing *People v. Resurreccion*, 618 Phil. 520, 532 (2009).

[26] See *People v. Tumulak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

[27] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,'" approved on July 15, 2014. As the Court noted in *People v. Gutierrez* (G.R. No. 236304, November 5, 2018), RA 10640, which was approved on July 15, 2014, states that it shall "take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation." Verily, a copy of the law was published on July 23, 2014 in the respective issues of "The Philippine Star" (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and the "Manila Bulletin" (Vol. 499, No. 23; World News section, p. 6); hence, **RA 10640 became effective on August 7, 2014**.

[28] Section 21 (1), Article II of RA 9165 and its Implementing Rules and Regulations.

RA 10640, an elected public official and a representative of the National Prosecution Service[29] ***OR*** the media.[30] The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."[31]

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded not merely as a procedural technicality but as a matter of substantive law.[32] This is because "[t]he law has been 'crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.'"[33]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[34] As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is a justifiable ground for non-compliance;

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[29] Which falls under the DOJ. (See Section 1 of Presidential Decree No. 1275, entitled "REORGANIZING THE PROSECUTION STAFF OF THE DEPARTMENT OF JUSTICE, REGIONALIZING THE PROSECUTION SERVICE, AND CREATING THE NATIONAL PROSECUTION SERVICE" [April 11, 1978] and Section 3 of RA 10071, entitled "AN ACT STRENGTHENING AND RATIONALIZING THE NATIONAL PROSECUTION SERVICE" otherwise known as the "PROSECUTION SERVICE ACT OF 2010" [lapsed into law on April 8, 2010].)

[30] Section 21 (1), Article II of RA 9165, as amended by RA 10640.

[31] See *People v. Miranda, supra* note 21, at 57. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[32] See *People v. Miranda, id.* at 60-61. See also *People v. Macapundag*, 807 Phil. 234, 244 (2017), citing *People v. Umipang, supra* note 23, at 1038.

[33] See *People v. Segundo*, 814 Phil. 697, 722 (2017), citing *People v. Umipang, id.*

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

and (*b*) the integrity and evidentiary value of the seized items are properly preserved.[35] The foregoing is based on the saving clause found in Section 21 (a),[36] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[37] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[38] and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[39]

Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.[40] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[41] These

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[35] See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

[36] Section 21 (a), Article II of the IRR of RA 9165 pertinently states: "***Provided, further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.]**"

[37] Section 1 of RA 10640 pertinently states: "***Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.**"

[38] *People v. Almorfe, supra* note 35.

[39] *People v. De Guzman*, 630 Phil. 637, 649 (2010).

[40] See *People v. Manansala, supra* note 21, at 375.

[41] See *People v. Gamboa, supra* note 23, citing *People v. Umipang, supra* note 23, at 1053.

considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.[42]

Notably, the Court, in *People v. Miranda*,[43] issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that "[since] the [procedural] requirements are clearly set forth in the law, x x x the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."[44]

In this case, an examination of the Certificate of Inventory[45] would show that the inventory of the seized items was not done in the presence of a DOJ representative, as the said inventory only contains the signatures of an elected public official and a media representative.[46] This is confirmed by the testimonies of the PDEA operatives who were members of the team that implemented the search warrant on petitioner's house and caused his arrest thereafter, to wit:

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[42] See *People v. Crispo, supra* note 21, at 376-377.

[43] *Supra* note 21.

[44] See *id.* at 61.

[45] Dated February 18, 2009. Records, p. 7.

[46] The arrest was made on February 18, 2009, and hence, the required witnesses are an elected public official, a DOJ representative, and a media representative.

TESTIMONY OF IO1 JUDITH RIGO (IO1 RIGO)

[Prosecutor Elvis P. Nonato]:
You signed likewise in this Certificate of Inventory?
[IO1 Rigo]: Yes, Sir.

Q: Where in these two copies of the Certificate of Inventory?
A: Here, sir. (witness points to her signature[])].

x x x x x x x x x

Q: How about these signatures appearing above these names, whose signatures are those? Inform the Court one by one.
A: The witnesses, Sir.

Q: Who are they?
A: Jonathan Mihistrado *(sic)* from ABS-CBN, Sir; Barangay Captain Ranilo Jerez[,] Sr. and Barangay Kagawad Salvador Alvarez, Sir.[47]

TESTIMONY OF IO1 VIDAL BACOLOD (IO1 BACOLOD)

[Atty. Lourdes Clarissa Donnatilla K. Cu]: Now, you said that the witness[es] during the search were Jonathan Magistrado and two (2) barangay officials, were there any other witnesses other than those three (3) persons you mentioned?
[IO1 Bacolod]: The suspect, ma'am.

Q: Other than him, no other witnesses?
A: No, ma'am.

Q: So, there was no DOJ representative?
A: No, ma'am.[48]

As the foregoing testimonies have already shown the absence of a DOJ representative during the implementation of the search warrant and the consequent marking, inventory, and photography of the item purportedly seized from petitioner, it became incumbent upon the prosecution to account for the absence of a required witness by presenting a justifiable reason therefor, or at the very least, by showing that genuine and sufficient

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[47] TSN, May 13, 2011, pp. 26-27.

[48] TSN, October 8, 2015, p. 27; emphasis supplied.

efforts were exerted by the apprehending officers to secure his presence. Absent such inquiry, there is nothing that would justify the aforementioned procedural lapse. In view of this unjustified deviation from the chain of custody rule, the Court is therefore constrained to conclude that the integrity and evidentiary value of the item purportedly seized from petitioner was compromised, which consequently warrants his acquittal.

WHEREFORE, the petition is **GRANTED**. The Decision dated February 22, 2018 and the Resolution dated August 16, 2018 of the Court of Appeals in CA-G.R. CR No. 38783 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Romeo Asis *y* Briones is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

Reyes, A. Jr., Inting, and *Zalameda,*[*] *JJ.*, concur.

Hernando, J., on leave.

SECOND DIVISION

[G.R. No. 242025. November 20, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NORIN SENDAD *y* KUNDO *a.k.a.* "NHORAIN SENDAD *y* KUSAIN,"**[*] *accused-appellant.*

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[*] Designated Additional Member per Special Order No. 2727 dated October 25, 2019.

[*] Also referred to as "Nhor-ain Sendad *y* Kusain" in some parts of the records.

SYLLABUS

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE AND/OR POSSESSION OF DANGEROUS DRUGS; IT IS ESSENTIAL THAT THE IDENTITY OF THE DANGEROUS DRUG BE ESTABLISHED WITH MORAL CERTAINTY. —** In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.

2. **ID.; ID.; CHAIN OF CUSTODY RULE; DISCUSSED. —** To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that "marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team." Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody. The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640, a representative from the media *AND* the Department of Justice (DOJ), and any elected public official; or (*b*) if **after** the amendment of RA 9165 by RA 10640, "[a]n elected public official and a representative of the National Prosecution Service *OR* the media." The law requires the presence

of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."

3. ID.; ID.; ID.; STRICT COMPLIANCE IS STRICTLY ENJOINED; SAVING CLAUSE FOR NON-COMPLIANCE REQUIRES THAT THERE IS JUSTIFIABLE GROUND AND THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED. — As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law." This is because "[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment." Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible. As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is a justifiable ground for noncompliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved. The foregoing is based on the saving clause found in Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640. It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses, and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.

4. ID.; ID.; ID.; ID.; ID.; NON-COMPLIANCE AS TO THE REQUIRED WITNESSES MAY BE PERMITTED IF GENUINE AND SUFFICIENT EFFORTS WERE EXERTED TO SECURE THE PRESENCE OF SUCH WITNESSES. — Anent the required witnesses rule, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be

convinced that the failure to comply was reasonable under the given circumstances. Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.

5. ID.; ID.; ID.; ID.; PROSECUTORS REMINDED THAT IN DEALING WITH DRUG CASES, LAPSES MUST BE ACCOUNTED FOR. — Notably, the Court, in *People v. Miranda*, issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that "[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Flores Cerdana Law Office for accused-appellant.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated June 21, 2018 of the Court of Appeals (CA) in CA-G.R. CR-

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[1] See Notice of Appeal dated July 19, 2018; *rollo*, pp. 20-21.

[2] *Id*. at 3-19. Penned by Associate Justice Tita Marilyn Payoyo-Villordon with Associate Justices Romulo V. Borja and Oscar V. Badelles, concurring.

H.C. No. 01626-MIN, which affirmed the Judgment[3] dated April 28, 2016 of the Regional Trial Court of Tacurong City, Branch 20 (RTC) in Criminal Case Nos. 3637-T and 3638-T, finding accused-appellant Norin Sendad *y* Kundo *a.k.a.* "Nhorain Sendad *y* Kusain" (Sendad) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from two (2) Criminal Complaints[5] filed before the RTC accusing Sendad of the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs. The prosecution alleged that at around 1:00 p.m. of January 11, 2013, the members of the San Narciso Police successfully implemented a buy-bust operation against Sendad, during which two (2) plastic sachets containing white crystalline substance were recovered from her. After Sendad's arrest, she was bodily searched, and four (4) more plastic sachets wrapped in paper containing a combined weight of 0.2613 gram of suspected *shabu* were recovered from her. PO3 Relyn Gonzales (PO3 Gonzales) then marked the six (6) plastic sachets he recovered, while PO1 Emmanuel Europa (PO1 Europa) marked the cellphone. They then brought Sendad and the seized items to the police station for further documentation and investigation. Thereat, they turned over Sendad and the seized items to the investigator and Senior Police Officer 1 John Bacea (SPO1 Bacea) who conducted the inventory and photography of the same in the presence of Sendad, Barangay

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[3] CA *rollo*, pp. 48-83. Penned by Judge Milanio M. Guerrero.

[4] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[5] Criminal Case No. 3637-T is for violation of Section 5, Article II of RA 9165, while Criminal Case No. 3638-T is for violation of Section 11, Article II of RA 9165 (See *rollo*, p. 4. See also CA *rollo*, pp. 48-49).

Kagawad Randy L. Casama, and Leo Diaz, a media representative. Notably, there was no Department of Justice (DOJ) personnel present during such inventory and photography. Afterwards, the seized items were returned to PO3 Gonzales who kept the same on his person until the next day when he turned it over to the crime laboratory where, after examination,[6] the contents thereof yielded positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.[7]

In defense, Sendad denied the charges against her, claiming instead, that she was inside Kimsan Plaza to buy some household supplies when suddenly, PO3 Gonzales put his arm on her shoulder, while two (2) other persons followed from the back. They told her not to resist or shout, and to just go with them. She did not know these men. She was then brought to the Tacurong City Police Station where she was frisked. They took ₱3,500.00 from her as well as her cellphone and made her sign a document. She was then detained in the lock-up cell. She later found out that she was being arrested for selling *shabu*, which she denied. She further denied that there was any such commotion caused by her supposed arrest in Kimsan Plaza. This was corroborated by the testimony of Rosemarie Belandres (Belandres), the roving guard assigned to the grocery section of the Kimsan Plaza on the date of the incident, who testified that there was no commotion in that section of Kimsan Plaza on the said date. Furthermore, she had no knowledge of a police apprehension for drugs on the said date. Additionally, Anthony Gonio (Gonio), the head of security of Kimsan Plaza during the time of the incident, likewise confirmed that he did not receive any report of an apprehension on the said date, or of any marking or inventory of drugs that supposedly happened in the grocery section.[8]

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[6] See Chemistry Report No. D-013-2013 dated January 12, 2013; records, p. 8.

[7] *Rollo*, pp. 5-6. See also CA *rollo*, pp. 50-62.

[8] *Rollo*, pp. 6-10. See also CA *rollo*, pp. 62-67.

In a Judgment[9] dated April 28, 2016, the RTC found Sendad guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced her as follows: (*a*) in Criminal Case No. 3637-T, she was sentenced to suffer the penalty of life imprisonment with no eligibility for parole, and to pay a fine in the amount of ₱500,000.00; and (*b*) in Criminal Case No. 3638-T, she was sentenced to suffer the penalty of imprisonment ranging from eight (8) years, as minimum, to fourteen (14) years, four (4) months, and one (1) day, as maximum, and to pay a fine in the amount of ₱300,000.00.[10] The RTC found that the prosecution, through the testimonial and documentary evidence it presented, had established beyond reasonable doubt that Sendad indeed sold two (2) plastic sachets containing dangerous drugs to the poseur-buyer, resulting in her arrest, and that she was later found to have been in illegal and knowing possession of four (4) more plastic sachets of dangerous drugs. Likewise, the RTC held that the identity, integrity, and evidentiary value of the illegal drugs were duly preserved. While the testimonies of PO3 Gonzales and PO1 Europa had contradictions, these refer to collateral matters which actually strengthened their credibility as it erased any suspicion of prior rehearsal. On the other hand, the RTC found Sendad's defense of denial untenable for her failure to substantiate the same, and in light of her positive identification by the prosecution's witnesses. The RTC also did not give credence to the statements of Belandres and Gonio, whose testimonies may be unreliable owing to the period of time which elapsed from the date of the incident and when they took the witness stand.[11] Aggrieved, Sendad appealed[12] to the CA.

In a Decision[13] dated June 21, 2018, the CA affirmed the RTC ruling, with modification on the penalty of imprisonment

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[9] CA *rollo*, pp. 48-83.

[10] *Id*. at 82-83.

[11] *Id*. at 68-81.

[12] See Notice of Appeal dated July 20, 2016; *id*. at 17.

[13] *Rollo*, pp. 3-19.

imposed in Criminal Case No. 3638-T to twelve (12) years and one (1) day, as minimum, to twenty (20) years, as maximum.[14] It held that the prosecution had sufficiently established beyond reasonable doubt all the elements of the crimes charged against Sendad, and all the links constituting the chain of custody. The CA also agreed with the RTC that the contradictions in the testimonies of PO3 Gonzales and PO1 Europa did not weaken their credibility.[15]

Hence, this appeal seeking that Sendad's conviction be overturned.

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,[16] it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.[17] Failing to prove the integrity of the *corpus*

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[14] *Id*. at 18-19.

[15] *Id*. at 12-18.

[16] The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment; while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug. (See *People v. Crispo*, G.R. No. 230065, March 14, 2018, 859 SCRA 356, 369; *People v. Sanchez*, G.R. No. 231383, March 7, 2018, 858 SCRA 84, 104; *People v. Magsano*, G.R. No. 231050, February 28, 2018, 857 SCRA 142, 152; *People v. Manansala*, G.R. No. 229092, February 21, 2018, 856 SCRA 359, 369-370; *People v. Miranda*, G.R. No. 229671, January 31, 2018, 854 SCRA 42, 52; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018, 853 SCRA 303, 312-313; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015] and *People v. Bio*, 753 Phil. 730, 736 [2015]).

[17] See *People v. Crispo*, *id*.; *People v. Sanchez*, *id*.; *People v. Magsano*, *id*.; *People v. Manansala*, *id*.; *People v. Miranda*, *id*.; and *People v. Mamangon*, *id*. See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

delicti renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.[18]

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[19] As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that "marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team."[20] Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.[21]

The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if

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[18] See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

[19] See *People v. Año*, G.R. No. 230070, March 14, 2018, 859 SCRA 381, 389; *People v. Crispo*, *supra* note 16; *People v. Sanchez*, *supra* note 16; *People v. Magsano*, *supra* note 16; *People v. Manansala*, *id.*; *People v. Miranda*, *supra* note 16; and *People v. Mamangon*, *supra* note 16. See also *People v. Viterbo*, *supra* note 17.

[20] *People v. Mamalumpon*, 767 Phil. 845, 855 (2015), citing *Imson v. People*, 669 Phil. 262, 270-271 (2011). See also *People v. Ocfemia*, 718 Phil. 330, 348 (2013), citing *People v. Resurreccion*, 618 Phil. 520, 532 (2009).

[21] See *People v. Tumulak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

prior to the amendment of RA 9165 by RA 10640,[22] a representative from the media *AND* the Department of Justice (DOJ), and any elected public official;[23] or (*b*) if **after** the amendment of RA 9165 by RA 10640, "[a]n elected public official and a representative of the National Prosecution Service[24] *OR* the media."[25] The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."[26]

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of

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[22] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.'" As the Court noted in *People v. Gutierrez* (see G.R. No. 236304, November 5, 2018) RA 10640 was approved on July 15, 2014. Under Section 5 thereof, it shall "take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation." RA 10640 was published on July 23, 2014 in The Philippine Star (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and Manila Bulletin (Vol. 499, No. 23; World News section, p. 6). Thus, **RA 10640 appears to have become effective on August 7, 2014.**

[23] Section 21 (1) and (2) Article II of RA 9165 and its Implementing Rules and Regulations.

[24] Which falls under the DOJ. (See Section 1 of Presidential Decree No. 1275, entitled "REORGANIZING THE PROSECUTION STAFF OF THE DEPARTMENT OF JUSTICE, REGIONALIZING THE PROSECUTION SERVICE, AND CREATING THE NATIONAL PROSECUTION SERVICE" [April 11, 1978] and Section 3 of RA 10071, entitled "AN ACT STRENGTHENING AND RATIONALIZING THE NATIONAL PROSECUTION SERVICE," otherwise known as the "PROSECUTION SERVICE ACT OF 2010" [lapsed into law on April 8, 2010].)

[25] Section 21, Article II of RA 9165, as amended by RA 10640.

[26] See *People v. Miranda*, *supra* note 16, at 57. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

substantive law."[27] This is because "[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment."[28]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[29] As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is a justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved.[30] The foregoing is based on the saving clause found in Section 21 (a),[31] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[32] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[33] and that the justifiable ground for non-compliance must be proven

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[27] See *People v. Miranda*, *id*. See also *People v. Macapundag*, 807 Phil. 234, 244 (2017), citing *People v. Umipang*, *supra* note 18, at 1038.

[28] See *People v. Segundo*, 814 Phil. 697, 722 (2017), citing *People v. Umipang*, *id*.

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

[30] See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

[31] Section 21 (a), Article II of the IRR of RA 9165 pertinently states: **"*Provided*, *further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items."**

[32] Section 1 of RA 10640 pertinently states: **"*Provided, finally*, That non-compliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items."**

[33] *People v. Almorfe*, *supra* note 31.

as a fact, because the Court cannot presume what these grounds are or that they even exist.[34]

Anent the required witnesses rule, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.[35] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[36] These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.[37]

Notably, the Court, in *People v. Miranda*,[38] issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that "[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."[39]

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[34] *People v. De Guzman*, 630 Phil. 637, 649 (2010).

[35] See *People v. Manansala*, *supra* note 16.

[36] See *People v. Gamboa*, *supra* note 18, citing *People v. Umipang*, *supra* note 18, at 1053.

[37] See *People v. Crispo*, *supra* note 16.

[38] *Supra* note 16.

[39] See *id* at 61.

In this case, there was a deviation from the required witnesses rule as the conduct of inventory and photography were not witnessed by a representative from the DOJ. This may be easily gleaned from the Inventory of Property Seized[40] which only confirms the presence of an elected public official, *i.e.*, Barangay Kagawad Randy L. Casama, and a media representative, *i.e.,* Leo Diaz. The absence of the DOJ personnel during the aforesaid conduct was left unacknowledged, much less justified. As earlier stated, it is incumbent upon the prosecution to account for this witness' absence by presenting a justifiable reason therefor or, at the very least, by showing that genuine and sufficient efforts were exerted by the apprehending officers to secure his presence. This was clearly absent in this case.

In view of this unjustified deviation from the chain of custody rule, and the inconsistencies surrounding the conduct of the buy-bust operation, the Court is therefore constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Sendad were compromised, which consequently warrants her acquittal.

WHEREFORE, the appeal is **GRANTED**. The Decision dated June 21, 2018 of the Court of Appeals in CA-G.R. CR-H.C. No. 01626-MIN is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Norin Sendad *y* Kundo *a.k.a.* "Nhorain Sendad *y* Kusain" is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause her immediate release, unless she is being lawfully held in custody for any other reason.

SO ORDERED.

Reyes, A. Jr., Inting, and *Zalameda,*[**] *JJ.,* concur.

Hernando, J., on leave.

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[40] Records, p. 5.

[**] Designated Additional Member per Special Order No. 2712 dated September 27, 2019.

SECOND DIVISION

[A.C. No. 7428. November 25, 2019]

VICTORIA C. SOUSA, *complainant, vs.* **ATTY. J. ALBERT R. TINAMPAY,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); DUTY OF COMPETENCE AND DILIGENCE; LAWYER'S NEGLECT OF THE LEGAL MATTER ENTRUSTED TO HIM CONSTITUTES INEXCUSABLE NEGLIGENCE. — A lawyer's duty of competence and diligence includes not just reviewing the cases entrusted to the counsel's care or giving sound legal advice. Significantly, it consists of properly representing the client before any court or tribunal, attending scheduled hearings or conferences, preparing and filing the required pleadings, as well as prosecuting the handled cases with reasonable dispatch. Conversely, a lawyer's negligence in fulfilling his duties subjects him to disciplinary action. While such negligence is incapable of exact formulation, the Court has consistently held that the lawyer's mere failure to perform the obligations due his client is *per se* a violation. [of] Canon 17 and Canon 18, Rule 18.03 and 18.04 of the Code of Professional Responsibility (CPR) x x x It is axiomatic that no lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. Every lawyer has the right to decline employment but once he agrees to take on the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. At that point, he owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his client's rights, as well as the exertion of his utmost learning and ability to the end that nothing be taken or withheld from his client, save by the rules of law, legally applied. Simply put, a client is entitled to the benefit of any and every remedy authorized by the law and he may expect his lawyer to assert every such remedy or defense. x x x [Here,] Respondent's neglect of the legal matter entrusted to him constitutes flagrant violations of the tenets of the CPR. It constitutes inexcusable negligence for which he must be held administratively liable.

2. ID.; ID.; ID.; ID.; PENALTY; SUSPENSION FROM THE PRACTICE OF LAW AND RETURN OF THE LEGAL FEES FOR FAILURE TO RENDER LEGAL SERVICE. — Anent the proper penalty to be imposed on respondent, jurisprudence tells us that in instances where the lawyer commits similar acts against their respective clients, the Court imposed on them the penalty of suspension from the practice of law. x x x In this case, the Court finds the suspension of one year sufficient for respondent's misconduct appropriate. Considering that this is his first administrative offense, such penalty serves the purpose of protecting the interest of the public and the legal profession. x x x Since respondent failed to render legal service to complainant, he should have promptly accounted for and returned the money to her. The Court finds it appropriate to order the respondent to return to complainant the legal fee [paid and the dollars] advanced to him as part of the legal fees, computed at the exchange rate prevailing at the time of payment. Both amounts shall be paid within 10 days from receipt of this Decision and interest at the rate of 6% *per annum* is imposed on them, which shall accrue from the time of respondent's receipt of this Decision until full payment.

APPEARANCES OF COUNSEL

Saludo Fernandez Aquino and *Taleon Law Offices* for complainant.

D E C I S I O N

INTING, *J.*:

Once a lawyer agrees to handle a case, he is required to undertake the task with zeal, care and utmost devotion. Acceptance of money from a client establishes an attorney-client relationship and gives rise to the duty of fidelity to the client's cause.[1]

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[1] *San Gabriel v. Atty. Sempio*, A.C. No. 12423, March 26, 2019.

For the Court's resolution is a Complaint[2] for disbarment/ suspension filed by Victoria C. Sousa (complainant) against Atty. J. Albert R. Tinampay (respondent) for professional misconduct and malpractice, fraud, misrepresentation and conflict of interest.

Complainant is a co-defendant in Civil Case No. 103 entitled *Spouses Antonio L. Dominguez and Fe D. Dominguez v. Victoria Cabilan Sousa, et al.*, a case for annulment of sale. It was raffled to the Municipal Circuit Trial Court (MCTC) of Dauis, Panglao, Bohol, but was eventually dismissed for lack of jurisdiction.[3] It was later refiled with the Regional Trial Court (RTC) of Tagbilaran City and docketed as Civil Case No. 6657.[4] The RTC treated it as an original case. In connection with it, on January 13, 2000, complainant executed a Special Power of Attorney (SPA)[5] in favor of respondent, naming, constituting, and appointing him to be her attorney-in-fact.[6]

According to the complainant, respondent did not enter his appearance as her counsel in the proceedings before the MCTC.[7] Further, during the pre-trial of the refiled case in the RTC, complainant was declared in default since neither she nor her former counsel appeared; and although respondent was present, he remained silent and did not submit any notice for his substitution as the new counsel of the complainant. Respondent never admitted in open court that he is the legal counsel of the complainant, but he continuously accepted payment from the complainant.[8]

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[2] *Rollo*, pp. 8-17.

[3] *Id.* at 258.

[4] Referred as Civil Case No. 6577 in some parts of the *rollo*.

[5] *Id.* at 21.

[6] *Id.*

[7] *Id.* at 14.

[8] *Id.*

In his Comment[9] and Position Paper,[10] respondent countered that he was never the counsel of complainant. He insisted that Atty. Teofisto Cabilan was the counsel of record of the complainant, and that he represented complainant's co-defendants in Civil Case No. 6657.[11] In fact, there was never any retainer agreement between him and complainant engaging him as counsel. He admitted though that he had billed complainant for the case and was paid ₱41,500.00 as referral fee.[12]

The Report and Recommendation of the Commission on Bar Discipline

In the Report and Recommendation[13] dated January 14, 2010 of the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD), Investigating Commissioner Manuel T. Chan (Investigating Commissioner) found that respondent failed in his duty and responsibility in safeguarding the interest of complainant during the pre-trial of Civil Case No. 6657.[14] It recommended that he be reprimanded or censured on account of his actuation. It made the following findings:

> Under the circumstances, it is relevant to inquire whether there was a legal obligation on the part of respondent to represent complainant in said pre-trial — either as regular counsel or only as counsel on special appearance for that particular occasion. What appears to be indubitable was that here was a clear obligation on the part of respondent to represent complainant in said pre-trial as her attorney-in-fact, considering that she was in the United States at that time and that he was her duly designated attorney-in-fact for the Dominguez case under the relevant SPA. The rationalization of respondent that no actual

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[9] *Id.* at 59-65.

[10] *Id.* at 112-126.

[11] *Id.* at 62, 117-118.

[12] *Id.* at 119, 260.

[13] *Id.* at 257-264.

[14] *Id.* at 262-263.

prejudice was inflicted upon complainant arising from the declaration of default, even if true, is not material at all in determining his liability.

x x x x x x x x x

This Commissioner finds respondent clearly negligent and unmindful of his duties to complainant with regards to the Dominguez case during the pre-trial which resulted in her being declared in default. He was present during the proceedings, supposedly representing the other co-defendants (Cuals), and yet inexplicably did not do anything to protect the interest of complainant either as attorney-in-fact or counsel on special appearance in view of the absence of regular counsel. Moreover, respondent did not report such incident at least soon enough to complainant so that appropriate action could be taken to reverse the default order.

Whether such negligence as committed in his professional capacity in that respondent failed to represent complainant as legal counsel in said pre-trial, or such negligence is in his private capacity in that he failed to represent respondent as attorney-in-fact in said pre-trial does not really matter. x x x. The Code of Professional Responsibility is replete with provisions which oblige the lawyer to observe candor, fairness and loyalty in all his dealings and transactions with his client, to be faithful to the cause of his client and to serve his client with competence and diligence. Certainly, the failure of respondent to represent and to protect the interest of complainant during the said pretrial violates such canons and could be considered a misconduct.[15]

The Resolution and Extended Resolution of the IBP Board of Governors

Per Resolution No. XIX-2010-601[16] dated October 9, 2010, the IBP Board of Governors adopted and approved with modification the Report and Recommendation of the Investigating Commissioner. It found respondent guilty of grave misconduct and meted out the penalty of suspension from the practice of law for a period of one year. He was likewise ordered to return to complainant the sum of ₱202,500.00 as well as the

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[15] *Id.*

[16] *Rollo*, pp. 255-256.

amount of $2,168.00, within 60 days from finality of the judgment.[17]

However, in a Resolution[18] dated June 9, 2012, the IBP Board of Governors granted respondent's motion for reconsideration and reversed and set aside its previous Resolution No. XIX-2010-601, with a warning that respondent be more circumspect in his future dealings. It stated:

> It bears pointing out that the cases handled by Respondent for Complainant as well as those for her protege, the Cuals, were all brought to a successful conclusion. As to the money in question, it can be gleaned from the enumerated events and instructions of Complainant to Respondent as to how her funds should be disbursed, that she is indeed a whimsical lady who is used to getting what she wants. It is now obvious that it was only when she dealt with Respondent in an "unprofessional" manner that matters became complicated; it was then that herein Respondent rebuked her "unprofessional" demands which ultimately gave rise to the instant case.[19]

Ultimately, the question herein is whether or not the IBP Board of Governors is correct in absolving respondent of any liability.[20]

Complainant insisted in her Petition for Review on *Certiorari*[21] that respondent is her counsel considering that she even executed an SPA authorizing him to appear and represent her in Civil Case No. 6657.[22] Respondent never denied the validity and due execution of the SPA. According to complainant, she was declared in default and was prejudiced by respondent's negligence.[23] Completely unaware of the order of default against

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[17] *Id.* at 255.

[18] *Id.* at 335-336.

[19] *Id.* at 336.

[20] *Id.* at 355.

[21] *Id.* at 348-365.

[22] *Id.* at 359.

[23] *Id.* at 358.

her, complainant continued to remit payments to respondent which the latter accepted. Under the circumstances, she asserted that respondent is guilty of gross misconduct for failing to account for the various amounts he received from her. The fiduciary nature of the relationship between counsel and client imposes on the lawyer the duty to account for the money or property collected or received for or from the client.[24]

On the other hand, in his Comment,[25] respondent reiterated that complainant was updated minute by minute of all the proceedings. She was well represented, through the Cual family, and he had an updated accounting of all her remittances. He also maintained that the billings he sent to complainant were for his services to the Cual family charged against their land where complainant constructed her residential/vacation house.[26]

Our Ruling

After a careful review of the records of the case, the Court finds that respondent was negligent and unmindful of his sworn duties to complainant.

The relationship between an attorney and his/her client is one imbued with utmost trust and confidence. Clients are led to expect that lawyers would be ever-mindful of their cause and exercise the required degree of diligence in handling their affairs. In addition, the lawyer is expected to maintain at all times a high standard of legal proficiency, and to devote his full attention, skill and competence to the case, regardless of its importance and whether he accepts it for a fee of for free.[27]

A lawyer's duty of competence and diligence includes not just reviewing the cases entrusted to the counsel's care or giving

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[24] *Id.* at 360-362.

[25] *Id.* at 406-411.

[26] *Id.* at 406-407.

[27] *Ball v. Atty. Mataro*, A.C. No. 12294 (Resolution), January 30, 2019 citing *Caranza Vda. De Saldivar v. Atty. Cabanes, Jr.*, 713 Phil. 530 (2013).

sound legal advice. Significantly, it consists of properly representing the client before any court or tribunal, attending scheduled hearings or conferences, preparing and filing the required pleadings, as well as prosecuting the handled cases with reasonable dispatch.[28] Conversely, a lawyer's negligence in fulfilling his duties subjects him to disciplinary action. While such negligence is incapable of exact formulation, the Court has consistently held that the lawyer's mere failure to perform the obligations due his client is *per se* a violation.[29] Canon 17 and Canon 18, Rule 18.03 and 18.04 of the Code of Professional Responsibility (CPR) clearly provide:

CANON 17 – A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

CANON 18 – A lawyer shall serve his client with competence and diligence.

x x x x x x x x x

Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

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

It is axiomatic that no lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. Every lawyer has the right to decline employment but once he agrees to take on the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. At that point, he owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his client's rights, as well as the exertion of his utmost learning and ability to the end that nothing be taken or withheld from his client, save by the rules of law, legally applied. Simply put, a client is entitled to the benefit of any and every

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[28] *Id.*

[29] *Id.*

remedy authorized by the law and he may expect his lawyer to assert every such remedy or defense.[30]

In relation to the foregoing, in *United Coconut Planters Bank v. Atty. Noel*,[31] the Court suspended the respondent from the practice of law for three years after committing inexcusable negligence in failing to file an answer on behalf of complainant in one case and for which reason, the latter was declared in default. The Court found that he grossly neglected his duty as counsel to the extreme detriment of his client. He willingly and knowingly allowed the default order to attain finality and let judgment to be rendered against his client on the basis of *ex parte* evidence. He also failed to assert any of the defenses and remedies available to his client under the applicable laws. These constitute inexcusable negligence warranting a exercise by the Court of its power to discipline him.

Moreover, in *Reyes v. Atty. Vitan*,[32] it was held that the act of receiving money as acceptance fee for the legal services in handling complainant's case and then failing to render such services is a clear violation of Canon 18 of the CPR, thus:

> When respondent accepted the amount of ₱17,000.00 from complainant, it was understood that he agreed to take up the latter's case and that an attorney-client relationship between them was established. From then on, it was expected of him to serve his client, herein complainant, with competence and attend to his cause with fidelity, care and devotion.
>
> The act of receiving money as acceptance fee for legal services in handling complainant's case and subsequently failing to render such services is a clear violation of Canon 18 of the *Code of Professional Responsibility* which provides that a lawyer shall serve his client with competence and diligence.[33]

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[30] *United Coconut Planters Bank v. Atty. Noel*, A.C. No. 3951, June 19, 2018 citing *Santiago v. Atty Fojas*, 318 Phil. 79, 86-87 (1995).

[31] A.C. No. 3951, June 19, 2018.

[32] 496 Phil. 1 (2005).

[33] *Id.* at 4.

In the present case, evidence shows that complainant availed herself of the legal services of respondent as evidenced by the SPA she executed in his favor on January 13, 2000. The pertinent portion of the document reads:

> I, VICTORIA C. SOUSA, a citizen of the United States of America by marriage but a Filipino by birth, of legal age, married, temporarily residing at 182 Pres. Carlos P. Garcia North Ave., Tagbilaran City, Philippines, do hereby name, constitute, and appoint my legal counsel, Atty. J. Albert R. Tinampay, a Filipino, of legal age, married to Tita Lim-Tinampay, with office address at Bohol Quality Complex, Tagbilaran City, 6300, Philippines, to be my true and lawful attorney-in-fact, for me and in my name, place and stead, to do and perform the following acts and things to wit:
>
> *To represent me before any court, person or office relative to whatever properties I have acquired wherever located in the Philippines; to appear for and in my in all stages all cases filed for or against me, including Civil Case No. 6358, RTC-Bohol, Sousa v. Dominguez, et al., Civil Case No. 103, 14th Municipal Circuit Trial Court of Dauis-Panglao, Bohol, Dominguez. et al. v. Victoria Cabilan Sousa, et al., and in all other cases that may be filed by or against me, whether it be civil, criminal. administrative or whatever: to appear in all stages, including pre-trial and amicable settlement; to sign for and in my behalf any other document relative thereto.*[34] (Underscoring supplied.)

As expressly stated, respondent shall represent complainant in all the cases filed for or against her. These include Civil Case No. 6657, previously docketed as Civil Case No. 103, pending before the RTC of Tagbilaran City. The SPA, considerably, categorically directed respondent to appear in all stages of the case such as the pre-trial conference. Here, respondent was present during the pre-trial stage of Civil Case No. 6657, but failed to represent complainant well enough and protect her interest either as an attorney-in-fact or by way of special appearance. Consequently, complainant was declared in default. The situation became worse when respondent failed

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[34] *Rollo*, p. 21.

to at least inform the complainant about the progress of the case so that proper action could be taken to reverse the default order.

Respondent's neglect of the legal matter entrusted to him constitutes flagrant violations of the tenets of the CPR. It constitutes inexcusable negligence for which he must be held administratively liable.[35]

Anent the proper penalty to be imposed on respondent, jurisprudence tells us that in instances where the lawyer commits similar acts against their respective clients, the Court imposed on them the penalty of suspension from the practice of law. In *Segovia-Ribaya v. Atty. Lawsin*,[36] the respondent was suspended for a period of one year for his failure to perform his undertaking under his retainership agreement with his client and to return the money given to him by the latter.[37] Similarly, in *Go v. Atty. Buri*,[38] the erring lawyer was suspended for a period of two years for neglecting her client's affairs and in failing to return the latter's money and/or property despite demand.

In this case, the Court finds the suspension of one year sufficient for respondent's misconduct appropriate. Considering that this is his first administrative offense, such penalty and not disbarment as prayed for by complainant, serves the purpose of protecting the interest of the public and the legal profession.

Finally, the Court observes that while the complainant alleged that respondent received ₱202,500.00 and $2,168.00, only the following amounts were supported by evidence, *viz.*: (1) ₱111,500.00,[39] (2) ₱9,500.00,[40] (3) $500.00,[41]

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[35] *San Gabriel v. Atty. Sempio, supra* note 1.

[36] 721 Phil. 44 (2013).

[37] *Id.* at 53.

[38] A.C. No. 12296, December 4, 2018.

[39] *Rollo*, p. 397.

[40] *Id.* at 398.

[41] *Id.* at 400.

(4) $250.00,[42] and (5) $200.00.[43] Since respondent failed to render legal service to complainant, he should have promptly accounted for and returned the money to her. The Court finds it appropriate to order the respondent to return to complainant the legal fee amounting to ₱121,000.00. In addition, he shall return to complainant $950.00 which complainant advanced to him as part of the legal fees, computed at the exchange rate prevailing at the time of payment. Both amounts shall be paid within 10 days from receipt of this Decision and interest at the rate of 6% *per annum*, is imposed on them, which shall accrue from the time of respondent's receipt of this Decision until full payment.[44]

WHEREFORE, the Court finds respondent Atty. J. Albert Tinampay **GUILTY** of violating Canons 17, 18 and Rules 18.03 and 18.04 of the Code of Professional Responsibility. Accordingly, the Court **SUSPENDS** him from the practice of law for one (1) year effective immediately upon receipt of this Decision. He is **STERNLY WARNED** that a repetition of the same or similar acts shall be dealt with more severely in the future. Respondent is likewise **ORDERED** to return the amounts of ₱121,000.00 and $950.00, computed at the exchange rate prevailing at the time of actual payment which shall earn legal interest at the rate of 6% *per annum* from the finality of this Decision until fully paid. Respondent shall submit to the Court proof of restitution within ten (10) days from payment. Failure to comply with this directive shall warrant the imposition of a more severe penalty.

Let all the courts, through the Office of the Court Administrator, as well as the Integrated Bar of the Philippines and the Office of the Bar Confidant, be notified of this Decision. Let a copy of this Decision be entered in the records of respondent.

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[42] *Id.* at 401.

[43] *Id.* at 402.

[44] *San Gabriel v. Atty. Sempio, supra* note 1.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Hernando*, and *Zalameda*,[*] *JJ.*, concur.

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

SECOND DIVISION

[G.R. No. 166726. November 25, 2019]

EQUITABLE PCI BANK[1] (Formerly INSULAR BANK OF ASIA & AMERICA/PHIL. COMMERCIAL AND INDUSTRIAL BANK[2]), *petitioner, vs.* **MANILA ADJUSTERS & SURVEYORS, INC.,[3] ILOCOS SUR FEDERATION OF FARMERS COOPERATIVE, INC., ESTATE OF NG YEK KIONG and ERNESTO COKAI,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS THAT COINCIDE WITH THOSE OF THE TRIAL COURT, RESPECTED. — "[F]actual findings of the CA, especially if

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[*] Designated additional member per Special Order No. 2724 dated October 25, 2019.

[1] Now Banco De Oro Unibank, Inc./Banco De Oro; *rollo*, p. 252.

[2] Should be "Philippine Commercial International Bank"; *see* Records, Vol. II, p. 1045.

[3] Should be "Manila Adjusters & Surveyors Company"; *see* Records, Vol. I, p. 59.

they coincide with those of the RTC, as in the instant case, is generally binding on us. In a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, this Court, may not review the findings of facts all over again. It must be stressed that this Court is not a trier of facts, and it is not its function to re-examine and weigh anew the respective evidence of the parties. The jurisprudential doctrine that findings of the [CA] are conclusive on the parties and carry even more weight when these coincide with the factual findings of the trial court, must remain undisturbed, unless the factual findings are not supported by the evidence on record."

2. CIVIL LAW; DAMAGES; LEGAL INTEREST FOLLOWING THE GUIDELINES LAID DOWN IN THE CASE OF *NACAR V. GALLERY FRAMES*. — As for the payment of interest, x x x [the parties] did not stipulate an interest rate in case of default when they entered into the sale. [T]he legal interest x x x shall commence to run from the time extrajudicial demand was made, x x x. [F]ollowing the guidelines laid down by the Court in *Nacar v. Gallery Frames* x x x the amount of ₱1,000,000.00 shall be subject to interest at the rate of 12% per *annum* from the date the extrajudicial demand was made or on October 8, 1975 until June 30, 2013, and thereafter, 6% per *annum* from July 1, 2013 until finality of this judgment. Moreover, once the judgment in this case becomes final and executory, the monetary award discussed above shall be subject to legal interest at the rate of 6% per *annum* from such finality until its satisfaction.

APPEARANCES OF COUNSEL

BDO Legal Services Group for petitioner.

Redentor A. Salonga for respondent Manila Adjusters and Surveyors Co., Inc.

Camilo R. Flores for respondent Ilocos Sur Federation of Farmers Cooperative, Inc.

Joaquin G. Chung, Jr. Law Offices for third-party defendants.

D E C I S I O N

HERNANDO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court challenging the August 31, 2004 Decision[4] and January 5, 2005 Resolution[5] of the Court of Appeals (CA) in CA-G.R. CV No. 54738, affirming with modification the November 10, 1995 Decision[6] of the Regional Trial Court (RTC) of Manila, Branch 7, in Civil Case No. 100783 which dismissed the Complaint for replevin and damages filed by respondent Ilocos Sur Federation of Farmers Cooperatives, Inc. (Federation).

The Antecedents

On June 27, 1975, the Federation and the Philippine American General Insurance Co., Inc. (Philam), represented by its adjuster, Manila Adjusters and Surveyors, Company (MASCO), executed a Deed of Sale[7] involving salvaged fertilizers which were stored in warehouses in San Fernando, La Union. The agreement provided that the Federation would pay for the stocks of fertilizers in installments in accordance with an agreed schedule for the total amount of ₱5,159,725.00. Moreover, the Federation would be accountable for the storage and warehousing charges. The Federation was also required to open an irrevocably confirmed without recourse Letter of Credit (LOC) amounting to ₱1,000,000.00 which will be forfeited in favor of MASCO in case of the Federation's non-compliance with the terms and conditions of the contract.

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[4] *Rollo*, pp. 34-41; penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Fernanda Lampas Peralta.

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

[6] CA *Rollo*, pp. 45-50; penned by Judge Enrico A. Lanzanas.

[7] Records, Vol. I, 7-11.

Apparently, the Federation already availed of Domestic LOC No. D-75126[8] dated June 23, 1975 from petitioner Equitable PCI Bank (Bank) (then Insular Bank of Asia & America), with a face value of ₱1,000,000.00 in favor of MASCO. The said LOC was amended[9] on June 26, 1975 to extend its expiry date from July 23, 1975 to October 22, 1975. Likewise, the LOC shall be drawable by MASCO upon its submission to the Bank of a certification that the Federation failed to comply with the terms and conditions of the sale.[10] According to the Bank, the following documents were needed to claim from the LOC: "(1) letter of default and demand for payment of the proceeds of the [LOC]; (2) the original copy of the [LOC]; (3) the original copy of the advice of [LOC] amendment extending the expiry date; (4) the original of the draft drawn with the Bank; and 5) the certification of default."[11]

Incidentally, the Federation only managed to pay the first installment of ₱300,000.00 and part of the second installment amounting to ₱200,000.00 out of the total amount of ₱5,159,725.00. Although the Federation also tendered a personal check amounting to ₱259,725.00, the same bounced due to insufficient funds. Thus, apart from its total previous payment of ₱500,000.00, the Federation no longer made additional payments. MASCO demanded payment from the Federation but it failed to settle its accountabilities.

On October 8, 1975, the date when the last installment became due, MASCO, through its President and General Manager, Dominador Tiongco (Tiongco), wrote a letter[12] to the Federation informing the latter of its (Federation's) failure to fulfill its obligations. MASCO likewise signified its resolve to demand for the proceeds of the LOC from the Bank. Thereafter, MASCO

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[8] *Id.* at 400-401.

[9] *Id.* at 402.

[10] *Id.* at 401.

[11] *Rollo*, p. 268.

[12] Records, Vol. I, pp. 59-60.

allegedly sent to the Bank the following: a letter-claim[13] dated October 8, 1975 addressed to the Bank expressing MASCO's intent to draw from the LOC; the original copy of LOC No. D-75126; the original copy of the advice of LOC amendment dated June 26, 1975 (which extended the original expiry date); the original of the draft drawn with the Bank; and the certification of default. The letter-claim and documents were purportedly personally delivered by MASCO's cashier to the Bank's branch manager. However, the Bank refused to pay MASCO the proceeds of the LOC.

In view of these, on January 9, 1976, the Federation filed a Complaint[14] for replevin with damages dated December 18, 1975 against MASCO and Philam before the then Court of First Instance (CFI) of Manila which was raffled to Branch VII thereof. The Federation asked to be placed in physical possession and control of around 180 bags of fertilizers, in light of the parties' prior sale agreement. The Complaint was subsequently amended[15] to include the alleged violation of MASCO and Philam of the contract of sale as an added cause of action. The Complaint was again amended[16] to implead the Bank as a party defendant to enjoin it from paying the LOC it issued in favor of MASCO, and Ng Yek Kiong and Ernesto Cokai as third-party defendants.

In its Answer with Counterclaim and Cross-Claim,[17] the Bank denied receipt of the letter-claim dated October 8, 1975, as well as the documents attached thereto. Likewise, it filed a cross-claim against MASCO contending that the latter failed to present to the Bank the draft under the LOC. In addition, the Bank filed a Third-Party Complaint[18] against Ng Yek Kiong

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[13] *Id.*, Vol. II, pp. 1054-1055.

[14] *Id.*, Vol. I, pp. 1-6; Civil Case No. 100783 entitled, "*The Ilocos Sur Federation of Farmers Cooperative, Inc. v. Manila Adjusters and Surveyors, Inc. and Phil-Am General Insurance Co., Inc.*"

[15] Records, Vol. I, pp. 90-103.

[16] *Id.* at 200-213.

[17] *Id.* at 394-399.

[18] *Id.* at 493-495.

and Ernesto Cokai for indemnity based on surety agreement in which the latter bound themselves jointly and severally to indemnify the Bank up to ₱1,000,000.00 in connection with the LOC.

MASCO, in its Answer[19] to the Bank's cross-claim, filed a counterclaim against the Bank for the payment of the proceeds of the LOC and for damages.

During the proceedings, the Federation and MASCO jointly submitted a Partial Stipulation of Facts[20] which provided that after the Federation's default, MASCO duly and timely filed a claim against the LOC with then Insular Bank of Asia & America.[21] Interestingly, the Federation did not present additional proof but opted to rely on the said stipulations. MASCO's witnesses identified the Partial Stipulation of Facts and its letter-claim dated October 8, 1975 addressed to the Bank along with the required documents wherein it claimed for payment of the proceeds of the LOC considering the Federation's failure to comply with the terms of the sale.

Nevertheless, the Bank denied receipt of the letter-claim dated October 8, 1975. It further averred that it received instructions from the Federation not to release the proceeds of the LOC to MASCO since it (MASCO) supposedly violated the terms and conditions for the issuance of the same.

Meanwhile, in another case filed by Ng Yek Kiong against the Bank docketed as Civil Case No. 99661[22] with the CFI of Manila, Branch XVI, an injunctive order was issued on February 18, 1976 which, as the Bank alleged, prevented it from paying the proceeds of the LOC. The said injunction was eventually

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[19] *Id.* at 406-408.

[20] *Id.*, Vol. II, pp. 681-683.

[21] *Id.* at 683.

[22] *Id.*, Vol. I, pp. 241-247; "*Ng Yek Kiong and Ernesto Cokai v. Insular Bank of Asia and America, Manila Adjusters & Surveyors Company and Mariano Pintor, et al.*"

dissolved by the Supreme Court in G.R. No. L-44126[23] which was promulgated on February 28, 1977.

In any case, the Federation's Complaint was dismissed for lack of interest on the part of the plaintiff (Federation) and for failure to prosecute. Nonetheless, the proceedings as regards the counterclaim of MASCO against the Federation as well as the cross-claim of the Bank against MASCO (and the counterclaim of MASCO against the Bank) ensued.[24]

Tiongco testified that MASCO executed a Deed of Sale sometime in June 1975 covering approximately 75,000 bags of salvaged fertilizer in favor of the Federation. He confirmed that the LOC was issued by then Insular Bank of Asia and America. He reiterated that out of the eight installment payments, the Federation only paid the first installment and part of the second installment. For this reason, MASCO repeatedly demanded from the Federation to pay according to the installment schedule yet the latter failed to do so. Because of the Federation's default, in October 1975 or when the last installment became due, MASCO was constrained to file a claim on the proceeds of the LOC from the Bank.[25]

Tiongco averred that MASCO wrote a letter-claim to the Bank and appended the required documents in order to properly claim from the LOC.[26] He specified that he instructed MASCO's cashier, Antonio Jimenez (Jimenez), to personally deliver the required documents to the Bank's manager. Yet, even after receipt of the claim, the Bank did not release the proceeds of the LOC. Additionally, he insisted that the Bank received the letter-claim dated October 8, 1975 and even pointed out the written date of receipt by the Bank's representative in MASCO's receiving copy of the letter-claim.[27] Regardless, Tiongco admitted

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[23] *Manila Adjusters & Surveyors Company v. Bocar*, 166 Phil. 408 (1977).

[24] Records, Vol. I, p. 899; *see* October 12, 1990 Order.

[25] TSN, November 21, 1990, pp. 9-12.

[26] *Id.* at 14-18.

[27] *Id*. at 20-21; TSN, November 28, 1990, pp. 2-3; *Records*, Vol. II, p. 1054; Handwritten marking signifying receipt on October 8, 1975.

that he did not personally see or meet the individual who received the documents in behalf of the Bank and that he relied on Jimenez's word that he (Jimenez) delivered everything to the Bank.[28]

Carlos Macazo, the Bank's Account Officer Assistant, stated that the Federation instructed the Bank not to pay MASCO because of its violation of the provisions of the Deed of Sale. He explained that non-compliance with the terms and conditions will result in the cancellation of the LOC. He added that based on the Bank's records, MASCO failed to present the draft of the Federation drawn under the LOC.[29] Notwithstanding this, he stated that the Bank could not locate the written instruction of the Federation not to release the LOC's proceeds because there was no smooth turnover of documents during the Bank's merger.[30]

Andronico Uy, an officer of the Bank, asserted that documents for reception of the Bank should pass through a metered machine and the date and time of receipt should be stamped on the document and then signed by the Bank's clerk.[31] Thus, it was the Bank's position that it could not have received MASCO's claim since there was no indication that it passed through the said machine.

The Ruling of the Regional Trial Court

In the November 10, 1995 Decision,[32] the RTC held that the Federation did not comply with the terms and conditions of the Deed of Sale, since it failed to pay the entire sum of ₱5,159,725.00. On the other hand, the trial court found that MASCO properly filed its claim against the LOC with the Bank.

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[28] TSN, November 28, 1990, p. 3.

[29] TSN, February 13, 1991, pp. 5-7.

[30] TSN, February 20, 1991, p. 3.

[31] TSN, May 17, 1991, pp. 4-5.

[32] CA *rollo*, pp. 45-50.

It further found that the Federation and the Bank did not present sufficient evidence to overturn the said facts. Thus, the dispositive portion of the trial court's Decision reads:

> WHEREFORE, and considering the foregoing, judgment is hereby rendered as follows:
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> 1. The Complaint of plaintiff Ilocos Sur Federation of Farmers Cooperatives, Inc. is hereby dismissed. Said plaintiff Ilocos Sur Federation is hereby ordered to pay defendant Manila Adjusters & Surveyors, Inc. relative to [its] counterclaim, the storage fee of ₱80,000.00 plus interest thereon every year from the filing of the counterclaim until paid plus the sum of ₱50,000.00 as and for attorney's fees.
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> 2. The cross-claim of cross-plaintiff Insular Bank of Asia and America, now Philippine Commercial and International Bank, is dismissed. Said cross-plaintiff Philippine Commercial and International Bank is ordered to pay defendant Manila Adjusters & Surveyors, Inc. regarding the latter's counterclaim, the face amount of the Letter of Credit of One Million (₱1,000,000.00)[,] Pesos (sic), plus 12% interest per year from October 8, 1975 until paid and attorney's fees of ₱50,000.00.
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> 3. Regarding the bank's counterclaim against plaintiff Ilocos Sur Federation of Farmers Cooperatives, Inc. and the bank's Third-Party complaint against Ng Yek Kiong and Ernesto Cokai, plaintiff Ilocos Sur Federation of Farmers Cooperatives, Inc. is ordered to indemnity the Philippine Commercial and International Bank whatever amounts that the bank shall pay the Manila Adjusters and Surveyors, Inc. in connection with the latter's judgment against the bank. Third-party defendants Ng Yek Kiong and Ernesto Cokai are adjudged jointly and severally liable with the plaintiff in favor of the bank up to the limit of their surety agreement of One Million (₱1,000,000.00) Pesos.
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> SO ORDERED.[33]

The Bank asked for a reconsideration[34] but was denied in an Order[35] dated March 4, 1996. Thus, the Bank appealed to the CA.

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

[34] Records, Vol. II, pp. 1031-1039.

[35] *Id.* at 1045.

The Ruling of the Court of Appeals

The CA, in its assailed August 31, 2004 Decision,[36] affirmed the RTC's findings and likewise found that MASCO complied with the conditions to claim the proceeds of the LOC upon presentation of the required documents to the Bank. Moreover, it ruled that MASCO was entitled to an award of interest based on Article 2209[37] of the Civil Code. Since MASCO strictly complied with the terms of the LOC, it was legally entitled to payment and interest at the rate of 12% *per annum*. The appellate court noted that the Bank failed and refused to pay MASCO upon the instruction of the Federation because MASCO allegedly violated the terms and conditions of the Deed of Sale and the LOC. Notwithstanding this, it held that MASCO was not entitled to attorney's fees as such cannot be recovered as part of damages considering the policy that no premium should be placed on the right to litigate. The dispositive portion of the CA's assailed Decision reads:

> **WHEREFORE**, the foregoing considered, the instant appeal is hereby **GRANTED** and the assailed [RTC] decision is **MODIFIED** with the deletion of the award of attorney's fees with respect to appellant bank. The [RTC] decision is affirmed in all other respects.
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> No costs.
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> SO ORDERED.[38]

The Bank filed a motion for reconsideration which was denied by the CA in a Resolution[39] dated January 5, 2005. Discontented,

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[36] *Rollo*, pp. 34-41.

[37] Art. 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six percent per annum.

[38] *Rollo*, p. 41.

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

the Bank elevated[40] this case before Us and raised the following issues:

(A) WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT HOLDING THAT STRICT COMPLIANCE IN THE HANDLING OF DOCUMENTS IN A LETTER OF CREDIT TRANSACTION IS NECESSARY.

(B) WHETHER OR NOT INTEREST IS DUE DURING THE TIME INJUNCTION WAS ISSUED AND PRIOR TO THE REVERSAL THEREOF BY THIS HONORABLE COURT.[41]

In its Amended Petition for Review,[42] the Bank cited the following grounds:

Whether or not the Court of Appeals failed to cite evidence to support its conclusion that petitioner Bank was liable under the letter of credit[.]

Whether or not petitioner Bank can be held liable for payment of interest despite existence of an injunctive order that prevented it from paying[.][43]

Thus, the main issue is whether or not MASCO submitted the required documents for it to be allowed to draw from the proceeds of the LOC from the Bank.

The Ruling of the Court

The petition is unmeritorious.

The Bank argues that there should be strict compliance with the terms of the LOC before it can be required to pay. It insists that a party who seeks to draw from the LOC must establish by clear and convincing evidence that the required documents were submitted. It questions the trial court's finding that MASCO had submitted the necessary documents to the Bank's manager,

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[40] *Id.* at 19-32.

[41] *Id.* at 24-25.

[42] *Id.* at 264-287.

[43] *Id.* at 273.

as this finding was only supported by an oral testimony without documentary proof of actual receipt and was contrary to the testimonies of the Bank's witnesses who denied receipt of the documents.[44] It avers that "[t]he Bank's witness clearly testified that the bank receives every package through its metered machine bearing the date and time of receipt and the signature of the person in charge of receiving the same, usually the Bank clerk."[45]

The Bank points out that as indicated in the Partial Stipulation of Facts offered before the RTC, MASCO recognized that an injunction was issued[46] upon the instance of Ng Yek Kiong directed against the claim of MASCO upon the LOC, and that subsequently the Supreme Court dissolved the same injunctive order. In view of this, the Bank posits that the computation of interest should not commence from October 8, 1975, or the date of the alleged submission of the required documents to the Bank. Instead, the interest should be computed from the time the Bank was informed of the dissolution of the injunction. This is because at the time the injunction was served upon the Bank, it had no legal right to question its validity. *Ergo*, it had to comply with the order and should not be faulted for not releasing the proceeds during the time that the injunction was in effect.[47]

At the outset, it should be emphasized that it is a well-known procedural rule that a petition for review on *certiorari* under Rule 45 of the Rules of Court is only limited to questions of law. In fact,

> 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 re-examination of factual findings is outside the province of a petition for review on *certiorari*, to wit:

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[44] *Id.* at 25-26 and 274.

[45] *Id.* at 27.

[46] By then CFI Judge Bocar.

[47] *Rollo*, pp. 28-29.

> **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 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.[48] (Citations omitted)

In the petition at bench, the Bank mainly contends that it did not receive the required documents from MASCO in order for the latter to claim the proceeds of the LOC. Undoubtedly, such contention's truth or falsity can easily be verified by assessing the documentary and testimonial evidence submitted

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[48] *Miro v. Vda. de Erederos*, 721 Phil. 772, 785-786 (2012); *Diokno v. Cacdac*, 553 Phil. 405, 428 (2007); *Phil. Veterans Bank v. Monillas*, 573 Phil. 384, 389 (2008); and *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*, 665 Phil. 784, 789 (2011).

(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) 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) When the findings are contrary to those of the trial court;
(8) When the findings of fact are conclusions without citation of specific evidence on which they are based;
(9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and
(10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.

by the parties during trial. Clearly, this is a question of fact which is not within the purview of a petition for review on *certiorari* under Rule 45. Moreover, the instant case does not fall under the exceptions wherein the Court should once again review the factual circumstances surrounding the case before arriving at its conclusion. In fact, based on the records, the findings of fact by the CA and the RTC are accurate and have no badges of misapprehension or bad faith, and thus need not be interfered with.

To stress, "[f]actual findings of the CA, especially if they coincide with those of the RTC, as in the instant case, is generally binding on us. In a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, this Court, may not review the findings of facts all over again. It must be stressed that this Court is not a trier of facts, and it is not its function to re-examine and weigh anew the respective evidence of the parties. The jurisprudential doctrine that findings of the [CA] are conclusive on the parties and carry even more weight when these coincide with the factual findings of the trial court, must remain undisturbed, unless the factual findings are not supported by the evidence on record."[49]

Both the CA and the RTC found that MASCO properly presented the documentary requirements of the Bank in order to claim from the LOC. The Bank was not able to overturn such finding as it merely denied receipt of the same without corroborating evidence, except for an allegation that all documents received by the Bank should go through a metered machine which was not found on those documents submitted by MASCO. Contrariwise, MASCO averred that the official papers were personally handed over to the manager of the Bank at the time, which could explain why it did not pass through the metered machine or the usual procedure in the Bank's reception. Interestingly, the Bank was not able to completely

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[49] *Cortez v. Cortez*, G.R. No. 224638, April 10, 2019, citing *Villanueva v. Court of Appeals*, 536 Phil. 404, 408 (2006) and *Valdez v. Reyes*, 530 Phil. 605, 608 (2006).

establish if the practice of utilizing a metered machine was already being enforced when the documents were presented, considering that the incident happened in 1975. The Bank did not even submit an affidavit or offer the testimony of the bank manager during trial in order to debunk MASCO's assertion that he or she actually received the documents. In addition, the contention that the Federation instructed the Bank not to pay MASCO suggested that the Bank, regardless of receipt of the documents, would not pay MASCO immediately. Unfortunately, it would be difficult to either prove or debunk the parties' allegations since more than 40 years had already passed. To stress, We are limited to the offered evidence from which the Court can draw its factual and legal conclusions.

Hence, given that MASCO was able to prove with preponderant evidence[50] that it submitted the documents which the Bank required in order to claim from the LOC, there is basis to affirm the findings of the RTC and the CA that the Bank should release the proceeds of the LOC amounting to ₱1,000,000.00 to MASCO.

As for the payment of interest, the Court notes that the Bank failed to present sufficient factual or legal basis to support its contention that the time in which the injunction was in effect should not be included in the computation of the legal interest, it being established that the parties to the Deed of Sale, particularly the Federation and Philam/MASCO, did not stipulate an interest rate in case of default when they entered into the sale. Furthermore, We find that the Bank did not advance any amount or offer any alternative in order to show that it was willing to pay the proceeds of the LOC in spite of the issuance of an injunctive order (which was eventually dissolved by the Court anyway) and notwithstanding the Federation's instruction to the Bank not to pay MASCO.

Withal, the legal interest on the face amount of the LOC or ₱1,000,000.00 shall commence to run from the time extrajudicial

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[50] RULES OF COURT, Rule 133, § (1).

demand[51] was made, or the date when the letter-claim along with the documents were submitted to the Bank, specifically on October 8, 1975. In this respect, the Court agrees with the ruling of the CA, which affirmed the RTC's finding. However, the Court modifies the appealed CA Decision with regard to the interest on the monetary awards following the guidelines laid down by the Court in *Nacar v. Gallery Frames*[52] to wit:

> [I]n the absence of an express stipulation as to the rate of interest that would govern the parties, the rate of legal interest for loans or forbearance of any money, goods or credits and the rate allowed in judgments shall no longer be twelve percent (12%) *per annum* — as reflected in the case of *Eastern Shipping Lines* and Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions, before its amendment by BSP-MB Circular No. 799 — but will now be six percent (6%) *per annum* effective July 1, 2013. It should be noted, nonetheless, that the new rate could only be applied prospectively and not retroactively. Consequently, the twelve percent (12%) *per annum* legal interest shall apply only until June 30, 2013. Come July 1, 2013 the new rate of six percent (6%) *per annum* shall be the prevailing rate of interest *when applicable*.
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> Nonetheless, with regard to those judgments that have become final and executory prior to July 1, 2013, said judgments shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein.
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> **To recapitulate and for future guidance, the guidelines laid down in the case of *Eastern Shipping Lines* are accordingly modified to embody BSP-MB Circular No. 799, as follows:**
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> I. When an obligation, regardless of its source, *i.e.*, law, contracts, quasi-contracts delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions

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[51] *Pineda v. Zuñiga Vda. de Vega*, G.R. No. 233774, April 10, 2019, *citing* Desiderio P. Jurado, *COMMENTS AND JURISPRUDENCE ON OBLIGATIONS AND CONTRACTS* (1987 Ninth Revised Edition), p. 54.

[52] 716 Phil. 267, 280-283 (2013). *See* Bangko Sentral ng Pilipinas Monetary Board Circular No. 799, Series of 2013.

under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

And, in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein. (Citations omitted.)

Based on the foregoing, the amount of ₱1,000,000.00 shall be subject to interest at the rate of 12% *per annum* from the date the extrajudicial demand was made or on October 8, 1975 until June 30, 2013, and thereafter, 6% *per annum* from July 1, 2013 until finality of this judgment.

Moreover, once the judgment in this case becomes final and executory, the monetary award discussed above shall be subject to legal interest at the rate of 6% *per annum* from such finality until its satisfaction.

As a final note, it is apt to mention that this is an inherited case which has been pending final resolution since 1975. It has been around 44 years since the filing of the case before the trial court. There is even a concern that a few of the parties liable herein no longer exist or can no longer be located due to the passage of time. Although the delay could be attributed to a number of factors, it remains that this case has been pending for quite some time, especially considering that the main issue is actually merely a factual one.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED** for failure to establish any reversible error on the part of the Court of Appeals. The assailed August 31, 2004 Decision and January 5, 2005 Resolution of the Court of Appeals in CA-G.R. CV No. 54738 are hereby **AFFIRMED WITH MODIFICATIONS** that the amount of ₱1,000,000.00 shall be subject to interest at the rate of 12% *per annum* from October 8, 1975 until June 30, 2013, and at the rate of 6% *per annum* from July 1, 2013 until full satisfaction of the same.

SO ORDERED.

Perlas-Bernabe (*Chairperson*), *Inting*, and *Zalameda*,[*] *JJ.*, concur.

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

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[*] Designated additional member per Special Order No. 2727 dated October 25, 2019.

SECOND DIVISION

[G.R. No. 200984. November 25, 2019]

NONA S. RICAFORT, in her capacity as Chairman of the Board of Trustees of EULOGIO "AMANG" RODRIGUEZ INSTITUTE OF SCIENCE AND TECHNOLOGY (EARIST), HORACE R. CRUDA, ATTY. ARMI-MINDA DAYOT CORPUZ, MARCELINA E. BACANI, EDUARDO G. ONG, and RONNIE C. TUNGUL, in their capacity as Members of the Board of Trustees of EARIST, and DR. ENRIQUE R. HILARIO, in his capacity as the designated officer-in-charge of the Office of the President of EARIST, *petitioners, vs.* **MAURA V. BAUTISTA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW ARE ALLOWED; EXCEPTIONS. — A petition for review on *certiorari* under Rule 45 is an appeal from a ruling of a lower tribunal on pure questions of law. In other words, in petitions for review on *certiorari*, only questions of law may be put into issue and questions of fact cannot be entertained. It is only in exceptional circumstances that the Court admits and reviews questions of fact, to wit: (1) when the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply

briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. However, this case does not fall in any of the exceptional circumstances enumerated above.

2. CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES; REQUISITES FOR AWARD THEREOF; ATTORNEY'S FEES, GRANTED; LEGAL INTEREST, IMPOSED. — The requisites for the award of exemplary damages are as follows: (1) they may be imposed by way of example in addition to compensatory damages, and only after the claimant's right to them has been established; (2) that they cannot be recovered as a matter of right, their determination depending upon the amount of compensatory damages that may be awarded to the claimant; and (3) the act must be accompanied by bad faith or done in a wanton, fraudulent, oppressive or malevolent manner. There is no doubt that all of the requisites for the award of exemplary damages are present in the instant case. The imposition of exemplary damages on petitioner's part is by way of example or correction for the public good since the existence of bad faith was established by the court *a quo*. On the grant of attorney's fees to respondent, the Court affirms both the court *a quo* and the CA that there was an unjustified refusal on the part of petitioner to satisfy respondent's valid, just, and demandable claim. Hence, it is just and equitable to grant respondent attorney's fees. However, applying the guidelines in *Nacar v. Gallery Frames, et al.,* the Court finds that a legal interest at the rate of 6% shall be imposed on the amount finally adjudged, from the finality of this Decision until its full satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

APPEARANCES OF COUNSEL

Gimenez Gatmaytan and Associates for respondent.

D E C I S I O N

INTING, *J.*:

This is a Petition for Review[1] filed under Rule 45 of the 1997 Rules of Civil Procedure which seeks to reverse and set aside the Decision[2] dated February 28, 2012 of the Court of Appeals (CA) in CA-G.R. CV No. 93009 dismissing the appeal filed by Nona S. Ricafort (petitioner) and affirming the Decision[3] dated October 14, 2008 of the Regional Trial Court, Branch 51, Manila (RTC Branch 51) in Civil Case No. 06-114930. The assailed Decision declared as illegal the unnumbered resolution[4] issued by the Board of Trustees (BoT) of the Eulogio "Amang" Rodriguez Institute of Technology (EARIST) which considered Maura V. Bautista (respondent) to have mandatorily retired from service upon reaching the age of 65 years old, and thus, revoking her reappointment or extension of service as President of EARIST.

EARIST is a state college established by virtue of Presidential Decree No. 1524. Based on EARIST charter, and as reiterated in Republic Act No. (RA) 8292 otherwise known as the *Higher Education Modernization Act of 1997*, the BoT is its governing body.[5]

On December 8, 1999, respondent was appointed as President of EARIST by Esther A. Garcia, then Chairman of the Commission on Higher Education (CHED) for four years effective on December 8, 1999, or until December 2003.[6]

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[1] *Rollo*, pp. 180-209.

[2] *Id.* at 44-59; penned by Associate Justice Franchito N. Diamante with Associate Justices Mariflor P. Punzalan Castillo and Angelita A. Gacutan, concurring.

[3] *Id.* at 141-151; penned by Judge Gregorio B. Clemeña, Jr.

[4] *Id.* at 236-237.

[5] *Id.* at 185.

[6] *Id.*

On May 14, 2003, or prior to the expiration of respondent's term in December 2003, the BoT passed Board Resolution No. 12-2003 approving the reappointment of respondent effective December 16, 2003 up to age 65, but without prejudice to an extension beyond 65 years of age.[7]

On August 13, 2003, the BoT passed Board Resolution No. 15-2003 approving the reappointment of respondent for one full term of four (4) years effective on December 16, 2003.[8]

On September 5, 2003, Rolando R. Dizon, then Chairman of the CHED and on behalf of the BoT, signed the reappointment paper of respondent for one full term of another four years effective December 16, 2003 up to December 17, 2007. Hence, for her second term of office, respondent continued to discharge the functions of the President of EARIST.[9]

Sometime in 2005, upon reaching the mandatory retirement age of 65, respondent was offered a retirement benefit by the Government Service Insurance System (GSIS) to which she applied[10] and approved by the GSIS effective December 1, 2005.[11] Respondent received from the GSIS her retirement and terminal leave benefits in the amount of ₱1,314,644.83[12] and ₱821,347.68,[13] respectively. Respondent continued to occupy the office as President of EARIST and she never submitted a resignation letter.

On April 19, 2006, upon learning of the approval of respondent's application for retirement, the BoT, headed by

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[7] *Id.*

[8] *Rollo*, p. 45.

[9] *Id.* at 45-46.

[10] *Id.* at 60.

[11] *Id.* at 61.

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

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

its new Chairman, herein petitioner, together with the other members thereof, passed and approved an unnumbered resolution, which considered the respondent to have mandatorily retired from service. Consequently, petitioner, in the same unnumbered resolution and in the Memorandum[14] dated April 19, 2006, designated Dr. Enrique R. Hilario (Dr. Hilario), as Officer-in-Charge (OIC) of EARIST.[15] The unnumbered resolution reads:

> WHEREAS, Dr. Maura V. Bautista has mandatorily retired from the government service effective December 1, 2005;
>
> WHEREAS, the Board of Trustees noted her retirement and decided in Executive Session not to extend her services;
>
> WHEREAS, in the exigency of service, there is a need to designate an Officer-in-Charge to discharge the functions and responsibilities of the SUC President II;
>
> NOW THEREFORE, BE IT RESOLVED, AS IT IS HEREBY RESOLVED, that the Board notes the mandatory retirement of Dr. Maura V. Bautista effective December 2005 and decided not to extend her services.
>
> RESOLVED, AS IT IS HEREBY FURTHER RESOLVED, that the Board in the exigency of service, designates **DR. ENRICO R. HILARIO**, Dean, College of Industrial Technology as Officer-in-Charge, Office of the President of the Eulogio "Amang" Rodriguez Institute of Science and Technology effective April 20, 2006. He shall discharge the responsibilities of a SUC President II and he shall be entitled to all remunerations attached to the position except the basic salary thereof.
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> RE[S]OLVED FURTHERMORE, AS IT IS HEREBY FURTHERMORE RESOLVED, that all Board Resolutions relative to the re-appointment of Dr. Maura V. Bautista beyond the age of 65 are hereby revoked/rescinded.[16]

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[14] *Id.* at 238.

[15] *Id.* at 143.

[16] *Id.* at 236.

The officers, faculty, students, and staff of EARIST were informed of Dr. Hilario's designation in a notice[17] dated April 19, 2006, which reads:

> Per instruction of Commissioner Nona S. Ricafort, Chairperson of the EARIST Board of Trustees, we are furnishing you with a copy of the resolution designating Professor Enrico R. Hilario as Officer-in-Charge, Office of the President of the EARIST effective April 20, 2006. This designation shall remain in force and in effect until a new President has been appointed/selected by the BOT.
>
> This is in view of the mandatory retirement of Dr. Maura V. Bautista and of the EARIST Board of Trustees' decision not to extend her services as EARIST President.[18]

On April 26, 2006, respondent filed a Petition for Injunction (with Application for a Temporary Restraining Order and/or Writ of Preliminary Injunction)[19] praying, among others, that a temporary restraining order and/or writ of preliminary injunction be issued *ex parte* restraining petitioner and other members of the BoT from implementing the Memorandum dated April 19, 2006, and to order Dr. Hilario to cease and desist from exercising the functions of the President of EARIST.[20] Respondent also prayed that after proper proceedings, the lower court declare as null and void and set aside the Memorandum dated April 19, 2006; make permanent the restraining order and a preliminary injunction issued against the implementation of the questioned Memorandum; and direct petitioner and other members of the BoT to pay moral and exemplary damages and attorney's fee.[21]

On May 2, 2006, the RTC Branch 41, Manila (RTC Branch 41), where this case was originally assigned, issued

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[17] *Id.* at 71.

[18] *Id.*

[19] *Rollo*, pp. 240-251.

[20] *Id.* at 249.

[21] *Id.*

an Order[22] dismissing the petition. It ruled that the petition was not the proper remedy to assail the Memorandum dated April 19, 2006 and that respondent had other recourse before the CHED.

On Motion for Reconsideration,[23] the RTC Branch 41 issued an Order[24] dated June 6, 2006 granting the motion. The RTC set aside the earlier Order dated May 2, 2006.

On June 13, 2006, the RTC Branch 41 issued another Order[25] granting a Temporary Restraining Order restraining petitioner and the other members of the BoT from implementing the Memorandum dated April 19, 2006, and ordering Dr. Hilario to cease and desist from exercising the functions as OIC of the Office of the President of EARIST. Further, the RTC Branch 41 ordered the reinstatement of respondent to resume her duties and functions as the President of EARIST.

On June 29, 2006, petitioner and other members of the BoT, through the Office of the Solicitor General (OSG), filed a Very Respectful Motion for Inhibition[26] of the Presiding Judge of Branch 41.

On June 30, 2006, Judge Vedasto B. Marco, Presiding Judge of RTC Branch 41, granted the motion for inhibition.[27] The case was re-raffled to RTC Branch 51.

Ruling of the RTC

On October 14, 2008, the RTC Branch 51 rendered a Decision[28] in the petition for injunction. The court *a quo* ruled

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[22] *Rollo*, pp. 96-97.

[23] *Id.* at 99-108.

[24] *Id.* at 98.

[25] *Id.* at 109.

[26] *Id.* at 128-134.

[27] *Id.* at 137.

[28] *Id.* at 141-151.

that the designation of Dr. Hilario as OIC of the Office of the President of EARIST was not proper because the position of president was not vacated per Section 30[29] of the Revised Implementing Rules and Regulations (RIRR) for RA 8292.[30] Following the RIRR, respondent was still serving as President of EARIST.

The court *a quo*, in the application for an injunction by respondent against herein petitioner and all other members of the BoT, was posed with the question as to whether the issuance of an injunction to stop the implementation of the Memorandum dated April 19, 2006 was proper and tenable, considering that based from respondent's allegations, she was reaching the age of 67 by November 2007. Thus, the court *a quo* held that although the prayer for injunction was tenable, but since respondent's reappointment was only effective up to December 2007, it considered the issuance of an injunction order not proper.[31]

However, the court *a quo* awarded the respondent with actual damages by way of her unearned salary from April 19, 2006 up to December 2007; exemplary damages in the amount of ₱50,000.00; and attorney's fees in the amount of ₱20,000.00. Further, the court *a quo* required only the petitioner to pay the awards ratiocinating that the petitioner, in appointing an OIC in the Office of the President, displayed an abuse of power as Commissioner of the CHED and her action was purely personal.[32]

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[29] Sec. 30. Vacancy in the Office of the President. – In case of vacancy by reason of death, transfer, resignation, removal for cause or incapacity of the incumbent President to perform the functions of his office, the CHED Chairman or the CHED Commissioner as Chair of the BOR/BOT, shall within fifteen (15) days from the occurence of such vacancy, designate an Officer-in-Charge (OIC) in the Office of the President (OP), subject to confirmation by the GB [Governing Body].

[30] *Rollo*, p. 150.

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

[32] *Id.* at 151.

Ruling of the CA

On February 28, 2012, the CA rendered the assailed Decision,[33] which denied the appeal and affirmed the Decision dated October 14, 2008. The CA found it proper to award respondent with actual damages in the form of the loss of her salary from April 19, 2006 up to December 17, 2007.[34] Further, the CA upheld the court *a quo*'s findings that petitioner was liable for exemplary damages by way of example or correction for he public good because the existence of bad faith on the part of petitioner was established.[35] Also, as to the award of attorney's fees, the CA found that petitioner had refused to satisfy respondent's valid, just, and demandable claim. Hence, the CA deemed it just and equitable to grant respondent the amount of ₱20,000.00 as attorney's fees.

The Issue

Petitioner maintains that the award of exemplary damages and attorney's fees in favor of respondent lacks basis as the BoT acted in good faith when it issued the unnumbered resolution and considered respondent as having retired from the service.[36]

Our Ruling

The petition is without merit.

A petition for review on *certiorari* under Rule 45 is an appeal from a ruling of a lower tribunal on pure questions of law.[37] In other words, in petitions for review on *certiorari*, only questions of law may be put into issue and questions of fact cannot be entertained.[38] It is only in exceptional circumstances that the

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

[34] *Id.* at 56.

[35] *Id.*

[36] *Rollo*, p. 196.

[37] *Century Iron Works, Inc. v. Bañas*, 711 Phil. 576, 585 (2013).

[38] *Cebu Shipyard & Eng'g Works, Inc. v. William Lines, Inc.*, 366 Phil. 439, 452 (1999).

Court admits and reviews questions of fact, to wit: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[39] However, this case does not fall in any of the exceptional circumstances enumerated above.

In the petition before the Court, petitioner is raising mixed questions of fact and law.

Petitioner proffers that the award of the court *a quo* of damages in favor of respondent ostensibly lacks basis because there is no showing that the actuation or decision of the BoT was tainted with bad faith;[40] and that the BoT merely interpreted the provision of RA 8292 insofar as its power to extend the term of office of an incumbent president is concerned.[41] Moreover, petitioner explains that the BoT acted in good faith when it issued the unnumbered Resolution. Petitioner also asserts that the issuance of the unnumbered Resolution is a collegial action of the BoT since no one can act alone without the approval of the majority

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[39] *New City Builders, Inc. v. NLRC*, 499 Phil. 207, 212-213 (2005) citing *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, April 28, 2004, 428 SCRA 79.

[40] *Rollo*, p. 201.

[41] *Id.*

of the member. Hence, petitioner insists that the court *a quo* and the CA erred in singling her out as the only member of the BoT who shall be personally liable to respondent for exemplary damages and attorney's fees.[42]

All told, the Court finds that the resolution of the propriety of the award of exemplary damages and attorney's fees entails a review of the factual circumstances which led the court *a quo*, as affirmed by the CA, to decide in such manner. Likewise, the position of petitioner that she did not act with malice or bad faith in the issuance of the unnumbered Resolution calls for the Court to analyze and weigh the evidence all over again.

It must be stressed that only questions of law can be addressed in reviews on *certiorari*.[43] It is not the function of the Court to analyze or weigh the evidence, which tasks belong to the trial court as the trier of facts and to the appellate court as the reviewer of facts. The Court is confined to the review of errors of law that may have been committed in the judgment under review.[44]

In *Madrigal v. Court of Appeals*,[45] the Court had the occasion to rule that the Court's jurisdiction is limited to reviewing errors of law that may have been committed by the lower court. *The Court is not a trier of facts as it leaves these matters to the lower court, which has more opportunity and facilities to examine these matters. It is the policy of the Court to defer to the factual findings of the trial judge, who has the advantage of directly observing the witnesses on the stand and to determine their demeanor whether they are telling or distorting the truth.*[46]

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[42] *Rollo*, p. 203.

[43] *Far Eastern Surety and Insurance Co., Inc. v. People*, 721 Phil. 760, 769 (2013).

[44] *Id.*, citing *Dihiansan v. Court of Appeals*, 237 Phil. 695, 701-703 (1987).

[45] 496 Phil. 149, 156 (2005) citing *Bernardo v. Court of Appeals*, G.R. No. 101680, December 7, 1992, 216 SCRA 224.

[46] *Id.*

At any rate, as aptly ruled by the CA, there was nothing irregular with respondent's reappointment[47] as the procedure for her reappointment was properly observed by the BoT;[48] that it was done after a concerted evaluation of the BoT;[49] and which was very well in conformity with RA 8292.[50] To stress, the BoT approved the reappointment of respondent as President of EARIST until December 17, 2007 during their regular meeting held on August 13, 2003.[51] Thus, as found by both the court *a quo* and the CA, petitioner erred into believing that since respondent had already reached the age of 65 while serving as the President of EARIST, she was automatically and compulsorily terminated.[52]

Likewise, the Court affirms the findings of the court *a quo* as to petitioner's display of an abuse of power as Commissioner of the CHED when she excluded respondent from the conference room that led to the appointment of Dr. Hilario as OIC in the Office of the President that consequently denied respondent of her right to due process.[53]

Accordingly, the Court finds that both the court *a quo* and the CA correctly awarded in favor of respondent actual damages by way of unearned salary from April 19, 2006 until December 17, 2007. It follows, therefore, that the award of exemplary damages is likewise proper. The requisites for the award of exemplary damages are as follows:

(1) they may be imposed by way of example in addition to compensatory damages, and only after the claimant's right to them has been established;

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[47] *Rollo*, p. 53.

[48] *Id.*

[49] *Id.*

[50] *Rollo*, p. 54.

[51] *Id.*

[52] *Id.*

[53] *Rollo*, p. 151.

(2) that they cannot be recovered as a matter of right, their determination depending upon the amount of compensatory damages that may be awarded to the claimant; and

(3) the act must be accompanied by bad faith or done in a wanton, fraudulent, oppressive or malevolent manner.[54]

There is no doubt that all of the requisites for the award of exemplary damages are present in the instant case. The imposition of exemplary damages on petitioner's part is by way of example or correction for the public good since the existence of bad faith was established by the court *a quo*.[55]

On the grant of attorney's fees to respondent, the Court affirms both the court *a quo* and the CA that there was an unjustified refusal on the part of petitioner to satisfy respondent's valid, just, and demandable claim.[56] Hence, it is just and equitable to grant respondent attorney's fees.

However, applying the guidelines in *Nacar v. Gallery Frames, et al.*,[57] the Court finds that a legal interest at the rate of 6% shall be imposed on the amount finally adjudged, from the finality of this Decision until its full satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[58]

WHEREFORE, the petition is **DENIED**. The Decision dated February 28, 2012 of the Court of Appeals in CA-G.R. CV No. 93009 is **AFFIRMED with MODIFICATION**. The legal interest of 6% *per annum*, reckoned from the finality of this Decision until full satisfaction, is imposed upon the amount of respondent's unearned salary from April 19, 2006 up to

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[54] *Arco Pulp and Paper Co., Inc., et al. v. Lim*, 737 Phil. 133, 153 (2014) citing *Francisco v. Ferrer, Jr.*, 405 Phil. 741, 750 (2001).

[55] *Rollo*, p. 56.

[56] *Id.* at 57.

[57] 716 Phil. 267 (2013).

[58] *Id.* at 282-283.

December 2007, and upon the ₱70,000.00 representing the exemplary damages and attorney's fees to be paid by petitioner to respondent.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Hernando*, and *Zalameda*,[*] *JJ.*, concur.

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

SECOND DIVISION

[G.R. No. 202111. November 25, 2019]

TEDDY GRANA and TEOFILO GRANA, *petitioners, vs.* **THE PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ISSUES LIMITED TO LEGAL QUESTIONS; FACTUAL FINDINGS OF THE TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED. — The issues raised by petitioners require a re-appreciation and reexamination of the evidence, which is evidentiary and factual in nature. On this ground alone, the petition must be denied because "'*one*, the petition for review thereby violates the limitation of the issues to only legal questions, and, *two*, the Court, not being a trier of facts, will not disturb the factual findings of the CA, unless they were mistaken, absurd, speculative, conflicting, tainted with grave abuse of discretion, or contrary to the findings reached

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[*] Designated additional member per Special Order No. 2724 dated October 25, 2019.

by the court of origin,' which was not shown to be the case here." Besides, findings of facts of the RTC, its calibration of the testimonial evidence, its assessment of the probative weight thereof, as well as its conclusions anchored on the said findings, are accorded high respect if not conclusive effect when affirmed by the CA, as in this case.

2. **CRIMINAL LAW; REVISED PENAL CODE; MALICIOUS MISCHIEF (ARTICLE 327); ELEMENTS THEREOF DULY PROVEN IN CASE AT BAR. —** Article 327 of the Revised Penal Code pertinently provides: Art. 327. *Who are liable for malicious mischief* - Any person who shall deliberately cause to the property of another any damage not falling within the terms of the next preceding chapter, shall be guilty of malicious mischief. The elements of Malicious Mischief have been duly proven in this case, *viz.*: 1. Petitioners admitted in their "*kontra salaysay*" that Teofilo deliberately destroyed the fence and its cement foundation, and made diggings in the subject property; 2. The destruction did not constitute arson or other crime involving destruction; and 3. The act of damaging another's property was committed merely for the sake of damaging it.

3. **ID.; ID.; ID.; PENALTY PURSUANT TO ARTICLE 329 AS AMENDED BY RA 10951. —** With regard to the penalty x x x there is a need to modify the same in view of the adjustments stated in Republic Act No. 10951. Under Section 88 thereof, the penalty imposed on persons found liable for Malicious Mischief under Article 327 and penalized under Article 329 is amended to read as follows: **SEC. 88**. Article 329 of the same Act, as amended by Commonwealth Act No. 3999, is hereby further amended to read as follows: "Art. 329. *Other mischiefs*. — The mischiefs not included in the next preceding article shall be punished: "1. By *arresto mayor* in its medium and maximum periods, if the value of the damage caused exceeds Two hundred thousand pesos (₱200,000); "2. By *arresto mayor* in its minimum and medium periods, if such value is over Forty thousand pesos (₱40,000) but does not exceed Two hundred thousand pesos (₱200,000); and **"3. By *arresto menor* or a fine of not less than the value of the damage caused and not more than Forty thousand pesos (₱40,000), if the amount involved does not exceed Forty thousand pesos (₱40,000) or cannot be estimated.**" The value of the damage caused to private complainant by petitioners is only ₱7,500.00. Consequently,

pursuant to Article 329 of the RPC, as amended by R.A. 10951, petitioners' original sentence of a straight penalty of imprisonment of four (4) months should be reduced to *arresto menor* or imprisonment of one (1) day to thirty (30) days.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL; THE REDUCTION OF THE SENTENCE IMPOSED ON THE CRIME COMMITTED WILL BENEFIT EVEN THOSE WHO DID NOT JOIN THE APPEAL OF THEIR CO-ACCUSED. — We note that Gil and Olive did not appeal their case before the Court of Appeals. Section 11(a), Rule 122 of the Rules of Court provides that "[a]n appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter." In this case, considering the reduction of the sentence imposed on the crime committed, which is favorable and applicable to Gil and Olive, then they should benefit from the reduction of the sentence imposed on them.

APPEARANCES OF COUNSEL

A. Tan Zoleta & Associates Law Firm for petitioners.
The Solicitor General for respondent.

D E C I S I O N

HERNANDO, *J.*:

This Petition for Review on *Certiorari* assails the February 21, 2012 Decision[1] and June 6, 2012 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CR No. 34194, partially reversing the May 16, 2011 Decision[3] of the Regional Trial Court (RTC), Branch 195, Parañaque City, in Criminal Case Nos. 10-0980

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[1] *Rollo*, pp. 41-48; penned by Associate Justice Amy C. Lazaro-Javier (now a member of this Court) and concurred in by Associate Justices Sesinando E. Villon and Stephen C. Cruz.

[2] *Id.* at 50-51.

[3] *Id.* at 85-90; penned by Judge Aida Estrella Macapagal.

and 10-0981, which in turn affirmed *in toto* the August 10, 2010 Joint Decision[4] of the Metropolitan Trial Court (MeTC), Branch 77, Parañaque City in Criminal Cases Nos. 03-2756 and 03-2757.

Complainant Freddie Bolbes (Bolbes) filed before the MeTC, Branch 77 of Parañaque City an Information[5] for malicious mischief against Teddy Grana (Teddy), Gil Valdes[6] (Gil), Ricky Dimaganti (Ricky), Olive Grana (Olive), and Teofilo Grana (Teofilo), and docketed as Crim. Case No. 03-2756, and another Information for Other Forms of Trespass to Dwelling, docketed as Crim. Case No. 03-2757, only against Teddy, Gil and Ricky.

All accused pleaded not guilty on the separate charges, except Ricky who still remains at large. The case was referred to the Philippine Mediation Office, but the parties failed to amicably settle their differences.[7]

The evidence for the prosecution shows that complainant Bolbes and the five accused were neighbors at Bernabe Subdivision, Parañaque City. Bolbes claimed to have purchased the property subject of this controversy from the Home Insurance and Guaranty Corporation (HIGC) for ₱554,400.00 payable in installments as evidenced by the Contract to Sell dated February 28, 2002. He started occupying the said property in 1989, prior to his application with the HIGC. On the witness stand, Bolbes identified his *Sinumpaang Salaysay* and confirmed the truthfulness of his statements. In the said *Sinumpaang Salaysay*, Bolbes declared that on July 6, 2003, petitioner Teddy and accused Gil and Ricky, upon the order of Teofilo and Olive and without Bolbes's consent, entered the subject property by destroying the iron fence, removing the cement foundation and made diggings until it reached a portion of the foundation of his apartment, thus, exposing his apartment to danger of being

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[4] *Id.* at 60-67; penned by Judge Donato H. de Castro.

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

[6] Also spelled as "Valdez" in some parts of the records.

[7] *Rollo*, p. 61.

destroyed in case of heavy rains. Teddy and Gil stopped only when some *Barangay Tanods* arrived in the vicinity. *Barangay Tanod* Andres Bonifacio testified that on July 7, 2003, Bolbes went to their barangay and filed a complaint against the five accused which was entered in the barangay blotter under entry no. 295. He also tried to persuade the petitioners to stop as well as accused Teofilo, Olive and Ricky what they were doing.[8]

For the defense, only Teofilo was presented. Teofilo testified that he bought the property subject of the controversy from Clarito Baldeo, who in turn, purchased it from one Alexandra Bernabe, as evidenced by a contract of lease with option to purchase. He admitted that he dug a portion of the lot to construct a perimeter fence for his and Bolbes's mutual protection, but, it did not push through because Bolbes stopped him. He referred the matter to the barangay for settlement and to which Bolbes agreed. However, after two months, he received summons from the court. He declared that he is the owner of the said parcel of land and that he made some diggings and destroyed the fence because Bolbes built them without his consent.[9]

On August 10, 2010, the MeTC of Parañaque City rendered a Joint Decision finding all accused in Crim. Case No. 03-2756 guilty beyond reasonable doubt of the crime of Malicious Mischief, while in Crim. Case No. 03-2757, Teddy and Gil were both convicted of Other Forms of Trespass. The MeTC ruled that all the elements constituting the crimes charged were present in these two cases.

The dispositive portion of the MeTC Joint Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered:
>
> 1. In x x x Criminal Case No. 03-2756 finding the accused Teddy Grana, Gil Valdes, Olive Grana and Teofilo Grana, GUILTY BEYOND REASONABLE DOUBT of the crime of Malicious

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[8] *Id.* at 86.

[9] *Id.* at 87.

Mischief and each is hereby sentenced to suffer the straight penalty of imprisonment of four (4) months and to pay the complainant ₱7,500.00 as Actual Damages, ₱10,000.00 as Attorney's fees plus ₱1,500.00 for each appearance in court, ₱1,000.00 as incidental expenses and the costs.

