PHILIPPINE REPORTS

VOL. 867

NOVEMBER 28, 2019 TO DECEMBER 11, 2019

VOLUME 867

REPORTS ON CASES

DECIDED BY THE

SUPREME COURT

OF THE

PHILIPPINES

FOR THE PERIOD

NOVEMBER 28, 2019 - DECEMBER 11, 2019

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2023

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

FLOYD JONATHAN LIGOT TELAN
SC ASSISTANT CHIEF OF OFFICE

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

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

LEUWELYN TECSON-LAT
COURT ATTORNEY V

ROSALYN ORDINARIO GUMANGAN
COURT ATTORNEY V

FLORDELIZA DELA CRUZ-EVANGELISTA
COURT ATTORNEY V

FREDERICK INTE ANCIANO
COURT ATTORNEY IV

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

LORELEI SANTOS BAUTISTA
COURT ATTORNEY IV

ROUSE STEPHEN G. CEBREROS
COURT ATTORNEY IV

SARAH FAYE Q. BABOR
COURT ATTORNEY IV

GERARD PALIZA SARINO
COURT ATTORNEY II

SUPREME COURT OF THE PHILIPPINES
(as of March 2023)

HON. ALEXANDER G. GESMUNDO, Chief Justice
HON. MARVIC MARIO VICTOR F. LEONEN, Senior Associate Justice
HON. ALFREDO BENJAMIN S. CAGUIOA, Associate Justice
HON. RAMON PAUL L. HERNANDO, Associate Justice
HON. AMY C. LAZARO-JAVIER, Associate Justice
HON. HENRI JEAN PAUL B. INTING, Associate Justice
HON. RODIL V. ZALAMEDA, Associate Justice
HON. MARIO V. LOPEZ, Associate Justice
HON. SAMUEL H. GAERLAN, Associate Justice
HON. RICARDO R. ROSARIO, Associate Justice
HON. JHOSEP Y. LOPEZ, Associate Justice
HON. JAPAR B. DIMAAMPAO, Associate Justice
HON. JOSE MIDAS P. MARQUEZ, Associate Justice
HON. ANTONIO T. KHO, Associate Justice
HON. MARIA FILOMENA D. SINGH, Associate Justice

SUPREME COURT OF THE PHILIPPINES
(as of November-December 2019)

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

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

FIRST DIVISION

Chairperson

Hon. Diosdado M. Peralta

Members

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

Division Clerk of Court

Atty. Librada C. Buena

SECOND DIVISION

Chairperson

Hon. Estela M. Perlas-Bernabe

Members

Hon. Andres B. Reyes
Hon. Ramon Paul L. Hernando
Hon. Henri Jean Paul B. Inting

Division Clerk of Court

Atty. Ma. Lourdes C. Perfecto

THIRD DIVISION

Chairperson

Hon. Marvic Mario Victor F. Leonen

Members

Hon. Alexander G. Gesmundo
Hon. Rosmari D. Carandang
Hon. Rodil V. Zalameda

Division Clerk of Court

Atty. Wilfredo Y. Lapitan

PHILIPPINE REPORTS
CONTENTS

PHILIPPINE REPORTS

Page

Page

Page

Page

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[A.C. No. 9252. November 28, 2019]

EXECUTIVE JUDGE ELOIDA R. DE LEON-DIAZ, Regional Trial Court, Branch 58, Lucena City, *complainant, vs.* **ATTY. RONALDO ANTONIO V. CALAYAN,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY AND LAWYER'S OATH; CRITICISMS AGAINST ERRING MAGISTRATES SHALL BE BONA FIDE AND SHALL NOT SPILL OVER THE WALLS OF DECENCY AND PROPRIETY; CASE AT BAR. — After a judicious review of the instant case, we adopt the findings of the Investigating Commissioner, affirmed by the BOG, that Atty. Calayan must be held administratively liable for his infractions, in violation of the Code of Professional Responsibility (*CPR*) and the Lawyer's Oath, specifically, Canon 8; Rule 10.03, Canon 10; and Rule 12.04, Canon 12 of the CPR. x x x In his defense, Atty. Calayan argued that he was not violating any rule in filing his complaints and that he was, in fact, even encouraged by the Court in *Almacen* to raise any criticism against erring magistrates. But the contention hardly absolves Atty. Calayan of his indiscretions. It may be true that based on *Almacen*, the decisions of courts and judges are always subject to scrutiny and the right of lawyers to expose the formers' errors and inconsistencies. But it was never the intention of *Almacen* to grant these lawyers, such as Atty. Calayan, an unbridled right

to disregard all respect towards the magistrates and to file any and all kinds of pleadings, motions, and complaints as they please. Accordingly, Almacen cautioned all members of the Bar: But it is the cardinal condition of all such criticism that it shall be bona fide, and shall not spill over the walls of decency and propriety. A wide chasm exists between fair criticism, on the one hand, and abuse and slander of courts and the judges thereof, on the other. Intemperate and unfair criticism is a gross violation of the duty of respect to courts. It is such a misconduct that subjects a lawyer to disciplinary action. x x x [W]e agree with the Investigating Commissioner in finding that there was indeed a demonstration of a rebellious, disruptive, and boisterous attitude from Atty. Calayan. Contrary to his claims, his rampant filing of pleading after pleading, most of which were eventually dismissed or rejected for being unsubstantiated by any convincing proof, can hardly support his claims of good faith. It is well to remember that justice is what the facts and the law dictate, and not that which a lawyer wants it to be. As such, he does not possess the right to attack the judgment of a court merely for being adverse to his position.