2. In x x x Criminal Case No. 03-2757 finding the accused Teddy Grana, Gil Valdez, GUILTY BEYOND REASONABLE DOUBT of the crime of Other Forms of Trespass and each is hereby sentenced to suffer the penalty of Fine in the amount of ₱200.00 each with subsidiary imprisonment in case of insolvency.

3. Let the cases against the accused Ricky Dimaganti be sent to the archives and an Alias Warrant of Arrest be issued against him for his apprehension.

SO ORDERED.[10]

Aggrieved, the four accused in Crim. Case No. 03-2756 appealed before the RTC of Parañaque City. The RTC affirmed *in toto* the findings of the MeTC that all the elements of the crime of Malicious Mischief were present in this case. It ratiocinated that:

All the foregoing elements are present in the case at bar. First, all accused, in their *pinagsamang kontra salaysay* admitted that defendant Teofilo made some diggings in the subject property, removed the fence and destroyed the cement built therein by private complainant. Second, the diggings, demolition of the fence and destruction of the cement do not constitute arson or any other crime involving destruction. Third, even granting for the sake of argument that the ownership of the subject property was still disputed, accused Teofilo was not justified in summarily and extra judicially destroying the fence and removing the cement that private complainant had built therein. As it is, to the mind of the court, accused did the act complained of not for the purpose of protecting his right as the alleged owner of the subject property but to give vent to their anger and disgust over private complainant's alleged act of putting the fence and cement thereon without their consent. Indeed, accused Teofilo's act of summarily removing the

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[10] *Id.* at 67.

steel fence and cement put up by private complainant, with the consent, assent and approval of his co-accused smacks of their pleasure in causing damage to it. x x x

As to the participation of accused Teddy, Olive, Gil and Ricky, in the act complained of which proved conspiracy, the same was established by said accused themselves when they stated in their sinumpaang salaysay, specifically on page 2, No. 3 thereof, which for ready reference, is herein below quoted, thus:

> "*na kami ay di maaring makasuhan ng nasabing reklamo sa mga dahilang naisaad na at sa dahilang ang aming ginawa ay hindi bilang paghihiganti, pagkapoot o may motibong masama na sinadyang ginawa upang sirain lamang ang mga nasabing bagay*."[11]

As to the crime of Other Forms of Trespass, the RTC, likewise, found on appeal that all the elements constituting the said crime attendant. It ruled that petitioner's claim of ownership over the said property as evidenced by the receipt dated July 31, 1994, which did not even mention the transaction and the subject matter thereof cannot prevail over that of Bolbes's who was able to present more credible pieces of documentary evidence, such as: Contract to Sell dated February 28, 2002 between complainant and HIGC, Transfer Certificate of Title No. 148468 in the name of HIGC, breakdown of installment payments, Tax Declaration No. E-010-08879 issued to HIGC; official Real Property Tax Receipt No. 0054254, and the location sketch/ drawing prepared by HIGC.[12]

Discontented, petitioner interposed an appeal before the CA which was partly granted.

The CA affirmed the conviction of Teddy, Gil, Olive and Teofilo for the crime of Malicious Mischief while Teddy and Gil were acquitted of the crime of Other Forms of Trespass.

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[11] *Id.* at 88-89.

[12] *Id.* at 90.

In acquitting Teddy and Gil of the crime of Other Forms of Trespass, the CA found that one of the elements of the said crime, that is, "the entrance is made while either of them is uninhabited"[13] was not established. The CA held that:

> The burden of proving that the place was uninhabited when petitioners surreptitiously entered it belongs to the prosecution. Record, however, does not show that the prosecution had ever established this element. In fact, in concluding that the place was uninhabited, the RTC merely used assumptions, *i.e*., petitioners' contention that the subject property is inhabited is belied by their own admission that they and private complainant are inhabiting the immediate environs; and there is nowhere in their pleadings a statement that the subject property was being occupied[/inhabited] at the time of the incident. Assumptions are not proof, especially where, in this case, such assumptions are non-sequitur. Verily, the prosecution failed to prove the element that the place was uninhabited when petitioners entered it on the day in question.[14]

The CA then ruled:

> **ACCORDINGLY**, the petition is **PARTLY GRANTED**. The assailed conviction of Teddy Grana, Gil Valdez, Olive Grana and Teofilo Grana for malicious mischief is **AFFIRMED** in Criminal Case No. 10-0980; the conviction of Teddy Grana and Gil Valdez in Criminal Case No. 10-0981 is **REVERSED** and **SET ASIDE** and a new one entered **ACQUITTING** them of other forms of trespass.[15]

Teddy, Gil, Olive and Teofilo filed a Partial Motion for Reconsideration which was likewise denied for lack of merit.[16]

Hence, the present Petition for Review on *Certiorari* filed by petitioners Teddy and Teofilo. The two other accused, Gil and Olive, did not appeal their case.

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[13] *Id.* at 46.

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

[15] *Id.* at 47-48.

[16] *Id.* at 50.

Petitioners Teddy and Teofilo raise the following assignment of errors, *viz.*: (1) not all the elements of the crime of malicious mischief have been proven beyond reasonable doubt; (2) the petitioners were not driven by hatred, revenge, or evil motive when they removed the illegal fence constructed by the private complainant; and (3) the petitioners did not act maliciously when they removed the illegal fence constructed by Bolbes.[17]

The contentions are not meritorious.

The issues raised by petitioners require a re-appreciation and re-examination of the evidence which are evidentiary and factual in nature. On this ground alone, the petition must be denied because "'*one*, the petition for review thereby violates the limitation of the issues to only legal questions, and, *two*, the Court, not being a trier of facts, will not disturb the factual findings of the CA, unless they were mistaken, absurd, speculative, conflicting, tainted with grave abuse of discretion, or contrary to the findings reached by the court of origin,' which as not shown to be the case here."[18]

"Besides, findings of facts of the RTC, its calibration of the testimonial evidence, its assessment of the probative weight thereof, as well as its conclusions anchored on the said findings, are accorded high respect if not conclusive effect when affirmed by the CA, as in this case. [The MeTC/RTC] 'had the opportunity too serve the witnesses on the stand and detect if they were telling the truth.' 'To thus accord with the established doctrine of finality and bindingness of the trial court's findings of fact, [the Court shall] not disturb [the] findings of fact of the [MeTC/] RTC, particularly after their affirmance by the CA,' as petitioner[s were] not able to sufficiently establish any extraordinary circumstance which merits a departure from the said doctrine."[19]

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[17] *Id.* at 28.

[18] *Roque v. People*, 757 Phil. 392, 398 (2015).

[19] *Id.*

Article 327 of the Revised Penal Code pertinently provides:

> Art. 327. *Who are liable for malicious mischief.* – Any person who shall deliberately cause to the property of another any damage not falling within the terms of the next preceding chapter, shall be guilty of malicious mischief.

The elements of Malicious Mischief have been duly proven in this case, *viz.*:

1. Petitioners admitted in their "*kontra salaysay*" that Teofilo deliberately destroyed the fence and its cement foundation, and made diggings in the subject property;
2. The destruction did not constitute arson or other crime involving destruction; and
3. The act of damaging another's property was committed merely for the sake of damaging it.

Under the third element, assuming that petitioner Teofilo owned the property in controversy, he and his co-accused were not justified in summarily destroying the improvements built thereon by Bolbes. They unlawfully took the law into their own hands when they surreptitiously entered Bolbes's enclosed lot and destroyed its fence and foundation. Evidently, petitioners' actions were made out of hatred, revenge or evil motive. As aptly found by the RTC:

> [T]o the mind of the court, accused did the act complained of not for the purpose of protecting his right as the alleged owner of the subject property but to give vent to their anger and disgust over private complainant's alleged act of putting the fence and cement thereon without their consent. x x x[20]

Considering that all the elements of the crime of Malicious Mischief are present in this case, petitioners were properly adjudged guilty thereof.

With regard to the penalty imposed by the MeTC, as affirmed by the RTC and further affirmed by the Court of Appeals, there

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[20] *Rollo*, p. 89.

is a need to modify the same in view of the adjustments stated in Republic Act No. 10951. Under Section 88 thereof, the penalty imposed on persons found liable for Malicious Mischief under Article 327 and penalized under Article 329 is amended to read as follows:

> **SEC. 88.** Article 329 of the same Act, as amended by Commonwealth Act No. 3999, is hereby further amended to read as follows:
>
> "Art. 329. *Other mischiefs*. – The mischiefs not included in the next preceding article shall be punished:
>
> "1. By *arresto mayor* in its medium and maximum periods, if the value of the damage caused exceeds Two hundred thousand pesos (₱200,000);
>
> "2. By *arresto mayor* in its minimum and medium periods, if such value is over Forty thousand pesos (₱40,000) but does not exceed Two hundred thousand pesos (₱200,000); and
>
> **"3. By *arresto menor* or a fine of not less than the value of the damage caused and not more than Forty thousand pesos (₱40,000), if the amount involved does not exceed Forty thousand pesos (₱40,000) or cannot be estimated."** (Emphasis Ours)

The value of the damage cause to private complainant by petitioners is only ₱7,500.00. Consequently, pursuant to Article 329 of the RPC, as amended by R.A. 10951, petitioners' original sentence of a straight penalty of imprisonment of four (4) months should be reduced to *arresto menor* or imprisonment of one (1) day to thirty (30) days.

We note that Gil and Olive did not appeal their case before the Court of Appeals. Section 11(a), Rule 122 of the Rules of Court provides that "[a]n appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter." In this case, considering the reduction of the sentence imposed on the crime committed, which is favorable and applicable to Gil and Olive, then they should benefit from the reduction of the sentence imposed on them.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. Petitioners Teddy Grana and Teofilo Grana, as well as accused Gil Valdes and Olive Grana, are found GUILTY beyond reasonable doubt of the crime of Malicious Mischief under Article 327 and penalized under Article 329 of the Revised Penal Code, as amended. The February 21, 2012 Decision and the June 6, 2012 Resolution of the Court of Appeals in CA-G.R. CR No. 34194 are **AFFIRMED with the MODIFICATION** that Teddy Grana, Teofilo Grana, Gil Valdes and Olive Grana are sentenced to suffer imprisonment of thirty (30) days of *arresto menor* and to pay private complainant Freddie Bolbes the amount of ₱7,500.00 as actual damages, which shall earn interest of six percent (6%) *per annum* from the date of the finality of this judgment until fully paid.

SO ORDERED.

Perlas-Bernabe (*Chairperson*), *Inting*, and *Zalameda*,[*] *JJ.*, concur.

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

SECOND DIVISION

[G.R. No. 220447. November 25, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALBERT PARAN *y* GEMERGA,** *accused-appellant.*

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[*] Designated additional member per Special Order No. 2727 dated October 25, 2019.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; AN APPEAL OF A CRIMINAL CONVICTION OPENS THE ENTIRE RECORDS OF THE TRIAL TO REVIEW. —** [A]n appeal of a criminal conviction opens the entire records of the trial to review. Consequently, the Court, in the course of its review, may also examine any error even if not assigned by the accused.

2. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS. —** The elements necessary in the prosecution of illegal sale of dangerous drugs are: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor. Similarly, it is essential that the transaction or sale be proved to have actually taken place coupled with the presentation in court of evidence of the *corpus delicti*.

3. **ID.; ID.; CHAIN OF CUSTODY RULE; APPLICABLE RULE FOR CASES COMMITTED PRIOR TO AMENDMENT UNDER RA 10640.—** In order to avoid planting, tampering, substitution and contamination of the *corpus delicti*, Section 21, Article II of RA 9165 provides for the manner by which law enforcement officers should handle seized items in dangerous drugs cases. However, Section 21, Article II of RA 9165 was amended by RA 10640, which requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain witnesses, namely: an elected public official and a representative of the National Prosecution Service or the media. Considering that the present case took place on June 29, 2006 prior to the amendment of RA 9165 by RA 10640, the old provision of Section 21, Article II of RA 9165 applies, x x x [T]hus the seized drugs must be immediately inventoried and photographed in the presence of the accused or his representative, a representative from the media, the Department of Justice (DOJ), and any elected public official. All are required to sign the copies of the inventory and each should be given a copy thereof.

4. ID.; ID.; ID.; ABSENCE OF INSULATING WITNESSES; REQUIRES JUSTIFIABLE REASON FOR THE FAILURE OR A SHOWING OF GENUINE AND SUFFICIENT EFFORT TO SECURE THEM MUST BE ADDUCED. — While the absence of the insulating witnesses required by Section 21 of RA 9165 does not itself render the confiscated items inadmissible, a justifiable reason for the failure or a showing of a genuine and sufficient effort to secure them must be adduced. The prosecution must show that earnest efforts were employed in contacting the representatives enumerated under the law. Mere statements of their unavailability, absent actual serious attempts to secure the required witnesses, are unacceptable and do not justify non-compliance. These consideration arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and to make necessary arrangements to strictly comply with the procedure prescribed by Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.

APPEARANCES OF COUNSEL

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

D E C I S I O N

INTING, *J.*:

This is an appeal from the Decision[1] dated December 22, 2014 of the Court of Appeals (CA) in CA-G.R. CEB CR-HC

[1] *Rollo*, pp. 4-13; penned by Associate Justice Edgardo L. Delos Santos with Associate Justices Marilyn B. Lagura-Yap and Justice Jhosep Y. Lopez, concurring.

No. 01721 affirming the Decision[2] dated July 19, 2013 of the Regional Trial Court (RTC) of Bacolod City, Branch 52 in Criminal Case No. 06-29331. The RTC found Albert Peran *y* Gemerga (appellant) guilty beyond reasonable doubt for violation of Section 5, Article II of Republic Act No. (RA) 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

The Facts

The indictment of appellant for violation of Section 5, Article II of RA 9165 stemmed from the following Information:[3]

> That on or about the 29th day of June, 2006, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, not being authorized by law to sell, trade, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did, then and there willfully, unlawfully and feloniously sell, deliver, give away to a police poseur buyer in a buy-bust operation one (1) folded notebook paper containing 1.32 grams of dried marijuana fruiting tops, in exchange of marked money of one (1) ₱100.00 bill bearing Serial No. XU250204, in violation of the aforementioned law.
>
> Act contrary to law.[4]

The prosecution alleged that on June 15, 2006, the Granada Police Station received an information from a concerned citizen that a certain "Pinut," a 20-year-old student, was selling marijuana at Don Generoso Villanueva National High School located at Brgy. Granada, Bacolod City. Acting on the information, Station Commander Police Inspector Renato C. Ofamen (P/Insp. Ofamen) ordered Senior Police Officer II Arnaldo N. Briñas (SPO2 Briñas) to verify the information.

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[2] CA *rollo*, pp. 28-38; penned by Presiding Judge Raymond Joseph G. Javier.

[3] Records, p. 1.

[4] *Id*.

SPO2 Briñas conducted a two-week surveillance of appellant and confirmed that the information was positive.[5]

On June 29, 2006 at around 6:30 a.m., P/Insp. Ofamen ordered SPO2 Briñas to conduct a buy-bust operation against appellant. In preparation thereof, SPO2 Briñas entered in the police blotter the details of their buy-bust money consisting of a marked ₱100-bill with serial number XU250204.[6]

Therafter, SPO2 Briñas and his back-up, Police Officer II Arnold James Laguna, went to Patricia Homes Subdivision located in Brgy. Granada. Upon reaching the designated place, SPO2 Briñas positioned himself near a waiting shed. After about 30 minutes, appellant, wearing his school uniform, alighted from a public utility jeepney. SPO2 Briñas approached appellant and asked if he had marijuana. Appellant nodded his head. SPO2 Briñas gave appellant the marked ₱100-bill. In return, appellant handed SPO2 Briñas the marijuana wrapped in a notebook paper. Immediately, SPO2 Briñas introduced himself as a policeman and arrested appellant. Appellant was informed of the offense he committed and of his constitutional rights. SPO2 Briñas marked the sheet of paper where the marijuana was wrapped.[7]

SPO2 Briñas brought appellant to the Bacolod City Police Station 6 and recorded the incident in the police blotter. The seized marijuana was inventoried in the presence of *barangay* officials, *Kagawad* Gerson M. Nietes and *Kagawad* William D. Diocson. Photographs of the seized item,[8] together with the appellant were taken. On the same day, SPO2 Briñas brought the suspected marijuana to the Philippine National Police Crime Laboratory Office 6, Camp Montelibano, Bacolod City and was received by Police Senior Inspector Alexis A.

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[5] *Rollo*, p. 5.

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

[7] *Id*. at 6.

[8] Records, pp. 12-13.

Guinanao (PSI Guinanao). After examination, the seized item wrapped in a notebook paper tested positive for marijuana fruiting tops.[9]

For the defense, appellant alleged that he was a high school student at Don Generoso Villanueva National High School, *Barangay* Granada, Bacolod City. On June 29, 2006 at around 7:00 a.m., appellant was at Patricia Homes Subdivision, which is a kilometer away from his school. When he was about to ride a pedicab, a man placed his hand on his shoulder and introduced himself as a policeman. The policeman was not in uniform and was only wearing green shirt and shorts.[10]

Appellant was brought to the Granada Police Station. Inside one of the rooms, he was stripped and searched but nothing was recovered from appellant. Later, a *barangay* official arrived. Appellant was thereafter photographed while pointing at the money and marijuana placed on a table.[11] He learned that the policeman who arrested him was SPO2 Briñas.

On the basis of the testimonies of two witnesses presented in court, namely: a) PSI Guinanao, the forensic chemical officer; and b) SPO2 Briñas, the *poseur*-buyer and arresting officer, the RTC convicted appellant in its Decision[12] dated July 19, 2013. The RTC ruled that the prosecution was able to prove beyond reasonable doubt the existence of all the elements of illegal sale of marijuana.[13] Moreover, the RTC found that the prosecution substantially complied with the chain of custody requirement under Section 21, Article II of RA 9165.[14]

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[9] *Id*. at 9.

[10] CA *rollo*, p. 30.

[11] *Id*. at 31.

[12] *Id*. at 28-38.

[13] *Id*. at 37.

[14] *Id*. at 35-36.

In the Decision dated December 22, 2014, the CA affirmed the RTC ruling. Hence, this appeal.

The Court's Ruling

The appeal is with merit.

At the onset, it must be emphasized that an appeal of a criminal conviction opens the entire records of the trial to review. Consequently, the Court, in the course of its review, may also examine any error even if not assigned by the accused.[15]

The elements necessary in the prosecution of illegal sale of dangerous drugs are: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor. Similarly, it is essential that the transaction or sale be proved to have actually taken place coupled with the presentation in court of evidence of the *corpus delicti*.[16]

In order to avoid planting, tampering, substitution and contamination of the *corpus delicti*, Section 21, Article II of RA 9165 provides for the manner by which law enforcement officers should handle seized items in dangerous drugs cases. However, Section 21, Article II of RA 9165 was amended by RA 10640,[17] which requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain witnesses, namely: an elected public official and a representative of the National Prosecution Service or the media.[18] Considering that the present case took place on

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[15] *Casona v. People*, G.R. No. 179757, September 13, 2017, 839 SCRA 448, 447.

[16] *People v. Roble*, 663 Phil. 147, 157 (2011) citing *Cruz v. People*, G.R. No. 164580, February 6, 2009, 578 SCRA 147, 152-153.

[17] An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of Republic Act No. 9165, Otherwise Known as the "Comprehensive Dangerous Drugs Act of 2002," approved on July 15, 2014.

[18] Section 21(1), Article II RA 9165, as amended by RA 10640.

June 29, 2006 prior to the amendment of RA 9165 by RA 10640, the old provision of Section 21, Article II of RA 9165 applies, to wit:

> 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 supplied).

As could be gleaned from the foregoing, the seized drugs must be immediately inventoried and photographed in the presence of the accused or his representative, a representative from the media, the Department of Justice (DOJ), and any elected public official. All are required to sign the copies of the inventory and each should be given a copy thereof.

In the prosecution's attempt to show that the safeguards of Section 21, Article II of RA 9165 were complied with, they presented the testimony of SPO2 Briñas, who testified that the alleged buy-bust operation happened at 8:00 a.m. of June 29, 2006. After appellant's arrest, SPO2 Briñas averred that he immediately brought appellant to the police station where an inventory of the seized item was conducted in the presence of two *barangay* officials.

The prosecution failed to comply with Section 21, Article II of RA 9165.

Other than SPO2 Briña's bare allegation, the records are bereft of proof that an inventory was actually conducted after appellant's arrest on June 29, 2006. In lieu of the inventory, the prosecution presented a Certification[19] dated June 30, 2006 stating that appellant was apprehended by the anti-illegal drugs task group on June 29, 2006, and that marijuana leaves were seized from him.

The Certification adduced by the prosecution cannot serve as proof of the required inventory under Section 21 of RA 9165. Being dated June 30, 2006, the Certification only signifies that no inventory was conducted on June 29, 2006 — the day of appellant's arrest and alleged seizure of marijuana. The Certification did not bear all the signatures of the three insulating witnesses. Only two elective officials, namely *Kagawad* Gerson M. Nietes and *Kagawad* William D. Diocson, signed the Certification. This clearly indicates that no representative from the media or from the DOJ actually came to witness the alleged inventory and photographing of the allegedly seized marijuana.

While the absence of the insulating witnesses required by Section 21 of RA 9165 does not itself render the confiscated items inadmissible, a justifiable reason for the failure or a showing of a genuine and sufficient effort to secure them must be adduced.[20] The prosecution must show that earnest efforts were employed in contacting the representatives enumerated under the law. Mere statements of their unavailability, absent actual serious attempts to secure the required witnesses, are unacceptable and do not justify non-compliance.[21] These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and to make necessary arrangements to strictly comply

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[19] Records, p. 11.

[20] See *People v. Visperas*, G.R. No. 231010, June 26, 2019 citing *People v. Ramos*, G.R. No. 233744, February 28, 2018.

[21] *Id*.

with the procedure prescribed by Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.[22]

Here, not only did the prosecution fail to proffer any explanation for their non-compliance with the three witness rule, there was even no effort on their part to observe the law. As stated by SPO2 Briñas in his Affidavit,[23] the police operatives conducted a two-week surveillance of appellant. During the two-week period, they had every opportunity to arrange and secure the presence of the required insulating witnesses, but they failed to do so. This signifies the police officers' lack of effort to comply with the safeguards of Section 21 of RA 9165, adversely affecting the authenticity of the allegedly seized marijuana.

The identity of the marijuana presented in court is likewise questionable. We reiterate what was held in *Casona v. People*:[24]

> Inasmuch as the dangerous drug itself constitutes the *corpus delicti* of the offense charged, its identity and integrity must be shown by the State to have been preserved. On top of the elements for proving the offense of illegal possession, therefore, is that the substance possessed is the very substance presented in court. **The State must establish this element with the same exacting degree of certitude as that required for ultimately handing down a criminal conviction**. To achieve this degree of certitude, the Prosecution has to account for all the links in the chain of custody of the dangerous drug, from the moment of seizure from the accused until it is presented in court as proof of the *corpus delicti*. The process, though tedious, must be undergone, for the end is always worthwhile — the preservation of

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[22] *Id*.

[23] Records, pp. 4-5.

[24] *Casona v. People*, G.R. No. 179757, September 13, 2017, 839 SCRA 448.

the chain of custody that will prevent unnecessary doubts about the identity of the evidence.[25] (Emphasis supplied.)

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood or at least the possibility that, at any of the links in the chain of custody, there could have been tampering, alteration or substitution of substances from other cases in which similar evidence was submitted for laboratory testing. Hence, in authenticating the specimen, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.[26]

In this case, the specimen subject of the Request for Laboratory Examination[27] prepared by P/Insp. Ofamen was merely described as "[a] *small pi[e]ce of wrapped notebook pad containing suspected dried marijuana leaves[.] (buy bust)*." Strangely, when the specimen was brought to the crime laboratory, the police officers did not even bother to place the substance in a sealed container to eliminate the possibility of it being tampered, altered or substituted. They just left the purported marijuana leaves wrapped in a piece of notebook paper and delivered it to the crime laboratory. Likewise, the request reveals that the specimen was not even marked or labeled for it to be readily identifiable from the other specimens.

The item's identity and evidentiary value even became more questionable after the result of the laboratory examination. To reiterate, the substance subject of the Request for Laboratory Examination were dried marijuana leaves. Curiously, per Chemistry Report No. D-206-2006,[28] the specimen which was

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[25] *Id*. at 449.

[26] *People v. Merando*, G.R. No. 232620, August 5, 2019 citing *Mallillin v. People*, 576 Phil. 576, 588-589 (2008).

[27] Records, p.8.

[28] *Id*. at 9.

examined by PSI Guinanao were not marijuana leaves, but marijuana fruiting tops. The Court cannot just gloss over this disparity in the identity of the *corpus delicti* especially that there was a complete disregard by the law enforcement officers of Section 21 of RA 9165. Indubitably, the variance in the specimen subject of the Request for Laboratory Examination and the item indicated in the Chemistry Report creates reasonable doubt as to the identity of the *corpus delicti*. There being no exact certitude that the substance allegedly seized from appellant is the very substance presented in court, We are constrained to rule for the acquittal of appellant on the ground that his guilt has not been proven beyond reasonable doubt.

WHEREFORE, in view of the foregoing, the appeal is **GRANTED**. The Decision dated December 22, 2014 of the Court of Appeals in CA-G.R. CEB CR-HC No. 01721 is **REVERSED** and **SET ASIDE**. Accordingly, Albert Paran *y* Gemerga is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt in Criminal Case No. 06-29331. Albert Paran *y* Gemerga is **ORDERED** immediately **RELEASED** from detention, unless he is detained for any other lawful cause.

The Director of the Bureau of Corrections, Muntinlupa City is ordered to cause his immediate release, unless he is being held in custody for any other reason. The Director of the Bureau of Corrections is directed to report the action he has taken to this Court within five days from receipt of this Decision.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Hernando*, and *Zalameda,*[*] *JJ.,* concur.

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

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[*] Designated additional member per Special Order No. 2724 dated October 25, 2019.

THIRD DIVISION

[G.R. No. 221884. November 25, 2019]

MANUEL AGULTO and JOSELITO JAMIR, *petitioners, vs.* **168 SECURITY, INC. (168 SECURITY AND ALLIED SERVICES, INC.), represented by JAIME ANG,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT PROCUREMENT REFORM ACT (RA 9184); FAILURE TO CONDUCT PUBLIC BIDDING; TO QUALIFY AS GRAVE MISCONDUCT, THERE MUST BE AN INDEPENDENT FINDING OF DELIBERATE RESORT TO NEGOTIATED PROCUREMENT TO BENEFIT THE PUBLIC OFFICIALS THEMSELVES OR SOME OTHER PERSON. —** T]he question that needs to be addressed is whether every failure to conduct the public bidding as required by The Government Procurement and Reform Act (R.A. 9184) automatically qualifies the act as grave misconduct. We have already answered this in the negative and We reiterate such ruling. x x x [A]s ruled in the case of *Office of the Ombudsman v. De Guzman*, in addition to the lack of public bidding, there must be an independent finding that petitioners have deliberately resorted to negotiated procurement to benefit themselves or some other person for them to be held liable for grave misconduct.

2. **ID.; ID.; ADMINISTRATIVE OFFENSE: MISCONDUCT; GRAVE MISCONDUCT. —** Misconduct is **intentional wrongdoing or deliberate violation** of a rule of law or standard of behavior. To constitute an administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. In grave misconduct, as distinguished from simple misconduct, the elements of **corruption, clear intent to violate the law**, or **flagrant disregard of an established rule** must be manifest. Without any of these elements, the transgression of an established rule is properly characterized as simple misconduct only.

3. ID.; ID.; ID.; NEGLIGENCE. — As a rule, negligence is the omission of the diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time, and of the place. In the case of public officials, there is negligence when there is a **breach of duty** or **failure to perform the obligation**, and there is gross negligence when a breach of duty is flagrant and palpable. An act done in good faith, which constitutes only an error of judgment and for no ulterior motives and/or purposes, is merely simple negligence.

APPEARANCES OF COUNSEL

Maronilla Law Office for petitioners.
Jose S. Santos, Jr. for respondent.

D E C I S I O N

CARANDANG, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated December 14, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 140711 filed by Drs. Manuel B. Agulto (Agulto) and Joselito C. Jamir (Jamir; collectively, petitioners), the Chancellor and Vice-Chancellor, respectively, of the University of the Philippines-Manila (UP-Manila).

Antecedents

In December 2011, a contract for security services was entered between 168 Security and Allied Service, Inc. (168 SASI) and UP-Manila, represented by Agulto and Jamir, for a period of one year from January 1, 2012 to December 31, 2012.[3] The

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[1] *Rollo*, pp. 10-56.

[2] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Priscilla J. Baltazar and Socorro B. Inting, concurring; *id*. at 336-345.

[3] *Id*. at 65-66.

last whereas clause of the agreement states that the same may be renewed for another year, provided that the performance rating for the first year is at least very satisfactory.[4] The contract expired on December 31, 2012.[5]

On February 21, 2013, Jamir informed 168 SASI that their security services will be extended for six months only or until June 30, 2013.[6] On March 12, 2013, 168 SASI protested, demanding that the contract should be extended for one year since it obtained a very satisfactory rating the previous year.[7]

On June 28, 2013, Jamir informed 168 SASI that the UP-Manila Management Team decided to terminate its services effective July 15, 2013 due to loss of trust and confidence. The reasons for the loss of trust and confidence, as claimed by petitioners, included the incidents of theft in the different offices in the campus, the fact that a large group of protesters was able to gain access to the 8th floor of the LCB Building where petitioners hold office, and destruction of public properties.[8] 168 SASI challenged the decision, which prompted Jamir to send a letter asking whether 168 SASI was still interested in continuing its services and gave it until July 31, 2013 to act on the query.[9] At 2:40 p.m. of July 31, 2013, 168 SASI served its reply expressing its willingness to continue providing services until the termination of its contract. However, on the same day, Agulto sent a letter to 168 SASI informing it of the termination of contract for its failure to reply.[10] On August 2, 2013, Jamir issued a memorandum to all deans, directors and heads of offices of UP-Manila directing them not to recognize 168 SASI since

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[4] *Id*. at 66.

[5] *Id*.

[6] *Id*.

[7] *Id*. at 67.

[8] *Id*. at 76.

[9] *Id*.

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

its security services contract had been terminated.[11] Agulto also sent a letter to Camelo Ayson of Commander Security Services, Inc. (CSSI), directing it to take over as the security agency of UP-Manila. 168 SASI alleged that petitioners awarded the contract of service to CSSI without conducting a public bidding, and thus, guilty of grave misconduct.[12]

Petitioners, on the other hand, countered that the extension of the contract for security services for six months was in accordance with the Revised Guidelines on the Extension of Contracts for General Support Services in relation to Resolution No. 23-2007 of the Government Procurement Policy Board.[13] It was, likewise, claimed that the eventual termination thereof was based on loss of trust and confidence, taking into consideration the incidents of theft around the UP-Manila Campus and in the Philippine General Hospital (PGH), as well as the inability to control the protesters who gained access to the 8th floor in one of the buildings in the University where petitioners hold office.[14] Petitioners also asserted that the apparent inability of 168 SASI to provide security services despite their accommodation prompted them to secure the services of another security agency to prevent hiatus in the security of the University and the hospital. The take-over was, likewise, under the same terms and conditions currently enforced, negating any undue injury or disadvantage to the government.[15] In fact, in a letter[16] dated July 31, 2013 sent by petitioners to CSSI, it was clearly spelled out that their acceptance of the take-over was further subject to a bidding that would commence at the soonest possible time. This meant that the same pay per month for each guard on an 8-hour and 12-hour duty shall be

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[11] *Id*. at 69.

[12] *Id*. at 207.

[13] *Id*. at 75.

[14] *Id*. at 76.

[15] *Id*. at 79.

[16] *Id*. at 163.

paid to CSSI, and the same shall only be for the period until a winning bidder is contracted.[17] Further, petitioners claimed that as early as January 2013, they had commenced the activities for the conduct of a public bidding. Unfortunately, the activities were interrupted by an untimely and much-publicized incident of a suicide by a student of UP-Manila, whereby the administration focused on the welfare of the students first. The conduct of the public bidding was again delayed due to the filing of a civil case for specific performance by 168 SASI, which sought for a writ of mandatory injunction.[18] In the civil case, 168 SASI prayed for the renewal of the contract of service for one year from January 1, 2013 to December 31, 2013, as allegedly contained in the 2012 contract entered by them with petitioners.[19] On December 6, 2013, petitioners issued an administrative order for the constitution of a technical working group to evaluate bid proposals for security services for 2014. Ultimately, on January 28, 2014, the new Vice-Chancellor directed the commencement of the bidding process in accordance with Republic Act No. (R.A.) 9184.[20]

Ombudsman's Ruling

On October 13, 2014, the Office of the Ombudsman rendered its Decision[21] finding petitioners guilty of grave misconduct and meted upon them the penalty of dismissal from service.[22] The Ombudsman found that CSSI was engaged without the benefit of a public bidding as required under the Government Procurement Reform Act. For the Ombudsman, petitioners cannot

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[17] *Id*. at 135.

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

[19] *Id*. at 104-130.

[20] *Id*. at 82.

[21] *Id*. at 204-217.

[22] *Id*. at 215-216.

hide behind the excuse that CSSI was engaged in order to prevent a hiatus in the service because records show that 168 SASI continued providing security services beyond July 31, 2013, which negated the claims of imminent interruption in security services.[23] Besides, the contract of service granted to CSSI amounted to ₱46,710,555.48. It was not unreasonable to expect that petitioners should have been more diligent and prudent in making sure that the transaction observed the requirements of competitive bidding.[24]

On reconsideration,[25] the Ombudsman affirmed the finding of grave misconduct but dismissed the criminal complaint for lack of probable cause, stating that:

x x x x x x x x x

Viewed in this context, respondents-movants' action of giving CSSI the green light to assume the provision of security services — though patently irregular for not following the proper procedures in R.A. No. 9184 and its Implementing Rules, hence the finding of gross misconduct in the administrative aspect — may have been prompted by respondents-movants' desire to prevent the unenviable scenario of leaving UP Manila, both the school and the hospital, un-secured. It is also in this context that respondents-movants' move to institute a more detailed security plan, which matter was also averred previously, is reconsidered in support of their claim of good faith. This new facet, which entitles respondents-movants to the benefit of the doubt, negates the element of manifest partiality or gross inexcusable negligence.[26]

Aggrieved, petitioners filed a Petition for Review under Rule 43 to the CA.

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[23] *Id*. at 213-214.

[24] *Id*. at 214.

[25] *Id*. at 218-239.

[26] *Id*. at 279.

CA Ruling

A Decision[27] dated December 14, 2015 was rendered by the CA affirming the finding of grave misconduct against petitioners.[28]

The CA ratiocinated that petitioners' engagement with CSSI without a public bidding was a flagrant disregard of procurement laws.[29] The CA also concluded that petitioners cannot say that the Ombudsman made a conclusive finding in the resolution for the motion for reconsideration that they were in good faith. Contrary to petitioners' assertions, the Ombudsman never made a categorical finding that petitioners acted in good faith. That the Ombudsman reconsidered its finding of probable cause for violation of R.A. 3019 does not automatically mean that they acted in good faith or that the administrative charge of grave misconduct against them should also be dismissed.[30]

Still aggrieved, petitioners filed this petition for review on *certiorari*. Thereafter, 168 SASI filed its Comment.

Issue

The issue in this case may only be summed up by whether or not petitioners were guilty of grave misconduct.

Our Ruling

UP-Manila is an academic as well as a medical complex. It houses not only the offices and colleges as a University but also the country's premier government hospital – the PGH. As argued by petitioners, security inside and outside the campus is a primordial concern. Unlike the UP-Diliman campus, for instance, which has a vast area for the students, faculty and visitors, the Manila campus is surrounded by the Metro's busiest

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[27] *Id*. at 336-345.

[28] *Id*. at 345.

[29] *Id*. at 341.

[30] *Id*. at 343-344.

highways. Hence, it is necessary to have steady and reliable security officers on the ground. This was how petitioners justified their direct agreement with CSSI to take over as security guards of the UP-Manila campus without the conduct of public bidding as required by R.A. 9184. Hence, the question that needs to be addressed is whether every failure to conduct the public bidding as required by R.A. 9184 automatically qualifies the act as grave misconduct.

We have already answered this in the negative and We reiterate such ruling.

In the case of *Office of the Ombudsman-Mindanao v. Martel and Guinares*,[31] while the Court categorized the lack of public bidding as an offense constituting grave misconduct and dishonesty,[32] *Martel* is not applicable in this case. In *Martel*, the Provincial Accountant and the Provincial Treasurer of Davao del Sur were found guilty of grave misconduct and gross neglect of duty[33] in failing to conduct public bidding for the purchase of five additional vehicles for the Office of the Provincial Governor. Specifically, this Court stated that respondents "allowed the Governor of Davao del Sur to purchase and use more than one vehicle"[34] in violation of a Commission on Audit circular. Otherwise stated, there was grave misconduct because the lack of public bidding was deliberately done in order to benefit the Governor of Davao del Sur.

In other words, as ruled in the case of *Office of the Ombudsman v. De Guzman*,[35] in addition to the lack of public bidding, there must be an independent finding that petitioners have deliberately resorted to negotiated procurement to benefit themselves or some other person for them to be held liable for grave misconduct.

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[31] G.R. No. 221134, 806 Phil. 649 (2017).

[32] *Id*. at 658.

[33] *Id*. at 655.

[34] *Id*. at 622.

[35] G.R. No. 197886, October 4, 2017.

In this case, it was not alleged, much less proved, that the direct engagement by petitioners with CSSI was deliberately done in order to benefit themselves or some other person. Records reveal that the element of intent to commit a wrong required under the administrative offense of grave misconduct[36] is lacking to warrant petitioners' dismissal from service. Besides, CSSI was engaged to take over as security service provider under the same terms and conditions as previously enforced in order to negate undue injury or disadvantage to the government.

In their letter[37] to 168 SASI, petitioners decided to extend the contract for security services for six months from January 1, 2013 to June 30, 2013 in order to come up and develop a comprehensive security plan, which would be used as terms of reference on the public bidding for security services. Petitioners did this in order to rectify the unsound practice that it was only after an award to the winning bidder that the latter would draw up a security plan for UP-Manila.[38] Besides, the engagement of CSSI was merely on a temporary basis[39] in order to have a stop-gap measure brought about by the termination of the contract of service with 168 SASI.

Misconduct is **intentional wrongdoing** or **deliberate violation** of a rule of law or standard of behavior. To constitute an administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. In grave misconduct, as distinguished from simple misconduct, the elements of **corruption, clear intent to violate the law**, or **flagrant disregard of an established rule** must be manifest. Without any of these elements, the transgression of an established rule is properly characterized as simple misconduct only.[40]

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[36] *Office of the Ombudsman v. Racho*, 656 Phil. 149, 155 (2011).

[37] *Rollo*, p. 86.

[38] *Id*. at 81.

[39] *Id*. at 102.

[40] *Daplas v. Department of Finance*, G.R. No. 221153, April 17, 2017.

The Ombudsman's pronouncements in its resolution[41] determining the motion for reconsideration· is telling on petitioners' good faith in giving CSSI the green light to take over the provision of security services, that is, petitioners may have been prompted by their desire to prevent the unenviable scenario of leaving UP-Manila, both the school and the hospital, unsecured. Hence, petitioners cannot be held guilty of misconduct – either grave or simple.

Neither may petitioners be held liable for negligence. As a rule, negligence is the omission of the diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time, and of the place. In the case of public officials, there is negligence when there is a **breach of duty** or **failure to perform the obligation**, and there is gross negligence when a breach of duty is flagrant and palpable.[42] An act done in good faith, which constitutes only an error of judgment and for no ulterior motives and/or purposes, is merely simple negligence.[43]

As discussed above and duly proved, petitioners were not remiss in their duty to conduct public bidding as required by R.A. 9184. They had started drawing up a security plan as early as January 2013. They intended to use the six-month extension given to 168 SASI in order to conduct public bidding, but the plan was cut short because of the unfortunate incident of suicide concerning a student – something that is out of the control of petitioners. Additionally, 168 SASI filed a civil case against them and prayed for a writ of mandatory injunction, naturally; petitioners waited for the decision in said case resulting in the further postponement of the public bidding. Despite all of these setbacks, on January 28, 2014, the commencement of the bidding process was pushed through in accordance with R.A. 9184.

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[41] *Rollo*, pp. 269-280.

[42] *Navarro v. Office of the Ombudsman*, 793 Phil. 453, 475-476 (2016).

[43] *Pleyto v. PNP-Criminal Investigation & Detection Group*, 563 Phil. 842, 910 (2007).

Absent any wrongful and intentional wrongdoing on the part of petitioners who were motivated only by their desire to secure the UP-Manila campus, thereby necessitating the direct negotiation to CSSI for the provision of security services inside the campus, they are likewise not liable of negligence – either gross or simple.

WHEREFORE, the petition is **GRANTED**. The assailed Decision dated December 14, 2015 of the Court of Appeals in CA-G.R. SP No. 140711 is hereby **REVERSED** and **SET ASIDE**. Since petitioners Manuel B. Agulto and Joselito C. Jamir have retired from government service, the Government Service Insurance System is **ORDERED** to give them their pension and other retirement benefits not received during the pendency of this case.

SO ORDERED.

Leonen (*Chairperson*), *Lazaro-Javier*,[*] and *Zalameda, JJ.*, concur.

Gesmundo, J., on official leave.

SECOND DIVISION

[G.R. No. 234812. November 25, 2019]

MASAKAZU UEMATSU,[*] *petitioner, vs.* **ALMA N. BALINON,** *respondent.*

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[*] Designated as Additional Member of the Third Division per Special Order 2728 dated October 25, 2019.

[*] Eumatsu in some parts of the *rollo*.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; PRINCIPLE OF IMMUTABILITY OF JUDGMENT; EXCEPTIONS. —** [T]he decision in the Permanent Protection Order (PPO) case had long been final and executory before petitioner filed his Dissolution case on July 23, 2014. Such being the case, by virtue of the doctrine of immutability of judgment, this final and executory judgment of the RTC-Tagum can no longer be altered in any way by any court. While there are recognized exceptions to the rule on immutability of judgment, such as: (l) correction of any 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—none of which was alleged and proved here.

2. **ID.; ID.; FORUM SHOPPING; PRESENT WHEN A PARTY FILES TWO OR MORE CASES INVOLVING THE SAME PARTIES, CAUSES OF ACTION AND RELIEFS. —** A party is guilty of forum shopping when he or she institutes, either simultaneously or successively, two or more actions before different courts asking the latter to rule the same or related issues and grant the same or substantially the same reliefs. Such institution of actions is on the notion that one or the other court would render a favorable ruling or increase the chance of the party of obtaining a favorable decision. x x x In fine, there is forum shopping when a party files two or more cases involving the *same parties, causes of action and reliefs.* Notably, forum shopping is one of the grounds for the dismissal of a case. The rule against it aims to avoid the rendition of two competent courts of separate and opposing rulings which may arise because a party-litigant takes advantage and tries his or her luck into seeking relief until a result in one's favor is attained.

3. **ID.; SPECIAL CIVIL ACTIONS; INDIRECT CONTEMPT; AN INDIRECT CONTEMPT NOT INITIATED BY THE COURT MUST BE COMMENCED BY A VERIFIED PETITION. —** A person may be punished for indirect contempt when he or she disobeys or resists a lawful court order, among other acts enumerated in Section 3, Rule 71 of the Rules of

Court. The proceedings thereto may be commenced by the court initiating it *motu proprio* or by a verified petition with supporting particulars as well as certified true copies of relevant documents and upon full compliance with the requirements for filing of initiatory pleadings for civil actions. x x x In *Arriola, et al. v. Arriola (Arriola),* the Court emphasized that the indirect contempt, not initiated by the court *motu proprio*, must be commenced by a verified petition. It ratiocinated that even if the contempt proceedings emanated from a principal case, still, the governing rules require that a petition be filed and treated independently of the main action. It stressed that it is beyond doubt that the requirement of a verified petition in initiating an indirect contempt proceeding is a mandatory requirement.

4. ID.; CIVIL PROCEDURE; JUDGMENTS; FINAL JUDGMENT DISTINGUISHED FROM INTERLOCUTORY ORDER; TO CONTEST THE RULING IN THE CONTEMPT CHARGE, THE PROPER REMEDY WAS APPEAL UNDER RULE 41. — [A] final judgment is one that finally disposes of a case and leaves nothing more to be done by the court to it. Once rendered, the task of the court to decide the controversy or determine the rights and liabilities of the parties comes to an end. On the other hand, an interlocutory order is one that does not finally dispose of an action as there are other matters that need to be done by the court. A final judgment is appealable while an interlocutory order is not. Here, the RTC-Tagum adjudged respondent guilty of indirect contempt imposing against her the penalty of imprisonment of 15 days and ordering her to pay a fine in the amount of ₱30,000.00. By such ruling, the RTC-Tagum had finally disposed of the matters surrounding the charge of contempt. Pursuant to Section 11, Rule 71 of the Rules of Court, to contest the ruling in the contempt charge, the proper remedy for respondent was to file an appeal under Rule 41 of the Rules of Court.

APPEARANCES OF COUNSEL

P.B. Labrador and Partners for petitioner.
Rapista & Rubillar-Rapista Law Office for respondent.

D E C I S I O N

INTING, *J.*:

Before the Court is a Petition Review on *Certiorari*[1] assailing the Decision[2] dated May 23,2017 of the Court of Appeals (CA) in CA-G.R. SP No. 07775-MIN, which granted the petition for *certiorari* filed therewith and concomitantly, annulled and set aside the Resolution[3] dated August 15, 2016 as well as the Orders dated September 6, 2016[4] and September 28, 2016[5] of Branch 2, Regional Trial Court of Tagum City, (RTC-Tagum) in Civil Case No. 4233.

Likewise being challenged is the CA Resolution[6] of August 25, 2017, which denied Masakazu Uematsu's (petitioner) motion for reconsideration.

The Antecedents

This case emanated from a Petition[7] for the issuance of a permanent protection order (PPO) and plea for issuance of temporary protection order under Republic Act No. (RA) 9262 (PPO case) filed by Alma N. Balinon (respondent) against petitioner. Respondent asserted that she filed the case due to the physical, emotional, mental, and sexual abuses committed against her by petitioner, her common-law spouse who was a drug dependent.

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[1] *Rollo*, pp. 19-47.

[2] *Id.* at 52-79; penned by Associate Justice Rafael Antonio M. Santos with Associate Justices Edgardo T. Lloren and Ruben Reynaldo G. Roxas, concurring.

[3] *Id.* at 85-88; penned by Presiding Judge Ma. Susana T. Baua.

[4] *Id.* at 90.

[5] *Id.* at 92-93.

[6] *Id.* at 81-83.

[7] *Id.* at 95-102.

In the Decision[8] dated October 7, 2011 of the RTC-Tagum, the petition for the PPO case filed by the respondent was granted and a PPO against petitioner was issued. RTC-Tagum gave credence to respondent's claim that she and her children would be in constant threat or harm unless a PPO be issued against petitioner. The Decision in the PPO case became final and executory, and a corresponding Entry of Judgment[9] was issued on November 29, 2011.

On July 23, 2014, or almost three years after the finality of the PPO case, petitioner filed a Complaint[10] with the Regional Trial Court of Lapu-Lapu City, Cebu (RTC-Lapu-Lapu) for the dissolution of co-ownership, partnership, liquidation, and accounting (Dissolution case) against respondent. In the complaint, petitioner prayed, among others, for the winding up and accounting of his co-ownership with respondent, that the latter be ordered to turnover all papers and effects pertaining to their co-ownership, and the settlement of their properties be made.

On June 30, 2015, while the Dissolution case was pending, petitioner filed with the RTC-Tagum a Motion (To Order Defendant Alma N. Balinon to Account)[11] (Motion to Account) praying that respondent be ordered to account all the proceeds of their closed businesses and sold properties. The RTC-Tagum directed respondent to file a comment on the motion. However, despite the 15-day extension period granted her, respondent failed to file her comment.

Subsequently, petitioner filed Motion to Direct [Respondent] to Comply with the Order of the Court[12] stating that respondent's failure to file a comment and to make an account was an act

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[8] *Id.* at 121-125.

[9] *Id.* at 263-264.

[10] *Id.* at 174-178.

[11] *Id.* at 126-129.

[12] *Id.* at 276-279.

of disobedience to the lawful order of the court. Thus, he prayed that respondent be given a final warning to render an accounting on their common properties under pain of contempt should she defy the court's order.

In its Order[13] dated December 2, 2015, the RTC-Tagum directed respondent to explain why she should not be sanctioned for her failure to comply with the directive of the court within a period of five days. In the same order, it granted respondent a period of 15 days to make an accounting and declared that her failure to do so shall constrain the court to admit the allegations in petitioner's Motion to Account and to dispose of the properties therein enumerated.[14]

On June 8, 2016, petitioner filed a Motion for Resolution.[15] He declared that respondent was still unable to submit for accounting their common properties. Consequently, he prayed for the RTC-Tagum to issue an order citing her in contempt of court and to resolve his Motion to Account.

Ruling of the RTC-Tagum

In the Resolution[16] dated August 15, 2016, the RTC-Tagum found respondent guilty of indirect contempt. It imposed against her the penalty of imprisonment for a period of 15 days and ordered her to pay a fine in the amount of ₱30,000.00.[17] The RTC-Tagum likewise ordered, among other matters, that the properties enumerated in petitioner's Motion to Account be forfeited in his favor.

Respondent moved for a reconsideration, but her motion was denied in the RTC-Tagum's Order[18] dated September 6, 2016.

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[13] *Id.* at 130.

[14] *Id.*

[15] *Rollo*, pp. 283-284.

[16] *Id.* at 85-88.

[17] *Id.* at 88.

[18] *Id.* at 90.

Undeterred, respondent filed a notice of appeal.[19]

In an Order[20] dated September 28, 2016, the RTC-Tagum denied due course respondent's notice of appeal. It held that its Resolution dated August 15, 2016 was an interlocutory order and as such, could not be subject of an appeal. Hence, respondent flied a petition for *certiorari*[21] with the CA.

Ruling of the CA

In the Decision[22] dated May 23, 2017, the CA granted the petition. Accordingly, it annulled and set aside the RTC-Tagum Resolution dated August 15, 2016 as well as its Orders dated September 6, 2016 and September 28, 2016.[23]

The CA decreed that the Decision of the RTC-Tagum in the PPO case had become final and executory and could no longer be altered except for clerical errors or mistakes. According to the CA, petitioner's Motion to Account was not in the nature of a motion for execution of a final and executory judgment, but pertained to a different subject matter; thus, it must be subject of a separate case.

The CA also elucidated that petitioner's Motion to Account must be dismissed because petitioner committed forum shopping when he filed it despite the pendency of the Dissolution case before the RTC-Lapu-Lapu. It noted that: (1) there was forum shopping considering that these two actions pertained to the same parties, the rights asserted, and reliefs prayed for arose from the same facts; (2) and any ruling in them would amount to *res judicata*.

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[19] *Id.* at 289-290.

[20] *Id.* at 227-228.

[21] *Id.* at 203-220.

[22] *Id.* at 52-79.

[23] *Id.* at 78.

The CA further noted that the action filed with the RTC-Tagum was a PPO case relating to acts of violence against women and their children defined under RA 9262. It stressed that settlement and distribution of properties were not among the objectives and reliefs specified under RA 9262. Hence, it ruled that the RTC-Tagum had no jurisdiction over petitioner's Motion to Account, since the PPO case was ruled against petitioner. It likewise explained that petitioner could not pray for the distribution of his and respondent's properties because, as respondent therein, petitioner was not allowed to include any counterclaim in the PPO case.

Furthermore, the CA ruled that the RTC-Tagum committed grave abuse of its discretion when it cited respondent in indirect contempt even if its basis was a mere motion filed by petitioner, without observance of the required procedure in indirect contempt cases.

Finally, the CA ratiocinated that the subject notice of appeal involved the disposition of the RTC-Tagum: (1) convicting respondent for indirect contempt; and (2) ordering the forfeiture of the co-owned properties in favor of petitioner. These matters, according to the CA, were appealable and the RTC-Tagum was unjustified in denying the notice of appeal.

With the denial of his motion for reconsideration, petitioner filed this Petition raising the sole issue, to wit:

> Whether the [CA] erred in granting the petition for *certiorari* filed by respondent.[24]

Petitioner's Arguments

In the Petition for Review on *Certiorari*,[25] petitioner insists that he did not commit forum shopping when he filed the Motion to Account before the RTC-Tagum even if he pursued it during the pendency of his Dissolution case with the RTC-Lapu-Lapu.[26]

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[24] *Id.* at 30.

[25] *Id.* at 19-47.

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

He asserts at the respective reliefs prayed for in those cases were different. He alleges that the Motion to Account involved the prayer for accounting of his and respondent's money lending and car dealership businesses; while, the Dissolution case prayed for the dissolution of their community property and its distribution to them.[27]

Petitioner also insists that the RTC-Tagum did not commit grave abuse of discretion in holding respondent guilty of indirect contempt of court. He claims that the indirect contempt charge was initiated *motu proprio* by the RTC-Tagum such that he did not have to file a verified petition on the matter.[28]

Finally, petitioner maintains that the denial of respondent's notice of appeal by the RTC-Tagum was proper.[29] The Resolution dated August 15, 2016 of the RTC-Tagum, relative to the Decision finding respondent guilty of indirect contempt and also ordering the forfeiture of the subject properties in favor of petitioner, was an interlocutory order, which was not appealable.[30]

Respondent's Arguments

Respondent counters that the RTC-Tagum had no more jurisdiction over the final and executory judgment in the PPO case such that the eventual filing of the Motion to Account in the same case should have been dismissed outright.[31] She contends that by the filing of petitioner of his subsequent motions in the PPO case, after the decision therein had already been final and executory, had erroneously converted it into a case of distribution of properties, which was absurd and beyond the authority of the RTC-Tagum.[32]

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[27] *Id.* at 44.

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

[29] *Id.* at 41.

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

[31] *Id.* at 198.

[32] *Id.* at 199.

At the same time, respondent stresses that petitioner committed forum shopping when he filed the Motion to Account even when he had already filed a separate Dissolution case praying for the same remedies for accounting and distribution of properties.[33] She adds that after the RTC-Tagum ruled in favor of petitioner and forfeited in his favor the subject properties, petitioner then withdrew the Dissolution case. The act of withdrawal by the petitioner showed that after having secured one remedy from the RTC-Tagum, he sought the withdrawal of the other case.[34]

Our Ruling

The Petition lacks merit.

Application of the principle of immutability of judgment in this case.

At the outset, it is primordial to stress that the decision in the PPO case had long been final and executory before petitioner filed his Dissolution case on July 23, 2014. Such being the case, by virtue of the doctrine of immutability of judgment, this final and executory judgment of the RTC-Tagum can no longer be altered in any way by any court. While there are recognized exceptions to the rule on immutability of judgment, such as: (1) correction of any 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[35] — none of which was alleged and proved here.

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[33] *Id.*

[34] *Rollo*, p. 200.

[35] *Gomeco Metal Corp. v. Court of Appeals, et al.*, 793 Phil. 355, 379 (2016).

Forum shopping; when committed.

Moreover, not only did petitioner endeavor to alter an already final and executory judgment, he committed forum shopping when he filed his Motion to Account in the PPO case; thus, the RTC-Tagum should have dismissed it outright.

A party is guilty of forum shopping when he or she institutes, either simultaneously or successively, two or more actions before different courts asking the latter to rule the same or related issues and grant the same or substantially the same reliefs. Such institution of actions is on the notion that one or the other court would render a favorable ruling or increase the chance of the party of obtaining a favorable decision.[36] More particularly, forum shopping is evident in these situations:

> (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).[37]

In fine, there is forum shopping when a party files two or more cases involving the *same parties, causes of action and reliefs*. Notably forum shopping is one of the grounds for the dismissal of a case. The rule against it aims to avoid the rendition of two competent courts of separate and opposing rulings which may arise because a party-litigant, takes advantage and tries his or her luck into seeking relief until a result in one's favor is attained.[38]

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[36] *Pavlow v. Mendenilla*, 809 Phil. 24, 50 (2017).

[37] *Id.*

[38] *Brown-Araneta v. Araneta*, 719 Phil. 293, 316-317 (2013).

In this case, the identity of parties in the Dissolution case and in the Motion to Account (filed in the PPO case) cannot be denied. Both of these cases involved herein petitioner and respondent. Moreover, the rights and reliefs asserted by petitioner in the Dissolution case pertained to the same ones that he declared in the Motion to Account.

To stress, in the Dissolution case, petitioner prayed that: (1) an order be issued against respondent in order for their co-ownership be wound up and accounted, and for respondent to turnover papers and effects affecting the co-ownership; and (2) for the affairs be settled and distribution be made to them. In said case, petitioner listed real properties located in Tagum City, which, he claimed to have been purchased because of his and respondent's lending business and which were subject of their supposed co-ownership. Specifically, these real properties were registered under Transfer Certificates of Title Nos. T-239652, T-239653, T-239654, T-241966, T-241746, T-234235, T-234600 and T-263601.[39]

On the other hand, in his Motion to Account filed in the PPO case, petitioner prayed for the court to order respondent to account all the proceeds of his and respondent's closed businesses and sold properties. Interestingly, petitioner listed the same properties[40] in the Motion to Account as those he listed in the Dissolution case. He also similarly stated in the Motion to Account that these properties were acquired by his and respondent's joint efforts or in other words, were co-owned by them.

Added to these, after obtaining a favorable action with the RTC-Tagum granting the petitioner's Motion to Account, petitioner filed a notice to withdraw his Dissolution case with the RTC-Lapu-Lapu. As pointed out by the CA, such withdrawal of action, after obtaining a favorable ruling in another court, shows petitioner's "reprehensible act of trifling with court

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[39] *Rollo*, p. 175.

[40] *Id.* at 277.

processes,"[41] and of his scheme into seeking the same or similar reliefs from different courts to increase his chance of getting a favorable decision.

In sum, it cannot be mistaken that the Dissolution case and the Motion to Account (in the PPO case) were practically pursuant to the same facts and reliefs asked for, that is, for an accounting of the co-owned properties of the parties. They are so interrelated that any disposition made in any of them, regardless of which party is successful, would amount to *res judicata*.[42] Evidently, the subsequent filing of the Motion to Account despite the pendency of the Dissolution case was unnecessary and vexatious; thus, it should have been dismissed on the ground of forum shopping.

Indirect contempt; procedure, requirements.

In addition, petitioner posits that the RTC-Tagum properly found respondent guilty of indirect contempt. He adds that since the court initiated *motu proprio* such charge, then he did not have to file a verified petition on the matter.

The Court is not convinced.

A person may be punished for indirect contempt when he or she disobeys or resists a lawful court order, among other acts enumerated in Section 3, Rule 71 of the Rules of Court. The proceedings thereto may be commenced by the court initiating it *motu proprio* or by a verified petition with supporting particulars as well as certified true copies of relevant documents and upon full compliance with the requirements for filing of initiatory pleadings for civil actions.[43]

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[41] *Id.* at 72.

[42] See *Pavlow v. Mendenilla, supra* note 36 at 51.

[43] RULES OF COURT, Rule 71, Section 4 provides;

Sec. 4. *How proceedings commenced.* – Proceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt as committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.

As the CA observed, the RTC-Tagum found respondent guilty of indirect contempt, *not* on account of it having initiated the proceedings *motu proprio*, but on the basis of the motion filed by petitioner. Let it be recalled that in his Motion to Direct [Respondent] to Comply with the Order of this Court and Motion for Resolution, petitioner claimed that respondent disobeyed the lawful order of the court and prayed that she be cited in indirect contempt. Such being the case, petitioner should have had filed first a verified petition in pursuing the contempt charge against respondent.

In *Arriola, et al. v. Arriola* (*Arriola*),[44] the Court emphasized that the indirect contempt, not initiated by the court *motu proprio*, must be commenced by a verified petition. It ratiocinated that even if the contempt proceedings emanated from a principal case, still, the governing rules require that a petition be filed and treated independently of the main action. It stressed that it is beyond doubt that the requirement of a verified petition in initiating an indirect contempt proceeding is a **mandatory** requirement quoting the Court's earlier pronouncement in *Regalado v. Go*,[45] *viz.*:

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Henceforth, except for indirect contempt proceedings initiated *motu propio* by order of or a formal charge by the offended court, all charges shall be commenced by a verified petition with full compliance with the requirements therefore and shall be disposed in accordance with the second paragraph of this section.

In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned. If the contempt charges arose out of or are related to a principal action pending in the court, the petition for contempt shall allege that fact but said petition shall be docketed, heard and decided separately, unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision. (n)

[44] 566 Phil. 654 (2008).

[45] 543 Phil. 578 (2007).

x x x x x x x x x

Even if the contempt proceedings stemmed from the main case over which the court already acquired jurisdiction, the rules direct that the petition for contempt be treated independently of the principal action. Consequently, the necessary prerequisites for the filing of initiatory pleadings, such as the filing of a verified petition, attachment of a certification on non-forum shopping, and the payment of the necessary docket fees, must be faithfully observed.[46] (Emphasis in the original.)

Like in *Arriola*, the indirect contempt charge against respondent was initiated by petitioner's mere motion; thus, without compliance with the mandatory requirements under Section 4, Rule 71 of the Rules of Court. Specifically, not only did petitioner fail to file a verified petition, he, likewise, did not comply with the requirements for the filing of initiatory pleadings. This being so, the RTC-Tagum had improperly taken cognizance of the charge and conversely, it should have dismissed the motion.

Interlocutory order, final judgment; distinguished.

Petitioner also faults the CA in finding that the RTC-Tagum committed grave abuse of discretion in denying respondent's notice of appeal. He argues that the denial of the notice of appeal was proper because the Resolution relative to the court's pronouncement which (a) found respondent guilty of indirect contempt, and (b) ordered the forfeiture of the subject properties in favor of the petitioner was an interlocutory order; hence, not appealable.

We disagree.

Let it be underscored that a final judgment is one that finally disposes of a case and leaves nothing more to be done by the court to it. Once rendered, the task of the court to decide the controversy or determine the rights and liabilities of the parties

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[46] *Supra* note 44 at 663.

comes to an end. On the other hand, an interlocutory order is one that does not finally dispose of an action as there are other matters that need to be done by the court. A final judgment is appealable while an interlocutory order is not.[47]

Here, the RTC-Tagum adjudged respondent guilty of indirect contempt imposing against her the penalty of imprisonment of 15 days and ordering her to pay a fine in the amount of ₱30,000.00. By such ruling, the RTC-Tagum had finally disposed of the matters surrounding the charge of contempt. Pursuant to Section 11, Rule 71 of the Rules of Court, to contest the ruling in the contempt charge, the proper remedy for respondent was to file an appeal under Rule 41 of the Rules of Court.[48]

Finally, the Court agrees with the CA that the RTC-Tagum's disposition on the forfeiture of the subject properties in favor of petitioner as also embodied in its Resolution dated August 15, 2016 was a final judgment leaving nothing more to be done by the Court. The pronouncement carried with it a determination of the rights as well as the liabilities of the parties. This being so, the proper recourse that should have been taken by the aggrieved party was to appeal the ruling against her. Hence, there is no merit in fact and in law for the RTC-Tagum to deny respondent's notice of appeal.

In view of all the foregoing disquisitions, the Court finds that the CA properly granted the petition for *certiorari*. *First*, the RTC-Tagum gravely abused its discretion in granting the Motion to Account in violation of the principles governing the immutability of judgment as well as forum shopping. *Second*, the RTC-Tagum committed grave abuse of discretion in finding respondent guilty of indirect contempt despite non-compliance with the procedure for filing the same. *Third*, the RTC-Tagum also gravely abused its discretion when it denied due course to

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[47] *Heirs of Timbang Daromimbang Dimaampao v. Atty. Alug, et al.*, 754 Phil. 236, 244-245 (2015).

[48] *Capitol Hills Golf & Country Club, Inc., et al. v. Sanchez*, 728 Phil. 58, 73-74 (2014).

respondent's notice of appeal when it involved a final judgment, which is appealable.

WHEREFORE, the Petition is **DENIED**. The Decision dated May 23, 2017 and Resolution dated August 25, 2017 of the Court of Appeals in CA-G.R. SP No. 07775-MIN are **AFFIRMED**.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Hernando*, and *Zalameda*,[**] *JJ.*, concur.

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

FIRST DIVISION

[G.R. No. 244256. November 25, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSEPH STA. CRUZ *y* ILUSORIO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); CHAIN OF CUSTODY RULE; LINKS IN THE CHAIN. — Chain of custody is a procedural mechanism that ensures that the identity and integrity of the *corpus delicti* are clear and free from any unnecessary doubt or uncertainty. It secures the close and careful monitoring and recording of the custody, safekeeping, and transfer of the confiscated illegal drug so as to preclude any incident of planting,

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[**] Designated additional member per Special Order No. 2724 dated October 25, 2019.

tampering, or switching of evidence. The links in the chain, to wit: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the marked illegal drug seized from the forensic chemist to the court must be adequately proved in such a way that no question can be raised as to the authenticity of the dangerous drug presented in court.

2. ID.; ID.; ID.; OFFENSES COMMITTED ON NOVEMBER 5, 2010 REQUIRE COMPLIANCE WITH SECTION 21 OF R.A. NO. 9165. — Since the offenses were committed on November 5, 2010, the Court must evaluate the apprehending officers' compliance with the chain of custody requirement in accordance with Section 21 of R.A. No. 9165. Section 21, Article II of R.A. No. 9165 strictly requires that (1) the seized items be inventoried and photographed immediately after seizure or confiscation; and (2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel; (b) an elected public official; (c) a representative from the Department of Justice (DOJ).

3. ID.; ID.; ID.; ID.; ABSENCE OF THE NECESSARY WITNESSES; JUSTIFIABLE REASONS THEREFOR MUST BE ALLEGED AND PROVED, AND EARNEST EFFORTS TO SECURE THEIR ATTENDANCE MUST BE PROVEN. — In this case, the physical inventory and photographing of the confiscated items were done at the police station and only a media representative was present. There were no elected public official and representative from the DOJ. In fact, the physical inventory and photographing of the seized items were not even made in the presence of accused-appellant. x x x 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 [justifiable] reasons x x x Further, earnest efforts to secure the attendance of the necessary witnesses must be proven.

4. ID.; ID.; ID.; ID.; NON-COMPLIANCE AND ITS SAVING CLAUSE. — While it is true that less than strict compliance

with the guidelines stated in Section 21, Article II of R.A. No. 9165 does not necessarily render void and invalid the confiscation and custody over the evidence obtained, the saving clause would only be set in motion when these requisites are satisfied: 1) the existence of justifiable grounds; and 2) the integrity and evidentiary value of the seized items are properly preserved by the police officers.

APPEARANCES OF COUNSEL

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

D E C I S I O N

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

On appeal is the August 29, 2018 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 10019 which affirmed the October 30, 2017 Joint Decision[2] of the Regional Trial Court (RTC), Branch 72, Malabon City finding accused-appellant Joseph Sta. Cruz *y* Ilusorio (accused-appellant) guilty in both Criminal Case No. 10-1980-MN of violating Section 5, and in Criminal Case No. 10-1979-MN of violating Section 11, Article II of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The Facts

Accused-appellant was charged with illegal possession of methamphetamine hydrochloride (*shabu*), committed as follows:

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[1] Penned by Associate Justice Franchito N. Diamante, with Associate Justices Remedios A. Salazar-Fernando and Ma. Luisa C. Quijano-Padilla, concurring; *rollo*, pp. 3-20.

[2] Penned by Judge Jimmy Edmund G. Batara; CA *rollo,* pp. 53-58.

In Criminal Case No. 10-1979-MN

That on or about the 5th day of November 2010, in the City of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being a private person and without authority of law, did, then and there, willfully, unlawfully and feloniously have in his possession, custody and control two (2) small heat-sealed transparent plastic sachets with markings "HAB/JSCI-2-11-5-10" containing 0.03 gram of white crystalline substance and "HAB/JSCI-3-11-5-10" containing 0.02 gram of white crystalline substance, which substance when subjected to qualitative examination gave positive result for Methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.[3]

Accused-appellant was also indicted for illegal sale of *shabu*, committed as follows:

In Criminal Case No. 10-1980-MN

That on or about the 5th day of November 2010, in the City of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being a private person and without authority of law, did, then and there, willfully, unlawfully and feloniously sell and deliver to [*poseur*]-buyer PO1 HERBERT A. BAGAIN, JR., in the amount Php500.00 one (1) small heat-sealed transparent plastic sachet with markings "HAB/JSCI-1-11-5-10" containing 0.02 gram of white crystalline substance, which substance when subjected to qualitative examination gave positive result for Methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.[4]

Upon arraignment, accused-appellant pleaded not guilty to the charges. Thereafter, trial on the merits ensued.

Version of the Prosecution

The prosecution presented Police Officer 2 Herbert Bagain, Jr. (PO2 Bagain), the *poseur*-buyer and apprehending officer

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[3] *Id*. at 53.

[4] *Id*.

and Police Chief Inspector Stella S. Garciano (P/C Insp. Garciano), the forensic chemist as witnesses. Their combined testimonies tended to establish the following:

On November 5, 2010, at around 4:30 p.m., the police operatives at District Anti-Illegal Drugs, Northern Police District in Larangay, Caloocan City received information from a confidential informant that accused-appellant was engaged in the illegal drug trade.[5]

After receiving such information, P/C Insp. Arnold Thomas C. Ibay immediately formed a buy-bust team and designated Deputy Officer P/C Insp. Leoben Ong as the leader and PO2 Bagain as the *poseur*-buyer. The team conducted a briefing and coordinated with the Philippine Drug Enforcement Agency for the conduct of the buy-bust operation on the same day.[6]

At around 8:15 p.m. the same day, the team proceeded to the target area on Hito Street, Longos, Malabon City. PO2 Bagain intimated to accused-appellant his intention to buy ₱500.00 worth of *shabu*. He then handed to accused-appellant the buy-bust money while accused-appellant gave him a plastic sachet.[7]

Then, PO2 Bagain turned his back and waved his umbrella as the pre-arranged signal. The team rushed to the scene and PO2 Bagain introduced himself to accused-appellant as a police officer. Thereafter, PO2 Bagain arrested and handcuffed accused-appellant and found two more plastic sachets containing white crystalline substance from the possession of accused-appellant. PO2 Bagain placed all the plastic sachets in his pocket.[8]

Thereafter, the team proceeded to the police station for inquest proceedings. Thereat, PO2 Bagain made an inventory of the seized items which could not be done at the place of arrest

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[5] *Id*. at 54.

[6] *Id*.

[7] *Id*.

[8] *Id*.

because there were several persons at that time. The plastic sachets were then turned over to PO3 Ariosto Rana (PO3 Rana) who prepared the request for laboratory examination. A media representative was present at the police station when the inventory and markings were being made.[9]

Together with PO3 Rana, PO2 Bagain brought the seized specimens to the Philippine National Police Crime Laboratory for qualitative examination. P/C Insp. Garciano received the request and the specimens. Upon laboratory examination, the specimens tested positive for *shabu*.[10]

Version of the Defense

Accused-appellant denied the accusations against him and averred that on November 5, 2010, at around 2:00 p.m., he was filling soil by the entry way of his mother's residence at Block 8, Lot 43, Hito Street, Longos, Malabon City. During his break, he decided to go outside to watch people playing *mahjong*. His son followed him and after a while, they saw several police officers pass by the area. Later on, the policemen returned to the area where he was standing. They held his arms and tried to bring him with them, but he resisted and asked why he was being apprehended. He finally acceded to their demands because the police officers were forcing him to go and he was afraid that he might get hurt. He was then brought to the Larangay Police Station where he was detained.[11]

The RTC Ruling

In a Joint Decision dated October 30, 2017, the RTC found accused-appellant guilty of illegal possession of *shabu*. It opined that possession of a dangerous drug constitutes a *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused in the absence of a satisfactory explanation of such

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[9] *Id*. at 54-55.

[10] *Supra* note 5.

[11] *Id*. at 55-56.

possession. The trial court also handed a guilty verdict on accused-appellant for illegal sale of *shabu*. It declared that the prosecution was able to prove that the *shabu* subject of the cases are the same items purchased and seized from accused-appellant. The *fallo* reads:

> WHEREFORE, in view of the foregoing[,] judgment is rendered as follows:
>
> In Criminal Case No. 10-1979-MN for Violation of Section 11, Article II of Republic Act No. 9165, the accused JOSEPH STA. CRUZ *y* ILUSORIO is found GUILTY beyond reasonable doubt of the offense charged and is hereby sentenced to suffer the penalty of imprisonment of TWELVE (12) YEARS and ONE (1) DAY to FOURTEEN (14) YEARS and to pay a fine of Three Hundred Thousand Pesos (₱300,000.00).
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> In Criminal Case No. 10-1980-MN for Violation of Section 5, Article II of Republic Act No. 9165, the accused JOSEPH STA. CRUZ *y* ILUSORIO is found GUILTY beyond reasonable doubt of the offense charged and is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of FIVE HUNDRED THOUSAND (₱500,000.00) PESOS.
>
> All the specimen subject of these cases are forfeited in favor of the government to be disposed of under the rules governing the same.
>
> SO ORDERED.[12]

Aggrieved, accused-appellant elevated an appeal before the CA.

The CA Ruling

In a Decision dated August 29, 2018, the CA affirmed the RTC ruling. It agreed with the findings of the trial court that the prosecution adequately established all the elements of illegal sale of a dangerous drug as the collective evidence presented during the trial showed that a valid buy-bust operation was conducted. Likewise, all the elements of illegal possession of

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[12] *Id*. at 58.

a dangerous drug were proven. The prosecution was able to demonstrate that the integrity and evidentiary value of the confiscated drugs were not compromised. The witnesses for the prosecution were able to testify on every link in the chain of custody, establishing the crucial link in the chain from the time the seized items were first discovered until they were brought for examination and offered in evidence in court. Thus, it disposed the case in this wise:

> WHEREFORE, in view of the foregoing, the instant appeal is hereby DENIED. The Joint Decision dated October 30, 2017 of the Malabon City Regional Trial Court, Branch 72, in the cases docketed as Criminal Case No. 10-1979-MN and Criminal Case No. 10-1980-MN is AFFIRMED.
>
> SO ORDERED.[13]

Hence, this appeal. Accused-appellant and the People manifested that they would no longer file a Supplemental Brief, taking into account the thorough and substantial discussions of the issues in their respective appeal briefs before the CA. Accused-appellant reiterated that the buy-bust team failed to follow the procedure mandate in Section 21(1), Article II of R.A. No. 9165.

The Court's Ruling

The judgment of conviction is reversed and set aside and accused-appellant is acquitted of the crimes charged.

Chain of custody is a procedural mechanism that ensures that the identity and integrity of the *corpus delicti* are clear and free from any unnecessary doubt or uncertainty. It secures the close and careful monitoring and recording of the custody, safekeeping, and transfer of the confiscated illegal drug so as to preclude any incident of planting, tampering, or switching of evidence. The links in the chain, to wit: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the

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[13] *Rollo*, p. 19.

illegal drug seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the marked illegal drug seized from the forensic chemist to the court must be adequately proved in such a way that no question can be raised as to the authenticity of the dangerous drug presented in court.[14] Thus, in *Mallillin v. People*,[15] the Court declared:

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

Section 21(1), Article II of R.A. No. 9165 states:

> 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

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[14] *People v. Lim*, G.R. No. 231989, September 4, 2018.

[15] 576 Phil. 576, 587 (2008).

the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, **a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof[.] (Emphasis supplied)

Supplementing the above-quoted provision, Section 21(a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 mandates:

SEC. 21. x x x

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

On July 15, 2014, R.A. No. 10640 was approved to amend R.A. No. 9165, thus:

(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 from whom such items were confiscated and/or seized, or his/her representative or counsel, **with an elected public official and a representative of the National Prosecution Service or the media** who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the

search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items. (Emphasis supplied)

Since the offenses were committed on November 5, 2010, the Court must evaluate the apprehending officers' compliance with the chain of custody requirement in accordance with Section 21 of R.A. No. 9165.

Section 21, Article II of R.A. No. 9165 strictly requires that (1) the seized items be inventoried and photographed immediately after seizure or confiscation; and (2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel; (b) an elected public official; (c) a representative from the media; and (d) a representative from the Department of Justice (DOJ).[16]

In addition, in *People v. Tanes*,[17] the Court declared:

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of R.A. 9165 allow the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. In this connection, this also means that **the three required witnesses should already be physically present at the time of the conduct of the physical inventory of the seized items which, as mentioned, 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**. (Emphasis supplied)

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[16] *People v. Retada*, G.R. No. 239331, July 10, 2019.

[17] G.R. No. 240596, April 3, 2019.

In this case, the physical inventory and photographing of the confiscated items were done at the police station and only a media representative was present.[18] There were no elected public official and representative from the DOJ. In fact, the physical inventory and photographing of the seized items were not even made in the presence of accused-appellant.

The Court stressed in *People v. Sipin*:[19]

The prosecution bears the burden of proving a valid cause for noncompliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law. Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence. It should take note that the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items. Strict adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule, since it is highly susceptible to planting, tampering or alteration of evidence.

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) [T]heir 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,

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[18] CA *rollo*, pp. 54-55.

[19] G.R. No. 224290, June 11, 2018.

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.[20]

Further, earnest efforts to secure the attendance of the necessary witnesses must be proven. *People v. Ramos*,[21] requires:

> It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of [R.A. No.] 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of availability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for noncompliance. These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of [R.A. No.] 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that the exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.[22] (Citation omitted, emphases supplied)

While it is true that less than strict compliance with the guidelines stated in Section 21, Article II of R.A. No. 9165 does not necessarily render void and invalid the confiscation

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[20] *Id*.

[21] G.R. No. 233744, February 28, 2018.

[22] *People v. Ramos*, G.R. No. 233744, February 28, 2018.

and custody over the evidence obtained, the saving clause would only be set in motion when these requisites are satisfied: 1) the existence of justifiable grounds; and 2) the integrity and evidentiary value of the seized items are properly preserved by the police officers.[23]

The first requirement instructs the prosecution to identify and concede the lapses of the buy-bust team and thereafter give a justifiable and credible explanation therefor. In this case, PO2 Bagain himself admitted that in the conduct of the drug inventory, only a media representative was present.[24] There was no attempt to secure the presence of a representative from the DOJ and an elected public official. Worse, it was not made in the presence of accused-appellant.

With regard to the second requirement, the prosecution was not able to prove that the integrity and evidentiary value of the seized items remained intact from the time of confiscation, marking, submission to the laboratory for examination, and presentation in court. The lack of a DOJ representative and an elected public official during the actual physical inventory and photographing of the seized drugs without offering a credible justification created a gap in the chain of custody. Moreover, records do not show that the prosecution was able to establish a justifiable ground as to why the police officers were not able to secure the presence of the other mandatory witnesses. Considering that buy-bust is a planned operation, police officers are given sufficient time to prepare and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21, Article II of R.A. No. 9165.[25]

Because of the miniscule amount of the confiscated illegal drugs involved, rigid compliance with Section 21 of R.A. No. 9165 is expected from the apprehending officers. As aptly

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[23] *People v. Fatallo*, G.R. No. 218805, November 7, 2018.

[24] CA *rollo*, p. 55.

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

held in *People v. Plaza*,[26] "buy-bust teams should be more meticulous in complying with Section 21 of R.A. No. 9165 to preserve the integrity of the seized *shabu* most especially where the weight of the seized item is a miniscule amount that can be easily planted and tampered with." Without the insulating presence of the three witnesses during the seizure, marking and physical inventory of the sachets of *shabu*, the evils of switching, "planting" or contamination of the evidence arise as to negate the integrity and credibility of the seized drugs that were evidence herein of the *corpus delicti*.[27] The procedure enshrined in Section 21, Article II 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.[28] For indeed, however noble the purpose or necessary the exigencies of our campaign against illegal drugs may be, it is still a governmental action that must always be executed within the boundaries of law.[29]

In fine, as a result of the apprehending officers' non-compliance with Section 21 of R.A. No. 9165, accused-appellant must therefore be acquitted.

WHEREFORE, premises considered, the August 29, 2018 Decision of the Court of Appeals in CA-G.R. CR-HC No. 10019 is **REVERSED** and **SET ASIDE**. Accordingly, accused-apellant Joseph Sta. Cruz *y* Ilusorio is **ACQUITTED** on reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Chief Superintendent of the New Bilibid Prison for immediate implementation. The said Superintendent is **ORDERED** to

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[26] G.R. No. 235467, August 20, 2018.

[27] *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[28] *Gamboa v. People*, 799 Phil. 584, 597 (2016).

[29] *Id*.

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

SO ORDERED.

Peralta, C.J. (Chairperson), Lazaro-Javier, and *Inting*,[*] *JJ.*, concur.

Caguioa (*Working Chairperson*), *J.*, on official leave.

EN BANC

(A.M. No. P-08-2555. November 26, 2019)
[Formerly A.M. OCA IPI No. 08-2780-P]

MARIA ROSANNA J. SANTOS, *complainant, vs.* **EMMA J. RAYMUNDO, Clerk III, Branch 69; GEORGE F. LUCERO, Process Server, Branch 71; and RONALD P. FAJARDO,[*] Process Server, Office of the Clerk of Court, all in the Metropolitan Trial Court, Pasig City,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; WILLFUL FAILURE TO PAY ONE'S DEBT IS ADMINISTRATIVELY PUNISHABLE; THE ACT OF CONTRACTING LOANS OF MONEY OR OTHER PROPERTY FROM PERSONS WITH WHOM THE OFFICE OF THE EMPLOYEE HAS BUSINESS RELATIONS IS PUNISHABLE BY DISMISSAL FROM THE SERVICE.— In *Atty. Jaso v. Lourdes*, the Court held

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[*] Additional Member per Special Order No. 2726.

[*] Also referred to as "Ronald F. Fajardo" in some parts of the *rollo*.

that willful failure to pay just debts is administratively punishable and a ground for disciplinary action. Here, Raymundo admitted in her undated last letter to the Court that her monetary obligation to Santos remains unpaid. Thus, she shall be penalized administratively for her infraction. The Court observed that in Santos' November 28, 2011 letter to the Court, she recalled that sometime in October 2006, she approached Raymundo regarding an estafa case that she filed against someone. When Raymundo learned that she came from abroad, she convinced her to lend her money. Seeing that Santos was hesitant, Raymundo assured her that their transaction would not result to a lawsuit because she loved her job as a court employee, and promised to pay back in one year. However, when Santos came to collect, Raymundo uttered hurtful words, *"tatanga-tanga ka, magdemanda ka kung gusto mo tatagal naman yan ng 5 years[."]* In short, Raymundo could not have met Santos and later borrowed money from her were it not for her court position. She used her position to convince Santos to lend her money, although Santos was initially hesitant. She also used her position to make it appear that she had an advantage over Santos if the latter decides to file a complaint. The act of contracting loans of money or other property from persons with whom the office of the employee has business relations is punishable by dismissal from the service under the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS).

2. ID.; ID.; ID.; CONTINUOUS DEFIANCE OF THE COURT'S DIRECTIVES CONSTITUTES INSUBORDINATION.— [R]aymundo exhibited defiance to the Court's directives on more than one occasion. First, she was previously ordered to show cause why she should not be held in contempt for not submitting her comment on Santos' August 7, 2010 letter. Secondly, she continuously failed to comply with the Compromise Agreement as directed by the Court. From the time the Court approved and adopted Judge Mejorada's report and recommendation, Raymundo was penalized three times: (1) reprimanded with a stern warning for conduct unbecoming of a court employee; (2) suspension for 30 days without pay for conduct unbecoming of a court employee with a stern warning; and (3) suspension for one year without pay with a stern warning for insubordination. Therefore, as the OCA correctly concluded, Raymundo is also guilty of insubordination.

3. ID.; ID.; ID.; CONTRACTING LOANS OF MONEY OR OTHER PROPERTY FROM PERSONS WITH WHOM THE OFFICE OF THE EMPLOYEE HAS BUSINESS RELATIONS IS A GRAVE OFFENSE PUNISHABLE BY DISMISSAL FROM THE SERVICE; INSUBORDINATION IS A LESS GRAVE OFFENSE PUNISHABLE BY SUSPENSION FOR THE FIRST OFFENSE AND DISMISSAL FOR THE SECOND OFFENSE; IF THE ERRING COURT PERSONNEL IS FOUND GUILTY OF MULTIPLE ADMINISTRATIVE OFFENSES, THE COURT SHALL IMPOSE THE PENALTY CORRESPONDING TO THE MOST SERIOUS CHARGE AND THE REST SHALL BE CONSIDERED AS AGGRAVATING CIRCUMSTANCES.— In *Boston Finance and Investment Corp. v. Gonzalez*, the Court pronounced that the Code of Conduct for Court Personnel and the existing Civil Service Rules shall apply in disciplining court personnel who are not members of the bench. x x x. Section 50, Rule 10 of the 2017 RACCS enumerates the classification of offenses with lists of acts and omissions, and specifies the corresponding penalties. SEC. 50. *Classification of Offenses*.– x x x A. The following **grave offenses shall be punishable by dismissal from the service**: x x x; 9. **Contracting loans of money or other property from persons with whom the office of the employee has business relations**; x x x D. The following **less grave offenses are punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense; and dismissal from the service for the second offense**: x x x; 5. **Insubordination**[.] x x x Following the Court's ruling in the *Boston Finance* case, the Court shall impose the penalty corresponding to the most serious charge and the rest shall be considered as aggravating circumstances. Here, contracting loans of money or other property from persons with whom the office of the employee has business relations is a grave offense and punishable by dismissal from the service. On the other hand, insubordination is a less grave offense and punishable by suspension for the first offense and dismissal for the second offense.

4. ID.; ID.; ID.; COURT PERSONNEL MUST COMPLY WITH JUST CONTRACTUAL OBLIGATIONS, ACT FAIRLY AND ADHERE TO HIGH ETHICAL STANDARDS, AS THEY ARE EXPECTED TO BE PARAGONS OF UPRIGHTNESS, FAIRNESS, AND HONESTY NOT ONLY

IN THEIR OFFICIAL CONDUCT BUT ALSO IN THEIR PERSONAL ACTUATIONS, INCLUDING BUSINESS AND COMMERCIAL TRANSACTIONS.— As for respondents Lucero and Fajardo, the Court already reprimanded them in a Resolution dated July 1, 2009. In the said Resolution, the Court adopted and approved Judge Mejorada's findings of fact, conclusions of law, and recommendations. She found them guilty of conduct unbecoming of a court employee, and recommended that they be reprimanded with a stern warning that a repetition of the same or similar offense shall be dealt with more severely. Thus, the complaints against them are deemed concluded. The Court reiterates our pronouncement in *Atty. Jaso v. Londres*: The Court has consistently reminded court personnel to comply with just contractual obligations, act fairly and adhere to high ethical standards, as they are expected to be paragons of uprightness, fairness and honesty not only in their official conduct but also in their personal actuations, including business and commercial transactions. Having incurred a just debt, it is x x x [a] moral and legal responsibility to settle it when it became due.

APPEARANCES OF COUNSEL

Domingo S. Cruz for respondent Emma J. Raymundo.

D E C I S I O N

***PER CURIAM*:**

Continuous failure to pay one's debt and ignoring the Court's directives are serious infractions of insubordination and contracting loans of money or other property from persons with whom the office of the employee has business relations. The latter is punishable by dismissal from the service.

The Facts

In a sworn letter-complaint dated March 24, 2008, complainant Maria Rosanna J. Santos (Santos) charged respondents Emma J. Raymundo (Raymundo), Clerk III, Branch 69; George F. Lucero (Lucero), Process Server, Branch 71; and Ronald P.

Fajardo (Fajardo), Process Server, Office of the Clerk of Court, all in the Pasig Metropolitan Trial Court (MeTC), of conduct unbecoming of a court employee for failure to pay debts.[1]

Raymundo borrowed a total of ₱100,000.00 from Santos, and issued checks as payment. However, they were dishonored upon presentment for payment because the account was closed. In November 2006, Lucero borrowed a total of ₱6,000.00, while Fajardo borrowed a total of ₱4,500.00 from Santos. When Santos was collecting the payments at the Pasig MeTC, the three respondents uttered invectives and other hurtful words to her in front of other court employees. Santos filed criminal and civil actions against the respondents for their failure to pay their debts. Believing that these actions are not enough, Santos also filed this administrative complaint against them.[2]

In his Counter-Affidavit dated May 8, 2008, Fajardo denied the allegations of verbal altercation, and averred that it was Santos who publicly humiliated him in front of his co-workers and threatened him with bodily harm. Thus, he filed a criminal complaint for oral defamation, grave threats and unjust vexation against Santos. He asserted that he did not fabricate a story against Santos as proven by the public prosecutor's finding of probable cause for light threats.[3]

He contended that the administrative complaint against him was filed to force him to withdraw his criminal complaint, and that non-payment of debt is not a ground for an administrative complaint, but for a civil action. He prayed for the dismissal of the administrative complaint against him.[4]

In his Affidavit dated May 8, 2008, Lucero also denied the accusations of verbal confrontation against him, but admitted having borrowed ₱10,000.00 from Santos. He alleged paying

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

[2] *Id*.

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

[4] *Id*. at 26.

Santos and the last of which was on November 23, 2007. After that, Santos stopped collecting, probably due to the criminal complaint filed against her. He also claimed that Santos retaliated by fabricating a story against him.[5]

In her Comment dated May 19, 2008, Raymundo likewise denied the allegation of quarrel, but admitted having a ₱100,000.00 loan from Santos. She claimed to have been paying her on installment basis and have made good some of the checks she issued her. She insisted that the checks were returned to her because of payment. She last saw Santos on September 26, 2007 when the latter collected from her. She accused Santos of attempting to take her mobile phone as payment for her loan. She maintained that Santos made up a story for her administrative complaint as leverage against the criminal action for grave oral defamation, grave coercion and attempted theft she filed against Santos.[6]

In her Reply dated August 20, 2008, Santos contested that Raymundo paid her. The acknowledgment receipts that Raymundo attached showed that the payments came from Charito L. Medina (Medina), another borrower. The checks also indicated stamped marks "ACCOUNT CLOSED" and not "PAID." Further, while Raymundo signed the checks, Medina replaced them with cash as payment for her (Medina) loan; thus, Santos returned the checks. However, since Raymundo kept the checks, she presented them as proof of payment for her (Raymundo) loan.[7]

Santos alleged that the criminal complaint against her was dismissed because it was based on lies. On the other hand, she filed 21 counts of violation of Batas Pambansa Bilang 22 (BP 22) or the Bouncing Checks Law against Raymundo for none of the checks she issued were good.[8]

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

[6] *Id.* at 47-48.

[7] *Id.* at 51.

[8] *Id.*

As for Lucero's Affidavit, Santos averred that she came to know him through Raymundo, who assured her that she would collect on him for her. He promised to pay ₱10,000.00 immediately, but failed to do so. He stopped paying when he learned that Raymundo was no longer paying her.[9]

As for Fajardo, Santos revealed that he had arranged for an amicable settlement with her.[10]

In the September 29, 2008 Resolution, the Court referred the matter to the Pasig MeTC executive judge for investigation, report, and recommendation.[11] However, due to the appointment of the then executive judge to the second level court and the inhibition of the vice executive judge, the case was referred to Judge Marina Gaerlan-Mejorada (Judge Mejorada).[12]

The Formal Investigation

Judge Mejorada conducted several hearings. On November 17, 2008, Santos filed a Manifestation with Notice of Dismissal indicating that Lucero paid ₱5,000.00 and his humbling act led her to conclude that the incident arose out of misunderstanding. Thus, she was no longer interested in pursuing this administrative case against him and prayed that the case against Lucero be dismissed.[13]

On November 14, 2008, Fajardo filed a Manifestation with Motion to Dismiss signifying that in Santos' Reply she mentioned that they were amenable to a settlement, and they realized that the events that led to the filing of this administrative complaint were brought by misapprehension of facts. He attached Santos' Affidavit of Desistance as proof that she was ending this case against him and prayed for its dismissal.[14]

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[9] *Id*. at 52.

[10] *Id*.

[11] *Id*. at 69.

[12] *Id*. at 71-72, 103-105.

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

[14] *Id*. at 83-84, 87.

In the March 4, 2009 Order, Judge Mejorada noted the manifestations, but did not rule on the motions to dismiss. Respondents Lucero and Fajardo were given the option to attend or to forego the subsequent hearings, while Santos and Raymundo were informed to be ready for the said hearings.[15]

On April 21, 2009, Santos and Raymundo submitted a Compromise Agreement, and manifested that they are waiving their right to present evidence other than those already part of the records of the case. They jointly moved for the termination of the hearing, which the court granted.[16]

The Compromise Agreement states that Raymundo owed Santos ₱225,000.00, and that she would pay Santos ₱2,500.00 monthly. Raymundo also promised to obtain several loans from the Supreme Court Savings and Loan Association (SCSLA) and to give the loan proceeds to Santos as payment. Raymundo executed a Special Power of Attorney in Santos' favor so she could receive the loan proceeds from the SCSLA.[17]

The Investigation Report and Recommendation

Judge Mejorada submitted her report and recommendation dated April 22, 2009 to the Office of the Court Administrator (OCA). She explained that under the Uniform Rules on Administrative Cases, the requisites for a case of willful failure to pay just debts are: (1) there must be claims adjudicated by a court or law; or (2) there must be claims the existence and justness of which are admitted by the debtor.[18]

Here, all the respondents categorically admitted their monetary obligations to Santos. While they claimed installment payments, the entire amount due remained unsettled, which are supported by documentary evidence. Judge Mejorada noted that the parties

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[15] *Id*. at 111.

[16] *Id*. at 151.

[17] *Id*. at 157-160.

[18] *Id*. at 171.

arrived at their respective amicable agreements during the hearing, and these would mitigate the respondents' infractions.[19]

Judge Mejorada elucidated that jurisprudence held that all court personnel are expected to exhibit the highest sense of honesty and integrity, not only in the performance of their official duties, but also in their personal and private dealings with other people to preserve the Court's good name and standing. The image of a court of justice is mirrored in the conduct, official or otherwise, of the men and women who work there. Any impression or impropriety, misdeed or negligence must be avoided.[20]

Thus, Judge Mejorada found the three respondents guilty of conduct unbecoming of a court employee and recommended them to be reprimanded with a stern warning that a repetition of the same or similar offense shall be dealt with more severely.[21]

In the July 1, 2009 Resolution, the Court resolved to adopt and approve the findings of fact, conclusions of law, and recommendations of Judge Mejorada.[22] (First Offense)

After more than a year, Santos informed the Court through her August 7, 2010 letter that Raymundo reneged on their Compromise Agreement as the former received the loan proceeds from the SCSLA, but she did not pay them to her. She submitted SCSLA disbursement vouchers and SCSLA certification to prove her allegations.[23]

In the October 4, 2010 Resolution, the Court referred the matter to the OCA for evaluation, report, and recommendation.[24] In its January 18, 2011 Memorandum, the OCA found proof of

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[19] *Id*. at 171-172.

[20] *Id*. at 171.

[21] *Id*. at 172.

[22] *Id*. at 191-192.

[23] *Id*. at 193-194.

[24] *Id*. at 208.

Santos' claims and recommended that Raymundo be required to file her comment.[25] Raymundo failed to submit her comment as required in the Court's February 9, 2011 Resolution.[26] Thus, she was ordered to show cause why she should not be held in contempt for non-compliance with the Court's Resolution.[27]

In her April 14, 2011 letter, Raymundo apologized to the Court and asked for forgiveness for violating BP 22. She acknowledged that it was improper for a court employee to get involved in lawsuits. She admitted that she did not give Santos the loan proceeds from SCSLA due to sickness of a family member and to pay rent. She pleaded to lower the interest rate, because a portion of the money she owed was someone else's debt. She also alleged overpayment.[28]

She claimed that she was pressured by Santos' lawyer to sign the Compromise Agreement in exchange for the withdrawal of the administrative complaint against her. She requested to lower the interest rate or an extension of time to pay, because she intends to renew her SCSLA loan. She promised that she would give the entire loan proceeds to Santos. She attached several receipts worth ₱107,000.00 as proof of payment to Santos.[29]

In a November 28, 2011 letter, Santos replied to Raymundo's letter and recounted how they met and ended up lending money to her. She stated that it was untrue that Raymundo was pressured to sign the Compromise Agreement, and that she was supporting her ailing father. She admitted that Raymundo paid ₱107,000.00, but her five-year debt is not yet fully settled.[30]

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[25] *Id*. at 209-211.

[26] *Id*. at 212-213.

[27] *Id*. at 215-216.

[28] *Id*. at 217.

[29] *Id*.

[30] *Id*. at 246-248.

The OCA's 1st Recommendation

In its September 17, 2012 Memorandum,[31] the OCA enumerated its findings:

1. x x x Raymundo willfully dishonored the compromise agreement, paying complainant only ₱32,000.00 from the proceeds of one SCSLAI loan, leaving unpaid a total of ₱73,000.00 which she obtained from other SCSLAI loans. This clearly shows bad faith on x x x Raymundo's part and demonstrated her lack of honesty and commitment to faithfully heed the terms of their settlement.

2. There was an unequivocal admission from x x x Raymundo that she failed to give complainant the entire proceeds of all her SCSLAI loans as agreed upon. A mere excuse, *i.e.*, emergency relative to her father's sickness and monthly rental payments will not suffice as she failed to present proof of either medical records or of rental liability.

3. x x x Raymundo asked consideration on the reduction of interest or extension of the repayment period as she promised to renew a loan to pay her outstanding loan. However, she had exhibited her unreliability when she could not keep up with her promise, even surreptitiously obtaining salary and multi-purpose loans without giving their proceeds to complainant. Further, a period of five (5) years is quite a long time and more than an ample grace period to fully pay her obligation. The questioned interest may not even be sufficient to compensate the grave suffering, great humiliation, hard efforts and wasted time experienced by complainant in trying to recoup the money owed to her.

4. Complainant x x x accused x x x Raymundo of paying her obligation only during an investigation and failing to pay thereafter as well as buying her boyfriend a motorcycle in 2006 when she received the loan from complainant. Likewise, she alleged that x x x Raymundo's father received support from his children abroad when he was still alive contrary to x x x Raymundo's statement that she took care of him

[31] *Id*. at 264-272.

> financially. Complainant further mentioned the estafa committed against her by persons introduced to her by x x x Raymundo. These are graphic [*indicia*] of the character and behavior of x x x Raymundo which she did not controvert. Given the foregoing, we are more inclined to believe the statements of complainant rather than those of x x x Raymundo.[32]

The OCA pointed out that more than a month after the Court issued a resolution reprimanding and warning Raymundo, she violated the Compromise Agreement. It appeared that she ignored and took it for granted. The OCA also noted that this is her second administrative case. The first one was dismissed in 2005. The OCA mentioned that her admission on failing to give the entire loan proceeds and her full payment of the capital borrowed mitigates any grave penalty that may be imposed on her. The OCA explained that the light offense of failure to pay just debts is penalized by reprimand for the first commission, suspension for 1-30 days for the second time, and dismissal for the third.[33]

The OCA found Raymundo guilty of conduct unbecoming of a court employee for the second time, and recommended the penalty of suspension for 30 days without pay and to be directed to fully comply with the Compromise Agreement with stern warning that failure to do so would mean imposition of the most severe penalty.[34]

In the November 19, 2012 Resolution, the Court adopted and approved the OCA's findings of fact, conclusions of law, and recommendations.[35] (Second Offense)

After more than a year, Santos wrote the Court letters dated December 26, 2013[36] and April 13, 2014[37] informing that

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

[33] *Id*. at 270-271.

[34] *Id*. at 271-272.

[35] *Id*. at 273-274.

[36] *Id*. at 277-279.

[37] *Id*. at 281.

Raymundo still had not complied with the Compromise Agreement. She again wrote the Court on November 10, 2014[38] reiterating her sentiments in her previous letters, and mentioned that she no longer hopes to be paid, but only to see Raymundo penalized for her misdeeds. The Court referred the matter to the OCA for evaluation, report, and recommendation.[39]

The OCA's 2nd Recommendation

In its April 28, 2015 Memorandum,[40] the OCA observed that Raymundo intentionally evaded her monetary obligations and disobeyed the Court's directives, which manifest evident disrespect to the institution she serves. She had been penalized twice in this administrative case, and still, she has not shown earnest effort to rectify her misconducts. Her actuations indicate bad faith, willful disobedience, utter disrespect and contempt for the Court, and constitute gross insubordination. Gross insubordination is a grave offense and is penalized by suspension for six months and one day to one year for the first offense, and dismissal from the service for the second offense.[41]

The OCA determined that Raymundo is guilty of insubordination and recommended the penalty of suspension for one year without pay with a stern warning that a repetition of the same or analogous infractions shall be dealt with more severely.[42] (Third Offense)

Raymundo responded through an undated letter and belied Santos' claim of nonpayment. She attached several acknowledgment receipts, bank deposit slips, and other documents to prove payment to Santos. She averred that she

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[38] *Id*. at 283-286.

[39] *Id*. at 280, 282.

[40] *Id*. at 288-293.

[41] *Id*. at 292.

[42] *Id*. at 292-293.

gave her payment to Santos' sister, who stopped collecting since February 2015. She tried to contact her, but to no avail.[43]

In a September 7, 2016 letter, Santos reiterated that the Compromise Agreement was approved and adopted by the Court in this administrative case, and Raymundo still failed to comply with her obligations.[44]

The Issue Presented

Whether or not Raymundo should be held administratively liable for failure to comply with the Compromise Agreement and for insubordination.

The Court's Ruling

The Court approves and adopts the OCA's findings of fact, conclusions of law, and recommendation as contained in its April 28, 2015 Memorandum.

In *Atty. Jaso v. Londres*,[45] the Court held that willful failure to pay just debts is administratively punishable and a ground for disciplinary action. Here, Raymundo admitted in her undated last letter to the Court that her monetary obligation to Santos remains unpaid. Thus, she shall be penalized administratively for her infraction.

The Court observed that in Santos' November 28, 2011 letter to the Court, she recalled that sometime in October 2006, she approached Raymundo regarding an estafa case that she filed against someone. When Raymundo learned that she came from abroad, she convinced her to lend her money. Seeing that Santos was hesitant, Raymundo assured her that their transaction would not result to a lawsuit because she loved her job as a court employee, and promised to pay back in one year.[46]

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[43] *Id*. at 296-327.

[44] *Id*. at 328.

[45] 811 Phil. 362 (2017).

[46] *Rollo*, p. 246.

However, when Santos came to collect, Raymundo uttered hurtful words, "*tatanga-tanga ka, magdemanda ka kung gusto mo tatagal naman yan ng 5 years*[."][47]

In short, Raymundo could not have met Santos and later borrowed money from her were it not for her court position. She used her position to convince Santos to lend her money, although Santos was initially hesitant. She also used her position to make it appear that she had an advantage over Santos if the latter decides to file a complaint. The act of contracting loans of money or other property from persons with whom the office of the employee has business relations is punishable by dismissal from the service under the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS).

Moreover, Raymundo exhibited defiance to the Court's directives on more than one occasion. First, she was previously ordered to show cause why she should not be held in contempt for not submitting her comment on Santos' August 7, 2010 letter.[48] Secondly, she continuously failed to comply with the Compromise Agreement as directed by the Court. From the time the Court approved and adopted Judge Mejorada's report and recommendation, Raymundo was penalized three times: (1) reprimanded with a stem warning for conduct unbecoming of a court employee; (2) suspension for 30 days without pay for conduct unbecoming of a court employee with a stern warning; and (3) suspension for one year without pay with a stern warning for insubordination. Therefore, as the OCA correctly concluded, Raymundo is also guilty of insubordination.

In *Boston Finance and Investment Corp. v. Gonzalez*,[49] the Court pronounced that the Code of Conduct for Court Personnel and the existing Civil Service Rules shall apply in disciplining court personnel who are not members of the bench.

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[47] *Id*.

[48] *Id*. at 212, 215.

[49] A.M. No. RTJ-18-2520, October 9, 2018.

On the other hand, as regards other court personnel who are not judges or justices, the CCCP governs the Court's exercise of disciplinary authority over them. It must be pointed out that the CCCP explicitly incorporates civil service rules, *viz.*:

INCORPORATION OF OTHER RULES

> Section 1. All provisions of law, **Civil Service rules**, and issuances of the Supreme Court governing or regulating the conduct of public officers and employees applicable to the Judiciary **are deemed incorporated** into this Code. x x x

Hence, offenses under civil service laws and rules committed by court personnel constitute violations of the CCCP, for which the offender will be held administratively liable. However, considering that the CCCP does not specify the sanctions for those violations, the Court has, **in the exercise of its discretion**, adopted the penalty provisions under existing civil service rules, such as the RACCS, including Section 50 thereof.

x x x x x x x x x

> (b) The administrative liability of court personnel (who are not judges or justices of the lower courts) shall be governed by the Code of Conduct for Court Personnel, which incorporates, among others, the civil service laws and rules. If the respondent **court personnel** is found guilty of multiple administrative offenses, the Court shall **impose the penalty corresponding to the most serious charge, and the rest shall be considered as aggravating circumstances**. (Emphases in the original)

Section 50, Rule 10 of the 2017 RACCS[50] enumerates the classification of offenses with lists of acts and omissions, and specifies the corresponding penalties.

> SEC. 50. *Classification of Offenses.*— Administrative offenses with corresponding penalties are classified into grave, less grave and light, depending on their gravity or depravity and effects on the government service.

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[50] CSC Resolution No. 1701077, July 3, 2017.

A. The following **grave offenses shall be punishable by dismissal from the service**:

1. Serious Dishonesty;
2. Gross Neglect of Duty;
3. Grave Misconduct;
4. Being Notoriously Undesirable;
5. Conviction of a Crime Involving Moral Turpitude;
6. Falsification of Official Document;
7. Physical or mental disorder or disability due to immoral or vicious habits;
8. Receiving for personal use of a fee, gift or other valuable thing in the course of official duties or in connection therewith when such fee, gift or other valuable thing is given by any person in the hope or expectation of receiving a favor or better treatment than that accorded to other persons, or committing acts punishable under the anti-graft laws;
9. **Contracting loans of money or other property from persons with whom the office of the employee has business relations;**

x x x x x x x x x

D. The following **less grave offenses are punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense; and dismissal from the service for the second offense:**

1. Simple Neglect of Duty;
2. Simple Misconduct;
3. Discourtesy in the Course of Official Duties;
4. Violation of existing Civil Service Law and rules of serious nature;
5. **Insubordination[.]** (Emphases supplied)

x x x x x x x x x

Following the Court's ruling in the *Boston Finance* case, the Court shall impose the penalty corresponding to the most serious charge and the rest shall be considered as aggravating circumstances. Here, contracting loans of money or other property from persons with whom the office of the employee has business relations is a grave offense and punishable by

dismissal from the service. On the other hand, insubordination is a less grave offense and punishable by suspension for the first offense and dismissal for the second offense.

As for respondents Lucero and Fajardo, the Court already reprimanded them in a Resolution dated July 1, 2009. In the said Resolution, the Court adopted and approved Judge Mejorada's findings of fact, conclusions of law, and recommendations. She found them guilty of conduct unbecoming of a court employee, and recommended that they be reprimanded with a stern warning that a repetition of the same or similar offense shall be dealt with more severely.[51] Thus, the complaints against them are deemed concluded.

The Court reiterates our pronouncement in *Atty. Jaso v. Londres*:[52]

> The Court has consistently reminded court personnel to comply with just contractual obligations, act fairly and adhere to high ethical standards, as they are expected to be paragons of uprightness, fairness and honesty not only in their official conduct but also in their personal actuations, including business and commercial transactions. Having incurred a just debt, it is x x x [a] moral and legal responsibility to settle it when it became due.

WHEREFORE, the Court finds Emma J. Raymundo, Clerk III of the Pasig Metropolitan Trial Court, Branch 69, **GUILTY** of contracting loans of money or other property from persons with whom the office of the employee has business relations and insubordination for the second time. She is meted the penalty of **DISMISSAL** from the service with **FORFEITURE** of all retirement benefits, except accrued leave credits, and perpetual disqualification from holding public office in any branch or instrumentality of the government, including government-owned or controlled corporations.

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[51] *Rollo*, pp. 191-192.

[52] *Supra* note 45, at 368.

She is likewise **ORDERED** to comply with the Compromise Agreement dated April 20, 2009.

SO ORDERED.

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

Caguioa and *Gesmundo, JJ.*, on official leave.

SECOND DIVISION

[G.R. No. 211301. November 27, 2019]

PARK DEVELOPERS, INCORPORATED, REYNALDO JESUS B. PASCO, SR., ROLANDO GOLLA, NENITA B. PASCO, JULITO CAPARAS, TERESA CAPARAS and CONSTANCIO BERNARDO, *petitioners, vs.* **ELIZABETH D. DACLAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; TWO MODES OF APPEAL FROM A DECISION OR FINAL ORDER OF THE TRIAL COURT IN THE EXERCISE OF ITS ORIGINAL JURISDICTION; BY WRIT OF ERROR WHERE QUESTIONS OF FACT OR QUESTIONS OF LAW AND FACT ARE RAISED OR INVOLVED, OR APPEAL BY *CERTIORARI* WHERE ONLY QUESTIONS OF LAW ARE RAISED OR INVOLVED; IN ALL CASES WHERE PURE QUESTIONS OF LAW ARE RAISED, THE APPEAL MUST BE FILED BEFORE THE SUPREME COURT BY A PETITION FOR REVIEW ON *CERTIORARI* UNDER

RULE 45 OF THE RULES OF COURT; AN APPEAL ERRONEOUSLY TAKEN TO THE COURT OF APPEALS SHALL NOT BE TRANSFERRED TO THE APPROPRIATE COURT BUT SHALL BE DISMISSED OUTRIGHT.— Under the Rules of Court, there are two modes of appeal from a decision or final order of the trial court in the exercise of its original jurisdiction: (1) by writ of error under Section 2(a), Rule 41 if questions of fact or questions of fact and law are raised or involved; or (2) appeal by *certiorari* under Section 2(c), Rule 41, in relation to Rule 45, where only questions of law are raised or involved. This is glaringly clear from the provisions of Section 2, Rule 41 x x x. Thus, this Court finds that the CA did not err in dismissing petitioners' appeal. Since what petitioners raised in their appeal was a pure question of law, their proper recourse was to file before this Court a petition for review on *certiorari* under Rule 45 of the Rules of Court. In fact, the CA's dismissal of petitioners' appeal was the only proper and unavoidable outcome as Section 2, Rule 50 of the Rules of Court provides: Sec. 2. Dismissal of improper appeal to the Court of Appeals.– An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by said court. Similarly, an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed. **An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright.**

2. **ID.; RULES OF PROCEDURE; COURTS HAVE THE PREROGATIVE TO RELAX PROCEDURAL RULES OF EVEN THE MOST MANDATORY CHARACTER, BEARING IN MIND THE DUTY TO RECONCILE BOTH THE NEED TO SPEEDILY PUT AN END TO LITIGATION AND THE PARTIES' RIGHT TO DUE PROCESS; THE COURT ALLOWS THE RELAXATION OF THE RULES OF PROCEDURE TO RESOLVE THE SUBSTANTIVE ISSUE OF THE INSTANT CASE IN ORDER TO RENDER A JUST AND SPEEDY DISPOSITION THEREOF.—** Notwithstanding the absence of error on the part of the CA in dismissing petitioners' appeal, this Court finds it imperative to

resolve the substantive issue of the instant case in order to render a just and speedy disposition thereof. As held in *Ong Lim Sing, Jr. v. FEB Leasing and Finance Corp.*, courts have the prerogative to relax procedural rules of even the most mandatory character, bearing in mind the duty to reconcile both the need to speedily put an end to litigation and the parties' right to due process. In numerous cases, the liberal construction of the rules has been allowed by this Court when to do so would serve the demands of substantial justice and equity. In *Nursery Care Corp., et al. v. Acevedo, et al.*, this Court adopted a liberal approach and resolved the case on the merits despite its ruling that the CA's dismissal of the appeal therein was proper as it raised only questions of law.

3. **ID.; COURTS; JURISDICTION; DOCTRINE OF PRIMARY JURISDICTION; THE DOCTRINE APPLIES WHERE A CLAIM IS ORIGINALLY COGNIZABLE IN THE COURTS AND COMES INTO PLAY WHENEVER ENFORCEMENT OF THE CLAIM REQUIRES THE RESOLUTION OF ISSUES WHICH, UNDER A REGULATORY SCHEME, HAVE BEEN PLACED WITHIN THE SPECIAL COMPETENCE OF AN ADMINISTRATIVE AGENCY; IN SUCH A CASE, THE COURT IN WHICH THE CLAIM IS SOUGHT TO BE ENFORCED MAY EITHER SUSPEND THE JUDICIAL PROCESS PENDING REFERRAL OF SUCH ISSUES TO THE ADMINISTRATIVE BODY FOR ITS VIEW OR, IF THE PARTIES WOULD NOT BE UNFAIRLY DISADVANTAGED, DISMISS THE CASE WITHOUT PREJUDICE.—** The *doctrine of primary jurisdiction* has been increasingly called into play on matters demanding the special competence of administrative agencies even if such matters are also within the jurisdiction of the courts. Under this doctrine, if a case is such that its determination requires the expertise, specialized training and knowledge of an administrative body, relief must first be obtained in an administrative proceeding before resort to the courts is had even if the matter may well be within their proper jurisdiction. The doctrine applies where a claim is originally cognizable in the courts and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an

administrative agency. In such a case, the court in which the claim is sought to be enforced may either suspend the judicial process pending referral of such issues to the administrative body for its view or, if the parties would not be unfairly disadvantaged, dismiss the case without prejudice.

4. POLITICAL LAW; ADMINISTRATIVE LAW; HOUSING AND LAND USE REGULATORY BOARD (HLURB); THE HLURB HAS JURISDICTION OVER AN ACTION TO ANNUL CONTRACTS FOR THE PURCHASE OR CONTINUAL USE OF MEMORIAL LOTS, BUT THE DECISION OF THE REGIONAL TRIAL COURT IN THE INSTANT CASE REMAINS VALID, FOR AT THE TIME THE COMPLAINT WAS FILED, NO SPECIFIC PROVISIONS OF LAW, OTHER THAN PRESIDENTIAL DECREE NO. 1344, DELINEATED THE CASES OVER WHICH THE HLURB HAS EXCLUSIVE JURISDICTION; ALL CASES, THE JURISDICTION OVER WHICH IS NOT SPECIFICALLY PROVIDED FOR BY LAW TO BE WITHIN THE JURISDICTION OF ANY OTHER COURT, FALL UNDER THE JURISDICTION OF THE REGIONAL TRIAL COURT.— x x x [T]his Court disagrees with petitioners' insistence that the March 31, 2011 Decision of the RTC is void for lack of jurisdiction. It bears mentioning that at the time respondent filed her Complaint dated November 25, 2005, no specific provisions of law, other than Presidential Decree No. (PD) 1344, delineated the cases over which the HLURB has exclusive jurisdiction. x x x. On December 7, 2017, the HLURB promulgated and adopted HLURB Resolution No. 963-17 or the "*Revised Rules of Proceedings Before Regional Arbiters*" (2017 Rules). Through this Resolution, the scope of jurisdiction of the HLURB was made clear. x x x. Significantly, the 2017 Rules, through Section 6.1, Rule 2 thereof, has expressly included cases involving memorial parks as among those which are under the exclusive jurisdiction of the HLURB Arbiters. x x x. On February 14, 2019, RA 11201, known as the "*Department of Human Settlements and Urban Development Act*" was approved x x x. On July 19, 2019, the "*Implementing Rules and Regulations of the Department of Human Settlements and Urban Development Act*" was approved. Significantly, the IRR OF RA 11201 has defined the term "real estate projects" or "*real estate development projects*" as referring to "subdivisions, condominiums,

townhouses, *memorial parks,* columbaria and other similar projects which by law are subject to the regulatory jurisdiction of the Department." From this definition, it is readily observable that the term "real estate," which used to cover only subdivisions and condominiums under PD 1344, has now been broadened to also include townhouses, *memorial parks*, columbaria and other similar projects. x x x. To stress, however, the 2017 Rules as well as RA 11201 and its IRR were not yet in force at the time the present controversy arose. Accordingly, this Court rules to uphold the jurisdiction of the RTC over the case filed by respondent involving the purchase of continual use of a memorial lot. As declared in *Durisol Phils., Inc. v. Court of Appeals*: The regional trial court, formerly the court of first instance, is a court of general jurisdiction. All cases, **the jurisdiction over which is not specifically provided for by law to be within the jurisdiction of any other court**, fall under the jurisdiction of the regional trial court.

5. CIVIL LAW; CONTRACTS; ANNULMENT OF THE APPLICATION FOR CONTINUAL USE OF MEMORIAL LOTS ON THE GROUND THAT THE CONSENT OF THE RESPONDENT WAS VITIATED BY MISTAKE, AFFIRMED.— It bears to reiterate that petitioners did not raise any other issue besides jurisdiction. They did not question the RTC's findings of fact. Neither did they challenge the very judgment of the RTC which, among others, annulled their agreement with respondent denominated as Application for Continual Use; ordered them to return to respondent all the payments she made in the total amount of ₱457,760.74, plus legal interest; and ordered them to pay moral and exemplary damages and attorney's fees. To this Court, petitioners' omission to question the RTC's judgment connotes their admission that they are indeed liable to respondent. At any rate, this Court finds the RTC Decision dated March 31, 2011 to be in order. The RTC correctly annulled the Application for Continual Use on the ground that respondent's consent to enter into such agreement was vitiated by mistake. Under Article 1331 of the Civil Code, "[i]n order that mistake may invalidate consent, it should refer to the substance of the thing which is the object of the contract, or to those conditions which have principally moved one or both parties to enter into the contract." Here, the RTC found that respondent was enticed by the written advertisement

of PDI stating the convenient features one would enjoy at Sanctuary Memorial Park which did not materialize. The RTC also noted the absence of knowledge on the part of respondent that PDI was not clothed with authority to sell or dispose of the memorial lots at Sanctuary Memorial Park at the time the agreement was executed. Undeniably, these conditions vitiated respondent's consent and sufficiently justified the annulment of the Application for Continual Use.

6. **ID.; DAMAGES; MORAL DAMAGES MAY BE AWARDED WHEN THERE IS WILLFUL INJURY TO PROPERTY IF THE COURT SHOULD FIND THAT, UNDER THE CIRCUMSTANCES, SUCH DAMAGES ARE JUSTLY DUE; EXEMPLARY DAMAGES MAY BE AWARDED BY WAY OF EXAMPLE OR CORRECTION FOR THE PUBLIC GOOD; AWARD OF MORAL AND EXEMPLARY DAMAGES TO RESPONDENT WAS PROPER AS THE ACTS OF THE PETITIONERS WERE ACCOMPANIED WITH BAD FAITH.—** As to the damages awarded, this Court also finds no reason to deviate from the findings of the RTC. Moral damages may be awarded when there is willful injury to property if the court should find that, under the circumstances, such damages are justly due. Further, exemplary damages may be awarded by way of example or correction for the public good, in addition to the moral damages. In this case, the RTC found that the attendant circumstances caused respondent to suffer sleepless nights. It also noted that petitioners' acts were accompanied with bad faith. Hence, the award of moral and exemplary damages to respondent was proper.

7. **ID.; ID.; ATTORNEY'S FEES; AWARD OF ATTORNEY'S FEES IS PROPER WHERE A PARTY WAS CONSTRAINED TO LITIGATE, HIRE THE SERVICES OF COUNSEL, AND INCUR EXPENSES TO ENFORCE HER RIGHTS AND PROTECT HER INTERESTS.—** [T]he RTC correctly ordered the award of attorney's fees in favor of respondent who was constrained to litigate, hire the services of counsel, and incur expenses to enforce her rights and protect her interests. As provided in Article 2208(2) of the Civil Code, recovery of attorney's fees and expenses of litigation, other than judicial costs, may be allowed in cases where the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest.

APPEARANCES OF COUNSEL

Maximino V. Patag for petitioners.
Jerome B. Aragones 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 seeking to set aside the Court of Appeals (CA) Decision[2] dated August 12, 2013 and Resolution[3] dated February 10, 2014 in CA-G.R. CV No. 97454. The assailed Decision dismissed, pursuant to Section 2, Rule 50 of Rules of Court, the appeal filed by Park Developers, Inc. (PDI), Reynaldo Jesus B. Pasco, Sr., Rolando Golla, Nenita B. Pasco, Julito Caparas, Teresa Caparas, and Constancio Bernardo (petitioners) from the Decision[4] dated March 31, 2011 of Branch 67, Regional Trial Court (RTC), Pasig City in Civil Case No. 70647. The assailed Resolution, on the other hand, denied for lack of merit petitioners' subsequent Motion for Reconsideration.

The Antecedents

The factual and procedural antecedents of this case, as summarized by the CA, are as follows:

> On September 24, 2003, [respondent] Elizabeth D. Daclan, through a document denominated as Application for Continual Use, purchased from [petitioner] Park Developers Incorporated ("PDI" for brevity) a family estate memorial lot located at Sanctuary Memorial Park ("Sanctuary" for brevity), Barangay Timalan, Naic, Cavite. The total contract price is ₱708,000.00, payable in thirty-six monthly

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[1] *Rollo*, pp. 7-15.

[2] *Id.* at 17-21; penned by Associate Justice Sesinando E. Villon with Associate Justices Florito S. Macalino and Pedro B. Corales, concurring.

[3] *Id.* at 22.

[4] CA *rollo*, pp. 18-26; penned by Judge Amorfina Cerrado-Cezar.

installments. At the time of the institution of the instant case, [respondent] had already paid PDI a total amount of ₱457,760.74.

However, sometime in 2005, [respondent] learned that, as certified by the Housing and Land Use Regulatory Board (HLURB), it had never issued any Certificate of Registration or License to Sell in favor of PDI. Thus, on January 13, 2006, [respondent] filed the instant case [for Annulment of Contract with Damages] against PDI and its corporate officers, Reynaldo Jesus B. Pasco, Sr., Rolando G. Golla, Nenita B. Pasco, Julito P. Caparas, Teresa B. Caparas, and Constancio R. Bernardo.

On March 31, 2011, the RTC rendered judgment against [petitioners], disposing as follows:

"WHEREFORE, in view of all the foregoing, the Court resolved as follows, to wit:

a. Annulling the agreement denominated as 'application for continual use' entered into between [respondent] and [petitioners] and ordering the latter, jointly and solidarily, to return to the [respondent] all payments made by her in the total amount of Four Hundred Fifty Seven Thousand Seven Hundred Sixty and 74/100 (Php457,760.74), plus legal interest computed from the time [petitioners] failed to return said amount despite valid demand;

b. Ordering [petitioners], jointly and solidarily, to pay [respondent] moral damage in the amount of Fifty Thousand Pesos (Php50,000.00);

c. Ordering [petitioners], jointly and solidarily, to pay [respondent] Fifty Thousand Pesos (Php50,000.00) exemplary damages;

d. Ordering [petitioners], jointly and solidarily, to pay attorney's fees in the amount of One Hundred Thousand Pesos (Php100,000.00).

On the other hand, compulsory counterclaim of [respondent] is DENIED for lack of merit.

SO ORDERED."[5] (Citations omitted.)

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

Unsatisfied with the RTC's ruling, petitioners interposed an appeal in accordance with Section 2(a), Rule 41 of the Rules of Court which was given due course in the RTC Order[6] dated July 11, 2011.

In their Appellant[s'] Brief,[7] petitioners imputed a lone error:

THE LOWER COURT PATENTLY ERRED IN RENDERING THE APPEALED DECISION DESPITE LACK OF JURISDICTION.[8]

According to petitioners, it is the HLURB and not the RTC which has primary jurisdiction over the subject matter of the case filed by respondent.

The CA's Ruling

On August 12, 2013, the CA rendered the now assailed Decision[9] dismissing petitioners' appeal. It held that since petitioners' appeal raised no question other than the issue of jurisdiction, they should have taken their appeal directly to this Court by filing a petition for review on *certiorari* under Rule 45 of the Rules of Court and not an ordinary appeal with the CA under Rule 41 of the same Rules.

The dispositive portion of the CA's Decision reads:

WHEREFORE, in light of all the foregoing, the appeal is hereby **DISMISSED** pursuant to Rule 50, Section 2 of the 1997 Rules of Civil Procedure.

SO ORDERED.[10]

Petitioners filed a Motion for Reconsideration.[11] In the assailed February 10, 2014, Resolution,[12] the CA denied their motion.

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[6] CA *rollo*, p. 17.

[7] *Id.* at 31-38.

[8] *Id.* at 35.

[9] *Rollo*, pp. 17-21.

[10] *Id.* at 21.

[11] CA *rollo*, pp. 92-93.

[12] *Rollo*, p. 22.

Hence, this petition.

The Issue

Petitioners argue that the CA erred in dismissing their appeal for raising a pure question of law without first passing judgment on whether the HLURB has primary jurisdiction over the subject matter of the case. They assert that they were only constrained to raise the sole issue of jurisdiction considering that the judgment of the RTC is void. Petitioners thus beseech this Court to now "decide the novel issue of jurisdiction over action to annul contracts for the purchase or continual use of memorial lots."[13]

The Court's Ruling

The appeal lacks merit.

I. The CA was correct in dismissing petitioners' appeal pursuant to Section 2, Rule 50 of the Rules of Court; however, for the sake of justice and equity, the relaxation of the rules of procedure is warranted in this case.

At the outset, the CA's finding that petitioners solely anchored their appeal on a purely legal question deserves respect from this Court.[14] In their appeal before the CA, petitioners raised the sole issue of whether the trial court was vested with jurisdiction to hear and try the case filed by respondent. In the present petition, they also readily admit that they "assigned as error only the validity of the appealed Decision of the lower court for lack of jurisdiction of the RTC over the present case for rescission of the 'Application for Continual Use', x x x."[15]

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[13] *Id.* at 11.

[14] *Escoto v. Phil. Amusement and Gaming Corp.*, 797 Phil. 320, 326 (2016).

[15] *Rollo*, p. 10.

Under the Rules of Court, there are two modes of appeal from a decision or final order of the trial court in the exercise of its original jurisdiction: (1) by writ of error under Section 2(a), Rule 41 if questions of fact or questions of fact and law are raised or involved; or (2) appeal by *certiorari* under Section 2(c), Rule 41, in relation to Rule 45, where only questions of law are raised or involved.[16] This is glaringly clear from the provisions of Section 2, Rule 41, *viz.*:

> Sec. 2. Modes of appeal. –
>
> (a) *Ordinary appeal*. – The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.
>
> x x x x x x x x x
>
> (c) *Appeal by certiorari*. – In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45.

Thus, this Court finds that the CA did not err in dismissing petitioners' appeal. Since what petitioners raised in their appeal was a pure question of law, their proper recourse was to file before this Court a petition for review on *certiorari* under Rule 45 of the Rules of Court.[17] In fact, the CA's dismissal of petitioners' appeal was the only proper and unavoidable outcome as Section 2, Rule 50 of the Rules of Court provides:

> Sec. 2. *Dismissal of improper appeal to the Court of Appeals*. – An appeal under Rule 41 taken from the Regional Trial Court to the

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[16] *Cando v. Sps. Olazo*, 547 Phil. 630, 635 (2007).

[17] *Macawiwili Gold Mining and Dev't. Co., Inc. v. CA*, 358 Phil. 245, 257 & 261 (1998).

Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by said court. Similarly, an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed.

An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright. (Emphasis supplied.)

Notwithstanding the absence of error on the part of the CA in dismissing petitioners' appeal, this Court finds it imperative to resolve the substantive issue of the instant case in order to render a just and speedy disposition thereof. As held in *Ong Lim Sing, Jr. v. FEB Leasing and Finance Corp.*,[18] courts have the prerogative to relax procedural rules of even the most mandatory character, bearing in mind the duty to reconcile both the need to speedily put an end to litigation and the parties' right to due process.[19] In numerous cases, the liberal construction of the rules has been allowed by this Court when to do so would serve the demands of substantial justice and equity.[20]

In *Nursery Care Corp., et al. v. Acevedo, et al.*,[21] this Court adopted a liberal approach and resolved the case on the merits despite its ruling that the CA's dismissal of the appeal therein was proper as it raised only questions of law. Similarly, this Court finds it proper to relax the technical rules or procedure in this case, taking into consideration the earlier pronouncement in *Spouses Go v. Chaves, et al.*:[22]

Our rules of procedure are designed to facilitate the orderly disposition of cases and permit the prompt disposition of unmeritorious cases which clog the court dockets and do a little more than waste the courts' time. These technical and procedural rules, however, are

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[18] 551 Phil. 768 (2007).

[19] *Id.* at 780.

[20] *Id.*

[21] 740 Phil. 70, 82 (2014).

[22] 633 Phil. 342 (2010).

intended to ensure, rather than suppress, substantial justice. A deviation from their rigid enforcement may thus be allowed, as petitioners should be given the fullest opportunity to establish the merits of their case, rather than lose their property on mere technicalities. x x x[23]

II. The HLURB has primary jurisdiction over respondent's complaint; however, the judgment of the RTC remains valid.

The issue brought before this Court is "whether it is the HLURB and not the [RTC] which has the jurisdiction over complaints to annul contracts involving the purchase or continual use of memorial lots based on the developer's alleged lack of certificate of registration and license to sell and the absence of improvements in the memorial park."[24]

The *doctrine of primary jurisdiction* has been increasingly called into play on matters demanding the special competence of administrative agencies even if such matters are also within the jurisdiction of the courts.[25] Under this doctrine, if a case is such that its determination requires the expertise, specialized training and knowledge of an administrative body, relief must first be obtained in an administrative proceeding before resort to the court even if the matter may well be within their proper jurisdiction.[26] The doctrine applies where a claim is originally cognizable in the courts and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative agency.[27] In such a case, the court in which the claim is sought to be enforced may either

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[23] *Id.* at 350.

[24] *Rollo*, p. 10.

[25] *San Miguel Properties, Inc. v. Sec. Perez, et al.*, 717 Phil. 244, 262 (2013).

[26] *Euro-Med Laboratories, Phil., Inc. v. Province of Batangas*, 527 Phil. 623, 626 (2006).

[27] *Id.* at 626-627.

suspend the judicial process pending referral of such issues to the administrative body for its view or, if the parties would not be unfairly disadvantaged, dismiss the case without prejudice.[28]

Article IV, Section 5(c) of Executive Order No. 648[29] has vested the HLURB the power to "*[i]ssue rules and regulations to enforce the land use policies and human settlements as provided for in Presidential Decrees No. 399, 815, 933, 957, 1216, 1344, 1396, 1517, Letter of Instructions No. 713, 729, 833, 935 and other related laws regulating the use of land including the regulatory aspects of the Urban Land Reform Act and all decrees relating to regulation of the value of land and improvements, and their rental*."

Pursuant thereto, the HLURB promulgated HLURB Resolution No. 681-00 (Amending the Rules and Regulations for Memorial Parks and Cemeteries), which was approved on September 21, 2000. The rules and regulations therein apply to new development and/or expansion/alteration of existing memorial parks/cemeteries and other private burial grounds.[30] Section 2, Rule I thereof provides that every registered owner or developer of a parcel of land who wishes to convert it into a memorial park/cemetery shall apply with the Board or city/municipality concerned for the approval of the memorial park/cemetery plan by the filing of required documents as stated therein. Further, Rule II thereof prescribes the procedure for the registration and licensing of memorial park/cemetery projects.

Given the foregoing, although respondent's complaint was within the jurisdiction of the RTC, the circumstances surrounding her purchase of a memorial lot brought it clearly within the ambit of the HLURB's primary jurisdiction.

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[28] *Id.* at 627.

[29] Charter of the Human Settlements Regulatory Commission.

[30] Section 1, HLURB Resolution No. 681-00.

However, this Court disagrees with petitioners' insistence that the March 31, 2011 Decision[31] of the RTC is void for lack of jurisdiction. It bears mentioning that at the time respondent filed her Complaint[32] dated November 25, 2005, no specific provisions of law, other than Presidential Decree No. (PD) 1344,[33] delineated the cases over which the HLURB has exclusive jurisdiction.

For reference, Section 1 of PD 1344 provides:

> Sec. 1. In the exercise of its functions to regulate the real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the National Housing Authority [later transferred the HLURB] shall have exclusive jurisdiction to hear and decide cases of the following nature:
>
> A. Unsound real estate business practices;
>
> B. Claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman; and
>
> C. Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lot or condominium unit against the owner, developer, dealer or salesman.

In the 2007 case of *Delos Santos v. Spouses Sarmiento*,[34] this Court held that not every case involving buyers and sellers of real estate may be filed with the HLURB whose jurisdiction is limited to cases filed by the buyer or owner of a subdivision lot or condominium unit.[35] In addition, the HLURB's jurisdiction shall be based on any of the causes of action enumerated under

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[31] CA *rollo*, pp. 18-26.

[32] Records, Vol. I, pp. 3-14.

[33] Empowering the National Housing Authority to Issue Writ of Execution in the Enforcement of Its Decisions under Presidential Decree No. 957.

[34] 548 Phil. 1 (2007).

[35] *Id.* at 16.

Section of PD 1344, and the jurisdictional facts must be clearly alleged in the complaint.[36]

Subsequently, the jurisdiction of the HLURB was expanded through the enactment of Republic Act No. (RA) 9904 otherwise known as the "*Magna Carta for Homeowners and Homeowners' Associations*," which was approved on January 7, 2010. Under Section 20(d) of RA 9904, the HLURB is vested with the authority to "*[h]ear and decide intra-association and/or inter-association controversies and/or conflicts x x x.*"

The Revised Rules of Proceedings Before Regional Arbiters

On December 7, 2017, the HLURB promulgated and adopted HLURB Resolution No. 963-17 or the "*Revised Rules of Proceedings Before Regional Arbiters*" (2017 Rules). Through this Resolution, the scope of jurisdiction of the HLURB was made clear.

Rule 2, Sections 5 and 6 of the 2017 Rules set out the *general* and *specific* jurisdiction of the HLURB Regional Arbiters, *viz*.:

Sec. 5. General Jurisdiction. – Arbiters have exclusive jurisdiction over disputes involving laws being implemented by the Housing and Land Use Regulatory Board and such other cases as may be provided by law unless specifically vested in another tribunal.

Sec. 6. Specific Jurisdiction. –

6.1. *Jurisdiction over real estate developments*. The Arbiters shall exercise exclusive and original jurisdiction to hear and decide cases involving subdivisions, condominiums, memorial parks and similar real estate developments, as follows:

6.1.1. Claims for refund, complaints against unsound real estate business practices and other actions for specific performance of contractual and statutory obligations filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer,

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[36] *Id.*

broker or salesman; and other complaints for violation of Presidential Decree No. 957 and other related laws;

6.1.2. Suits filed in opposition to an application for certificate of registration and license to sell, development permits for condominium projects, clearance to mortgage, or the revocation or cancellation thereof, and locational clearances, certifications or permits, when issued by the Housing and Land Use Regulatory Board;

6.1.3. Suits filed by the project owner or developer or the duly registered homeowners association of the project pertaining to the open spaces or common areas of the subdivision or condominium, except those where third parties are involved; and,

6.1.4. Disputes involving easements within or among subdivisions projects.

6.2. *Jurisdiction over homeowners and homeowners associations*. The Arbiters shall exercise exclusive jurisdiction to hear and decide cases involving homeowners associations, as follows:

6.2.1. Suits filed in opposition to an application for, or the revocation of, certificate of registration of homeowners associations;

6.2.2. Intra-association disputes or controversies arising out of the relations between and among members of homeowners associations; between any or all of them and the homeowners association of which they are members, including federations and other umbrella organizations of homeowners associations;

6.2.3. Inter-association disputes or controversies arising out of the relations between and among two or more homeowners associations or condominium corporations, federations or other umbrella organizations of homeowners associations;

6.2.4. Disputes or controversies between the association and the homeowners or other beneficial users relating to the exercise of their respective rights, duties and obligations;

6.2.5. Disputes between the homeowners association and the State, insofar as its registration or right to exist and those which are intrinsically connected with the regulation of homeowners associations.

The 2017 Rules also provides that "[*t*]*he 2011 Housing and Land Use Regulatory Board Rules of Procedure*[37] (2011 Rules) *and the Rules of Court shall have suppletory application insofar as these have not been specifically repealed or are not inconsistent with this Rules*."[38] With reference to the 2011 Rules, the disputes or controversies it covers are listed under Section 2, Rule 1[39] thereof. It is worth mentioning that the 2011 Rules does not specifically state that the HLURB shall have exclusive jurisdiction over the cases so covered.

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[37] HLURB Resolution No. 871-11 otherwise known as the "2011 Revised Rules of Procedure of the Housing and Land Use Regulatory Board."

[38] Sec. 4, Rule 1, HLURB Resolution No. 963-17.

[39] Sec. 2, Rule 1, HLURB Resolution No. 871-11 provides:

Section 2. *Coverage*. – This Rules shall be applicable to the following disputes or controversies:

(a) Actions concerning unsound real estate business practices filed by buyers;
(b) Claims involving refund and other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman;
(c) Cases involving specific performance of contractual and statutory obligations filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman;
(d) Intra-association disputes or controversies arising out of the relations between and among members of homeowners associations between any or all of them and the homeowners association of which they are members;
(e) Inter-association disputes or controversies arising out of the relations between and among two or more homeowners associations;
(f) Disputes between such homeowners association and the state insofar as it concerns their individual franchise or right to exist and those which are intrinsically connected with the regulation of homeowners associations or dealing with the internal affairs of such entity;
(g) Suits filed in opposition to an application for certificate of registration and license to sell, development permit for condominium projects, clearance to mortgage, or the revocation or cancellation thereof, and locational clearances, certifications or permits, when issued by the Regional Field Office of HLURB;
(h) Appeals from decisions of local and regional planning and zoning bodies; and,
(i) Other analogous cases.

This Court also observes that disputes involving memorial parks, like the one at bar, are not among those covered in the 2011 Rules. Significantly, the 2017 Rules, through Section 6.1, Rule 2[40] thereof, has expressly included cases involving memorial parks as among those which are under the exclusive jurisdiction of the HLURB Arbiters.

The recent enactment of RA 11201 otherwise known as the "Department of Human Settlements and Urban Development Act" and the promulgation of its Implementing Rules and Regulations (IRR); the reconstitution of the HLURB and the transfer of its functions to the Human Settlements Adjudicatory Commission

On February 14, 2019, RA 11201 known as the "*Department of Human Settlements and Urban Development Act*" was approved. The law created the Department of Human Settlements and Urban Development (Department), defined its mandate, powers and functions, and decreed its inclusion in the annual General Appropriations Act for its continued implementation. Section 4, Chapter III of RA 11201 pertinently provides:

Sec. 4. *Creation and Mandate of the Department of Human Settlements and Urban Development*. – There is hereby created the Department of Human Settlements and Urban Development, hereinafter referred to as the Department, through the consolidation of the Housing and Urban Development Coordinating Council (HUDCC) and the Housing Land Use Regulatory Board (HLURB). The Department shall act as the primary national government entity responsible for the management of housing, human settlement and urban development. It shall be the sole and main planning and policy-making, regulatory,

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[40] Sec. 6.1, Rule 2, HLURB Resolution No. 963-17, pertinently provides:

Sec. 6.1. *Jurisdiction over real estate developments*. The Arbiters shall exercise exclusive and original jurisdiction to hear and decide cases involving subdivisions, condominiums, **memorial parks** and similar real estate developments x x x. (Emphasis supplied.)

program coordination, and performance monitoring entity for all housing, human settlement and urban development concerns, primarily focusing on the access to and the affordability of basic human needs. It shall develop and adopt a national strategy to immediately address the provision of adequate and affordable housing to all Filipinos, and shall ensure the alignment of the policies, programs, and projects of all its attached agencies to facilitate the achievement of this objective.

It is important to note that under Section 12, Chapter IV of RA 11201, the HLURB has been reconstituted and shall henceforth be known as the *Human Settlements Adjudication Commission* (HSAC). The adjudicatory function of the HLURB has been transferred to the HSAC and shall be attached to the Department for policy, planning and program coordination only.[41]

On July 19, 2019, the "*Implementing Rules and Regulations of the Department of Human Settlements and Urban Development Act*" was approved. Significantly, the IRR of RA 11201 has defined the term "*real estate projects*" or "*real estate development projects*" as referring to "subdivisions, condominiums, townhouses, memorial parks, columbaria and other similar projects which by law are subject to the regulatory jurisdiction of the Department."[42] From this definition, it is readily observable that the term "real estate," which used to cover only subdivisions and condominiums under PD 1344, has now been broadened to also include townhouses, *memorial parks*, columbaria and other similar projects.

Additionally, the confusion as to the jurisdiction of the HLURB, now the HSAC, has been removed as the IRR of RA 11201 has listed the cases over which the Regional Adjudicators of the HSAC have original and exclusive jurisdiction as well as the cases over which the Commission

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[41] *See* Section 12, Chapter IV of the RA 11201.

[42] *See* Section 3.30, Rule I of the Implementing Rules and Regulations of the Department of Human Settlements and Urban Development Act.

Proper has exclusive appellate jurisdiction. Sections 33 and 34 of the IRR of RA 11201 specifically provide:

> Sec. 33. *Jurisdiction of the Commission*. – The Commission shall have the exclusive appellate jurisdiction over:
>
> 33.1 All cases decided by the Regional Adjudicators; and
>
> 33.2 Appeals from decisions of local and regional planning and zoning bodies.
>
> The decision of the Commission shall be final and executory after fifteen (15) calendar days from receipt by the parties.
>
> Sec. 34. *Jurisdiction of Regional Adjudicators*. – The Regional Adjudicators shall exercise original and exclusive jurisdiction to hear and decide cases involving the following:
>
> 34.1 Cases involving subdivisions, condominiums, memorial parks and similar real estate developments:
>
> (a) Actions concerning unsound real estate business practices filed by buyers or homeowners against the project owner or developer, which cause prejudice to the buyers or committed with bad faith and disregard of the buyers' rights;
>
> (b) Claims for refund, and other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman: *Provided*, That when the cause of action arises from the buyer's rights under Section 23 of PD 957 and the purchase price of the property is paid through a housing loan from a bank or other financing institutions, the latter shall be impleaded as necessary party;
>
> (c) Cases involving specific performance of contractual and statutory obligations arising from the sale of the lot or unit and development of the subdivision or condominium project;
>
> (d) Disputes involving the open spaces or common areas and their use filed by the project owner or developer or the duly registered HOA, including the eviction of informal settlers therein, in accordance with the requirements of law, and the rules and regulations promulgated by duly constituted authorities;
>
> (e) Suits to declare subdivision, condominium or other real estate developments within the regulatory jurisdiction of the Department

as abandoned, as defined under Section 3 of the Act for the purpose of Section 35 of PD 957;

(f) Disputes involving easements within or among subdivision projects; and

(g) Actions to annul mortgages executed in violation of Section 18 of PD 957 filed by a subdivision lot or condominium unit buyer against the project owner and/or developer and the mortgagee.

34.2 Cases involving [Homeowners Associations (HOA)]:

(a) Controversies involving the registration and regulation of HOAs;

(b) Intra-association disputes or controversies arising out of the relations between and among members of HOAs; between any or all of them and the HOA of which they are members;

(c) Inter-association disputes or controversies arising out of the relations between and among two (2) or more HOAs between and among federations and other umbrella organizations, on matters pertaining to the exercise of their right, duties and functions; and

(d) Disputes between such HOA and the State, insofar as it concerns their individual franchise or right to exist and those which are intrinsically connected with the regulation of HOAs or dealing with the internal affairs of such entity;

34.3 Disputes involving the implementation of Section 18 of RA 7279, as amended by 10884, and its implementing rules and regulations; and

34.4 Disputes or controversies involving laws and regulations being implemented by the Department except those cases falling within the jurisdiction of other judicial or quasi-judicial body.

The March 31, 2011 Decision of the RTC remains valid.

To stress, however, the 2017 Rules as well as RA 11201 and its IRR were not yet in force at the time the present controversy arose.

Accordingly, this Court rules to uphold the jurisdiction of the RTC over the case filed by respondent involving the purchase of continual use of a memorial lot. As declared in *Durisol Phils., Inc. v. Court of Appeals*:[43]

> The regional trial court, formerly the court of first instance, is a court of general jurisdiction. All cases, **the jurisdiction over which is not specifically provided for by law to be within the jurisdiction of any other court**, fall under the jurisdiction of the regional trial court. x x x[44] (Emphasis supplied)

III. The RTC was correct in annulling the Application for Continual Use,[45] *in ordering the return of the payments respondent made in the total amount of ₱457,760.74, plus legal interest, and in ordering the award of moral and exemplary damages and attorney's fees to respondent.*

It bears to reiterate that petitioners did not raise any other issue besides jurisdiction. They did not question the RTC's findings of fact. Neither did they challenge the very judgment of the RTC which, among others, annulled their agreement with respondent denominated as Application for Continual Use; ordered them to return to respondent all the payments she made in the total amount of ₱457,760.74, plus legal interest; and ordered them to pay moral and exemplary damages and attorney's fees. To this Court, petitioners' omission to question the RTC's judgment connotes their admission that they are indeed liable to respondent.

At any rate, this Court finds the RTC Decision[46] dated March 31, 2011 to be in order. The RTC correctly annulled

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[43] 427 Phil. 604 (2002).

[44] *Id.* at 612.

[45] Records, Vol. I, pp. 15-18.

[46] CA *rollo*, pp. 18-26.

the Application for Continual Use on the ground that respondent's consent to enter into such agreement was vitiated by mistake. Under Article 1331 of the Civil Code, "[i]n order that mistake may invalidate consent, it should refer to the substance of the thing which is the object of the contract, or to those conditions which have principally moved one or both parties to enter into the contract." Here, the RTC found that respondent was enticed by the written advertisement of PDI stating the convenient features one would enjoy at Sanctuary Memorial Park which did not materialize.[47] The RTC also noted the absence of knowledge on the part of respondent that PDI was not clothed with authority to sell or dispose of the memorial lots at Sanctuary Memorial Park at the time the agreement was executed.[48] Undeniably, these conditions vitiated respondent's consent and sufficiently justified the annulment of the Application for Continual Use.

As to the damages awarded, this Court also finds no reason to deviate from the findings of the RTC. Moral damages may be awarded when there is willful injury to property if the court should find that, under the circumstances, such damages are justly due.[49] Further, exemplary damages may be awarded by way of example or correction for the public good, in addition to the moral damages.[50] In this case, the RTC found that the attendant circumstances caused respondent to suffer sleepless nights.[51] It also noted that petitioners' acts were accompanied with bad faith.[52] Hence, the award of moral and exemplary damages to respondent was proper.

Moreover, the RTC correctly ordered the award of attorney's fees in favor of respondent who was constrained to litigate,

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[47] *Id.* at 24.

[48] *Id.*

[49] CIVIL CODE, Article 2220.

[50] CIVIL CODE, Article 2229.

[51] CA *rollo,* p. 25.

[52] *Id.*

hire the services of counsel, and incur expenses to enforce her rights and protect her interests.[53] As provided in Article 2208(2) of the Civil Code, recovery of attorney's fees and expenses of litigation, other than judicial costs, may be allowed in cases where the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest.

WHEREFORE, the Petition for Review on *Certiorari* is hereby **DENIED**. The Decision dated March 31, 2011 of the Branch 67, Regional Trial Court, Pasig City in Civil Case No. 70647 is **AFFIRMED *in toto*.**

SO ORDERED.

Perlas-Bernabe, S.A.J (*Chairperson*), *Reyes, A. Jr., Hernando*, and *Zalameda*,[*] *JJ.*, concur.

SECOND DIVISION

[G.R. No. 212895. November 27, 2019]

FLUOR DANIEL, INC. - PHILIPPINES, *petitioner, vs.* **FIL-ESTATE PROPERTIES, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; THE SIXTY (60)-DAY PERIOD WITHIN WHICH TO FILE A PETITION FOR *CERTIORARI* IS NON-EXTENDIBLE, AS THIS PERIOD IS DEEMED REASONABLE AND SUFFICIENT TIME FOR A PARTY TO MULL OVER AND TO PREPARE A

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[53] *Id.*

[*] Designated additional member per Special Order No. 2724 dated October 25, 2019.

PETITION ASSERTING GRAVE ABUSE OF DISCRETION BY A LOWER COURT; SUBJECT TO THE SOUND DISCRETION OF THE COURT, THE PERIOD FOR FILING A PETITION FOR *CERTIORARI* MAY BE EXTENDED FOR GOOD AND SUFFICIENT REASON AND ONLY IF THE MOTION FOR EXTENSION IS FILED BEFORE THE EXPIRATION OF THE TIME SOUGHT TO BE EXTENDED.— Under the Rules of Court currently in force, a petition for *certiorari* must be filed not later than 60 days from notice of the judgment, order or resolution complained of. If a motion for reconsideration or new trial was timely filed, the petition must be filed not later than 60 days from notice of the denial of the motion. Under the amendment introduced by A.M. No. 00-2-03-SC in 2000, motions for extension of time to file petitions for *certiorari* were allowed for compelling reasons only. In *Yutingco v. Court of Appeals*, the Court held that "the 60-day-period ought to be considered inextendible[,]" because this period "is deemed reasonable and sufficient time for a party to mull over and to prepare a petition asserting grave abuse of discretion by a lower court. The period was specifically set to avoid any unreasonable delay that would violate the constitutional rights of parties to a speedy disposition of their case." Nevertheless, it was held in that same case that "it is a familiar and fundamental rule that a motion for extension of time to file a pleading is best left to the sound discretion of the court and an extension will not be allowed except for good and sufficient reason and only if the motion is filed before the expiration of the time sought to be extended. This has been the prevailing rule ever since, even after the amendments introduced by A.M. No. 07-7-12-SC in 2007.

2. ID.; ID.; ID.; ID.; 60-DAY REQUIREMENT FOR FILING A PETITION FOR *CERTIORARI*, WHEN MAY BE RELAXED.— [T]he Court has relaxed the 60-day requirement in the following instances: when the assailed decision was contradictory to the evidence presented; in a motion for consolidation of several criminal cases, when the relief sought would be more in keeping with law and equity, and to facilitate a speedy trial, considering that there was substantial identity in the informations filed and the witnesses to be presented; where paramount public interest necessitated that the dispute involving the operation of a major power plant be resolved on the merits; where the case involved the expropriation of private property to build a major highway and no undue prejudice or delay will

be caused to either party in admitting the petition; and when the appellate court had already granted an extension but later reversed itself. Furthermore, in *Castells, et al. v. Saudi Arabian Airlines*, the Court enumerated the following instances when the period to file a petition for *certiorari* may be extended: (*1*) most persuasive and weighty reasons; (*2*) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (*3*) good faith of the defaulting party by immediately paying within a reasonable time from the time of the default; (*4*) the existence of special or compelling circumstances; (*5*) the merits of the case; (*6*) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (*7*) a lack of any showing that the review sought is merely frivolous and dilatory; (*8*) the other party will not be unjustly prejudiced thereby; (*9*) fraud, accident, mistake, or excusable negligence without appellant's fault; (*10*) peculiar legal and equitable circumstances attendant to each case; (*11*) in the name of substantial justice and fair play; (*12*) importance of the issues involved; and (*13*) exercise of sound discretion by the judge guided by all the attendant circumstances.

3. ID.; ID.; ID.; PETITIONER'S MOTION FOR ADDITIONAL TIME TO FILE PETITION FOR *CERTIORARI* SHOULD BE GRANTED, AS THERE IS NO SHOWING THAT THE RESPONDENT WILL BE PREJUDICED OR UNJUSTLY DEPRIVED OF ANY BENEFIT IF PETITIONER'S MOTION IS GRANTED; EVERY PARTY-LITIGANT MUST BE AFFORDED THE AMPLEST OPPORTUNITY FOR THE PROPER AND JUST DETERMINATION OF HIS CAUSE, FREE FROM THE CONSTRAINTS OF TECHNICALITIES.— The pleadings, evidence, and arguments on record make a meritorious case for granting FDIP's motion for additional time to file its petition for *certiorari*. x x x. The fact remains that up to now, FDIP has not collected a single centavo of the 13 million-peso award that was rendered in its favor almost 20 years ago. On the other hand, FEPI has been successfully evading its legal obligation for almost 20 years by the simple expedient of a denial of a motion for additional time to file a petition for *certiorari*. There is no showing that FEPI will be prejudiced or unjustly deprived of any benefit if FDIP's motion is granted. To settle the matter once and for all, substantial justice dictates that the issues raised by the parties before this Court be litigated in the proper forum – the CA. This

> pronouncement in *Bacarra v. NLRC* is apropos: The emerging trend in the rulings of this Court is to afford every party-litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. This is in line with the time-honored principle that cases should be decided only after giving all the parties the chance to argue their causes and defenses. For, it is far better to dispose of a case on the merits which is a primordial end rather than on a technicality, if it be the case that may result in injustice.

APPEARANCES OF COUNSEL

Salvador Llanillo & Bernardo for petitioner.
Arnel C. Ordas for respondent.

D E C I S I O N

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

The present petition for review[1] under Rule 45 of the Revised Rules of Court dated August 1, 2014 assails the Resolutions dated February 24, 2014[2] and June 3, 2014[3] of the Court of Appeals (CA) in CA-G.R. SP No. 133922, which denied Fluor Daniel, Inc. - Philippines' (FDIP) Motion for Additional Time to File Petition for *Certiorari*.

The facts are as follows:

On April 26, 2000, the Construction Industry Arbitration Commission (CIAC) issued a Notice of Award[4] in CIAC Case No. 42-98, which was captioned "*Fluor Daniel, Inc. - Phils., Claimant, versus Fil-Estate Properties, Inc.* (FEPI),

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[1] *Rollo*, pp. 12-30.

[2] Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Myra V. Garcia-Fernandez, and Nina G. Antonio-Valenzuela, concurring; *id.* at 38-41.

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

[4] *Id.* at 45.

Respondent." Attached to the Notice of Award was a Decision[5] ordering FEPI to pay FDIP the amount of ₱13,579,599.57, plus interest.

The matter was then raised before the appellate courts. The CIAC decision was affirmed by the CA on December 21, 2001, and by this Court on June 18, 2008. Said judgment attained finality on April 17, 2009 upon the issuance of an Entry of Judgment[6] by this Court. Perforce, the CIAC issued a writ of execution. FEPI offered real properties as satisfaction for the judgment debt, but FDIP refused, on the ground that it is a foreign-owned corporation which cannot own real property in this jurisdiction. After further investigation, FDIP discovered that FEPI owned shares of stock in another corporation, Fil-Estate Industrial Park, Inc. (FEIP). The existence of these shares was relayed to the sheriff, and they were garnished in July 2012. On December 7, 2012, the shares were auctioned and awarded to FDIP as the highest bidder.

However, FDIP subsequently discovered that FEIP had ceased operations, thereby rendering its shares worthless. FDIP, thus, decided not to pay the sheriff's commission, and as such, the corresponding certificate of sale was not executed. Deeming the award unsatisfied, FDIP filed with the CIAC a Motion for Issuance of Alias Writ of Execution dated July 24, 2013, which the CIAC denied in an Order dated December 6, 2013. On December 27, 2013, FDIP filed a motion for reconsideration. On January 27, 2014, the CIAC issued a Declaration reiterating the denial of FDIP's motion for an alias writ of execution.[7] Nevertheless, on February 10, 2014, FDIP filed its Motion for Additional Time to File Petition for *Certiorari* with the CA, requesting for an additional period of 15 days, or until February 25, 2014, within which to file a petition for *certiorari*. FDIP filed its petition for *certiorari* dated February 19, 2014.

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[5] *Id.* at 46-91.

[6] *Id*. at 92.

[7] Comment/Opposition of FEPI, *id.* at 170-171.

On February 24, 2014, the CA issued the first assailed Resolution,[8] ruling that there was no showing of exceptional and meritorious circumstances that would enable the appellate court to exercise its discretion to grant an extension of time to file a petition for *certiorari*. The appellate court further held that if FDIP's case was really highly meritorious, it should have promptly utilized the 60-day reglementary period to conduct its investigation into FEPI's assets. The CA also noted that there was no showing that FDIP filed a motion for reconsideration of the CIAC's Order dated December 6, 2013 and there is no other plain, speedy, and adequate remedy in the ordinary course of law. As a result, the CA, in a Resolution dated February 28, 2014, simply considered FDIP's petition for *certiorari* as noted.

FDIP filed a motion for reconsideration on March 20, 2014.

On June 3, 2014, the CA issued the second assailed Resolution[9] denying FDIP's motion for reconsideration. The appellate court found no merit in the motion and reiterated the findings it made in the first assailed resolution.

FDIP now seeks redress before this Court, arguing that the appellate court erred in rejecting its Motion for Additional Time to File Petition for *Certiorari*. FDIP asserts that there are exceptional circumstances warranting the grant of additional time to file a petition for *certiorari*. *First*, FDIP had no plain, speedy and adequate remedy from the CIAC's Order dated December 6, 2013, since a motion for reconsideration was prohibited under the CIAC Rules. *Second*, FDIP will suffer manifest injustice as it will no longer have any recourse from the failed execution of the arbitral award that it had obtained more than ten years ago. *Third*, FDIP needed additional time to conduct its investigation into FEPI's properties since the latter was forcing FDIP to receive payment in a form that it cannot hold. *Fourth*, FDIP needed more time to find other suitable assets of FEPI, so that FDIP may determine if it would be worth

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[8] *Id.* at 38-41.

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

the trouble of getting back to court. It was only after the conduct of such investigation that FDIP was able to determine that the only way to legally recover the award due to it was through another litigation of the matter before the courts; but by that time, FDIP as left with no choice but to ask for additional time to seek the proper remedy before the proper court.

In its Comment/Opposition,[10] FEPI disputes FDIP's claim that its case was exceptional and meritorious enough to warrant the exercise of the CA's discretion to grant an extension of time to file a petition for *certiorari*. FEPI asserts that, as the CA held, FDIP should have promptly utilized the 60-day reglementary period in conducting its investigation into the merits of continuing the litigation of the matter. FEPI, likewise, asserts that FDIP showed grave disregard for procedural rules by filing both a motion for reconsideration before the CIAC and petition for *certiorari* before the CA. FDIP had no one to blame but itself when it bought the allegedly worthless shares because it failed to observe due diligence in ascertaining the true value of the FEIP shares, since the principle of *caveat emptor* applies with equal force to auction sales. Lastly, FEPI gues that the resort to an alias writ of execution was correctly rejected by the CIAC, as FDIP cannot prevent the consummation of the auction sale by refusing to pay the sheriff's fees and costs.

The essential issue in this petition is whether or not the CA erred in denying FDIP's Motion for Additional Time to File Petition for *Certiorari*.

Ruling of the Court

The petition is meritorious.

Under the Rules of Court currently in force, a petition for *certiorari* must be filed not later than 60 days from notice of the judgment, order or resolution complained of. If a motion for reconsideration or new trial was timely filed, the petition

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[10] *Id*. at 159-176.

must be filed not later than 60 days from notice of the denial of the motion.[11] Under the amendment introduced by A.M. No. 00-2-03-SC in 2000, motions for extension of time to file petitions for *certiorari* were allowed for compelling reasons only. In *Yutingco v. Court of Appeals*,[12] the Court held that "the 60-day-period ought to be considered inextendible[,]" because this period "is deemed reasonable and sufficient time for a party to mull over and to prepare a petition asserting grave abuse of discretion by a lower court. The period was specifically set to avoid any unreasonable delay that would violate the constitutional rights of parties to a speedy disposition of their case."[13] Nevertheless, it was held in that same case that "it is a familiar and fundamental rule that a motion for extension of time to file a pleading is best left to the sound discretion of the court and an extension will not be allowed except for good and sufficient reason and only if the motion is filed before the expiration of the time sought to be extended."[14]

This has been the prevailing rule ever since, even after the amendments introduced by A.M. No. 07-7-12-SC in 2007. The strict proscription against motions for extension in *Laguna Metts Corp. v. Court of Appeals, et al.*[15] was subsequently qualified in *Domdom v. Third and Fifth Divisions of the Sandiganbayan, et al.*,[16] *Labao v. Flores, et al.*,[17] and *Mid-Islands Power Generation Corp. v. Court of Appeals, et al.*,[18] all of which held that motions for extension may be granted, subject to the discretion of the court and for compelling and meritorious

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[11] RULES OF COURT, Rule 65, Section 4.

[12] 435 Phil. 83 (2002).

[13] *Id*. at 91.

[14] *Id*.

[15] 611 Phil. 530 (2009).

[16] 627 Phil. 341 (2010).

[17] 649 Phil. 213 (2010).

[18] 683 Phil. 325 (2012).

reasons. These rulings were harmonized in *Rep. of the Phils. v. St. Vincent de Paul Colleges, Inc.*,[19] *viz.*:

> What seems to be a "conflict" is actually more apparent than real. A reading of the foregoing rulings leads to the simple conclusion that *Laguna Metts Corporation* involves a strict application of the general rule that petitions for *certiorari* must be filed strictly within sixty (60) days from notice of judgment or from the order denying a motion for reconsideration. *Domdom*, on the other hand, relaxed the rule and allowed an extension of the sixty (60)-day period subject to the Court's sound discretion.
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> x x x x x x x x x
>
> Note that *Labao* explicitly recognized the general rule that the sixty (60)-day period within which to file a petition for *certiorari* under Rule 65 is non-extendible, only that there are certain exceptional circumstances, which may call for its non-observance. x x x
>
> In *Laguna Metts Corporation v. Court of Appeals*, we explained that the reason behind the amendments under A.M. No. 07-7-12-SC was to prevent the use or abuse of the remedy of petition for *certiorari* in order to delay a case or even defeat the ends of justice. We thus deleted the clause that allowed an extension of the period to file a Rule 65 petition for compelling reasons. Instead, we deemed the 60-day period to file as reasonable and sufficient time for a party to mull over the case and to prepare a petition that asserts grave abuse of discretion by a lower court. The period was specifically set and limited in order to avoid any unreasonable delay in the dispensation of justice, a delay that could violate the constitutional right of the parties to a speedy disposition of their case. x x x.
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> Nevertheless, in the more recent case of *Domdom v. Sandiganbayan*, we ruled that the deletion of the clause in Section 4, Rule 65 by A.M. No. 07-7-12-SC did not, *ipso facto*, make the filing of a motion for extension to file a Rule 65 petition absolutely prohibited. We held in *Domdom* that if absolute proscription were intended, the deleted portion could have just simply been reworded to specifically prohibit an extension of time to file such petition. Thus, because of the lack of an express prohibition, we held that motions for extension may be allowed, subject to this Court's sound discretion, and only under exceptional and meritorious cases.

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[19] 693 Phil. 145 (2012).

x x x x x x x x x

To reiterate, under Section 4, Rule 65 of the Rules of Court and as applied in *Laguna Metts Corporation*, the general rule is that a petition for *certiorari* must be filed within sixty (60) days from notice of the judgment, order, or resolution sought to be assailed. Under exceptional circumstances, however, and subject to the sound discretion of the Court, said period may be extended pursuant to *Domdom, Labao and Mid-Islands Power* cases.[20] (Citations omitted)

Following this rule, the Court has relaxed the 60-day requirement in the following instances: when the assailed decision was contradictory to the evidence presented;[21] in a motion for consolidation of several criminal cases, when the relief sought would be more in keeping with law and equity, and to facilitate a speedy trial, considering that there was substantial identity in the informations filed and the witnesses to be presented;[22] where paramount public interest necessitated that the dispute involving the operation of a major power plant be resolved on the merits;[23] where the case involved the expropriation of private property to build a major highway and no undue prejudice or delay will be caused to either party in admitting the petition;[24] and when the appellate court had already granted an extension but later reversed itself.[25] Furthermore, in *Castells, et al. v. Saudi Arabian Airlines*,[26] the Court enumerated the following instances when the period to file a petition for *certiorari* may be extended:

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[20] *Id*. at 154-157.

[21] *Bacarra v. NLRC*, 510 Phil. 353, 359 (2005).

[22] *Domdom v. Third and Fifth Divisions of the Sandiganbayan, et al.*, *supra* note 16, at 348-349.

[23] *Mid-Islands Power Generation Corp. v. Court of Appeals, et al.*, *supra* note 18, at 337-338.

[24] *Rep. of the Phils. v. St. Vincent de Paul Colleges, Inc.*, *supra* note 19, at 157.

[25] *Castells, et al. v. Saudi Arabian Airlines*, 716 Phil. 667 (2013).

[26] *Id*.

(*1*) most persuasive and weighty reasons; (*2*) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (*3*) good faith of the defaulting party by immediately paying within a reasonable time from the time of the default; (*4*) the existence of special or compelling circumstances; (*5*) the merits of the case; (*6*) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (*7*) a lack of any showing that the review sought is merely frivolous and dilatory; (*8*) the other party will not be unjustly prejudiced thereby; (*9*) fraud, accident, mistake, or excusable negligence without appellant's fault; (*10*) peculiar legal and equitable circumstances attendant to each case; (*11*) in the name of substantial justice and fair play; (*12*) importance of the issues involved; and (*13*) exercise of sound discretion by the judge guided by all the attendant circumstances.[27] (Citation omitted and underscoring ours)

Given the law, the Court recapitulates the material facts. The assailed CIAC order was issued on December 6, 2013. FDIP's motion for reconsideration was filed on December 27, 2013. The CIAC reiterated the denial in its Declaration dated January 27, 2014. FDIP filed its Motion for Additional Time to File Petition for *Certiorari* with the CA on February 10, 2014; and its petition for *certiorari* was dated February 19, 2014.

The pleadings, evidence, and arguments on record make a meritorious case for granting FDIP's motion for additional time to file its petition for *certiorari*.

At this point, it must be emphasized that FDIP's petition for *certiorari* is directed at the Order dated December 6, 2013 of the CIAC, which denied FDIP's motion for alias writ of execution. FDIP sought an alias writ of execution after it discovered that the FEIP shares it bought on auction were worthless. FEPI faults FDIP for filing both a motion for reconsideration and a petition for *certiorari* against the CIAC Order dated December 6, 2013. The parties devote most of their pleadings to these two core issues. Regarding the merits

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[27] *Id*. at 673-674.

of the issuance of the alias it of execution, FDIP asserts that it is entitled to such relief because the auction sale where it bought the FEIP shares should be considered void; while FEPI argues that FDIP is bound by the principle of *caveat emptor* and should have therefore conducted due diligence before buying the FEIP shares. Regarding the alleged procedural fault committed by FDIP, it argues that the filing of its motion for reconsideration of the CIAC Order dated December 6, 2013 was unintentional. According to FDIP, the motion was filed by its former counsel who was under the impression that it was still engaged by FDIP when in fact, FDIP had already engaged another law firm to prosecute the case. FEIP counters that such explanation is unacceptable, since FDIP's former counsel did not file a withdrawal of appearance; while its current counsel did not enter its appearance in substitution of the former counsel. Furthermore, despite its position that a motion for reconsideration is a prohibited pleading under the CIAC rules, FDIP did not withdraw its motion for reconsideration of the CIAC Order dated December 6, 2013 even after it filed a petition for *certiorari* before the CA.

The foregoing questions involve mixed issues of fact and law which are best litigated by the CA. The fact remains that up to now, FDIP has not collected a single centavo of the 13 million-peso award that was rendered in its favor almost 20 years ago. On the other hand, FEPI has been successfully evading its legal obligation for almost 20 years by the simple expedient of a denial of a motion for additional time to file a petition for *certiorari*. There is no showing that FEPI will be prejudiced or unjustly deprived of any benefit if FDIP's motion is granted. To settle the matter once and for all, substantial justice dictates that the issues raised by the parties before this Court be litigated in the proper forum – the CA. This pronouncement in *Bacarra v. NLRC*[28] is apropos:

The emerging trend in the rulings of this Court is to afford every party-litigant the amplest opportunity for the proper and just

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[28] 510 Phil. 353 (2005).

determination of his cause, free from the constraints of technicalities. This is in line with the time-honored principle that cases should be decided only after giving all the parties the chance to argue their causes and defenses. For, it is far better to dispose of a case on the merits which is a primordial end rather than on a technicality, if it be the case that may result in injustice.[29] (Underscoring ours)

IN VIEW OF THE FOREGOING, the instant petition is **GRANTED**. The Resolutions dated February 24, 2014 and June 3, 2014 of the Court of Appeals in CA-G.R. SP No. 133922 are hereby **REVERSED** and **SET ASIDE**. The Court of Appeals is ordered to **REINSTATE** and **ADMIT** the petition for *certiorari* filed by petitioner Fluor Daniel, Inc. - Philippines in CA-G.R. SP No. 133922 and to proceed with the case with dispatch.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Hernando, Inting*, and *Zalameda, JJ.*, concur.

SPECIAL THIRD DIVISION

[G.R. No. 215280. November 27, 2019]

FRANCISCO C. EIZMENDI, JR., JOSE S. TAYAG, JR., JOAQUIN L. SAN AGUSTIN, EDUARDO V. FRANCISCO, EDMIDIO V. RAMOS, JR., ALBERT G. BLANCAFLOR, REY NATHANIEL C. IFURUNG, MANUEL H. ACOSTA, JR., and VALLE VERDE COUNTRY CLUB, INC., *petitioners, vs.* **TEODORICO P. FERNANDEZ,** *respondent.*

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[29] *Id*. at 361.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DECISION AND MINUTE RESOLUTION, DISTINGUISHED; A MINUTE RESOLUTION CONSTITUTES *RES JUDICATA* ONLY INSOFAR AS IT INVOLVES THE SAME SUBJECT MATTER AND THE SAME ISSUES CONCERNING THE SAME PARTIES; HOWEVER, IF OTHER PARTIES AND ANOTHER SUBJECT MATTER – EVEN IF THERE ARE THE SAME PARTIES AND ISSUES – ARE INVOLVED, THE MINUTE RESOLUTION IS NOT A BINDING PRECEDENT.— The mere fact that *Valle Verde* is an unsigned resolution does not prevent it from having a binding precedent in this case. Fernandez is confused with the concept of an unsigned resolution or minute resolution that has no binding precedent. In *Phil. Health Care Providers, Inc. v. Commissioner of Internal Revenue*, the Court clarified why a minute resolution has no binding precedent, thus: x x x. x x x. Besides, there are substantial, not simply formal, distinctions between a minute resolution and a decision. The constitutional requirement under the first paragraph of Section 14, Article VIII of the Constitution that the facts and the law on which the judgment is based must be expressed clearly and distinctly applies only to decisions, not to minute resolutions. A minute resolution is signed only by the clerk of court by authority of the justices, unlike a decision. It does not require the certification of the Chief Justice. Moreover, unlike decisions, minute resolutions are not published in the Philippine Reports. Finally, the proviso of Section 4(3) of Article VIII speaks of a decision. Indeed, as a rule, this Court lays down doctrines or principles of law which constitute binding precedent in a decision duly signed by the members of the Court and certified by the Chief Justice. The binding nature of a minute resolution and its ability to establish a lasting judicial precedent have already been settled in *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue* where the Court explained that a minute resolution constitutes *res judicata* only insofar as it involves the "same subject matter and the same issues concerning the same parties[.]" However, if other parties and another subject matter (even if there are the same parties and issues) are involved, the minute resolution is not a binding precedent.

2. ID.; ID.; ID.; AN UNSIGNED RESOLUTION CREATES A BINDING PRECEDENT WHERE THE SAME STATED CLEARLY AND DISTINCTLY THE FACTS AND THE LAW ON WHICH IT IS BASED, AND IS NOT JUST A MERE DISMISSAL OF A PETITION FOR FAILURE TO COMPLY WITH FORMAL AND SUBSTANTIVE REQUIREMENTS.— Even if *Valle Verde* is an unsigned resolution, it still creates a binding precedent to the extent that the Court pointed out in the assailed Decision, *i.e.*, if the allegations and prayers in the complaint raise issues of validation of proxies, and the manner and validity of elections, such as the nullification of the election was unlawfully conducted due to lack of quorum, then such complaint falls under the definition of "election contest" under the Interim Rules. This is because *Valle Verde* stated clearly and distinctly the facts and the law on which it is based, and it is not just a mere dismissal of a petition for failure to comply with formal and substantive requirements.

3. ID.; ID.; ID.; CONCEPT AND EFFECT OF AN *OBITER DICTUM,* EXPLAINED; RULING IN *VALLE VERDE* CASE (G.R. NO. 209120, OCTOBER 14, 2013) ON WHAT CONSTITUTES ELECTION CASES IS NOT AN *OBITER DICTUM*.— The ruling in *Valle Verde* on what constitutes election cases is not an *obiter dictum*. *Land Bank of the Phils. v. Suntay* explains the concept and effect of an *obiter dictum*, as follows: An *obiter dictum* has been defined as an opinion expressed by a court upon some question of law that is not necessary in the determination of the case before the court. It is a remark made, or opinion expressed, by a judge, in his decision upon a cause by the way, that is, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. It does not embody the resolution or determination of the court, and is made without argument, or full consideration of the point. It lacks the force of an adjudication, being a mere expression of an opinion with no binding force for purposes of *res judicata.*

4. ID.; ID.; ID.; EVEN IF THE *VALLE VERDE* CASE (G.R. NO. 209120) WAS MERELY SIGNED BY THE DIVISION CLERK OF COURT, SUCH UNSIGNED RESOLUTION WAS ISSUED BY THE AUTHORITY OF THE JUSTICES

WHO WERE MEMBERS OF THE DIVISION WHO TOOK PART IN THE DELIBERATION OF THE CASE AND THE SAME IS A DEFINITIVE DETERMINATION OF A QUESTION OF LAW RAISED BEFORE IT.— *Valle Verde* directly resolved the substantive issue raised by VVCCI as to whether its complaint is an election contest. x x x. x x x. We find the petition unmeritorious. x x x. x x x. The present complaint falls under the definition of election contest because it raises the issues of the validation of proxies, and the manner and validity of elections. Furthermore, a reading of Valle Verde's allegations, as well as its prayers in the complaint, shows that the complaint is essentially for the nullification of the election on the ground that the election was unlawfully conducted due to the adjournment of the meeting for lack of quorum. x x x. Even if *Valle Verde* was merely signed by the Division Clerk of Court, such unsigned resolution was issued by authority of the Justices who were members of the Division who took part in the deliberation of the case, and it is still a definitive determination of a question of law raised before it. Applying Section 2, Rule 6 of the Interim Rules, the Court declared that the complaint falls under the definition of election contest because it raises the issues of the validation of proxies, and the manner and validity of elections.

5. STATUTORY CONSTRUCTION; THE PRINCIPLES OF STATUTORY CONSTRUCTION ARE APPLICABLE TO THE INTERPRETATION OF THE INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES (INTERIM RULES), AS THE SAME WAS PROMULGATED BY AUTHORITY OF LAW AND HAS THE FORCE AND EFFECT OF LAW.— There is also no merit to Fernandez's claim that the statutory construction principle to the effect that what cannot be done directly, cannot be done indirectly, is inapplicable to the construction of the rules of procedure. To disallow the application of such principle would defeat the purpose of the Interim Rules which is meant to expedite the resolution of intra-corporate cases, and would sanction the circumvention of said rules. As stressed in the Court's Decision, the 15-day reglementary period to file an election contest under the Interim Rules aims to hasten the submission and resolution of corporate election controversies, so that the state of uncertainty in the corporate leadership is settled. If the Court were to entertain one of the causes of action in Fernandez's

complaint, which is partly an election contest, the salutary purposes of that reglementary period would be defeated. Besides, "[r]ules of court, promulgated by authority of law, have the force and effect of law, if not in conflict with positive law." In *Alex Raul B. Blay v. Cynthia B. Baña*, the Court applied a statutory construction doctrine in construing a provision of the Rules of Court x x x. x x x. Since the *Interim Rules* was also promulgated by authority of law—Section 5(5), Article VIII of the Constitution no less—and has the force and effect of law, the Court sees no compelling reason why the principles of statutory construction should not be applied to the interpretation of such procedural rules.

6. REMEDIAL LAW; INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES; ELECTION CONTEST; A PARTY, WHETHER A CANDIDATE IN THE ELECTION OR NOT, HAS FIFTEEN (15) DAYS FROM THE DATE OF THE ELECTION, TO FILE AN ELECTION CONTEST; AN ELECTION CONTEST IS DETERMINED BY THE NATURE OF THE CONTROVERSY OR DISPUTE INVOLVED, NAMELY: (1) THE TITLE OR CLAIM TO ANY ELECTIVE OFFICE IN A CORPORATION; (2) THE VALIDATION OF PROXIES; (3) THE MANNER AND VALIDITY OF ELECTIONS; AND (4) THE QUALIFICATIONS OF CANDIDATES, INCLUDING THE PROCLAMATION OF WINNERS, TO THE OFFICE OF DIRECTOR, TRUSTEE OR OTHER OFFICER IN A CORPORATION.— That Fernandez was not a candidate in the election that he seeks to nullify and that he had no cause of action yet during the said period will not excuse him from Section 3, Rule 6 of the *Interim Rules* which requires that election contests must be filed within fifteen (15) days from the date of the election. The definition of an election contest is clear; it hardly distinguishes whether the complainant is a participant in the election or not, and it is determined only by the nature of the controversy or dispute involved, namely: (1) the title or claim to any elective office in a corporation; (2) the validation of proxies; (3) the manner and validity of elections; and (4) the qualifications of candidates, including the proclamation of winners, to the office of director, trustee or other officer in a corporation. As aptly pointed out by petitioners, Fernandez is a member of VVCCI, and the time

to question their election is within 15 days from the election; to allow him to belatedly question their authority as members of the board would open the floodgate to any member who will be disciplined by petitioners or to question their act by questioning the validity of their election anytime.

7. ID.; ID.; ID.; THE RELIEF PRAYED FOR IN THE COMPLAINT IS PART OF THE BODY OF THE PLEADING WHICH CANNOT BE DISREGARDED IN ADJUDICATING THE CASE; A COURT'S JURISDICTION OVER THE SUBJECT MATTER IS DETERMINED BY THE RELEVANT ALLEGATIONS IN THE COMPLAINT, THE LAW IN EFFECT WHEN THE ACTION WAS FILED, AND THE CHARACTER OF THE RELIEF SOUGHT, IRRESPECTIVE OF WHETHER THE PLAINTIFF IS ENTITLED TO ALL OR SOME OF THE CLAIMS ASSERTED.— Equally bereft of merit is Fernandez's contention that the prayer of his complaint cannot be considered as part of the allegations on the nature of the cause of action, and it may even be disregarded in adjudicating the case. The rule is settled that a court's jurisdiction over the subject matter is determined by the relevant allegations in the complaint, the law in effect when the action was filed, and the character of the relief sought, irrespective of whether the plaintiff is entitled to all or some of the claims asserted. Section 2, Rule 7 of the 1997 Rules of Civil Procedure provides that the body of the pleading sets forth its designation, the allegations of the party's claims or defenses, the relief prayed for, and the date of the pleading. Considering that the prayer in a complaint is a "relief," which is part of the body of such pleading, the prayer in Fernandez's complaint cannot be simply ignored in deciding his case. In fact, in *Yujuico v. Quiambao*, the Court relied on the relief prayed for in the complaint, in order to rule that the subject complaint is an election contest.

8. ID.; ID.; ID.; AN ELECTION CONTEST FILED BEYOND THE 15-DAY REGLEMENTARY PERIOD SHALL BE DISMISSED OUTRIGHT.— [I]t bears repeating that no grave abuse of discretion can be ascribed against the Regional Trial Court of Pasig City, Branch 158, insofar as it did not allow any evidence to be presented in Commercial Case No. 13-202, relating to the February 23, 2013 elections of the Board of Directors of VVCCI. The Regional Trial Court's action of virtually dismissing

the first cause of action in Fernandez's complaint, for being an election contest filed beyond the 15-day reglementary period, is indeed consistent with the following provisions of the *Interim Rules*: (a) Section 3, Rule 1, because such act promotes the objective of securing a just, summary, speedy and inexpensive determination of every action or proceeding; and (b) Section 4, Rule 6, which authorizes the court to dismiss outright the complaint if the allegations thereof are not sufficient in form and substance.

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

1. REMEDIAL LAW; INTERIM RULES OF PROCEDURE GOVERNING INTRA-CORPORATE CONTROVERSIES (INTERIM RULES); THE TRUE NATURE OF THE ACTION CAN BE ASCERTAINED FROM THE ULTIMATE FACTS AVERRED IN THE COMPLAINT AND THE RELIEF SOUGHT; RESPONDENT'S ACTION ASSAILS THE LEGITIMACY OF THE SUBJECT ANNUAL MEMBERSHIP MEETING FOR LACK OF QUORUM, NOT AN ELECTION CONTEST.—While the complaint touches on the issue of private petitioners' authority as VVCCI's BoD, a closer scrutiny will show that the primordial focus of respondent's complaint deals with the very legitimacy of the meeting itself. Section 4, Rule 2 of the *Interim Rules* provides that a complaint involving intra-corporate controversies must state or contain all the facts and materials relevant to a plaintiff's cause of action. Moreover, it must contain the law relied upon and the relief sought. Furthermore, well-settled is the principle that material averments in the complaint and the character of the relief prayed for determine its cause of action. Otherwise stated, the true nature of the action can be ascertained from the ultimate facts averred in the complaint and the relief sought. The majority believe that the relevant allegations in respondent's complaint and the character of the relief sought by him qualify the action as an election contest. It believes that since respondent seeks to nullify the claim of the individual petitioners as members of the BoD of VVCCI, then the same falls under the definition of an election contest. Contrary to the majority opinion however, x x x a more holistic reading of respondent's complaint readily reveals it as an action which is primarily aimed at questioning the very legitimacy of the

February 23, 2013 VVCCI annual membership meeting. In fact, the manner in which respondent assails the subject meeting clearly propounds that there was a failure to achieve quorum.

2. ID.; ID.; ELECTION CONTEST DISTINGUISHED FROM AN ACTION FOR NULLIFICATION OF STOCKHOLDERS' OR MEMBERS' MEETING CALLED PURSUANT TO THE CORPORATION CODE AND THE COMPANY'S BY-LAWS.— The mere fact that the complaint contains a prayer relating to the issue of the validity of the individual petitioners' title as BoD of VVCCI should not be treated as a conclusive indication of the complaint's primary purpose. The prayer to invalidate the claims of the individual petitioners will merely be a consequence or having the February 23, 2013 annual membership meeting annulled. Now, a distinction must be made between a suit whose primary purpose is the challenge of an individual's claim to an elective office within a corporation and one which seeks the nullification of any regular or special meeting called pursuant to Title VI of Batas Pambansa Bilang 68, otherwise known as the *Corporation Code of the Philippines*. x x x Thus, an election contest is any controversy whose primary issue deals with: (a) title or claim to any elective office within the corporation; (b) the validation of proxies; (c) the manner or how elections are conducted and its ensuing validity; (d) the qualifications of candidates; or (e) the proclamation of winners as officers. In contrast, an action assailing the inherent validity of a meeting involves an entirely distinct issue: the determination of whether it was called pursuant to the company's by-laws and in accordance with the Corporation Code. The relevant provision of law is Section 50 in relation to Section 52, under Title VI of the Corporation Code. These provisions provide for when such meetings shall be held and under what circumstances a quorum shall be achieved in order for them to be valid. x x x. In *Bernas* and *Lim*, despite the presence of issues which touch upon the validity of a group's election as part of a company's BoD, the Court did not hesitate to declare a special stockholders' and a regular members' meeting inherently invalid for being improperly called. In doing so, the Court acknowledged that the mere presence of such issues does not automatically qualify a case as an election contest. It effectively held that if the primary issue of the intra-corporate controversy is the annulment of a stockholders' or members' meeting on the basis of lack of quorum, then the same should

be treated as an entirely distinct action from that of an election contest.

3. ID.; ID.; THE ANNULMENT OF THE SUBJECT ANNUAL MEMBERS' MEETING DUE TO LACK OF QUORUM RENDERED VOID THE SUBSEQUENT RESOLUTION SUSPENDING THE RESPONDENT FROM THE CLUB FOR VIOLATION OF THE COMPANY BY-LAWS; ANY RESOLUTION OR DISPOSITION OF OTHER LEGAL ISSUES STEMMING FROM THE VOID MEETING WOULD HAVE NO BINDING EFFECT ON THE CORPORATION OR ANY OF ITS MEMBERS.— Having determined the true nature of respondent's Complaint as one which assails the very validity of a members' meeting and delineating from an election contest under the *Interim Rules*, the question which must be answered now is how the annulment of the February 23, 2013 VVCCI annual membership meeting would affect respondent's suspension from the club. x x x. [T]he Court in *Lim* made a similar pronouncement when it declared the July 21, 2012 general membership meeting of Condocor as invalid for being called despite the lack of quorum. The Court ruled that any resolution or disposition of other legal issues stemming from the void meeting would have no binding effect on the corporation or any of its members. x x x [T]he annulment of the February 23, 2013 VVCCI annual members' meeting would likewise void the subsequent resolution which suspended respondent for six (6) months from the club for violation of the company's by-laws.

4. ID.; ID.; THE MERE PRESENCE OF AN ISSUE RELATING TO THE AUTHORITY OF THE GROUP AS MEMBERS OF THE BOARD OF DIRECTORS AS A RESULT OF THE COMPANY'S ANNUAL MEMBERSHIP MEETING DOES NOT *IPSO FACTO* MAKE THE CASE AN ELECTION CONTEST; COMPLAINT MUST BE READ IN ITS ENTIRETY AND NOT HASTILY PIGEONHOLED INTO A PARTICULAR TYPE OF ACTION; DISMISSAL OF THE RESPONDENT'S COMPLAINT, UNWARRANTED.— The mere presence of an issue regarding private petitioners' authority as VVCCI's BoD as a result of the company's February 23, 2013 annual membership meeting does not *ipso facto* make it an election contest as defined under the Interim Rules. Respondent's complaint must be read in its entirety and not

hastily pigeonholed into a particular type of action. Respondent's Complaint was filed for the very purpose of questioning the inherent validity of the February 23, 2013 VVCCI annual membership meeting, an action completely distinct from an election protest. To automatically qualify an action seeking to annul a stockholders' or members' meeting as an election contest for the mere reason of the presence of an issue relating to a group's title as members of the BoD of a company would set a troublesome precedent. To do so would effectively ignore the innate differences of the two actions and subject one to the procedural requirements of the other, much like in this case. Thus, x x x it was a mistake for the trial court to have dismissed respondent's first cause of action on the basis of it being filed beyond the fifteen (15)-day reglementary period as provided for under the *Interim Rules* on the erroneous premise that the same is an election contest. The trial court should have allowed reception of evidence regarding the circumstances surrounding the February 23, 2013 VVCCI annual membership meeting in order to fully resolve the issue regarding the inherent validity of said meeting and the succeeding legality of respondent's suspension as a member of the club.

APPEARANCES OF COUNSEL

Ifurung Law Offices for petitioners.
A.D. Corvera & Associates for respondent.
Fernandez & Associates Law Firm for respondent.

R E S O L U T I O N

PERALTA, *C.J.*:

This resolves the Motion for Reconsideration[1] dated October 29, 2018 of respondent Teodorico P. Fernandez, seeking to reconsider and set aside the Court's Decision[2] dated

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[1] *Rollo*, pp. 295-307.

[2] *Id.* at 278-294. Penned by Associate Justice Diosdado M. Peralta, and concurred in by Associate Justices Marvic Mario Victor F. Leonen, Andres B. Reyes, Jr., Alexander G. Gesmundo and Jose C. Reyes, Jr.

September 5, 2018 which: (1) granted the petition for review on *certiorari*; (2) reversed and set aside the Court of Appeals' Decision dated June 30, 2014 and Resolution dated October 24, 2014 in CA-G.R. SP No. 134704; and (3) reinstated the Order issued by the Regional Trial Court of Pasig City, Branch 158, on January 28, 2014 in Commercial Case No. 13-202, insofar as it did not allow any evidence to be presented relating to the February 23, 2013 elections of the Board of Directors of Valle Verde Country Club, Incorporated (*VVCCI*).

Fernandez argues that the Court erred in applying the *stare decisis* principle to his case, and that there is absolutely no binding precedent which supports the ruling that his complaint, questioning the suspension of his membership in VVCCI for lack of authority of petitioners Francisco C. Eizmendi, Jr., Jose S. Tayag, Jr., Joaquin L. San Agustin, Eduardo V. Francisco, Edmidio V. Ramos, Jr., Albert G. Blancaflor, Rey Nathaniel C. Ifurung, and Manuel H. Acosta, Jr., as alleged directors of VVCCI, apart from the ground of denial of due process, is partly an election contest within the purview set by the Interim Rules of Procedure for Intra-Corporate Controversies (*Interim Rules*).

Fernandez contends that the Resolution[3] in *Valle Verde Country Club, Inc., represented by its hold-over Board of Directors, etc. v. Francisco C. Eizmendi, Jr., et al. (Valle Verde)*, G.R. No. 209120, dated October 14, 2013, is a mere unsigned or minute resolution which neither constitutes a binding precedent nor obligates non-parties, like himself. In support of his contention, Fernandez cites Section 6 (c), Rule 13 of the *Internal Rules of the Supreme Court* which states that "[b]y *unsigned resolution*[,] the Court disposes of the case on the merits, but its ruling is essentially meaningful only to the parties; has no significant doctrinal value; or is [of] minimal interest to the law profession, the academe, or the public."

Fernandez insists that the Court erred in giving *stare decisis* effect an *obiter dictum* in *Valle Verde* by proscribing or

[3] *Id.* at 142-145.

disallowing his cause of action on the premise that the same is "partly an election contest" filed beyond the 15-day reglementary period. He claims that the disquisitions in *Valle Verde* on "election contest" are mere *obiter dicta*, which are not binding under the doctrine of *stare decisis*. He also assails the Court's ruling that he cannot question the validity of the February 23, 2013 election for that would be violative of the 15-day reglementary period, based on the maxim that "what cannot be done directly cannot be done indirectly." He submits that the application of the said maxim presupposes the existence of a prohibition in the Constitution or in a law, and that such period is a mere limitation of an action or a specie of a statute of limitation found in a rule of procedure. He asserts that the reglementary period cannot apply to him because he was not a candidate, and he had no cause of action yet during the period.

Fernandez also faults the Court for making capital of the prayer in his complaint to justify the finding that the same presents an election contest. He explains that the prayer for relief, although part of the complaint, cannot create a cause of action; hence, it cannot be considered as part of the allegations on the nature of the cause of action, and it may be disregarded in adjudicating the case.

The Court finds the arguments devoid of merit.

The mere fact that *Valle Verde* is an unsigned resolution does not prevent it from having a binding precedent in this case. Fernandez is confused with the concept of an unsigned resolution or minute resolution that has no binding precedent. In *Phil. Health Care Providers, Inc. v. Commissioner of Internal Revenue*,[4] the Court clarified why a minute resolution has no binding precedent, thus:

> It is true that, although contained in a minute resolution, our dismissal of the petition was a disposition of the merits of the case. When we dismissed the petition, we effectively affirmed the CA ruling being questioned. As a result, our ruling in that case has already become

[4] 616 Phil. 387 (2009).

final. When a minute resolution denies or dismisses a petition for failure to comply with formal and substantive requirements, the challenged decision, together with its findings of fact and legal conclusions, are deemed sustained. But what is its effect on other cases?

With respect to the same subject matter and the same issues concerning the same parties, it constitutes *res judicata*. However, if other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent. Thus, in *CIR v. Baier-Nickel*, the Court noted that a previous case, *CIR v. Baier-Nickel* involving the same parties and the same issues, was previously disposed of by the Court thru a minute resolution dated February 17, 2003 sustaining the ruling of the CA. Nonetheless, the Court ruled that the previous case "ha(d) no bearing" on the latter case because the two cases involved different subject matters as they were concerned with the taxable income of different taxable years.

Besides, there are substantial, not simply formal, distinctions between a minute resolution and a decision. The constitutional requirement under the first paragraph of Section 14, Article VIII of the Constitution that the facts and the law on which the judgment is based must be expressed clearly and distinctly applies only to decisions, not to minute resolutions. A minute resolution is signed only by the clerk of court by authority of the justices, unlike a decision. It does not require the certification of the Chief Justice. Moreover, unlike decisions, minute resolutions are not published in the Philippine Reports. Finally, the proviso of Section 4(3) of Article VIII speaks of a decision. Indeed, as a rule, this Court lays down doctrines or principles of law which constitute binding precedent in a decision duly signed by the members of the Court and certified by the Chief Justice.[5] (Citations omitted)

The binding nature of a minute resolution and its ability to establish a lasting judicial precedent have already been settled in *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*[6] where the Court explained that a minute resolution constitutes *res judicata* only insofar as it involves the "same subject matter and the same issues concerning the same parties[.]"

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[5] *Id.* at 420-422.

[6] 716 Phil. 676, 687 (2013).

However, if other parties and another subject matter (even if there are the same parties and issues) are involved, the minute resolution is not a binding precedent.

Even if *Valle Verde* is an unsigned resolution, it still creates a binding precedent to the extent that the Court pointed out in the assailed Decision, *i.e.*, if the allegations and prayers in the complaint raise issues of validation of proxies, and the manner and validity of elections, such as the nullification of the election was unlawfully conducted due to lack of quorum, then such complaint falls under the definition of "election contest" under the Interim Rules. This is because *Valle Verde* stated clearly and distinctly the facts and the law on which it is based, and it is not just a mere dismissal of a petition for failure to comply with formal and substantive requirements.

The ruling in *Valle Verde* on what constitutes election cases is not an *obiter dictum*. *Land Bank of the Phils. v. Suntay*[7] explains the concept and effect of an obiter dictum, as follows:

> An obiter dictum has been defined as an opinion expressed by a court upon some question of law that is not necessary in the determination of the case before the court. It is a remark made, or opinion expressed, by a judge, in his decision upon a cause by the way, that is, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. It does not embody the resolution or determination of the court, and is made without argument, or full consideration of the point. It lacks the force of an adjudication, being a mere expression of an opinion with no binding force for purposes of res judicata.[8] (Citations omitted)

Valle Verde directly resolved the substantive issue raised by VVCCI as to whether its complaint is an election contest, in this wise:

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[7] 678 Phil. 879 (2011).

[8] *Id.* at 913-914.

The Petition

In a petition before this Court, Valle Verde points out that it is not challenging the validity of proxies, but merely the respondents' unlawful misrepresentation of corporate office. It stresses that the election did not take place since the annual meeting was already adjourned prior to the respondents' declaration as winners in the "election." Consequently, its complaint is not an election contest as there were actually no winning candidates on February 23, 2013. It also argues that it is a real party-in-interest in this case because the respondents' misrepresentation causes confusion among its members and employees, and disrupts its operations.

Our Ruling

We find the petition unmeritorious.

Section 2, Rule 6 of the Interim Rules on Intra-Corporate Controversies defines an election contest as "any controversy or dispute involving title or claim to any elective office in a stock or non-stock corporation, the validation of proxies, the manner and validity of elections, and the qualifications of candidates, including the proclamation of winners, to the office of director, trustee or other officer directly elected by the stockholders in a close corporation or by members of a non-stock corporation where the article of incorporation or by-laws so provide."

The present complaint falls under the definition of election contest because it raises the issues of the validation of proxies, and the manner and validity of elections. Furthermore, a reading of Valle Verde's allegations, as well as its prayers in the complaint, shows that the complaint is essentially for the nullification of the election on the ground that the election was unlawfully conducted due to the adjournment of the meeting for lack of quorum.

The determination of the validity of the proxies and of the manner and validity of elections is necessary in adjudicating whether the respondents are the lawful directors and officers of Valle Verde. Consequently, Valle Verde cannot claim that it did not raise these factual issues because no election was conducted last February 23, 2013 due to the adjournment of the meeting for lack of quorum. Valle Verde's assertion that there was no election is merely an effect of the declaration of the nullity of the election if the current petition would be found meritorious.

Even if *Valle Verde* was merely signed by the Division Clerk of Court, such unsigned resolution was issued by authority of the Justices who were members of the Division who took part in the deliberation of the case, and it is still a definitive determination of a question of law raised before it. Applying Section 2, Rule 6 of the Interim Rules, the Court declared that the complaint falls under the definition of election contest because it raises the issues of the validation of proxies, and the manner and validity of elections.

There is also no merit to Fernandez's claim that the statutory construction principle to the effect that what cannot be done directly, cannot be done indirectly, is inapplicable to the construction of the rules of procedure. To disallow the application of such principle would defeat the purpose of the Interim Rules which is meant to expedite the resolution of intra-corporate cases, and would sanction the circumvention of said rules. As stressed in the Court's Decision, the 15-day reglementary period to file an election contest under the Interim Rules aims to hasten the submission and resolution of corporate election controversies, so that the state of uncertainty in the corporate leadership is settled. If the Court were to entertain one of the causes of action in Fernandez's complaint, which is partly an election contest, the salutary purposes of that reglementary period would be defeated.

Besides, "[r]ules of court, promulgated by authority of law, have the force and effect of law, if not in conflict with positive law."[9] In *Alex Raul B. Blay v. Cynthia B. Baña*,[10] the Court applied a statutory construction doctrine in construing a provision of the Rules of Court, thus:

> It is hornbook doctrine in statutory construction that "[t]he whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole. A statute must be so construed as to harmonize and give effect to all its

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[9] *Shioji v. Harvey*, 43 Phil. 333, 342 (1922), citing *Inchausti & Co. v. De Leon*, 24 Phil. 224 (1913).

[10] G.R. No. 232189, March 7, 2018 (citation omitted).

provisions whenever possible. In short, every meaning to be given to each word or phrase must be ascertained from the context of the body of the statute since a word or phrase in a statute is always used in association with other words or phrases and its meaning may be modified or restricted by the latter.

By narrowly reading Section 2, Rule 17 of the Rules of Court, the CA clearly violated the foregoing principle and in so doing, erroneously sustained the assailed RTC Orders declaring respondent's counterclaim "as remaining for independent adjudication" despite the latter's failure to file the required manifestation within the prescribed fifteen (15)-day period.

Since the *Interim Rules* was also promulgated by authority of law—Section 5(5), Article VIII of the Constitution no less—and has the force and effect of law, the Court sees no compelling reason why the principles of statutory construction should not be applied to the interpretation of such procedural rules.

That Fernandez was not a candidate in the election that he seeks to nullify and that he had no cause of action yet during the said period will not excuse him from Section 3, Rule 6 of the *Interim Rules* which requires that election contests must be filed within fifteen (15) days from the date of the election. The definition of an election contest is clear; it hardly distinguishes whether the complainant is a participant in the election or not, and it is determined only by the nature of the controversy or dispute involved, namely: (1) the title or claim to any elective office in a corporation; (2) the validation of proxies; (3) the manner and validity of elections; and (4) the qualifications of candidates, including the proclamation of winners, to the office of director, trustee or other officer in a corporation. As aptly pointed out by petitioners, Fernandez is a member of VVCCI, and the time to question their election is within 15 days from the election; to allow him to belatedly question their authority as members of the board would open the floodgate to any member who will be disciplined by petitioners or to question their act by questioning the validity of their election anytime.[11]

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[11] *Rollo*, p. 355.

Equally bereft of merit is Fernandez's contention that the prayer of his complaint cannot be considered as part of the allegations on the nature of the cause of action, and it may even be disregarded in adjudicating the case. The rule is settled that a court's jurisdiction over the subject matter is determined by the relevant allegations in the complaint, the law in effect when the action was filed, and the character of the relief sought, irrespective of whether the plaintiff is entitled to all or some of the claims asserted.[12] Section 2, Rule 7 of the 1997 Rules of Civil Procedure provides that the body of the pleading sets forth its designation, the allegations of the party's claims or defenses, the relief prayed for, and the date of the pleading. Considering that the prayer in a complaint is a "relief," which is part of the body of such pleading, the prayer in Fernandez's complaint cannot be simply ignored in deciding his case.

In fact, in *Yujuico v. Quiambao*,[13] the Court relied on the relief prayed for in the complaint, in order to rule that the subject complaint is an election contest, thus:

> Another weighty defense raised by petitioners is that the action has prescribed. One of the reliefs sought by respondents in the complaint is the nullification of the election of the Board of Directors and corporate officers held during the March 1, 2004 annual stockholders' meeting on the ground of improper venue, in violation of the Corporation Code. Hence, the action involves an election contest, falling squarely under the Interim Rules of Procedure Governing Intra-Corporate Controversies under R.A. No. 8799.[14]

Finally, it bears repeating that no grave abuse of discretion can be ascribed against the Regional Trial Court of Pasig City, Branch 158, insofar as it did not allow any evidence to be presented in Commercial Case No. 13-202, relating to the February 23, 2013 elections of the Board of Directors of VVCCI. The Regional Trial Court's action of virtually dismissing the

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[12] *Sps. Trayvilla v. Sejas, et al.*, 780 Phil. 85, 90 (2016).

[13] 542 Phil. 236 (2007).

[14] *Id.* at 257.

first cause of action in Fernandez's complaint, for being an election contest filed beyond the 15-day reglementary period, is indeed consistent with the following provisions of the *Interim Rules*: (a) Section 3, Rule 1, because such act promotes the objective of securing a just, summary, speedy and inexpensive determination of every action or proceeding; and (b) Section 4, Rule 6, which authorizes the court to dismiss outright the complaint if the allegations thereof are not sufficient in form and substance.

WHEREFORE, the Motion for Reconsideration dated October 29, 2018 is **DENIED** for lack of merit.

SO ORDERED.

Leonen and *Reyes, J. Jr., JJ*., concur.

Reyes, A. Jr., J., dissents, see dissenting opinion.

Gesmundo, J., on wellness leave.

DISSENTING OPINION

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

After a thorough review of the records and all previous dispositions, I am convinced that Teodorico P. Fernandez's (respondent) Motion for Reconsideration[1] (MR) of the Court's September 5, 2018 Decision,[2] with respect to the contention that his Complaint[3] filed before the Regional Trial Court (RTC) of Pasig City, Branch 158, in Commercial Case No. 13-202 does not constitute an election contest, is meritorious.

To recall, the instant controversy stems from a Complaint[4] filed by respondent on November 28, 2013 for Invalidation of

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[1] *Rollo*, pp. 322-347.

[2] *Id.* at 278-294.

[3] *Id.* at 85-95.

[4] *Id.*

Corporate Acts and Resolutions with Application for Writ of Preliminary Injunction against the individual petitioners in herein case, namely: Francisco C. Eizmendi, Jr., Jose S. Tayag, Jr., Joaquin San Agustin, Eduardo Francisco, Edmidio Ramos, Jr., Albert Blancaflor, Rey Nathaniel Ifurung, and Manuel Acosta, Jr.[5]

The complaint was filed as a response to the incidents surrounding the February 23, 2013 annual membership meeting of Valle Verde Country Club, Inc. (VVCCI) and respondent's ensuing six (6)-month suspension as a member of it. Respondent alleges that on February 23, 2013, VVCCI held its scheduled annual membership meeting through its hold-over Board of Directors (BoD), but the same had to be adjourned for lack of quorum. Immediately thereafter, the individual petitioners took over the proceedings, declared a quorum, and elected themselves as the new BoD of VVCCI.[6]

Afterwards, on October 18, 2013, the individual petitioners, acting for and in behalf of VVCCI as members of its BoD, passed a resolution finding respondent guilty of violating its by-laws. As punishment, respondent was suspended from the sports club for six (6) months.[7]

Respondent argues that the corporate acts done by private petitioners, insofar as the office of the BoD of VVCCI is concerned, are without any authority. He argues that since the annual membership meeting, wherein private petitioners were "constituted" as the BoD of VVCCI, was held despite lack of quorum, then the same is void. As such, any subsequent meetings of the BoD that were held thereafter, including all the resolutions and measures that were approved thereat, are likewise void and could produce no legal effect.[8]

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[5] *Id.*

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

[7] *Id.* at 45.

[8] *Id.* at 44.

In fact, during the hearing[9] for the application of the writ of preliminary injunction, respondent was adamant that the Complaint he filed before the trial court assailed the very legitimacy of the February 23, 2013 annual membership meeting, *to wit*:

COURT:

> Before you testify, we are in agreement that the remaining issue ... we will not touch on the election aspect because that is not proper for the instant case. I have already said it's too late in the day to file an election contest. So, the only issue before the Court is the suspension.

ATTY. FERNANDEZ:

> Yes, your Honor, but with due respect, if your Honor please, **our case is not an election contest because this is a suit precisely questioning the legal authority of the board who suspended me**[.]

COURT:

> **Yes, even if you do not say that it is an election contest, that will especially, the issue will still be whether or not the board of directors' composition is legitimate because, in essence, it was still an election contest.** I will not touch on that, as I had continuously said. The only reason I'm still entertaining this complaint is with respect to your suspension. So, your suspension, it cannot be based ... whether or not your suspension is legitimate will not be anchored on the composition of the board of directors but on issues like due process, if you were duly notified, if the grounds for your suspension were valid, etcetera.

x x x x x x x x x

ATTY. FERNANDEZ:

> But, Your Honor, may we be allowed to present evidence in relation to the fact that... **I have two allegations, if your Honor please. No. 1, is the fact that they have no legal authority to suspend me because when they convened as a board, when they elected themselves as board of directors after the declaration of no**

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[9] *Id.* at 96-105.

quorum, your Honor, they used 1,500 as basis and therefore …[10] (Emphasis supplied)

For their part, private petitioners dispute the allegation that no quorum was achieved during the February 23, 2013 meeting. They insist that a meeting was validly called and that their election as the new BoD was legal and binding. Being valid, they claim that they properly managed the affairs of VVCCI and all acts done in connection with their duties as officers of VVCCI, including the suspension of respondent for violation of its by-laws, were valid.[11]

The *ponencia* resolves the case by considering respondent's complaint as an election contest within the purview of the *Interim Rules of Procedure Governing Intra-Corporate Controversies (Interim Rules)*, to wit:

Fernandez's complaint disputes the election of petitioners as members of the BOD of VVCCI on the ground of lack of *quorum* during the February 23, 2013 annual meeting. **Verily, his complaint is partly an "election contest" as defined under Section 2, Rule 6 of the *Interim Rules***, which refers to "any controversy or dispute involving title or claim to any elective office in a stock or non-stock corporation, the validation of proxies, the manner and validity of elections, and the qualifications of candidates, including proclamation of winners, to the office of director, trustees or other officer directly elected by the stockholders in a close corporation or by members of a non-stock corporation where the articles of incorporation so provide."[12] (Emphasis supplied)

The present *ponencia* exists on the premise that the complaint falls under the definition of an election contest because it clearly raises an issue on the manner and validity of the individual petitioners' election. As such, the dismissal of respondent's complaint was justified because it was filed well beyond the

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[10] *Id.* at 98-100.

[11] *Id.* at 45.

[12] *Id.* at 287.

fifteen (15)-day reglementary period pursuant to Section 3, Rule 6 of the *Interim Rules*.[13]

I cannot agree with this premise.

While the complaint touches on the issue of private petitioners' authority as VVCCI's BoD, a closer scrutiny will show that the primordial focus of respondent's complaint deals with the very legitimacy of the meeting itself.

Section 4, Rule 2 of the *Interim Rules* provides that a complaint involving intra-corporate controversies must state or contain all the facts and materials relevant to a plaintiff's cause of action. Moreover, it must contain the law relied upon and the relief sought.[14] Furthermore, well-settled is the principle that

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[13] SEC. 3. *Complaint*. – In addition to the requirements in Section 4, Rule 2 of these Rules, the complaint in an election contest must state the following:

1. The case was filed within fifteen (15) days from the date of the election if the by-laws of the corporation do not provide for a procedure for resolution or the controversy, or within fifteen (15) days from the resolution of the controversy by the corporation as provided in its by-laws[.]

[14] SEC. 4. *Complaint*. – The complaint shall state or contain:

1. the names, addresses, and other relevant personal or juridical circumstances of the parties;
2. all facts material and relevant to the plaintiff's cause or causes of action, which shall be supported by affidavits of the plaintiff or his witnesses and copies of documentary and other evidence supportive of such cause or causes of action;
3. the law, rule, or regulation relied upon, violated, or sought to be enforced;
4. a certification that (a) the plaintiff has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency, and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court; and
5. the relief sought.

material averments in the complaint and the character of the relief prayed for determine its cause of action.[15] Otherwise stated, the true nature of the action can be ascertained from the ultimate facts averred in the complaint and the relief sought.[16]

The majority believe that the relevant allegations in respondent's complaint and the character of the relief sought by him qualify the action as an election contest. It believes that since respondent seeks to nullify the claim of the individual petitioners as members of the BoD of VVCCI, then the same falls under the definition of an election contest.[17]

Contrary to the majority opinion however, it is my view that a more holistic reading of respondent's complaint readily reveals it as an action which is primarily aimed at questioning the very legitimacy of the February 23, 2013 VVCCI annual membership meeting. In fact, the manner in which respondent assails the subject meeting clearly propounds that there was a failure to achieve quorum. The pertinent portions of respondent's complaint read:

> 2.12. At the annual members' meeting set on February 23, 2013, VVCCI through the hold-over BOD **adjourned the same for lack of quorum**.
>
> 2.13. **Despite the adjournment of the annual members' meeting set on February 23, 2013 for lack of quorum, the individual defendants, conspiring and confederating with each other, held a supposed annual members' meeting by illicitly using the original 1,500 membership certificates as the base for purposes of quorum and declaring the presence of a quorum based on the attendance at the most of only 790 or 793 members in person or by proxy.**

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[15] *First Sarmiento Property Holdings, Inc. v. Philippine Bank of Communications*, G.R. No. 202836, June 19, 2018, 886 SCRA 438, 458; *Bulao v. CA*, 291-A Phil. 349, 355-356 (1993); and *Sps. Abrin v. Campos*, 280 Phil. 454, 459 (1991).

[16] *Jimenez, Jr. v. Jordana*, 486 Phil. 452, 465 (2004).

[17] *Rollo*, pp. 286-287.

2.14. **Despite the fatal lack of quorum at the supposed election meeting**, the individual defendants proceeded with it to have themselves constituted as the new members of the BOD of VVCCI.

2.15. Claiming themselves to be the newly constituted BOD of VVCCI, on October 18, 2013, the individual defendants held a meeting, at which they, purportedly acting for and in behalf of VVCCI, found plaintiff, among others, "guilty of less serious violations of the Bylaws" and imposed on him the penalty of suspension (of membership in VVCCI) for six (6) months from September 21, 2013 or until March 21, 2014, as shown in the Memorandum dated October 21, 2013 of defendant Ifurung to the General Manager of VVCCI. A photocopy of the Memorandum is hereto attached as *Annex "H"*.[18] (Emphasis supplied; citations omitted)

RELIEF

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2. After hearing on the merits, to render judgment in favor of plaintiff and against the defendants.

x x x x x x x x x

c) **Nullifying the so-called annual members' meeting of February 23, 2013, as well as subsequent so-called board meetings similarly held and conducted by the individual defendants**, such as but not limited to the so-called board meeting of October 18, 2013, including all resolutions and measures approved thereat, particularly those which relate to the suspension of plaintiff from VVCCI[.][19] (Emphasis supplied)

Admittedly, while the complaint does delve into the authority of private petitioners as the newly elected BoD of VVCCI, it is apparent that the same is not its primary purpose. A review of the ultimate facts averred and the nature of the relief show that its primary purpose is the annulment of the February 23, 2013 annual membership meeting for lack of quorum. The

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[18] *Id.* at 89.

[19] *Id.* at 92-93.

complaint detailed how the meeting was initially adjourned because no quorum was achieved and how private petitioners ignored the announcement. It went on to recount how private petitioners proceeded to hold another meeting, this time using a different basis to compute quorum.[20]

The mere fact that the complaint contains a prayer relating to the issue of the validity of the individual petitioners' title as BoD of VVCCI should not be treated as a conclusive indication of the complaint's primary purpose.[21] The prayer to invalidate the claims of the individual petitioners will merely be a consequence of having the February 23, 2013 annual membership meeting annulled.

Now, a distinction must be made between a suit whose primary purpose is the challenge of an individual's claim to an elective office within a corporation and one which seeks the nullification of any regular or special meeting called pursuant to Title VI of Batas Pambansa Bilang 68, otherwise known as the *Corporation Code of the Philippines*.[22] Accordingly, an election contest is defined under the *Interim Rules* as:

> SEC. 2. *Definition*. – An election contest refers to any controversy or dispute involving title or claim to any elective office in a stock or non-stock corporation, the validation of proxies, the manner and validity of elections, and the qualifications of candidates, including the proclamation of winners, to the office of director, trustee or other officer directly elected by the stockholders in a close corporation or by members of a non-stock corporation where the articles of incorporation or by-laws so provide.

Thus, an election contest is any controversy whose primary issue deals with: (a) title or claim to any elective office within the corporation; (b) the validation of proxies; (c) the manner or how elections are conducted and its ensuing validity; (d) the

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[20] *Id.* at 88-90.

[21] *Id.* at 92.

[22] The Corporation Code of the Philippines.

qualifications of candidates; or (e) the proclamation of winners as officers.[23]

In contrast, an action assailing the inherent validity of a meeting involves an entirely distinct issue: the determination of whether it was called pursuant to the company's by-laws and in accordance with the Corporation Code. The relevant provision of law is Section 50 in relation to Section 52, under Title VI of the Corporation Code. These provisions provide for when such meetings shall be held and under what circumstances a quorum shall be achieved in order for them to be valid. They provide:

> SEC. 50. *Regular and special meetings of stockholders or members*. – Regular meetings of stockholders or members shall be held annually on a date fixed in the by-laws, or if not so fixed, on any date in April of every year as determined by the board of directors or trustees: Provided, That written notice of regular meetings shall be sent to all stockholders or members of record at least two (2) weeks prior to the meeting, unless a different period is required by the by-laws.
>
> Special meetings of stockholders or members shall be held at any time deemed necessary or as provided in the by-laws: Provided, however, [t]hat at least one (1) week written notice shall be sent to all stockholders or members, unless otherwise provided in the by-laws.
>
> x x x x x x x x x
>
> SEC. 52. *Quorum in meetings*. – Unless otherwise provided for in this Code or in the by-laws, a quorum shall consist of the stockholders representing a majority of the outstanding capital stock or a majority of the members in the case of non-stock corporations. (n)

The difference between the two actions can be seen in *Bernas v. Cinco*[24] (Bernas) wherein the Court, in resolving an action which sought the nullification of a special stockholders' meeting, declared said meeting null and void for being improperly called.[25]

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[23] Section 2, Rule 6 of the *Interim Rules*.

[24] 762 Phil. 387 (2015).

[25] *Id.* at 395.

The dispute therein involved two separate groups of members which comprised the BoD of the Makati Sports Club (MSC): the Bernas group, and the Cinco group. The former formed part of the incumbent members of MSC's BoD whose terms were set to expire either in 1998 or 1999. The latter were stockholders of MSC who were elected to replace the Bernas group during a special stockholders' meeting held in 1997.[26]

The special meeting was called by MSC's oversight committee in order to address rumored anomalies in the handling of corporate funds. During the meeting, the Bernas group was removed from office and, in their place, the Cinco group was elected. Aggrieved, the Bernas group initiated an action before the Securities and Exchange Commission seeking the nullification of the special stockholders meeting on the ground that it was improperly called.[27]

Finding that the 1997 special stockholder's meeting was improperly called, the Court declared the same null and void. Consequently, the subsequent acts and issued resolutions of the Cinco group were likewise declared void from the very beginning.[28]

Similarly, in *Lim v. Moldex Land*,[29] (Lim) the Court was presented with the issue regarding the validity of a non-stock corporation's annual general membership meeting. In this particular case, Condocor, a non-stock, non-profit corporation, was the registered condominium corporation for the Golden Empire Tower, a condominium project of Moldex Land. During Condocor's 2012 annual general membership meeting, its corporate secretary and chairman declared the existence of a quorum even though only twenty nine (29) of the one hundred eight (108) unit owners were present. Petitioner therein Lim

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[26] *Id.* at 395-396.

[27] *Id.* at 396.

[28] *Id.* at 414.

[29] 804 Phil. 341 (2017).

objected to the validity of the meeting and she, along with most of the unit owners present, walked out and left.[30]

Despite the walkout, the individual respondents therein proceeded with the meeting and elected new members of Condocor's BoD. Consequently, Lim filed a case with the RTC assailing the validity of Condocor's 2012 annual general membership meeting on the basis of lack of quorum.[31]

In resolving the case, the Court discussed the requisites for a stockholders' or members' meeting to be valid and the importance of the presence of quorum, *to wit*:

> In corporate parlance, the term "meeting" applies to every **duly convened assembly either of stockholders, members, directors, trustees, or managers for any legal purpose**, or the transaction of business of a common interest. Under Philippine corporate laws, meetings may either be regular or special. **A stockholders' or members' meeting must comply with the following requisites to be valid:**
>
> 1. The meeting must be held on the date fixed in the By-Laws or in accordance with law;
>
> 2. Prior written notice of such meeting must be sent to all stockholders/members of record:
>
> 3. It must be called by the proper party;
>
> 4. It must be held at the proper place; and
>
> **5. Quorum and voting requirements must be met.**
>
> **Of these five (5) requirements, the existence of a quorum is crucial. Any act or transaction made during a meeting without quorum is rendered of no force and effect**, thus, not binding on the corporation or parties concerned.[32] (Citations omitted and emphasis supplied)

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[30] *Id.* at 347.

[31] *Id.* at 347-348.

[32] *Id.* at 354.

Ultimately, the Court found that the 2012 annual general membership meeting was convened despite the lack of quorum. As a result, the subject meeting was declared null and void and the subsequent election of Condocor's new BoD was nullified. It further declared that the succeeding meetings of the new BoD, as well as any resolutions it issued, were of no force and could produce no legal effect.[33]

In *Bernas* and *Lim*, despite the presence of issues which touch upon the validity of a group's election as part of a company's BoD, the Court did not hesitate to declare a special stockholders' and a regular members' meeting inherently invalid for being improperly called. In doing so, the Court acknowledged that the mere presence of such issues does not automatically qualify a case as an election contest. It effectively held that if the primary issue of the intra-corporate controversy is the annulment of a stockholders' or members' meeting on the basis of lack of quorum, then the same should be treated as an entirely distinct action from that of an election contest.

Having determined the true nature of respondent's Complaint[34] as one which assails the very validity of a members' meeting and delineating its difference from an election contest under the *Interim Rules*, the question which must be answered now is how the annulment of the February 23, 2013 VVCCI annual membership meeting would affect respondent's suspension from the club.

In *Bernas*, when the Court declared the December 17, 1997 special stockholders' meeting therein as void, it likewise declared the election of the Cinco group as having no binding force and effect. Consequently, all other actions of the Cinco group before the expiration of the term of office of the Bernas group were also declared void. As succinctly put by the Court, "the expulsion of the Bernas Group and the subsequent auction of Bernas' shares are void from the very beginning and therefore the

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[33] *Id.* at 364.

[34] *Rollo*, pp. 85-89.

ratifications effected during the subsequent meetings cannot be sustained. A void act cannot be the subject of ratification."[35]

Likewise, the Court in *Lim* made a similar pronouncement when it declared the July 21, 2012 general membership meeting of Condocor as invalid for being called despite the lack of quorum. The Court ruled that any resolution or disposition of other legal issues stemming from the void meeting would have no binding effect on the corporation or any of its members, *to wit*:

> **As there was no quorum**, any resolution passed during the July 21, 2012 annual membership meeting was null and void and, therefore, not binding upon the corporation or its members. **The meeting being null and void, the resolution and disposition of other legal issues emanating from the null and void July 21, 2012 membership meeting has been rendered unnecessary.**[36] (Emphasis supplied)

Given the foregoing, I submit that the annulment of the February 23, 2013 VVCCI annual members' meeting would likewise void the subsequent resolution which suspended respondent for six (6) months from the club for violation of the company's by-laws.

In fine, I must disagree with the majority opinion which treats respondent's complaint as "partly an election contest."[37] The mere presence of an issue regarding private petitioners' authority as VVCCI's BoD as a result of the company's February 23, 2013 annual membership meeting does not *ipso facto* make it an election contest as defined under the *Interim Rules*. Respondent's complaint must be read in its entirety and not hastily pigeonholed into a particular type of action.

Respondent's Complaint[38] was filed for the very purpose of questioning the inherent validity of the February 23, 2013 VVCCI

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[35] *Supra* note 24, at 414.

[36] *Supra* note 29, at 356-357.

[37] *Id.* at 292.

[38] *Id.* at 85-89.

annual membership meeting, an action completely distinct from an election protest. To automatically qualify an action seeking to annul a stockholders' or members' meeting as an election contest for the mere reason of the presence of an issue relating to a group's title as members of the BoD of a company would set a troublesome precedent. To do so would effectively ignore the innate differences of the two actions and subject one to the procedural requirements of the other, much like in this case.

Thus, it is my opinion that it was a mistake for the trial court to have dismissed respondent's first cause of action on the basis of it being filed beyond the fifteen (15)-day reglementary period as provided for under the *Interim Rules* on the erroneous premise that the same is an election contest. The trial court should have allowed reception of evidence regarding the circumstances surrounding the February 23, 2013 VVCCI annual membership meeting in order to fully resolve the issue regarding the inherent validity of said meeting and the succeeding legality of respondent's suspension as a member of the club.

For these reasons, I dissent.

ACCORDINGLY, I vote to:

(a) **GRANT** the Motion for Reconsideration dated October 29, 2018 filed by respondent Teodorico P. Fernandez;

(b) **SET ASIDE** the Court's Decision dated September 5, 2018; and

(c) **REINSTATE** the Court of Appeals Decision dated June 30, 2014 in CA-G.R. SP No. 134704.

SECOND DIVISION

[G.R. No. 224212. November 27, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROMEO DE CASTRO DE GUZMAN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; QUALIFIED RAPE; ELEMENTS; THE MINORITY OF THE VICTIM AND HIS/HER RELATIONSHIP WITH THE OFFENDER SHOULD BOTH BE ALLEGED IN THE INFORMATION AND PROVEN BEYOND REASONABLE DOUBT DURING TRIAL IN ORDER TO QUALIFY THE RAPE CHARGE, AS THESE CIRCUMSTANCES HAVE THE EFFECT OF ALTERING THE NATURE OF THE RAPE AND ITS CORRESPONDING PENALTY; OTHERWISE, THE DEATH PENALTY CANNOT BE IMPOSED UPON THE OFFENDER.— Under Article 266-B of the RPC, rape under paragraph 1 of Article 266-A shall be punished by *reclusion perpetua*. However, rape is considered qualified and the death penalty shall be imposed — 1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim[.] Relevantly, the elements of qualified rape are: "(1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under [eighteen] years of age at the time of the rape; and (5) the offender is [either] a parent (whether legitimate, illegitimate or adopted), [ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent] of the victim." The minority of the victim **and** his/her relationship with the offender should **both** be alleged in the Information and proven beyond reasonable doubt during trial in order to qualify the rape charge as these circumstances have the effect of altering the nature of the rape and its corresponding penalty. Otherwise, the death penalty cannot be imposed upon the offender.

2. ID.; RAPE; ACCUSED-APPELLANT SHOULD ONLY BE CONVICTED OF SIMPLE STATUTORY RAPE AND SIMPLE RAPE AS THE QUALIFYING CIRCUMSTANCE OF RELATIONSHIP WAS NOT PROPERLY PLEADED AND PROVEN; THE CRIME IS ONLY RAPE, ALTHOUGH THE STATE SUCCESSFULLY PROVES THE COMMON-LAW RELATIONSHIP, WHERE THE INFORMATION DOES NOT PROPERLY ALLEGE THE QUALIFYING CIRCUMSTANCE OF RELATIONSHIP BETWEEN THE ACCUSED AND THE VICTIM, AS THE RIGHT OF THE ACCUSED TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HIM IS INVIOLABLE.— In this case, AAA's minority was properly alleged and indisputably proven during trial. She was below 18 years old at the time the crimes were committed against her. Moreover, it was proven by evidence that De Guzman forced AAA into engaging in sexual congress by using threats and intimidation and without her consent, in addition to his moral ascendancy over her. Corollarily, it was alleged in the Informations that De Guzman was AAA's "stepfather." A "stepfather" is the "husband of one's mother by virtue of a marriage subsequent to that of which the person spoken of is the offspring. It presupposes a legitimate relationship between the appellant and the victim's mother." However, during trial, the prosecution failed to establish this stepparent-stepdaughter relationship between De Guzman and AAA. No proof of marriage was presented in order to establish De Guzman's legal relationship with BBB. In other words, De Guzman cannot be considered as the stepfather of AAA as alleged in the Informations. On the contrary, records show that De Guzman was actually the common-law spouse of BBB as he was not legally married to her. Since De Guzman's relationship with AAA as alleged in the Informations was not proven beyond reasonable doubt, De Guzman cannot be convicted of Qualified Rape, only Simple Statutory Rape and Simple Rape. Stated differently, "the crime is only simple rape, although the State successfully proves the common-law relationship, where the information does not properly allege the qualifying circumstance of relationship between the accused and the female. This is because the right of the accused to be informed of the nature and cause of the accusation against him is inviolable." According to *People v.*

Begino, the "qualifying circumstances must be properly pleaded in the indictment. If the same are not pleaded but proved, they shall be considered only as aggravating circumstances since the latter admit of proof even if not pleaded. It would be a denial of the right of the accused to be informed of the charges against him and consequently, a denial of due process, if he is charged with simple rape and be convicted of its qualified form, although the attendant circumstance qualifying the offense and resulting in the capital punishment was not alleged in the indictment on which he was arraigned." Since the qualifying circumstance of relationship was not properly pleaded and proven in the case at bench, De Guzman should only be convicted of Simple Statutory Rape and Simple Rape under paragraph 1 of Article 266-A of the RPC.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WHEN A RAPE VICTIM'S ACCOUNT IS STRAIGHTFORWARD AND CANDID, AND IS CORROBORATED BY THE MEDICAL FINDINGS OF THE EXAMINING PHYSICIAN, THE TESTIMONY IS SUFFICIENT TO SUPPORT A CONVICTION, FOR 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.— [A]AA was below 18 years old at the time of the commission of the crimes against her. The evidence showed that De Guzman had carnal knowledge of the victim on two occasions by using threats and intimidation, and his moral ascendancy over her. Upon assessment, the manner by which AAA narrated the commission of the felonies, which was corroborated by the medico-legal officer, confirmed that De Guzman was guilty beyond reasonable doubt of Simple Statutory Rape in Crim. Case No. 11-0540 and Simple Rape in Crim. Case No. 11-0400. Indeed, "[i]t is settled that when a rape victim's account is straightforward and candid, and is corroborated by the medical findings of the examining physician, the testimony is sufficient to support a conviction." Definitely, AAA's positive and categorical testimony prevails over De Guzman's self-serving

denial without sufficient proof, as well as his attempt to cast doubt upon the motives of AAA's aunts to pursue the case. This Court has consistently emphasized 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.'" Based on Our evaluation, the testimonies of the prosecution witnesses should be accorded great weight since the trial court found the said testimonies more convincing as these corroborated each other on material points. Absent any indication that the trial court committed errors in its appreciation of the evidence, We see no reason to deviate from the factual findings of the trial court that De Guzman had carnal knowledge of AAA on two instances, as charged in the Informations.

4. CRIMINAL LAW; SIMPLE STATUTORY RAPE AND SIMPLE RAPE; ACCUSED-APPELLANT FOUND GUILTY THEREOF; PROPER IMPOSABLE PENALTY.— [T]he Court finds accused-appellant De Guzman guilty of Simple Statutory Rape in Crim. Case No. 11-0540 and Simple Rape in Crim. Case No. 11-0400 under paragraph 1(d) of Article 266-A in relation to Article 266-B of the RPC as amended by RA No. 8353. In Crim. Case No. 11-0400, AAA was 15 years old when the rape occurred, while in Crim. Case No. 11-0540, she was below 12 years old. To stress, De Guzman cannot be held liable for qualified rape since the prosecution failed to properly designate in the Informations that De Guzman is actually BBB's common-law husband (which was proven during the trial) and not AAA's stepfather. Nevertheless, De Guzman should still suffer the penalty of *reclusion perpetua* for Simple Statutory Rape and Simple Rape.

5. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT, MODIFIED.— [T]he awards for damages should be modified to conform to recent jurisprudence. Thus, the proper amount of civil indemnity, moral damages, and exemplary damages should all be increased to PhP75,000.00 each for both offenses. Furthermore, the monetary awards should be subject to the interest rate of six percent (6%) *per annum* from the finality of the Decision until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

HERNANDO, *J.*:

This is an appeal under Rule 124[1] of the Rules of Court challenging the May 26, 2015 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06680, which affirmed with modification the January 20, 2014 Joint Decision[3] of the Regional Trial Court (RTC), Las Piñas City, Branch 254, in Crim. Case Nos. 11-0400 and 11-0540, finding accused-appellant Romeo De Castro De Guzman (De Guzman) guilty of two counts of Qualified Rape.

The Antecedents

De Guzman appeals his conviction for two counts of qualified rape. He denies the charges and argues that his guilt has not been proven beyond reasonable doubt.

In two separate Informations both dated May 11, 2011, De Guzman was charged with Qualified Rape in relation to Republic Act (RA) No. 7610, the accusatory portions of which read:

In Criminal Case No. 11-0400 (Qualified Rape in relation to RA 7610):

That on or about the 9th day of May 2011, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there willfully,

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[1] As amended by A.M. No. 00-5-03-SC.

[2] *Rollo*, pp. 2-18; penned by Associate Justice Magdangal M. de Leon and concurred in by Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela.

[3] CA *rollo*, pp. 31-42; penned by Presiding Judge Gloria Butay Aglugub.

unlawfully and feloniously had carnal knowledge [of AAA[4]], a fifteen (15)[-]year old minor, without her consent, by means of force, threat and intimidation, and by taking advantage of his moral ascendancy over her, he being her step-parent, thereby subjecting her to sexual abuse; the act complained of is prejudicial to the physical, psychological and moral development of the said minor, and which degrades or demeans her intrinsic worth and dignity as a human being.

CONTRARY TO LAW.[5]

In Criminal Case No. 11-0540 (Qualified Rape in relation to RA 7610):

That sometime in year 2003, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there willfully, unlawfully and feloniously had carnal knowledge [of AAA], an eight (8)[-]year old minor, without her consent, by means of force, threat and intimidation, and by taking advantage of his moral ascendancy over her, he being her step-parent, thereby subjecting her to sexual abuse; the act complained of is prejudicial to the physical, psychological and moral development of the said minor, and which degrades or demeans her intrinsic worth and dignity as a human being.

CONTRARY TO LAW.[6]

During his arraignment, De Guzman entered a plea of "not guilty."[7]

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[4] "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 Rule on Violence against Women and Their Children, effective November 15, 2004." (*People v. Dumadag*, 667 Phil. 664, 669 [2011]).

[5] CA *rollo*, p. 45.

[6] *Id.* at 47.

[7] Records, p. 22.

At the pre-trial, the parties stipulated on the following: a) jurisdiction of the court; b) identity of the accused; and c) the victim was still a minor at the time of the alleged incidents.[8]

The pertinent facts, as stated in the Appellee's Brief (represented by the Office of the Solicitor General), are as follows:

> AAA was born on January 20, 1996. After the separation of her mother BBB[9] with her biological father, BBB cohabited with appellant, who acted as his stepfather. Appellant also has two (2) biological children with BBB.
>
> Sometime in 2003, when AAA was only eight (8) years old, appellant who was then at the small extension of their house at x x x asked AAA to join him. At that time[,] BBB was out of their house doing laundry. AAA's siblings were also asleep.
>
> AAA approached appellant who made her lie down on the floor and removed her shorts and underwear. Appellant then inserted his penis [into] AAA's vagina. AAA felt pain but did not shout because prior to this, appellant warned AAA against reporting the incident to anyone, including her mother. Appellant also told AAA not to make any noise. Out of fear, AAA did not report the rape to her mother.
>
> AAA was repeatedly raped on separate occasions, which she did not also report to her mother. In order to avoid appellant, AAA often spent time with her friends outside of their house. Meanwhile, AAA's mother did not appreciate this so she shaved AAA's head. At this point, AAA also stopped studying.
>
> Thereafter, AAA transferred to the house of her aunt, [CCC[10]], x x x where she continued her studies. While living with her aunt [CCC] sometime in March 2011, she disclosed to her aunt [CCC] that appellant raped her.
>
> Another incident of rape occurred when AAA returned to their new house x x x. On May 9, 2011, at around 2:00 p.m., appellant approached AAA while [she was sorting out] her younger brothers'

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[8] *Id.* at 37.

[9] *Supra* note 4.

[10] *Id.*

toys. He immediately removed AAA's shorts and underwear, and instructed AAA to lie down on the floor. Appellant then inserted his penis into AAA's vagina. AAA did not shout because she was scared. No one was home at the time of the said incident because AAA's mother was doing laundry at her employer's house, while her brothers were playing outside.

The following day, or on May 10, 2011, at around 11:00 a.m., AAA's aunt [DDD[11]] went to their house x x x when she learned from [CCC] about what happened. Afterwards, [DDD] brought AAA to her own house where she confronted AAA regarding the sexual abuse committed by appellant. AAA then confirmed that appellant indeed raped her.

Soon after, AAA and her aunt [DDD] went to her uncle [EEE[12]]. They then proceeded to the Department of Social Welfare and Development (DSWD) and to the Las Piñas Police Station for purposes of reporting AAA's rape.[13] (Citations omitted)

During trial, AAA's birth certificate[14] was presented which revealed that she was only around seven years old (not yet eight years old as indicated in the Information) when the first rape was committed against her in 2003, as she was born on January 20, 1996. AAA was 15 years old when she was raped on May 9, 2011.

The prosecution likewise established that AAA submitted herself to a medical examination wherein the attending medico-legal officer found that she had both shallow and deep healed hymenal lacerations, which confirmed that there was a prior blunt force or penetrating trauma to the area. This was affirmed by the Initial Medico-Legal Report[15] dated May 10, 2011 and the subsequent Medico-Legal Report No. R11-748[16] dated May 13, 2011.

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[11] *Id.*

[12] *Id.*

[13] CA *rollo*, pp. 95-96.

[14] Records, p. 58.

[15] *Id.* at 56.

[16] *Id.* at 190.

Police Chief Inspector Editha Martinez, who conducted the medico-legal examination, affirmed the findings in the medico-legal report during her testimony. She stated that a possible cause of the lacerations would be any hard blunt object that penetrated the hymen, which could include an erect penis.[17] On cross-examination, though, she admitted that it was possible that the trauma caused on the hymen could have been self-inflicted.[18]

Significantly, AAA, during her testimony, affirmed that De Guzman is her stepfather.[19] She also narrated how De Guzman took advantage of her during the 2003 incident, as follows:

> [Pros. Sylvia I. Butial]: Can you tell the Court of any incident that transpired in 2003, inside your house x x x?
> [AAA]: My mother was not at home then. She was doing the laundry and my siblings were then asleep when this incident happened, Ma'am.
>
> Q: Do you recall the [month] when this incident happened?
> A: No more, Ma'am.
>
> Q: What happened when your mother was not at home and your siblings were then sleeping?
> A: My stepfather who was then at the small extension of our house called me, Ma'am.
>
> Q: Can you tell me the name of your stepfather?
> A: Romeo De Castro De Guzman, Ma'am.
>
> Q: What did you do when Romeo De Castro De Guzman called you x x x?
> A: I approached [him], Ma'am.
>
> Q: What happened when you approached Romeo De Castro De Guzman?
> A: He made me lie down on the floor and removed my shorts and panty, Ma'am.

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[17] TSN, August 30, 2013, pp. 10-12.

[18] *Id.* at 16.

[19] TSN, February 28, 2012, p. 5.

Q: What happened after he removed your shorts and panty?
A: He inserted his penis [into] my vagina, Ma'am.

Q: How did you feel when he did that to you?
A: It was painful, Ma'am.

Q: Did you shout when he did that to you?
A: No, Ma'am.

Q: Why did you not shout?
A: Because before he did that to me, he told me not to report to my mother nor to anyone and not to make any noise, Ma'am.

Q: What else did he tell you before he inserted his penis [into] your vagina?
A: That's all, Ma'am.

Q: Did you tell your mother [about] what the accused did to you?
A: No, Ma'am.

Q: Why not?

x x x x x x x x x

A: Because I was scared, Ma'am.[20]

Likewise, AAA narrated what De Guzman did to her during the May 9, 2011 incident, as follows:

[Pros. Sylvia I. Butial]: Can you also tell the Court if there was any unusual incident that transpired on May 9, 2011?
[AAA]: Yes, Ma'am.

Q: What was that incident?
A: That same day, he again did the same thing he was doing to me, Ma'am.

Q: Who is that person you are referring to?
A: Romeo De Guzman, Ma'am.

Q: Can you tell the Court what exactly did Romeo De Guzman do to you?
A: He removed my shorts and my panty and he inserted his penis [into] my vagina, Ma'am.

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[20] *Id.* at 7-10.

Q: How old were you then?
A: I was 15 years old, Ma'am.[21]

AAA stated that she was alone at the time and while she was sorting the toys of her siblings, De Guzman approached her. Thereafter, he immediately removed her shorts and panty and instructed her to lie down on the floor. She did not do anything because she did not know who to ask help from in case she had the chance to do so. Moreover, she explained that she did not shout because she was scared, and that she did not tell her mother about what happened. After the harrowing experience, AAA stayed at her cousin's house. Afterwards, AAA's aunt, DDD, asked AAA about the rape incidents. AAA then relayed to DDD that De Guzman raped her. In turn, DDD told her brother EEE about what happened to AAA. Together, they brought AAA to the Department of Social Welfare and Development (DSWD) to report the crime.[22]

On cross-examination, AAA averred that her brothers were sleeping when the 2003 incident occurred. She likewise revealed that she had earlier told her aunt CCC about what De Guzman did to her.[23]

AAA further narrated that in April 2010, her mother sent her to stay with her aunt CCC. AAA explained that at the time, she would usually go out with her friends to avoid staying at home with De Guzman. Unaware of the reasons for such display of attitude, she caught the ire of her mother causing the latter to shave her head and to force her to discontinue her studies.[24] Even so, AAA revealed that she was terrified to tell her mother about the rape incidents because she feared that her mother would only scold her and not support her. She likewise claimed that there were other rape incidents.[25]

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

[22] *Id.* at 12-18.

[23] *Id.* at 27 and 31.

[24] TSN, May 29, 2012, p. 4.

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

DDD, BBB's sister and AAA's aunt, testified that she asked for the transfer of custody of AAA to the DSWD-Marillac Hills because BBB was trying to convince AAA to desist from pursuing the case.[26]

The defense presented De Guzman as its lone witness. De Guzman denied the accusations against him. He alleged that AAA was a problematic child and even joined a gang so much so that her mother shaved her head. Due to this, De Guzman and BBB sent AAA to live with her aunt CCC in Montalban. He likewise claimed that AAA was angry at him because he always scolds her, especially since AAA was seeing her boyfriend. He claimed that AAA's aunts, the ones who helped AAA file the case, were averse to him. He reiterated that there was no truth in the allegations.[27]

The Ruling of the Regional Trial Court

In a Joint Decision[28] dated January 20, 2014, the RTC ruled that the victim's testimony established the existence of the elements of rape under Article 266-A, paragraph (1)(a) of the Revised Penal Code (RPC), as amended. It found that AAA's testimony positively and categorically demonstrated that De Guzman succeeded in having carnal knowledge of her. It added that in an incestuous rape of a minor, there is no need to prove employment of actual force or intimidation since the overpowering moral influence of the father (supposedly in this case, stepfather) would suffice. The trial court further held that AAA's accusations cannot be dismissed and treated as a mere concoction since a child of such a young age who willingly underwent medical examination and the rigors of a public trial to seek justice cannot be deemed as someone who was merely making up the accusations.

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[26] TSN, December 4, 2012, p. 10.

[27] TSN, November 22, 2013, pp. 5-17.

[28] CA *rollo*, pp. 31-42.

The RTC appreciated the qualifying circumstances of minority and relationship. The RTC noted that AAA was only eight years old during the 2003 rape incident and 15 years old during the 2011 rape incident. Moreover, the RTC held that the qualifying circumstance of relationship, *i.e.*, that De Guzman was the victim's stepparent, was established by the admission of De Guzman himself.[29] Meanwhile, De Guzman's denial and claim that the victim's aunts harbored anger towards him were not considered by the trial court, his denial being self-serving and cannot prevail over the positive and categorical testimony of the victim. Hence, the dispositive portion of the RTC's Joint Decision reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered, finding accused ROMEO DE CASTRO DE GUZMAN, **GUILTY *as charged*** in **Criminal Case Nos. 11-0400 and 11-0540**, and is hereby sentenced to suffer the penalty of *Reclusion Perpetua*, ***for each case***, and to pay the private complainant AAA, the amount[s] of SEVENTY[-]FIVE THOUSAND PESOS (₱75,000.00) as civil indemnity, SEVENTY[-]FIVE THOUSAND PESOS (₱75,000.00), as moral damages, and Fifty Thousand Pesos (₱50,000.00), as exemplary damages.
>
> SO ORDERED.[30]

Aggrieved, De Guzman appealed[31] before the Court of Appeals and assigned this sole error:

> THE COURT <u>*A QUO*</u> GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE OFFENSES CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.[32]

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[29] *Id.* at 40-41.

[30] *Id.* at 41-42.

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

[32] *Id.* at 59.

The Ruling of the Court of Appeals

The CA, in its assailed May 26, 2015 Decision,[33] likewise held that the twin circumstances of minority of the victim and her relationship to the offender concurred and raised the offense to qualified rape. It likewise found the testimonies of AAA and the other prosecution witnesses to be more credible. Additionally, it accorded great weight to the findings of fact of the trial court.[34] Hence, the appellate court affirmed the RTC's ruling finding De Guzman guilty of two counts of qualified rape with modification on the award of exemplary damages, as follows:

WHEREFORE, the RTC *Joint Decision* dated January 20, 2014 is **AFFIRMED** with **MODIFICATION** as to the amount of exemplary damages, which should be reduced from FIFTY THOUSAND PESOS (₱50,000.00) to THIRTY THOUSAND PESOS (₱30,000.00).

SO ORDERED.[35]

Discontented, De Guzman appealed[36] his case before Us. Thus, the main issue is whether or not he is guilty beyond reasonable doubt of the felony of Qualified Rape.

The Ruling of the Court

The appeal is partly meritorious.

De Guzman argues that since AAA's testimony was unnatural, inconsistent and unconvincing, her credibility was doubtful. He contends that it should not be assumed that AAA's hymenal lacerations resulted from rape incidents as these may have been caused by something else. Moreover, even if the lacerations were caused by forcible sexual intercourse, it does not automatically mean that De Guzman was the perpetrator

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[33] *Rollo*, pp. 2-18.

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

[35] *Id.* at 17-18.

[36] *Id.* at 19-21.

considering that she has a boyfriend. Finally, De Guzman vehemently denies the charges against him.[37]

The People counters that De Guzman exercised moral ascendancy over AAA as he assumed parental authority over her during her formative years. Hence, actual force or intimidation need not be employed when the influence of De Guzman over her already suffices. Moreover, due to AAA's minority at the time of the commission of the felonies, the trial court correctly qualified the offense of rape pursuant to Article 266-B (1) of the RPC.[38] Moreover, it insists that De Guzman's defense of denial was inherently weak and could not prevail over AAA's positive testimony, which was supported by the medico-legal report and the testimony of the examining physician. It emphasizes that the trial court correctly ruled that her testimony deserved merit, as it was in the best position to assess the deportment of the witnesses during trial. This is notwithstanding the alleged inconsistencies in her testimony, which even erased the suspicion of a rehearsed testimony and manifested her innocence and spontaneity in relating her story despite the rigors of a public trial. It likewise argues that AAA's failure to physically resist should not be construed against her credibility as it did not negate the commission of rape against her especially when intimidated and instilled with fear by the offender.[39]

Article 266-A, paragraph (1) of the RPC reads as follows:

Article 266-A. *Rape; When and How Committed*. — Rape is committed –

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;
b) When the offended party is deprived of reason or is otherwise unconscious;

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[37] *Id.* at 64-68.

[38] *Id.* at 100.

[39] *Id.* at 100-111.

c) By means of fraudulent machination or grave abuse of authority; and
d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x x x x x x[40]
(Emphasis supplied)

Under Article 266-B of the RPC, Rape under paragraph 1 of Article 266-A shall be punished by *reclusion perpetua*. However, rape is considered qualified and the death penalty shall be imposed –

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim[.]

Relevantly, the elements of qualified rape are: "(1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under [eighteen] years of age at the time of the rape; and (5) the offender is [either] a parent (whether legitimate, illegitimate or adopted), [ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent] of the victim."[41] The minority of the victim **and** his or her relationship with the offender should **both** be alleged in the Information and proven beyond reasonable doubt during trial in order to qualify the rape charge as these circumstances have the effect of altering the nature of the rape and its corresponding penalty. Otherwise, the death penalty cannot be imposed upon the offender.[42]

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[40] REVISED PENAL CODE, Article 266-A, as amended by Republic Act No. 8353 (1997).

[41] *People v. Salaver*, G.R. No. 223681, August 20, 2018, citing *People v. Colentava*, 753 Phil. 361, 372-373 (2015).

[42] *People v. Begino*, 601 Phil. 182, 190 (2009), citing *People v. Ferolino*, 386 Phil. 161, 179 (2000); *People v. Bayya*, 384 Phil. 519, 527 (2000);

In this case, AAA's minority was properly alleged and indisputably proven during trial. She was below 18 years old at the time the crimes were committed against her. Moreover, it was proven by evidence that De Guzman forced AAA into engaging in sexual congress by using threats and intimidation and without her consent, in addition to his moral ascendancy over her.

Corollarily, it was alleged in the Informations that De Guzman was AAA's "stepfather." A "stepfather" is the "husband of one's mother by virtue of a marriage subsequent to that of which the person spoken of is the offspring. It presupposes a legitimate relationship between the appellant and the victim's mother."[43]

However, during trial, the prosecution failed to establish this stepparent-stepdaughter relationship between De Guzman and AAA. No proof of marriage was presented in order to establish De Guzman's legal relationship with BBB. In other words, De Guzman cannot be considered as the stepfather of AAA as alleged in the Informations. On the contrary, records show that De Guzman was actually the common-law spouse of BBB as he was not legally married to her. Since De Guzman's relationship with AAA as alleged in the Informations was not proven beyond reasonable doubt, De Guzman cannot be convicted of Qualified Rape, only Simple Statutory Rape and Simple Rape. Stated differently, "the crime is only simple rape, although the State successfully proves the common-law relationship, where the information does not properly allege the qualifying circumstance of relationship between the accused and the female. This is because the right of the accused to be informed of the nature and cause of the accusation against him is inviolable."[44]

People v. Maglente, 366 Phil. 221 (1999); *People v. Ilao*, 357 Phil. 656, 672 (1998); *People v. Ramos*, 357 Phil. 559, 575 (1998).

[43] *People v. Begino, id.*, citing *People v. Radam, Jr.*, 434 Phil. 87, 100 (2002).

[44] *People v. Arcillas*, 692 Phil. 40, 42 (2012); see *People v. Mamac*, 388 Phil. 342, 351-352 (2000); *People v. Fraga*, 386 Phil. 884, 909-911 (2000); *People v. Balacano*, 391 Phil. 509, 525-527 (2000).

According to *People v. Begino*,[45] the "qualifying circumstances must be properly pleaded in the indictment. If the same are not pleaded but proved, they shall be considered only as aggravating circumstances since the latter admit of proof even if not pleaded. It would be a denial of the right of the accused to be informed of the charges against him and consequently, a denial of due process, if he is charged with simple rape and be convicted of its qualified form, although the attendant circumstance qualifying the offense and resulting in the capital punishment was not alleged in the indictment on which he was arraigned."[46] Since the qualifying circumstance of relationship was not properly pleaded and proved in the case at bench, De Guzman should only be convicted of Simple Statutory Rape and Simple Rape under paragraph 1 of Article 266-A of the RPC.

To reiterate, AAA was below 18 years old at the time of the commission of the crimes against her. The evidence showed that De Guzman had carnal knowledge of the victim on two occasions by using threats and intimidation and his moral ascendancy over her. Upon assessment, the manner by which AAA narrated the commission of the felonies, which was corroborated by the medico-legal officer, confirmed that De Guzman was guilty beyond reasonable doubt of Simple Statutory Rape in Crim. Case No. 11-0540 and Simple Rape in Crim. Case No. 11-0400. Indeed, "[i]t is settled that when a rape victim's account is straightforward and candid, and is corroborated by the medical findings of the examining physician, the testimony is sufficient to support a conviction."[47] Definitely, AAA's positive and categorical testimony prevails over De Guzman's self-serving denial without sufficient proof, as well as his attempt to cast doubt upon the motives of AAA's aunts to pursue the case.[48] This Court has consistently emphasized

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[45] *People v. Begino, supra* note 43.

[46] *Id.* at 192, citing *People v. Garcia*, 346 Phil. 475, 504-505 (1997).

[47] *People v. Traigo*, 734 Phil. 726, 730 (2014).

[48] *People v. Colentava*, *supra* note 42 at 377-378.

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.'"[49]

Based on Our evaluation, the testimonies of the prosecution witnesses should be accorded great weight since the trial court found the said testimonies more convincing as these corroborated each other on material points. Absent any indication that the trial court committed errors in its appreciation of the evidence, We see no reason to deviate from the factual findings of the trial court that De Guzman had carnal knowledge of AAA on two instances, as charged in the Informations.[50]

In conclusion, the Court finds accused-appellant De Guzman guilty of simple statutory rape in Crim. Case No. 11-0540 and Simple Rape in Crim. Case No. 11-0400 under paragraph 1(d) of Article 266-A in relation to Article 266-B of the RPC as amended by RA No. 8353. In Crim. Case No. 11-0400, AAA was 15 years old when the rape occurred while in Crim. Case No. 11-0540, she was below 12 years old. To stress, De Guzman cannot be held liable for qualified rape since the prosecution failed to properly designate in the Informations that De Guzman is actually BBB's common-law husband (which was proven during the trial) and not AAA's stepfather. Nevertheless, De Guzman should still suffer the penalty of *reclusion perpetua* for Simple Statutory Rape and Simple Rape.[51] Also, the awards for damages should be modified to conform to recent jurisprudence. Thus, the proper amount of civil indemnity, moral damages, and exemplary damages should all be increased to PhP75,000.00 each for both offenses.[52] Furthermore, the

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[49] *People v. Salaver*, *supra* note 42, citing *People v. Dalipe*, 633 Phil. 428, 448 (2010).

[50] *People v. Traigo*, *supra* note 47.

[51] *People v. Tulagan*, G.R. No. 227363, March 12, 2019.

[52] *People v. Jugueta*, 783 Phil. 806, 849 (2016).

monetary awards should be subject to the interest rate of six percent (6%) *per annum* from the finality of the Decision until fully paid.[53]

WHEREFORE, the instant appeal is **DISMISSED**. The assailed May 26, 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06680 is **AFFIRMED with MODIFICATIONS** in that accused-appellant Romeo De Castro De Guzman is found **GUILTY** beyond reasonable doubt of Simple Statutory Rape in Crim. Case No. 11-0540 and Simple Rape in Crim. Case No. 11-0400 and is thus sentenced to suffer the penalty of *reclusion perpetua* for each offense. Moreover, the awards for civil indemnity, moral damages, and exemplary damages shall be increased to PhP75,000.00 each for every offense. Lastly, all amounts due shall earn legal interest of six percent (6%) *per annum* from the date of the finality of this Decision until full payment.

SO ORDERED.

Perlas-Bernabe (*Chairperson*), *Reyes, A. Jr., Inting*, and *Zalameda*,[*] *JJ.*, concur.

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[53] *People v. Roy*, G.R. No. 225604, July 23, 2018, citing *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013).

[*] Designated additional member per Special Order No. 2727 dated October 25, 2019.

THIRD DIVISION

[G.R. No. 229515. November 27, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NIDA GUILLERMO *y* DE LUNA and DESIREE GUILLERMO *y* SOLIS,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ESSENTIAL ELEMENTS; THE DELIVERY OF THE ILLEGAL DRUGS TO THE POSEUR-BUYER AND THE RECEIPT OF THE BUY-BUST MONEY BY THE SELLER CONSUMMATE THE TRANSACTION.— For a successful prosecution of the crime of illegal sale of dangerous drugs, it is essential to prove beyond reasonable doubt the following: (1) the identity of the buyer, the seller, the object of the sale and the consideration and (2) the delivery of the thing sold and its payment. The delivery of the illegal drugs to the *poseur*-buyer and the receipt of the buy-bust money by the seller are the circumstances that consummate the transaction. Proof of the transaction must be credible and complete. In every criminal prosecution, it is the State, and no other, that bears the burden of proving the illegal sale of the dangerous drug beyond reasonable doubt.

2. ID.; ID.; ID.; THE ABSENCE OF PREVIOUS AGREEMENT BETWEEN THE POSEUR-BUYER AND THE SELLER AS TO THE SPECIFIC QUANTITY OF DANGEROUS DRUGS AND THE HIGHLY QUESTIONABLE CONDUCT OF THE BUY-BUST OPERATION CREATE A REASONABLE DOUBT AS TO WHETHER THE ILLEGAL SALE OF DANGEROUS DRUGS TRANSPIRED; EVIDENCE TO BE BELIEVED MUST NOT ONLY PROCEED FROM THE MOUTH OF A CREDIBLE WITNESS, BUT MUST BE CREDIBLE IN ITSELF, SUCH AS THE COMMON EXPERIENCE AND OBSERVATION OF MANKIND CAN PROVE AS PROBABLE UNDER THE CIRCUMSTANCES.— In this case, there is a reasonable doubt as to whether there was even a sale that transpired between IO1

Tactac and the accused because of the highly questionable nature of the buy-bust money for Us to believe that there was a legitimate buy-bust operation that was conducted by the police. Be it noted that evidence to be believed must not only proceed from the mouth of a credible witness, but must be credible in itself, such as the common experience and observation of mankind can prove as probable under the circumstances. According to the prosecution, the subject of the sale is ₱350,000.00 worth of *shabu*. x x x. [I]t is highly impossible that a sale of dangerous drugs between the *poseur*-buyer and the seller would be consummated without a specific quantity of dangerous drugs agreed beforehand. For drug pushers, *shabu* is a very precious commodity that even a speck of it has money value. Thus, the testimony of the PDEA officers that the subject of the sale would only involve ₱350,000.00 worth of *shabu* without any previous agreement as to the specific quantity is dubious and not worthy of belief.

3. **ID.; ID.; ID.; THE IDENTITY OF THE DANGEROUS DRUG MUST BE ESTABLISHED WITH MORAL CERTAINTY, CONSIDERING THAT THE DANGEROUS DRUG ITSELF FORMS AN INTEGRAL PART OF THE *CORPUS DELICTI* OF THE CRIME; THE FAILURE 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, WARRANTING AN ACQUITTAL.—** In addition to the questionable conduct of the buy-bust operation, 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. 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.

4. **ID.; ID.; CHAIN OF CUSTODY RULE; 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 HIS REPRESENTATIVE OR COUNSEL, AS WELL AS A REPRESENTATIVE FROM THE MEDIA AND THE DEPARTMENT OF JUSTICE (DOJ) AND ANY ELECTED PUBLIC OFFICIAL; NON-COMPLIANCE THEREOF NOT PROPERLY JUSTIFIED BY THE ARRESTING OFFICERS IN CASE AT BAR.— 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 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. After going over the records of this case, the prosecution was not able to preserve the integrity and evidentiary value of the seized items because it was not shown that the marking of the seized items was done in the presence of the accused and/or his representative. The testimony of IO1 Tactac did not mention that the marking of the seized items was done in the presence of the accused and/or his representative. She merely testified that she marked the seized items in the PDEA office. In fact, during the testimony of IO1 Lorilla, he claimed that the presence of the accused during the inventory of the seized items was no longer necessary. Another procedural lapse committed by the PDEA officers is the fact that there was no DOJ representative present when the inventory and taking of photographs of the seized items were done. This procedural lapse can be excused under Section 21 (a), Article II of the Implementing Rules and Regulations of R.A. 9165, provided that non-compliance with the procedure was properly justified by the arresting officers. However, the PDEA officers not only failed to comply with the requirement, but also failed to offer any explanation for their non-compliance and passed it off as unnecessary.

5. **ID.; ID.; ID.; THE FAILURE OF THE PROSECUTION TO IDENTIFY THE PERSON WHO RECEIVED AND BROUGHT THE SEIZED ITEMS TO THE CRIME LABORATORY FOR EXAMINATION, WHO RETRIEVED THE SAME FROM THE EVIDENCE CUSTODIAN AND BROUGHT TO THE COURT TO BE IDENTIFIED AS THE SAME ITEMS CONFISCATED FROM THE ACCUSED, CONSTITUTE A BREAK IN THE CHAIN OF**

CUSTODY THAT TAINTED THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS.— Another break in the chain of custody that tainted the integrity and evidentiary value of the seized items was the failure of the prosecution to identify the person who received and brought the request for laboratory examination along with the seized items to the crime laboratory. Even though the stamped request indicated that it was IOI Tactac who brought the same to the crime laboratory, and that it was received by FC Seville, the latter was unsure who brought the same to the crime laboratory. x x x. While the parties entered into stipulation that FC Seville prepared the chemistry report after conducting the laboratory examination, nobody identified who brought the seized items to the crime laboratory. Nobody also identified who retrieved the seized items from the evidence custodian and brought it to the court. There is no clear proof that the *shabu* allegedly confiscated from both the accused was the same item brought to the crime laboratory, examined in the laboratory, retrieved from the evidence custodian, and brought to the court to be identified as the same items confiscated from the accused.

6. **ID.; ID.; ID.; THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTIES ONLY APPLIES WHEN THE POLICE OFFICERS ARE SHOWN TO HAVE COMPLIED WITH THE STANDARD CONDUCT OF OFFICIAL DUTY AS PROVIDED FOR BY LAW, BUT THE SAME CANNOT WORK IN FAVOR OF THE POLICE OFFICERS WHERE THE RECORDS OF THE CASE IS REPLETE WITH MAJOR FLAWS IN THE PRESERVATION OF THE INTEGRITY AND EVIDENTIARY VALUE OF THE ILLEGAL DRUGS SEIZED FROM THE ACCUSED; SEVERAL LAPSES COMMITTED BY THE POLICE OFFICERS IN PRESERVING THE INTEGRITY AND EVIDENTIARY VALUE OF THE ALLEGED *SHABU* CONFISCATED FROM BOTH THE ACCUSED RENDER THEIR ACQUITTAL PROPER.—** This Court is not unmindful of the fact that police officers have in their favor the presumption of regularity in the performance of official duties. However, the said presumption only applies when the officers are shown to have complied with the standard conduct of official duty as provided for by law. It cannot prevail over the Constitutional

presumption of innocence, and cannot, by itself, constitute proof beyond reasonable doubt. In this case, the presumption of regularity cannot work in favor of the PDEA officers since the records of the case is replete with major flaws in the preservation of the integrity and evidentiary value of the seized items as required under R.A. 9165. The highly dubious and unbelievable story of the police officers that they conducted a legitimate buy-bust operation against Nida and Desiree, compounded by the serious lapses they committed in preserving the integrity and evidentiary value of the alleged *shabu* confiscated from both accused, render their acquittal proper.

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.*:

For automatic review before Us is the Decision[1] dated November 10, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05786 affirming the Decision[2] dated September 5, 2012 of the Regional Trial Court of Caloocan City, Branch 120 (RTC) in Crim. Case No. C-84928, finding Nida Guillermo *y* De Luna (Nida) and Desiree Guillermo *y* Solis (Desiree) guilty beyond reasonable doubt of Illegal Sale of Dangerous Drugs.

On March 29, 2017, We required the parties to file their respective supplemental briefs.[3] However, the parties filed a Manifestation[4] adopting their Appellant's[5] and

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[1] Penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Noel G. Tijam (Former Member of the Court) and Francisco P. Acosta, concurring; *Rollo*, pp. 2-18.

[2] Penned by Judge Aurelio R. Ralar, Jr.; CA *rollo*, pp. 26-38.

[3] *Rollo*, pp. 24-25.

[4] *Id*. at 27-28, 31-32.

[5] CA *rollo*, pp. 57-75.

Appellee's Briefs,[6] which sufficiently raised all their claims and arguments.

Nida and Desiree were charged in an Information[7] for violation of Section 5, in relation to Section 26, Article II of Republic Act No. (R.A.) 9165, which reads:

> That on or about the 13th day of September, 2010 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, without being authorized by law, did then and there willfully, unlawfully and feloniously by direct overt acts, sell and deliver to IO1 GRACE L. TACTAC (who posed as buyer) METHYLAMPHETAMINE HYDROCHLORIDE (*Shabu*), weighing 47.4739 grams, without the corresponding license or prescription therefore, and knowing the same to be such.
>
> Contrary to Law.

During the arraignment, Nida and Desiree pleaded not guilty. As such, trial ensured.

Version of the Prosecution

Intelligence Officer 1 Grace L. Tactac (IO1 Tactac) testified that on or about 9:00 a.m. of September 13, 2010, IO1 Tactac together with her colleagues namely, IO2 Lorenzo Advincula, Jr. (IO2 Advincula), IO1 Arnold Camayang, IO1 Gerald Gasun and IO1 Berlin Orlames[8] were called by their team leader, IA1 Joshua Arquero (IA1 Arquero). IA1 Arquero informed the team that a buy-bust operation will be conducted against a certain *alias* "Nida," *alias* "Jojo," and *alias* "Randy" based on information given by a confidential informant regarding the drug activities of said individuals.

During the briefing, IA1 Arquero said that the subject of the sale was ₱350,000.00 worth of *shabu*. IO1 Tactac was

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[6] *Id*. at 101-123.

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

[8] TSN dated December 2, 2010, p. 9.

designated as the *poseur*-buyer, while IO2 Advincula was the immediate back-up or the arresting officer. It was also agreed that the pre-arranged signal would be the loosening of IO1 Tactac's ponytail.[9] According to IO1 Tactac, she was ordered by IA1 Arquero to withdraw two pieces of genuine 500-peso bills from their logistics money. The two 500-peso bills, with serial numbers FD236082 and FD236083,[10] were marked by IO1 Tactac with "GLT" on the lower portion of the money. The two genuine bills were placed on the top and at the bottom of the boodle money made out of newspapers[11] and then placed inside an orange paper bag.[12]

IA1 Arquero ordered the confidential informant to call *alias* "Nida," later identified as herein accused Nida, to inquire about their meet-up place. Nida agreed to meet at Tropical Hut in Monumento. After the preparation of the documents relative to the buy-bust procedure, the team proceeded to the agreed meeting place.[13]

At around 11:00 a.m., the buy-bust team first coordinated with the Caloocan Police,[14] then proceeded to Tropical Hut. Upon arrival at Tropical Hut, the confidential informant called Nida to inform her that they were already at the meeting place. Meanwhile, the other members of the buy-bust team positioned themselves. After several minutes, Nida arrived. She asked IO1 Tactac if the money was ready. The latter answered in the affirmative. As testified by IO1 Tactac, Nida, however, had no opportunity to see the alleged buy-bust money nor count the same.[15]

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[9] Records, p. 7.

[10] Records, p. 24.

[11] TSN dated February 3, 2011, p. 22.

[12] Records, p. 7.

[13] *Id*.

[14] *Id*.

[15] TSN dated December 9, 2010, p. 13.

Thereafter, Nida went home to get the items. After several minutes, Nida texted the confidential informant to transfer to the 7-11 convenience store near Tropical Hut. After IOI Tactac informed IA1 Arquero of the change of venue, the former and the confidential informant proceeded to 7-11.[16] After about 20 minutes, Nida arrived with another female companion, later identified as herein accused Desiree, who was carrying a child and a blue paper bag.[17] Upon seeing IO1 Tactac and the confidential informant, Nida introduced Desiree as her niece. IO1 Tactac asked Nida if she already had the items. Nida then told Desiree to hand over the blue paper bag to IO1 Tactac, who examined the contents of the blue paper bag which contained a "White Horse" plastic. Inside the plastic is a DVD cover of "The Expendables." Inside the DVD cover were 11 plastic sachets containing white crystalline substance. Upon seeing the contents of the blue paper bag, IO1 Tactac handed the orange paper bag to Desiree. IO1 Tactac executed the pre-arranged signal of loosening her ponytail.

Upon seeing the signal, IO2 Advincula rushed to the scene. IO1 Tactac grabbed Desiree when she saw IO2 Advincula. IO1 Tactac introduced herself as a Philippine Drug Enforcement Agency (PDEA) agent. IO2 Advincula then arrived and arrested Nida. Thereafter, the rest of the buy-bust team arrived.[18] IOI Tactac testified that she seized the alleged buy-bust money from Desiree. Since it is not practical to conduct the inventory and marking of the seized items at the place of arrest, IAl Arquero instructed his team to return to the office at Barangay Pinyahan, Quezon City.[19] IO1 Tactac testified that during the transit from Monumento to Barangay Pinyahan, Quezon City, she was in possession of the seized items.

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[16] Records, p. 8.

[17] TSN dated December 2, 2010, p. 22.

[18] Records, p. 8.

[19] TSN dated December 2, 2010, pp. 28-29.

Upon arrival at the PDEA office, IO1 Tactac marked the 11 plastic sachets containing white crystalline substance and made an inventory of the same, then showed the seized items and the inventory she made to IO1 Crisanto Lorilla (IO1 Lorilla), the investigator on the case.[20]

During the testimony of IO1 Tactac, she claimed that she marked the blue paper bag labelled "Blue Magic" as "EXH A GLT 09-13-10," the plastic bag labelled "White Horse" as "EXH A-1 GLT 09-13-10" and the DVD cover labelled "The Expendables" as "EXH A-2 GLT 09-13-10." The 11 plastic sachets containing white crystalline substance as "EXH B1 GLT 09-13-10" to "EXH B11 GLT 09-13-10." The inventory was signed by IO1 Tactac, IO2 Advincula, Barangay Kagawad Jonathan Burce, and media representative from TV5 Ivy Rivera.[21] Photographs were also taken during the inventory.

IO1 Lorilla prepared the Request for Laboratory Examination[22] of the seized items and the Request for Drug Test[23] of both the accused. After examination, the seized items yielded positive for the presence of Methamphetamine Hydrochloride, or *shabu*, as evidenced by Chemistry Report No. PDEA-DD010-368.[24] However, the drug test on both the accused gave a negative result for the presence of Methamphetamine Hydrochloride, 3,4-Methamphetamine, MDMA, cocaine, and Tetrahydrocannabinol (THC) metabolites, as evidenced by Chemistry Report No. PDEA-DT010-272 to 273.[25]

IO2 Advincula corroborated the testimony of IO1 Tactac. IO2 Advincula added that because there were many people in

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[20] *Id*. at 33.

[21] Records, p. 22.

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

[23] *Id*. at 17.

[24] *Id*. at 56.

[25] *Id*. at 21.

the area, they just conducted the inventory and the taking of the photographs at the PDEA office.[26]

IO1 Lorilla testified that he was the investigator on the case. He claimed that when the buy-bust team reached their office, IO1 Tactac presented the seized items to him. After that, he called a barangay kagawad and a media representative to witness the inventory and the taking of the photographs.[27] In his cross-examination, when asked whether the inventory was witnessed by the accused or his counsel and a Department of Justice (DOJ) representative, IO1 Lorilla claimed that their presence were no longer necessary since he was satisfied that the inventory was witnessed by a barangay kagawad and a media representative.[28]

Forensic Chemist Shaila Seville (FC Seville) testified with the parties making the following admissions:

1. that FC Seville is an expert witness and as such received the Request for Laboratory Examination dated September 13, 2010;

2. that attached to the request is a blue paper bag containing 11 pieces of small heat-sealed plastic sachets containing white crystalline substance; and

3. that she conducted the examination on the eleven (11) plastic sachets containing white crystalline substance and after examination, the same yielded positive for the presence of Methamphetamine Hydrochloride, a dangerous drug, as evidenced by Chemistry Report No. PDEA-DD010-368.[29]

Thereafter, the prosecution rested its case.

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[26] TSN dated February 3, 2011, pp. 16-17.

[27] TSN dated March 10, 2011, pp. 8-9.

[28] *Id*. at 17-18.

[29] Records, p. 59.

Version of the Defense

Accused Nida, a vendor living in Caloocan City, testified that on September 13, 2010, she and her son John Ryan, were on their way to Potrero Public School (Potrero) when they met her niece, Desiree, who was about to bring her child to the Fabella Hospital (Fabella). Thus, they boarded the jeepney together. In the jeepney were other passengers, including an old woman and a man. The man asked Nida where the banks are located and the latter replied that there were plenty of banks in the area of the Manila Central University.

When they reached their destination, Nida, John Ryan, Desiree and her child alighted from the jeepney. Nida instructed Desiree to wait for her ride going to Recto, since she and John Ryan will cross the street. While Nida's son was buying candies, two women suddenly grabbed her. When Nida asked why they were grabbing her, the two women told her not to make a scene and just go with them. Nida was then forcibly brought inside the vehicle. Inside the vehicle, Nida was accused of being the companion of the old lady and the man who were in the jeepney with her and Desiree. Nida was then frisked and was told that if she could find her alleged companions, they will release her.

Nida was brought to the PDEA office where she also saw Desiree. There, Nida was informed that they were selling *shabu* and was shown the plastic sachets containing the white crystalline substance on top of a table. She and Desiree were asked to stand beside the table and look at the evidence.[30] Their pictures were taken and the Barangay Kagawad said, "*picture taking lang to ha, wala kaming kinalaman diyan*."[31]

When asked about the accusations of IO1 Tactac, Nida denied the same. She claimed that IO1 Tactac said that the items allegedly recovered from them will not be used against them and that IO1 Tactac will help them.[32] In fact, she heard IO1

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[30] TSN dated November 20, 2011, pp. 11-12.

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

[32] TSN dated November 24, 2011, p. 8.

Tactac saying "*dapat hinuli natin yung talagang totoong involved diyan at hindi ang dalawang iyan.*"[33]

Desiree testified, corroborating the testimony of Nida, that on September 13, 2010, she was on her way to Fabella with her child when she saw Nida and John Ryan who were on their way to Potrero. After they parted ways, two men suddenly grabbed her causing her child to fall. The two men released her to pick up her child. Thereafter, they boarded Desiree in their vehicle. When she asked why were they arresting her, the two men just told her to keep quiet and to just go along with them. Inside the vehicle, Desiree was frisked and when she asked what were they searching, they told her to just bring it out. Desiree was confused and does not have any idea as to what she should bring out. Eventually she was brought to the PDEA office and was surprised to see Nida there.[34]

At the PDEA office, Desiree was informed that she was in conspiracy with Nida in selling illegal drugs. Thereafter, they showed her the plastic sachets on top of the table which the police said came from them. The PDEA officers made Desiree and Nida stand beside the table for the picture taking. Desiree then heard IO1 Tactac say that they should be released, since they were not the persons they were looking for. Further, she heard another male person say "*pakawalan na lang natin sila kasi hindi naman sila yung mga taong may hawak nito*." Thus, Desiree anticipated that they will be released. However, they were later subjected to a drug test. Then, Desiree was ordered to call someone to fetch her child, otherwise, the latter will be brought to the Department of Social Welfare and Development. Desiree called her aunt to fetch her child.[35]

John Ryan, the 14-year old son of Nida, corroborated the testimony of Nida. Additionally, John Ryan testified that when he saw his mother being taken by two female persons, he was

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[33] *Id*. at 11.

[34] TSN dated March 15, 2012, pp. 4-12.

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

not able to approach his mother because of fear. He then decided to go home and informed her aunt Virginia Guillermo (Virginia) that his mother was taken.[36]

The last witness of the defense, Estrella Guillermo, is the mother of Desiree. She claimed that she ordered Desiree to go to Fabella to have her grandchild checked and to buy diapers for another grandchild, who was confined at Fabella. Around 7:00 p.m., she and her sister, Virginia, went to PDEA to fetch her grandchild.

Thereafter, the defense rested its case without offering any documentary evidence.

Regional Trial Court Ruling

On September 5, 2012, the trial court rendered a Decision[37] finding Nida and Desiree guilty of illegal sale of dangerous drugs. The trial court found that the prosecution was able to establish the sale of *shabu* between IO1 Tactac and Nida and the eventual delivery of *shabu* by Desiree. The trial court further ruled that there is no evidence that would show that the PDEA operatives were impelled by improper motive, as such, the presumption of regularity in the performance of their official duties will be considered in their favor.

Insofar as the alleged conspiracy of Desiree, the trial court found that Desiree handed to IO1 Tactac the blue paper bag containing the eleven (11) plastic sachets of *shabu*. There is therefore a conscious criminal design between Nida and Desiree to commit the offense. Thus:

> WHEREFORE, premises cosidered, this court finds both accused Nida Guillermo *y* De Luna and Desiree Guillermo *y* Solis GUlLTY beyond reasonable doubt for violation of Section 5 in relation to Section 26, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and imposes upon them the penalty of Life Imprisonment and a fine of Five Hundred Thousand Pesos (Php500,000.00).

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[36] TSN dated May 3, 2012, p. 9.

[37] CA *rollo*, pp. 26-38.

The drugs subject matter of this case, with a total weight of 47.4739 grams is hereby confiscated and forfeited in favor of the government to be dealt with in accordance with law.

SO ORDERED.[38]

Court of Appeals Ruling

The CA found that the integrity of the seized items was not compromised and the chain of custody was not broken, thus:

WHEREFORE, premises considered, the assailed Decision dated September 5, 2012 of the Regional Trial Court, Branch 120, Caloocan City, in Criminal Case No. C-84928, against Nida Guillermo *y* De Luna and Desiree Guillermo *y* Solis is hereby AFFIRMED.

SO ORDERED.[39] (Citation omitted)

Arguments of the Accused

Accused alleged that the members of the buy-bust operation team failed to comply with the requirements for handling the seized items provided under R.A. 9165. IO1 Tactac failed to mark the confiscated items and make an inventory of the seized items at the crime scene. No inventory and photograph of the seized items were taken by the arresting officers in the presence of the accused and his counsel, a DOJ representative, an elective official and a media representative immediately after seizure of the illegal drugs.

Likewise, accused claimed that the elements of illegal sale of dangerous drugs were not established because the prosecution failed to present proof that the sale actually took place. There was no testimony that the parties agreed as to the quantity of *shabu* to be sold to the *poseur*-buyer. Also, IO1 Tactac never testified on the manner of how she handled the seized items. She only claimed that she took custody of the same, as well as the boodle money upon confiscation. Accused argued that while

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

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

the parties stipulated as to the qualification of the forensic chemist and the due execution of the chemistry report, there is no stipulation as to who brought the request for laboratory examination and the seized items to the crime laboratory. Finally, the PDEA officers failed to provide any sufficient justification as for their procedural lapses.

Arguments of Plaintiff-Appellee

The People, through the Office of the Solicitor General (OSG), claimed that the marking and inventory of the illegal drugs at the PDEA office did not destroy the integrity and evidentiary value of the seized items. The testimony of IO1 Tactac established that the dangerous drugs presented in court are the same items confiscated from the accused and subjected to examination by the forensic chemist. The prosecution further argued that the elements of illegal sale of dangerous drugs was established. IO1 Tactac positively identified both the accused as the persons who sold the dangerous drugs to her. Both the accused failed to overcome the presumption accorded to police officers in performing their duties. There is no evidence that IO1 Tactac and all the arresting officers were impelled by any ill motive.

The Court's Ruling

The appeal is meritorious.

For a successful prosecution of the crime of illegal sale of dangerous drugs, it is essential to prove beyond reasonable doubt the following: (1) the identity of the buyer, the seller, the object of the sale and the consideration and (2) the delivery of the thing sold and its payment. The delivery of the illegal drugs to the *poseur*-buyer and the receipt of the buy-bust money by the seller are the circumstances that consummate the transaction.[40] Proof of the transaction must be credible and complete. In every criminal prosecution, it is the State, and no

[40] *People v. Garrucho*, 789 Phil. 163, 171 (2016).

other, that bears the burden of proving the illegal sale of the dangerous drug beyond reasonable doubt.[41]

In this case, there is a reasonable doubt as to whether there was even a sale that transpired between IO1 Tactac and the accused because of the highly questionable nature of the buy-bust money for Us to believe that there was a legitimate buy-bust operation that was conducted by the police.

Be it noted that evidence to be believed must not only proceed from the mouth of a credible witness, but must be credible in itself, such as the common experience and observation of mankind can prove as probable under the circumstances.[42]

According to the prosecution, the subject of the sale is ₱350,000.00 worth of *shabu*. The alleged buy-bust money, as testified by IO1 Tactac and IO2 Advincula, consisted of two genuine 500-peso bills placed on the top and at the bottom of the boodle money consisting of cut newspapers in the size of a peso bill. It is incredulous that the boodle money is sandwiched between two genuine 500-peso bills, which cannot be stacked neatly like new and crisp 500-peso bills without Desiree noticing it. It is more in accord with human experience that with only two genuine 500-peso bills in between the cut-out newspapers as boodle money would be clearly obvious to Nida and Desiree, who would have been alerted that Desiree was receiving a stack of cut-out newspapers placed inside an orange bag. Cut-out newspapers cannot even approximate the color scheme of any genuine money bill. Be it a 20-peso bill, 50-peso bill, 100-peso bill, 500-peso bill, or a 1000-peso bill. The narration of the PDEA officers that Nida and Desiree accepted the boodle money as payment for the sale of about 50 grams of *shabu*, without raising any alarm, is highly unbelievable.

Further, it is highly impossible that a sale of dangerous drugs between the *poseur*-buyer and the seller would be consummated

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[41] *People v. Andaya*, 745 Phil. 237, 247 (2014).

[42] *People v. Sota*, G.R. No. 203121, November 29, 2017, 847 SCRA 113.

without a specific quantity of dangerous drugs agreed beforehand. For drug pushers, *shabu* is a very precious commodity that even a speck of it has money value. Thus, the testimony of the PDEA officers that the subject of the sale would only involve ₱350,000.00 worth of *shabu* without any previous agreement as to the specific quantity is dubious and not worthy of belief.

In addition to the questionable conduct of the buy-bust operation, 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.[43] 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.[44] 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 the seized items in the presence of the accused 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.[45]

After going over the records of this case, the prosecution was not able to preserve the integrity and evidentiary value of the seized items because it was not shown that the marking of the seized items was done in the presence of the accused and/or his representative. The testimony of IO1 Tactac did not mention that the marking of the seized items was done in the presence of the accused and/or his representative. She merely

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[43] *People v. Crispo*, G.R. No. 230065, March 14, 2018, 859 SCRA 356.

[44] *People v. Gamboa*, G.R. No. 233702, June 20, 2018, 867 SCRA 548.

[45] Section 21 of R.A. 9165.

testified that she marked the seized items in the PDEA office. In fact, during the testimony of IO1 Lorilla, he claimed that the presence of the accused during the inventory of the seized items was no longer necessary.[46]

Another procedural lapse committed by the PDEA officers is the fact that there was no DOJ representative present when the inventory and taking of photographs of the seized items were done. This procedural lapse can be excused under Section 21(a), Article II of the Implementing Rules and Regulations of R.A. 9165, provided that non-compliance with the procedure was properly justified by the arresting officers. However, the PDEA officers not only failed to comply with the requirement, but also failed to offer any explanation for their non-compliance and passed it off as unnecessary.

Another break in the chain of custody that tainted the integrity and evidentiary value of the seized items was the failure of the prosecution to identify the person who received and brought the request for laboratory examination along with the seized items to the crime laboratory. Even though the stamped request indicated that it was IO1 Tactac who brought the same to the crime laboratory, and that it was received by FC Seville, the latter was unsure who brought the same to the crime laboratory, thus:

> Clarificatory questions from the Court.
>
> Q Who provided to you this plastic bag?[47]
> A I **supposed** the arresting officers who submitted those evidence in our office, Your Honor.[48] (Emphasis ours)

While the parties entered into stipulation that FC Seville prepared the chemistry report after conducting the laboratory

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[46] Records, p. 21.

[47] Referring to the blue paper bag containing the white plastic bag with label "White Horse," where the 11 sachets of *shabu* was found inside the DVD cover of the "The Expendables."

[48] TSN dated November 11, 2010, p, 17.

examination, nobody identified who brought the seized items to the crime laboratory. Nobody also identified who retrieved the seized items from the evidence custodian and brought it to the court. There is no clear proof that the *shabu* allegedly confiscated from both the accused was the same item brought to the crime laboratory, examined in the laboratory, retrieved from the evidence custodian, and brought to the court to be identified as the same items confiscated from the accused.

This Court is not unmindful of the fact that police officers have in their favor the presumption of regularity in the performance of official duties. However, the said presumption only applies when the officers are shown to have complied with the standard conduct of official duty as provided for by law.[49] It cannot prevail over the Constitutional presumption of innocence, and cannot, by itself, constitute proof beyond reasonable doubt.[50] In this case, the presumption of regularity cannot work in favor of the PDEA officers since the records of the case is replete with major flaws in the preservation of the integrity and evidentiary value of the seized items as required under R.A. 9165.

The highly dubious and unbelievable story of the police officers that they conducted a legitimate buy-bust operation against Nida and Desiree, compounded by the serious lapses they committed in preserving the integrity and evidentiary value of the alleged *shabu* confiscated from both accused, render their acquittal proper.

WHEREFORE, the instant appeal is **GRANTED**. The Decision dated November 10, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 05786 is hereby **REVERSED** and **SET ASIDE**. The accused Nida Guillermo *y* De Luna and Desiree Guillermo *y* Solis are **ACQUITTED** of the charge for violation of Section 5, in relation to Section 26, Article II of Republic Act No. 9165. Nida Guillermo *y* De Luna and Desiree Guillermo

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[49] *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487.

[50] *People v. Ramos*, 791 Phil. 162, 175 (2016).

y Solis are ordered to be immediately **RELEASED** from custody, unless they are being held for another lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation, who is then also **DIRECTED** to report to this Court the action he has taken within five (5) days from receipt of this Decision.

SO ORDERED.

Leonen (*Chairperson*), *Lazaro-Javier*,* and *Zalameda, JJ.*, concur.

Gesmundo, J., on official leave.

THIRD DIVISION

[G.R. No. 229669. November 27, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ESRAFEL DAYON *y* MALI @ "BONG,"** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS. — To ensure conviction for illegal sale of dangerous drugs, the following elements constituting the crime must be present: (a) the identities of the buyer and seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and the payment for the thing. The presentation of the seized drugs as evidence in court

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* Designated as Additional Member of the Third Division per Special Order No. 2728.

is indispensable in every prosecution for the illegal sale of dangerous drugs because the drugs seized are the *corpus delicti* of the crime. As such, the State should establish beyond doubt the identity of the dangerous drugs by showing that the drugs offered in court as evidence were the same substances bought during the buy-bust operation. This requirement is complied with by ensuring that the custody of the seized drugs from the time of confiscation until presentation is safeguarded under what is referred to as the chain of custody by RA 9165, whose objective is to remove unnecessary doubts concerning the identity of the evidence.

2. ID.; ID.; CHAIN OF CUSTODY PROCEDURE; INCLUDES MARKING, PHYSICAL INVENTORY AND PHOTOGRAPHING OF THE SEIZED ITEMS IN THE PRESENCE OF REQUIRED WITNESSES. — As part of the chain of custody procedure, RA 9165 requires that the marking, physical inventory, and photographing of the seized items be conducted immediately after their seizure and confiscation. The law further requires that the inventory and photographing be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: *(a)* if **prior** to the amendment of RA 9165 by RA 10640, "a representative from the media *AND* the Department of Justice (DOJ), and any elected public official"; or *(b)* if **after** the amendment of RA 9165 by RA 10640, "[an] elected public official and a representative of the National Prosecution Service *OR* the media." The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."

3. ID.; ID.; ID.; SAVING CLAUSE IN CASE OF NON-COMPLIANCE WITH THE REQUIREMENTS; THE PROSECUTION MUST RECOGNIZE AND EXPLAIN THE LAPSES. — Section 21(a), Article II of the IRR of RA 9165 contains this *proviso*: x x x Provided, further, that non-compliance with these requirements [the presence of the required witnesses, and the time and place of inventory and photographing] 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; x x x The

applicability of this saving mechanism, however, is conditioned upon the apprehending team rendering a justification for such non-compliance. Failure to tender justification will create doubt as to the identity and evidentiary value of the drugs presented as evidence in court. For this saving mechanism to apply, the prosecution must first recognize the lapse or lapses in the prescribed procedures and then explain the lapse or lapses.

4. ID.; ID.; ID.; ID.; ON THE ABSENCE OF REQUIRED WITNESSES, A JUSTIFIABLE REASON FOR SUCH ABSENCE OR A SHOWING OF ANY GENUINE AND SUFFICIENT EFFORT TO SECURE THE PRESENCE OF THE REQUIRED WITNESSES MUST BE ADDUCED.— [T]he absence of the witnesses required by law does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such absence, or a showing of any genuine and sufficient effort to secure the presence of the required witnesses, must be adduced. The prosecution must show that earnest efforts were employed in contacting the witnesses enumerated in the law. Mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justifiable grounds for non-compliance. Police officers are compelled not only to state the reasons for their non-compliance but must also convince the Court that they exerted earnest efforts to comply with the mandated procedures and that, under the given circumstances, their actions were reasonable.

APPEARANCES OF COUNSEL

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

D E C I S I O N

ZALAMEDA, *J.*:

This appeal[1] assails the Decision[2] promulgated on 14 December 2015 by the Court of Appeals (CA) in CA-G.R. CR-

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[1] *Rollo*, pp. 20-21.

[2] *Id.* 2-19.

HC No. 07178, which affirmed the Decision[3] rendered on 11 December 2014 by Branch 2, Regional Trial Court (RTC) of Manila, in Criminal Case No. 13-299147, finding accused-appellant Esrafel Dayon *y* Mali @ "Bong" (accused-appellant) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act (RA) 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

Antecedents

On 14 August 2013, an Information was filed charging accused-appellant with illegal sale of *shabu*, defined and punished under Section 5, Article II of RA 9165, to wit:

> That on or about **August 06, 2013**, in the City of Manila, Philippines, the said accused not having been authorized by law to sell, trade, deliver, transport or distribute or give away to another any dangerous drug, did then and there will fully, unlawfully and knowingly sell or offer for sale to a police officer / poseur[-]buyer one **(1) heat-sealed transparent plastic sachet marked as "BONG" containing ZERO POINT ZERO FOUR ZERO (0.040) gram of white crystalline substance** commonly known as *Shabu*, containing Metamphetamine Hydrochloride, a dangerous drug.
>
> Contrary to law.[4] (Emphasis in the original)

Upon arraignment, accused-appellant pleaded "not guilty." After the termination of pre-trial, trial on the merits ensued.

Version of the Prosecution

On 06 August 2013, a team from the Philippine National Police Moriones Tondo Police Station 2, in coordination with the Philippine Drug Enforcement Agency, conducted a buy-bust operation in Tondo, Manila, against a certain "Bong," which they later identified as accused-appellant. During the buy-bust, accused-appellant sold and handed to the poseur-buyer one (1) heat-sealed transparent plastic sachet containing white crystalline

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[3] CA *rollo*, pp. 55-59.

[4] Records, p. 1.

substance suspected to be *shabu*. The team photographed, marked, and inventoried the seized item at the place of arrest in the presence of accused-appellant, as well as a member of the media, and claimed efforts were made to summon *barangay* officials, but the latter refused due to fear of reprisal and notoriety of the place of arrest.[5] Thereafter, the seized item was brought to the crime laboratory, which confirmed that the plastic sachet contained 0.040 gram of metamphetamine hydrochloride, a dangerous drug.[6]

Version of the Defense

Accused-appellant denied the charges against him and averred he was arrested on 05 August 2013 while on his way to 168 Mall in Divisoria. He was approached by three (3) men in civilian clothing, and frisked. One of the men said, "*isama na rin yan*," (include him also). He saw that there was another man, already handcuffed, in the *kuliglig*, a motorized pedicab, he was made to board. When accused-appellant asked the other man where they were going, the latter replied, "*sa prisinto*," (to the precinct). He found out later that the man with him in the *kuliglig* was named Bong. When confronted with the marked photograph of his arrest with another man, accused-appellant explained that the photograph was taken at the precinct where the police officers just placed evidence on his lap, and the name of the other man in the photograph was Bong. Accused-appellant insisted his nickname was "*Piyel*."[7] Accused-appellant further claimed the police officers demanded ₱100,000.00 from him in exchange for his release. He told them it was impossible for him to come up with that amount as he was jobless and his wife earned only ₱170.00 per day. They told him, "*kayang-kaya mo, tawagan mo yung magulang mo*," (you can afford it, call your parents).[8]

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[5] *Id*. at 4-5.

[6] *Id*. at 7.

[7] *Rollo*, pp.7-8.

[8] *Id*. at 8.

Ruling of the RTC

On 11 December 2014, the RTC convicted accused-appellant of the crime charged. The RTC disposed:

> WHEREFORE, judgment is hereby rendered finding accused Esrafel Dayon *y* Mali GUILTY beyond reasonable doubt of the crime charged in Crim. Case No. 13-299147 and is hereby sentenced to life imprisonment and to pay a fine of ₱500,000.00.
>
> The specimen is forfeited in favor of the government and the Branch Clerk of Court, accompanied by the Branch Sheriff, is directed to turn over with dispatch and upon receipt the said specimen to the Philippine Drug Enforcement Agency (PDEA) for proper disposal and in accordance with the law and rules.
>
> SO ORDERED.[9]

Ruling of the CA

On 14 December 2015, the CA promulgated its assailed Decision affirming accused-appellant's conviction, thus:

> **WHEREFORE**, the appeal is **DENIED**. The December 11, 2014 Decision of the Regional Trial Court, Branch 2, Manila, in Criminal Case No. 13-299147 convicting appellant for violation of Section 5, Article II of Republic Act No. 9165 is hereby **AFFIRMED**.
>
> **SO ORDERED**.[10] (Emphasis in the original)

Hence, this appeal.[11]

Issues

Accused-appellant claims the court *a quo*:

I

X X X GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE

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[9] CA *rollo*, p. 59.

[10] *Rollo*, pp. 18-19.

[11] *Id*. at 20-21.

PROSECUTION'S FAILURE TO PROVE A VALID BUY-BUST OPERATION.

II

X X X GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE INTEGRITY AND IDENTITY OF THE SEIZED PLASTIC [SACHET] OF METAMPHETAMINE HYDROCHLORIDE.[12]

Ultimately, the controversy boils down to whether or not the court *a quo* correctly convicted accused-appellant for the crime of illegal sale of dangerous drugs.

Ruling of the Court

We find merit in the appeal.

To ensure conviction for illegal sale of dangerous drugs, the following elements constituting the crime must be present: (a) the identities of the buyer and seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and the payment for the thing. The presentation of the seized drugs as evidence in court is indispensable in every prosecution for the illegal sale of dangerous drugs because the drugs seized are the *corpus delicti* of the crime. As such, the State should establish beyond doubt the identity of the dangerous drugs by showing that the drugs offered in court as evidence were the same substances bought during the buy-bust operation. This requirement is complied with by ensuring that the custody of the seized drugs from the time of confiscation until presentation is safeguarded under what is referred to as the chain of custody by RA 9165, whose objective is to remove unnecessary doubts concerning the identity of the evidence.[13]

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[12] CA *rollo*, p. 27.

[13] *People v. Angngao*, G.R. No. 189296, 11 March 2015, 752 SCRA 531, 541.

As part of the chain of custody procedure, RA 9165 requires that the marking, physical inventory, and photographing of the seized items be conducted immediately after their seizure and confiscation. The law further requires that the inventory and photographing be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640,[14] "a representative from the media *AND* the Department of Justice (DOJ), and any elected public official"; or (*b*) if **after** the amendment of RA 9165 by RA 10640, "[an] elected public official and a representative of the National Prosecution Service *OR* the media." The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."[15]

The Information charges accused-appellant of committing the crime on 06 August 2013, prior to the effectivity of the amendatory law, RA 10640.[16] Section 21 of RA 9165, as complemented by Section 21 (a) of Article II of its Implementing Rules and Regulations (IRR), requires that immediately after seizure and confiscation of the suspected drug, it should be physically inventoried and photographed in the presence of the following witnesses: (a) the accused or person/s from whom the items were seized and confiscated, or his representative or counsel; (b) a representative from the media AND the Department of Justice (DOJ); and (c) any elected public official.

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[14] 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 15 July 2014.

[15] *People v. Bangalan*, G.R. No. 232249, 03 September 2018.

[16] In *People v. Gutierrez* (G.R. No. 236304, 05 November 2018), this Court noted that RA 10640 was approved on 15 July 2014, and published on 23 July 2014 in The Philippine Star (Vol. XXVIII, No. 359, Metro Section, p. 21) and the Manila Bulletin (Vol. 499, No. 23, World News Section, p. 6). Thus, it became effective 15 days thereafter or on 07 August 2014, pursuant to Section 5 of the law. See also *People v. Bangalan, id.*

The marking, inventory, and photographing of the seized items in this case were conducted immediately at the place of the seizure and arrest. But the prosecution failed to establish the crucial presence of ALL witnesses required by R.A. 9165. As testified to by prosecution witness SPO1 Joel Sta. Maria, only a representative from the media was present out of the required third-party Witnesses:

Q Now, Mr. Witness. did you take pictures at the place of the arrest?
A PO3 Jimenez took the picture while I made the marking and the inventory, sir.

Q But this picture was taken where, Mr. Witness?
A At the place of the arrest, sir, Purok 2, Isla Puting Bato, sir.

Q At the presence of whom, Mr. Witness?
A Both accused, sir.

Q No one else?
A The media, sir.

Q Media was here?
A Yes, sir.

Q During the time of the arrest?
A Yes, sir.

x x x x x x x x x

Q He was at the place of the arrest, Mr. Witness? Are you sure?
A He was being called by us, sir.

Q Is he also at (sic) the picture?
A No, sir.[17]

Clearly, not all the witnesses required by RA 9165 were present during the marking, inventory and photographing of the items allegedly seized from accused-appellant.

Section 21(a), Article II of the IRR of RA 9165 contains this *proviso*:

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[17] Records, TSN dated 09 September 2014, pp. 20-21.

xxx Provided, further, that non-compliance with these requirements [the presence of the required witnesses, and the time and place of inventory and photographing] 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; xxx[18]

The applicability of this saving mechanism, however, is conditioned upon the apprehending team rendering a justification for such non-compliance. Failure to tender justification will create doubt as to the identity and evidentiary value of the drugs presented as evidence in court.[19] For this saving mechanism to apply, the prosecution must first recognize the lapse or lapses in the prescribed procedures and then explain the lapse or lapses.[20]

Thus, the absence of the witnesses required by law does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such absence, or a showing of any genuine and sufficient effort to secure the presence of the required witnesses, must be adduced. The prosecution must show that earnest efforts were employed in contacting the witnesses enumerated in the law. Mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justifiable grounds for non-compliance. Police officers are compelled not only to state the reasons for their non-compliance but must also convince the Court that they exerted earnest efforts to comply with the mandated procedures and that, under the given circumstances, their actions were reasonable.[21]

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[18] See also *Casona v. People,* G.R. No. 179757, 13 September 2017, 839 SCRA 448.

[19] *People v. Velasco*, G.R. No. 219174, 21 February 2018, 856 SCRA 303, 314.

[20] *People v. Alagarme*, G.R. No. 184789, 23 February 2015, 751 SCRA 317, 329.

[21] *Ramos v. People,* G.R. No. 233572, 30 July 2018.

We have carefully reviewed the records and can find no justification by the arresting team for their procedural lapses. The prosecution witnesses did not provide in their testimonies any acknowledgment or explanation for the lack of a DOJ representative and an elected public official. There was no statement of any earnest efforts by the arresting team to contact the required witnesses.

The Joint Affidavit of Apprehension[22] by the police officers state in part:

> xxx That effort made in summoning [the] Barangay officials to witness the inventory failed in vain due to the notoriety of the place[,] they refuses (sic) to be part of the incident for fear of reprisal, thus suspects and evidences was (sic) immediately brought at (sic) [the] Police Station. SAID office and turned over for investigation.[23]

The Court finds this statement in the affidavit flimsy and insufficient to explain the procedural lapse. First, it fails to establish that an actual serious attempt to contact the required witnesses was made by the apprehending officers. Second, it only mentions an effort to summon *barangay* officials, but the law then prevailing also required the presence of a DOJ representative during the inventory and photographing. Finally, the justifiable ground for non-compliance must be proved as a fact because the Court cannot presume what these grounds are or that they even exist.[24]

The purpose of the law in requiring the presence of certain witnesses at the time of the seizure and inventory of the seized items is to insulate the seizure from any taint of illegitimacy or irregularity.[25] Their insulating presence during the inventory and photographing was specifically designed to obviate switching, 'planting' or contamination of evidence.[26]

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[22] Records, pp. 4-5.

[23] *Id.* at 5.

[24] *Supra* at note 22.

[25] *People v. Maganon*, G.R. No. 234040, 26 June 2019.

[26] *Id*.

In this case, the arresting officers failed to secure the presence of a DOJ representative and an elected public official without providing any justifiable reason and without proving that they exerted earnest efforts to do so. This failure adversely affected the integrity and credibility of the seized sachet of *shabu*. The prosecution had sufficient opportunity during trial to explain the procedural lapses but glaringly left the same unacknowledged and unjustified. Such omission casts suspicion on the *corpus delicti* of the offense charged, thereby creating reasonable doubt.

While We support the government's efforts to combat the proliferation of illegal drugs in Philippine society, the Court maintains the importance of the procedural safeguards in all drug-related cases. Vigilance in eradicating illegal drugs must not come at the expense of disregarding the law, rules and established jurisprudence on the matter.

WHEREFORE, the Appeal is hereby **GRANTED**. The Decision dated 14 December 2015 by the Court of Appeals in CA-G.R. CR-HC No. 07178 is **REVERSED and SET ASIDE**. Accordingly, accused-appellant **ESRAFEL DAYON *y* MALI @ "BONG"** is **ACQUITTED** on the ground of reasonable doubt. He is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is detained for any other lawful cause.

The Director of the Bureau of Corrections is **DIRECTED** to **IMPLEMENT** this Decision and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED.

Leonen (*Chairperson*), *Carandang,* and *Lazaro-Javier,*[*] *JJ.,* concur.

Gesmundo, J., on leave.

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[*] Designated as Additional Member of the Third Division per Special Order No. 2728.

THIRD DIVISION

[G.R. No. 232083. November 27, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **COCOY CATUBAY,** *accused*, **JONEPER JAIME** *y* **DURAN,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ESSENTIAL ELEMENTS; ESTABLISHED IN CASE AT BAR.—** In the prosecution of a case for illegal sale of dangerous drugs, the prosecution must be able to establish the following essential elements: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and its payment. To emphasize, the delivery of the illicit drugs to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited drug, the *corpus delicti*, as evidence. Here, the prosecution was able to establish the elements of the illegal sale of *shabu* through the testimony of PO2 Magsayo x x x. The identity of the accused-appellant as the seller of illicit drugs cannot be doubted having been caught *in flagrante* by PO2 Magsayo, who positively identified him to be the person who sold subject sachet of *shabu* to him during the buy-bust operation. Likewise, the prosecution presented in evidence the sachet subject of the sale as well as the buy-bust money used for the transaction. PO2 Magsayo also recounted the details of the transaction from the time he met accused-appellant, to the time the exchange was made, and ultimately, his execution of the pre-arranged signal to signify the consummation of the transaction.

2. **ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; ESTABLISHED IN CASE AT BAR.—** Insofar as the crime of illegal possession of dangerous drugs is concerned, the prosecution was able to prove the guilt of accused-appellant

with moral certainty as it duly established the existence of the following elements of the offense, *viz*.: (1) that the accused was in possession of the object identified as a prohibited or regulatory drug; (2) that such possession was not authorized by law; and (3) that the accused freely and consciously possessed the said drug. Apart from the sachet of *shabu* sold to the poseur-buyer, the buy-bust team was able to seize from accused-appellant's possession the buy-bust money and two (2) additional pieces of properly marked plastic sachets containing *shabu* which accused-appellant freely and consciously possessed prior to his apprehension without any authority or license to possess the same.

3. ID.; ID.; ILLEGAL SALE OF DANGEROUS DRUGS; AS LONG AS THE POLICE OFFICER WENT THROUGH THE OPERATION AS A BUYER AND HIS OFFER WAS ACCEPTED BY THE APPELLANT AND THE DANGEROUS DRUGS WERE DELIVERED TO THE FORMER, THE CRIME IS CONSIDERED CONSUMMATED BY THE DELIVERY OF THE GOODS.— While the body of Information stated that accused-appellant conspired with Catubay in the illegal sale of *shabu*, conspiracy was deemed no longer relevant considering that the former remained at large; the court not having acquired jurisdiction over his person. Nevertheless, accused-appellant's liability does not hinge on the presence of conspiracy. Even without the alleged conspiracy, clear and convincing evidence was established proving that accused-appellant committed the offenses charged. The courts below were correct in ruling that the prosecutions was able to prove that the illegal sale of *shabu* was consummated upon the delivery of the subject of the sale, sachet of *shabu*, acceptance object of the sale, and the marked money. Settled is the rule that as long as the police officer went through the operation as a buyer and his offer was accepted by appellant and the dangerous drugs delivered to the former, the crime is considered consummated by the delivery of the goods.

4. ID.; ID.; CHAIN OF CUSTODY RULE; REQUIREMENTS OF THE LAW AS TO THE CUSTODY, PRESERVATION AND DISPOSITION OF SEIZED ITEMS FROM ITS SEIZURE UP TO ITS PRESENTATION IN COURT, INCLUDING THE PRESENCE OF THE THREE (3) MANDATORY WITNESSES, COMPLIED WITH IN CASE

AT BAR.— We find that the police officers complied with the procedures laid down in Section 21 of RA 9165 and its Implementing Rules and Regulations as to the custody and disposition of the seized items from its seizure up to its presentation in court. First, the buy-bust team immediately marked the seized items at the place of seizure and took custody of the same. Second, considering that onlookers have started to gather, the inventory and taking of photographs were done at the buy-bust team's office in the presence of the three (3) mandatory witnesses, *i.e.*, an elected public official, and representatives from the DOJ and the media, together with accused-appellant. Third, the members of the buy-bust team promptly brought the seized items to the crime laboratory, duly received by PCI Llena. And fourth, after the seized items tested positive for *shabu*, the same were then turned-over to the custodian before they were presented in court. Thus, We uphold the findings of the RTC that there was compliance with the law as to the preservation and disposition of the dangerous drug and the chain of custody requirements.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IN CASES INVOLVING VIOLATIONS OF THE DANGEROUS DRUGS ACT, CREDENCE SHOULD BE GIVEN TO THE NARRATION OF THE INCIDENT BY THE PROSECUTION WITNESSES, ESPECIALLY WHEN THEY ARE POLICE OFFICERS WHO ARE PRESUMED TO HAVE PERFORMED THEIR DUTIES IN A REGULAR MANNER, UNLESS THERE IS EVIDENCE TO THE CONTRARY.— Anent accused-appellant's bare denial, such cannot prevail over the positive testimonies of the prosecution witnesses. Denial is a weak form of defense especially when it is not substantiated by clear and convincing evidence, as in this case. It bears stressing on this score that in cases involving violations of the Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses, especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary. Accused-appellant herein failed to convince the Court that there was ill motive on the part of the arresting officers. Thus, absent any proof of motive to falsely accuse accused-appellant of such grave offenses, the presumption of regularity in the performance of official duty

and the findings of the trial court with respect to the credibility of the prosecution witnesses prevail.

6. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ACCUSED-APPELLANT'S CONVICTION FOR THE OFFENSES OF ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS MUST STAND WHERE THE INTEGRITY AND EVIDENTIARY VALUE OF THE *CORPUS DELICTI* HAD BEEN PROPERLY PRESERVED.— The prosecution has successfully demonstrated that the police officers faithfully adhered to the rules on the chain of custody, including compliance with the inventory and three (3)-witness requirements. As such, the integrity and evidentiary value of the *corpus delicti* had been properly preserved. Necessarily, accused-appellant's conviction for the offenses charged must stand.

APPEARANCES OF COUNSEL

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

D E C I S I O N

ZALAMEDA, *J.*:

This is an appeal[1] seeking to reverse and set aside the Decision dated 01 December 2016[2] of the Court of Appeals (CA) in C.A.-G.R. CEB CR-HC No. 02143 which affirmed the Judgment[3] dated 28 May 2015 of Branch 34, Regional Trial Court (RTC) of Dumaguete City, finding Joneper Jaime *y* Duran (accused-appellant) guilty beyond reasonable doubt for violating Sections

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[1] CA *rollo*, pp. 84-86.

[2] *Rollo*, pp. 4-16; penned by Associate Justice Germano Francisco D. Legaspi with Associate Justices Gabriel T. Ingles and Marilyn B. Lagura-Yap, concurring.

[3] CA *rollo*, pp. 39-49, penned by Judge Rosendo B. Bandal, Jr.

5 and 11, Article II of Republic Act (RA) 9165[4] in Criminal Case Nos. 2011-20433 and 2011-20432, respectively.

Antecedents

Accused-appellant and his co-accused, Cocoy Catubay (Catubay), were charged with violation of Section 5, Art. II of RA 9165, in an Amended Information,[5] the accusatory portion of which states:

Criminal Case No. 2011-20433

That on or about the 6th day of April 2011, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, acting together and mutually aiding one another, not being then authorized by law, did, then and there willfully, unlawfully and feloniously sell and deliver to a poseur-buyer one (1) heat sealed transparent plastic sachet containing 0.16 gram of Methamphetamine Hydrochloride, commonly called "*shabu*", (sic) a dangerous drug.

Contrary to Section 5, Article II, R.A. 9165.

In another Amended Information,[6] accused-appellant was charged with violation of Section 11, Art. II of RA 9165, the accusatory portion of which states:

Criminal Case No. 2011-20432

That on or about the 6th day of April 2011, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did, then and there willfully, unlawfully and feloniously keep and possess two (2) heat sealed transparent plastic sachets containing an approximate aggregate weight of 0.78 gram of Methamphetamine Hydrochloride, commonly called "*shabu*", (sic) a dangerous drug.

The accused has been found positive for Methamphetamine, a dangerous drug, as reflected in Chemistry Report No. DT-070-11.

Contrary to Section 11, Article II, R.A. 9165. (Emphasis supplied)

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[4] Comprehensive Dangerous Drugs Act of 2002.

[5] Records, Criminal Case No. 2011-20433, p. 42.

[6] Records, Criminal Case No. 2011-20432, p. 41.

Upon arraignment,[7] accused-appellant pleaded not guilty to the charges. After pre-trial,[8] trial on the merits ensued.

Version of the Prosecution

Acting on an information, a team was formed on 06 April 2011 to conduct a buy-bust operation on Catubay's alleged illegal sale of prohibited drugs. On their way to execute the entrapment operation, the informant was appraised that Catubay would not be able to deliver *shabu*. In his stead, accused-appellant was to undertake the transaction. Upon arrival of accused-appellant at the agreed meet-up point, PO2 Jerry Magsayo (PO2 Magsayo), the designated poseur-buyer, bought from him *shabu* worth Five Hundred Pesos (₱500.00). When PO2 Magsayo asked if there were other available stocks, accused-appellant readily showed him two (2) more plastic sachets with suspected *shabu* worth ₱4,100.00 each.[9]

Upon receipt of the buy-bust money, PO2 Magsayo executed the pre-arranged signal leading to accused-appellant's arrest. Two (2) other sachets with suspected *shabu* were recovered from accused-appellant's possession. The buy-bust team marked the seized items and proceeded right away to their office for the inventory and photograph taking as the crowd of onlookers began to thicken. The buy-bust team inventoried and photographed the seized items in the presence of accused-appellant, *Brgy. Kagawad* Dandy Catada, Department of Justice (DOJ) representative Anthony Chilius Benlot, and media representative Neil Rio.[10]

The team brought the request for laboratory examination and drug test, together with the seized items, to the Philippine National Police Crime Laboratory in Dumaguete City. Forensic Chemist Police Chief Inspector Josephine Llena (PCI Llena)

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[7] *Id.* at 60.

[8] *Id.* at 63.

[9] *Rollo*, pp. 7-8.

[10] *Id.* at 8.

received the items and subjected them to physical and chemical examination. Per Laboratory Reports, the seized items, as well as accused-appellant's urine sample, were found positive for *shabu*. PCI Llena turned-over the seized items to the evidence custodian for safe-keeping, and retrieved the same for submission to the trial court.[11]

Version of the Defense

Accused-appellant denied the charges against him. He alleged that a car stopped in front of him while he was passing by the LBC warehouse. A certain Miguel Dungog alighted from the said car, grabbed and handcuffed him. He was made to board the car and saw three (3) men inside who were looking for Catubay. When they failed to locate the latter, accused-appellant was instead brought in an office where he was forced to admit ownership of the money and drugs atop a table. They proceeded to the hospital for medical examination and he was detained at the police station afterwards.[12]

Ruling of the RTC

On 28 May 2015, the RTC rendered its Judgment,[13] the dispositive portion of which reads:

WHEREFORE, in Criminal Case No. 2011-20433, accused JONEPER JAIME *y* DURAN is found guilty beyond reasonable doubt of the offense of illegal selling of 0.16 gram of *shabu* to PO2 Jerry Magsayo, who acted as poseur-buyer, in violation of Section 5, Article II of the Comprehensive Dangerous Drugs Act of 2002, and the court hereby imposes upon him the penalty of LIFE IMPRISONMENT and to pay a fine of FIVE HUNDRED THOUSAND PESOS (₱500,000.00).

In Criminal Case No. 2011-20432, accused Joneper Jaime is also found guilty beyond reasonable doubt of the offense of illegal possession of 0.78 gram of *shabu*, a dangerous drug, in violation of

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[11] *Id.*

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

[13] CA *rollo*, pp. 39-49.

Section 11, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and the court hereby imposes upon him the indeterminate penalty of TWELVE (12) YEARS AND ONE (1) DAY, as minimum, to FOURTEEN (14) YEARS, as maximum term, and to pay a fine of FOUR HUNDRED THOUSAND PESOS (₱400,000.00).

x x x x x x x x x.

SO ORDERED.[14]

The RTC gave credence to the straightforward, consistent and credible testimonies of the prosecution witnesses that accused-appellant was caught *in flagrante* selling *shabu* and also found in possession of two (2) more sachets of *shabu*. The police officers were likewise accorded the presumption of regularity in the performance of their duties. The RTC further held that there was compliance with the law in preserving the integrity of the seized items, and an unbroken chain in the custody of the same until its submission to court. It was likewise disclosed that the offense of illegal possession of *shabu* was attended by an aggravating circumstance considering that at the time of its commission, accused-appellant was found positive for *shabu*.[15]

Ruling of the CA

On appeal, the CA affirmed the findings of the RTC.[16] It stressed that accused-appellant's act of handing to PO2 Magsayo a sachet of *shabu*, along with PO2 Magsayo's subsequent act of handing the payment, consummated the illegal sale of *shabu*.

Hence, this appeal.

Issue

The sole issue in this case is whether the CA correctly found accused-appellant guilty beyond reasonable doubt of illegal sale and illegal possession of dangerous drugs under RA 9165.

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[14] *Id.* at 49.

[15] *Id.* at 46-48.

[16] *Rollo*, pp. 4-16.

Ruling of the Court

The elements of illegal sale and illegal possession of shabu were adequately proven

In the prosecution of a case for illegal sale of dangerous drugs, the prosecution must be able to establish the following essential elements: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and its payment.[17] To emphasize, the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited drug, the *corpus delicti*, as evidence.[18]

Here, the prosecution was able to establish the elements of the illegal sale of *shabu* through the testimony of PO2 Magsayo:

> PROSECUTOR CORTES: When you were already at the Bypass Road, what happened again?
> PO2 MAGSAYO: When we were already there, our informant contacted Cocoy Catubay and Cocoy Catubay told us that he will send someone to deliver and accept payment.
>
> Q: After you were informed that he will be sending the person who can also receive the money, what happened next?
> A: After a few minutes, a person approached us in our brown tinted car and immediately went inside.
>
> x x x x x x x x x.[19]
>
> Q: So the person who went inside the car his name is Joneper Jaime?
> A: Yes, ma'am, we learned his name after the arrest, ma'am.

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[17] *People v. Ygot*, G.R. No. 210715, 18 July 2016, 797 SCRA 87, 92.

[18] *People v. Amaro*, G.R. No. 207517, 01 June 2016, 792 SCRA 1, 10.

[19] TSN dated 27 September 2011, pp. 6-7.

Q: When this Joneper Jaime entered the car, what happened next?
A: After he entered the car, our confidential informant told Joneper Jaime that I was the one who was going to purchase.

Q: After the confidential informant told Joneper Jaime that you were the one who was going to purchase, what happened next?
A: After our confidential informant introduced me to Joneper Jaime, I told Joneper Jaime that I am going to buy five hundred pesos worth of "*shabu*" (sic) ma'am.

Q: What, if any, was his reaction?
A: He immediately gave me the one (1) transparent plastic sachet, ma'am, containing "*shabu*" (sic) After that, I asked him if he had other stocks because I wanted to buy more.

Q: After you asked Joneper Jaime if he had more stocks, what was his reply, if any?
A: He told me that he has two more sachets.

x x x x x x x x x.[20]

Q: When did you give him the five hundred peso bill?
A: After I learned, ma'am, that he has two more sachets.

x x x x x x x x x.[21]

The identity of the accused-appellant as the seller of illicit drugs cannot be doubted having been caught *in flagrante* by PO2 Magsayo, who positively identified him to be the person who sold the subject sachet of *shabu* to him during the buy-bust operation.[22] Likewise, the prosecution presented in evidence the sachet subject of the sale as well as the buy-bust money[23] used for the transaction. PO2 Magsayo also recounted the details of the transaction from the time he met accused-appellant, to the time the exchange was made, and ultimately, his execution

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[20] *Id.* at 8.

[21] *Id.* at 11.

[22] *Id.* at 12.

[23] *Id.* at 16, 14.

of the pre-arranged signal to signify the consummation of the transaction.[24]

Insofar as the crime of illegal possession of dangerous drugs is concerned, the prosecution was able to prove the guilt of accused-appellant with moral certainty as it duly established the existence of the following elements of the offense, *viz*.: (1) that the accused was in possession of the object identified as a prohibited or regulatory drug; (2) that such possession was not authorized by law; and (3) that the accused freely and consciously possessed the said drug.[25]

Apart from the sachet of *shabu* sold to the poseur-buyer, the buy-bust team was able to seize from accused-appellant's possession the buy-bust money and two (2) additional pieces of properly marked plastic sachets containing *shabu* which accused-appellant freely and consciously possessed prior to his apprehension without any authority or license to possess the same.[26]

Conspiracy, in this case, is irrelevant as clear and convincing evidence shows that accused-appellant committed the offenses charged

Accused-appellant ascribes error on the CA contending that the prosecution failed to establish his culpability because the same is anchored primarily on the alleged conspiracy between him and Catubay.[27]

We are not persuaded.

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[24] *Id.* at 07-08; 11.

[25] *People v. Pagkalinawan*, G.R. No. 184805, 03 March 2010, 614 SCRA 202, 215.

[26] TSN dated 27 September 2011, witness PO2 Magsayo, pp. 10-11; TSN dated 01 September 2011, witness SI Tagle, p. 13.

[27] CA *rollo*, pp. 34-35.

While the body of Information stated that accused-appellant conspired with Catubay in the illegal sale of *shabu*, conspiracy was deemed no longer relevant considering that the former remained at large; the court not having acquired jurisdiction over his person. Nevertheless, accused-appellant's liability does not hinge on the presence of conspiracy. Even without the alleged conspiracy, clear and convincing evidence was established proving that accused-appellant committed the offenses charged.

The courts below were correct in ruling that the prosecution was able to prove that the illegal sale of *shabu* was consummated upon the delivery of the subject of the sale, sachet of *shabu*, acceptance object of the sale, and the marked money.[28] Settled is the rule that as long as the police officer went through the operation as a buyer and his offer was accepted by appellant and the dangerous drugs delivered to the former, the crime is considered consummated by the delivery of the goods.[29]

The procedural rules on the chain of custody were properly observed; denial, in the light of positive testimonies of the prosecution witnesses, is inherently weak

On another point, We find that the police officers complied with the procedures laid down in Section 21 of RA 9165 and its Implementing Rules and Regulations as to the custody and disposition of the seized items from its seizure up to its presentation in court. First, the buy-bust team immediately marked the seized items at the place of seizure and took custody of the same. Second, considering that onlookers have started to gather, the inventory and taking of photographs were done at the buy-bust team's office in the presence of the three (3) mandatory witnesses, *i.e.*, an elected public official, and representatives from the DOJ and the media, together with accused-appellant. Third, the members of the buy-bust team

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[28] *Rollo*, pp. 15-16.

[29] *People v. Dali, et al.*, G.R. No. 234163, 06 March 2019.

promptly brought the seized items to the crime laboratory, duly received by PCI Llena. And fourth, after the seized items tested positive for *shabu*, the same were then turned-over to the custodian before they were presented in court. Thus, We uphold the findings of the RTC that there was compliance with the law as to the preservation and disposition of the dangerous drug and the chain of custody requirements.

Anent accused-appellant's bare denial, such cannot prevail over the positive testimonies of the prosecution witnesses. Denial is a weak form of defense especially when it is not substantiated by clear and convincing evidence, as in this case.[30] It bears stressing on this score that in cases involving violations of the Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses, especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.[31] Accused-appellant herein failed to convince the Court that there was ill motive on the part of the arresting officers. Thus, absent any proof of motive to falsely accuse accused-appellant of such grave offenses, the presumption of regularity in the performance of official duty and the findings of the trial court with respect to the credibility of the prosecution witnesses prevail.

The prosecution has successfully demonstrated that the police officers faithfully adhered to the rules on the chain of custody, including compliance with the inventory and three (3)-witness requirements. As such, the integrity and evidentiary value of the *corpus delicti* had been properly preserved. Necessarily, accused-appellant's conviction for the offenses charged must stand.

WHEREFORE, the appeal is hereby **DENIED**. Accordingly, the Decision dated 01 December 2016 rendered by the Court of Appeals in C.A.-G.R. CEB CR-HC No. 02143 finding accused-

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[30] *Id.*

[31] *People v. Arago, Jr.*, G.R. No. 233833, 20 February 2019.

appellant guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of RA 9165 is **AFFIRMED**.

SO ORDERED.

Leonen (*Chairperson*), *Carandang,* and *Lazaro-Javier*, *JJ.*, concur.

Gesmundo, J., on leave.

THIRD DIVISION

[G.R. No. 234051. November 27, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARNEL AMBROSIO *y* NIDUA *a.k.a.* "ARNEL,"** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; IT IS ESSENTIAL THAT THE IDENTITY OF THE PROHIBITED DRUGS SEIZED FROM THE ACCUSED BE ESTABLISHED BEYOND REASONABLE DOUBT, AND THAT THE PROHIBITED DRUGS OFFERED IN COURT AS EXHIBIT ARE THE SAME AS THOSE RECOVERED FROM THE ACCUSED.— Accused-appellant was charged with illegal sale and illegal possession of dangerous drugs, as defined and penalized under Sections 5 and 11, Article II of RA 9165. For

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* Designated as additional Member of the Third Division per Special Order No. 2728.

the successful prosecution of illegal sale of prohibited drugs, the following elements must be established: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. In turn, for the successful prosecution of illegal possession of dangerous drugs, it must be established that the accused was in possession of the dangerous drugs without authority of law, and the accused freely and consciously possessed the dangerous drug. In both cases, it is essential that the identity of the prohibited drugs seized from the accused be established beyond reasonable doubt, and that the prohibited drugs offered in court as exhibit are the same as those recovered from the accused. This requirement is known as the chain of custody rule under RA 9165, which was created to obviate any doubt concerning the identity of the seized drugs.

2. **ID.; ID.; CHAIN OF CUSTODY RULE; THE APPREHENDING TEAM SHALL IMMEDIATELY AFTER SEIZURE AND CONFISCATION, PHYSICALLY INVENTORY AND PHOTOGRAPH THE SEIZED DRUGS IN THE PRESENCE OF THE ACCUSED OR HIS/HER REPRESENTATIVE, A REPRESENTATIVE FROM THE MEDIA AND THE DEPARTMENT OF JUSTICE (DOJ), AND ANY ELECTED PUBLIC OFFICIAL; REQUIREMENTS NOT COMPLIED WITH.—** Section 21, Article II of RA 9165 lays down the chain of custody rule, outlining the procedures police officers must follow in handling seized drugs in order to preserve their integrity and evidentiary value. Said provision was later amended by RA 10640 which took effect in 2014, but since the offenses charged were allegedly committed on 18 June 2013, it is the earlier version of Section 21, Article II of RA 9165 and its corresponding Implementing Rules and Regulations which should apply. The relevant portion of Section 21 (1) reads – (1) The apprehending team having initial custody and control of the drugs shall, **immediately after seizure and confiscation, physically inventory and photograph the same in the presence** of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, **a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof. The seized items should have been marked with the

initials of Veñalon, as well as the date, time and place where the evidence was seized, pursuant to the PNP Manual on Anti-Illegal Drugs Operation and Investigation. But the apprehending officers disregarded this and instead marked the seized items as "Arnel," and "Arnel-1" to "Arnel-8". Also, the marking, inventory and photographing of the seized items were not done immediately. The testimony of Veñalon shows that the police officers waited for some time for an elected official to show up. When it seemed that no elected official was coming, they decided to mark the inventory in the presence of a *Bantay Bayan* desk officer instead.

3. ID.; ID.; ID.; THE PRESENCE OF THE THREE (3) REQUIRED WITNESSES SHOULD NOT ONLY BE DURING THE INVENTORY OF THE SEIZED ITEMS BUT, MORE IMPORTANTLY, DURING ACCUSED-APPELLANT'S APPREHENSION, AS THEIR PRESENCE AT THE TIME OF THE SEIZURE AND CONFISCATION WOULD BELIE ANY DOUBT AS TO THE SOURCE, IDENTITY, AND INTEGRITY OF THE SEIZED DRUGS, AND WOULD CONTROVERT THE DEFENSE OF FRAME-UP.— The marking and inventory of the seized items were not attended and witnessed by any representative from the media and the DOJ, as well as any elected official, all in violation of the requirements in Section 21 of RA 9165. True, Fernando, the *Bantay Bayan* desk officer, was present. But he is not an elected public official and, thus, not one of the required witnesses in the law. The presence of the three (3) required witnesses should not only be during the inventory but, more importantly, during accused-appellant's apprehension. For it is at this point that their presence was most needed. Their presence at the time of the seizure and confiscation would belie any doubt as to the source, identity, and integrity of the seized drugs. If the buy-bust operation was legitimately conducted, the presence of these insulating witnesses would also controvert the usual defense of frame-up; they would be able to testify that the operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

4. ID.; ID.; ID.; REQUIRED WITNESSES RULE; MERE STATEMENTS OF UNAVAILABILITY, ABSENT ACTUAL SERIOUS ATTEMPTS TO CONTACT THE REQUIRED WITNESSES, ARE UNACCEPTABLE AS

JUSTIFIABLE GROUNDS FOR NON-COMPLIANCE WITH THE REQUIRED WITNESSES RULE.— The records show that the briefing of the buy-bust team terminated at around 4:00 p.m., and that the team members merely stayed inside their office until it was time to leave for the target area at 8:45 p.m. In those nearly five (5) hours of hiatus, anybody in the team could have contacted representatives from the media, the DOJ, and any local elected official in the area. But nothing in the records show that the police officers exerted any effort at all to secure the attendance of the mandatory witnesses during accused-appellant's apprehension and during inventory. MADAC operative Veñalon testified that when it appeared that no elected public officials were forthcoming, the police officers decided that the presence of the *Bantay Bayan* desk officer will suffice. This is not a justifiable ground for non-compliance with the required witnesses rule. No other proof was given that the police officers took other measures to ensure the presence of an elected public official. Mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justifiable grounds for non-compliance.

5. **ID.; ID.; ID.; LINKS IN THE CHAIN OF CUSTODY; WHERE THE PARTIES STIPULATE TO DISPENSE WITH THE ATTENDANCE AND TESTIMONY OF THE FORENSIC CHEMIST, IT SHOULD BE STIPULATED THAT THE FORENSIC CHEMIST WAS TO TESTIFY THAT HE/SHE TOOK THE PRECAUTIONARY STEPS REQUIRED IN ORDER TO PRESERVE THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEM; NOT COMPLIED WITH.—** The following links should be established in the chain of custody of the confiscated item: first, the seizure and marking, if practicable, of 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 from the forensic chemist to the court. In this case, there is a glaring gap in the fourth link of the chain. The trial court dispensed with the testimony of the forensic chemist in view of the stipulation entered into by the prosecution and the defense during the pre-trial conference. It has been held

in *People v. Pajarin* that in case the parties stipulate to dispense with the attendance and testimony of the forensic chemist, it should be stipulated that the forensic chemist was to testify that he/she took the precautionary steps required in order to preserve the integrity and evidentiary value of the seized item, thus: (1) that the forensic chemist received the seized article as marked, properly sealed, and intact; (2) that he/she resealed it after examination of the content; and (3) that he/she placed his/her own marking on the same to ensure that it could not be tampered with pending trial. An examination of the Order dated 25 September 2013, wherein the testimony of the forensic chemist was dispensed with, does not show that the aforesaid conditions were stipulated on.

6. ID.; ID.; ID.; IT IS ESSENTIAL THAT THE PROHIBITED DRUG CONFISCATED OR RECOVERED FROM THE SUSPECT IS THE VERY SAME SUBSTANCE OFFERED IN COURT AS EXHIBIT, AND THE IDENTITY OF THE SAID DRUG IS ESTABLISHED WITH THE SAME UNWAVERING EXACTITUDE AS THAT REQUIRED TO MAKE A FINDING OF GUILT; THE PROSECUTION'S FAILURE TO GIVE JUSTIFIABLE GROUNDS FOR THE POLICE OFFICERS' DEVIATION FROM THE PROCEDURES LAID DOWN BY LAW, AND TO ACCOUNT FOR THE FOURTH LINK IN THE CHAIN OF CUSTODY, COMPROMISED THE INTEGRITY AND EVIDENTIARY VALUE OF THE *CORPUS DELICTI*, RAISING A CLOUD OF REASONABLE DOUBT WARRANTING ACCUSED-APPELLANT'S ACQUITTAL FOR THE CHARGE OF VIOLATION OF RA NO. 9165.— In cases of illegal sale and possession of dangerous drugs, the dangerous drug itself seized from the accused constitutes the *corpus delicti* of the offense. Hence, it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved. The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed. The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and the identity of the said drug is established with the same unwavering exactitude as that required to make a finding of guilt. When there are doubts on whether the seized substance

examined and established to be the prohibited drug, there can be no crime of illegal possession or illegal sale of a prohibited drug. The prosecution's failure to give justifiable grounds for the police officers' deviation from the procedures laid down in RA 9165, and its failure to account for the fourth link in the chain of custody, have compromised the integrity and evidentiary value of the *corpus delicti* in this case, thereby raising a cloud of reasonable doubt warranting accused-appellant's acquittal. As such, We find that the evidence for the prosecution failed to establish the guilt of the accused-appellant beyond reasonable doubt.

APPEARANCES OF COUNSEL

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

D E C I S I O N

ZALAMEDA, *J.*:

This is an appeal seeking to reverse and set aside the Decision[1] dated 20 April 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 07424, which affirmed the Decision[2] dated 03 September 2014 of Branch 64, Regional Trial Court (RTC) of Makati City in Criminal Case Nos. 13-1497 to 1498, finding Arnel Ambrosio *y* Nidua, *a.k.a.* "Arnel" (accused-appellant), guilty beyond reasonable doubt of the crime of violation of Sections 5[3] and 11,[4] Article II of Republic Act (RA) 9165.

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[1] *Rollo*, pp. 2-12; penned by CA Associate Justice Eduardo B. Peralta, Jr., with CA Associate Justices Remedios A. Salazar-Fernando and Mario V. Lopez (now a Member of this Court), concurring.

[2] CA *rollo*, pp. 49-54; Records, pp. 111-116.

[3] Penalizing the sale, trading, administration, dispensation, delivery, distribution and transportation of dangerous drugs and/or controlled precursors and essential chemicals.

[4] Penalizing possession of dangerous drugs.

Antecedents

Accused-appellant was indicted for the subject offenses in two separate Informations, the accusatory portion of each states –

Criminal Case No. 13-1497

On the 18th day of June 2013 in the city of Makati, the Philippines, accused, not being lawfully authorized to [possess] or otherwise use any dangerous drugs and without corresponding license or prescription, did then and there willfully, unlawfully and feloniously sell, give away, distribute and deliver zero point eighty gram (0.80) and zero point ninety three gram (0.93), with the total of one point seventy three gram (1.73) of dried marijuana fruiting tops which is a dangerous drug, in violation of the above cited law.

CONTRARY TO LAW.[5]

and

Criminal Case No. 13-1498

On the 18th day of June 2013 in the city of Makati, the Philippines, accused, not being lawfully authorized by law to possess and without corresponding prescription did then and there willfully, unlawfully and feloniously have in his possession, direct custody and control six heat sealed transparent plastic sachets containing zero point ninety gram (0.90), zero point eighty nine gram (0.89), zero point ninety eight gram (0.98), zero point eighty five gram (0.85), zero point eighty four gram (0.84) and zero point seventy gram [(0.70)] and one piece of glass tube/pipe containing zero point eighteen gram (0.18) with the total of five point thirty four grams (5.34) of dried marijuana fruiting tops which is a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[6]

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[5] Records, p. 1.

[6] *Id.* at 3.

Upon arraignment, accused-appellant entered a plea of not guilty to the charges.[7] After pre-trial was terminated, trial on the merits ensued.[8]

Version of the Prosecution

On 18 June 2013, the Station Anti Illegal Drugs Special Operations Task Group (SAIDSOTG) received information that accused-appellant engaged in illegal drug pushing in D. Gomez St., *Barangay* Tejeros, Makati City. On the basis thereof, a buy-bust team was organized in coordination with the Makati Anti-Drug Abuse Council (MADAC).

Before 9:00 p.m. of that day, the buy-bust team proceeded to the target area accompanied by the informant. However, accused-appellant did not have *shabu* at the time, so he encouraged the poseur-buyer, Bobby Veñalon (Veñalon), to purchase a "*kasang isang daan*," or One Hundred Pesos (Php 100.00) worth of marijuana instead. The poseur-buyer acceded, and after parting with the marked money as payment, accused-appellant handed two (2) plastic sachets allegedly containing marijuana. After executing the pre-arranged signal, the poseur-buyer introduced himself as a MADAC operative,[9] and placed accused-appellant under arrest. Obtained from accused-appellant's possession was a gray carton with six (6) plastic sachets containing suspected marijuana, six (6) empty plastic sachets, one pipe, one pink lighter, and the marked money.[10]

As it was drizzling and a commotion was taking place, the arresting officers brought the accused-appellant, together with the seized items, to the *barangay* hall of *Barangay* Tejeros, Makati City.[11] Since there was no available elected official,

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[7] *Id.* at 32.

[8] *Id.* at 51-53.

[9] *Id.* at 8-11, 31-32.

[10] *Id.* at 11-12, 38.

[11] *Id*. at 12, 40-42.

the arresting officers summoned the *Barangay Bantay Bayan* Desk Officer, Ramon Fernando (Fernando), to witness the inventory.[12] The seized items were marked, inventoried,[13] photographed[14] and listed in the Inventory Receipt[15] in the presence of accused-appellant and signed by a member of the buy-bust team and Fernando.[16]

Later, the subject specimens were brought and turned over to the SAIDSOTG office for preparation of the requests for laboratory examination[17] and drug test[18] on accused-appellant. The seized items and the requests were later brought to the Southern Police District Crime Laboratory. Pursuant to Chemistry Report No. D-474-13,[19] the submitted specimens tested positive for the presence of marijuana.

Version of the Defense

At around 5:00 p.m. of 18 June 2013, accused-appellant was inside the lavatory of his house when he heard some commotion outside. Upon stepping out of the lavatory, he found six (6) armed men inside his house wearing MADAC uniforms. They brought accused-appellant inside a vehicle and took him to an office. He was bodily searched, but nothing was recovered from him.[20]

He was detained temporarily and, after an hour, brought to an office where they photographed him beside a plastic sachet. He was ordered to admit that the plastic sachet belonged to him, but he refused. He was later taken to the SOCO, then to

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[12] TSN dated 12 February 2014, pp. 13, 16-17, 42-43.

[13] *Id.* at 14-16.

[14] *Id.* at 14; Records, pp. 97-99.

[15] Records, p. 89.

[16] TSN dated 12 February 2014, pp. 16-18, 43.

[17] Records, p. 87.

[18] *Id.* at 91.

[19] *Id.* at 90.

[20] TSN dated 13 August 2014, pp. 2, 4-9.

the Hospital of Pasay, and finally, to the Counter Intelligence Division or CID.[21]

Ruling of the RTC

On 03 September 2014, the RTC rendered its Decision, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:
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> 1. In Criminal Case No. 13-1497, finding the accused Arnel Ambrosio *y* Nidua, GUILTY of the charge for violation of Section 5, Article II of RA 9165 and sentencing him to life imprisonment and to pay a fine of FIVE HUNDRED THOUSAND PESOS (Php500,000.00) without subsidiary imprisonment in case of insolvency; and
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> 2. In Criminal Case No. 13-1498, finding the accused Arnel Ambrosio *y* Nidua, GUILTY of the charge for violation of Section 11, Article II of RA 9165 and sentencing him to an indeterminate penalty of twelve (12) years and one (1) day to fifteen (15) years of imprisonment and to pay a fine of FOUR HUNDRED THOUSAND PESOS (Php400,000.00) without subsidiary imprisonment in case of insolvency.
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> SO ORDERED.[22]

The RTC stated that the prosecution was able to establish all the elements of the crimes charged. The poseur-buyer positively identified accused-appellant as the person who sold him One Hundred Pesos (Php100.00)[23] worth of marijuana. The prosecution likewise satisfactorily proved that accused-appellant had in his possession several sachets of dangerous drugs. The RTC further held that the integrity and evidentiary value of the seized items were properly preserved by the buy-bust team under the chain of custody rule and disregarded accused-appellant's defense of denial.

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[21] *Id.* at 10-12.

[22] Records, page 116; CA *rollo*, p. 54.

[23] TSN dated August 2014, p. 10.

Aggrieved, accused-appellant appealed to the CA.

Ruling of the CA

In its Decision, the CA affirmed accused-appellant's conviction. It ruled that the prosecution succeeded in establishing that there was an illegal sale of prohibited drugs between the poseur-buyer and accused-appellant. It likewise found that accused-appellant was not legally authorized to possess the marijuana and drug paraphernalia obtained from him.

The CA did not give credence to accused-appellant's defense that the prosecution failed to follow the chain of custody rule. It declared that notwithstanding the procedural lapses in the handling of the seized drugs, these were not fatal to the prosecution's cause as it was able to demonstrate the chain of custody of the seized illegal drugs and the preservation of its integrity all throughout the process.

Hence, this appeal.

Issue

The issue is whether or not the CA correctly found accused-appellant guilty beyond reasonable doubt for the crimes of illegal sale and illegal possession of prohibited drugs under RA 9165.

Ruling of the Court

The Court finds the appeal meritorious.

Accused-appellant was charged with illegal sale and illegal possession of dangerous drugs, as defined and penalized under Sections 5 and 11, Article II of RA 9165.

For the successful prosecution of illegal sale of prohibited drugs, the following elements must be established: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.[24] In turn, for the successful prosecution of

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[24] *People v. Pantallano*, G.R. No. 233800, 06 March 2019.

illegal possession of dangerous drugs, it must be established that the accused was in possession of the dangerous drugs without authority of law, and the accused freely and consciously possessed the dangerous drug.[25]

In both cases, it is essential that the identity of the prohibited drugs seized from the accused be established beyond reasonable doubt, and that the prohibited drugs offered in court as exhibit are the same as those recovered from the accused.[26] This requirement is known as the chain of custody rule under RA 9165, which was created to obviate any doubt concerning the identity of the seized drugs.[27]

Section 21, Article II of RA 9165 lays down the chain of custody rule, outlining the procedures police officers must follow in handling seized drugs in order to preserve their integrity and evidentiary value.[28] Said provision was later amended by RA 10640 which took effect in 2014,[29] but since the offenses charged were allegedly committed on 18 June 2013, it is the earlier version of Section 21, Article II of RA 9165 and its corresponding Implementing Rules and Regulations which should apply. The relevant portion of Section 21 (1) reads –

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

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[25] *People v. Ismael*, G.R. No. 208093, 20 February 2017, 818 SCRA 122, 132.

[26] *People v. Macaumbang*, G.R. No. 208836, 01 April 2019.

[27] *People v. Bangcola*, G.R. No. 237802, 18 March 2019.

[28] *People v. Alvaro*, G.R. No. 225596, 10 January 2018.

[29] 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.

The requirements of Section 21 of RA 9165 were not complied with

The seized items should have been marked with the initials of Veñalon, as well as the date, time and place where the evidence was seized, pursuant to the PNP Manual on Anti-Illegal Drugs Operation and Investigation.[30] But the apprehending officers disregarded this and instead marked the seized items as "Arnel," and "Arnel-1" to "Arnel-8".[31]

Also, the marking, inventory and photographing of the seized items were not done immediately. The testimony of Veñalon shows that the police officers waited for some time for an elected official to show up. When it seemed that no elected official was coming, they decided to mark the inventory in the presence of a *Bantay Bayan* desk officer instead. The pertinent portion of Veñalon's testimony is reproduced below:

PROSECUTOR:
Were you able to reach the barangay hall, Mr. Witness?
WITNESS:
Yes, ma'am.

PROSECUTOR:
What did you (sic) there, Mr. Witness?
WITNESS:
We waited for an elected official of the barangay hall (sic).

PROSECUTOR :
Was there any elected barangay official [who] showed up at the barangay hall?
WITNESS:
None, ma'am, because I think the barangay chairman and the kagawad had a meeting at that time.

PROSECUTOR :
What did you do when nobody from the barangay official showed up?

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[30] See *People v. Otico*, G.R. No. 231133, 06 June 2018, 865 SCRA 534.

[31] TSN dated 12 February 2014, pp. 14-15.

WITNESS:
The police officers just decided to summon the Bantay Bayan duty officer to serve as a witness.

PROSECUTOR:
Was the Bantay Bayan officer there?
WITNESS:
Yes, ma'am.

PROSECUTOR:
What did you do when he arrived?
WITNESS:
Doon ko po nilatag ang inventory *na wala pong sulat at pati po iyong mga ebidensya na nakuha ko po.*[32]

The marking and inventory of the seized items were not attended and witnessed by any representative from the media and the DOJ, as well as any elected official, all in violation of the requirements in Section 21 of RA 9165. True, Fernando, the *Bantay Bayan* desk officer, was present. But he is not an elected public official and, thus, not one of the required witnesses in the law.

The presence of the three (3) required witnesses should not only be during the inventory but, more importantly, during accused-appellant's apprehension. For it is at this point that their presence was most needed. Their presence at the time of the seizure and confiscation would belie any doubt as to the source, identity, and integrity of the seized drugs. If the buy-bust operation was legitimately conducted, the presence of these insulating witnesses would also controvert the usual defense of frame-up; they would be able to testify that the operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.[33]

The records show that the briefing of the buy-bust team terminated at around 4:00 p.m., and that the team members

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[32] *Id.* at pp. 12-13.

[33] *People v. Caranto*, G.R. No. 217668, 20 February 2019; citing *People v. Tomawis*, G.R. No. 228890, 18 April 2018.

merely stayed inside their office until it was time to leave for the target area at 8:45 p.m.[34] In those nearly five (5) hours of hiatus, anybody in the team could have contacted representatives from the media, the DOJ, and any local elected official in the area. But nothing in the records show that the police officers exerted any effort at all to secure the attendance of the mandatory witnesses during accused-appellant's apprehension and during inventory.

MADAC operative Veñalon testified that when it appeared that no elected public officials were forthcoming, the police officers decided that the presence of the *Bantay Bayan* desk officer will suffice. This is not a justifiable ground for non-compliance with the required witnesses rule. No other proof was given that the police officers took other measures to ensure the presence of an elected public official. Mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justifiable grounds for non-compliance.[35]

The following links should be established in the chain of custody of the confiscated item: first, the seizure and marking, if practicable, of 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 from the forensic chemist to the court.[36]

In this case, there is a glaring gap in the fourth link of the chain. The trial court dispensed with the testimony of the forensic chemist in view of the stipulation entered into by the prosecution and the defense during the pre-trial conference.

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[34] TSN dated 12 February 2014, p. 31.

[35] *People v. Isla*, G.R. No. 237352, 15 October 2018.

[36] *People v. Ubungen*, G.R. No. 225497, 23 July 2018.

It has been held in *People v. Pajarin*[37] that in case the parties stipulate to dispense with the attendance and testimony of the forensic chemist, it should be stipulated that the forensic chemist was to testify that he/she took the precautionary steps required in order to preserve the integrity and evidentiary value of the seized item, thus: (1) that the forensic chemist received the seized article as marked, properly sealed, and intact; (2) that he/she resealed it after examination of the content; and (3) that he/she placed his/her own marking on the same to ensure that it could not be tampered with pending trial. An examination of the Order dated 25 September 2013, wherein the testimony of the forensic chemist was dispensed with, does not show that the aforesaid conditions were stipulated on.[38]

In cases of illegal sale and possession of dangerous drugs, the dangerous drug itself seized from the accused constitutes the *corpus delicti* of the offense. Hence, it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved. The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed.[39] The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and the identity of the said drug is established with the same unwavering exactitude as that required to make a finding of guilt.[40] When there are doubts on whether the seized substance examined and established to be the prohibited drug, there can be no crime of illegal possession or illegal sale of a prohibited drug.[41]

The prosecution's failure to give justifiable grounds for the police officers' deviation from the procedures laid down in

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[37] G.R. No. 190640, 12 January 2011, 639 SCRA 489.

[38] Records, pp. 51-53.

[39] *People v. Hilario*, G.R. No. 210610, 11 January 2018, 851 SCRA 1, 18.

[40] *People v. Malana*, G.R. No. 233747, 05 December 2018.

[41] *Supra* at note 39.

RA 9165, and its failure to account for the fourth link in the chain of custody, have compromised the integrity and evidentiary value of the *corpus delicti* in this case, thereby raising a cloud of reasonable doubt warranting accused-appellant's acquittal. As such, We find that the evidence for the prosecution failed to establish the guilt of the accused-appellant beyond reasonable doubt.

WHEREFORE, the instant appeal is hereby **GRANTED**. Accordingly, the Decision dated 20 April 2017 rendered by the Court of Appeals in CA-G.R. CR HC No. 07424 is **REVERSED AND SET ASIDE**. Accused-appellant **ARNEL AMBROSIO *y* NIDUA *a.k.a.* "ARNEL"** is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. The accused-appellant is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is detained for any lawful cause.

The Director of the Bureau of Corrections is **DIRECTED** to **IMPLEMENT** this Decision and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED.

Leonen (*Chairperson*), *Carandang*, and *Lazaro-Javier*,[*] *JJ.*, concur.

Gesmundo, J., on leave.

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[*] Designated as additional Member of the Third Division per Special Order No. 2728.

THIRD DIVISION

[G.R. No. 234296. November 27, 2019]

ERNESTO P. GUTIERREZ, *petitioner, vs.* **NAWRAS MANPOWER SERVICES, INC., AL-ADHAMAIN CO. LTD., and ELIZABETH BAWA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; THE MIGRANT OVERSEAS FILIPINOS ACT OF 1995 (REPUBLIC ACT NO. 8042); ILLEGAL DISMISSAL; AN ILLEGALLY DISMISSED MIGRANT WORKER IS ENTITLED TO THE PAYMENT OF HIS OR HER SALARY EQUIVALENT TO THE UNEXPIRED PORTION OF HIS OR HER EMPLOYMENT CONTRACT.— The CA incorrectly reduced the award for petitioner's salary to SR13,800.00. In *Sameer*, this Court struck down the phrase "or for three (3) months for every year of the unexpired term, whichever is less" under Section 7 of R.A. 10022 because the same phrase was already declared unconstitutional in R.A. 8042 or the Migrant Workers and Overseas Filipinos Act of 1995. Petitioner is, thus, entitled to "his salaries for the unexpired portion of his employment contract" — the operative clause of Section 7. As such, the LA's computation of SR40,250.00 shall be reinstated.

2. ID.; ID.; ID.; AN ILLEGALLY DISMISSED MIGRANT WORKER IS ENTITLED TO A FULL REFUND OF HIS OR HER PAYMENT OF THE AIRPLANE TICKET FOR HIS OR HER REPATRIATION; REIMBURSEMENT OF PETITIONER'S EXCESS AIRFARE TICKET, PROPER.— Petitioner claimed that he paid SR3,100.00 as airfare to the Philippines but was only reimbursed SR2,000.00 by Al-Adhamain. Respondents countered that it was Al-Adhamain that purchased petitioner's airplane ticket. x x x. This Court is more inclined to believe that petitioner was able to substantiate his claim of paying SR3,100.00 for his airplane ticket. Aside from the fact that respondents kept silent on the matter in their appeal before the NLRC, the NLRC pointed out that petitioner presented a ticket receipt as proof that petitioner paid for the airplane ticket. This is bolstered by the LA's findings that respondents

failed to present any proof of payment for the ticket. A reading of the CA's decision, likewise, reveals that respondents failed to present any proof to substantiate their claim that they paid for petitioner's ticket. As such, it is proper to reinstate the LA and NLRC's order for respondents to reimburse petitioner the excess SR1,100.00 payment.

3. ID.; ID.; ID.; AN ILLEGALLY DISMISSED MIGRANT WORKER WHO WAS NOT PAID LAWFUL WAGES CORRESPONDING TO THE UNEXPIRED PORTION OF HIS OR HER EMPLOYMENT CONTRACT IS ENTITLED TO AN AWARD OF 10% ATTORNEY'S FEES; THE FINDINGS OF FACT REQUIRED TO PROVE ENTITLEMENT TO ATTORNEY'S FEES IN LABOR CASES REFER TO THE UNJUSTIFIED WITHHOLDING OF LAWFUL WAGES; MALICE OR BAD FAITH ON THE PART OF THE EMPLOYER IN WITHHOLDING THE WAGES NEED NOT BE SHOWN.— In actions for recovery of wages, such as the instant case, a specific provision under the Labor Code governs. Article 111 (a) of the Labor Code provides: Art. 111. *Attorney's Fees*. - (a) In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered. x x x We construed Article 111 of the Labor Code as an exception to the general rule of strict construction in the award of attorney's fees. In *Kaisahan*, We held that "[a]lthough an express finding of facts and law is still necessary to prove the merit of the award, there need not be any showing that the employer acted maliciously or in bad faith when it withheld wages." The findings of fact required to prove entitlement to attorney's fees in labor cases refer to the unjustified withholding of lawful wages. Here, it is undisputed that petitioner was not paid lawful wages corresponding to the unexpired portion of the contract. Therefore, petitioner is entitled to attorney's fees.

4. ID.; ID.; ID.; AN ILLEGALLY DISMISSED MIGRANT WORKER IS ENTITLED TO A FULL REIMBURSEMENT OF THE PLACEMENT FEE HE OR SHE HAS PAID; PETITIONER IS ENTITLED TO THE REPAYMENT OF HIS LAST SALARY BUT NOT TO A REFUND OF THE PLACEMENT FEE AND THE INTEREST ON THE SAME AS HE NEVER PAID THE PLACEMENT FEE.— Petitioner was not given his November 2013 salary because Al-Adhamain

withheld it "as [petitioner's] placement fee." The said salary deduction was improper because an illegally dismissed migrant worker is entitled to a full reimbursement of his/her placement fee. The LA's directive to refund petitioner's placement fee is really one for the repayment of petitioner's November 2013 salary because petitioner never paid respondents a placement fee. The LA, the NLRC, and the CA incorrectly considered petitioner entitled to a "refund" of his placement fee because petitioner's latest salary (*i.e.*, for November 2013) was deducted for such purpose. Petitioner is not entitled to a refund because he never paid respondents any placement fee. Consequently, petitioner is not entitled to a 12% interest on the same.

5. ID.; ID.; ID.; PETITIONER'S ENTITLEMENT TO MORAL AND EXEMPLARY DAMAGES NOT SUFFICIENTLY PROVED; THE FACTUAL FINDINGS OF THE LABOR ARBITER AND THE COURT OF APPEALS WILL NOT BE DISTURBED BY THE COURT AS THE SAME IS NOT A TRIER OF FACTS.— Petitioner claimed to have substantially proven respondents' wanton, oppressive, and malevolent manner in terminating him to entitle petitioner to an award of moral and exemplary damages. However, the LA and the CA both found petitioner's evidence insufficient to prove his entitlement to moral and exemplary damages. Thus, We shall not disturb these factual findings as this Court is not a trier of facts in petitions for review on *certiorari*.

6. ID.; ID.; ID.; PETITIONER IS ENTITLED TO 6% PER ANNUM LEGAL INTEREST ON THE JUDGMENT AWARD.— In the case of *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*, this Court clarified the imposition of interest previously stated in the case of *Nacar v. Gallery Frames*. When the monetary obligation does not constitute a loan or forbearance of money, goods, or credits and there is no stipulation as to the payment of interest on the damages, a legal interest of 6% *per annum* under Article 2209 of the Civil Code shall be imposed. The imposition of such legal interest shall be reckoned from the date of extrajudicial or judicial demand and shall continue to run until full payment. In the case of *Hun Hyung Park v. Eung Won Choi*, this Court explained that such interest — called compensatory interest — will not be subject to the imposition of further interest under Article 2212 of the Civil Code.

Therefore, the amounts of SR40,250.00 as unexpired portion of the contract and SR1,100.00 as excess payment for airfare awarded to petitioner shall earn a legal interest of 6% from the time the complaint was filed until full payment.

APPEARANCES OF COUNSEL

Jerome F. Del Rosario for petitioner.
Aguinaldo S. Sepnio for respondents.

D E C I S I O N

CARANDANG, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated March 20, 2017 and the Resolution[3] dated September 14, 2017 of the Court of Appeals (CA) in CA-G.R. SP. No. 143185. The CA affirmed the National Labor Relations Commission's (NLRC) Resolution and the Labor Arbiter's (LA) Decision finding petitioner Ernesto P. Gutierrez entitled to (1) a refund of placement fee; (2) salary for the unexpired portion of petitioner's contract; and (3) 10% attorney's fees. However, the CA modified the awards granted to petitioner by reducing the salary award from 40,250.00 Saudi Arabia Riyal (SR40,250.00) to SR13,800.00, deleting petitioner's entitlement to a refund of the excess airfare paid for his repatriation, and omitting the award of attorney's fees for lack of basis.

Factual Antecedents

Petitioner is an Overseas Filipino Worker. He was hired by respondent NAWRAS Manpower Services, Inc. (NAWRAS) to work as respondent Al-Adhamain Co. Ltd.'s (Al-Adhamain)

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[1] *Rollo*, pp. 10-56.

[2] Penned by Associate Justice Samuel H. Gaerlan, with Associate Justices Normandie B. Pizarro and Jhosep Y. Lopez, concurring; *id*. at 58-69.

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

"driver vehicle road" in Saudi Arabia for two years.[4] Petitioner was offered a monthly salary of SR2,300.00.[5] According to petitioner, other perks include SR300.00 food allowance, free accommodation, two hours' worth of daily overtime, and a service vehicle. He was deployed to Saudi Arabia on July 31, 2013.[6]

Upon arrival, petitioner claimed that he was initially placed on floating status. He received his first salary only in November 2013 and received two months' worth of salary on December 2, 2013. He received a service vehicle on December 3, 2013 but he had to personally shoulder the gasoline expenses going to Al-Adhamain's asphalt plant. On February 15, 2014, the workshop supervisor informed petitioner that he would be transferred to another site and was made to report to Al-Adhamain's administrator. At the administrator's office, he was only given a clearance form. In a meeting with Al-Adhamain's owner, petitioner was told that his contract would be terminated and he would be repatriated as soon as petitioner completes his clearance. Petitioner then called NAWRAS about the pre-termination of his contract but was refrained from filing a complaint with the Philippine Overseas Labor Office in order to allow NAWRAS to talk to Al-Adhamain. Petitioner thus proceeded to submit the requirements for his clearance in the last week of February 2014. On March 15, 2014, petitioner was given his remaining salary (sans 1-month salary) and a refund of his two months' salary bond. He was then told to book his own flight back to the Philippines and that he would be reimbursed later on. However, of the SR3,100.00 that he spent for the airfare, Al-Adhamain's owner only reimbursed him for SR2,000.00.[7]

Upon repatriation, petitioner filed a complaint for actual illegal dismissal with claims for underpaid overtime pay, unpaid salaries,

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[4] See petitioner's Overseas Filipino Worker Information; *id*. at 122.

[5] *Id*.

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

[7] *Id*. at 14-19.

and transportation expenses, termination pay, damages, and attorney's fees against respondents.[8]

Respondents averred that petitioner was validly dismissed because of his poor performance. After petitioner's three-month probationary period, Al-Adhamain informed him of his unsatisfactory performance. Petitioner was thus transferred to a different site to afford him a chance to change his working attitude. They claimed that petitioner was given several chances to change his work attitude to no avail. Despite extending several opportunities for petitioner to improve, petitioner opted to request for his last salary, benefits, termination pay, and return ticket. Lastly, respondents alleged that they complied with the notice and hearing requirement before terminating petitioner's employment.[9]

Ruling of the Labor Arbiter

On March 30, 2015, the LA rendered a Decision[10] finding petitioner illegally dismissed.

The LA rejected respondents' claim that petitioner was dismissed for just cause. It noted that respondents failed to produce any evidence supporting their claim. Respondents failed to give any detail on how they measured petitioner's performance to conclude that petitioner's work was unsatisfactory.[11]

The LA then granted petitioner's claim for refund of his SR2,300.00 placement fee due to respondents' failure to rebut such claim. On the amount of unpaid salary, the LA awarded petitioner 17.5 months' worth of salary because petitioner was only able to work for six months and two weeks of his two-year contract. Petitioner's request for refund of the excess airfare ticket of SR1,100.00 was likewise granted. Petitioner's claims

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[8] *Id*. at 171.

[9] *Id*. at 364-365.

[10] Penned by Labor Arbiter Clarissa G. Beltran-Lerios; *id*. at 171-177.

[11] *Id*. at 174.

for overtime pay, moral damages, and exemplary damages were denied for lack of evidence justifying the same.[12]

Aggrieved, respondents appealed the LA's decision with the NLRC.

Ruling of the National Labor Relations Commission

In its July 30, 2015 Resolution,[13] the NLRC affirmed the LA's Decision *in toto*.

The NLRC found petitioner illegally dismissed because of respondents' unsubstantiated claim of petitioner's poor performance. The NLRC reiterated this Court's ruling that poor performance, equivalent to inefficiency under Article 282[14] of the Labor Code, must amount to gross and habitual neglect of duties to be a just cause for dismissal.[15] The NLRC clarified that poor performance does not necessarily equate to gross and habitual neglect of duties.[16]

Respondents' Motion for Reconsideration[17] was denied in a Resolution[18] dated September 28, 2015. Unfazed, respondents elevated the matter to the CA *via* a Petition for *Certiorari*[19] under Rule 65 of the Rules of Court.

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[12] *Id*. at 175-176.

[13] Penned by Presiding Commissioner Gregorio O. Bilog, III, with Commissioners Erlinda T. Agus and Alan A. Ventura, concurring; *id*. at 236-244.

[14] Mistakenly referred to as Article 288 in the NLRC Resolution.

[15] *Mitsubishi Motors Phils. Corp. v. Chrysler Phils. Labor Union*, 477 Phil. 241, 256 (2004).

[16] *Rollo*, p. 241, citing *Eastern Overseas Employment Center, Inc. v. Bea*, 512 Phil. 749, 758 (2005).

[17] *Id*. at 245-250.

[18] Penned by Presiding Commissioner Gregorio O. Bilog, III, with Commissioners Erlinda T. Agus and Alan A. Ventura, concurring; *id*. at 257-258.

[19] *Id*. at 260-272.

Ruling of the Court of Appeals

On March 20, 2017, the CA affirmed the tribunal's finding of illegal dismissal. The CA also found a dearth of evidence to prove that petitioner's performance equated to gross and habitual neglect. However, the CA modified petitioner's monetary awards in order to conform to paragraph 5, Section 7 of Republic Act No. (R.A.) 10022.[20]

Paragraph 5, Section 7 of R.A. 10022 states in part:

> In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, or any unauthorized deductions from the migrant worker's salary, the worker shall be entitled to the full reimbursement [of] his placement fee and the deductions made with interest at twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.

Thus, the appellate court affirmed petitioner's entitlement to a refund of his placement fee with 12% annual legal interest but reduced the amount of his remaining salary to SR13,800, calculated as follows:

Basic Salary	SR 2,300.00
Multiplied by: Factor based on 17.5 unexpired term (equivalent to 3 months for every year of the unexpired term)	6 months
Petitioner's remaining salary	SR 13,800.00

[20] An Act Amending Republic Act No. 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, as amended, Further Improving the Standard of Protection and Promotion of the Welfare of Migrant Workers, Their Families and Overseas Filipinos in Distress, and for Other Purposes.

The same rule was reiterated in Section 5, Rule VII of the Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995, as amended by R.A. 10022.

The CA deleted petitioner's award of SR1,100.00 representing the excess airfare for petitioner's repatriation. The CA ruled that petitioner only presented his e-ticket, which did not indicate the amount petitioner paid. Attorney's fees were likewise deleted due to the LA's failure to explain the factual circumstances warranting such award.

Seeking a reinstatement of the LA's decision, petitioner files the instant petition for review. Petitioner avers that Section 7 of R.A. 10022 should not have been applied because it was declared unconstitutional in *Sameer Overseas Placement Agency, Inc. v. Cabiles*.[21]

Petitioner prays for the following awards:

1. Reinstatement of the LA's award of
a. SR40,250.00 salary for the unexpired portion of the contract;
b. SR1,100.00 excess airfare ticket expense; and
c. 10% attorney's fees;
2. Petitioner's latest salary for one month;
3. 12% annual interest on his latest salary and on the reimbursement of his placement fee;
4. Moral and exemplary damages; and
5. Legal interest on judgment award.

Our Ruling

The instant petition is partly meritorious. We shall discuss the issues *seriatim*.

Petitioner is entitled to salary equivalent to the unexpired portion of the contract

The CA incorrectly reduced the award for petitioner's salary to SR13,800.00. In *Sameer*,[22] this Court struck down the phrase

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[21] 740 Phil. 403, 459 (2014).

[22] *Id*.

"or for three (3) months for every year of the unexpired term, whichever is less"[23] under Section 7 of R.A. 10022 because the same phrase was already declared unconstitutional in R.A. 8042 or the Migrant Workers and Overseas Filipinos Act of 1995.[24] Petitioner is, thus, entitled to "his salaries for the unexpired portion of his employment contract" – the operative clause of Section 7. As such, the LA's computation of SR40,250.00 shall be reinstated.

Petitioner is entitled to SR1,100.00 as reimbursement for his airfare ticket

Petitioner claimed that he paid SR3,100.00 as airfare to the Philippines but was only reimbursed SR2,000.00 by Al-Adhamain.[25] Respondents countered that it was Al-Adhamain that purchased petitioner's airplane ticket.[26] The LA ordered respondents to reimburse petitioner the unpaid airfare of SR1,100.00 for failure of respondents to present any evidence proving their claim.[27] On appeal, the NLRC affirmed the LA's findings because of petitioner's attachment of his ticket receipt showing petitioner's payment of the airplane ticket. The NLRC also noted that respondents "opted not to comment on the [petitioner's] plane ticket."[28] However, the CA reversed such findings because petitioner's only evidence was an e-ticket absent any indication of how much was paid.[29]

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[23] *Id*. at 448.

[24] See *Serrano v. Gallant Maritime Services, Inc.*, 601 Phil. 245, 306 (2009).

[25] *Rollo*, p. 19.

[26] *Id*. at 368.

[27] *Id*. at 176.

[28] *Id*. at 243.

[29] *Id*. at 67.

This Court is more inclined to believe that petitioner was able to substantiate his claim of paying SR3,100.00 for his airplane ticket. Aside from the fact that respondents kept silent on the matter in their appeal before the NLRC, the NLRC pointed out that petitioner presented a ticket receipt as proof that petitioner paid for the airplane ticket. This is bolstered by the LA's findings that respondents failed to present any proof of payment for the ticket. A reading of the CA's decision, likewise, reveals that respondents failed to present any proof to substantiate their claim that they paid for petitioner's ticket. As such, it is proper to reinstate the LA and NLRC's order for respondents to reimburse petitioner the excess SR1,100.00 payment.

Petitioner is entitled to 10% attorney's fees

In *Kaisahan at Kapatiran ng mga Manggagawa at Kawani sa MWC-East Zone Union v. Manila Water Co., Inc.*,[30] this Court differentiated the ordinary and extraordinary concepts of attorney's fees. Attorney's fees under the extraordinary concept refer to those awarded by the Court to the losing party.[31] These may be awarded in specific instances enumerated under Article 2208 of the Civil Code. Under paragraph 7 of Article 2208, attorney's fees may be recovered "[i]n actions for recovery of wages x x x."

In actions for recovery of wages, such as the instant case, a specific provision under the Labor Code governs. Article 111 (a) of the Labor Code provides:

Art. 111. *Attorney's Fees.* – (a) In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.

x x x x x x x x x

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[30] 676 Phil. 262 (2011).

[31] *Id*. at 270.

We construed Article 111 of the Labor Code as an exception to the general rule[32] of strict construction in the award of attorney's fees. In *Kaisahan*, We held that "[a]lthough an express finding of facts and law is still necessary to prove the merit of the award, there need not be any showing that the employer acted maliciously or in bad faith when it withheld wages."[33] The findings of fact required to prove entitlement to attorney's fees in labor cases refer to the unjustified withholding of lawful wages.[34]

Here, it is undisputed that petitioner was not paid lawful wages corresponding to the unexpired portion of the contract. Therefore, petitioner is entitled to attorney's fees.

Petitioner is entitled to repayment of his last salary

Petitioner was not given his November 2013 salary because Al-Adhamain withheld it "as [petitioner's] placement fee."[35] The said salary deduction was improper because an illegally dismissed migrant worker is entitled to a full reimbursement of his/her placement fee. The LA's directive to refund petitioner's placement fee is really one for the repayment of petitioner's November 2013 salary because petitioner never paid respondents a placement fee.

Petitioner is not entitled to 12% interest on the "refund" of placement fee

The LA, the NLRC, and the CA incorrectly considered petitioner entitled to a "refund" of his placement fee because petitioner's latest salary (*i.e.*, for November 2013) was deducted

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[32] The general rule,under Article 2208 of the Civil Code is that "[i]n the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, **cannot** be recovered x x x." (Emphasis ours)

[33] *Supra* note 30 at 275.

[34] See *id*. at 276.

[35] *Rollo*, p. 65.

for such purpose. Petitioner is not entitled to a refund because he never paid respondents any placement fee. Consequently, petitioner is not entitled to a 12% interest on the same.

Petitioner is not entitled to moral and exemplary damages

Petitioner claimed to have substantially proven respondents' wanton, oppressive, and malevolent manner in terminating him to entitle petitioner to an award of moral and exemplary damages. However, the LA and the CA both found petitioner's evidence insufficient to prove his entitlement to moral and exemplary damages. Thus, We shall not disturb these factual findings as this Court is not a trier of facts in petitions for review on *certiorari*.

Petitioner is entitled to legal interest on the judgment award

In the case of *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*,[36] this Court clarified the imposition of interest previously stated in the case of *Nacar v. Gallery Frames*.[37] When the monetary obligation does not constitute a loan or forbearance of money, goods, or credits and there is no stipulation as to the payment of interest on the damages, a legal interest of 6% *per annum* under Article 2209[38] of the Civil Code shall be imposed. The imposition of such legal interest shall be reckoned from the date of extrajudicial or judicial demand and shall continue to run until full payment.[39] In the

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

[37] 716 Phil. 267 (2013), citing *Eastern Shipping Lines, Inc. v. Court of Appeals*, 304 Phil. 236 (1994).

[38] Art. 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six [percent] *per annum*.

[39] *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*, *supra* note 36.

case of *Hun Hyung Park v. Eung Won Choi*,[40] this Court explained that such interest – called compensatory interest – will not be subject to the imposition of further interest under Article 2212[41] of the Civil Code.

Therefore, the amounts of SR40,250.00 as unexpired portion of the contract and SR1,100.00 as excess payment for airfare awarded to petitioner shall earn a legal interest of 6%[42] from the time the complaint was filed until full payment.

WHEREFORE, the Decision dated March 20, 2017 and the Resolution dated September 14, 2017 of the Court of Appeals in CA-G.R. SP. No. 143185 are **AFFIRMED with MODIFICATION**. Respondents NAWRAS Manpower Services, Inc., Al-Adhamain Co. Ltd., and Elizabeth Bawa are **ORDERED** to pay petitioner Ernesto P. Gutierrez:

1. Salary for the unexpired term of petitioner's employment contract in the amount of SR40,250.00;
2. Petitioner's November 2013 salary;
3. Reimbursement for petitioner's airplane ticket in the amount of SR1,100.00;
4. Interest of 6% *per annum* on SR40,250.00 and SR1,100.00, computed from the time the complaint was filed until the same are fully paid; and
5. 10% attorney's fees.

The Labor Arbiter is **ORDERED** to make a recomputation of the total monetary benefits awarded and due to petitioner in accordance with this Decision.

SO ORDERED.

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[40] G.R. No. 220826, March 27, 2019.

[41] Art. 2212. Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point.

[42] As imposed by the *Bangko Sentral ng Pilipinas*' Monetary Board Circular No. 799, series of 2013.

Leonen (*Chairperson*), *Lazaro-Javier*,* and *Zalameda, JJ.*, concur.

Gesmundo, J., on official leave.

THIRD DIVISION

[G.R. No. 236322. November 27, 2019]

COKIA INDUSTRIES HOLDINGS MANAGEMENT, INC. and/or GEORGE LEE CO, President & Chief Operating Officer, *petitioners, vs.* **BEATRIZ C. BUG-OS,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL EXISTS IF AN ACT OF CLEAR DISCRIMINATION, INSENSIBILITY, OR DISDAIN BY AN EMPLOYER BECOMES SO UNBEARABLE ON THE PART OF THE EMPLOYEE THAT IT COULD FORECLOSE ANY CHOICE BY HIM OR HER EXCEPT TO FOREGO HIS OR HER CONTINUED EMPLOYMENT; RESIGNATION REFERS TO THE VOLUNTARY ACT OF AN EMPLOYEE WHO IS IN A SITUATION WHERE ONE BELIEVES THAT PERSONAL REASONS CANNOT BE SACRIFICED IN FAVOR OF THE EXIGENCY OF THE SERVICE, AND ONE HAS NO OTHER CHOICE BUT TO DISSOCIATE ONESELF FROM EMPLOYMENT.— Constructive dismissal

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* Designated as Additional Member of the Third Division per Special Order No. 2728.

exists if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him or her except to forego his or her continued employment. The test for determining if an employee was constructively dismissed is whether a reasonable person in the employee's position would feel compelled to give up his or her employment under the prevailing circumstances. In contrast, resignation refers to the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment. The acts of the employee before and after the alleged resignation must be considered in determining whether he or she, in fact, intended to sever his or her employment.

2. ID.; ID.; ID.;THE EMPLOYER HAS THE BURDEN OF PROVING THAT AN EMPLOYEE VOLUNTARILY RESIGNED, BUT AN ALLEGATION OF CONSTRUCTIVE DISMISSAL MUST BE PROVEN BY THE EMPLOYEE, ESPECIALLY WHEN HE OR SHE HAS GIVEN A RESIGNATION LETTER TO THE EMPLOYER.— The employer has the burden of proving that an employee voluntarily resigned. However, an allegation of constructive dismissal must be proven by the employee, especially when he or she has given a resignation letter to the employer, as held in the appropriate case of *Gan v. Galderma Philippines, Inc.* Whether the parties were able to discharge their respective burdens involves a review of the factual findings of the courts *a quo*. While the Court generally does not perform such function, the conflicting findings of the Labor Arbiter, the NLRC, and the CA call for the same in this case.

3. ID.; ID.; ID.; STRONG WORDS FROM THE EMPLOYER DO NOT NECESSARILY MAKE THE WORKING ENVIRONMENT UNBEARABLE, AS ONLY WHEN THESE ARE UTTERED WITHOUT PALPABLE REASON OR ARE EXPRESSED ONLY TO DEGRADE THE DIGNITY OF THE EMPLOYEE WILL A HOSTILE WORK ENVIRONMENT BE CREATED; BARE ALLEGATIONS ALONE ARE INSUFFICIENT TO ESTABLISH CONSTRUCTIVE DISMISSAL.— As proof of Bug-Os' voluntary resignation, petitioners submitted a copy of her

handwritten resignation letter. x x x. On its face, the letter does not have any indication that Bug-Os was forced to execute it. She made no mention of what she claims are false accusations against her. Her words of gratitude further undermine her assertion that she was coerced to resign. Nonetheless, Bug-Os claims that George and his mother subjected her to harsh treatment the moment the irregular transactions were discovered. This made working for CIHMI unbearable and compelled her to resign. However, she did not submit proof in support of her contentions. Bare allegations alone are insufficient to establish constructive dismissal. Notably, Lolita Perez (Perez), CIHMI's employee in charge of bookkeeping, recording, and preparation of its vouchers and even Bug-Os herself claimed that the latter was never scolded or subjected to disciplinary action by petitioners prior to the discovery of the irregularities. In addition, Perez refuted Bug-Os and averred that George scolded the latter only once in relation to the irregularities. Moreover, strong words from the employer do not necessarily make the working environment unbearable. When these are uttered "without palpable reason or are expressed only for the purpose of degrading the dignity of the employee, then a hostile work environment will be created." Bug-Os did not cite the statements made by George that were demeaning to her. Hence, We cannot say whether George uttered words which made working in CIHMI unbearable for her, or simply expressed his anger over the misappropriation of CIHMI's funds.

4. **ID.; ID.; ID.; WHILE THERE IS NO FIXED PERIOD FOR CONSTRUCTIVE DISMISSAL, THE PERIOD FROM THE TIME THE EMPLOYEE WAS ASKED TO EXPLAIN THE IRREGULARITIES DISCOVERED UNTIL SHE RESIGNED, DOES NOT LEND CREDIBILITY TO HER CLAIM THAT SHE WAS CONSTRUCTIVELY DISMISSED.—** We also take note of the fact that Bug-Os resigned merely two days after she was given the Office Memorandum, or from July 4 to 6, 2015. It is incredulous that in that short span of time, she was subjected to so much harassment that it made working for CIHMI unbearable. While there is no fixed period for constructive dismissal, the period from the time Bug-Os was asked to explain the irregularities discovered until she resigned simply does not lend credibility to her claim that she was constructively dismissed.

APPEARANCES OF COUNSEL

Dela Serna & Castaños Law Firm for petitioners.
Oro Legis Lawyers and Notaries for respondent.

D E C I S I O N

CARANDANG, *J.*:

This is a Petition for Review on *Certiorari*[1] assailing the Decision[2] dated August 25, 2017 and Resolution[3] dated November 24, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 07982. The CA affirmed the Resolutions dated December 29, 2016[4] and February 14, 2017[5] of the National Labor Relations Commission (NLRC), which granted respondent Beatriz Bug-Os' (Bug-Os) motion for reconsideration and set aside its Resolution[6] dated June 16, 2016 and the Decision[7] dated November 23, 2015 of the Labor Arbiter. The NLRC found Cokia Industries Holdings Management, Inc. (CIHMI) and its President and Chief Operating Officer George Lee Co (George; collectively, petitioners) to have illegally dismissed Bug-Os and ordered them to pay her backwages, 13th month pay, and service incentive leave pay. The NLRC also ordered Bug-Os' reinstatement to her previous position without loss of seniority rights and privileges.[8]

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[1] *Rollo*, pp. 3-39.

[2] Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Perpetua T. Atal-Paño and Ruben Reynaldo G. Roxas, concurring; *id*. at 193-202.

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

[4] Penned by Presiding Commissioner Proculo T. Sarmen, with Presiding Commissioners Bario-Rod M. Talon and Elbert T. Restauro, concurring; *id*. at 138-142.

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

[6] *Id*. at 117-127.

[7] Penned by Labor Arbiter Rammex C. Tiglao; *id*. at 82-89.

[8] *Id*. at 85-89.

Antecedents

Bug-Os was employed as CIHMI's accounting personnel on January 2, 2001. She was tasked to do the following: (1) prepare salary payrolls, vouchers, and contributions; (2) process loans and submit remittances of the company to various government agencies like the Social Security System (SSS), Philippine Health Insurance Corporation (PhilHealth), and Pagtutulungan sa Kinabukasan: Ikaw, Bangko, Industria at Gobyerno (Pag-Ibig) Fund; and (3) serve as liason officer/ authorized representative to various government agencies, including the Department of Labor and Employment.[9]

When Biange L. Co (Biange) died, he was replaced by his sister, Shirley L. Co (Shirley), as Corporate Finance Officer/ Treasurer of CIHMI in May 2015. Shirley reviewed the documents of the company and discovered that there was a record of a Pag-Ibig loan in her name even though she did not apply for it. After she informed George of her discovery, they began investigating the matter. They discovered several irregularities, including forgeries and falsifications on the Pag-Ibig loan supposedly obtained by Shirley, and on the remittances to Pag-Ibig. The documents for the loan under Shirley's name bore her forged signature and that of Biange's.[10]

On July 4, 2015, George issued an Office Memorandum to Bug-Os, directing her to explain: "(1) why she participated and connived in applying, processing, and securing a multi-purpose loan in the name of stockholder and corporate officer(s) Shirley Co; (2) why she lied and told Shirley that the latter did not have any loan with Pag-Ibig; and (3) why she attempted to cover up the fact that Shirley has an existing loan with Pag-Ibig that she never applied for." Bug-Os submitted her handwritten explanation on the same day.[11] She denied having

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[9] *Id*. at 194.

[10] *Id*.

[11] *Id*. at 195.

any knowledge of the irregularities. Allegedly, Gina Co (Gina), sister-in-law of George and Bug-Os' immediate supervisor, was the one responsible for the forgery. Bug-Os claimed that she merely prepared the loan forms and submitted it to Pag-Ibig.[12]

On July 6, 2015, Bug-Os tendered her departure through a handwritten resignation letter, which became effective at the close of office hours on the same day. The following day, she sent another handwritten letter authorizing her cousin, Corazon P. Etac (Etac), to withdraw her salaries, 13th month pay and other amounts due her. On July 30, 2015, Etac received the check for Bug-Os worth ₱9,163.50 covering her salary for July 1 to 6, 2015, 13th month pay, and proportionate service incentive leave pay. Bug-Os filed a complaint for illegal dismissal against petitioners on August 11, 2015.[13]

Ruling of the Labor Arbiter

On November 23, 2015, the Labor Arbiter dismissed Bug-Os' complaint with prejudice and for lack of merit.[14] The Labor Arbiter held that her unjustified failure to submit her position paper is sufficient ground to dismiss her complaint.[15] In any case, the Labor Arbiter ruled that petitioners were able to show that Bug-Os voluntarily resigned.[16] There was no proof that she was merely compelled to do so. She even sent another letter authorizing Etac to claim her monetary benefits on her behalf to CIHMI after she resigned. For the Labor Arbiter, Bug-Os opted for a graceful exit rather than be dismissed.[17] Bug-Os appealed to the NLRC.

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[12] *Id*. at 97.

[13] *Id*. at 195.

[14] *Id*. at 89.

[15] *Id*.

[16] *Id*. at 85.

[17] *Id*. at 86-87.

Ruling of the NLRC

In its June 16, 2016 Resolution, the NLRC dismissed the appeal and affirmed the ruling of the Labor Arbiter.[18] The NLRC agreed with the Labor Arbiter that Bug-Os' failure to submit her position paper was inexcusable.[19] The NLRC also held that Bug-Os resigned without waiting for the outcome of the investigation.[20] The contents of her resignation, position, an undergraduate degree in accounting, 18 units of Masters in Business Administration,[21] work experience, and the circumstances before and after her departure, constitute substantial proof of her voluntary resignation.[22] In addition, she did not submit evidence that George was hostile towards her. Overall, there was no proof of Bug-Os' constructive dismissa1.[23]

Bug-Os filed a motion for reconsideration. In its December 29, 2016 Resolution,[24] the NLRC granted her motion and ruled as follows:

WHEREFORE, the motion for reconsideration is **GRANTED.**

The assailed Resolution is SET ASIDE and a new one is entered finding respondents guilty of illegal dismissal. Complainant is entitled to backwages of ₱211,431.00, and reinstatement to her previous position without loss of seniority rights and privileges.

In addition, since complainant is not a minimum wage earner, the award of backwages, 13th month pay and SILP is subject to 5% withholding tax pursuant to Revenue Memorandum Circular No. 39-2012 dated August 3, 2012 as restated in NLRC Administrative Order No. 11-17, dated November 16, 2012.

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[18] *Id*. at 126-127.

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

[20] *Id*. at 124.

[21] *Id*. at 66.

[22] *Id*. at 127.

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

[24] *Supra* note 4.

SO ORDERED.[25]

The NLRC held that Bug-Os was forced to resign because petitioners subjected her to harsh words and treatment.[26] George gave his orders in a high-pitched voice, directed her to do something despite being busy working on the payroll, forced her to run when she was given orders, and made her feel like a slave.[27] Bug-Os' act of filing her complaint shows that she had no real intention to give up her office.[28]

Petitioners filed a motion for reconsideration, but the NLRC denied it in its Resolution[29] dated February 14, 2017. Thus, they filed a petition for *certiorari* before the CA to assail the ruling of the NLRC.

Ruling of the CA

The CA denied the petition and affirmed the Resolutions of the NLRC in its Decision[30] dated August 25, 2017. The CA was convinced that Bug-Os would not have resigned if not for the harsh words and treatment from petitioners.[31] Therefore, the CA held that the NLRC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction.[32]

Petitioners filed a motion for reconsideration. After the CA denied it in its Resolution[33] dated November 24, 2017, petitioners filed a petition before this Court to assail the ruling of the NLRC.

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[25] *Id*. at 141.

[26] *Id*. at 139.

[27] *Id*. at 138.

[28] *Id*. at 140.

[29] *Supra* note 5.

[30] *Supra* note 2.

[31] *Id.* at 200-201.

[32] *Id.* at 201.

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

Issue

The issue before Us is whether the CA erred in affirming the finding of the NLRC that Bug-Os was illegally dismissed.

Ruling of the Court

The petition is meritorious.

Constructive dismissal exists if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him or her except to forego his or her continued employment.[34] The test for determining if an employee was constructively dismissed is whether a reasonable person in the employee's position would feel compelled to give up his or her employment under the prevailing circumstances.[35]

In contrast, resignation refers to the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment. The acts of the employee before and after the alleged resignation must be considered in determining whether he or she, in fact, intended to sever his or her employment.[36]

The employer has the burden of proving that an employee voluntarily resigned. However, an allegation of constructive dismissal must be proven by the employee,[37] especially when he or she has given a resignation letter to the employer, as held in the appropriate case of *Gan v. Galderma Philippines*,

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[34] *Que v. Asia Brewery, Inc.,* G.R. No. 202388, April 10, 2019.

[35] *Peñaflor v. Outdoor Clothing Manufacturing Corp.,* 632 Phil. 219, 226 (2010).

[36] *Pascua v. Bank Wise, Inc.,* G.R. Nos. 191460 & 191464, January 31, 2018, 853 SCRA 446, 460.

[37] *FCA Security and General Services, Inc. v. Academia, Jr. II*, G.R. No. 189493, August 2, 2017, 834 SCRA 83, 84.

Inc.[38] Whether the parties were able to discharge their respective burdens involves a review of the factual findings of the courts *a quo*. While the Court generally does not perform such function, the conflicting findings of the Labor Arbiter, the NLRC, and the CA call for the same in this case.[39]

As proof of Bug-Os' voluntary resignation, petitioners submitted a copy of her handwritten resignation letter. Bug-Os' resignation letter states:

> Sirs/Madams,
>
> Good day!
>
> Effective at the close of office hours of July 6, 2015, I will tender my resignation as an OFFICE EMPLOYEE of your 2 (two) PRESTIGIOUS COMPANIES.
>
> Thank you for the OPPORTUNITY working w/ you.[40]

On its face, the letter does not have any indication that Bug-Os was forced to execute it. She made no mention of what she claims are false accusations against her. Her words of gratitude further undermine her assertion that she was coerced to resign.[41]

Nonetheless, Bug-Os claims that George and his mother subjected her to harsh treatment the moment the irregular transactions were discovered. This made working for CIHMI unbearable and compelled her to resign. However, she did not submit proof in support of her contentions. Bare allegations alone are insufficient to establish constructive dismissal.[42]

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[38] 701 Phil. 612, 640 (2013).

[39] *Lu v. Enopia,* 806 Phil. 725, 738 (2017).

[40] *Rollo,* p. 78.

[41] See *Panasonic Manufacturing Philippines Corp. v. Peckson,* G.R. No. 206316, March 20, 2019; *Rodriguez v. Park N Ride, Inc.,* 807 Phil. 747-758 (2017); and *Vicente v. Court of Appeals,* 557 Phil. 777-786 (2007).

[42] *Panasonic Manufacturing Philippines Corp. v. Peckson*, *supra* note 41; *Doble, Jr. v. ABB, Inc.*, G.R. No. 215627, June 5, 2017, 825 SCRA 557; and *Cosue v. Ferritz Integrated Development Corp*., G.R. No. 230664, July 24, 2017, 831 SCRA 605.

Notably, Lolita Perez (Perez), CIHMI's employee in charge of bookkeeping, recording, and preparation of its vouchers and even Bug-Os herself claimed that the latter was never scolded or subjected to disciplinary action by petitioners prior to the discovery of the irregularities.[43] In addition, Perez refuted Bug-Os and averred that George scolded the latter only once in relation to the irregularities.[44]

Moreover, strong words from the employer do not necessarily make the working environment unbearable. When these are uttered "without palpable reason or are expressed only for the purpose of degrading the dignity of the employee, then a hostile work environment will be created."[45] Bug-Os did not cite the statements made by George that were demeaning to her. Hence, We cannot say whether George uttered words which made working in CIHMI unbearable for her, or simply expressed his anger over the misappropriation of CIHMI's funds.

We also take note of the fact that Bug-Os resigned merely two days after she was given the Office Memorandum, or from July 4 to 6, 2015. It is incredulous that in that short span of time, she was subjected to so much harassment that it made working for CIHMI unbearable. While there is no fixed period for constructive dismissal, the period from the time Bug-Os was asked to explain the irregularities discovered until she resigned simply does not lend credibility to her claim that she was constructively dismissed.

Conversely, petitioners submitted evidence to prove that Bug-Os committed irregularities, such as the affidavits of Shirley, Perez, and Edem Manlangit (Manlangit), another employee of CIHMI. Shirley attested to the fact that she did not obtain a

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[43] *Rollo,* pp. 56 & 93.

[44] *Id*. at 56.

[45] *Philippine Span Asia Carriers Corp. v. Pelayo*, G.R. No. 212003, February 28, 2018, citing *Rodriguez v. Park N Ride, Inc*., 807 Phil. 747-758 (2017).

loan from Pag-Ibig. Perez enumerated the irregularities she discovered after auditing CIHMI's transactions with SSS and Pag-Ibig of which are: 1) Bug-Os reported an amount for remittance to Pag-Ibig in excess of what was actually deducted from the employees' salaries. She then credited the excess to her loan;[46] 2) Bug-Os deducted from the salaries of other employees but credited the amount deducted to the payment of her own loan and that of other persons;[47] and 3) Bug-Os reported an amount for remittance that is higher than what was actually deducted from her salary.[48] As for Manlangit, he affirmed Perez's statement that ₱5,000 was deducted from his salary but it was credited to the payment of Bug-Os' loan.

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[46] *Rollo,* p. 54.

Date	Amount Remitted	Amount Actually Deducted	Amount Credited to Bug-Os' Loan Payment
April 2014	₱37,823.00	₱32,823.00	₱5,000.00

[47] *Id.* at 54-56.

Date	Employee Whose Salary was Deducted	Amount Deducted	Amount Credited to
October 2014	Manlangit	₱5,000.00	Bug-Os
January 2015	Perez	₱1,000.00	₱500 was credited to Grace Reyes while the remaining amount is unaccounted for
May 2015	Gina Co	₱6,000.00	Bug-Os
May 2015	Allan Daquilog	₱3,000.00	Bug-Os

[48] *Id.* at 55.

Date	Amount Deducted	Amount Reported
February 2015	₱6,000.00	₱9,000.00
March 2015	₱6,000.00	₱9,000.00
April 2015	₱6,000.00	₱9,000.00

Bug-Os admitted that she was in charge of processing the payroll, vouchers, loan application, and remittances to SSS, Pag-Ibig, and PhilHealth of CIHMI's employees except for herself. However, she denied committing any irregularity and ascribed it to Gina. The determination of whether Bug-Os defrauded CIHMI is unnecessary to resolve this case. Even so, the evidence presented by petitioners in relation to this matter and the January 11, 2019 Judgment[49] of the Municipal Trial Court in Cities of Cagayan de Oro City, Branch 5 convicting Bug-Os of six counts of estafa, in relation to the remittances to Pag-Ibig, support the finding of the Labor Arbiter that Bug-Os resigned on her own volition, perhaps to avoid further questioning from petitioners.

We, therefore, disagree with the NLRC and the CA's ruling that Bug-Os was constructively dismissed. There is a lack of evidence to support this conclusion. As such, the Labor Arbiter was correct in dismissing Bug-Os' complaint.

WHEREFORE, the petition is **GRANTED**. The Decision dated August 25, 2017 and the Resolution dated November 24, 2017 of the Court of Appeals in CA-G.R. SP No. 07982 are **REVERSED** and **SET ASIDE**. The Decision dated November 23, 2015 of the Labor Arbiter in NLRC Case No. RAB-10-08-00675-2015 is **REINSTATED.**

SO ORDERED.

Leonen (*Chairperson*), *Lazaro-Javier,*[*] and *Zalameda, JJ.,* concur.

Gesmundo, J., on official leave.

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[49] *Id*. at 247-257; penned by Presiding Judge Maria Luna Llena G. Lanticse-Saba.

[*] Designated as Additional Member of the Third Division per Special Order No. 2728 dated October 25, 2019.

SECOND DIVISION

[G.R. No. 237277. November 27, 2019]

ALASKA MILK CORPORATION, *petitioner, vs.* **RUBEN P. PAEZ, FLORENTINO M. COMBITE, JR., SONNY O. BATE, RYAN R. MEDRANO, and JOHN BRYAN S. OLIVER,** *respondents.*

[G.R. No. 237317. November 27, 2019]

ASIAPRO MULTIPURPOSE COOPERATIVE, *petitioner, vs.* **RUBEN P. PAEZ, FLORENTINO M. COMBITE, JR., SONNY O. BATE, RYAN R. MEDRANO, and JOHN BRYAN S. OLIVER,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE DETERMINATION OF FACTUAL MATTERS IS NOT WITHIN THE PURVIEW OF THE COURT'S APPELLATE JURISDICTION UNDER RULE 45 OF THE RULES OF COURT, EXCEPT WHEN THE FINDINGS OF THE COURT OF APPEALS DIVERGED WITH THAT OF THE LABOR TRIBUNALS.—** It must be made clear that the status of Asiapro and 5S as contractors – that is, whether they are engaged in legitimate job contracting or proscribed labor-only contracting – involves the determination of factual matters, not ordinarily within the purview of the Court's appellate jurisdiction under Rule 45. Nevertheless, in view of the divergent findings of the CA, on one hand, and the labor tribunals, on the other, the Court is left with no alternative other than to review the antecedents that prodded the respondents to file their complaints before the LA.

2. **LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; EMPLOYMENT; LABOR-ONLY CONTRACTING IS AN ARRANGEMENT WHERE A PERSON WITHOUT SUBSTANTIAL CAPITAL OR INVESTMENT IN THE FORM OF TOOLS, EQUIPMENT, MACHINERY, OR WORK PREMISES, AMONG OTHER**

THINGS, SUPPLIES WORKERS TO AN EMPLOYER, AND SUCH WORKERS PERFORM ACTIVITIES DIRECTLY RELATED TO THE PRINCIPAL BUSINESS OF THE LATTER; IN JOB CONTRACTING, THE CONTRACTOR CARRIES OUT A BUSINESS DISTINCT AND INDEPENDENT FROM THE PRINCIPAL'S, AND UNDERTAKES THE WORK OR SERVICE ON ITS OWN ACCOUNT, USING ITS OWN MANNER AND METHODS IN DOING SO, AND THE CONTRACTOR'S EMPLOYEES ARE FREE FROM THE CONTROL OF THE PRINCIPAL EMPLOYER, SAVE ONLY AS TO THE RESULT THEREOF.— After a meticulous scrutiny of the evidence on record, the Court is firmly convinced that Asiapro is a legitimate independent contractor. The same, however, cannot be said of 5S. Article 106 of the Labor Code defines ***labor-only contracting*** as an arrangement where a person without substantial capital or investment in the form of tools, equipment, machinery, or work premises, among other things, supplies workers to an employer, and such workers perform activities directly related to the principal business of the latter. In agreements of this nature, the contractor merely acts as an agent in recruiting workers on account of the principal with the intent to circumvent the constitutional and statutory rights of employees. There is no question that the practice is inimical to the national interest and that it runs contrary to public policy. As such, it is proscribed by law. Nevertheless, not all forms of contracting are prohibited. ***Job contracting*** is the permissible yet regulated practice of farming out a specific job or service to a contractor for a definite or predetermined period of time, regardless of whether the contractor's employees perform their assigned tasks within or outside the principal employer's premises. In job contracting, the contractor carries out a business distinct and independent from the principal's, and undertakes the work or service on its own account, using its own manner and methods in doing so. Also, the contractor's employees are free from the control of the principal employer, save only as to the result thereof.

3. ID.; ID.; ID.; JOB CONTRACTING; REGISTRATION REQUIREMENT; THE CONTRACTORS ARE REQUIRED TO REGISTER THEMSELVES WITH THE DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE) REGIONAL OFFICE IN WHICH THEY PRINCIPALLY

OPERATE; NON-COMPLIANCE WITH THE REGISTRATION REQUIREMENT GIVES RISE TO A PRESUMPTION THAT THE CONTRACTOR IS ENGAGED IN LABOR-ONLY CONTRACTING.— [J]ob contracting is a regulated practice. Accordingly, the law authorizes the Secretary of Labor to promulgate administrative rules that distinguish between valid job contracting and prohibited labor-only contracting, keeping with the fundamental state policy of protecting labor. In view of this statutory directive, the Department of Labor and Employment (DOLE) requires contractors to register themselves with the DOLE Regional Office in which they operate, so as to monitor their compliance with the law's guiding principles. Failure to comply with the registration requirement gives rise to a presumption that the contractor is engaged in labor-only contracting. In this case, both Asiapro and 5S failed to register in accordance with the exact tenor of the rules. Asiapro's registration is evidenced by Certificate of Registration No. NCR-PFO-9199090111-199, dated September 1, 2011, while that of 5S is evidenced by Certificate of Registration No. ROIVA-LPO-18A-06140-51, dated June 27, 2014. Evidently, Asiapro failed to show that it was registered with the proper DOLE Regional Office. In this regard, Asiapro, to show compliance with the registration requirement, presented a certificate issued by the National Capital Region (NCR) branch of the DOLE, when it should have instead presented one issued by the DOLE, Region IV-A office, which exercises territorial jurisdiction over the San Pedro plant. It must be remembered that the rules require contractors to register themselves in the regional office of the place where they principally operate. Since Asiapro failed to allege that its principal place of operation is the NCR, its certificate of registration did not comply with the requirement set forth in the rules.

4. ID.; ID.; ID.; LABOR-ONLY CONTRACTING; THE FAILURE OF THE CONTRACTORS TO REGISTER IN ACCORDANCE WITH THE RULES MERELY GIVES RISE TO A PRESUMPTION OF LABOR-ONLY CONTRACTING, BUT THE SAME IS NOT CONCLUSIVE AS TO THEIR STATUS AS CONTRACTORS, FOR IN DISTINGUISHING BETWEEN PERMISSIBLE JOB CONTRACTING AND PROHIBITED LABOR-ONLY CONTRACTING, THE TOTALITY OF THE FACTS AND

THE SURROUNDING CIRCUMSTANCES OF THE CASE ARE TO BE CONSIDERED, EACH CASE TO BE DETERMINED BY ITS OWN FACTS, AND ALL THE FEATURES OF THE RELATIONSHIP ASSESSED.— [T]he registration of Asiapro is irregular on another matter. The record reveals that all of the respondents' assignments at the San Pedro, Laguna plant antedated Asiapro's registration with the DOLE. x x x [T]he respondents began working at Alaska's premises on various dates from 2007 to 2010, while Asiapro's certificate of registration was issued only in 2011. This must necessarily be taken against Asiapro, as there is no basis to give the certificate of registration a retroactive effect. 5S, for its part, faces the same problem. While it was registered with the proper DOLE Regional Office, its certificate of registration was issued only in 2014, after the respondents had been separated from Alaska. Nevertheless, the failure of Asiapro and 5S to register in accordance with the rules merely gave rise to a presumption of labor-only contracting. Stated otherwise, the flaw was not conclusive as to their status as contractors. After all, "in distinguishing between permissible job contracting and prohibited labor-only contracting, the totality of the facts and the surrounding circumstances of the case are to be considered, each case to be determined by its own facts, and all the features of the relationship assessed."

5. **ID.; ID.; ID.; JOB-CONTRACTING; THE POSSESSION OF SUBSTANTIAL CAPITAL OR INVESTMENTS IS INDISPENSABLE IN PROVING A CONTRACTOR'S LEGITIMACY; PROOF OF INVESTMENTS IN THE FORM OF TOOLS, EQUIPMENT, MACHINERIES, OR WORK PREMISES MAY BE DISPENSED WITH WHERE THE CONTRACTOR ADEQUATELY MET THE CAPITALIZATION REQUIREMENT FOUND IN THE RULES.—** [A]rticle 106 of the Labor Code defines a labor-only contractor as one who "does not have ***substantial capital or investment*** in the form of tools, equipment, machineries, work premises, among others." This was reiterated in the rules prevailing at the time pertinent to this case. To be sure, two sets of DOLE regulations are relevant to the discussion herein – Department Order (D.O.) No. 18-2, series of 2002, which was effective when the respondents first became worker-members of Asiapro and 5S, and D.O. No. 18-A, series of 2011, effective during the respondents' respective assignments at and separation

from Alaska. x x x. Unlike the registration requirement, which serves only to raise a disputable presumption of job contracting, the possession of substantial capital or investments is indispensable in proving a contractor's legitimacy. Apropos, D.O. No. 18-A provides a concrete numerical threshold for determining substantial capital. Under Section 3(1) thereof, the capitalization requirement is met by corporations, partnerships, and cooperative that have at least ₱3,000,000.00 in paid-up capital stocks/shares. Here, Asiapro, through its audited financial statements, was able to prove that it possessed the requisite substantial capital. As of 2010, it had ₱3,130,000.00 in paid-up capital shares, broken down into ₱630,000.00 in common shares and ₱2,500,000.00 in preferred shares. In 2011, its paid-up capital increased to ₱4,000,000.00, broken down into ₱1,500,000.00 in common shares and ₱2,500,000.00 in preferred shares. Clearly, therefore, Asiapro adequately met the capitalization requirement found in the rules, and, having done so, it no longer needed to establish that it possessed investments in the form of tools or equipment that facilitated the performance of the respondents' work with Alaska. Verily, case law dictates that evidence of substantial capitalization entails that proof of investments in form of tools, equipment, machineries, or work premises may be dispensed with.

6. **ID.; ID.; ID.; ID.; A SUM OF ASSETS, WITHOUT MORE, IS INSUFFICIENT TO PROVE THAT AN ENTITY IS ENGAGED IN VALID JOB CONTRACTING, FOR THERE MUST BE EVIDENCE SHOWING THAT THE WORKER-MEMBERS, IN THE PERFORMANCE OF THEIR JOB, WORK OR DUTIES, USED TOOLS, MACHINERIES OR EQUIPMENT PROVIDED BY THE CONTRACTOR.—** 5S, for its part, failed to prove that it possessed substantial capital or investments, and since it never bothered to appeal the adverse CA decision, this burden of proof shifted to Alaska. For one, the record is bereft of any financial statements revealing the paid-up capital of 5S. In fact, the LA, in ruling that 5S was a legitimate independent contractor, relied not on the latter's capitalization, but on the showing that 5S had total assets amounting to ₱8,373,044.00. However, a sum of assets, without more, is insufficient to prove that an entity is engaged in valid job contracting. In the plain language of D.O. No. 18-2, such assets must be manifested as investments relating to the job, work, or service to be performed, and as clarified by D.O. No.

18-A, these investments may come in form of tools, equipment, machineries, and work premises, among others. While the labor tribunals believed that 5S had an adequate amount of assets, it was never established that the contractor furnished its worker-members with the tools or equipment necessary to carry out the services of a production helper at Alaska's milk manufacturing plant. This heavily militates against the ability of 5S to engage in its own independent business. Certainly, Alaska, considering that the services in question were rendered [at] the San Pedro plant, could have easily adduced evidence showing that the respondents, in the performance of their duties, used tools and equipment provided by 5S. Nevertheless, Alaska failed to even mention what these tools and equipment were, averring instead that 5S, based on its total assets, is an independent job contractor. The Court will not readily presume that said assets were those contemplated by the rules, especially since Alaska's bare allegation, a conclusion of law, no less, is not supported by the evidence on record. On this score alone, 5S cannot be considered a legitimate job contractor.

7. ID.; ID.; ID.; ID.; A CONTRACTOR IS ENGAGED IN LABOR-ONLY CONTRACTING WHERE THE SAME DOES NOT EXERCISE CONTROL OVER THE MEANS AND METHODS BY WHICH EMPLOYEES PERFORM THEIR WORK.— Under D.O. No. 18-2 and D.O. No. 18-A, the fact that the contractor does not exercise ***control*** over its purported employees is another conclusive indicator of labor-only contracting. Jurisprudence is replete with rulings stating that the most important criterion in determining the existence of an employer-employee relationship is the power to control the means and methods by which employees perform their work. Pursuant to the so-called "control test," the employer is the person who has the power to control both the end achieved by his or her employees, and the manner and means they use to achieve that end. To emphasize, it is not essential that the employer actually exercises the power of control, as the ability to wield the same is sufficient. The evidence on record clearly established that Asiapro controlled the means and methods used by its work members (*i.e.* respondents Paez and Medrano) in carrying out their duties at the San Pedro plant.

8. ID.; ID.; ID.; ID.; FACTORS THAT MUST BE CONSIDERED IN DETERMINING A CONTRACTOR'S LEGITIMACY;

PETITIONER-COOPERATIVE IS ENGAGED IN VALID JOB CONTRACTING.— [A] perusal of the totality of the circumstances surrounding the separate businesses of Asiapro and 5S lends credence to the conclusion that the former is engaged in valid job contracting while the latter is not. In *Garden of Memories Park and Life Plan, Inc., et al. v. NLRC, et al.*, the Court enumerated several factors that must be appraised in determining a contractor's legitimacy, thus: [W]hether or not the contractor is carrying on an independent business; the nature and extent of the work; the skill required; the term and duration of the relationship; the right to assign the performance of specified pieces of work; the control and supervision of the work to another; the employers power with respect to the hiring, firing and payment of the contractors workers; the control of the premises; the duty to supply premises, tools, appliances, materials and labor; and the mode, manner and terms of payment. Here, Asiapro was clearly able to substantiate its assertion that it carried on its own independent business.

9. ID.; ID.; ID.; ID.; REGULAR EMPLOYEES OF THE LABOR-ONLY CONTRACTOR ARE, BY FICTION OF LAW, CONSIDERED AS EMPLOYEES OF THE PRINCIPAL; THUS, THEY CANNOT BE TERMINATED WITHOUT LAWFUL CAUSE; ILLEGALLY DISMISSED EMPLOYEES ARE ENTITLED TO REINSTATEMENT WITHOUT LOSS OF SENIORITY RIGHTS AND OTHER PRIVILEGES, IN ADDITION TO FULL BACKWAGES, INCLUSIVE OF ALLOWANCES AND BENEFITS.— Regular employees may only be terminated for just or authorized cause. This applies in cases of labor-only contracting, where the law creates an employer-employee relationship between the principal and the employees of the purported contractor. It is uncontroverted that respondents Bate, Combite, and Oliver were terminated from Alaska due to the expiration of their contracts with 5S, through which they were assigned to render services at the San Pedro plant. However, because of the finding that 5S was engaged in labor-only contracting, they are, by fiction of law, considered as Alaska's regular employees. Hence, having been terminated without lawful cause, they are entitled to reinstatement without loss of seniority rights and other privileges, in addition to full backwages, inclusive of allowances and benefits, pursuant to Article 279 of the Labor Code.

APPEARANCES OF COUNSEL

Añover Añover San Diego & Primavera Law Offices for petitioner Asiapro Multipurpose Cooperative.

Banzuela & Associates for respondents.

Esguerra & Blanco for petitioner Alaska Milk Corporation.

D E C I S I O N

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

Before the Court are two consolidated Rule 45 petitions, both seeking the reversal of the July 10, 2017 Decision[1] and February 1, 2018 Resolution[2] rendered by the Court of Appeals (CA) in CA-G.R. SP No. 139418.

The Factual Antecedents

Alaska Milk Corporation (Alaska), the petitioner in G.R. No. 237277, is a duly organized domestic corporation engaged in the business of manufacturing dairy products,[3] while Asiapro Multipurpose Cooperative (Asiapro), the petitioner in G.R. No. 237317, is a duly registered cooperative that contracts out the services of its worker-members.[4]

Ruben P. Paez, Florentino M. Combite, Jr., Sonny O. Bate, Ryan R. Medrano, and John Bryan S. Oliver (the respondents, collectively) worked as production helpers at Alaska's San Pedro, Laguna milk manufacturing plant (the San Pedro plant). All of them were originally members of Asiapro until respondents Bate, Combite, and Oliver transferred to 5S Manpower Services (5S) on June 26, 2013.[5]

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[1] Penned by Associate Justice Filomena D. Singh, with Associate Justices Ricardo R. Rosario and Edwin D. Sorongon, concurring; *rollo* (G.R. No. 237277), pp. 52-73.

[2] *Id.* at 75-80.

[3] *Id.* at 6.

[4] *Rollo* (G.R. No. 237317), p. 6.

[5] *Id.* at 38.

Through several Joint Operating Agreements, Asiapro and 5S undertook to provide Alaska with personnel who could perform "auxiliary functions" at the San Pedro plant.[6] By virtue of one such agreement, respondents Medrano and Paez, who became members of Asiapro on March 1 and May 4, 2009, respectively, were assigned to work at the San Pedro plant immediately upon the acquisition of their membership.[7] On the other hand, respondents Bate, Combite, and Oliver were assigned to work at the same plant beginning September 2008, June 2010, and May 2007, respectively,[8] and despite their transfer to 5S, they continued to work thereat.[9]

As production helpers, the respondents performed various post-production activities. They prepared raw materials, operated machinery, and monitored the release of defective products.[10] Additionally, they assisted other workers at the San Pedro plant by packaging finished milk products for delivery.[11]

On different dates in 2013, the respondents were informed through separate memoranda that their respective assignments at Alaska were to be terminated later that year. Paez's was then relieved of duty on July 10;[12] Bate, Combite, and Oliver on October 15;[13] and Medrano on November 27.[14] Subsequently, Paez and Medrano requested that Asiapro transfer them to a different client-principal, while Bate, Combite, and Oliver made a similar request with 5S.[15]

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[6] *Id.* at 37.

[7] *Id.* at 38.

[8] *Rollo* (G.R. No. 237277), pp. 336-337.

[9] *Rollo* (G.R. No. 237317), p. 38.

[10] *Id.* at 50.

[11] *Id.* at 17.

[12] *Id.* at 38.

[13] *Id.* at 39.

[14] *Id.*

[15] *Id.* at 38-39.

However, before the cooperatives acted on said requests, the respondents filed with the Labor Arbiter (LA) separate complaints for illegal dismissal, regularization, and payment of money claims. Owing to the related antecedents of and issues presented in each case, the LA resolved to consolidate the respondents' complaints.[16]

The LA's Ruling

On August 14, 2014, the LA rendered a Decision[17] against the respondents, dismissing their complaints for lack of merit. It was found that Asiapro and 5S had the capacity to carry on an independent business, and that the cooperatives exercised control over the respondents through coordinators assigned at the premises of Alaska.[18] Since the respondents were not Alaska's employees, the LA concluded that there was no illegal dismissal to speak of.[19] The dispositive portion of the decision reads:

> **WHEREFORE**, premises considered, the instant consolidated complaints for illegal dismissal and regularization are hereby dismissed for lack of merit. However, respondent 5S Manpower Services Cooperative and Alaska Milk Corporation, in solidum, are hereby ordered to pay complainants John Bryan S. Oliver and Mark M. Magpili the sum ₱7,301.66 each as unpaid proportionate 13th month pay for the year 2013.
>
> All other claims are hereby dismissed for lack of basis.
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> **SO ORDERED.**[20]

Dissatisfied, the respondents appealed the LA's decision to the National Labor Relations Commission (NLRC).

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[16] *Id.* at 39.

[17] *Rollo* (G.R. No. 237277), pp. 336-353.

[18] *Id.* at 352.

[19] *Id.* at 352-353.

[20] *Id.* at 353.

The NLRC's Ruling

Finding no merit in the respondents' appeal, the NLRC issued a Resolution[21] dated October 29, 2014, affirming the LA's decision *in toto*. Since Asiapro and 5S had sufficiently established their capacity to carry on an independent business, the NLRC agreed with the LA's finding that the cooperatives were engaged in legitimate contracting operations. In addition, it was ruled that the respondents were members of 5S and Asiapro, respectively, and not employees of Alaska.[22] Thus, the NLRC did not find any error on the part of the LA when the latter ruled that there was no illegal dismissal in this case.[23] The appeal was therefore disposed of, *viz.*:

> **WHEREFORE**, premises considered, Complainant-Appellant's appeal is hereby **DISMISSED** for lack of merit. The 14 August 2014 decision of the Labor Arbiter is hereby **AFFIRMED in toto**.
>
> SO ORDERED.[24]

The respondents, after the NLRC denied their motion for reconsideration, filed a petition for *certiorari* before the CA.

The CA's Ruling

On July 10, 2017, the CA promulgated the herein assailed Decision in favor of the respondents, granting their appeal and reversing the NLRC's October 29, 2014 Resolution. The appellate court opined that Asiapro and 5S were engaged in labor-only contracting, and that the respondents were regular employees of Alaska.[25] It was noted that the two cooperatives lacked investments in the form of tools and equipment,[26] and that the workers they farmed out (*i.e.*, the respondents) performed

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[21] *Id.* at 127-135.

[22] *Id.* at 133.

[23] *Id.* at 135.

[24] *Id.*

[25] *Id.* at 62-68.

[26] *Id.* at 64.

functions that were necessary and desirable to Alaska's operations.[27] Consequently, the respondents were found to have been illegally dismissed.[28] The decretal part of the CA's decision reads:

> **WHEREFORE**, the petition for *certiorari* is hereby **GRANTED**. The assailed Resolutions dated 29 October 2014 and 12 December 2014, both issued by the Third Division of the National Labor Relations Commission in NLRC LAC No. 10-002482-14, are **ANNULLED** and **SET ASIDE**.
>
> Petitioners Ruben P. Paez, Florentino M. Combite, Jr., Sonny O. Bate, Ryan R. Medrano, and John Bryan S. Oliver are declared regular employees of Alaska Milk Corporation. As a result of their illegal dismissal, petitioners are entitled to backwages from the time they were not allowed to report to work, and to reinstatement without loss of seniority rights and other privileges. However, if reinstatement is no longer feasible, petitioners are entitled to receive separation pay equivalent to one month salary for every year of service. Alaska Milk Corporation and 5S Manpower Services Cooperative are solidarily liable for the payment of backwages, and separation pay if applicable, to Sonny O. Bate, Florentino M. Combite, Jr. and Bryan S. Oliver. Alaska Milk Corporation and Asiapro Cooperative are solidarily liable for the payment of backwages, and separation pay if applicable, to Ruben P. Paez and Ryan R. Medrano.
>
> **SO ORDERED.**[29]

Disgruntled, Alaska and Asiapro filed a motion for reconsideration of the July 10, 2017 Decision, which the CA denied on February 1, 2018. Notably, 5S took no part in the proceedings after the rendition of said decision.

Hence, the instant petitions, through which Alaska and Asiapro argue that the CA erred in ruling that the respondents were illegally dismissed. In support of the contention, they maintain that Asiapro and 5S are legitimate job contractors, as evidenced by their substantial capital and registration with the Department

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[27] *Id.* at 65.

[28] *Id.* at 71.

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

of Labor and Employment (DOLE).[30] Asiapro further pointed out[31] that its status as an independent contractor had been previously recognized by the Court in *Rep. of the Philippines v. Asiapro Cooperative*.[32]

The Issues

The core issue to be resolved by the Court is *whether or not the respondents were illegally dismissed*. This in turn will depend on *whether or not Asiapro and 5S are engaged in labor-only contracting*.

The Court's Ruling

The CA's decision must be modified.

At the outset, it must be made clear that the status of Asiapro and 5S as contractors—that is, whether they are engaged in legitimate job contracting or proscribed labor-only contracting—involves the determination of factual matters, not ordinarily within the purview of the Court's appellate jurisdiction under Rule 45.[33] Nevertheless, in view of the divergent findings of the CA, on one hand, and the labor tribunals, on the other, the Court is left with no alternative other than to review the antecedents that prodded the respondents to file their complaints before the LA.

After a meticulous scrutiny of the evidence on record, the Court is firmly convinced that Asiapro is a legitimate independent contractor. The same, however, cannot be said of 5S.

Article 106 of the Labor Code[34] defines ***labor-only contracting*** as an arrangement where a person without substantial capital or investment in the form of tools, equipment, machinery, or work premises, among other things, supplies workers to an

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[30] *Id.* at 16-29.

[31] *Rollo* (G.R. No. 237317), pp. 22-25.

[32] 563 Phil. 979 (2007).

[33] *Royale Homes Marketing Corp. v. Alcantara*, 739 Phil. 744, 755 (2014).

[34] Presidential Decree No. 442, as amended (1974).

employer, and such workers perform activities directly related to the principal business of the latter. In agreements of this nature, the contractor merely acts as an agent in recruiting workers on account of the principal with the intent to circumvent the constitutional and statutory rights of employees.[35] There is no question that the practice is inimical to the national interest and that it runs contrary to public policy. As such, it is proscribed by law.

Nevertheless, not all forms of contracting are prohibited. ***Job contracting*** is the permissible yet regulated practice of farming out a specific job or service to a contractor for a definite or predetermined period of time, regardless of whether the contractor's employees perform their assigned tasks within or outside the principal employer's premises.[36] In job contracting, the contractor carries out a business distinct and independent from the principal's, and undertakes the work or service on its own account, using its own manner and methods in doing so. Also, the contractor's employees are free from the control of the principal employer, save only as to the result thereof.[37]

As mentioned, job contracting is a regulated practice. Accordingly, the law authorizes the Secretary of Labor to promulgate administrative rules that distinguish between valid job contracting and prohibited labor-only contracting, keeping with the fundamental state policy of protecting labor.[38] In view of this statutory directive, the Department of Labor and Employment (DOLE) requires contractors to register themselves with the DOLE Regional Office in which they operate,[39] so as

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[35] *Coca-Cola Bottlers Phils., Inc. v. Agito, et al.*, 598 Phil. 909, 923 (2009).

[36] *Mago v. Sun Power Manufacturing Limited*, G.R. No. 210961, January 24, 2018, 853 SCRA 1, 15.

[37] *Petron Corporation v. Cabrete, et al.*, 759 Phil. 353, 366 (2015).

[38] LABOR CODE, Art. 106.

[39] Department of Labor and Employment Order No. 18-2, s. 2002, Sec. 11 and Department of Labor and Employment Order No. 18-A, s. 2011, Sec. 14.

to monitor their compliance with the law's guiding principles.[40] Failure to comply with the registration requirement gives rise to a presumption that the contractor is engaged in labor-only contracting.[41]

In this case, both Asiapro and 5S failed to register in accordance with the exact tenor of the rules. Asiapro's registration is evidenced by Certificate of Registration No. NCR-PFO-9199090111-199, dated September 1, 2011,[42] while that of 5S is evidenced by Certificate of Registration No. ROIVA-LPO-18A-06140-51, dated June 27, 2014.[43] Evidently, Asiapro failed to show that it was registered with the proper DOLE Regional Office. In this regard, Asiapro, to show compliance with the registration requirement, presented a certificate issued by the National Capital Region (NCR) branch of the DOLE, when it should have instead presented one issued by the DOLE, Region IV-A office, which exercises territorial jurisdiction over the San Pedro plant. It must be remembered that the rules require contractors to register themselves in the regional office of the place where they principally operate.[44] Since Asiapro failed to allege that its principal place of operation is the NCR, its certificate of registration did not comply with the requirement set forth in the rules.

Further, the registration of Asiapro is irregular on another matter. The record reveals that all of the respondents' assignments at the San Pedro, Laguna plant antedated Asiapro's registration with the DOLE. As mentioned earlier, the respondents began working at Alaska's premises on various

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[40] *Consolidated Building Maintenance, Inc. v. Asprec, Jr.*, G.R. No. 217301, June 6, 2018.

[41] *Valencia v. Classique Vynil Products Corporation*, 804 Phil. 492, 507 (2017).

[42] *Rollo* (G.R. No. 237317), p. 428.

[43] *Id.* at 45.

[44] Department of Labor and Employment Order No. 18-2, s. 2002, Sec. 13 and Department of Labor and Employment Order No. 18-A, s. 2011, Sec. 14.

dates from 2007 to 2010, while Asiapro's certificate of registration was issued only in 2011. This must necessarily be taken against Asiapro, as there is no basis to give the certificate of registration a retroactive effect.[45]

5S, for its part, faces the same problem. While it was registered with the proper DOLE Regional Office, its certificate of registration was issued only in 2014, after the respondents had been separated from Alaska.

Nevertheless, the failure of Asiapro and 5S to register in accordance with the rules merely gave rise to a presumption of labor-only contracting. Stated otherwise, the flaw was not conclusive as to their status as contractors. After all, "in distinguishing between permissible job contracting and prohibited labor-only contracting, the totality of the facts and the surrounding circumstances of the case are to be considered, each case to be determined by its own facts, and all the features of the relationship assessed."[46]

Asiapro successfully and thoroughly rebutted the presumption, while 5S failed to do so.

First, as stated above, Article 106 of the Labor Code defines a labor-only contractor as one who does not have ***substantial capital or investment*** in the form of tools, equipment, machineries, work premises, among others.[47] This was reiterated in the rules[48] prevailing at the time pertinent to this case. To be sure, two sets of DOLE regulations are relevant to the discussion herein — Department Order (D.O.) No. 18-2, series of 2002, which was effective when the respondents first became worker-members of Asiapro and 5S, and D.O. No. 18-A, series

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[45] *Almeda, et al. v. Asahi Glass Philippines, Inc.*, 586 Phil. 103, 115 (2008).

[46] *Gallego v. Bayer Philippines, Inc., et al.*, 612 Phil. 250, 262 (2009).

[47] LABOR CODE, Art. 106.

[48] Department of Labor and Employment Order No. 18-2, s. 2002 and Department of Labor and Employment Order No. 18-A, s. 2011.

of 2011, effective during the respondents' respective assignments at and separation from Alaska. For clarity, the relevant provisions of both sets of rules are quoted below. D.O. No. 18-2 states the requirement, *viz.*:

> ***Section 5. Prohibition against labor-only contracting.*** — Labor-only contracting is hereby declared prohibited. For this purpose, labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are present:
>
> (i) **The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed** and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or
>
> (ii) the contractor does not exercise the right to control over the performance of the work of the contractual employee.[49] (Emphasis and underscoring supplied)

On the other hand, D.O. No. 18-A states:

> **Section 6. Prohibition against labor-only contracting.** Labor-only contracting is hereby declared prohibited. For this purpose, labor-only contracting shall refer to an arrangement where:
>
> (a) **The contractor does not have substantial capital or investments in the form of tools, equipment, machineries, work premises, among others**, and the employees recruited and placed are performing activities which are usually necessary or desirable to the operation of the company, or directly related to the main business of the principal within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal; or
>
> (b) The contractor does not exercise the right to control over the performance of the work of the employee. (Emphasis and underscoring supplied)[50]

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[49] Department of Labor and Employment Order No. 18-2, s. 2002, Sec. 5.

[50] Department of Labor and Employment Order No. 18-A, s. 2011, Sec. 6.

Unlike the registration requirement, which serves only to raise a disputable presumption of job contracting, the possession of substantial capital or investments is indispensable in proving a contractor's legitimacy.[51] Apropos, D.O. No. 18-A provides a concrete numerical threshold for determining substantial capital. Under Section 3(1) thereof, the capitalization requirement is met by corporations, partnerships, and cooperative that have at least ₱3,000,000.00 in paid-up capital stocks/shares.

Here, Asiapro, through its audited financial statements,[52] was able to prove that it possessed the requisite substantial capital. As of 2010, it had ₱3,130,000.00 in paid-up capital shares, broken down into ₱630,000.00 in common shares and ₱2,500,000.00 in preferred shares. In 2011, its paid-up capital increased to ₱4,000,000.00, broken down into ₱1,500,000.00 in common shares and ₱2,500,000.00 in preferred shares. Clearly, therefore, Asiapro adequately met the capitalization requirement found in the rules, and, having done so, it no longer needed to establish that it possessed investments in the form of tools or equipment that facilitated the performance of the respondents' work with Alaska. Verily, case law dictates that evidence of substantial capitalization entails that proof of investments in form of tools, equipment, machineries, or work premises may be dispensed with.[53]

5S, for its part, failed to prove that it possessed substantial capital or investments, and since it never bothered to appeal the adverse CA decision, this burden of proof shifted to Alaska.[54] For one, the record is bereft of any financial statements revealing the paid-up capital of 5S. In fact, the LA, in ruling that 5S was a legitimate independent contractor, relied not on the latter's capitalization, but on the showing that 5S had total assets

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[51] *Consolidated Building Maintenance, Inc. v. Asprec, Jr.*, *supra* note 40.

[52] *Rollo* (G.R. No. 237317), p. 139.

[53] *Neri v. National Labor Relations Commission*, 296 Phil. 610, 616 (1993).

[54] *Quintanar, et al. v. Coca-Cola Bottlers Philippines, Inc.*, 788 Phil. 385, 405 (2016).

amounting to ₱8,373,044.00.[55] However, a sum of assets, without more, is insufficient to prove that an entity is engaged in valid job contracting. In the plain language of D.O. No. 18-2, such assets must be manifested as investments relating to the job, work, or service to be performed,[56] and as clarified by D.O. No. 18-A, these investments may come in form of tools, equipment, machineries, and work premises, among others.[57] While the labor tribunals believed that 5S had an adequate amount of assets, it was never established that the contractor furnished its worker-members with the tools or equipment necessary to carry out the services of a production helper at Alaska' milk manufacturing plant. This heavily militates against the ability of 5S to engage in its own independent business.[58] Certainly, Alaska, considering that the services in question were rendered at the San Pedro plant, could have easily adduced evidence showing that the respondents, in the performance of their duties, used tools and equipment provided by 5S. Nevertheless, Alaska failed to even mention what these tools and equipment were, averring instead that 5S, based on its total assets, is an independent job contractor. The Court will not readily presume that said assets were those contemplated by the rules, especially since Alaska's bare allegation, a conclusion of law, no less, is not supported by the evidence on record.[59]

On this score alone, 5S cannot be considered a legitimate job contractor.

Second, under D.O. No. 18-2 and D.O. No. 18-A, the fact that the contractor does not exercise ***control*** over its purported employees is another conclusive indicator of labor-only

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[55] *Rollo* (G.R. No. 237277), p. 352.

[56] Department of Labor Order No. 18-2, s. 2002, Sec. 5.

[57] Department of Labor Order No. 18-A, s. 2011, Sec. 6.

[58] *DOLE Philippines, Inc. v. Esteva*, 538 Phil. 817, 867-868 (2006).

[59] *Coca Cola Bottlers Phils., Inc. v. Agito, et al.*, *supra* note 35, at 929-930.

contracting.[60] Jurisprudence is replete with rulings stating that the most important criterion in determining the existence of an employer-employee relationship is the power to control the means and methods by which employees perform their work.[61] Pursuant to the so-called "control test," the employer is the person who has the power to control both the end achieved by his or her employees, and the manner and means they use to achieve that end.[62] To emphasize, it is not essential that the employer actually exercises the power of control, as the ability to wield the same is sufficient.[63]

The evidence on record clearly established that Asiapro controlled the means and methods used by its work members (*i.e.* respondents Paez and Medrano) in carrying out their duties at the San Pedro plant. The Joint Operating Agreement between Alaska and Asiapro unequivocally indicates that the latter retained the right to control the means and methods by which Paez and Medrano performed their work, *viz*.:

ANNEX "A"

The Cooperative assumes the following operating responsibilities:

x x x x x x x x x

8. Regularly monitor the performance based on specific metrics agreed upon of its owners to ALASKA designated place of work to ensure the required standards of quality and quantity of the activity or operation are met.[64]

While the language of the Joint Operating Agreement cannot be determinative of the nature of the relationship between and among the parties thereto, the labor tribunals found that the

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[60] Department of Labor Order No. 18-A, s. 2011, Sec. 5(ii) and Department of Labor Order No. 18-A, s. 2011, Sec. 6(b).

[61] *Alba v. Espinosa, et al.*, 816 Phil. 694, 705-706 (2017).

[62] *Valeroso v. Skycable Corporation*, 790 Phil. 93, 102 (2016).

[63] *Felicilda v. Uy*, 795 Phil. 408, 415 (2016).

[64] *Rollo* (G.R. No. 237317), p. 187.

realities of workplace operations were such that Asiapro indeed controlled the means and methods utilized by its worker-members at the San Pedro plant.[65] As aptly pointed out by the LA, the performance of respondents Medrano and Paez was monitored by Asiapro's Project Coordinator, Alan Obligacion (Obligacion), who was stationed at said plant precisely to ensure that the cooperative could supervise the manner and methods utilized by its worker-members in fulfilling their duties.[66] Thus, through Obligacion's oversight,[67] Asiapro manifested the degree of control contemplated and required by jurisprudence.

To add, there is other evidence to bolster Asiapro's contention that it exercised control over respondents Medrano and Paez. First, under the Joint Operating Agreement, the cooperative warranted that its worker-members possessed the skills, knowledge, qualifications, and experience needed to meet the exigencies of Alaska's business.[68] To this end, Asiapro conducted training and orientation seminars to enhance productivity, and undertook to present satisfactory evidence showing the competence of its worker-members.[69] Second, it appears that respondents Medrano and Paez, upon learning of their separation from Alaska, met with Obligacion to discuss their transfer to a new client principal.[70] The fact that they met with an Asiapro representative, and not one from Alaska, is a strong indicator of the former's control over them.

In fine, taking the foregoing into consideration, the Court is convinced that it was Asiapro, not Alaska, that possessed the means and methods by which respondents Medrano and Paez performed their work. Accordingly, the cooperative cannot be

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[65] *Coca-Cola Bottlers Phils., Inc. v. Dela Cruz, et al.*, 622 Phil. 866, 900 (2009).

[66] *Rollo* (G.R. No. 237277), p. 352.

[67] *Mago v. Sun Power Manufacturing Limited*, *supra* note 36, at 23.

[68] *Rollo* (G.R. No. 237277), p. 242.

[69] *Id.*

[70] *Id.* at 54.

considered a labor-only contractor under Section 5 (ii) of D.O. No. 18-2 and Section 6 (b) of D.O. No. 18-A.

Third, a perusal of the totality of the circumstances surrounding the separate businesses of Asiapro and 5S lends credence to the conclusion that the former is engaged in valid job contracting while the latter is not. In *Garden of Memories Park and Life Plan, Inc., et al. v. NLRC, et al.*,[71] the Court enumerated several factors that must be appraised in determining a contractor's legitimacy, thus:

> [W]hether or not the contractor is carrying on an independent business; the nature and extent of the work; the skill required; the term and duration of the relationship; the right to assign the performance of specified pieces of work; the control and supervision of the work to another; the employers power with respect to the hiring, firing and payment of the contractors workers; the control of the premises; the duty to supply premises, tools, appliances, materials and labor; and the mode, manner and terms of payment.[72]

Here, Asiapro was clearly able to substantiate its assertion that it carried on its own independent business. Aside from its substantial capital, Asiapro showed that its existence began as far back as 1999,[73] and that it has since provided services to a noteworthy clientele, which includes Stanfilco, Del Monte Philippines, and Dole Asia.[74] In fact, Asiapro's list of top accounts in billings for the year 2013 reveals that Alaska is only the cooperative's third largest client.[75] This is in stark contrast to the operations of 5S, which was not registered as a cooperative until 2011.[76] Moreover, unlike Asiapro, it was not shown that 5S had clients other than Alaska. Worse, 5S merely has five regular employees, and does not own any tools,

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[71] 681 Phil. 299 (2012).

[72] *Id.* at 310.

[73] *Rollo* (G.R. No. 237317), p. 131.

[74] *Id.* at 181.

[75] *Id.*

[76] *Rollo* (G.R. No. 237277), p. 655.

machinery, or equipment that its worker-members can use in the performance of their duties.[77] These, taken together, make it highly improbable that 5S had the ability to carry on its own independent business, and are detrimental to the claim that 5S is a legitimate job contractor.

Having settled the nature of Asiapro and 5S as contractors, the Court shall now move on to the illegal dismissal issue.

Regular employees may only be terminated for just or authorized cause.[78] This applies in cases of labor-only contracting, where the law creates an employer-employee relationship between the principal and the employees of the purported contractor.[79]

It is uncontroverted that respondents Bate, Combite, and Oliver were terminated from Alaska due to the expiration of their contracts with 5S, through which they were assigned to render services at the San Pedro plant. However, because of the finding that 5S was engaged in labor-only contracting, they are, by fiction of law, considered as Alaska's regular employees. Hence, having been terminated without lawful cause, they are entitled to reinstatement without loss of seniority rights and other privileges, in addition to full backwages, inclusive of allowances and benefits, pursuant to Article 279 of the Labor Code.

On the other hand, respondents Medrano and Paez were not illegally dismissed. In fact, they were not dismissed at all. As found by the NLRC, after their contracts with Alaska expired, they refused to report to Asiapro for reassignment to another client-principal, *viz*.:

> In the case of Complainant-Appellant[s] Medrano and Paez, both were not dismissed[,] but [were] actually recalled to the office of Respondent-Appellee ASIAPRO for reassignment. Nothing was

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[77] *Id.* at 62.

[78] LABOR CODE, Art. 279.

[79] *Polyfoam-RGC International, Corp., et al. v. Concepcion*, 687 Phil. 137, 150 (2012).

presented to show that the Complainant-Appellant[s] were dismissed from work or prevented to work for Respondent-Appellee ASIAPRO[, of] which they are registered members. In fact, they were advised during the hearings to report back to the office for reassignment x x x.[80]

Thus, considering that respondents Medrano and Paez were not illegally dismissed, their prayer for reinstatement must perforce fail.[81]

WHEREFORE, the petitions are **PARTIALLY GRANTED**. The July 10, 2017 Decision and February 1, 2018 Resolution of the Court of Appeals in CA-G.R. SP No. 139418 are hereby **REVERSED** and **SET ASIDE**.

As regards respondents Sonny O. Bate, Florentino M. Combite, Jr., and John Bryan S. Oliver, Alaska Milk Corporation is **ORDERED** to reinstate them to their former positions, or the equivalents thereof, without loss of seniority rights.

As regards respondents Ruben P. Paez and Ryan R. Medrano, their complaints for illegal dismissal and regularization are hereby **DISMISSED** for lack of merit.

Let this case be **REMANDED** to the Labor Arbiter for computation, within thirty (30) days from receipt of this Decision, of the backwages and other benefits due.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Hernando, Inting*, and *Zalameda*, *JJ.*, concur.

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[80] *Rollo* (G.R. No. 237277), p. 134.

[81] *Atok Big Wedge Co., Inc. v. Gison*, 670 Phil. 615, 629 (2011).

[*] Designated as additional Member per Special Order No. 2727.

THIRD DIVISION

[G.R. No. 237803. November 27, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALLAN ALON-ALON *y* LIZARDA,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; IN CRIMINAL CASES, AN APPEAL THROWS THE WHOLE CASE OPEN FOR REVIEW, AND THE APPELLATE COURT HAS THE DUTY TO CORRECT, CITE AND APPRECIATE ERRORS IN THE APPEALED JUDGMENT, WHETHER OR NOT ASSIGNED OR UNASSIGNED.—** An appeal in criminal cases throws the whole case open for review, and the appellate court has the duty to correct, cite, and appreciate errors in the appealed judgment, whether or not assigned or unassigned. 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.

2. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.—** To secure a conviction for illegal sale of dangerous drugs, the following essential elements must be established: (a) the identities of the buyer and the seller, the object of sale, and consideration; and (b) the delivery of the thing sold and the payment. Material in the prosecution of illegal sale of dangerous drugs is the proof that the sale took place, coupled with the presentation of the *corpus delicti* as evidence.

3. **ID.; ID.; ID.; CHAIN OF CUSTODY, DEFINED; LINKS THAT MUST BE ESTABLISHED.—** 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 beyond reasonable doubt. Jurisprudence teaches that it is essential that the identity of the seized drug be established with moral certainty, and must be proven with exactitude that the substance bought during the buy-bust operation

is exactly the same substance offered in evidence before the court. In order to obviate any unnecessary doubts on such identity, the prosecution has to show an unbroken chain of custody over the same. Chain of custody means the duly recorded authorized movements and custody of the seized drugs at each stage, from the time of confiscation to receipt for forensic laboratory examination until their presentation in court for destruction. Section 21 of RA 9165 laid out the procedure to be followed by police officers. x x x The chain of custody rule was further expounded in the Implementing Rules and Regulations of RA 9165. Article II, Section 21 (a). x x x Based on the foregoing provision, the Court enumerated the links in the chain of custody that must be shown for the successful prosecution of illegal sale of dangerous drugs, *i.e.*, first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court. The chain of custody rule requires the testimony as to every link in the chain, describing how and from whom the seized evidence was received, its condition in which it was delivered to the next link in the chain, and the precautions taken to ensure its integrity.

4. ID.; ID.; ID.; ID.; WHILE THE MINISCULE AMOUNT OF THE SEIZED DRUGS IS BY ITSELF NOT A GROUND FOR ACQUITTAL, THIS CIRCUMSTANCE UNDERSCORES THE NEED FOR MORE EXACTING COMPLIANCE WITH THE CHAIN OF CUSTODY RULE.— It bears stressing that what makes the observance of the chain of custody even more crucial is that the *shabu* allegedly sold by the accused-appellant was only 0.02 gram. In *People v. Holgado*, the Court declared that the 5 centigrams (0.05 gram) of *shabu* seized was miniscule; hence, the need for exacting compliance with Section 21 of RA 9165, thus: While the miniscule amount of narcotics seized is by itself not a ground for acquittal, this circumstance underscores the need for more exacting compliance with Section 21. In *Malillin v. People,* this court said that "the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature

and similar in form to substances familiar to people in their daily lives."

5. ID.; ID.; ID.; ID.; WHEN NON-COMPLIANCE WITH THE CHAIN OF CUSTODY RULE MAY BE EXCUSED.— Despite the clear failure of the police officers to strictly adhere to Section 21 of RA 9165, We are cognizant that the same provision nevertheless provides a saving clause. It states that non-compliance with the requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer or team, shall not render void the seizure of, and custody over said items. However, this clause applies only where the prosecution recognized the procedural lapses, and thereafter cited justifiable grounds, which must be accompanied by evidence that the integrity and evidentiary value of the items are preserved. Furthermore, in *People v. De Guzman*, it was emphasized that the justifiable ground for non-compliance must be proven as a fact, because the courts cannot presume what these grounds are or whether they even exist. In this case, the saving mechanism of Section 21 cannot be applied as the prosecution not only failed to acknowledge the infirmity, much less provide justification for the breaches in the links of the chain of custody.

APPEARANCES OF COUNSEL

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

D E C I S I O N

ZALAMEDA, *J.*:

This is an appeal[1] seeking to reverse and set aside the Decision[2] dated 27 November 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07364 which affirmed with modification

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

[2] *Id*. at 2-15; penned by CA Associate Justice Victoria Isabel A. Paredes, with Associate Justices Jose C. Reyes, Jr. (now a Member of this Court) and Jane Aurora C. Lantion, concurring.

the Judgment[3] dated 18 February 2015 of Branch 31, Regional Trial Court (RTC) of San Pedro City, Laguna, finding accused-appellant Allan Alon-Alon *y* Lizarda (accused-appellant) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. (RA) 9165.[4]

Antecedents

Accused-appellant was charged in an Information,[5] the accusatory portion of which states:

> That on or about August 13, 2012, in the Municipality of San Pedro, Province of Laguna, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without legal authority, did then and there willfully, unlawfully and feloniously sell, distribute and deliver to a police poseur-buyer for ₱300.00 one (1) heat-sealed transparent plastic sachet containing Methamphetamine Hydrochloride (*shabu*), a dangerous drug weighing 0.02 gram.
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> CONTRARY TO LAW.

Upon arraignment,[6] accused-appellant pleaded not guilty[7] to the charge. After pre-trial,[8] trial on the merits ensued.

Version of the Prosection

Acting on a confidential information, a team was formed to conduct a buy-bust operation against accused-appellant who was allegedly engaged in rampant illegal drug trade activities in San Pedro, Laguna. In the course of the buy-bust operation, accused-appellant sold to the poseur-buyer a plastic sachet containing suspected *shabu* and, in exchange, obtained payment

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[3] CA *rollo,* pp. 86-91; penned by RTC Presiding Judge Sonia T. Yu-Casano.

[4] Comprehensive Dangerous Drugs Act of 2002.

[5] Records, p. 1.

[6] *Id.* at 38.

[7] *Id*.

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

in the amount of Three Hundred Pesos (Php300.00). Upon arrest of accused-appellant, the buy-bust team immediately marked the buy-bust money and the plastic sachet subject of the sale. The inventory and the taking of the photographs of the seized items, however, were only done at the police station[9] in the presence of accused-appellant and a member of the media.

The seized items were brought to the crime laboratory for examination. Per Chemistry Report No. D-627-12, the specimen was found positive for Methamphetamine Hydrochloride.[10]

Version of the Defense

Accused-appellant denied the allegations against him. He claimed that in the evening of 13 August 2012, he was talking to a certain Angie, one of his tenants, when three (3) men arrived and entered his house. The men introduced themselves as police officers and ordered them to bring out the *shabu* they were hiding. When he and Angie protested, the police officers started searching his house. Unable to find anything, the police officers invited him to the police station for questioning where he was made to sign a piece of paper. Eventually, he was charged for violation of Section 5, Article II of RA 9165.[11]

Ruling of the RTC

On 18 February 2015, the RTC rendered its Judgment,[12] the dispositive portion of which reads:

WHEREFORE, foregoing considered, judgment is hereby rendered finding Accused Allan Alon-Alon *y* Lizarda GUILTY beyond reasonable doubt of violation of Section 5, Article II of RA 9165. He is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand (₱500,000.00) Pesos without subsidiary imprisonment in case of insolvency.

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[9] *Rollo,* pp. 5-6.

[10] *Id.* at 6-7.

[11] TSN, 16 September 2014, pp. 4-7.

[12] CA *rollo,* pp. 86-91.

The period of his preventive imprisonment should be given full credit.

Let the plastic sachet of shabu subject matter of this case be immediately forwarded to the Philippine Drug Enforcement Agency for its disposition as provided by law. The ₱300.00 buy-bust money is ordered forfeited in favour of the government and deposited in the National Treasury through the Office of the Clerk of Court.

SO ORDERED.[13]

Ruling of the CA

The CA affirmed the Judgment of the RTC and held that the prosecution clearly established the elements of illegal sale of *shabu*. It further declared that the chain of custody was not broken despite non-compliance with the requirements provided in Section 21 of RA 9165, as the prosecution was able to establish that the integrity and evidentiary value of the seized item were preserved from its seizure until its presentation in court.[14]

The CA affirmed with modification the penalty imposed by the RTC, in that accused-appellant shall be ineligible for parole.[15]

Hence, this appeal.

Issue

The sole issue in this case is whether the CA correctly found accused-appellant guilty beyond reasonable doubt of illegal sale of dangerous drugs under RA 9165.

Ruling of the Court

The appeal is meritorious.

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[13] *Id*. at 91.

[14] *Rollo,* pp. 9-14.

[15] *Id*. at 14.

An appeal in criminal cases throws the whole case open for review, and the appellate court has the duty to correct, cite, and appreciate errors in the appealed judgment, whether or not assigned or unassigned. 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.[16]

Accused-appellant was charged with the offense of illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of RA 9165. To secure a conviction for illegal sale of dangerous drugs, the following essential elements must be established: (a) the identities of the buyer and the seller, the object of sale, and consideration; and (b) the delivery of the thing sold and the payment. Material in the prosecution of illegal sale of dangerous drugs is the proof that the sale took place, coupled with the presentation of the *corpus delicti* as evidence.[17]

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 beyond reasonable doubt.[18] Jurisprudence teaches that it is essential that the identity of the seized drug be established with moral certainty,[19] and must be proven with exactitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court.[20] In order to obviate any unnecessary doubts on such identity, the prosecution has to show an unbroken chain of custody over the same.[21]

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[16] *Cunanan v. People,* G.R. No. 237116, 12 November 2018.

[17] *People v. Alvarado,* G.R. No. 234048, 23 April 2018, 862 SCRA 521, 534.

[18] *Derilo v. People,* 784 Phil. 679-694 (2016); G.R. No. 190466, 18 April 2016, 789 SCRA 517, 525.

[19] *Largo v. People,* G.R. No. 201293, 19 June 2019.

[20] *People v. Bartolini,* G.R. No. 215192, 27 July 2016, 798 SCRA 711.

[21] *People v. Ching*, 819 Phil. 565-581 (2017); G.R. No. 223556, 09 October 2017, 842 SCRA 280.

Chain of custody means the duly recorded authorized movements and custody of the seized drugs at each stage, from the time of confiscation to receipt for forensic laboratory examination until their presentation in court for destruction.[22] Section 21 of RA 9165 laid out the procedure to be followed by police officers:

> Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.*– The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same **in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof[.] (Emphasis supplied)

The chain of custody rule was further expounded in the Implementing Rules and Regulations of RA 9165. Article II, Section 21 (a) detailed the procedure as follows:

> 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

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

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, 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[.]

Based on the foregoing provision, the Court enumerated the links in the chain of custody that must be shown for the successful prosecution of illegal sale of dangerous drugs, *i.e.*, *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[23] The chain of custody rule requires the testimony as to every link in the chain, describing how and from whom the seized evidence was received, its condition in which it was delivered to the next link in the chain, and the precautions taken to ensure its integrity.[24]

As to the first link

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 an elected public official,[25] pursuant to Section 21, Article II of RA 9165, the

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[23] *People v. Baltazar,* G.R. No. 229037, 29 July 2019.

[24] *People v. Havana,* 776 Phil. 462-476 (2016); G.R. No. 198450, 11 January 2016, 778 SCRA 524.

[25] *Id*.

applicable law at the time of the commission of the alleged offense.

In this case, the physical inventory and taking of photographs were conducted in the presence of the accused-appellant, with only a representative from the media. The two (2) other required witnesses, *i.e.*, a representative from the DOJ and an elected public official, were absent:

> [Pros. De Leon:] What did you do after you arrived at the police station?
>
> [PO3 Avila:] We called the media man, conducted inventory, and we took pictures of the item together with the suspect and the media man, sir.[26]

As to the second and third links

According to prosecution witness PO2 Rick Jaison Almadilla, he turned over the seized items to PO3 Pio Pievro Avila (PO3 Avila) – one of the arresting officers, and not to the investigating officer, as mandated under the law. Likewise, it was PO3 Avila who brought the same to the crime laboratory.[27] There was no mention, however, on how he handled the said specimen while it was in his custody until he brought it to the crime laboratory.

As to the fourth link

Forensic chemist Lalaine Ong Rodrigo testified that she received the specimen from their receiving clerk, and turned it over to the evidence custodian for safekeeping after her examination thereof. She likewise retrieved the same from the evidence custodian before presenting it in court.[28] However, the evidence custodian was not presented in court in clear disregard of the mandate that every link in the chain must testify,

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[26] TSN, 12 November 2013, p. 9.

[27] TSN, 26 June 2014, p.10; TSN, 12 November 2013, pp. 10-11.

[28] TSN, 17 September 2013, p. 3.

describing the condition of the seized item when it was delivered, and the precautions taken to ensure its integrity.[29]

All the foregoing facts show a breach in each of the link of the chain of custody, casting doubt as to the integrity of the seized item.

To restate, the physical inventory and taking of photographs of the seized item were done in the presence of accused-appellant and a mere representative from the media as witness. In *People v. Seguiente*,[30] the Court acquitted the accused because of the absence of a DOJ representative during the conduct of inventory and taking of photographs. In said case, the Court keenly noted that the prosecution failed to recognize said deficiency and concluded that said lapse, among others, effectively produced serious doubts on the integrity and identity of the *corpus delicti*.

As regards the absence of a testimony from PO3 Avila as to how he handled the seized item from receipt until he brought it to the crime laboratory, said testimony is imperative. To be sure, the probability on the integrity and identity of the *corpus delicti* being compromised is present in every storage or transportation of the prohibited item, be it from the Philippine National Police crime laboratory directly to the court or otherwise.[31] Also, the non-presentation of the evidence custodian in court is similarly fatal to the prosecution's cause. In *People v. Ubungen*,[32] the Court ruled that absent any testimony on the management, storage, and preservation of the seized illegal drug, the fourth link in the chain of custody could not be reasonably established.

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[29] *Supra* note 24.

[30] G.R. No. 218253, 20 June 2018, 867 SCRA 268.

[31] *People v. Carlit,* G.R. No. 227309, 16 August 2017.

[32] G.R. No. 225497, 23 July 2018.

The prosecution failed to acknowledge and give a justifiable ground for non-compliance with Section 21 of RA 9165

It bears stressing that what makes the observance of the chain of custody even more crucial is that the *shabu* allegedly sold by the accused- appellant was only 0.02 gram.[33] In *People v. Holgado*,[34] the Court declared that the 5 centigrams (0.05 gram) of *shabu* seized was miniscule; hence, the need for exacting compliance with Section 21 of RA 9165, thus:

> While the miniscule amount of narcotics seized is by itself not a ground for acquittal, this circumstance underscores the need for more exacting compliance with Section 21. In *Malillin v. People,* this court said that "the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives."[35] (Citations omitted)

Despite the clear failure of the police officers to strictly adhere to Section 21 of RA 9165, We are cognizant that the same provision nevertheless provides a saving clause. It states that non-compliance with the requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer or team, shall not render void the seizure of, and custody over said items. However, this clause applies only where the prosecution recognized the procedural lapses, and thereafter cited justifiable grounds,[36] which must be accompanied by evidence that the integrity and evidentiary value of the items are preserved.[37] Furthermore, in *People v. De*

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[33] Records, p. 1.

[34] 741 Phil. 78 (2014); G.R. No. 207992, 11 August 2014, 732 SCRA 554.

[35] G.R. No. 207992, 11 August 2014, 732 SCRA 554, 576.

[36] *People v. Hementiza*, G.R. No. 227398, 22 March 2017, 821 SCRA 470, 494.

[37] *People v. Ga-a*, G.R. No. 222559, 06 June 2018, 865 SCRA 220, 260.

Guzman,[38] it was emphasized that the justifiable ground for non-compliance must be proven as a fact, because the courts cannot presume what these grounds are or whether they even exist.

In this case, the saving mechanism of Section 21 cannot be applied as the prosecution not only failed to acknowledge the infirmity, much less provide justification for the breaches in the links of the chain of custody.

Given the foregoing procedural lapses, serious uncertainty hangs over the identity of the seized drug. The prosecution failed to fully prove the elements of the offense charged, creating a reasonable doubt on the criminal liability of the accused-appellant.[39] Consequently, there is no recourse but to acquit accused-appellant.

WHEREFORE, the appeal is hereby **GRANTED.** The assailed Decision dated 27 November 2017 rendered by the Court of Appeals in CA- G.R. CR-HC No. 07364 is **REVERSED** and **SET ASIDE.** Accordingly, accused-appellant **ALLAN ALON-ALON *y* LIZARDA** is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is detained for any lawful cause.

The Director of the Bureau of Corrections is **DIRECTED** to **IMPLEMENT** this Decision and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED.

Leonen, S.A.J. (*Chairperson*), *Carandang,* and *Lazaro-Javier,*[*] *JJ.,* concur.

Gesmundo, J., on leave.

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[38] 630 Phil. 627-655 (2010); G.R. No. 186498, 26 March 2010, 616 SCRA 652, 662.

[39] *People v. Dahil*, 750 Phil. 212-239 (2015); G.R. No. 212196, 12 January 2015, 745 SCRA 221, 248.

[*] Designated as additional Member of the Third Division per Special Order No. 2728.

THIRD DIVISION

[G.R. No. 238517. November 27, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LUNG WAI TANG,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 1972 (RA 6425), AS AMENDED BY RA 7659; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS, ESTABLISHED IN THIS CASE. — In illegal possession of dangerous drugs, the elements are: (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 said drug. Here, the elements were established when accused-appellant was caught in possession of 7,918.90 grams of *shabu* by members of the PNP Narcotics Group during the implementation of a search warrant at Unit 310 of SJB Condominium in Quezon City. Prosecution witness P/Insp. Roger Fuentes positively identified accused-appellant as the person who opened the door of Unit 310. Upon conducting a search, the police officers found several plastic bags containing white crystalline substance of suspected *shabu*. After inventory and marking, the seized items were brought to the PNP Crime Laboratory for examination. The forensic chemist and prosecution witness P/Insp. Cirox T. Omero conducted a chemical examination of the seized items and the results confirmed the seized white crystalline substance as 7,918.90 grams of methamphetamine hydrochloride, commonly known as *shabu*.

2. REMEDIAL LAW; EVIDENCE; DEFENSE OF DENIAL AND FRAME-UP, INVARIABLY VIEWED WITH DISFAVOR; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES PREVAILS. — Accused-appellant's defenses, primarily predicated on denial and frame-up, are invariably viewed with disfavor because such defenses can easily be fabricated and are common ploys in prosecutions for the illegal possession of dangerous drugs. They deserve scant consideration in light of the positive testimonies

of the police officers. In order to prosper accused-appellant's defense of denial and frame-up must be, proven with strong and convincing evidence. Without proof of any intent on the part of the police officers to falsely impute to appellants the commission of a crime, the presumption of regularity in the performance of official duty and the principle that the findings of the trial court on the credibility of witnesses are entitled to great respect, should prevail over bare denials and self-serving claims.

3. ID.; ID.; ID.; SHEER VOLUME OF THE SEIZED DRUGS WHICH IS ALMOST EIGHT (8) KILOGRAMS RENDERS THE FRAME-UP DIFFICULT TO BELIEVE. — This Court finds unreliable accused-appellant's version that he was merely framed-up. The considerable quantity of seized drugs totaling 7.9 kilograms renders his claim that the seized drugs were planted by the police officers difficult to believe. Unlike miniscule amounts, a large quantity of drugs worth millions is not as susceptible to planting, tampering, or alteration. x x x [L]arge amounts of seized drugs are not as easily planted, tampered, or manipulated. Here, the considerable quantity of *shabu* consisting of almost eight (8) kilograms provides strong probative value favoring the prosecution's version of events.

4. ID.; CRIMINAL PROCEDURE; PLEA BARGAINING IN DRUGS CASES; RULING IN *ESTIPONA, JR. VS. LOBRIGO*, WHICH LED TO THE ADOPTION OF PLEA BARGAINING FRAMEWORK UNDER A.M. 18-03-16-SC, REITERATED. — The Court's ruling in *Estipona* led to the adoption of the plea bargaining framework in drug cases. Under this framework, an accused in a drug case is allowed the opportunity to plead guilty to a lesser drug-related offense. However, plea bargaining is not allowed if the quantity of drugs involved exceeds certain threshold amounts. In particular, no plea bargaining is allowed for illegal possession of dangerous drugs when the quantity involved amounts to 10 grams and above (for *shabu*, opium, morphine, heroin, or cocaine) or 500 grams and above (for marijuana). As for illegal sale of drugs, plea bargaining is unavailable when the quantity involved weighs one (1) gram and above (for *shabu* only) or ten (10) grams and above (for marijuana).

5. CRIMINAL LAW; RA 6425 AND ITS IMPLEMENTING RULES, APPLICABLE IN CASE AT BAR; THE CHAIN

OF CUSTODY PRESCRIBED UNDER RA 6425 IN HANDLING THE EVIDENCE WAS UNBROKEN AND THUS, THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS WERE PRESERVED. — [T]he search and seizure of dangerous drugs occurred on 18 July 2000, or prior to the effectivity of RA 9165. At the time, the prevailing law was RA 6425 and its implementing rules. Notably, in *People v. Gonzaga*, the Court had occasion to cite the prescribed procedure for the custody of seized drugs under RA 6425[.] x x x Both the CA and the RTC aptly found the chain of custody in handling the evidence unbroken. The arresting officer marked, photographed, and inventoried the seized *shabu* at the place of implementation of the search warrant in the presence of accused-appellant. It was then turned over to the evidence custodian for safekeeping at the police station. Thereafter, it was delivered to the PNP Crime Laboratory for qualitative examination and tested positive for methamphetamine hydrochloride or *shabu*. The same specimen was presented to the court and duly identified by prosecution witnesses through the markings they placed thereon. As such, the integrity and evidentiary value of the seized items were preserved. x x x [T]he Court is likewise convinced the apprehending officers observed proper procedure and maintained each link of the chain from marking and delivery of the seized evidence to the custodian for safekeeping, to its examination by the forensic chemist, up to presentation of the same before the trial court.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
San Diego Law Office for accused-appellant.

D E C I S I O N

ZALAMEDA, *J.*:

Our country has graciously opened its doors to foreigners seeking sojourn, or even permanent homes herein. But instead of returning the respect accorded to them, some take advantage of this hospitality, and engage in the widespread, large-scale infusion and proliferation of dangerous drugs, trammelling our intensified anti-drug campaign. And this We must not tolerate.

The Case

This appeal[1] assails the Decision[2] promulgated on 14 July 2017 by the Court of Appeals (CA) in CA-G.R. CR-HC No. 05518, affirming the Decision[3] rendered on 26 October 2011 by Branch 95, Regional Trial Court (RTC) of Quezon City in Criminal Case No. Q-00-93938, which found accused-appellant Lung Wai Tang (accused-appellant) guilty beyond reasonable doubt of violating Section 16, Article III of Republic Act No. (RA) 6425 as amended,[4] for illegal possession of Seven Thousand Nine Hundred Eighteen and 0.90 grams (7918.90 gms.) of methamphetamine hydrochloride, otherwise known as *shabu*.

Antecedents

The Information[5] reads:

> The undersigned Prosecution Attorney of the Department of Justice hereby accuses TAI ON CHEUNG, LUNG WAI TANG and SEK HUNG GOH@ PATRICK WONG GOH of the crime of violation of Sec. 16, Art. III of Republic Act. No. 6425, as amended, committed as follows:
>
> That on or about 3:00 o'clock in the afternoon of July 18, 2000 in Unit 310, SJB Condominium, Nr. 130-B Panay Avenue, Diliman, Quezon City, and within the jurisdiction of this

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[1] *Rollo*, pp. 35-36.

[2] *Id.* at 2-34; penned by Associate Justice Carmelita Salandanan Manahan and concurred in by Associate Justices Mario V. Lopez (now a Member of this Court) and Elihu A. Ybañez of the Special Sixth (6th) Division, Court of Appeals, Manila.

[3] CA *rollo*, pp. 129-156; penned by then Judge Henri Jean-Paul B. Inting (now a Member of the Court).

[4] Otherwise known as "The Dangerous Drugs Act of 1972," as amended by RA 7659 otherwise known as "An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, as amended, other Special Penal Laws, and for Other Purposes."

[5] Records, Volume I, pp. 1-2.

> Honorable Court, the above-named accused, confederating, conspiring and helping one another, did then and there willfully, unlawfully and feloniously and knowingly have in their possession approximately Seven Thousand Nine Hundred Eighteen and 0.90 gms. (7918.90 grams) of Methamphetamine Hydrochloride otherwise known as "*shabu,*" a regulated drug without any lawful authority to possess the same.
>
> CONTRARY TO LAW.

Upon arraignment, accused-appellant pleaded "not guilty."[6] After termination of pre-trial, trial on the merits ensued.

Version of the Prosecution

Sometime in May 2000, the Intelligence Division of the Philippine National Police (PNP) Narcotics Group received information from their foreign counterparts that a group from Hong Kong, particularly the San Li Ong Triad, was engaged in large-scale drug trafficking within the country. The PNP coordinated with the Bureau of Immigration to be on the lookout for a certain Tai On Cheung, a Chinese national,[7] who set foot in the Philippines on 21 May 2000. Thereafter, PNP operatives alerted their domestic informants to find out if any of them could locate or identify Tai On Cheung.[8]

On 01 June 2000, a police informant reported that a group of Hong Kong Chinese nationals were involved in a large-scale drug or *shabu* trafficking. Based on the information, the PNP organized surveillance operations to identify the group. During the operation, the police informant initially met with the subject group at the Holiday Inn Hotel. The police officers continued following them to Success Coffee Shop in J. Bocobo Street, Manila then to Atrium Hotel, then to another coffee shop fronting the gate of the Multinational Village in Parañaque City, and finally, to Casino Filipino near the Ninoy Aquino International

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[6] *Id.* at Vol. I, p. 159.

[7] Records, Vol. I, p. 24.

[8] *Rollo*, p. 11.

Airport (NAIA). The members of the group were later identified as Tai On Cheung, Sek Kung Goh, also known as Patrick Go, and accused-appellant Lung Wai Tang, *alias* "*Tangkad*."[9]

The PNP conducted further surveillance for one and a half (1 ½) months and established the subject group's daily routine: (i) from Atrium Hotel to multiple hotels, the group would go to Success Coffee Shop at J. Bocobo Street, Manila, to meet with other Chinese nationals; (ii) while at the Success Coffee Shop, Tai On Cheung and Patrick Go would go out to get some boxes from the trunk of their car and bring them inside the coffee shop; (iii) after the other Chinese nationals would receive the boxes and after drinking coffee or tea, the subject group would return to Atrium Hotel.[10] Through continuous surveillance and case build-up, the PNP was able to trace the subject group's safe house at Unit 310, San Jose Bright (SJB) Condominium, Panay Avenue, Quezon City.[11] Finally, the PNP, through the police informant, conducted a successful test buy for *shabu* from Tai On Cheung.[12]

The PNP applied for a search warrant[13] which was granted on 18 July 2000 by the RTC of Caloocan City stating:

> It appearing to the satisfaction of the undersigned after examining under oath searching question on SPO3 Edgar Groyon and P/Insp. Roger E. Fuentes that Cheung, Tai On @ Jimmy Cheng, Tang Lung Wai @ Wai, Michael Cheng @ Joseph Yeung and Wong, Patrick Y Goh have in their possession or control in the premises on No. 310, SJB Condominium, Nr. 130-B, Panay Avenue, Diliman, Quezon City, the following:
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> Undetermined amount of methamphetamine hydrochloride or *shabu*

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[9] *Id.* at 8.

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

[11] Records, Exhibits for the Prosecution, p. 8.

[12] *Rollo*, p. 9.

[13] Records, Exhibits for the Prosecution, p. 7.

YOU ARE HEREBY COMMANDED to make an immediate search at any time of the day and night of the place but limited only to the premises herein described and forthwith seize and take possession of the above-mentioned articles and bring the same to the undersigned to be dealt with as the law directs, together with detailed inventory of articles seized within ten (10) days from service thereof.[14]

The PNP served the search warrant at Unit 310 of SJB Condominium. During the operation, the police operatives were accompanied by the condominium's building engineer and chief security guard. Tai On Cheung and Sek Hung Go were with accused-appellant Lung Wai Tang inside Unit 310 when he opened the door.[15] The police operatives searched the premises and when they lifted the bed, they found a total of eight (8) self-sealing transparent plastic bags containing white crystalline substance suspected to be *shabu*. The police operatives marked and prepared an inventory of the seized items. The arresting officer, building engineer, chief security guard, and the three (3) suspects placed their respective markings on the seized evidence. The police officers then issued a Certificate of Good Conduct Search.

After the inventory (Receipt of Property Seized), the police operatives turned over Unit 310 to the building engineer while the three (3) suspects were brought to the police office for tactical interrogation. The arresting officer took possession of the seized evidence and turned them over to the evidence custodian at the police headquarters for safekeeping. He directed one of his personnel to prepare the request for laboratory examination and bring the confiscated pieces of evidence to the PNP Crime Laboratory which later issued a Certification confirming that the items seized were positive for the presence of *shabu*, a regulated drug.[16]

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[14] Records, Vol. I, p. 28.

[15] The Records interchangeably referred to accused-appellant as "Lung Wai Tang," "Lung Wai Tai," "Lung Way Tang," or a combination thereof.

[16] *Rollo*, p. 10.

Version of the Defense

In defense, accused-appellant proffered denial and claimed they were set up. He testified that he worked for the Regal Hotel in Hong Kong earning around HKD15,000.00 and Sunflower Sauna Parlor. He was arrested in Sta. Cruz, Binondo, Manila on 18 July 2000 while aboard a taxi.[17]

Accused-appellant alleged he was brought to Unit 310 of the SJB Condominium in Quezon City and saw police officers already waiting inside the unit. One of the police lifted the bed and pointed to two (2) Robinson's plastic bags with blue boxes inside. They opened the blue boxes which contained plastic bags with white crystalline substance. When he asked about the plastic bags, the policemen only smiled. He was then brought downstairs where he sat for about five (5) minutes until Tai On Cheung and Patrick Go entered together with several policemen.[18]

According to accused-appellant, a police officer instructed him to open the door once he hears a knock. Minutes after the police left the room, someone came knocking at the door. When accused-appellant did as instructed, the police officers served him a search warrant.[19]

Ruling of the RTC

The RTC rendered a decision convicting Tai On Cheung and accused-appellant. The RTC disposed:

WHEREFORE, judgment is hereby rendered finding accused TAI ON CHEUNG and LUNG WAI TANG **GUILTY** beyond reasonable doubt for violation of Section 16[,] [Article] III of R.A. 6425 as amended by R.A. 7659 or possessing approximately Seven Thousand Nine Hundred Eighteen and 0.90 grams (7918.90 grams) of *shabu*, and each is therefore sentenced to suffer the penalty of *Reclusion*

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[17] *Id.* at 16.

[18] *Id.* at 17.

[19] *Id.*

Perpetua and pay a fine of Php500,000.00; and accused SEK HUNG GOH **NOT GUILTY** of the same charge considering that the prosecution failed to prove his guilt beyond reasonable doubt.

Accused SEK HUNG GOH being a detained person at Camp Bagong Diwa, Bicutan, Taguig City, the Jail Warden of Camp Bagong Diwa, Bicutan, Taguig City is hereby ordered to release him from detention thereat, unless he is detained for some other lawful cause.

The representative sample of the subject shabu which is in the custody of the PDEA is ordered disposed.

IT IS SO ORDERED.[20]

Ruling of the CA

The CA sustained the conviction on appeal but dismissed the case as to Tai On Cheung on account of his death. The CA decreed as follows:

WHEREFORE, the appeal filed by **TAI ON CHEUNG** is hereby **DISMISSED** on account of his death pursuant to Article 89, paragraph 1 of the Revised Penal Code.

The appeal of **LUNG WAI TANG** is likewise **DISMISSED** for lack of merit. The Decision dated October 26, 2011 of the Regional Trial Court of Quezon City, Branch 95, in Criminal Case No. Q-00-93938 finding **LUNG WAI TANG** guilty beyond reasonable doubt of the offense charged is hereby **AFFIRMED**.

SO ORDERED.[21]

Hence, this appeal.[22]

Issues

In his appellant's brief, accused-appellant claimed:

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[20] CA *rollo*, p. 156.

[21] *Rollo*, pp. 33-34.

[22] *Id.* at 35.

I.

The trial court committed reversible error in convicting accused-appellant LUNG WAI TANG ruling that he was said to have constructive possession of shabu when the same was found in Unit 310 SJB Condominium, and the police enforcers who testified stated that accused-appellant LUNG WAI is a tenant/lessee of the said unit without showing any documentary proof or testimony by component individual to prove that accused- appellant was indeed a lessee/tenant of the said unit.

II.

The trial court committed reversible error in convicting accused-appellant despite a clear and blatant violation of his constitutional right to due process by admitting as evidence the signature affixed by accused-appellant on the bags of shabu against his will and without the assistance of counsel, considering that accused-appellant is a Chinese national who do not speak filipino or english language at that time.

III.

The trial court committed reversible error in convicting accused-appellant despite the glaring fact that the chain of custody in the [sic] handling the evidence was broken.

IV.

The trial court committed reversible error in convicting accused-appellant by erroneously applying the presumption of regularity in the performance of official duty on the part of the arresting officers.[23]

Further, accused-appellant insisted in his supplemental brief that: (a) his travel records indicated he was not in the country from 01 to 12 June 2000 when the alleged surveillance operations were conducted; (b) accused- appellant did not have constructive possession of the drugs; (c) the identity of accused-appellant was not clearly established; (d) the lower court cannot convict accused-appellant and acquit co-accused Sek Hung Goh under the same set of facts and reasonings; and (e) the time-stamped video footage showed the police officers were already inside

[23] CA *rollo*, pp. 77-78.

Unit 310 conducting the search at 3:42:22 p.m. while the photograph showed the team was still knocking outside the door at 3:45:54 p.m.[24]

Ultimately, the controversy boils down to whether or not the RTC and the CA correctly convicted accused-appellant for the crime of illegal possession of dangerous drugs.

Ruling of the Court

Transnational organized crime syndicates engaged in large scale distribution of dangerous drugs have infiltrated the country

Prefatorily, the Court notes that Southeast Asia is facing one of the world's most intense drug crises.[25] Threats arising from transnational organized crime in Southeast Asia are becoming more deeply integrated within the region itself, as well as with neighbouring and connected regions. At the same time, criminal networks operating in Southeast Asia have achieved global reach, trafficking unfathomable quantities of high-profit methamphetamine,[26] including here in the Philippines.

Based on the study[27] by the United Nations Office on Drugs and Crime (UNODC), there are indications that transnational organized crime groups have migrated into the Philippines. Their presence is clearly evident and several methamphetamine laboratories have already been dismantled in this country in

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[24] *Rollo*, p. 50.

[25] *Asia's meth trade is worth an estimated $61 B as region becomes a 'playground' for drug gangs*, written by Berlinger, Joshua, 18 July 2019 <https://edition.cnn.com/2019/07/18/asia/asia-methamphetamine-intl-hnk/index.html> (visited 11 November 2019).

[26] Transnational Organized Crime in Southeast Asia: Evolution, Growth and Impact, United Nations Office on Drugs and Crime (UNODOC) (2019), <https://www.unodc.org/documents/ southeastasiaandpacific/Publications/2019/SEA_TOCTA_ 2019_web.pdf> (visited 11 November 2019).

[27] *Id.*

2018, including one operated by a network based in Hong Kong, China.

The proliferation of these transnational drug syndicates, however, did not occur overnight. As in fact, accused-appellant in this case, a Chinese national,[28] is a member of a Hong Kong drug syndicate operating in Metro Manila.[29] The Chief of the PNP Narcotics Group testified it was their investigation of the San Li Ong Triad, a Hong Kong drug trafficking group, which lead to the identification and arrest of accused-appellant.[30] The present case, which involves illegal possession of almost eight (8) kilos of *shabu*, predates almost two (2) decades ago. Yet, the evils brought by these drug syndicates persist even twenty (20) years after, up to this date.

The elements of illegal possession of dangerous drugs were duly established

The CA and the RTC uniformly held that the prosecution established the crime of illegal possession of prohibited drugs as defined under RA 6425, as amended. We see no reason to disturb the united findings of the courts *a quo*.

In illegal possession of dangerous drugs, the elements are: (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 said drug.[31]

Here, the elements were established when accused-appellant was caught in possession of 7,918.90 grams of *shabu* by members of the PNP Narcotics Group during the implementation of a

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[28] Records, Vol. I, p. 25.

[29] *Id.* at 22.

[30] TSN, 27 May 2002, pp. 5-6.

[31] *People v. Serrano*, G.R. No. 179038, 06 May 2010, 620 SCRA 315, 344, citing *People v. Pringas*, G.R. No. 175928, 31 August 2007, 531 SCRA 828, 846.

search warrant at Unit 310 of SJB Condominium in Quezon City. Prosecution witness P/Insp. Roger Fuentes positively identified accused-appellant as the person who opened the door of Unit 310. Upon conducting a search, the police officers found several plastic bags containing white crystalline substance of suspected *shabu*. After inventory and marking, the seized items were brought to the PNP Crime Laboratory for examination.[32] The forensic chemist and prosecution witness P/Insp. Cirox T. Omero conducted a chemical examination of the seized items and the results confirmed the seized white crystalline substance as 7,918.90 grams of methamphetamine hydrochloride, commonly known as *shabu*.[33]

The defense of denial and frame-up are invariably weak

Accused-appellant's defenses, primarily predicated on denial and frame-up, are invariably viewed with disfavor because such defenses can easily be fabricated and are common ploys in prosecutions for the illegal possession of dangerous drugs. They deserve scant consideration in light of the positive testimonies of the police officers.[34]

In order to prosper, accused-appellant's defense of denial and frame-up must be proven with strong and convincing evidence. Without proof of any intent on the part of the police officers to falsely impute to appellants the commission of a crime, the presumption of regularity in the performance of official duty and the principle that the findings of the trial court on the credibility of witnesses are entitled to great respect, should prevail over bare denials and self-serving claims.[35]

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[32] *Rollo*, pp. 26-27. *See* also Records, Volume III, pp. 1616-1617.

[33] *Id.* at 27.

[34] *People v. Bala*, G.R. No. 203048, 13 August 2014, 733 SCRA 50, 65.

[35] *People v. Chi Chan Liu*, G.R. No. 189272, 21 January 2015, 746 SCRA 476, 498.

Further, accused-appellant's purported claim of being out of the country during the dates of surveillance from 01 June to 17 July 2000[36] and the minor discrepancy in the time-stamped video cannot stand against his positive identification by the prosecution witnesses. First, even if the Court considers the travel records belatedly submitted on appeal, these records merely indicated accused-appellant's arrival in the Philippines on 19 June 2000[37] while the police surveillance lasted until 17 July 2000. Second, the small difference in the time stamps between the video footage and the photographs can be attributed to the different internal clock settings of the separate devices used, particularly the video recorder and the still camera. In any case, accused-appellant's circumstantial arguments fail to convince the Court that factual errors were committed by the courts below.

The sheer volume of the seized drugs consisting of 7,918.90 grams or almost eight (8) kilograms renders the defense of frame-up difficult to believe; the large quantity of drugs seized reduces, if not eradicates, the possibility of planting or tampering of evidence

This Court finds unreliable accused-appellant's version that he was merely framed-up. The considerable quantity of seized drugs totaling 7.9 kilograms renders his claim that the seized drugs were planted by the police officers difficult to believe. Unlike miniscule amounts, a large quantity of drugs worth millions is not as susceptible to planting, tampering, or alteration.

In *People v. Chi Chan Liu*,[38] the Court upheld a conviction involving forty-five (45) kilos of *shabu* given the appellants' failure to explain how the police officers were able to plant

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[36] Records, Exhibits for the Prosecution, p. 21.

[37] *Rollo*, p. 72.

[38] *Supra* at note 35.

such a large quantity of drugs without their knowledge. The Court emphasized the defense of denial and frame-up should be established with strong and convincing evidence:

> The evidence on record clearly established that appellants were in possession of the bags containing the regulated drugs without the requisite authority. As mentioned previously, on the date of appellants' arrest, the apprehending officers were conducting a surveillance of the coast of Ambil Island in the Municipality of Looc, Occidental Mindoro, upon being informed by the Municipality's *Barangay* Captain that a suspicious-looking boat was within the vicinity. Not long after, they spotted two (2) boats anchored side by side, the persons on which were transferring cargo from one to the other. Interestingly, as they moved closer to the area, one of the boats hurriedly sped away. Upon reaching the other boat, the police officers found the appellants with several transparent plastic bags containing what appeared to be *shabu* which were plainly exposed to the view of the officers. Clearly, appellants were found to be in possession of the subject regulated drugs.
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> Moreover, this Court is not legally prepared to accept the version of the appellants that they had nothing to do with the incident and that they were being framed up as the drugs seized from them were merely planted by the apprehending officers. At the outset, this Court observes that appellants did not provide any explanation as to how the apprehending officers were actually able to plant forty-five (45) bags of regulated drugs weighing about one (1) kilo each in the speed boat of appellants in the middle of the ocean without their knowledge. Also, as the trial court noted, they did not even give any explanation as to the purpose of their presence in the coast of Ambil, Looc, Occidental Mindoro. More importantly, aside from saying that the confiscated bags of regulated drugs were merely implanted in their speed boat, they did not provide the court with sufficient evidence to substantiate their claim. x x x
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> This Court has consistently noted that denial or frame up is a standard defense ploy in most prosecutions for violations of the Dangerous Drugs Law. This defense has been invariably viewed with disfavor for it can easily be concocted. In order to prosper, the defense of denial and frame-up must be proved with strong and convincing evidence. Without proof of any intent on the part of the police officers to falsely impute to appellants the commission of a crime, the presumption of regularity in the performance of official duty and the

principle that the findings of the trial court on the credibility of witnesses are entitled to great respect, deserve to prevail over the bare denials and self-serving claims of frame up by appellants.

Strict adherence to the procedural safeguards is required where the quantity of illegal drugs seized is small, since it is highly susceptible to planting, tampering, or alteration of evidence.[39] On the other hand, large amounts of seized drugs are not as easily planted, tampered, or manipulated. Here, the considerable quantity of *shabu* consisting of almost eight (8) kilograms provides strong probative value favoring the prosecution's version of events.

In determining whether the amount of seized drugs is large or small, courts may be guided by the threshold quantities set under the Plea Bargaining Framework in drugs cases (A.M. 18-03-16-SC)

In *Estipona, Jr. v. Lobrigo*,[40] the Court acknowledged that the country's problem on illegal drugs has reached "epidemic," "monstrous," and "harrowing" proportions, and that its disastrously harmful social, economic, and spiritual effects have broken the lives, shattered the hopes, and destroyed the future of thousands especially our young citizens. Fully aware of the gravity of the drug menace that has beset our country and its direct link to certain crimes, the Court, within its sphere, must do its part to assist in the all-out effort to lessen, if not totally eradicate, the continued presence of drug lords, pushers and users.

Associate Justice Marvic Leonen's concurring opinion in *Estipona* further noted that most "drug-pushers" are found with less than 0.1 gram of illegal drugs. While some of these accused will be charged with both selling and possession, most of them

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[39] *People v. Bayang*, G.R. No. 234038, 13 March 2019.

[40] G.R. No. 226679, 15 August 2017, 837 SCRA 160, 171.

will have to suffer the penalty of selling, that is, life imprisonment. They will be sentenced to life imprisonment for evidence amounting to only about 2.5% of the weight of a five-centavo coin (1.9 grams) or a one-centavo coin (2.0 grams).[41]

The Court's ruling in *Estipona* led to the adoption of the plea bargaining framework[42] in drug cases. Under this framework, an accused in a drug case is allowed the opportunity to plead guilty to a lesser drug-related offense. However, plea bargaining is not allowed if the quantity of drugs involved exceeds certain threshold amounts. In particular, no plea bargaining is allowed for illegal possession of dangerous drugs when the quantity involved amounts to 10 grams and above (for *shabu*, opium, morphine, heroin, or cocaine) or 500 grams and above (for marijuana). As for illegal sale of drugs, plea bargaining is unavailable when the quantity involved weighs one (1) gram and above (for *shabu* only) or ten (10) grams and above (for marijuana).

This case presents an opportunity for the Court to set guidelines on when a certain amount of drugs may be considered large or miniscule. To recall, there should be a distinction in the evidentiary treatment of drugs based on its quantity. Unlike small amounts, large quantities of drugs are less likely to be the subject of planting and manipulation. During trial, considerable quantities of seized drugs are certainly more pesuasive than infinitesimal ones.

Thus, in determining whether the quantity of seized drugs may be considered large or small, courts should be guided by the threshold amounts set in the plea bargaining framework. If the amount of drugs seized precludes the availability of plea-bargaining, it shall be deemed a large amount and should be given strong probative value.

While seizure of bulk quantities of drugs will not excuse police officers from complying with the procedural requirements

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[41] *Id.*

[42] A.M. No. 18-03-16-SC.

under the law, the strong evidentiary treatment should encourage law enforcement agencies to focus on large-scale drug operations instead of small-time street dealers.

The old drugs law, or RA 6425 (The Dangerous Drugs Act of 1972) and its implementing rules, are applicable

Accused-appellant's challenge to the custody of the seized *shabu* is unavailing. Chain of custody is the duly recorded authorized movements and custody of seized items at each stage, from seizure to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.[43]

Here, the search and seizure of dangerous drugs occurred on 18 July 2000, or prior to the effectivity of RA 9165.[44] At the time, the prevailing law was RA 6425 and its implementing rules. Notably, in *People v. Gonzaga*,[45] the Court had occasion to cite the prescribed procedure for the custody of seized drugs under RA 6425:

Dangerous Drugs Board Regulation No. 3, Series of 1979

Subject: Amendment of Board Resolution No. 7, series of 1974, prescribing the procedure in the custody of seized prohibited and regulated drugs, instruments, apparatuses, and articles specially designed for the use thereof.

[xxx xxx xxx]

SECTION 1. All prohibited and regulated drugs, instruments, apparatuses and articles specially designed for the use thereof when unlawfully used or found in the possession of any person not authorized to have control and disposition of the same, or when found secreted or abandoned, shall be seized or confiscated by any national, provincial

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[43] *People v. Noah*, G.R. No. 228880, 06 March 2019.

[44] Otherwise known as "An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No. 6425, Otherwise Known as the Dangerous Drugs Act of 1972, as Amended, Providing Funds Therefor, and Other Purposes."

[45] G.R. No. 184952, 11 October 2010, 632 SCRA 551, 573.

or local law enforcement agency. Any apprehending team having initial custody and control of said drugs and/or paraphernalia, should immediately after seizure and confiscation, have the same physically inventoried and photographed in the presence of the accused, if there be any, and/or his representative, who shall be required to sign the copies of the inventory and be given a copy thereof. Thereafter, the seized drugs and paraphernalia shall be immediately brought to a properly equipped government laboratory for a qualitative and quantitative examination.

The apprehending team shall: (a) within forty-eight (48) hours from the seizure inform the Dangerous Drugs Board by telegram of said seizure, the nature and quantity thereof, and who has present custody of the same, and (b) submit to the Board a copy of the mission investigation report within fifteen (15) days from completion of the investigation.

Both the CA and the RTC aptly found the chain of custody in handling the evidence unbroken. The arresting officer marked, photographed, and inventoried the seized *shabu* at the place of implementation of the search warrant in the presence of accused-appellant. It was then turned over to the evidence custodian for safekeeping at the police station. Thereafter, it was delivered to the PNP Crime Laboratory for qualitative examination and tested positive for methamphetamine hydrochloride or *shabu*. The same specimen was presented to the court and duly identified by prosecution witnesses through the markings they placed thereon. As such, the integrity and evidentiary value of the seized items were preserved.[46]

Based on the records, the Court is likewise convinced the apprehending officers observed proper procedure and maintained each link of the chain from marking and delivery of the seized evidence to the custodian for safekeeping, to its examination by the forensic chemist, up to presentation of the same before the trial court.

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[46] *Rollo*, p. 31.

The country's wage of war against transnational organized drug syndicates operating in the country must not be thwarted; large scale illegal possession by members of these crime groups must not be countenanced

This Court has observed with dismay the deluge of cases against small-time drug pushers swamping the court dockets while affirming its readiness to handle cases involving the cartels trafficking these drugs in massive quantities. Thus, in *People v. Holgado*[47] –

> It is lamentable that while our dockets are clogged with prosecutions under Republic Act No. 9165 involving small-time drug users and retailers, we are seriously short of prosecutions involving the proverbial "big fish." We are swamped with cases involving small fry who have been arrested for miniscule amounts. While they are certainly a bane to our society, small retailers are but low-lying fruits in an exceedingly vast network of drug cartels. Both law enforcers and prosecutors should realize that the more effective and efficient strategy is to focus resources more on the source and true leadership of these nefarious organizations. Otherwise, all these executive and judicial resources expended to attempt to convict an accused for 0.05 gram of shabu under doubtful custodial arrangements will hardly make a dent in the overall picture. It might in fact be distracting our law enforcers from their more challenging task: to uproot the causes of this drug menace. We stand ready to assess cases involving greater amounts of drugs and the leadership of these cartels.[48]

Indeed, transnational organized crime syndicates engaged in large scale distribution of dangerous drugs in the country are destroying the very mind and soul of the Filipino nation. This Court will not hesitate to apply the full force of the law against them, more so foreign nationals benefitting from our kindness and hospitality. Law enforcement officials who risk

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[47] G.R. No. 207992, 11 August 2014, 732 SCRA 554, 557.

[48] *Id.*

their lives in protecting the Filipino nation by going against these syndicates should not only be commended, but should be encouraged.

WHEREFORE, the appeal is hereby **DISMISSED**. Accordingly, the Decision promulgated by the Court of Appeals on 14 July 2017 in CA-G.R. CR-H.C. No. 05518 is **AFFIRMED** *in toto*.

Accused-appellant is likewise **ORDERED** to pay the costs of suit.

SO ORDERED.

Leonen (*Chairperson*), *Carandang*, and *Lazaro-Javier*,[*] *JJ.*, concur.

Gesmundo, J., on leave.

THIRD DIVISION

[G.R. No. 240231. November 27, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CRESENCIANO ENOJO *a.k.a.* "OLPOK",** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURTS ARE IN THE BEST POSITION TO DECIDE ISSUES OF CREDIBILITY OF WITNESSES, HAVING THEMSELVES HEARD AND SEEN THE WITNESSES AND OBSERVED FIRSTHAND

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[*] Designated as Additional Member of the Third Division per Special Order No. 2728.

THEIR DEMEANOR AND DEPORTMENT AND THE MANNER OF TESTIFYING UNDER EXACTING EXAMINATION, MAKING THEIR ASSESSMENT OF A WITNESS'S CREDIBILITY FAR SUPERIOR TO THAT OF APPELLATE TRIBUNALS.— [W]e affirm accused-appellant's conviction for the murder of Delfred, Alfred, and Chrocila. Accused-appellant's defense, which centers on his challenge to the credibility of the prosecution witnesses, cannot be sustained considering that the RTC's assessment of these witnesses were affirmed by the CA. As such, these findings are now given great respect and conclusiveness. It is settled that trial courts are in the best position to decide issues of credibility of witnesses, having themselves heard and seen the witnesses and observed firsthand their demeanor and deportment and the manner of testifying under exacting examination, making their assessment of a witness's credibility far superior to that of appellate tribunals.

2. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; THE KILLING OF A CHILD IS CHARACTERIZED BY TREACHERY EVEN IF THE MANNER OF THE ASSAULT IS NOT SHOWN IN THE INFORMATION, AS THE WEAKNESS OF THE VICTIM DUE TO HIS TENDER AGE RESULTS IN THE ABSENCE OF ANY DANGER TO THE ACCUSED.— The CA and RTC were also correct in appreciating the qualifying circumstance of treachery. "The killing of a child is characterized by treachery even if the manner of the assault is not shown in the Information, as the weakness of the victim due to his tender age results in the absence of any danger to the accused." Hence, the mere allegation of the victim's minority is sufficient to qualify the crime to murder.

3. ID.; ID.; ID.; FACTUAL AVERMENTS CONSTITUTING NOT ONLY THE OFFENSE CHARGED, BUT ALSO THE CIRCUMSTANCES THAT MAY INCREASE THE ACCUSED'S LIABILITY, MUST BE MADE IN THE INFORMATION IN ORDER TO ENSURE THAT THE ACCUSED IS FULLY AFFORDED HIS RIGHT TO BE APPRISED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HIM; AN INFORMATION FOR THE CRIME OF FRUSTRATED MURDER IS INSUFFICIENT WHERE IT FAILED TO ALLEGE FACTUAL AVERMENTS CONSTITUTING TREACHERY.

— It is well to point out that the Information for the crime of frustrated murder committed against Carmen is insufficient for failure to allege factual averments constituting treachery. We take this as an opportunity to remind our public prosecutors that general allegations of the existence of aggravating or qualifying circumstances in the Information are not enough. Factual averments constituting not only the offense charged, but also the circumstances that may increase the accused's liability, must be made in the Information in order to ensure that the accused is fully afforded his right to be apprised of the nature and cause of the accusation against him. Failing in this regard would prevent the Court from appreciating the circumstances insufficiently alleged.

4. ID.; ID.; ID.; THERE IS NO TREACHERY EVEN IF THE ACCUSED'S ATTACK ON THE VICTIM WAS SUDDEN, WHERE THE SUDDENNESS IS NOT PRECONCEIVED AND DELIBERATELY ADOPTED, BUT IS JUST TRIGGERED BY A SUDDEN INFURIATION ON THE PART OF THE ACCUSED AS A RESULT OF A PROVOCATIVE ACT OF THE VICTIM, OR WHEN THE KILLING IS DONE AT THE SPUR OF THE MOMENT.— Even assuming the sufficiency of the Information for frustrated murder, We remain unconvinced that accused-appellant employed treachery when he attacked Carmen. "Treachery is present when the attack was carried out in a swift, deliberate, and unexpected manner, the purpose of which is to deny the victim of any opportunity to defend himself or herself. To sustain a finding of treachery, it must be shown that the offender must have planned the mode of attack to ensure its execution without exposing himself to any danger which may come from the victim's act of retaliation or self-defense." Here, Carmen was aware of accused-appellant's hostile intentions. In fact, upon learning about accused-appellant's threat, she sought to confront him. While accused-appellant's attack on Carmen was described as sudden, there is no treachery when the suddenness was not preconceived and deliberately adopted, but is just triggered by a sudden infuriation on the part of the accused as a result of a provocative act of the victim, or when the killing is done at the spur of the moment.

5. ID.; ID.; ABUSE OF SUPERIOR STRENGTH; AN ATTACK MADE BY A MAN WITH A DEADLY WEAPON UPON

AN UNARMED AND DEFENSELESS WOMAN CONSTITUTES THE CIRCUMSTANCE OF ABUSE OF THAT SUPERIORITY WHICH HIS SEX AND THE WEAPON USED IN THE ACT AFFORDED HIM, AND FROM WHICH THE WOMAN WAS UNABLE TO DEFEND HERSELF; CONVICTION OF ACCUSED-APPELLANT FOR THE CRIMES OF MURDER AND FRUSTRATED MURDER, AFFIRMED.— We rule that abuse of superior strength is present and could be appreciated as a qualifying circumstance against accused-appellant, considering that it is no longer absorbed by the now nonexistent circumstance of treachery. In several cases, We consistently held that an attack made by a man with a deadly weapon upon an unarmed and defenseless woman constitutes the circumstance of abuse of that superiority which his sex and the weapon used in the act afforded him, and from which the woman was unable to defend herself. The pieces of evidence show that at the time of her attack, Carmen was unarmed and without any means to fend off accused-appellant's attacks with his *bolo*. In this regard, the CA still correctly adjudged accused-appellant's criminal liability for the commission of the crimes of murder and frustrated murder. Resultantly, We find proper the imposition of penalty and award of damages by the CA.

APPEARANCES OF COUNSEL

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

D E C I S I O N

ZALAMEDA, *J.*:

This appeal[1] assails the Decision[2] dated 19 December 2017 by the Court of Appeals (CA) in CA-G.R. CEB CR-HC

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[1] *Rollo*, pp. 24-26.

[2] *Id*. at 4-23; penned by Associate Justice Geraldine C. Fiel-Macaraig, with Associate Justices Pamela Ann Abella Maxino and Louis P. Acosta, concurring.

No. 02161, which affirmed with modifications the Joint Decision[3] dated 16 November 2015 of Branch 31, Regional Trial Court (RTC) of Dumaguete City in Criminal Case Nos. 14617, 14900, 14902 and 14903, finding Cresenciano Enojo (accused-appellant) guilty beyond reasonable doubt for three (3) counts of murder, for the killing of three (3) children, namely: Delfred A. Cuevas, nine (9) years old; Alfred A. Cuevas, six (6) years old; and Chrocila A. Cuevas, two (2) years old; and one (1) count of frustrated murder, for the wounding of their mother, Carmen A. Cuevas.

Antecedents

The separate Informations filed against accused-appellant read:

Criminal Case No. 14900

That on November 20, 1999, at about 5:30 in the afternoon at Sitio Dumanon, Barangay Nasig-id, Zamboanguita, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with treachery and abuse of superior strength the victim being a minor and of tender age and unarmed, did then and there willfully, unlawfully and feloniously with the use of a bolo, assault, attack and hack DELFRED A. CUEVAS, a 9 year old, inflicting upon the said victim the following mortal wounds x x x which caused the instantaneous death of the victim.

Contrary to Article 248 of the Revised Penal Code as amended by RA 7659.[4]

Criminal Case No. 14902

That on November 20, 1999, at about 5:30 in the afternoon at Sitio Dumanon, Barangay Nasig-id, Zamboanguita, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with treachery and abuse of superior strength the victim being [a] minor and of tender age and unarmed, did then

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[3] CA *rollo,* pp. 43-96; penned by Presiding Judge Ma. Mercedita U. Sarsaba.

[4] *Rollo,* pp. 6-7.

and there willfully, unlawfully and feloniously with the use of a bolo, assault, attack and hack CARLFRED A. CUEVAS,[5] a 6 year old, inflicting upon the said victim the following mortal wounds x x x which caused the instantaneous death of the victim.

Contrary to Article 248 of the Revised Penal Code as amended by RA 7659.[6]

Criminal Case No. 14903

That on November 20, 1999, at about 5:30 in the afternoon at Sitio Dumanon, Barangay Nasig-id, Zamboanguita, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with treachery and abuse of superior strength the victim being [a] minor and of tender age and unarmed, did then and there willfully, unlawfully and feloniously with the use of a bolo, assault, attack and hack CHRESELA A. CUEVAS,[7] a 2 year old, inflicting upon the said victim the following mortal wounds x x x [w]hich caused the instantaneous death of the victim.

Contrary to Article 248 of the Revised Penal Code as amended by RA 7659.[8]

Criminal Case No. 14617

That on or about November 20, 1999, at about 5:30 o'clock in the afternoon at Sitio Dumanon, Barangay Nasig-id, Zamboanguita, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery, abuse of superior strength and disregard of the respect due the offended party on account of her sex, the victim being a woman, did then and there willfully, unlawfully and feloniously attack, assault and hack three (3) times Carmen Cuevas with the use of a bolo the accused was then armed and provided, thereby inflicting upon the victim the following injuries x x x which injuries could have caused

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[5] *See* Records, p. 361; the RTC indicated that the name of the child should be "Alfred."

[6] *Rollo,* pp. 7-8.

[7] *See* Records, p. 361; the RTC indicated that the name of the child should be "Chrocila."

[8] *Rollo,* pp. 8-9.

the death of the victim, thus performing all the acts of execution which could have produced the crime of Murder, as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the accused, that is, by the timely medical assistance given to said victim that prevented her death.

Contrary to Article 248 of the Revised Penal Code in relation to Articles 6 and 250 of the said (sic) code.[9]

When arraigned, accused-appellant pleaded not guilty to the charges. Upon termination of pre-trial, trial ensued where the prosecution and the defense presented their respective versions of the facts.

Version of the Prosecution

The prosecution presented the following as its witnesses: (1) Felix Montiil (Montiil), the victims' neighbor; (2) Carmen Cuevas (Carmen); and, (3) Dr. Clemente Hipe IV (Dr. Hipe). Montiil testified that he overheard one of the child victims, Delfred, saying he hit accused-appellant's dog with a slingshot. At that exact moment, accused-appellant was passing by, and in a fit of rage, he told Delfred, "*tirador ka rong bataa ka nga akong iro dako man ug samad sa kilid. Buk-on nya nako na imong ulo bataa ka. Bisan musugilon ka sa imong ginikanan iapil nako ug buak ang ulo*."[10] The RTC translated this to mean:

Slingshot you juvenile child, my dog has a big wound on its side, it even went home to my house. I might break your head you juvenile child. Even if you will tell your parents I will also break their heads.[11]

Upon hearing this, Delfred rushed home. Moments later, his mother, Carmen, came looking for accused-appellant to confront him on what he told her son. However, accused-appellant emerged and hacked Carmen twice on the head and once on the back, causing the latter to fall to the ground. Accused-

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

[10] *Id*. at 11.

[11] Records, p. 322.

appellant then made his way to Carmen's house, giving Carmen the opportunity to seek Montiil's help.[12]

In her testimony, Carmen recounted how she heard her children, Alfred and Chrocila, calling out to her after she fell to the ground. She yelled for them to run to their house, but accused-appellant followed them.[13] Carmen claimed she witnessed how accused-appellant hacked Alfred and Chrocila to death.[14] As for Delfred, she maintained that her son almost escaped, but accused-appellant caught up with him and hacked him on the head twice.[15]

Finally, Dr. Hipe, the physician who medically examined Carmen, testified that the injuries she suffered were fatal, and should have resulted in her death, but which nevertheless did not produce it by reason of a cause independent of the will of the accused: the timely medical attention provided to Carmen.[16]

Version of the Defense

Accused-appellant denied having hacked to death Carmen's three (3) minor children. He narrated that while plowing his neighbor's field, he heard children crying from a distance, but the sound died down. Accused-appellant continued with his errands and chanced upon Carmen, then armed with wooden club with clothes drenched in blood. When asked what happened, Carmen angrily retorted she would break his head if he continued asking her questions. Carmen then attacked and hit him. When the attack continued, accused-appellant swung his *bolo*, accidentally hitting Carmen on the head. He was surprised for being considered the suspect in the killing of Carmen's three children.[17]

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[12] *Rollo,* p. 11.

[13] *Id.*

[14] Records, p. 317.

[15] *Id.*

[16] *Id.* at 13, TSN dated 30 January 2014.

[17] *Id.* at 14.

Ruling of the RTC

After trial, the RTC found accused-appellant guilty of three (3) counts of murder and one (1) count of frustrated murder. The dispositive portion of the RTC's Decision reads:

WHEREFORE, all the foregoing considered, judgment is hereby rendered as follows:

1. In Criminal Case No. 14617, the court finds accused Cresenciano Enojo @ "Olpok" **GUILTY beyond reasonable doubt of the crime of Frustrated Murder under Article 248 as amended by R.A. 7659 of the Revised Penal Code in relation to Article 6 and 50 also of the Revised Penal Code** and hereby sentence[s] him to suffer 13 years of *cadena temporal* with the accessories of the law as well as sentence[s] him to pay temperate damages in the amount of Php25,000.00 in lieu of actual damages considering that some pecuniary loss was suffered but its amount cannot be proven with certainty during trial.

2. Considering that deceased minor victims Delfred Cuevas, Calfred (actually Alfred) Cuevas and Chrosela (actually Chrocila) Cuevas in Criminal Case Nos. 14900, 14902, 14903, were children of tender years, and since killing a child is characterized by treachery even if the manner of the assault is not shown because of the weakness of the victim due to her tender age results in the absence of any danger to the accused, the court finds accused Cresenciano Enojo **GUILTY beyond reasonable doubt for three (3) counts of the crime of Murder under Article 248 of the Revised Penal Code as amended by RA 7559** and hereby sentences him to suffer the penalty of *reclusion perpetua* for each count.

The penalty of Death should have been imposed to the accused in Criminal Case Nos. 14900, 14902 & 14903, however, with the enactment of R.A. No. 9346 on June 24, 2006, this court has to reduce the penalty of death to *reclusion perpetua* each in all said cases. This, notwithsating (sic), accused should not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

Finally, [the] accused is further ordered to indemnify the heirs of the aforesaid three (3) children the amounts of Php50,000.00 as civil indemnity, Php50,000.00 as moral damages, Php30,000.00 as exemplary damages and Php25,000.00 as temperate damages for each child-victim, plus legal interest on all damages awarded at the rate of 6% from the date of the finality of this decision.

SO ORDERED.[18] (Citations omitted)

The trial court found the prosecution's evidence sufficient to sustain accused-appellant's conviction of the crimes charged. After affording itself the opportunity to observe the witnesses' demeanor on the stand, the RTC found no reason to doubt their credibility. Moreover, accused-appellant's claim of self-defense failed to persuade since his version of what transpired was uncorroborated by any other witness and no medical certificate was presented to prove the alleged injuries sustained.[19] The RTC, however, was convinced that Carmen only saw the killing of her son Delfred, and not Alfred and Chrocila. Nevertheless, the RTC found sufficient circumstantial evidence pointing at the conclusion that accused-appellant killed the two (2) other children as well.[20]

In convicting accused-appellant of the children's murder, the RTC appreciated the circumstance of treachery considering the age of the victims. As for Carmen's wounding, the trial court found abuse of superior strength and treachery to be present.[21]

Ruling of the CA

In its Decision dated 19 December 2017, the CA affirmed accused-appellant's conviction and disposed of his appeal in this manner:

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[18] Records, pp. 363-364.

[19] *Id*. at 358-359.

[20] *Id*. at 361-363.

[21] *Id*. at 364.

WHEREFORE, in view of the foregoing, the 16 November 2015 Joint Decision rendered by the Regional Trial Court, 7th Judicial Region, Branch 31, Dumaguete City convicting accused-appellant Cresenciano Enojo, *a.k.a.* "Olpok" of Murder in Criminal Case Nos. 14900, 14902, and 14903 and of Frustrated Murder in Criminal Case No. 14617 is AFFIRMED, with the following MODIFICATIONS:

For the killing of the minors Delfred A. Cuevas, Alfred A. Cuevas and Chrocila A. Cuevas, accused-appellant is sentenced to suffer the penalty of *reclusion perpetua*, together with all its accessory penalties, for EACH COUNT of Murder. Appellant is ordered to pay the following amounts, as his civil liability: 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. Accused-appellant is likewise ordered to pay the amount of Fifty Thousand Pesos (₱50,000.00) as temperate damages.

For his conviction for Frustrated Murder, appellant is sentenced to suffer the penalty of 8 years and one day of *prision mayor,* as minimum of the indeterminate penalty, to (14) years, eight (8) months and one (1) day, the medium period of *reclusion temporal*, as maximum. Appellant is likewise ordered to the following[:] to pay the amounts of Fifty Thousand Pesos (₱50,000.00), as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral damages and Fifty Thousand Pesos (₱50,000.00) as exemplary damages.

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 judgment until fully paid.

SO ORDERED.[22]

The CA did not find merit in accused-appellant's claim that fatal inconsistencies plague the testimonies of the prosecution witnesses. If at all, the appellate court found these inconsistencies to be trivial and inconsequential. The CA also agreed with the trial court's appreciation of the circumstance of treachery in qualifying the killing of the children to murder, and abuse of superior strength and treachery in the wounding of Carmen. The appellate court, nevertheless, ruled that abuse of superior

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[22] *Rollo,* pp. 22-23.

strength was already absorbed by treachery.[23] Finally, the award of damages was modified to conform with recent jurisprudence.[24] Hence, this appeal.

Issues

In his appellant's brief, accused-appellant insists that abuse of superior strength and treachery were not present to qualify the crime against Carmen to frustrated murder. Also, the inconsistencies in Carmen's and Montiil's recollection of the events surrounding the children's attack cast doubts on their credibility and on their identification of the accused-appellant as the assailant.

Ruling of the Court

The appeal is without merit.

At the onset, We affirm accused-appellant's conviction for the murder of Delfred, Alfred, and Chrocila. Accused-appellant's defense, which centers on his challenge to the credibility of the prosecution witnesses, cannot be sustained considering that the RTC's assessment of these witnesses were affirmed by the CA. As such, these findings are now given great respect and conclusiveness. It is settled that trial courts are in the best position to decide issues of credibility of witnesses, having themselves heard and seen the witnesses and observed firsthand their demeanor and deportment and the manner of testifying under exacting examination,[25] making their assessment of a witness's credibility far superior to that of appellate tribunals.

The CA and RTC were also correct in appreciating the qualifying circumstance of treachery. "The killing of a child is characterized by treachery even if the manner of the assault is not shown in the Information, as the weakness of the victim

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[23] *Id.* at 18-19.

[24] *Id.* at 21-22.

[25] *Cruz v. People,* G.R. No. 166441, 08 October 2014, 737 SCRA 567, 580.

due to his tender age results in the absence of any danger to the accused.[26] Hence, the mere allegation of the victim's minority is sufficient to qualify the crime to murder.

Treachery was not present when accused-appellant attacked Carmen

It is well to point out that the Information for the crime of frustrated murder committed against Carmen is insufficient for failure to allege factual averments constituting treachery.[27] We take this as an opportunity to remind our public prosecutors that general allegations of the existence of aggravating or qualifying circumstances in the Information are not enough. Factual averments constituting not only the offense charged, but also the circumstances that may increase the accused's liability, must be made in the Information in order to ensure that the accused is fully afforded his right to be apprised of the nature and cause of the accusation against him.[28] Failing in this regard would prevent the Court from appreciating the circumstances insufficiently alleged.

Even assuming the sufficiency of the Information for frustrated murder, We remain unconvinced that accused-appellant employed treachery when he attacked Carmen. "Treachery is present when the attack was carried out in a swift, deliberate, and unexpected manner, the purpose of which is to deny the victim of any opportunity to defend himself or herself. To sustain a finding of treachery, it must be shown that the offender must have planned the mode of attack to ensure its execution without exposing himself to any danger which may come from the victim's act of retaliation or self-defense."[29]

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[26] *People v. Pantoja,* G.R. No. 223114, 29 November 2017, 847 SCRA 300, 318.

[27] See *People v. Dasmariñas,* G.R. No. 203986, 04 October 2017, 842 SCRA 39.

[28] See *People v. Petalino,* G.R. No. 213222, 24 September 2018; *People v. Delector,* G.R. No. 200026, 04 October 2017, 841 SCRA 647; *People v. Mercado*, G.R. No. 218702, 17 October 2018.

[29] *People v. Reyes,* G.R. No. 227013,17 June 2019.

Here, Carmen was aware of accused-appellant's hostile intentions. In fact, upon learning about accused-appellant's threat, she sought to confront him. While accused-appellant's attack on Carmen was described as sudden, there is no treachery when the suddenness was not preconceived and deliberately adopted, but is just triggered by a sudden infuriation on the part of the accused as a result of a provocative act of the victim, or when the killing is done at the spur of the moment.[30]

Accused-appellant's abuse of his strength over Carmen qualifies his crime to frustrated murder

We rule that abuse of superior strength is present and could be appreciated as a qualifying circumstance against accused-appellant, considering that it is no longer absorbed by the now nonexistent circumstance of treachery. In several cases, We consistently held that an attack made by a man with a deadly weapon upon an unarmed and defenseless woman constitutes the circumstance of abuse of that superiority which his sex and the weapon used in the act afforded him, and from which the woman was unable to defend herself.[31] The pieces of evidence show that at the time of her attack, Carmen was unarmed and without any means to fend off accused-appellant's attacks with his *bolo*.

In this regard, the CA still correctly adjudged accused-appellant's criminal liability for the commission of the crimes of murder and frustrated murder. Resultantly, We find proper the imposition of penalty and award of damages by the CA.

WHEREFORE, the appeal is hereby **DISMISSED.** Accordingly, the assailed Decision dated 19 December 2017 of the Court of Appeals in CA-G.R. CEB CR-HC No. 02161 is **AFFIRMED.**

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[30] *People v. Cañaveras,* G.R. No. 193839, 27 November 2013, 711 SCRA 1, 12.

[31] *People v. Corpuz,* G.R. No. 215320, 28 February 2018, 856 SCRA 610, 623.

SO ORDERED.

Leonen (*Chairperson*), *Carandang,* and *Lazaro-Javier,*[*] *JJ.,* concur.

Gesmundo, J., on leave.

SECOND DIVISION

[G.R. No. 243313. November 27, 2019]

ROSANA HEDREYDA *y* LIZARDA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE/POSSESSION OF DANGEROUS DRUGS; TO WARRANT A CONVICTION FOR VIOLATION OF THE LAW, THE PROSECUTION MUST BE ABLE TO ACCOUNT FOR EACH LINK OF THE CHAIN OF CUSTODY FROM THE MOMENT THAT THE ILLEGAL DRUGS ARE SEIZED UP TO THEIR PRESENTATION IN COURT AS EVIDENCE OF THE CRIME.— To warrant a conviction for violation of R.A. No. 9165, 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 of the chain of custody from the moment that the

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[*] Designated as Additional Member of the Third Division per Special Order No. 2728.

illegal drugs are seized up to their presentation in court as evidence of the crime.

2. ID.; ID.; ID.; REQUIRED WITNESSES IN THE INVENTORY AND PHOTOGRAPHING OF THE SEIZED DRUGS; VIOLATED IN CASE AT BAR.— 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 must be present during the inventory and taking of photographs. x x x The use of the word "shall" means that compliance with the foregoing requirements is mandatory. Section 21(a) clearly states 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 As culled from the records and highlighted by the testimonies of the witnesses themselves, only one out of three of the required witnesses was present during the inventory stage. There was no elected public official and no representative from the DOJ. It, likewise, bears stressing that PO2 Cailo himself admitted on direct examination that he could no longer recall the name of the media representative who was present during the inventory. x x x Neither was it shown nor alleged by the arresting officers that earnest efforts were made to secure the attendance of the other witnesses.

3. ID.; ID.; ID.; ID.; CERTAIN INSTANCES WHERE ABSENCE OF THE REQUIRED WITNESSES MAY BE JUSTIFIED.— In *People v. Reyes*, the Court enumerated certain instances where the absence of the required witnesses may be justified, *viz.*: It must be emphasized that the prosecution must be able to prove a justifiable ground in omitting certain requirements provided in Sec. 21 such as, but not limited to the following: (1) media representatives are not available at that time or that the police operatives had no time to alert the media due to the immediacy of the operation they were about to undertake, especially if it is done in more remote areas; (2) the police operatives, with

the same reason, failed to find an available representative of the National Prosecution Service; (3) the police officers, due to time constraints brought about by the urgency of the operation to be undertaken and in order to comply with the provisions of Article 125 of the Revised Penal Code in the timely delivery of prisoners, were not able to comply with all the requisites set forth in Section 21 of R.A. 9165. The above-ruling was further reiterated by the Court in *People of the Philippines v. Vicente Sipin y De Castro*, where it provided additional grounds that would serve as valid justification for the relaxation of the rule on mandatory witnesses, *viz.*: The prosecution never alleged and proved that the presence of the required witnesses was not obtained for any of the following reasons, 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[s] 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.

4. ID.; ID.; ID.; ID.; THE STATE DOES NOT ESTABLISH THE *CORPUS DELICTI* WHEN THE PROHIBITED SUBSTANCE SUBJECT OF PROSECUTION IS MISSING OR WHEN SUBSTANTIAL GAPS IN THE CHAIN OF CUSTODY RAISE GRAVE DOUBTS ABOUT THE AUTHENTICITY OF THE PROHIBITED SUBSTANCE PRESENTED IN COURT; CASE AT BAR.— In *People v. Relato*, the Court explained that in a prosecution for sale and possession of methamphetamine hydrochloride (*shabu*) prohibited under R.A. No. 9165, the State not only carries the heavy burden of proving the elements of the offense but also bears the obligation to prove the *corpus delicti*, failing in which the State will not discharge its basic duty of proving the guilt of the accused beyond reasonable doubt. **It is settled that the State does not establish the *corpus delicti* when the prohibited substance subject of**

the prosecution is missing or when substantial gaps in the chain of custody of the prohibited substance raise grave doubts about the authenticity of the prohibited substance presented as evidence in court. Any gap renders the case for the State less than complete in terms of proving the guilt of the accused beyond reasonable doubt.

5. ID.; ID.; ID.; ID.; 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 JUSTIFIABLE GROUND FOR NONCOMPLIANCE IS PROVEN AS A FACT.— 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 noncompliance is proven as a fact.

6. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; CANNOT PREVAIL WHEN THERE HAS BEEN A CLEAR AND DELIBERATE DISREGARD OF PROCEDURAL SAFEGUARDS BY THE POLICE OFFICERS THEMSELVES.— The prosecution's failure to justify its noncompliance with the requirements found in Section 21, specifically, the presence of the three required witnesses during the actual inventory of the seized items, is fatal to its case. The absence of these witnesses during the inventory stage constitutes a substantial gap in the chain of custody. Such absence cannot be cured by the simple expedient of invoking the saving clause. There being a substantial gap or break in the chain, it casts serious doubt on the integrity and evidentiary value of the *corpus delicti*. As such, the petitioner must be acquitted.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
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 January 23, 2018 and the Resolution[3] dated November 13, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 39519, which affirmed the Judgment[4] dated December 7, 2016 of the Regional Trial Court (RTC) of San Pedro City, Laguna, Branch 31, in Criminal Case No. 13-9460-SPL, finding Rosana Hedreyda *y* Lizarda (petitioner) guilty beyond reasonable doubt for violation of Section 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

In an Information[5] dated January 7, 2014, the petitioner was charged with Illegal Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of R.A. No. 9165. The accusatory portion of the Information reads:

> That on or about January 3, 2014, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court[,] the said accused[,] without authority of the law, did then and there willfully, unlawfully and feloniously have in her possession, custody and control two (2) small heat-sealed transparent plastic sachet containing METHAMPHETAMINE HYDROCHLORIDE, commonly known as *shabu*, a dangerous drug, weighing a total of zero point fifty[-]eight (0.58) gram.

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[1] *Rollo*, pp. 12-29.

[2] Penned by Associate Justice Normandie B. Pizarro, with Associate Justices Ramon A. Cruz and Pablito A. Perez, concurring; *id*. at 34-46.

[3] Penned by Associate Justice Ramon A. Cruz, with Associate Justices Fernanda Lampas Peralta and Pablito A. Perez, concurring; *id*. at 48.

[4] Rendered by Judge Sonia T. Yu-Casano; *id*. at 114-119.

[5] *Id*. at 60.

CONTRARY TO LAW.[6]

Version of the Prosecution

Police Officer 2 Mateo F. Cailo (PO2 Cailo), a member of the Philippine National Police assigned at the Provincial Intelligence Branch of the Laguna Provincial Police Office in Biñan City, Laguna, testified that at around 1:30 p.m. of January 3, 2014, he was on duty when he received a report from a concerned citizen that an illegal drug trade was rampantly and openly going on at Amil Compound in Barangay San Antonio, San Pedro, Laguna. After he relayed the information to Police Chief Inspector Arnold Formento, the latter directed him and PO2 Melmar B. Viray (PO2 Viray) to respond to the said report. PO2 Cailo and PO2 Viray then proceeded to the location and arrived at Amil Compound at around 4:30 p.m. According to PO2 Cailo, while they were standing near a store conducting their surveillance, they saw the petitioner at a distance of two meters, examining and flicking with her fingers a transparent plastic sachet containing white powdery substance suspected to be *shabu*. This prompted them to approach the petitioner. After they introduced themselves as police officers and informed her that she was being arrested for illegal possession of dangerous drugs, they asked the petitioner to take out the contents of her pocket to which the latter obliged. They found in her possession another plastic sachet containing powdery substance. The seized sachets were marked by PO2 Cailo with "RLH" and "RLH-1," the initials of the petitioner. They then brought the petitioner to the police station where a physical inventory of the seized illegal drugs was conducted in the presence of the petitioner and a media representative who took photographs of the same. After the request for laboratory examination was prepared and the drug dependency test conducted, the seized illegal drugs were brought by PO2 Cailo and PO2 Viray to the crime laboratory for examination. PO2 Cailo handed over the seized drugs to the crime laboratory

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[6] *Id*.

receiving clerk, PO3 Randy Legaspi, who then gave it to Forensic Chemist Donna Villa Huelgas who found both specimens positive for the presence of methamphetamine hydrochloride or *shabu*, a dangerous drug.[7]

Version of the Defense

On January 3, 2014, at around noon, the petitioner was sleeping inside her house in Amil Compound when police officers arrived and entered her house looking for her husband. She told them that he was not around as he seldom comes home. Nonetheless, the police officers searched her house. PO2 Viray then said that he found *shabu* on the bed. The petitioner denied keeping any drugs in the house but the police officers did not listen to her and brought her to the police station for investigation.[8]

On arraignment, the petitioner pleaded "not guilty" to the charge. Trial on the merits ensued thereafter.[9]

In a Judgment[10] dated December 7, 2016, the RTC found the petitioner guilty of the offense charged. The trial court held that the evidence presented by the prosecution has proven that the requirements of the law were substantially complied with and that the integrity and evidentiary value of the seized drugs were properly preserved.[11] The decretal portion of the judgment reads as follows:

> WHEREFORE, judgment is hereby rendered finding [the petitioner] GUILTY beyond reasonable doubt of violation of Section 11, Article II of [R.A.] No. 9165 and she is hereby sentenced to suffer imprisonment of TWELVE (12) YEARS and ONE (1) DAY as minimum and FOURTEEN (14) YEARS and EIGHT (8) MONTHS as maximum

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[7] *Id*. at 115-116.

[8] *Id*. at 116.

[9] *Id*. at 35-36.

[10] *Id*. at 114-119.

[11] *Id*. at 118.

and to pay a fine of THREE HUNDRED THOUSAND (₱300,000.00) PESOS without subsidiary imprisonment in case of insolvency.

Let the two plastic sachets of methamphetamine hydrochloride subject matter of this case be forwarded to the Philippine Drug Enforcement Agency for its disposition as provided by law.

SO ORDERED.[12]

Undeterred, the petitioner appealed to the CA. In a Decision[13] dated January 23, 2018, the CA affirmed the conviction and held, among others, that the failure of the police officers to strictly comply with Section 21, Article II of R.A. No. 9165 was not fatal as long as the integrity and evidentiary value of the seized dangerous drugs were preserved.[14] The *fallo* of the decision reads:

WHEREFORE, the appeal is **DENIED**. The assailed disposition of the RTC in Crim. Case No. 13-9460-SPL is **AFFIRMED**. Costs against the [petitioner].

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

The petitioner moved for reconsideration[16] which was, however, denied by the CA in a Resolution[17] dated November 13, 2018. Hence, this petition.

The issue for the Court's resolution is whether or not the petitioner's conviction for illegal possession of dangerous drugs, defined and penalized under Section 11, Article II of R.A. No. 9165, should be upheld.

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[12] *Id*.

[13] *Id*. at 34-46.

[14] *Id*. at 43.

[15] *Id*. at 46.

[16] *Id*. at 49-57.

[17] *Id*. at 48.

Ruling of the Court

The petition is meritorious.

To warrant a conviction for violation of R.A. No. 9165, 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 of 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 the crime of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11,[19] Article II of R.A. No. 9165. The petitioner insists

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[18] *People v. Paz*, G.R. No. 229512, January 31, 2018, 854 SCRA 23, 34-35.

[19] **SEC. 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.

that she 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 must 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] 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

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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.

the inventory stage was reduced from three to only two, to wit:

> **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 from whom such items were confiscated and/ or seized, or his/her representative or counsel, **with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof:** *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under **justifiable grounds**, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.[21] (Emphasis and underscoring ours, and italics in the original)

A comparison of the cited provisions shows 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

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[21] *R.A. No. 10640*, Section 1.

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 offense subject of this petition was committed before the amendment introduced by R.A. No. 10640, the old provisions of Section 21(a) 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 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[.]

The use of the word "shall" means that compliance with the foregoing requirements is mandatory. Section 21(a) clearly states 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*,[22] explained that the presence of these witnesses

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[22] 736 Phil. 749 (2014).

would preserve an unbroken chain of custody and prevent the possibility of tampering with or "planting" of evidence, *viz.*:

> Without the insulating presence of the representative from the media or the [DOJ], or any elected public official during the seizure and 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.[23] (Italics in the original)

As culled from the records and highlighted by the testimonies of the witnesses themselves, only one out of three of the required witnesses was present during the inventory stage. There was no elected public official and no representative from the DOJ. It, likewise, bears stressing that PO2 Cailo himself admitted on direct examination that he could no longer recall the name of the media representative who was present during the inventory, *viz.*:

> Q19. And when you arrived at your office, what did you do?
>
> A. We prepared the request for laboratory examination, request for drug test and we presented the arrested person and the items to the media, sir.
>
> Q20. What is the name of the media man?
>
> A. I cannot recall anymore, sir.[24]

Neither was it shown nor alleged by the arresting officers that earnest efforts were made to secure the attendance of the other witnesses. The tip was received at around 1:30 p.m. of January 3, 2014 and at 4:30 p.m. of the same day, the arresting officers proceeded to the target area to conduct surveillance. Given the time of the surveillance and arrest, the police officers

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[23] *Id*. at 764.

[24] TSN, February 3, 2015; *rollo*, p. 64.

had more than enough time to secure the attendance of the witnesses had they really wanted to.

In *People v. Reyes*,[25] the Court enumerated certain instances where the absence of the required witnesses may be justified, *viz.*:

> It must be emphasized that the prosecution must be able to prove a justifiable ground in omitting certain requirements provided in Sec. 21 such as, but not limited to the following: (1) media representatives are not available at that time or that the police operatives had no time to alert the media due to the immediacy of the operation they were about to undertake, especially if it is done in more remote areas; (2) the police operatives, with the same reason, failed to find an available representative of the National Prosecution Service; (3) the police officers, due to time constraints brought about by the urgency of the operation to be undertaken and in order to comply with the provisions of Article 125 of the Revised Penal Code in the timely delivery of prisoners, were not able to comply with all the requisites set forth in Section 21 of R.A. 9165.[26] (Citation omitted)

The above-ruling was further reiterated by the Court in *People of the Philippines v. Vicente Sipin y De Castro*,[27] where it provided additional grounds that would serve as valid justification for the relaxation of the rule on mandatory witnesses, *viz.*:

> The prosecution never alleged and proved that the presence of the required witnesses was not obtained for any of the following reasons, 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[s] 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

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[25] G.R. No. 219953, April 23, 2018, 862 SCRA 352.

[26] *Id*. at 367-368.

[27] G.R. No. 224290, June 11, 2018.

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.[28] (Citation omitted)

To the Court's mind, the lower courts relied so much on the narration of the prosecution witnesses that the integrity and evidentiary value of the seized drugs were preserved without taking into account the weight of these unjustified lapses.

In *People v. Relato*,[29] the Court explained that in a prosecution for sale and possession of methamphetamine hydrochloride (*shabu*) prohibited under R.A. No. 9165, the State not only carries the heavy burden of proving the elements of the offense but also bears the obligation to prove the *corpus delicti*, failing in which the State will not discharge its basic duty of proving the guilt of the accused beyond reasonable doubt. **It is settled that the State does not establish the *corpus delicti* when the prohibited substance subject of the prosecution is missing or when substantial gaps in the chain of custody of the prohibited substance raise grave doubts about the authenticity of the prohibited substance presented as evidence in court.** Any gap renders the case for the State less than complete in terms of proving the guilt of the accused beyond reasonable doubt.[30]

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 noncompliance is proven as a fact.

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[28] *Id*.

[29] 679 Phil. 268 (2012).

[30] *Id*. at 277-278.

In the recent case of *People of the Philippines v. Romy Lim y Miranda*,[31] the Court, speaking through now Chief Justice Diosdado M. Peralta, reiterated that testimonies of 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 read:

> 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, [Section] 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.

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

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.[32] (Citations omitted)

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 its 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*[33] 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 x x x 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.

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[32] *Id*.

[33] 686 Phil. 1024 (2012).

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 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."[34] (Citations omitted)

The prosecution's failure to justify its noncompliance with the requirements found in Section 21, specifically, the presence of the three required witnesses during the actual inventory of the seized items, is fatal to its case. The absence of these witnesses during the inventory stage constitutes a substantial gap in the chain of custody. Such absence cannot be cured by the simple expedient of invoking the saving clause. There being a substantial gap or break in the chain, it casts serious doubt on the integrity and evidentiary value of the *corpus delicti*. As such, the petitioner must be acquitted.

Finally, it cannot be gainsaid that it is mandated by no less than the Constitution[35] that an accused in a criminal case shall

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

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

(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

be presumed innocent until the contrary is proved. In *People v. Hilario*,[36] 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.[37]

WHEREFORE, premises considered, the petition for review on *certiorari* is hereby **GRANTED**. The Decision dated January 23, 2018 and the Resolution dated November 13, 2018 of the Court of Appeals in CA-G.R. CR No. 39519 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Rosana Hedreyda *y* Lizarda is **ACQUITTED** of the crime charged.

Let entry of final judgment be issued immediately.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Hernando, Inting*, and *Zalameda,*[*] *JJ.*, concur.

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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.

[36] G.R. No. 210610, January 11, 2018, 851 SCRA 1.

[37] *Id*. at 30.

[*] Designated additional Member per Special Order No. 2727 dated October 25, 2019.

SECOND DIVISION

[G.R. No. 243627. November 27, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **XANDRA SANTOS *y* LITTAUA[*] *a.k.a.* "XANDRA SANTOS LITTAUA,"** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT 9165 (COMPREHENSIVE DANGEROUS ACT); CHAIN OF CUSTODY RULE; LINKS THAT MUST BE ESTABLISHED.—** In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal. To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that "[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team." Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.

2. **ID.; ID.; ID.; REQUIRED WITNESSES IN THE INVENTORY AND PHOTOGRAPHY OF THE SEIZED ITEMS; AIMS TO ENSURE THE ESTABLISHMENT OF THE CHAIN**

[*] "Littaaua" in some parts of the records.

OF CUSTODY AND REMOVE ANY SUSPICION OF SWITCHING, PLANTING, OR CONTAMINATION OF EVIDENCE.— The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640, a representative from the media *AND* the Department of Justice (DOJ), and any elected public official; or (*b*) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the NPS *OR* the media. The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."

3. **ID.; ID.; ID.; FAILURE OF THE APPREHENDING TEAM TO STRICTLY COMPLY WITH THE PROCEDURE MAY BE EXCUSED PROVIDED THAT THERE IS JUSTIFIABLE GROUND, PROVEN AS FACT, FOR NON-COMPLIANCE AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.—** As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded not merely as a procedural technicality but as a matter of substantive law. This is because "[t]he law has been 'crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.'" Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible. As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is a justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved. The foregoing is based on the saving clause found in Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640. **It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses, and that the justifiable ground for non-compliance must be proven**

as a fact, because the Court cannot presume what these grounds are or that they even exist.

4. ID.; ID.; ID.; NON-COMPLIANCE WITH THE WITNESS REQUIREMENT MAY BE PERMITTED IF THE PROSECUTION PROVES THAT THE APPREHENDING OFFICERS EXERTED GENUINE AND SUFFICIENT EFFORTS TO SECURE THE PRESENCE OF SUCH WITNESSES, ALBEIT THEY FAILED TO APPEAR; ACCEPTABLE REASONS FOR THE ABSENCE OF REQUIRED WITNESSES.— Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted **genuine and sufficient efforts** to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was **reasonable** under the given circumstances. **Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.** These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule. Notably the Court in *People v. Lim*, explained that the absence of the required witnesses must be justified based on acceptable reasons 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 [and] media representative[s] 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."

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

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated May 31, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09438, which affirmed the Joint Decision[3] dated May 31, 2017 of the Regional Trial Court of Valenzuela City, Branch 172 (RTC) in Crim. Case Nos. 118-V-16 and 119-V-16 finding accused-appellant Xandra Santos *y* Littaua (accused-appellant) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from two (2) Informations[5] filed before the RTC charging accused-appellant with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively

[1] See Notice of Appeal dated June 27, 2018; *rollo*, pp. 10-11.

[2] Id. at 2-9. Penned by Associate Justice Japar B. Dimaampao with Associate Justices Manuel M. Barrios and Jhosep Y. Lopez, concurring.

[3] CA *rollo*, pp. 50-56. Penned by Judge Nancy Rivas-Palmones.

[4] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[5] The Information dated January 18, 2016 in Crim. Case No. 118-V-16 is for the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165 (records, p. 1); while the Information dated January 18, 2016 in Crim. Case No. 119-V-16 is for the crime of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of RA 9165; records, p. 1-A.

defined and penalized under Sections 5 and 11, Article II of RA 9165. The prosecution alleged that at around 6:30 in the evening of January 16, 2016, acting on the information received from a confidential informant, operatives from the Station Anti-Illegal Drug – Special Operation Task Group of the Valenzuela City Police successfully conducted a buy-bust operation against accused-appellant along Bisig Street, Valenzuela City, during which one (1) plastic sachet containing 0.20 gram of white crystalline substance was recovered from her. When accused-appellant was searched after her arrest, police officers found one (1) more plastic sachet containing 0.10 gram of the same substance from her possession. As noisy people started to crowd the place of arrest, officers immediately brought accused-appellant back to the police station where they marked, inventoried,[6] and photographed[7] the seized items in her presence as well as that of Kagawad Roberto Dawat (Kgd. Dawat) of Barangay Bisig. Subsequently, the seized items were brought to the Philippine National Police - Northern Police District crime laboratory[8] where, after examination,[9] their contents tested positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.[10]

In defense, accused-appellant denied the charges against her, claiming instead that, at the time of the incident, while waiting for the tricycle that carried the grandchildren of her live-in partner's mother to arrive, she was accosted by several police officers in civilian clothes who forcibly brought her to a police station and falsely made it appear that she had sold *shabu*.[11]

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[6] See Inventory of Seized Properties/Items dated January 16, 2016; id. at 14.

[7] Id. at 25.

[8] See Request for Laboratory Examination dated January 16, 2016; *id*. at 18.

[9] See Chemistry Report No. D-044-16 dated January 17, 2016; *id*. at 19.

[10] See *rollo*, pp. 2-5. See also CA *rollo*, pp. 53-54.

[11] See *rollo*, p. 5. See also CA *rollo*, p. 54.

In a Joint Decision[12] dated May 31, 2017, the RTC found accused-appellant **guilty** beyond reasonable doubt of the crimes charged, and accordingly, sentenced her to suffer the following penalties: (*a*) in Crim. Case No. 118-V-16, for the crime of Illegal Sale of Dangerous Drugs, the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00; and (*b*) in Crim. Case No. 119-V-16, for the crime of Illegal Possession of Dangerous Drugs, the penalty of imprisonment for a period of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and to pay a fine in the amount of ₱300,000.00.[13] It ruled that the prosecution was able to successfully prove all the respective elements of the crimes charged, and had duly established the chain of custody of the confiscated drugs. Meanwhile, it found accused-appellant's defenses of denial and frame-up untenable for lack of evidence.[14]

Aggrieved, accused-appellant appealed[15] to the CA, arguing that she should be acquitted on account of the conflicting testimonies of the prosecution witnesses, as well as non-compliance with the rule on chain of custody, particularly because the marking of the alleged drugs was not immediately done at the place of arrest, nor was the inventory of the same witnessed by a representative of the media or the National Prosecution Service (NPS).[16]

In a Decision[17] dated May 31, 2018, the CA **affirmed** the conviction of accused-appellant.[18] It held that the alleged inconsistencies in the testimonies of the prosecution witnesses

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[12] CA *rollo*, pp. 50-56.

[13] *Id*. at 55-56.

[14] See *id*. at 54-55.

[15] See Brief for the Accused-Appellant dated October 6, 2017; *id*. at 28-48.

[16] See *id*. at 35-47.

[17] *Rollo*, pp. 2-9.

[18] *Id*. at 9.

pertained to insignificant matters not relating to the actual conduct of the buy-bust operation, and that there was substantial compliance with the chain of custody rule considering that the integrity and evidentiary value of the confiscated drugs were properly preserved.[19]

Hence, this appeal seeking that accused-appellant's conviction be overturned.

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,[20] it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.[21] Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove

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[19] See *id*. at 6-9.

[20] The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment; while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug. (See *People v. Crispo*, G.R. No. 230065, March 14, 2018, 859 SCRA 356, 369; *People v. Sanchez*, G.R. No. 231383, March 7, 2018, 858 SCRA 94, 104; *People v. Magsano*, G.R. No. 231050, February 28, 2018, 857 SCRA 142, 152; *People v. Manansala*, G.R. No. 229092, February 21, 2018, 856 SCRA 359, 369-370; *People v. Miranda*, G.R. No. 229671, January 31, 2018, 854 SCRA 42, 52; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018, 853 SCRA 303, 312-313; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015]; and *People v. Bio*, 753 Phil. 730, 736 [2015]).

[21] See *People v. Crispo*, id.; *People v. Sanchez*, id.; *People v. Magsano*, id.; *People v. Manansala*, id. at 370; *People v. Miranda*, id. at 53; and *People v. Mamangon*, id. at 313. See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.[22]

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[23] As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that "[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team."[24] Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.[25]

The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if

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[22] See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

[23] See *People v. Año*, G.R. No. 230070, March 14, 2018, 859 SCRA 381, 389; *People v. Crispo*, *supra* note 20; *People v. Sanchez*, *supra* note 20; *People v. Magsano*, *supra* note 20, at 153; *People v. Manansala*, supra note 20, at 370; *People v. Miranda*, supra note 20, at 53; and *People v. Mamangon*, *supra* note 20, at 313. See also *People v. Viterbo*, *supra* note 21.

[24] *People v. Mamalumpon*, 767 Phil. 845, 855 (2015), citing *Imson v. People*, 669 Phil. 262, 270-271 (2011). See also *People v. Ocfemia*, 718 Phil. 330, 348 (2013), citing *People v. Resurreccion*, 618 Phil. 520, 532 (2009).

[25] See *People v. Tumulak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

prior to the amendment of RA 9165 by RA 10640,[26] a representative from the media *AND* the Department of Justice (DOJ), and any elected public official;[27] or (*b*) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the NPS[28] *OR* the media.[29] The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."[30]

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded not merely as a procedural technicality but as a matter of substantive law.[31] This is because "[t]he law has been 'crafted

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[26] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,'" approved on July 15, 2014. As the Court noted in *People v. Gutierrez* (G.R. No. 236304, November 5, 2018), RA 10640, which was approved on July 15, 2014, states that it shall "take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation." Verily, a copy of the law was published on July 23, 2014 in the respective issues of "The Philippine Star" (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and the "Manila Bulletin" (Vol. 499, No. 23; World News section, p. 6); hence, **RA 10640 became effective on August 7, 2014.**

[27] Section 21 (1) and (2) Article II of RA 9165.

[28] Which falls under the DOJ. (See Section 1 of Presidential Decree No. 1275, entitled "REORGANIZING THE PROSECUTION STAFF OF THE DEPARTMENT OF JUSTICE AND THE OFFICES OF THE PROVINCIAL AND CITY FISCALS, REGIONALIZING THE PROSECUTION SERVICE, AND CREATING THE NATIONAL PROSECUTION SERVICE" [April 11, 1978] and Section 3 of RA 10071, entitled "AN ACT STRENGTHENING AND RATIONALIZING THE NATIONAL PROSECUTION SERVICE" otherwise known as the "PROSECUTION SERVICE ACT OF 2010" [lapsed into law on April 8, 2010].)

[29] Section 21, Article II of RA 9165, as amended by RA 10640.

[30] See *People v. Miranda*, *supra* note 20, at 57. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[31] See *People v. Miranda*, *id*. at 60-61. See also *People v. Macapundag*, 807 Phil. 234, 244 (2017), citing *People v. Umipang*, *supra* note 22, at 1038.

by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.'"[32]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[33] As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is a justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved.[34] The foregoing is based on the saving clause found in Section 21 (a),[35] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[36] **It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[37] and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.**[38]

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[32] See *People v. Segundo*, G.R. No. 205614, July 26, 2017, citing *People v. Umipang*, *id*.

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

[34] See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

[35] Section 21 (a), Article II of the IRR of RA 9165 pertinently states: **"*Provided*, *further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.]"**

[36] Section 1 of RA 10640 pertinently states: **"*Provided*, *finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items."**

[37] *People v. Almorfe*, *supra* note 34.

[38] *People v. De Guzman*, 630 Phil. 637, 649 (2010).

Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted **genuine and sufficient efforts** to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was **reasonable** under the given circumstances.[39] **Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.**[40] These considerations arise from the fact that police officers are ordinarily given sufficient time - beginning from the moment they have received the information about the activities of the accused until the time of his arrest - to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.[41]

Notably the Court in *People v. Lim*,[42] explained that the absence of the required witnesses must be justified based on acceptable reasons 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 [and] media representative[s] 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

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[39] See *People v. Manansala*, *supra* note 20, at 375.

[40] See *People v. Gamboa*, *supra* note 22, citing *People v. Umipang*, *supra* note 22, at 1053.

[41] See *People v. Crispo*, *supra* note 20, at 376-377.

[42] See G.R. No. 231989, September 4, 2018.

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."[43]

Moreover, the Court, in *People v. Miranda*,[44] issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that "[since] the [procedural] requirements are clearly set forth in the law, then the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."[45]

In this case, the arresting officers' acts of performing the marking, inventory, and photography of the seized items not at the place of arrest but at the police station were justified as a crowd was already forming at the place of arrest. This notwithstanding, the Court observes that there was still a deviation from the witness requirement as the conduct of inventory and photography was not witnessed by a representative from the NPS or the media. This may be easily gleaned from the Inventory of Seized Properties/Items[46] which only confirms the presence of an elected public official, *i.e.*, Kgd. Dawat. Markedly, such finding was also admitted by the poseur-buyer, Police Officer 3 Allan T. Vizconde (PO3 Vizconde), on direct and cross-examination, who explained that despite their efforts at contacting representatives from the DOJ and the media, no one was available, so they decided to proceed with the conduct of inventory and photography without their presence, to wit:

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[43] See *id*., citing *People v. Sipin*, G.R. No. 224290, June 11, 2018.

[44] *Supra* note 20.

[45] See *id*. at 61.

[46] Dated January 16, 2016. Records, p. 14.

Direct Examination

[Fiscal Benedict Sta. Cruz]: There appears to be no representative from the Media and DOJ, could you tell us why?
[PO3 Vizconde]: Our chief called and after an hour, they told us that there is **no available** representatives, sir.[47]

Cross-Examination

[Atty. Abraham Alipio]: During the inventory, who were then present
[PO3 Vizconde]: PCI Ruba, Kgd. Dawat and other police officers.

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Q: Isn't it a fact that no representative from the media was present?
A: Our chief was calling for a representative from the media but until the kagawad arrived[,] there was **no representative from the media**, so we decided to conduct drug inventory.

Q: How about the representative from the DOJ?
A: None. They were calling but **no one is answering**.

Q: Did they inform you who were the persons they were tring to call?
A: Major Ruba was not able to tell us.

Q: According to you, this is a planned operation?
A: Yes, sir.

Q: Considering that it was a planned operation, why did you not secure a representative from [the] DOJ and Media before you conduct[ed] the operation?
A: What I know is that Major Ruba has already talked to those persons but during the conduct of inventory **no one arrived**.

Q: Did you not try to call any other person?
A: It was Major Ruba who was in charged (sic).[48]

The Court, however, finds such explanation untenable.

The sheer statement of PO3 Vizconde that representatives from the DOJ and the media had been contacted but were simply unavailable, without more, cannot be deemed reasonable enough

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[47] TSN, August 19, 2016, p. 17; emphasis and underscoring supplied.

[48] TSN, January 20, 2017, pp. 10-11; emphases supplied.

to justify a deviation from the mandatory directives of the law. Indeed, as earlier stated, mere claims of unavailability, absent a showing that actual and serious attempts were employed to contact the required witnesses, are unacceptable as they fail to show that genuine and sufficient efforts were exerted by police officers. In view of the foregoing, the Court is impelled to conclude that the integrity and evidentiary value of the items purportedly seized from accused-appellant, which constitute the *corpus delicti* of the crimes charged, have been compromised;[49] hence, her acquittal is perforce in order.

WHEREFORE, the appeal is **GRANTED**. The Decision dated May 31, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09438 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Xandra Santos *y* Littaua is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause her immediate release, unless she is being lawfully held in custody for any other reason.

SO ORDERED.

Reyes, A. Jr., Hernando, Inting, and *Zalameda,*[**] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 243635. November 27, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PRISCILA RUIZ *y* TICA,** *accused-appellant.*

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[49] See *People v. Patacsil*, G.R. No. 234052, August 6, 2018.

[**] Designated Additional Member per Special Order No. 2727 dated October 25, 2019.

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (AS AMENDED BY REPUBLIC ACT 10640); CHAIN OF CUSTODY RULE; PRESENCE OF AT LEAST TWO (2) WITNESSES DURING INVENTORY-TAKING AND PHOTOGRAPHING IS REQUIRED; SOLE PRESENCE OF MEDIA REPRESENTATIVE WILL NOT SUFFICE AS COMPLIANCE; CASE AT BAR.—** The chain of custody rule set out in Section 21 of R.A. 9165, as amended by R.A. 10640 must be strictly observed. R.A. 10640 applies in this case because the law became effective on July 23, 2014 and the buy-bust operation took place on February 26, 2015. Under R.A. 10640, the marking, physical inventory and photographing of the seized items by the apprehending team shall be conducted immediately after seizure and confiscation, and in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel. The law also mandates that the foregoing be witnessed by specific persons, namely: (a) an elected public official; **AND** (b) a representative of the National Prosecution Service **OR** the media. Records show the police officers' failure to comply with the foregoing rule. While the marking of the seized items took place immediately after seizure and confiscation, it is undisputed that the same was conducted without the presence of any of the additional witnesses prescribed by law. Likewise, only a media representative was present to sign the inventory of the seized items prepared at the police station. The mandate of R.A. 10640 is clear that there be the presence of at least two witnesses during the inventory-taking and photographing of the seized items. The sole presence of the media representative will not suffice as compliance.

2. **ID.; ID.; ID.; NON-COMPLIANCE WITH THE RULE MAY BE EXCUSED BY REPRESENTING JUSTIFIABLE GROUNDS FOR NON-COMPLIANCE AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED; CASE AT BAR.—** The law admits exceptions to the compliance with the provisions on custody and disposition of seized dangerous drugs. These include presenting justifiable grounds for non-compliance and that the integrity and evidentiary value of the seized items are properly preserved. Unfortunately, We did not

find any explanation from the police officers why they failed to observe the two-witness rule. There were no records or allegations that coordination had taken place with elective officials or the office of the National Prosecution Service regarding the conduct of a buy-bust operation nor a showing of an attempt to secure the presence of said persons aside from the media representative. From the facts, the police officers received a tip from a confidential informant regarding Ruiz's alleged illegal activities. They were able to confirm Ruiz's identity by conferring with other assets or confidential informants and even conducting surveillance prior to the buy-bust operation. We can only infer from said facts that the officers had sufficient time to prepare the necessary documentation for the buy-bust operation, which should have included securing attendance of the required witnesses under the law. To reiterate, this was not proven.

3. **ID.; ID.; ID.; EXISTENCE OF THE DANGEROUS DRUG, THE *CORPUS DELICTI* OF THE OFFENSE, IS VITAL TO A JUDGMENT OF CONVICTION; ACQUITTAL, WARRANTED IN CASE AT BAR.—** We emphasize that the dangerous drug is the *corpus delicti* of the offenses charged against Ruiz, and the fact of its existence is vital to a judgment of conviction. It is essential that the identity of the prohibited drugs be proven beyond doubt after the police officers have established compliance with the chain of custody rule. Faithful obedience of the rules requires 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 identification, and eventual destruction. It would include proof about every link in the chain. As discussed above, transmittal of the dangerous drugs, confiscated from Ruiz, from the police officers to the forensic chemist was not proven. Corollary, there is failure to prove the *corpus delicti*.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARANDANG, *J.*:

The instant appeal under Section 2, Rule 125 in relation to Section 3, Rule 56 of the Rules of Court assails the Decision[1] dated February 7, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08949, finding accused-appellant Priscila Ruiz *y* Tica (Ruiz) guilty for Illegal Sale of Dangerous Drugs and Illegal Possession of Dangerous Drugs[2] defined and penalized under Sections 5 and 11, respectively, of Republic Act No. (R.A.) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Facts of the Case

On February 26, 2015, the police officers from Police Regional Office 4A, Camp Vicente Lim, Calamba City prepared to conduct a buy-bust operation after receiving a tip from a confidential informant of the rampant illegal sale of drugs by a certain "Presing," later identified as accused-appellant Ruiz. Police Officer 2 Aldwin Paulo Tibuc (PO2 Tibuc) was tasked as *poseur*-buyer in the operation and Police Officer 2 Mateo F. Cailo (PO2 Cailo) as back-up arresting officer. The other member-officers of the buy-bust operation team shall act as perimeter security.

On the same day, the buy-bust operation team, together with the confidential informant, proceeded to the alleged location of illegal drug activity located in Southville Subdivision, Barangay San Antonio, San Pedro, Laguna. PO2 Tibuc and the confidential informant proceeded on foot to a *sari-sari* store owned by Ruiz, while PO2 Cailo and the other officers stationed themselves on a street nearby. Upon arriving at the *sari-sari*

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[1] Penned by Associate Justice Franchito N. Diamante, with Associate Justices Fernanda Lampas Peralta and Maria Eliza Sempio Diy, concurring; *rollo*, pp. 2-17.

[2] *Id*. at 16.

store, PO2 Tibuc observed a woman inside the store, who he identified as Ruiz. He and the confidential informant first bought cigarettes. Then, the confidential informant asked Ruiz, "*te baka merun ka diyan iiscore sana kami*." In reply, Ruiz asked how much they were going to purchase to which PO2 Tibuc said, "*kukuha po sana kami ng singko*." Ruiz picked up a crossbody bag on the floor and took out several pieces of plastic sachets containing white crystalline substance. She then handed one sachet to PO2 Tibuc, in exchange, the latter gave the ₱500.00 marked bill. Upon receipt of the plastic sachet with white crystalline substance, PO2 Tibuc secretly placed a call in his cellphone to PO2 Cailo as the pre-arranged signal that the sale of illegal drugs had been completed. Alerted by the missed call of PO2 Tibuc, PO2 Cailo immediately rushed to the crime scene. Just as PO2 Cailo was approaching the location, he observed a young woman running towards the *sari-sari* store and shouting, "*Lola, lola may mga pulis na paparating*." PO2 Tibuc also observed the same young woman approach the *sari-sari* store alerting Ruiz of the arrival of the police. Thus, he took opportunity to introduce himself as a police officer and prevented Ruiz and the young woman, later identified as Christy Joy Macaraeg (Macaraeg), from leaving the *sari-sari* store. At that same instant, PO2 Cailo, who arrived at the crime scene, reached for the young woman's arm, while the latter was trying to close the door of the *sari-sari* store.

After arrest, PO2 Tibuc seized the crossbody bag from Ruiz and opened the same to find 14 pieces of plastic sachets containing white crystalline substance and other paraphernalia. He then correspondingly marked at the same place of arrest the 14 sachets as "APT-1 to APT-14" and the other paraphernalia "APT-16 to APT-21."[3] PO2 Tibuc also marked the purchased plastic sachet as "APT-BB." He also recovered the ₱500.00 bill with the markings "APT."

The officers then brought Ruiz and Macaraeg to the police station in Calamba, Laguna for photographing and inventory-

[3] Records, p. 8.

taking of the seized items. A media representative signed the inventory. Thereafter, the documentary request for laboratory examination of the seized items was prepared. PO2 Tibuc brought said items to the forensic chemist for quantitative and qualitative examination. Per Chemistry Report No. D-451-15, the sachets containing white crystalline substance yielded positive for methamphetamine hydrochloride, more commonly known as *shabu*. The plastic sachet from the buy-bust sale contained 0.18 grams of *shabu*, and the 14 sachets from the crossbody bag contained a total amount of 9.08 grams of *shabu*. Ruiz was then indicted for illegal sale of dangerous drugs, illegal possession of dangerous drugs and illegal possession of drug paraphernalia penalized under Sections 5, 11, and 12, respectively, Article II of R.A. 9165. The three separate Informations provide:

Illegal Sale of Dangerous Drugs

Criminal Case No. 15-10379-SPL

That on or about February 26, 2015, in the City of San Pedro, Province of Laguna, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there, willfully, unlawfully and feloniously sell, deliver and distribute Methamphetamine Hydrochloride, a dangerous drug, weighing zero point eighteen (0.18) gram, contained in a heat-sealed transparent plastic sachet, in violation of the above-mentioned law.

CONTRARY TO LAW.[4]

Illegal Possession of Dangerous Drugs

Criminal Case No. 15-10380-SPL

That on or about February 26, 2015, in the City of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, without authority of law, did then and there, willfully, unlawfully and feloniously have in her possession, control and custody fourteen (14) heat sealed transparent plastic sachets containing Methamphetamine Hydrochloride commonly

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[4] *Id*. at 1.

known as "*Shabu*" a dangerous drug, having a total net weight of nine point zero eight (9.08) grams, in violation of the above-mentioned law.

CONTRARY TO LAW.[5]

Illegal Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs

Criminal Case No. 15-10381-SPL

That on or about February 26, 2015, in the City of San Pedro Philippines and[,] within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully[,] and unlawfully has under her possession and control, equipment, instrument, apparatus or paraphernalia fit or intended for smoking, consuming, administering or producing into the body Methamphetamine hydrochloride, otherwise known as "*shabu*", a dangerous drug, consisting of one (1) piece improvised glass [tooter] containing used in consuming[,] smoking "*shabu*", in violation of the law aforementioned.

CONTRARY TO LAW.[6]

Ruiz, on the one hand, claims that she was attending to her *sari-sari* store when two men, later identified as PO2 Tibuc and PO2 Cailo, bought softdrinks. Thereafter, said officers brought her and her granddaughter to the police station in Calamba, Laguna due to a suspicion that Ruiz was involved in the sale of illegal drugs. At the police station, PO2 Cailo took illegal drugs out from a cabinet, which they claimed belonged to Ruiz, who was detained by the officers at the police station from the time she was arrested until formal criminal charges were filed against her.[7]

Proceedings before the Regional Trial Court of San Pedro, Laguna, Branch 31 (RTC) ensued. On November 17, 2016, the RTC rendered its Consolidated Judgment[8] finding Ruiz guilty

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[5] *Id*. at 2.

[6] *Id*. at 3.

[7] CA *rollo*, p. 31.

[8] *Id*. at 46-54.

for Illegal Sale and Illegal Possession of Dangerous Drugs.[9] Ruiz was, however, acquitted of the charge of Illegal Possession of Drug Paraphernalia.[10] The dispositive portion of the Judgment reads:

> WHEREFORE, foregoing considered, judgment is hereby rendered as follows:
>
> 1. In Criminal Case No. 15-10379-SPL, accused Priscila Ruiz *y* Tica is found GUILTY beyond reasonable doubt of violation of Section 5, Article II of Republic Act 9165 and she is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand (₱500,000.00) Pesos without subsidiary imprisonment in case of insolvency.
>
> The period of her preventive imprisonment should be given full credit.
>
> 2. In Criminal Case No. 15-10380-SPL, accused Priscila Ruiz *y* Tica is found GUILTY beyond reasonable doubt of violation of Section 11, Article II of Republic Act 9165 and she is hereby sentenced to suffer the indeterminate penalty of imprisonment of twenty (20) years as minimum to twenty-five (25) years as maximum and to pay a fine of Five Hundred Thousand (₱500,000.00) Pesos without subsidiary imprisonment in case of insolvency.
>
> The period of her preventive imprisonment should be given full credit.
>
> 3. In Criminal Case No. 15-10381-SPL, for insufficiency of evidence, accused Priscila Ruiz *y* Tica is ACQUITTED of illegal possession of drug paraphernalia under Section 12, Article II of Republic Act 9165.
>
> Let the fifteen (15) plastic sachets of *shabu* with a total weight of 9.26 grams and drug paraphernalia subject matter of these cases be immediately forwarded to the Philippine Drug Enforcement Agency for its disposition as provided by law. The ₱500.00 buy-bust money is ordered forfeited in favour of the government and deposited to the account of the National Treasury through the Office of the Clerk of Court.

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[9] *Id*. at 53-54.

[10] *Id*. at 54.

SO ORDERED.[11]

The RTC held that the prosecution was able to present all the elements of illegal sale and possession of dangerous drugs. The court *a quo* gave credence to the testimony of PO2 Tibuc, who gave a recount of the events of the buy-bust operation from its preparation to the conduct of the purchase of illegal drugs, and arrest of Ruiz. The RTC also found that Ruiz was arrested *in flagrante delicto*. In view of her arrest, a body search was conducted, where she was found to be in possession of dangerous drugs. The RTC held that the integrity and evidentiary value of the *corpus delicti* had been preserved. There was no reason to doubt the testimonies of the prosecution witnesses. Their statements were consistent and supported by evidence all throughout. The RTC sentenced Ruiz to suffer the penalty of life imprisonment and to pay a fine amounting to ₱500,000.00 for Illegal Sale of Dangerous Drugs and imprisonment of 20 years as minimum to 25 years as maximum and a fine of ₱500,000.00 for Illegal Possession of Dangerous Drugs.

On appeal, the CA affirmed[12] the ruling of the RTC holding that the chain of custody had been established. The CA found that there could not have been a mix-up in marking the dangerous drugs. PO2 Tibuc sufficiently explained that he kept separate the plastic sachet seized from the buy-bust operation and the 14 plastic sachets, by keeping the latter in the crossbody bag retrieved from Ruiz. While the inventory-taking and photographing of the seized items did not take place at the crime scene, the CA still found compliance with the rules on custody and disposition of confiscated or seized dangerous drugs. The CA explained that the location of inventory-taking and photographing of seized items will depend on whether or not a search warrant had been issued. When the seizure of items is supported by a search warrant, the inventory-taking and photographing of seized items "must" be conducted at the place

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[11] *Id*. at 53-54.

[12] *Rollo*, pp. 2-17.

where the warrant was served. For warrantless seizures, the CA held that the same must be conducted at the nearest police station or the nearest office of the apprehending officers, whichever is practicable. In this case, since the illegal drugs were taken pursuant to an arrest *in flagrante delicto*, the police officers were correct in conducting the inventory-taking and photographing of seized items at the police station in Calamba City. Be it noted that the police officers, who conducted the buy-bust operation, are operatives from Police Regional Office 4A, Camp Vicente Lim, Calamba City.

In the same vein, the absence of an elected official or a representative from the National Prosecution Service was excused because what is important is establishing an unbroken chain of custody. Here, the CA held that the prosecution witnesses were able to testify that the seized sachets of *shabu* are the same items taken to the police station, subjected to laboratory examination and presented in court. The defense of denial by Ruiz cannot prevail over the prosecution witnesses' positive testimonies, coupled with the presentation of the *corpus delicti*. The CA sustained the imposition of life imprisonment for the charge of Illegal Sale of Dangerous Drugs, but modified the minimum period of the prison sentence for Illegal Possession of Dangerous Drugs from 20 years to 20 years and one day as minimum.

Unsatisfied with the Decision of the CA, Ruiz filed the instant appeal before this Court arguing that the *corpus delicti* was never established before the court *a quo* for failure to comply with the rules on custody and disposition of seized dangerous drugs under Section 21 of R.A. 9165. Ruiz reiterates her position that the sachet from the buy-bust sale and the 14 sachets retrieved from her could have been mixed-up by PO2 Tibuc because he was in possession of all seized items prior to marking. Hence, there could not have been any way for PO2 Tibuc to identify which of the sachets in his custody was from the buy-bust sale or those retrieved from Ruiz by reason of her arrest. In addition, the marking was not witnessed by any elective official, and media or representative from the office of the National

Prosecution Service, nor was the inventory-taking and photographing of the seized items conducted at the place of seizure as required under the law.

Ruiz also points out the gap or the undocumented transmittal of the seized items from the police station to the evidence custodian and, later, from the evidence custodian to the forensic chemist, who conducted the qualitative and quantitative examination. Ruiz asserts that the evidence custodian should have been presented in court to testify on the safeguards taken to preserve the integrity of the *corpus delicti*, especially after the conduct of the forensic laboratory examinations. There were no records showing what happened to the seized items between the turnover by the forensic chemist to the evidence custodian and, later, the presentation of the *corpus delicti* in open court.

We find the appeal meritorious.

The chain of custody rule set out in Section 21 of R.A. 9165, as amended by R.A. 10640[13] must be strictly observed. R.A. 10640 applies in this case because the law became effective on July 23, 2014 and the buy-bust operation took place on February 26, 2015. Under R.A. 10640, the marking, physical inventory and photographing of the seized items by the apprehending team shall be conducted immediately after seizure and confiscation, and in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel. The law also mandates that the foregoing be witnessed by specific persons, namely: (a) an elected public official; **AND** (b) a representative of the National Prosecution Service **OR** the media.

Records show the police officers' failure to comply with the foregoing rule. While the marking of the seized items took place immediately after seizure and confiscation, it is undisputed

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[13] 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."

that the same was conducted without the presence of any of the additional witnesses prescribed by law. Likewise, only a media representative was present to sign the inventory of the seized items prepared at the police station.[14] The mandate of R.A. 10640 is clear that there be the presence of at least two witnesses during the inventory-taking and photographing of the seized items. The sole presence of the media representative will not suffice as compliance.

The law admits exceptions to the compliance with the provisions on custody and disposition of seized dangerous drugs. These include presenting justifiable grounds for non-compliance and that the integrity and evidentiary value of the seized items are properly preserved.[15] Unfortunately, We did not find any explanation from the police officers why they failed to observe the two-witness rule. There were no records or allegations that coordination had taken place with elective officials or the office of the National Prosecution Service regarding the conduct of a buy-bust operation nor a showing of an attempt to secure the presence of said persons aside from the media representative. From the facts, the police officers received a tip from a confidential informant regarding Ruiz's alleged illegal activities. They were able to confirm Ruiz's identity by conferring with other assets or confidential informants[16] and even conducting surveillance[17] prior to the buy-bust operation. We can only infer from said facts that the officers had sufficient time to prepare the necessary documentation for the buy-bust operation, which should have included securing attendance of the required witnesses under the law. To reiterate, this was not proven.

In addition, We cannot uphold the integrity and evidentiary value of the *corpus delicti*. In his testimony, PO2 Tibuc identified

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[14] Records, p. 24.

[15] R.A. 10640, Sec. 1.

[16] TSN dated November 17, 2015, p. 2.

[17] TSN dated June 14, 2016, p. 4.

a document entitled "Chain of Custody"[18] as his proof of personally transmitting the seized items from the police station to the forensic laboratory beating his markings "APT-BB" and "APT-1 to APT -14."[19] On review of said document,[20] the details provide Ruiz as one of the suspects. However, it was a transmittal for "[t]welve (12) pcs of medium heat sealed transparent plastic sachet containing white crystalline substance of suspected *SHABU* with individual markings, RYR-BB, RYR-P1 to RYR-P11."[21] We are unable to determine on record who is "RYR." The initials cannot be identified with any one of the police officers from the buy-bust operation, the forensic chemist or accused herself. Further, Ruiz is charged for illegal sale of one plastic sachet containing 0.18 grams of *shabu* and illegal possession of 14 plastic sachets containing a total of 9.08 grams of *shabu* or a total of 15 plastic sachets, but the document entitled "Chain of Custody," which was signed by PO2 Tibuc himself, only states transmittal of 12 plastic sachets bearing markings that could not be identified to have any relation to the instant case.

We emphasize that the dangerous drug is the *corpus delicti* of the offenses charged against Ruiz, and the fact of its existence is vital to a judgment of conviction. It is essential that the identity of the prohibited drugs be proven beyond doubt after the police officers have established compliance with the chain of custody rule. Faithful obedience of the rules requires 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

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[18] TSN dated September 15, 2015, p. 7.

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

[20] Records, p. 18.

[21] *Id.*

identification, and eventual destruction.[22] It would include proof about every link in the chain.[23] As discussed above, transmittal of the dangerous drugs, confiscated from Ruiz, from the police officers to the forensic chemist was not proven. Corollary, there is failure to prove the *corpus delicti*.

WHEREFORE, the appeal is **GRANTED**. The Decision dated February 7, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 08949 is **REVERSED** and **SET ASIDE**. Accused-appellant Priscila Ruiz *y* Tica is hereby **ACQUITTED** of the crimes charged against her and is ordered to be immediately released, unless she is being lawfully held in custody for any other reason. The Director of Prisons is **DIRECTED** to inform this Court of the action taken hereon within five (5) days from receipt hereof.

SO ORDERED.

Leonen (*Chairperson*), *Lazaro-Javier*,[*] and *Zalameda, JJ.*, concur.

Gesmundo, J., on official leave.

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[22] *People v. Moner*, G.R. No. 202206, March 5, 2018, 857 SCRA 242, 255, citing Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002.

[23] *Id*. at 275-276, citing *Mallillin v. People*, 576 Phil. 576, 586-587 (2008).

[*] Designated as Additional Member of the Third Division per Special Order No. 2728.

THIRD DIVISION

[G.R. No. 243793. November 27, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOESON AGUILAR *y* CIMAFRANCA,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY; FACTUAL FINDINGS OF THE TRIAL COURT, WHEN AFFIRMED BY THE COURT OF APPEALS, ARE BINDING ON THE SUPREME COURT UNLESS FACT AND CIRCUMSTANCES HAVE BEEN OVERLOOKED OR MISINTERPRETED WHICH IF CONSIDERED WOULD AFFECT THE DISPOSITION OF THE CASE IN A DIFFERENT MANNER.—** It is well-settled that the factual findings of the trial court, when affirmed by the CA, are binding on this Court unless facts and circumstances have been overlooked or misinterpreted which, if considered, would affect the disposition of the case in a different manner. Despite the uniform factual findings of the RTC and the CA in this case, a review thereof is called for.

2. **CRIMINAL LAW; REPUBLIC ACT 9165, AS AMENDED BY REPUBLIC ACT 10640 (COMPREHENSIVE DANGEROUS DRUGS ACT); CHAIN OF CUSTODY RULE; IN CASE OF NON-COMPLIANCE, THE PROSECUTION MUST ESTABLISH THAT THERE IS A JUSTIFIABLE GROUND, PROVEN AS FACT, FOR NON-COMPLIANCE AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.—** Time and again, We have held that the prosecution has the positive duty to demonstrate observance with the chain of custody rule under Section 21 "in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law." In case of non-compliance, the prosecution must establish that: (1) there is a justifiable ground for non-compliance; and (2) the integrity and evidentiary value of the seized items are properly preserved. The reason for the procedural lapses and the justifiable ground for non-compliance must be proven as fact. As We explained

in *People v. Miranda*, "the procedure in Section 21 of R.A. 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."

3. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; PROOF BEYOND REASONABLE DOUBT; REQUIRED PROOF TO WARRANT A CONVICTION; ACCUSED IS ENTITLED TO AN ACQUITTAL UNLESS HIS OR HER GUILT IS SHOWN BEYOND REASONABLE DOUBT.— Section 2, Rule 133 of the Revised Rules on Evidence provides that the accused is entitled to an acquittal, unless his or her guilt is shown beyond reasonable doubt. The prosecution failed to establish Aguilar's guilt beyond reasonable doubt. Their version of the buy-bust operation and the identity and integrity of the seized drug specimens are all questionable. Therefore, Aguilar is entitled to an acquittal.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARANDANG, *J.*:

This is an ordinary appeal[1] filed by accused-appellant Joeson Aguilar *y* Cimafranca (Aguilar) assailing the Decision[2] dated September 27, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02650. The CA affirmed the Judgment[3] dated June 9, 2017 of the Regional Trial Court of Dumaguete City, Branch 30 (RTC) in Criminal Case No. 2015-23112, where it ruled as follows:

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[1] *Rollo*, pp. 17-19.

[2] Penned by Associate Justice Edward B. Contreras, with Associate Justices Louis P. Acosta and Dorothy P. Montejo-Gonzaga, concurring; *id*. at 4-16.

[3] Penned by Judge Rafael Crescencio C. Tan, Jr.; CA *rollo*, pp. 33-44.

WHEREFORE, in the light of the foregoing, the Court hereby finds the accused Joeson Aguilar *y* Cimafranca **GUILTY** beyond reasonable doubt of the offense of illegal sale of 5.19 grams of *shabu* in violation of Section 5, Article II of R.A. No. 9165 and is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).

The two (2) heat-sealed transparent plastic sachets with markings "JA-BB1-08-18-15" and "JA-BB2-08-18-15," with signature respectively containing 5.19 grams of *shabu* are hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

In the service of sentence, the accused Joeson Aguilar *y* Cimafranca shall be credited with the full time during which he has undergone preventive imprisonment, provided he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.[4]

The Antecedents

Aguilar was charged with violation of Section 5, Article II of Republic Act No. (R.A.) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, in an information that states:

That on or about the 18th day of August, 2015, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused not being then authorized by law; did, then and there willfully, unlawfully and criminally sell to a poseur[-]buyer two (2) heat-sealed transparent plastic sachet[s] containing 5.19 grams of white crystalline substance of Methamphetamine Hydrochloride, otherwise known as "*SHABU*," a dangerous drug.

Contrary to Sec. 5, Art. II of R.A. 9165.[5]

The witnesses for the prosecution testified that at around 9:30 a.m. of August 14, 2015, the Provincial Anti-Illegal Drugs

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[4] *Id*. at 43.

[5] Records, p. 2.

Special Operations Task Group (PAIDSOTG) of the Negros Oriental Provincial Police Office received a tip from a confidential informant that a certain "Tonton" was engaged in the sale of illegal drugs in Barangay Looc, Dumaguete City. The Chief of PAIDSOTG ordered Police Officer 3 Serito Ongy (PO3 Ongy) to conduct surveillance and casing operations to verify the information. PO3 Ongy directed Police Officer 1 Crisanto Panggoy (PO1 Panggoy) and PO1 William Vera Cruz (PO1 Vera Cruz) to perform the surveillance and casing operations.[6]

On August 17, 2015, PO1 Panggoy, PO1 Vera Cruz, and the confidential informant went to Barangay Looc, where they were able to observe that "Tonton" was selling drugs. At around 9:00 p.m. that day, the confidential informant introduced PO1 Panggoy to "Tonton." PO1 Panggoy told him that he wanted to buy *shabu* worth ₱20,000.00, to be delivered the following day. "Tonton" agreed to deliver the *shabu* at 6 p.m. of August 18, 2015.[7]

At 2:30 p.m. of August 18, 2015, a briefing was conducted for the buy-bust operation against "Tonton."[8] PO1 Panggoy was designated as the *poseur*-buyer, PO1 Vera Cruz as his back-up and photographer, and the rest of the PAIDSOTG as perimeter security. PO1 Panggoy prepared the ₱500.00 bill as buy-bust money by marking it with "CP" and bundled it together with cut-up manila paper[9] to make it appear that it was ₱20,000.00. The coordination request was given to the Philippine Drug Enforcement Agency (PDEA), and a coordination control number and a certificate of coordination were issued.[10]

Before 6:00 p.m., PO1 Panggoy, PO1 Vera Cruz, and the rest of the buy-bust operation team proceeded to Barangay

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[6] *Rollo*, p. 5.

[7] *Id*.

[8] *Id*.

[9] TSN, April 5, 2017, p. 22.

[10] *Rollo*, p. 6.

Looc. PO1 Panggoy waited for "Tonton" in front of a basketball court by the road. When he saw "Tonton," he approached him and asked for the *shabu*. "Tonton" asked him to show the money, and so PO1 Panggoy quickly flashed it to him. "Tonton" then took out two heat-sealed transparent plastic sachets containing white crystalline substance and gave them to PO1 Panggoy. PO1 Panggoy examined the contents of the sachet and handed the buy-bust money to "Tonton." When "Tonton" was about to turn his back to leave, PO1 Panggoy held him. He arrested him and informed him of his constitutional rights in a Visayan dialect. PO1 Panggoy asked him if he understood and "Tonton" nodded. He also conducted a body search and recovered the buy-bust money[11] from "Tonton's" hand.[12] PO1 Panggoy asked "Tonton" for his real name and the latter identified himself as Aguilar.[13]

When the back-up team arrived, PO1 Panggoy turned Aguilar over to PO1 Vera Cruz. PO1 Panggoy marked the two sachets with Aguilar's initials and signed them. Upon seeing that there were a number of people gathering around the area, the buy-bust operation team brought Aguilar to the Dumaguete City police station together with the confiscated items, which were in PO1 Panggoy's possession.[14]

At the police station, PO1 Panggoy conducted an inventory of the sachets and the buy-bust money, and prepared an inventory of the property seized in the presence of Aguilar, media representative Juancho Gallarde (Gallarde), Department of Justice representative Anthony Benlot (Benlot), and Barangay Captain Angelita Ragay (Ragay). All of them signed the inventory, together with PO3 Ongy. PO1 Vera Cruz took photographs during the inventory.[15] The inventory states that two pieces of

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[11] *Id.*

[12] TSN, April 5, 2017, p. 21.

[13] CA *rollo*, p. 35.

[14] *Rollo*, p. 6.

[15] *Id.* at 6-7.

transparent plastic sachets containing suspected *shabu* granules/powder and one marked ₱500.00 bill with bogus money used as buy-bust money were recovered from Aguilar.[16]

PO1 Panggoy placed the sachets in a brown envelope, which he sealed with a tape and signed. He prepared a memorandum request for crime laboratory examination and drug test. Afterwards, he went to the Negros Oriental Provincial Crime Laboratory. PO3 Edilmar Manaban (PO3 Manaban) received the brown envelope and retrieved the sachets inside to confirm that these were the items listed in the memorandum request. After confirming it, he placed the sachets back in the envelope and resealed it.[17] PO3 Manaban then placed the envelope inside his locker, which only he could access. He also collected a urine sample from Aguilar and placed it inside the refrigerator of the crime laboratory.[18]

On August 19, 2015,[19] PO3 Manaban submitted the memorandum request, the brown envelope, and the urine sample to Police Chief Inspector Josephine Llena (PCI Llena). She examined the contents of the sachets and the urine sample and found that they tested positive for the presence of methamphetamine hydrochloride. PCI Llena stated her findings in her chemistry reports. She kept the specimens in the evidence vault of the crime laboratory prior to their submission in court.[20]

An information for violation of Section 5, Article II of R.A. 9165 was filed against Aguilar.[21] He entered a plea of not guilty.[22]

Aguilar argued that he was inside his house fixing his speaker when five persons, whose faces were covered, entered and

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[16] Records, p. 18.

[17] *Rollo*, p. 7.

[18] CA *rollo*, p. 36.

[19] *Id.*

[20] *Rollo*, p. 7.

[21] *Id.* at 4-5.

[22] *Id.* at 5.

ransacked his house. They pointed their guns at him and, later, handcuffed him. Aguilar's mother Corazon, who was at home, saw what happened. Thereafter, Aguilar was brought to the back of the National Bureau of Investigation office where he was shown a picture of a male person and a female person. He was asked if he knew them but he did not. Aguilar was then brought to the police station. He saw that a sachet of *shabu* and a ₱500.00 bill were on top of a table. He was made to sit beside the table but he objected, claiming that none of the items on the table belonged to him.[23]

PCI Llena submitted her chemistry reports and the specimens to the court during trial.[24] She was presented as a witness for the prosecution together with PO3 Ongy, PO1 Panggoy, PO1 Vera Cruz, Gallarde, Benlot, Ragay, PO3 Manaban, and PDEA Agent Francisfil Tangeres.[25] Aguilar and his mother, Corazon, testified for the defense.[26]

Ruling of the RTC

On June 9, 2017, the RTC found Aguilar guilty beyond reasonable doubt of the crime charged and sentenced him to a penalty of life imprisonment and to pay a fine of ₱500,000.00.[27] The RTC held that the prosecution was able to establish that Aguilar sold dangerous drugs.[28] The testimonies of their witnesses were more credible than those of the defense. There was also no showing that PO1 Panggoy was motivated by ill will against Aguilar.[29] As for Aguilar's arrest, it is valid because he was

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[23] *Id*. at 8.

[24] CA *rollo*, p. 37.

[25] *Id*. at 33.

[26] *Id*. at 37.

[27] *Id*. at 43.

[28] *Id*. at 39.

[29] *Id*. at 42.

caught *in flagrante delicto*. Moreover, Aguilar did not question his arrest before his arraignment.[30]

With respect to the integrity and evidentiary value of the drug specimens, the RTC ruled that they were not compromised. PO1 Panggoy marked the sachets at the crime scene. He brought them to the police station to conduct an inventory. The inventory was done in the presence of all the required witnesses. Photographs were taken. PO1 Panggoy then brought the sachets to the crime laboratory where PO3 Manaban received them. PO3 Manaban turned them over to PCI Llena, who submitted them to the RTC.[31]

Aguilar appealed to the CA.

Ruling of the CA

On September 27, 2018, the CA denied the appeal and affirmed the RTC judgement *in toto*.[32] *First*, the CA held that all the elements of Section 5, Article II of R.A. 9165 were proven.[33] PO1 Panggoy positively identified Aguilar as the one who handed to him the sachets containing *shabu*. Aguilar received the buy-bust money as payment for the *shabu*.[34] The CA ruled that the testimonies of the prosecution's witnesses attesting to these were credible.[35] Further, no ill will on the part of the police operatives to falsely charge Aguilar was shown.[36] *Second*, Section 21 of R.A. 9165 was complied with. All the persons who had the drugs in their custody were presented in court.[37] *Third*, Aguilar never assailed his arrest before he was

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[30] *Id*. at 41.

[31] *Id*.

[32] *Rollo*, p. 16.

[33] *Id*. at 9.

[34] *Id*. at 10.

[35] *Id*. at 11.

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

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

arraigned. He was, thus, deemed to have waived any objection to it.[38]

Aguilar appealed the ruling of the CA to this Court. Both Aguilar[39] and the Office of the Solicitor General,[40] on behalf of plaintiff-appellee, manifested that they would no longer file a supplemental brief before this Court because their respective briefs before the CA have sufficiently discussed their positions.

Arguments of the Accused

First, Aguilar argued that he was not committing a crime when he was arrested. Hence, his arrest and the search conducted in connection to it were unlawful. Any evidence which were seized as a result were inadmissible. That being the case, there was no basis to sustain his conviction. *Second*, Aguilar pointed out that Section 21 of R.A. 9165 was not complied with. The inventory and taking of the photographs were not done at the place of arrest. Also, PO1 Panggoy did not immediately mark the items after recovering them. Further, Gallarde, Benlot, and Ragay were not present when the items were seized from Aguilar. They testified that the seized items were already marked and placed on top of the table when they arrived at the police station to observe the inventory. As such, they failed to observe its conduct. No justifiable ground was given by the police officers for their lapses. Consequently, the identity and integrity of the seized items were compromised. *Third*, the fact of sale was not sufficiently established. PO1 Panggoy's testimony was insufficient to prove the sale because no one corroborated it with respect to the consummation of the sale.[41]

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[38] *Id*. at 12.

[39] *Id*. at 26-30.

[40] *Id*. at 31-34.

[41] CA *rollo*, pp. 20-29.

Arguments of Plaintiff-Appellee

First, plaintiff-appellee argued that all the elements of a sale of a prohibited drug were established in this case through PO1 Panggoy's testimony and the other evidence submitted in court. *Second*, Section 21 of R.A. 9165 was complied with. The conduct of the marking in the police station was justified because people were already milling about the buy-bust area. In any event, R.A. 9165 does not require that the marking be done in the place where the buy-bust operation was conducted. *Third*, Aguilar's arrest was valid because he was caught *in flagrante delicto*. *Fourth*, the penalty imposed was correct.[42]

Issue

Whether or not the CA erred in upholding the conviction of Aguilar.

Ruling of the Court

The appeal is meritorious.

It is well-settled that the factual findings of the trial court, when affirmed by the CA, are binding on this Court unless facts and circumstances have been overlooked or misinterpreted which, if considered, would affect the disposition of the case in a different manner.[43] Despite the uniform factual findings of the RTC and the CA in this case, a review thereof is called for.

According to PO1 Panggoy, the payment he gave to Aguilar consisted of one ₱500.00 bill and bogus money made of cut manila paper. He explained that the bogus money was as thick as a bundle of ₱50,000.00,[44] albeit the payment due to Aguilar was only ₱20,000.00. It is incredulous that PO1 Panggoy's

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[42] *Id*. at 56-62.

[43] *People v. Alboka*, G.R. No. 212195, February 21, 2018, 856 SCRA 252, 265-266.

[44] TSN, April 5, 2017, p. 22.

payment was handed to him even though the bulk of it consists of cut-out manila paper and, therefore, evidently fake. That Aguilar would part with the dangerous drugs after PO1 Panggoy merely flashed the payment to him is doubtful considering the sum involved. The police's version of a legitimate buy-bust operation lacks credence. An exchange of a few pieces of peso bills for a small volume of *shabu* can be believable but for more than five grams of *shabu* worth ₱20,000.00 with one genuine bill and a bundle of cut-out manila paper to be accepted by the accused without question, and about to be counted by him,[45] is certainly incredulous. We, thus, find the veracity of the prosecution's version of what transpired on August 18, 2015 questionable.

Further, Section 21 of R.A. 9165, as amended by R.A. 10640,[46] was not complied with. Section 21(1) states:

> (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 from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

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[45] *Id.*

[46] 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."

Time and again, We have held that the prosecution has the positive duty to demonstrate observance with the chain of custody rule under Section 21 "in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law."[47] In case of non-compliance, the prosecution must establish that: (1) there is a justifiable ground for non-compliance; and (2) the integrity and evidentiary value of the seized items are properly preserved.[48] The reason for the procedural lapses and the justifiable ground for non-compliance must be proven as fact. As We explained in *People v. Miranda*,[49] "the procedure in Section 21 of R.A. 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."[50]

In *People v. Cariño*,[51] this Court held that there is non-compliance with Section 21 if the Inventory/Receipt of Property Seized was already prepared when the witnesses arrived and they merely signed it after comparing the seized items with the inventory. This undermines the purpose of requiring the presence of the witnesses, which is to prevent switching, planting, or contamination of evidence.[52] Similarly, the witnesses in this case, namely Gallarde, Benlot, and Ragay, all testified that the items were already prepared and the inventory was filled out when they arrived. They simply compared the entries with the seized items which were already on the table before signing the inventory.[53] The prosecution did not explain why they adopted

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[47] *People v. Lim*, G.R. No. 231989, September 4, 2018.

[48] *Limbo v. People*, G.R. No. 238299, July 1, 2019.

[49] G.R. No. 229671, January 31, 2018, 854 SCRA 42.

[50] *Id.*

[51] G.R. No. 233336, January 14, 2019.

[52] See *id*.

[53] TSN, April 6, 2017, p. 5; TSN, April 10, 2017, p. 5; TSN, April 11, 2017, pp. 4-5.

this procedure. As such, We cannot brush aside their non-compliance with Section 21.

Section 2, Rule 133 of the Revised Rules on Evidence provides that the accused is entitled to an acquittal, unless his or her guilt is shown beyond reasonable doubt. The prosecution failed to establish Aguilar's guilt beyond reasonable doubt. Their version of the buy-bust operation and the identity and integrity of the seized drug specimens are all questionable. Therefore, Aguilar is entitled to an acquittal.

WHEREFORE, the appeal is **GRANTED**. The Decision dated September 27, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 02650 is hereby **REVERSED** and **SET ASIDE**. Accused-appellant Joeson Aguilar *y* Cimafranca is **ACQUITTED** of the crime charged against him, and is ordered to be immediately released, unless he is being lawfully held in custody for any other reason. The Bureau of Corrections is **DIRECTED** to inform this Court of the action taken hereon within five (5) days from receipt hereof.

SO ORDERED.

Leonen (*Chairperson*), *Lazaro-Javier*,[*] and *Zalameda, JJ.*, concur.

Gesmundo, J., on official leave.

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[*] Designated as Additional Member of the Third Division per Special Order No. 2728.

SECOND DIVISION

[G.R. No. 245486. November 27, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RONALD JAIME DE MOTOR *y* DANTES and LYNIEL TORINO *y* RAMOS,** *accused;* **RONALD JAIME DE MOTOR *y* DANTES,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT 2002); ILLEGAL SALE/ POSSESSION OF DANGEROUS DRUGS; THE IDENTITY OF THE DANGEROUS DRUGS MUST BE ESTABLISHED WITH MORAL CERTAINTY, THE DANGEROUS DRUG BEING AN INTEGRAL PART OF THE *CORPUS DELICTI* OF THE CRIME.— In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.

2. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; LINKS THAT MUST BE ESTABLISHED.— To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that "[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team." Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the

seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.

3. ID.; ID.; ID.; REQUIRED WITNESSES IN THE INVENTORY AND PHOTOGRAPHY OF THE SEIZED ITEMS; AIMS TO REMOVE ANY SUSPICION OF SWITCHING, PLANTING, OR CONTAMINATION OF EVIDENCE.— The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640, a representative from the media *AND* the DOJ, and any elected public official; or (*b*) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service *OR* the media. The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."

4. ID.; ID.; ID.; ID.; FAILURE OF THE APPREHENDING TEAM TO STRICTLY COMPLY WITH THE CHAIN OF CUSTODY PROCEDURE MAY BE EXCUSED PROVIDED THAT THERE IS JUSTIFIABLE GROUND, PROVEN AS FACT, FOR NON-COMPLIANCE AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.— As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law." This is because "[t]he law has been 'crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.'" Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible. As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is a justifiable ground for noncompliance; and (*b*) the

integrity and evidentiary value of the seized items are properly preserved. The foregoing is based on the saving clause found in Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 1064. It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses, and that the justifiable ground for noncompliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.

5. **ID.; ID.; ID.; ID.; NON-COMPLIANCE WITH THE WITNESS REQUIREMENT MAY BE PERMITTED IF THE PROSECUTION PROVES THAT THE APPREHENDING OFFICERS EXERTED GENUINE AND SUFFICIENT EFFORTS TO SECURE THE PRESENCE OF SUCH WITNESSES, ALBEIT THEY EVENTUALLY FAILED TO APPEAR.—** Anent the witness requirement, noncompliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances. Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for noncompliance. These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated September 4, 2018 of the Court of Appeals (CA) CA-G.R. CR-HC No. 09767, which affirmed the Decision[3] dated June 23, 2017 of the Regional Trial Court of Lipa City, Batangas, Branch 12 (RTC) Criminal Case Nos. 0461-2012 and 0462-2012 finding accused-appellant Ronald Jaime De Motor *y* Dantes (accused-appellant) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from two (2) Informations[5] filed before the RTC accusing accused-appellant, among others, with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. The prosecution alleged that at around 3:00 in the afternoon of August 13, 2012, acting on information

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[1] See Notice of Appeal dated September 28, 2018; *rollo*, pp. 19-21.

[2] *Id*. at 3-18. Penned by Associate Justice Pedro B. Corales with Associate Justices Jane Aurora C. Lantion and Gabriel T. Robeniol, concurring.

[3] CA *rollo*, pp. 55-64. Penned by Presiding Judge Hon. Danilo S. Sandoval.

[4] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[5] Both dated August 14, 2012. Criminal Case No. 0461-2012 is for violation of Section 5, Article II of RA 9165 or Illegal Sale of Dangerous Drugs (records [Crim. Case No. 0461-2012], pp. 1-2), while Criminal Case No. 0462-2012 is for violation of Section 11, Article II of RA 9165 or Illegal Possession of Dangerous Drugs (records [Crim. Case No. 0462-2012], pp. 1-2).

received from a civilian asset, several officers of the Lipa City Police conducted a buy-bust operation against accused-appellant at a Jollibee branch in Barangay Mataas na Lupa, Lipa City, during which five (5) sachets containing dried marijuana leaves were recovered from him. Upon frisking accused-appellant, police officers found four (4) more sachets containing dried marijuana leaves inside one of his pockets. The officers then marked a total of nine (9) sachets and thereafter brought accused-appellant to their headquarters, where they inventoried[6] and photographed[7] the seized items in the presence of accused-appellant himself, as well as Pablo V. Levita (Levita), the Barangay Captain of Barangay Mataas na Lupa, and Michael Dominic Flores (Flores), a member of radio station 88.7. The seized items were then brought to the Philippine National Police-Batangas Provincial Crime Laboratory,[8] where, after examination,[9] tested positive for marijuana, a dangerous drug.[10]

In defense, accused-appellant denied the charges against him, claiming that, on the date of the incident, he was seated at a table inside a Jollibee branch in Barangay Mataas na Lupa, Lipa City, when several policemen suddenly arrived, dragged him outside, and hauled him into a car for no apparent reason.[11]

In a Decision[12] dated June 23, 2017, the RTC found accused-appellant **guilty** beyond reasonable doubt of the crimes charged,

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[6] See Inventory of Confiscated Seized Items; records (Crim. Case No. 0462-2012), p. 151.

[7] See *id*. at 150 and 152-153.

[8] See requests for laboratory examination dated August 13, 2012; *id*. at 155-156.

[9] See Chemistry Report No. BD-395-2012 dated August 13, 2012 examined by Forensic Chemist Police Senior Inspector Herminia Carandang Llacuna; *id*. at 157-158.

[10] See *rollo*, pp. 6-8. See also CA *rollo*, pp. 57-59.

[11] See *rollo*, p. 8. See also CA *rollo*, pp. 59-60.

[12] CA *rollo*, pp. 55-64. Penned by Presiding Judge Hon. Danilo S. Sandoval.

and, accordingly sentenced him as follows: (*a*) in Criminal Case No. 0461-2012, to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00; and (*b*) in Criminal Case No. 0462-201, to suffer the penalty of imprisonment for a period of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and to pay a fine in the amount of ₱300,000.00.[13] The trial court gave credence to the testimonies of the prosecution's witnesses and ruled that all the respective elements of the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs had been sufficiently proved.[14]

Aggrieved, accused-appellant appealed[15] to the CA, arguing that he should be acquitted on account of the inconsistent and improbable testimonies of the prosecution witnesses and in view of the arresting officer's non-compliance with the chain of custody rule since a representative from the Department of Justice (DOJ) was not present to witness the inventory and photography of the purported drugs.[16]

In a Decision[17] dated September 4, 2018, the CA **affirmed** the Decision of the RTC.[18] It found that the alleged inconsistencies in the testimonies of the prosecution witnesses pertained to trivial matters and minor details, and further held that the rule on chain of custody had been substantially complied with.[19]

Hence, this appeal seeking that accused-appellant's conviction be overturned.

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[13] *Id*. at 64.

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

[15] See Notice of Appeal dated July 21, 2017; *id*. at 13-14.

[16] See Brief of Accused-appellant dated February 1, 2018*; id*. at 28-53.

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

[18] See *id*. at 17.

[19] See *id*. at 11-17.

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,[20] it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.[21] Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.[22]

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[23]

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[20] The elements of Illegal Sale of Dangerous Drug under Section 5, Article II of RA 9165 are: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment; while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug. (See *People v. Crispo*, G.R. No. 230065, March 14, 2018, 859 SCRA 356, 369; *People v. Sanchez*, G.R. No. 231383, March 7, 2018, 858 SCRA 94, 104; *People v. Magsano*, G.R. No. 231050, February 28, 2018, 857 SCRA 142, 152; *People v. Manansala*, G.R. No. 229092, February 21, 2018, 856 SCRA 359, 369-370; *People v. Miranda*, G.R. No. 229671, January 31, 2018, 854 SCRA 42, 52; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018, 853 SCRA 303, 312-313; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015] and *People v. Bio*, 753 Phil. 730, 736 [2015]).

[21] See *People v. Crispo*, *id*.; *People v. Sanchez*, *id*.; *People v. Magsano*, *id*.; *People v. Manansala*, *id*. at 370; *People v. Miranda*, *id*.; and *People v. Mamangon*, *id*. See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[22] See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

[23] See *People v. Año*, G.R. No. 230070, March 14, 2018, 859 SCRA 380, 389; *People v. Crispo*, *supra* note 20; *People v. Sanchez*, *supra* note 20; *People v. Magsano*, *supra* note 20; *People v. Manansala*, *supra* note 20, at 370; *People v. Miranda*, *supra* note 20, at 53; and *People v. Mamangon*, *supra* note 20. See also *People v. Viterbo*, *supra* note 21.

As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that "[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team."[24] Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.[25]

The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640,[26] a representative from the media *AND* the DOJ, and any elected public official;[27] or (*b*) if **after** the amendment of RA 9165 by

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[24] *People v. Mamalumpon*, 767 Phil. 845, 855 (2015), citing *Imson v. People*, 669 Phil. 262, 270-271 (2011). See also *People v. Ocfemia*, 718 Phil. 330, 348 (2013), citing *People v. Resurreccion*, 618 Phil. 520, 532 (2009).

[25] See *People v. Tumulak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

[26] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.'" As the Court noted in *People v. Gutierrez* (G.R. No. 236304, November 5, 2018), RA 10640 was approved on July 15, 2014. Under Section 5 thereof, it shall "take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation." RA 10640 was published on July 23, 2014 in "The Philippine Star" (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and "Manila Bulletin" (Vol. 499, No. 23; World News section, p. 6). Thus, RA 10640 appears to have become effective on August 7, 2014.

[27] Section 21 (1), Article II of RA 9165 and its Implementing Rules and Regulations.

RA 10640, an elected public official and a representative of the National Prosecution Service *OR* the media.[28] The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."[29]

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law."[30] This is because "[t]he law has been 'crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.'"[31]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[32] As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is a justifiable ground for noncompliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved.[33] The foregoing is based on the saving clause found in Section 21 (a),[34] Article II of the Implementing

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[28] Section 21 (1), Article II of RA 9165, as amended by RA 10640.

[29] See *People v. Miranda*, *supra* note 20, at 57. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[30] See *People v. Miranda*, *id*. at 60-61. See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215, citing *People v. Umipang*, *supra* note 22, at 1038.

[31] See *People v. Segundo*, 814 Phil. 697, 722 (2017) citing *People v. Umipang*, *id*.

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

[33] See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

[34] Section 21 (a), Article II of the IRR of RA 9165 pertinently states: "***Provided, further*, that noncompliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value**

Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[35] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[36] and that the justifiable ground for noncompliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[37]

Anent the witness requirement, noncompliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.[38] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for noncompliance.[39] These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand,

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of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items." (Emphasis supplied)

[35] Section 1 of RA 10640 pertinently states: "***Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items**." (Emphasis supplied)

[36] *People v. Almorfe*, *supra* note 33.

[37] *People v. De Guzman*, 630 Phil. 637, 649 (2010).

[38] See *People v. Manansala*, *supra* note 20, at 375.

[39] See *People v. Gamboa*, *supra* note 22, citing *People v. Umipang*, *supra* note 22, at 1053.

knowing fully well that they would have to strictly comply with the chain of custody rule.[40]

Notably, the Court, in *People v. Miranda*,[41] issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that "[since] the [procedural] requirements are clearly set forth in the law, x x x the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."[42]

In this case, there was a deviation from the witness requirement as the conduct of the inventory and photography were not witnessed by a representative from the DOJ. This may be easily gleaned from the Inventory of Confiscated Drugs/Seized[43] which only confirms the presence of an elected public official, *i.e.*, Levita, and a representative from the media, *i.e.*, Flores. Such finding is confirmed by the testimony of Senior Police Officer 1 Arnold T. Quinio (SPO1 Quinio) on cross-examination, to wit:

Cross-Examination of SPO1 Quinio

[Atty. Ismael H. Macasaet]: How about the DOJ representative?
[SPO1 Quinio]: There was **no DOJ representative** came to the police station, sir.[44] (Emphasis supplied)

As earlier stated, it is incumbent upon the prosecution to account for the absence of a required witness by presenting a justifiable reason therefor or, at the very least, by showing

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[40] See *People v. Crispo*, *supra* note 20, at 376-377.

[41] *Supra* note 20.

[42] See *id.* at 61.

[43] Dated August 13, 2012; records, p. 151.

[44] TSN, November 13, 2014, p. 24.

that genuine and sufficient efforts were exerted by the apprehending officers to secure his or her presence. Here, records show that the prosecution **failed to acknowledge**, much less justify, the absence of a DOJ representative. While SPO1 Quinio admitted on cross-examination that the presence of a DOJ representative was not obtained, he did not offer any explanation for such lapse; neither did the prosecution conduct a re-direct examination to enable him to address the oversight.[45]

In view of such unjustified deviation from the chain of custody rule, the Court is therefore constrained to conclude that the integrity and evidentiary value of the items purportedly seized from accused-appellant were compromised, which consequently warrants his acquittal.

WHEREFORE, the appeal is **GRANTED**. The Decision dated September 4, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09767 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Ronald Jaime De Motor *y* Dantes is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

Reyes, A. Jr., Hernando, Inting, and *Zalameda*,[*] *JJ.*, concur.

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[45] See *id*.

[*] Designated Additional Member per Special Order No. 2727 dated October 25, 2019.

SECOND DIVISION

[G.R. No. 248035. November 27, 2019]

SPOUSES JOON HYUNG PARK and KYUNG AH LEE, *petitioners, vs.* **HON. RICO SEBASTIAN D. LIWANAG, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MAKATI CITY, BRANCH 136,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; RULES OF PROCEDURE; STRICT APPLICATION THEREOF MUST BE AVOIDED IF IT TENDS TO FRUSTRATE RATHER THAN PROMOTE SUBSTANTIAL JUSTICE.— This Court finds that a relaxation of the rules of procedure is necessary in the instant case in order to promote the best interest of the adoptee child, Innah. In *Heirs of Deleste v. Land Bank of the Phils.*, the Supreme Court pronounced: Time and again, this Court has held that a strict and rigid application of technicalities must be avoided if it tends to frustrate rather than promote substantial justice. As held in *Sta. Ana v. Spouses Carpo*: Rules of procedure are merely tools designed to facilitate the attainment of justice. If the application of the Rules would tend to frustrate rather than to promote justice, it is always within our power to suspend the rules or except a particular case from their operation. Law and jurisprudence grant to courts the prerogative to relax compliance with the procedural rules, even the most mandatory in character, mindful of the duty to reconcile the need to put an end to litigation speedily and the parties' right to an opportunity to be heard. x x x In addition, We find that the petitioners did not sleep on their rights and simply allowed the 60-day period from the denial of the First Motion for Reconsideration to lapse. Rather, petitioners filed the Manifestation and Second Motion for Reconsideration with the RTC in order to secure the necessary certification from their Foreign Adoption Agencies and/or Embassies which would reflect that since they are not residents in their countries and are residing in the Philippines, the said agencies could not issue the documents required by the domestic courts in support of their Petition for Adoption. The foregoing effort of petitioners was not meant to cause a delay on the

proceeding but to actually assist the court in the speedy disposal of the case.

2. POLITICAL LAW; STATUTORY CONSTRUCTION; ADOPTION STATUTES SHOULD BE LIBERALLY CONSTRUED TO CARRY OUT THE BENEFICIENT PURPOSES OF ADOPTION; CASE AT BAR.— We hold that since the case properly falls under the Domestic Adoption Act, it is for the best interest of the child that the instant case be speedily disposed by continuing the proceedings in the trial court for the determination of whether petitioners are indeed qualified to adopt the child, instead of inappropriately referring the instant domestic adoption case to the ICAB where the proceedings may have to start anew and might be referred back to the trial court for the continuation of the domestic adoption proceedings. Settled is the rule that in adoption proceedings, the welfare of the child is of paramount interest. The Supreme Court's pronouncement in *In the Matter of the Adoption of Stephanie Nathy Astorga Garcia* is instructive: *Liberal Construction of Adoption Statutes In Favor of Adoption*— It is a settled rule that adoption statutes, being humane and salutary, should be liberally construed to carry out the beneficent purposes of adoption. The interests and welfare of the adopted child are of primary and paramount consideration, hence, every reasonable intendment should be sustained to promote and fulfill these noble and compassionate objectives of the law. Lastly, Art. 10 of the New Civil Code provides that: "In case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail." This provision, according to the Code Commission, "is necessary so that it may tip the scales in favor of right and justice when the law is doubtful or obscure. It will strengthen the determination of the courts to avoid an injustice which may *apparently* be authorized by some way of interpreting the law." Accordingly, We find that petitioners' Petition for Adoption was appropriately filed under the Domestic Adoption Act of 1998 which the appropriate Family Court or RTC can properly take cognizance of.

APPEARANCES OF COUNSEL

Nina Patricia D. Sison-Arroyo for petitioners.
The Solicitor General for respondent.

R E S O L U T I O N

HERNANDO, *J.*:

For resolution is a Petition for Review on *Certiorari*[1] filed under Rule 45 of the Rules of Court which seeks to set aside the November 21, 2018 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 157452 which dismissed the Petition for *Certiorari* under Rule 65 of the Rules of Court for being filed out of time, and the June 19, 2019 Resolution,[3] which denied the Motion for Reconsideration thereof. Finally, the instant Petition prays that the case be remanded to the Regional Trial Court (RTC) for continuation of the adoption proceedings.

Antecedent Facts

Petitioners Spouses Joon Hyung Park and Kyung Ah Lee (petitioners) are American citizens residing in the Philippines, particularly in Makati City. They are the petitioners in the Petition for Adoption with Change of Name of the minor "Mayca Alegado" *a.k.a.* "Innah Alegado" (Innah) before the RTC of Makati City, docketed as Sp. Proc. Case No. R-MKT-16-01300-SP, and raffled to Branch 136 thereof presided over by respondent Judge Rico Sebastian D. Liwanag (respondent Judge).[4]

Petitioners have been residing in the Philippines since 2007 (in the case of petitioner Park) and since 2009 (in the case of petitioner Lee). They have been gainfully employed in the Philippines for almost the same length of time that they have been residing in the country. Petitioner Park is the President

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

[2] *Id*. at 28-31; penned by Associate Justice Geraldine C. Fiel-Macaraig and concurred in by Associate Justices Ramon R. Garcia and Eduardo B. Peralta, Jr.

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

[4] *Id*. at 5.

of two Philippine Economic Zone Authority (PEZA)-located corporations, Wyntron, Inc. and Danam Philippines, Inc., while petitioner Lee is the Senior Adviser of Banco De Oro's (BDO's) Korean Desk.[5]

Innah was born on December 13, 2012 in Tuguegarao City. She was barely 22 days old when rescued by a non-government organization from trafficking and referred to the Department of Social Welfare and Development (DSWD) Field Office in Cagayan. Innah's biological mother attempted to give her away in exchange for transportation fare.[6]

Innah is now six years old. She was a little over one year old when her care and custody was officially bestowed by the DSWD upon petitioners on January 18, 2014, through a Pre-Adoption Placement Authority.[7]

Petitioners have also adopted another girl, Hannah, through domestic adoption. The RTC of Makati City, Branch 144, granted Hannah's adoption on August 30, 2016. Hannah is now 10 years old, and Innah considers her as her older sister.[8]

The DSWD processed petitioners' application for adoption of Innah, and issued on May 30, 2016 its Affidavit of Consent. The DSWD's Affidavit of Consent instructed petitioners to file a petition for domestic adoption, stating that the prospective adoptive parent shall initiate judicial proceeding by filing the petition to adopt not later than 30 days from date of receipt of the DSWD's written consent to adoption.[9]

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[5] *Id*. at 6.

[6] *Id*. at 5.

[7] *Id*.

[8] *Id*.

[9] *Id*.

Ruling of the Regional Trial Court

In an Order[10] dated September 11, 2017, respondent Judge found that since petitioners are both foreigners, then the Petition for Adoption with Change of Name of the minor Innah presented a proper case of inter-country adoption, instead of considering said petition as being appropriately filed under the Domestic Adoption Act of 1998. Thus, pursuant to Section 32[11] of the Rule on Adoption and Section 30[12] of the Amended Implementing Rules and Regulations on Inter-Country Adoption,[13] the trial court directed the transmittal of a copy of the petition and its annexes to the Inter-Country Adoption Board (ICAB) for appropriate action. The dispositive portion of the Order, reads:

> **WHEREFORE**, the Court directs the transmittal of a copy of the petition and its annexes, duly certified to be a true copy, to the Inter-Country Adoption Board for appropriate action. Consistent with Rule 39, Section 1 of the Rules of Court, the branch clerk of court shall comply with this Order upon the expiration of the period to appeal from this Order if no appeal has been duly perfected.
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> This Order amounts to a case disposal. The October 27 and November 24, 2017 settings are **CANCELLED**.
>
> **IT IS SO ORDERED**.[14]

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[10] *Id*. at 40-41.

[11] SEC. 32. *Duty of Court*. The court, after finding that the petition is sufficient in form and substance and a proper case for inter-country adoption, shall immediately transmit the petition to the Inter-Country Adoption Board for appropriate action. (A.M. No. 02-6-02-SC, effective August 22, 2002.)

[12] SEC. 30. *Where to File Application*. The application shall be filed with the Board through the Central Authority or an accredited Foreign Adoption Agency (FAA) in the country where the applicant resides. Foreigners who file a petition for adoption in the Philippines under the Domestic Adoption Act of 1998 otherwise known as RA 8552, the Court, after finding the petition to be sufficient in form and substance and a proper case for inter-country adoption, shall immediately transmit the petition to the Board for appropriate action. The Board shall then act on the application following the procedures described in these Rules.

[13] Republic Act No. 8043.

[14] *Rollo*, p. 41.

On October 6, 2017, petitioners filed a Motion for Reconsideration (First Motion for Reconsideration) praying for respondent Judge to: (a) reconsider and set aside the Order dated September 11, 2017; (b) give petitioners time to confer with the ICAB and submit a best interest assessment; and (c) allow the Deposition through Written Interrogatories to proceed. Said Motion for Reconsideration was denied by respondent Judge in its Order[15] dated June 19, 2018. Petitioners received a copy of said Order on July 2, 2018.[16]

On July 4, 2018, petitioners filed a Manifestation and Second Motion for Reconsideration,[17] which partly reads:

> 2. Very recently, it has come to the attention of the Petitioners that the Supreme Court and ICAB entered into an agreement regarding the treatment of foreigners who reside in the Philippines and file a petition for adoption through the courts. Attached as Annex "A" is a copy of the DSWD Memorandum dated 1 June 2018,[18] which refers to this agreement.
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> 3. Accordingly, in reference to OCA Circular 213-2017, foreigners who reside in the Philippines should secure a certification from their Foreign Adoption Agencies and/or Embassies that since they are not residents in their countries and they are residing in the Philippines, the said agencies could not issue the documents required by the domestic courts in support of their Petition for domestic adoption. **"If ever their cases will be endorsed to ICAB by the court, ICAB will file a manifestation on this matter so that the domestic adoption could be pursued."**
>
> 4. In light of this supervening event, Petitioners pray for a reconsideration of the Order dated 19 June 2018 and that they be given thirty (30) days from notice to secure the necessary certification.[19] (Emphasis supplied)

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[15] *Id*. at 48.

[16] *Id.* at 49.

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

[18] *Id.* at 52; Re: Domestic Adoption by Foreigners Habitually Residing in the Philippines dated June 1, 2018, issued by the DSWD.

[19] *Id*. at 49.

In an Order[20] dated July 10, 2018, respondent Judge denied the foregoing Manifestation and Second Motion for Reconsideration for being a prohibited pleading. Petitioners received a copy of said Order on July 19, 2018. Petitioners pointed out that they have 60 days from receipt of the Order, or until September 17, 2018, to file a Petition for *Certiorari* under Rule 65 of the Rules of Court, with the CA.[21]

Ruling of the Court of Appeals

On September 12, 2018, petitioners filed a Petition for *Certiorari* under Rule 65 of the Rules of Court with the CA, which assailed respondent Judge's Orders dated September 11, 2017, June 19, 2018, and July 10, 2018.[22]

However, in its November 21, 2018 Resolution, the CA dismissed the Petition for *Certiorari* for being filed out of time. The CA reasoned that the 60-day period should have been counted from the denial of petitioners' First Motion for Reconsideration, not the second. Said Resolution partly reads:

> In this case, the petitioners alleged that they received the 19 June 2018 *Order*, which denied their first *Motion for Reconsideration*, on 2 July 2018. Following the express provision of Section 4, Rule 65 of the Rules of Court, the petitioners had 60 days from 2 July 2018, or until 31 August 2018, within which to file a petition for *certiorari*. Instead, the petitioners filed a *Manifestation and Second Motion for Reconsideration*. Only upon the denial of their second *Motion for Reconsideration* did the petitioners initiate the *certiorari* proceeding. Considering that the instant *Petition for Certiorari* was filed only on 12 September 2018, this Court cannot give due course thereto for being filed out of time.[23]

Petitioners filed a Motion for Reconsideration. They argued that the transmittal of the copies of the records of the case to the ICAB was in the nature of an interlocutory order, and not

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[20] *Id.* at 53.

[21] *Id.* at 9.

[22] See *id* at 30.

[23] *Id.* at 30.

a final decision; and as such, a second Motion for Reconsideration was permissible.[24] However, in the CA Resolution dated June 19, 2019, it denied petitioners' Motion for Reconsideration.

Aggrieved, petitioners filed the instant Petition for Review on *Certiorari* under Rule 45 of the Rules of Court on the following grounds: (i) the CA erred in dismissing the Petition for *Certiorari* for being filed out of time; it should have resolved the Petition on the merits; (ii) the 60-day period should be counted from the receipt of the Order denying their Manifestation and Second Motion for Reconsideration, which they received on July 19, 2018. Hence, when they filed their Petition for *Certiorari* with the CA on September 12, 2018, it was well within the 60-day period, which ended on September 17, 2018; (iii) respondent Judge committed grave abuse of discretion amounting to lack or excess of jurisdiction in referring the Petition for Adoption to the ICAB since the Petition was appropriately filed under the Domestic Adoption Act of 1998; (iv) substantial compliance with the Home Study and certification requirements is sufficient because such requirements are not jurisdictional; and (v) adoption laws must be construed liberally to promote the best interest of the child.[25]

The Court's Ruling

We resolve to **GRANT** the instant petition. Thus, the instant case should be remanded to the RTC for continuation of the adoption proceedings.

First, the nature of the trial court's case disposal is being raised as an issue. Was the "case disposal" equivalent to a final order such that a second motion for reconsideration is prohibited in accordance with Section 5, Rule 37 of the Rules of Court? Petitioners assert that the trial court's Order referring the case to the ICAB was an interlocutory order, which was a temporary disposal of the case subject to determination by the ICAB, after

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[24] *Id*. at 10.

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

it has gone through the records, on whether inter-country adoption is appropriate and feasible under the circumstances. Petitioners deny that the Manifestation and Second Motion for Reconsideration was filed with undue disregard of the orderly presentation and just resolution of the issues. Petitioners further point out that said Second Motion for Reconsideration was not a rehash of the arguments in the First Motion for Reconsideration since it was filed on the ground of supervening event that was newly discovered by the petitioners.[26] Consequently, petitioners claim that the 60-day period of the Petition for *Certiorari* under Rule 65 of the Rules of Court should be counted from the receipt of the Order denying their Manifestation and Second Motion for Reconsideration, or on July 19, 2018. Hence, when they filed their Petition for *Certiorari* with the Court of Appeals on September 12, 2018, it was well within the 60-day period.

This Court finds that a relaxation of the rules of procedure is necessary in the instant case in order to promote the best interest of the adoptee child, Innah. In *Heirs of Deleste v. Land Bank of the Phils.*,[27] the Supreme Court pronounced:

> Time and again, this Court has held that a strict and rigid application of technicalities must be avoided if it tends to frustrate rather than promote substantial justice. As held in *Sta. Ana v. Spouses Carpo*:
>
> > Rules of procedure are merely tools designed to facilitate the attainment of justice. If the application of the Rules would tend to frustrate rather than to promote justice, it is always within our power to suspend the rules or except a particular case from their operation. Law and jurisprudence grant to courts the prerogative to relax compliance with the procedural rules, even the most mandatory in character, mindful of the duty to reconcile the need to put an end to litigation speedily and the parties' right to an opportunity to be heard.

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[26] *Id*. at 13.

[27] 666 Phil. 350, 371-372 (2011), citing *Cusi-Hernandez v. Diaz*, 390 Phil. 1245, 1252 (2000); *Piglas-Kamao (Sari-Sari Chapter) v. National Labor Relations Commission*, 409 Phil. 735, 744-745 (2001); *Sta. Ana v. Spouses Carpo*, 593 Phil. 108, 123-124 (2008); and *Tanenglian v. Lorenzo*, 573 Phil. 472 (2008).

Our recent ruling in *Tanenglian v. Lorenzo* is instructive:

> We have not been oblivious to or unmindful of the extraordinary situations that merit liberal application of the Rules, allowing us, depending on the circumstances, to set aside technical infirmities and give due course to the appeal. **In cases where we dispense with the technicalities, we do not mean to undermine the force and effectivity of the periods set by law. In those rare cases where we did not stringently apply the procedural rules, there always existed a clear need to prevent the commission of a grave injustice. Our judicial system and the courts have always tried to maintain a healthy balance between the strict enforcement of procedural laws and the guarantee that every litigant be given the full opportunity for the just and proper disposition of his cause**. (Emphasis supplied, citations omitted)

In addition, We find that the petitioners did not sleep on their rights and simply allowed the 60-day period from the denial of the First Motion for Reconsideration to lapse. Rather, petitioners filed the Manifestation and Second Motion for Reconsideration with the RTC in order to secure the necessary certification from their Foreign Adoption Agencies and/or Embassies which would reflect that since they are not residents in their countries and are residing in the Philippines, the said agencies could not issue the documents required by the domestic courts in support of their Petition for Adoption. The foregoing effort of petitioners was not meant to cause a delay on the proceeding but to actually assist the court in the speedy disposal of the case.

Second, petitioners assert that respondent Judge erred in referring the Petition for Adoption to the ICAB since said Petition was appropriately filed under the Domestic Adoption Act of 1998. They claim that the Domestic Adoption Act clearly confers jurisdiction on Family Courts to hear adoption cases filed by aliens who have been residing in the Philippines for at least three continuous years.[28]

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[28] *Rollo*, p. 13.

Petitioners point out that contrary to the pronouncement of the RTC, the instant case is not appropriate for inter-country adoption proceedings because the Inter-Country Adoption Act of 1995[29] applies to aliens who permanently reside abroad. However, in the instant case, petitioners do not permanently reside in the U.S. They have been residing in the Philippines for more than three continuous years prior to the filing of their Petition for Adoption, as required by the Domestic Adoption Act. To support their claim and while the adoption proceeding was pending before the trial court, petitioners prepared the written deposition of Ms. Tifany Markee, an expert in U.S. immigration and inter-country adoption laws, who was deposed by the Philippine Consulate in Los Angeles, California, U.S.A. She certified that petitioners are deemed habitual residents outside the U.S. since they have resided for more than two years with Innah in the Philippines. This being the case, under U.S. laws, they are in fact exempted from adopting through inter-country adoption.[30]

Petitioners point out that it is through a full-blown trial that they could present sufficient evidence to prove that they are qualified to adopt. Thus, petitioners assert that:

> 63. x x x By ordering the transmittal of the case to the ICAB, respondent deprived petitioners of the opportunity to present evidence to establish the relevant U.S. law, their capacity to adopt under such law, and the adoptee's capacity to immigrate to the U.S. as petitioners' legitimate child.
>
> 64. Petitioners have already gone as far as securing authenticated copies of the relevant California laws on adoption and U.S. immigration laws, as well as deposing through written interrogatories an expert witness. If the proceedings before the respondent court are allowed to take its due course petitioners will be able to formally offer

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[29] SECTION 9. *Who May Adopt.* – An alien or a Filipino citizen permanently residing abroad may file an application for inter-country adoption of a Filipino child[.] (Republic Act No. 8043)

[30] *Rollo*, p. 16.

documentary and testimonial evidence to substantially comply with the certification requirement.[31]

A comparative review of the relevant provisions on the Domestic Adoption and Inter-Country Adoption particularly on those who are qualified to adopt and where to file the application for adoption shows the following:

Domestic Adoption	Inter-Country Adoption
SECTION 4 . *Who may adopt.* – The following may adopt: (1) Any Filipino citizen of legal age, in possession of full civil capacity and legal rights, of good moral character, has not been convicted of any crime involving moral turpitude; who is emotionally and psychologically capable of caring for children, at least sixteen (16) years older then the adoptee, and who is in a position to support and care for his children in keeping with the means of the family. The requirements of a 16-year difference between the age of the adopter and adoptee may be waived when the adopter is the biological parent of the adoptee or is the spouse of the adoptee's parent; (2) Any **lien possessing the same qualifications as above-stated for Filipino nationals**: *Provided*, That his country has diplomatic relations with the Republic of the Philippines, **that he has been living in the Philippines for at least three (3) continuous years prior to the filing of the petition for adoption and**	SECTION 9. *Who May Adopt.* – **An alien or a Filipino citizen permanently residing abroad** may file an application for inter-country adoption of a Filipino child if he/she: a) is at least twenty-seven (27) years of age and atleast sixteen (16) years older than the child to be adopted, at the time of application unless the adopter is the parent by nature of the child to be adopted or the spouse of such parent; b) if married his/her spouse must jointly file for the adoption; c) has the capacity to act and assume all rights and responsibilities of parental authority under his national laws, and has undergone the appropriate counseling from an accredited counselor in his/her country; d) has not been convicted of a crime involving moral turpitude; e) is eligible to adopt under his/her national law;

[31] *Id*. at 19.

maintains such residence until the adoption decree is entered, that he has been certified by his diplomatic or consular office or any appropriate government agency to have the legal capacity to adopt in his country, and that his government allows the adoptee to enter his country as his adopted child. *Provided, further*, That the requirements on residency and certification of the alien's qualification to adopt in his country may be waived for the following:

(i) a former Filipino citizen who seeks to adopt a relative within the fourth (4th) degree of consanguinity or affinity or

(ii) one who seeks to adopt the legitimate child of his Filipino spouse; or

(iii) one who is married to a Filipino Citizen and seeks to adopt jointly with his spouse a relative within the fourth (4th) degree of consanguinity or affinity of the Filipino spouse.

(3) The guardian with respect to the ward after the termination of the guardianship and clearance of his financial accountabilities.

Husband and wife shall jointly adopt, except in the following cases:

(i) if one spouse seeks to adopt the legitimate child of one spouse by the other spouse;or

(ii) if one spouse seeks to adopt his own illegitimate child: *Provided*, *however*, That the other spouse has signified his consent thereto; or

(iii) if the spouses are legally separated from each other.

f) is in a position to provide the proper care and support and to give the necessary moral values and example to all his children, including the child to be adopted;

g) agrees to uphold the basic rights of the child as embodied under Philippine laws, the U.N. Convention on the Rights of the Child, and to abide by the rules and regulations issued to implement the provisions of this Act;

h) comes from a country with whom the Philippines has diplomatic relations and whose government maintains a similary authorized and accredited agency and that adoption is allowed under his/her national laws; and

i) possesses all the qualifications and none of the disqualifications provided herein and in other applicable Philippine laws. (Emphasis supplied)

(*Inter-Country Adoption Act of 1995, Republic Act No. 8043,* [*June 7, 1995*])

In case husband and wife jointly adopt or one spouse adopts the illegitimate child of the other, joint parental authority shall be exercised by the spouses. (*Rule on Adoption, A.M. No. 02-6-02-SC [August 22, 2002]); see also Section 7, Domestic Adoption Act of 1998, Republic Act No. 8552 [February 25, 1998]*)	
SECTION 6. *Venue*. – The petition for adoption shall be filed with the Family Court of the province or city where the prospective adoptive parents reside. (*Rule on Adoption, A.M. No. 02-6-02-SC [August 22, 2002]*)	SECTION 28. *Where to File Petition*.– A verified petition to adopt a Filipino child may be filed by a foreign national or Filipino citizen permanently residing abroad with the Family Court having jurisdiction over the place where the child resides or may be found. It may be filed directly with the Inter-Country Adoption Board. (*Rule on Adoption A.M. No. 02-6-02-SC [August 22, 2002]) (See also, Section 10 of Inter-Country Adoption Act of 1995, Republic Act No. 8043 [June 7, 1995]*)

In addition, Section 32 of A.M. No. 02-6-02-SC provides that:

SECTION 32. *Duty of Court*. – The court, after finding that the petition is sufficient in form and substance and a proper case for inter-country adoption, shall immediately transmit the petition to the Inter-Country Adoption Board for appropriate action. *(Rule on Adoption, A.M. No. 02-6-02-SC, August 22, 2002)*

We note that petitioners, who are both American citizens, have been residing and have been gainfully employed in the Philippines since the year 2007 (in the case of petitioner Park) and since 2009 (in the case of petitioner Lee), and are thus living in the Philippines for at least three continuous years prior to the filing of the petition for adoption, as required by the Domestic Adoption Act.

In view of the foregoing, this Court finds that petitioners' Petition for Adoption was appropriately filed under the Domestic Adoption Act in order for the appropriate Family Court or RTC to take cognizance thereof.

Furthermore, We also take cognizance of the agreement[32] entered into between the Supreme Court and the ICAB regarding the treatment of foreigners who reside in the Philippines and who file a petition for adoption through the courts. Thus, said agreement which is incorporated in the DSWD's Memorandum dated June 1, 2018, *Re: Domestic Adoption by Foreigners Habitually Residing in the Philippines*, reads:

> This is to share with you the agreements between the Supreme Court and the Inter-country Adoption Board (ICAB), relative to cases of foreign adoptive families who are habitually or permanently residing in the Philippines.
>
> The Supreme Court *en banc* in OCA Circular 213-2017 states that foreigners who have filed an application for adoption with the assistance and approval of the DSWD MUST attach the following to their petition to the courts:
>
> 1. A Certification Declaring a Child as Legally Available for Adoption (CDCLAA);
> 2. Home Study Report to be prepared by an ICAB accredited Foreign Adoption Agency, if not possible/available, a Certification regarding the same should be executed by the Central Authority or Embassy of the receiving country.
> 3. A Certification regarding the alien's legal capacity to adopt and that his/her government allows the adoptee to enter his/her country as his/her adopted child. If not possible, a Certification should be executed by the Central Authority or Embassy of the receiving country.
>
> This implies that these foreigners should still secure a certification from their Foreign Adoption Agencies and/or Embassies that since they are not residents in their countries

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[32] *Id*. at 52; Re: Domestic Adoption by Foreigners Habitually Residing in the Philippines dated June 1, 2018, issued by the DSWD.

> and habitually residing in the Philippines, the said agencies could not issue the documents required by the domestic courts in support to their Petitions filed for domestic adoption. **If ever their cases will be endorsed to ICAB by the courts, ICAB will file a manifestation on this matter so that the domestic adoption could be pursued**. (*Emphasis supplied*)

Thus, even if the instant adoption proceeding would be referred to the ICAB, as what the RTC did, there is still a high probability that the ICAB will file a manifestation so that the domestic adoption before the trial court could be pursued, considering the circumstances of the case. Consequently, the referral to the ICAB would only cause a delay in the adoption proceedings, a matter that would be clearly prejudicial to the interest of the adoptee and the petitioners.

At this juncture, it must also be stressed that the Office of the Solicitor General (OSG), in its Comment,[33] noted that the dismissal by the CA was based purely on procedural grounds. Citing *Aguam v. Court of Appeals*,[34] the OSG opined that: "It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not miscarriage of justice."[35]

In addition, We also note that petitioners' effort during the proceedings in the trial court have already gone as far as securing authenticated copies of the relevant California laws on adoption, U.S. immigration laws, the taking of expert witness Ms. Tifany Markee's deposition through written interrogatories, and the submission of several documents to support their petition for adoption. We also take cognizance of the fact that the child,

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[33] *Id*. at 54-57.

[34] 388 Phil. 587, 594 (2000).

[35] *Rollo*, pp. 55-56.

Innah, had been living with petitioners for six years and has recognized them as her parents.

In view of this, We hold that since the case properly falls under the Domestic Adoption Act, it is for the best interest of the child that the instant case be speedily disposed by continuing the proceedings in the trial court for the determination of whether petitioners are indeed qualified to adopt the child, instead of inappropriately referring the instant domestic adoption case to the ICAB where the proceedings may have to start anew and might be referred back to the trial court for the continuation of the domestic adoption proceedings. Settled is the rule that in adoption proceedings, the welfare of the child is of paramount interest. The Supreme Court's pronouncement in *In the Matter of the Adoption of Stephanie Nathy Astorga Garcia*[36] is instructive:

Liberal Construction of Adoption Statutes In Favor of Adoption —

It is a settled rule that adoption statutes, being humane and salutary, should be liberally construed to carry out the beneficent purposes of adoption. The interests and welfare of the adopted child are of primary and paramount consideration, hence, every reasonable intendment should be sustained to promote and fulfill these noble and compassionate objectives of the law.

Lastly, Art. 10 of the New Civil Code provides that:

"In case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail."

This provision, according to the Code Commission, "is necessary so that it may tip the scales in favor of right and justice when the law is doubtful or obscure. It will strengthen the determination of the courts to avoid an injustice which may *apparently* be authorized by some way of interpreting the law." (Citations omitted)

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[36] 494 Phil. 515, 527 (2005).

Accordingly, We find that petitioners' Petition for Adoption was appropriately filed under the Domestic Adoption Act of 1998 which the appropriate Family Court or RTC can properly take cognizance of.

ACCORDINGLY, the instant Petition for Review on *Certiorari* is **GRANTED**. The assailed Resolutions dated November 21, 2018 and June 19, 2019 rendered by the Court of Appeals in CA-G.R. SP No. 157452 are hereby **REVERSED and SET ASIDE**. The instant case is **REMANDED** to the Regional Trial Court of Makati City, Branch 136, which is **DIRECTED** to continue with **DISPATCH** the adoption proceedings with change of name involving the minor "Mayca Alegado" *a.k.a.* "Innah Alegado."

SO ORDERED.

Perlas-Bernabe (Chairperson), Reyes, A. Jr., Inting, and *Zalameda, JJ.*, concur.

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to be at the crime scene at the time of its commission. (People *vs*. ABC, G.R. No. 219170, Nov. 13, 2019) p. 257

ALIBI AND DENIAL

Defenses of — It bears emphasizing that denial and alibi are intrinsically weak defenses that cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. (People *vs*. ABC, G.R. No. 219170, Nov. 13, 2019) p. 257

ANTI-TRAFFICKING IN PERSONS ACT OF 2003 (R.A. NO. 9208)

Trafficking in persons — Elements of trafficking in persons: (1) The *act* of "recruitment, transportation, transfer or harbouring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders;" (2) The *means* used which include "threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another; and (3) The *purpose* of trafficking is exploitation which includes "exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs." (People *vs*. Dela Rosa *y* Likinon, G.R. No. 227880, Nov. 6, 2019) p. 36

APPEALS

Appeal in criminal cases — An appeal of a criminal conviction opens the entire records of the trial to review; the Court, in the course of its review, may also examine any error even if not assigned by the accused. (People *vs*. Paran *y* Gemerga, G.R. No. 220447, Nov. 25, 2019) p. 531

— An appeal in criminal cases throws the whole case open for review, and the appellate court has the duty to correct, cite, and appreciate errors in the appealed judgment, whether or not assigned or unassigned; the appeal confers the appellate court full jurisdiction over the case and

for review on *certiorari* under Rule 45 of the Rules of Court; as a general rule, appeals in criminal cases are brought to the Court by filing such kind of petition, Section 13 (c), Rule 124 of the Rules provides that if the penalty imposed is life imprisonment, the appeal shall be made by a mere notice of appeal; nonetheless, in the interest of substantial justice, the Court will treat this petition as an ordinary appeal in order to finally resolve the substantive issues at hand. (Matabilas *vs*. People, G.R. No. 243615, Nov. 11, 2019) p. 124

— The determination of factual matters is not within the purview of the court's appellate jurisdiction under Rule 45 of the Rules of Court, except when the findings of the Court of Appeals diverged with that of the labor tribunals. (Alaska Milk Corp. *vs*. Paez, G.R. No. 237277, Nov. 27, 2019) p. 778

— The sufficiency of a claimant's evidence and the determination of the amount of refund, as called for in this case, are *questions of fact*, which are for the judicious determination by the CTA of the evidence on record; it is already an established rule in this jurisdiction that only questions of law may be raised under Rule 45 of the Rules of Court; it is not this Court's function to analyze or weigh all over again the evidence already considered in the proceedings below, as its jurisdiction under Section 1, Rule 45 is limited to reviewing only errors of law that may have been committed by the lower court. (Commissioner of Internal Revenue *vs*. San Miguel Corp., G.R. No. 180740, Nov. 11, 2019) p. 94

Rules on — It is unnecessary to remand the case to the lower court when the appellate court may proceed with the resolution of the case on the basis of the records before it; when the parties have submitted and presented evidence essential for the resolution of the dispute, the interest of justice is better served when the court proceeds with the determination of the parties' rights and obligations. (Tolentino *vs*. Phil. Postal Savings Bank, Inc., G.R. No. 241329, Nov. 13, 2019) p. 274

—— The Court has relaxed the 60-day requirement in the following instances: when the assailed decision was contradictory to the evidence presented; in a motion for consolidation of several criminal cases, when the relief sought would be more in keeping with law and equity, and to facilitate a speedy trial, considering that there was substantial identity in the informations filed and the witnesses to be presented; where paramount public interest necessitated that the dispute involving the operation of a major power plant be resolved on the merits; where the case involved the expropriation of private property to build a major highway and no undue prejudice or delay will be caused to either party in admitting the petition; and when the appellate court had already granted an extension but later reversed itself. (Fluor Daniel, Inc. - Phils. *vs*. Fil-Estate Properties, Inc., G.R. No. 212895, Nov. 27, 2019) p. 626

—— There is grave abuse of discretion when: (1) an act is done contrary to the Constitution, law, or jurisprudence; or (2) it is executed whimsically, capriciously, or arbitrarily out of malice, ill-will, or personal bias. (People *vs*. Sandiganbayan [1st Div.], G.R. No. 240776, Nov. 20, 2019) p. 439

—— Under the amendment introduced by A.M. No. 00-2-03-SC in 2000, motions for extension of time to file petitions for *certiorari* were allowed for compelling reasons only; in *Yutingco v. Court of Appeals*, the Court held that "the 60-day-period ought to be considered inextendible," because this period "is deemed reasonable and sufficient time for a party to mull over and to prepare a petition asserting grave abuse of discretion by a lower court; the period was specifically set to avoid any unreasonable delay that would violate the constitutional rights of parties to a speedy disposition of their case." (Fluor Daniel, Inc. - Phils. *vs*. Fil-Estate Properties, Inc., G.R. No. 212895, Nov. 27, 2019) p. 626

—— Under the Rules of Court currently in force, a petition for *certiorari* must be filed not later than 60 days from

Chain of custody — Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear; while the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances. (People *vs*. Sendad *y* Kundo, G.R. No. 242025, Nov. 20, 2019) p. 464

(Asis *y* Briones *vs*. People, G.R. No. 241602, Nov. 20, 2019) p. 453

(Grefaldo *y* De Leon *vs*. People, G.R. No. 246362, Nov. 11, 2019) p. 140

(Matabilas *vs*. People, G.R. No. 243615, Nov. 11, 2019) p. 124

— As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded not merely as a procedural technicality but as a matter of substantive law; the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is a justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved. (Asis *y* Briones *vs*. People, G.R. No. 241602, Nov. 20, 2019) p. 453

— As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law"; this is because "the law has been 'crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.'" (People *vs*. De Motor *y* Dantes, G.R. No. 245486, Nov. 27, 2019) p. 908

dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. (People *vs*. Santos *y* Littaua, G.R. No. 243627, Nov. 27, 2019) p. 584

(Matabilas *vs*. People, G.R. No. 243615, Nov. 11, 2019) p. 124

— Faithful obedience of the rules requires 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 identification, and eventual destruction. (People *vs*. Ruiz *y* Tica, G.R. No. 243635, Nov. 27, 2019) p. 881

— Here, since the buy-bust operation was conducted prior to the amendment of R.A. No. 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 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. (People *vs*. Guillermo *y* De Luna, G.R. No. 229515, Nov. 27, 2019) p. 690

— In cases involving dangerous drugs, the dangerous drug itself constitutes the *corpus delicti*; thus, its identity and integrity must be shown by the State to have been preserved. (People *vs*. Angeles *y* Miranda, G.R. No. 224223, Nov. 20, 2019) p. 356

— In order to avoid planting, tampering, substitution and contamination of the *corpus delicti*, Section 21, Article II of R.A. No. 9165 provides for the manner by which law enforcement officers should handle seized items in dangerous drugs cases. (People *vs*. Paran *y* Gemerga, G.R. No. 220447, Nov. 25, 2019) p. 531

by the prosecution that the arresting officers put in their best effort to comply with the same and the justifiable ground for noncompliance is proven as a fact. (Hedreyda *y* Lizarda *vs*. People, G.R. No. 243313, Nov. 27, 2019) p. 849

— Section 21, Article II of R.A. No. 9165 lays down the chain of custody rule, outlining the procedures police officers must follow in handling seized drugs in order to preserve their integrity and evidentiary value; said provision was later amended by R.A. No. 10640 which took effect in 2014, but since the offenses charged were allegedly committed on 18 June 2013, it is the earlier version of Section 21, Article II of R.A. No. 9165 and its corresponding Implementing Rules and Regulations which should apply. (People *vs*. Ambrosio *y* Nidua, G.R. No. 234051, Nov. 27, 2019) p. 734

— 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 must be present during the inventory and taking of photographs. (Hedreyda *y* Lizarda *vs*. People, G.R. No. 243313, Nov. 27, 2019) p. 849

— Section 21(a), Article II of the IRR of R.A. No. 9165 contains this *proviso*: provided, further, that non-compliance with these requirements [the presence of the required witnesses, and the time and place of inventory and photographing] 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 applicability of this saving mechanism, however, is conditioned upon the apprehending team rendering a justification for such non-compliance. (People *vs*. Dayon *y* Mali, G.R. No. 229669, Nov. 27, 2019) p. 709

— The chain of custody rule set out in Section 21 of R.A. No. 9165, as amended by R.A. No. 10640 must be strictly observed; R.A. No. 10640 applies in this case because the law became effective on July 23, 2014 and the buy-bust operation took place on February 26, 2015; under R.A. No. 10640, the marking, physical inventory and photographing of the seized items by the apprehending team shall be conducted immediately after seizure and confiscation, and in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel. (People *vs*. Ruiz *y* Tica, G.R. No. 243635, Nov. 27, 2019) p. 881

— The Court, in *People v. Miranda*, issued a definitive reminder to prosecutors when dealing with drugs cases; it implored that "since the procedural requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review." (People *vs*. Sendad *y* Kundo, G.R. No. 242025, Nov. 20, 2019) p. 464

— The failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and valid, provided that the prosecution satisfactorily proves that: *(a)* there is a justifiable ground for non-compliance; and *(b)* the integrity and evidentiary value of the seized items are properly preserved; the foregoing is based on the saving clause found in Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of R.A. No. 9165, which was later adopted into the text of R.A. No. 10640. (Matabilas *vs*. People, G.R. No. 243615, Nov. 11, 2019) p. 124

to the court. (People *vs*. Zapanta *y* Lucas, G.R. No. 230227, Nov. 6, 2019) p. 58

— The prosecution's failure to justify its noncompliance with the requirements found in Section 21, specifically, the presence of the three required witnesses during the actual inventory of the seized items, is fatal to its case. (Hedreyda *y* Lizarda *vs*. People, G.R. No. 243313, Nov. 27, 2019) p. 849

— The prosecution has the positive duty to demonstrate observance with the chain of custody rule under Section 21 "in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law"; in case of non-compliance, the prosecution must establish that: (1) there is a justifiable ground for non-compliance; and (2) the integrity and evidentiary value of the seized items are properly preserved. (People *vs*. Aguilar *y* Cimafranca, G.R. No. 243793, Nov. 27, 2019) p. 895

— The prosecution has to account for all the links in the chain of custody of the dangerous drug, from the moment of seizure from the accused until it is presented in court as proof of *corpus delicti*. (People *vs*. Angeles *y* Miranda, G.R. No. 224223, Nov. 20, 2019) p. 356

— The prosecution must show the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence; this includes testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. (People *vs*. Angeles *y* Miranda, G.R. No. 224223, Nov. 20, 2019) p. 356

the copy of the inventory and be given a copy thereof. (People *vs*. Baculio *y* Oyao, G.R. No. 233802, Nov. 20, 2019) p. 419

(People *vs*. Zapanta *y* Lucas, G.R. No. 230227, Nov. 6, 2019) p. 58

— Under the original provision of Section 21 and its IRR, the apprehending team was required to conduct a physical inventory and photographing of the seized items immediately after their seizure and confiscation in the presence of no less than three witnesses, namely: (1) a representative from the media; (2) a representative from the Department of Justice (DOJ); and (3) any elected public official. (People *vs*. Luminda *y* Edto, G.R. No. 229661, Nov. 20, 2019) p. 378

— While the absence of the insulating witnesses required by Section 21 of R.A. No. 9165 does not itself render the confiscated items inadmissible, a justifiable reason for the failure or a showing of a genuine and sufficient effort to secure them must be adduced. (People *vs*. Paran *y* Gemerga, G.R. No. 220447, Nov. 25, 2019) p. 531

— While the absence of the required witnesses under Section 21, Article II of R.A. No. 9165 does not *per se* render the confiscated items inadmissible, the prosecution must adduce a justifiable reason for this failure or a showing of any genuine and sufficient effort to secure the required witnesses; the presence of these personalities and the immediate marking and conduct of physical inventory after seizure and confiscation in full view of the accused and the required witnesses cannot be brushed aside as a simple procedural technicality. (People *vs*. Baculio *y* Oyao, G.R. No. 233802, Nov. 20, 2019) p. 419

Illegal possession of dangerous drugs — In cases for Illegal Possession of Dangerous Drugs under R.A. No. 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime; failing to prove the integrity of the

— It is highly impossible that a sale of dangerous drugs between the *poseur*-buyer and the seller would be consummated without a specific quantity of dangerous drugs agreed beforehand; for drug pushers, *shabu* is a very precious commodity that even a speck of it has money value. (*Id*.)

— Settled is the rule that as long as the police officer went through the operation as a buyer and his offer was accepted by appellant and the dangerous drugs delivered to the former, the crime is considered consummated by the delivery of the goods. (People *vs*. Jaime *y* Duran, G.R. No. 232083, Nov. 27, 2019) p. 721

— The delivery of the illegal drugs to the *poseur*-buyer and the receipt of the buy-bust money by the seller are the circumstances that consummate the transaction; proof of the transaction must be credible and complete; in every criminal prosecution, it is the State, and no other, that bears the burden of proving the illegal sale of the dangerous drug beyond reasonable doubt. (People *vs*. Guillermo *y* De Luna, G.R. No. 229515, Nov. 27, 2019) p. 690

— The presentation of the seized drugs as evidence in court is indispensable in every prosecution for the illegal sale of dangerous drugs because the drugs seized are the *corpus delicti* of the crime; the State should establish beyond doubt the identity of the dangerous drugs by showing that the drugs offered in court as evidence were the same substances bought during the buy-bust operation. (People *vs*. Dayon *y* Mali, G.R. No. 229669, Nov. 27, 2019) p. 709

— To successfully prosecute a case for illegal sale of dangerous drugs the following elements must be proven beyond reasonable doubt: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. (People *vs*. Ambrosio *y* Nidua, G.R. No. 234051, Nov. 27, 2019) p. 734

earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances. (People *vs*. De Motor *y* Dantes, G.R. No. 245486, Nov. 27, 2019) p. 908

— In *People of the Philippines v. Vicente Sipin y De Castro*, where it provided additional grounds that would serve as valid justification for the relaxation of the rule on mandatory witnesses, *viz*.: the prosecution never alleged and proved that the presence of the required witnesses was not obtained for any of the following reasons, 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[s] 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. (Hedreyda *y* Lizarda *vs*. People, G.R. No. 243313, Nov. 27, 2019) p. 849

— Non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear; while the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances. (People *vs*. Santos *y* Littaua, G.R. No. 243627, Nov. 27, 2019) p. 868

CORPORATIONS

Doctrine of apparent authority — If a corporation knowingly permits its officer, or any other agent, to perform acts within the scope of an apparent authority, holding him out to the public as possessing power to do those acts, the corporation will, as against any person who has dealt in good faith with the corporation through such agent, be stopped from denying such authority. (Tolentino *vs*. Phil. Postal Savings Bank, Inc., G.R. No. 241329, Nov. 13, 2019) p. 274

Government-owned and controlled corporations — As a general rule, GOCCs are not allowed to engage the legal services of private counsels; the OGCC is mandated by law to provide legal services to government-owned and controlled corporations. (Alejandrino *vs*. Commission on Audit, G.R. No. 245400, Nov. 12, 2019) p. 188

—— In *Phividec Industrial Authority v. Capitol Steel Corporation*, there are three indispensable conditions before a GOCC can hire a private lawyer: (1) private counsel can only be hired in exceptional cases; (2) the GOCC must first secure the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case may be; and (3) the written concurrence of the COA must also be secured. (Alejandrino *vs*. Commission on Audit, G.R. No. 245400, Nov. 12, 2019) p. 188

Interim Rules of Procedure for Intra-Corporate Controversies — The definition of an election contest is clear; it hardly distinguishes whether the complainant is a participant in the election or not, and it is determined only by the nature of the controversy or dispute involved, namely: (1) the title or claim to any elective office in a corporation; (2) the validation of proxies; (3) the manner and validity of elections; and (4) the qualifications of candidates, including the proclamation of winners, to the office of director, trustee or other officer in a corporation. (Eizmendi *vs*. Fernandez, G.R. No. 215280, Nov. 27, 2019) p. 638

reasonable opportunity to explain their case or are given the chance to have the ruling complained of reconsidered; there is no denial of procedural due process where the opportunity to be heard either through oral arguments or through pleadings is accorded. (Fernandez *vs*. Commission on Audit, G.R. No. 205389, Nov. 19, 2019) p. 292

EMPLOYMENT, TERMINATION OF

Constructive dismissal — Constructive dismissal exists if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him or her except to forego his or her continued employment; the test for determining if an employee was constructively dismissed is whether a reasonable person in the employee's position would feel compelled to give up his or her employment under the prevailing circumstances. (Cokia Industries Holdings Mgmt., Inc. *vs*. Bug-Os, G.R. No. 236322, Nov. 27, 2019) p. 765

— Strong words from the employer do not necessarily make the working environment unbearable; when these are uttered "without palpable reason or are expressed only for the purpose of degrading the dignity of the employee, then a hostile work environment will be created." (*Id*.)

— While there is no fixed period for constructive dismissal, the period from the time Bug-Os was asked to explain the irregularities discovered until she resigned simply does not lend credibility to her claim that she was constructively dismissed. (*Id*.)

Resignation — Resignation refers to the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment; the acts of the employee before and after the alleged resignation must be considered in determining whether he or she, in fact,

JUDGMENTS

Decision distinguished from minute resolution — A minute resolution is signed only by the clerk of court by authority of the justices, unlike a decision; it does not require the certification of the Chief Justice; unlike decisions, minute resolutions are not published in the Philippine Reports; the proviso of Section 4(3) of Article VIII speaks of a decision; indeed, as a rule, this Court lays down doctrines or principles of law which constitute binding precedent in a decision duly signed by the members of the Court and certified by the Chief Justice. (Eizmendi *vs*. Fernandez, G.R. No. 215280, Nov. 27, 2019) p. 638

— The binding nature of a minute resolution and its ability to establish a lasting judicial precedent have already been settled in *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue* where the Court explained that a minute resolution constitutes *res judicata* only insofar as it involves the same subject matter and the same issues concerning the same parties; however, if there are other parties and another subject matter even if they are the same parties and the same issues are involved, the minute resolution is not a binding precedent. (*Id*.)

Distinguished from interlocutory order — Final judgment is one that finally disposes of a case and leaves nothing more to be done by the court to it; once rendered, the task of the court to decide the controversy or determine the rights and liabilities of the parties comes to an end; on the other hand, an interlocutory order is one that does not finally dispose of an action as there are other matters that need to be done by the court; a final judgment is appealable while an interlocutory order is not. (Uematsu *vs*. Balinon, G.R. No. 234812, Nov. 25, 2019) p. 553

Immutability of judgments — The doctrine of finality of judgment or immutability of judgments provides that once a decision has acquired finality, it becomes immutable, unalterable, and may no longer be modified in any aspect, regardless if the modification is meant to correct erroneous factual and legal conclusions and if it

intent to circumvent the constitutional and statutory rights of employees. (Alaska Milk Corp. *vs*. Paez, G.R. No. 237277, Nov. 27, 2019) p. 778

— A contractor is engaged in labor only contracting where the same does not exercise control over the means and methods by which employees perform their work. (*Id*.)

— In *Garden of Memories Park and Life Plan, Inc., et al. v. NLRC, et al.,* the Court enumerated several factors that must be appraised in determining a contractor's legitimacy, thus: whether or not the contractor is carrying on an independent business; the nature and extent of the work; the skill required; the term and duration of the relationship; the right to assign the performance of specified pieces of work; the control and supervision of the work to another; the employer's power with respect to the hiring, firing and payment of the contractors workers; the control of the premises; the duty to supply premises, tools, appliances, materials and labor; and the mode, manner and terms of payment. (*Id*.)

— Regular employees may only be terminated for just or authorized cause; this applies in cases of labor-only contracting, where the law creates an employer-employee relationship between the principal and the employees of the purported contractor. (*Id*.)

— The failure of the contractors to register in accordance with the rules merely gives rise to a presumption of labor-only contracting, but the same is not conclusive as to their status as contractors, for in distinguishing between permissible job contracting and prohibited labor-only contracting, the totality of the facts and the surrounding circumstances of the case are to be considered, each case to be determined by its own facts, and all the features of the relationship assessed. (*Id*.)

LOCAL GOVERNMENT CODE OF 1991

Appropriations — As stated in Section 336 of the LGC, the general rule is that funds shall be available exclusively for the specific purpose for which they have been

prove entitlement to attorney's fees in labor cases refer to the unjustified withholding of lawful wages; malice or bad faith on the part of the employer in withholding the wages need not be shown. (*Id*.)

— In *Sameer*, this Court struck down the phrase "or for three (3) months for every year of the unexpired term, whichever is less" under Section 7 of R.A. No. 10022 because the same phrase was already declared unconstitutional in R.A. No. 8042 or the Migrant Workers and Overseas Filipinos Act of 1995; petitioner is, thus, entitled to "his salaries for the unexpired portion of his employment contract" the operative clause of Section 7. (*Id*.)

MODES OF DISCOVERY

Depositions — It is important to be reminded that the right to take a deposition, whether in a form of oral or written interrogatories, has limitations; the Rules of Court expressly provides for limitations to a deposition when the examination is being conducted in bad faith or in such a manner as to annoy, embarrass, or oppress the person subject to the inquiry; depositions are also limited when the inquiry touches upon the irrelevant or encroaches upon the recognized domain of privilege. (BDO Strategic Holdings, Inc. *vs*. Asia Amalgamated Holdings Corp., G.R. No. 217360, Nov. 13, 2019) p. 249

— It is true that depositions are legal instruments consistent with the principle of promoting the just, speedy and inexpensive disposition of every action or proceeding; they are designated to facilitate the early disposition of cases and expedite the wheels of justice; hence, the use of discovery is highly encouraged. (*Id*.)

— The grounds for disallowing a written interrogatory are not restricted to those expressly mentioned under the Rules of Court and existing jurisprudence; it must also be emphasized that the court's exercise of such discretion will not be set aside in the absence of abuse, or unless the court's disposition of matters of discovery was

PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Application of — The POEA-SEC should never be read in isolation with other laws such as the provisions of the Labor Code on disability and the AREC; otherwise, the disability rating of the seafarer will be completely at the mercy of the company-designated physician, without redress, should the latter fail or refuse to give one; it must be emphasized that the POEA--SEC is not the only contract between the parties that governs the determination of the disability compensation due the seafarer. (Abundo *vs*. Magsaysay Maritime Corp., G.R. No. 222348, Nov. 20, 2019) p. 334

—— The referral to a third doctor is mandatory, and that the seafarer's failure to abide thereby is a breach of the POEA-SEC which makes the assessment of the company-designated physician final and binding; however, our jurisprudence is replete with cases which pronounce that before a seafarer should be compelled to initiate referral to a third doctor, there must first be a final and categorical assessment made by the company-designated physician as to the seafarer's disability within 120/240-day period. (*Id*.)

—— There is no question that the referral to a third doctor as provided in Section 20(A)(3) of the POEA-SEC is mandatory in case there are disagreements made by the company-designated physician and the seafarer's chosen physician as to the seafarer's medical condition. (*Id*.)

PRESUMPTIONS

Presumption of regularity in the performance of official duties — Even if We presume that our law enforcers performed their assigned duties beyond reproach, the Court cannot allow the presumption of regularity in the conduct of police duty to overthrow the presumption of innocence of the accused in the absence of proof beyond reasonable doubt. (People *vs*. Luminda *y* Edto, G.R. No. 229661, Nov. 20, 2019) p. 378

of that superiority which his sex and the weapon used in the act afforded him, and from which the woman was unable to defend herself. (People *vs.* Enojo, G.R. No. 240231, Nov. 27, 2019) p. 835

Employing means to weaken the defense — In determining whether the qualifying circumstance of employing means to weaken the defense is present in this case the Court shall be guided by the same standard in determining the presence of abuse of superior strength, *i.e.*, "notorious inequality of forces between the victim and the aggressor/s that is plainly and obviously advantageous to the aggressor's and purposely selected or taken advantage of to facilitate the commission of the crime." (People *vs.* Maron *y* Emplona, G.R. No. 232339, Nov. 20, 2019) p. 400

Treachery — In order for treachery to qualify murder, the following elements must be established: (1) the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or to retaliate; and (2) said means, methods or forms of execution were deliberately or consciously adopted by the assailant. (People *vs.* Maron *y* Emplona, G.R. No. 232339, Nov. 20, 2019) p. 400

–– The killing of a child is characterized by treachery even if the manner of the assault is not shown in the information, as the weakness of the victim due to his tender age results in the absence of any danger to the accused. (People *vs.* Enojo, G.R. No. 240231, Nov. 27, 2019) p. 835

–– There is no treachery even if the accused's attack on the victim was sudden, where the suddenness is not preconceived and deliberately adopted, but is just triggered by a sudden infuriation on the part of the accused as a result of a provocative act of the victim, or when the killing is done at the spur of the moment. (*Id.*)

RAPE

is either a parent (whether legitimate, illegitimate or adopted), [ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent] of the victim; the minority of the victim and his or her relationship with the offender should both be alleged in the Information and proven beyond reasonable doubt during trial in order to qualify the rape charge as these circumstances have the effect of altering the nature of the rape and its corresponding penalty. (People *vs*. De Guzman, G.R. No. 224212, Nov. 27, 2019) p. 670

REALTY INSTALLMENT BUYER ACT (R.A. NO. 6552)

Application of — In *Orbe v. Filinvest Land, Inc*., the Court emphasized that "at least two years of installments" means the "equivalent of the totality of payments diligently or consistently made throughout a period of two (2) years." (Sps. Francisco *vs*. Battung, G.R. No. 212740, Nov. 13, 2019) p. 225

RES JUDICATA

Principle of — The doctrine of *res judicata* provides that "a final judgment or decree on the merits by a court of competent jurisdiction of the rights of the parties is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in the former suit"; said final judgment becomes conclusive as to the rights of the parties and their privies and serves as an absolute bar to subsequent actions involving the same claim, demand, or cause of action. (Sps. Francisco *vs*. Battung, G.R. No. 212740, Nov. 13, 2019) p. 225

2004 RULES ON NOTARIAL PRACTICE

Notarization — Notarization converts a private document into a public document, making it admissible in evidence without further proof of its authenticity; a notarized document is, by law, entitled to full faith and credit upon its face; it is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his notarial duties; otherwise, the

under Section 5 (b) of R.A. No. 7610" with the imposable penalty of *reclusion temporal* in its medium period to *reclusion perpetua*, but it should not make any reference to the provisions of the RPC; it is only when the victim of the sexual assault is 18 years old and above, and not demented, that the crime should be called as "Sexual Assault under paragraph 2, Article 266-A of the RPC" with the imposable penalty of *prision mayor*. (People *vs*. XXX, G.R. No. 233661. Nov. 6, 2019) p. 71

— Section 5(b) of R.A. No. 7610 imposes the penalty of *reclusion temporal* medium when the victim of lascivious conduct is under twelve (12) years of age; since the aggravating circumstance of relationship was correctly applied, the penalty should be imposed in its maximum period; we then divide *reclusion temporal* medium to three equal periods to get its maximum; for purposes of applying the Indeterminate Sentence Law, the maximum term should be within the range of the maximum period of imposable penalty; while the penalty was provided by a special law, its technical nomenclature was taken from the RPC; thus, the determination of the indeterminate sentence should be based on the rules applied for offenses punishable under the RPC. (*Id*.)

— The imposable penalty for lascivious conduct under Section 5(b) of R.A. No. 7610 is *reclusion temporal* medium to *reclusion perpetua*. (*Id*.)

Sexual abuse — The elements of sexual abuse under Section 5(1) of R.A. No. 7610 are: (1) offender is a man; (2) indulges in sexual intercourse with a female child exploited in prostitution or other sexual abuse, who is 12 years old or below 18 or above 18 under special circumstances; and (3) coercion or influence of any adult, syndicate or group is employed against the child to become a prostitute. (People *vs*. ABC, G.R. No. 219170, Nov. 13, 2019) p. 257

STATUTES

Interpretation of — It is a settled rule that adoption statutes, being humane and salutary, should be liberally construed

TAXATION

Prescriptive period — The Court squarely addressed the issue of which prescriptive period shall apply to a claim for tax refund of erroneously paid/remitted tax on interest income, whether the two (2)-year prescriptive period under Section 229 of the Tax Reform Act of 1997 or the six (6)-year prescriptive period for actions based on *solutio indebiti* under Article 1145 of the Civil Code; the Court therein applied the two (2)-year prescriptive period under the Tax Reform Act of 1997, which is mandatory regardless of any supervening cause that may rise after payment and categorically declared that *solutio indebiti* was inapplicable. (Commissioner of Internal Revenue *vs*. San Miguel Corp., G.R. No. 180740, Nov. 11, 2019) p. 94

Tax Reform Act of 1997 — It is worthy to stress that as for the judicial claim, the tax law even explicitly provides that it be filed within two (2) years from payment of the tax "regardless of any supervening cause that may arise after payment"; for excise tax on domestic products in general, the return is filed and the excise tax is paid by the manufacturer or producer before removal of the products from the place of production. (Commissioner of Internal Revenue *vs*. San Miguel Corp., G.R. No. 180740, Nov. 11, 2019) p. 94

— Section 1 of RR No. 17-99, which imposed a twelve percent (12%) increase on specific tax rates on distilled spirits, wines, fermented liquors, and cigars and cigarettes packed by machine pursuant to R.A. No. 8240, with the qualification "that the new specific tax rate for any existing brand of cigars, cigarettes packed by machine, distilled spirits, wines and fermented liquors shall not be lower than the excise tax that is actually being paid prior to January 1, 2000"; Section 143 of the Tax Reform Act of 1997 on fermented liquor, just like Section 145 of the same Act on cigars and cigarette, provides that the specific tax rates on the taxable product shall be increased by twelve percent (12%) on January 1, 2000; and that the excise tax from any brand of the taxable product within

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