2. ID.; ID.; PRACTICE OF LAW; IMBUED WITH PUBLIC INTEREST AND THAT A LAWYER OWES SUBSTANTIAL DUTIES NOT ONLY TO HIS CLIENT, BUT ALSO TO HIS BRETHREN IN THE PROFESSION, TO THE COURTS, AND TO THE PUBLIC; MEMBERSHIP IN THE BAR IS A PRIVILEGE BURDENED WITH CONDITIONS. — Time and again, the Court has repeatedly emphasized that the practice of law is imbued with public interest and that a lawyer owes substantial duties not only to his client, but also to his brethren in the profession, to the courts, and to the public, and takes part in the administration of justice, one of the most important functions of the State, as an officer of the court. Accordingly, lawyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity, and fair dealing. Settled is the principle that the practice of law is not a right, but a privilege bestowed by the State on those who show that they possess, and continue to possess, the qualifications required by law for the conferment of such privilege: Membership in the bar is a privilege burdened with conditions. A high sense of morality, honesty, and fair dealing is expected and required of a member of the bar. The nature of the office of a lawyer requires that he shall be of good moral character. This qualification is not only a

condition precedent to the admission to the legal profession, but its continued possession is essential to maintain one's good standing in the profession.

APPEARANCES OF COUNSEL

Delloro Espino & Saulog Law Office for respondent.

D E C I S I O N

PERALTA, *C.J.*:

Before the Court is a Letter[1] dated October 19, 2009 sent by complainant Executive Judge Eloida R. De Leon-Diaz, Regional Trial Court (*RTC*), Branch 58, Lucena City, to the Court Administrator which the Court, in its Resolution[2] dated November 21, 2011, considered as a Formal Complaint against respondent Atty. Ronaldo Antonio V. Calayan relative to his alleged misconduct in the handling of his cases before the different branches of the Lucena City trial courts.

The antecedent facts are as follows:

In her letter, Judge Diaz informed the Court of the agreement arrived at by all incumbent judges at the raffle of cases held on September 14, 2009, requesting that all cases involving respondent Atty. Calayan and his family, whether newly-filed or not, and which at that time already totaled fifteen (15), be transferred to another venue to maintain the dignity and respectability of the court. According to her, the cases involving the Calayan family have been likened to the "Sword of Damocles" over the heads of the judges and some lawyers involved due to Atty. Calayan's persistent demands for them to inhibit either by motion or by filing administrative cases against them. What was constant, moreover, was that the judges have been harassed by Atty. Calayan one way or another through the relentless filing of unnecessary pleadings "almost every day." For this reason, no judge from the jurisdiction would want to sit in any

[1] *Rollo*, pp. 5-6.

[2] *Id.* at 4.

of the cases which have already undergone numerous re-raffles and unsuccessful mediation efforts.[3]

At the heart of this controversy is an intra-corporate dispute docketed as Civil Case No. 2007-10 filed by Atty. Calayan's siblings and mother against him, his wife, and daughter that sought to revert into a stock corporation, as well as to place the family business, Calayan Educational Foundation, Inc. (*CEFI*), of which Atty. Calayan was the President and Chairman of the Board of Trustees, under a receivership. The case was originally presided by Judge Adolfo Encomienda who appointed a receiver to take over the corporation but who voluntarily inhibited himself after Atty. Calayan filed a Motion to Recuse against him. The case was eventually raffled to Judge Virgilio Alpajora who ordered the creation of a management committee, but who also voluntarily inhibited himself on account of Atty. Calayan's filing of an administrative case against him. Said administrative case was dismissed but Judge Alpajora's counter-complaint was converted into an administrative case against Atty. Calayan.[4]

Meanwhile, in a Resolution[5] dated November 21, 2011, the Court resolved that the letter of Judge Diaz be considered as another formal complaint against Atty. Calayan with respect to his alleged misconduct arising from the intra-corporate controversy. In her Position Paper[6] dated September 7, 2012, Judge Diaz emphasized Atty. Calayan's indiscretions and disrespect towards the court. As of the date of said Position Paper, Judge Diaz pointed out that Atty. Calayan had already filed the following: (1) two (2) petitions before the Court of Appeals (*CA*) challenging her letter; (2) an administrative complaint against her; (3) an administrative complaint against Judge Alpajora; (4) an administrative complaint against Judge Rafael R. Lagos; (5) an administrative complaint against Judge Guillermo Andaya; and (6) an administrative complaint against

---

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

[4] *Alpajora v. Calayan*, A.C. No. 8208, January 10, 2018, 850 SCRA 99.

[5] *Supra* note 2.

[6] *Rollo*, pp. 137-149.

Atty. Vincent Robles. She further drew attention to the fact that during the pendency of the action on her letter, Atty. Calayan sent her an advanced copy of the administrative complaint he filed against her. To her, this may be likened to a threat to the court and her person. In the end, she maintained that it was quite strange for a lawyer to file endless complaints against the judges handling his case and, at the same time, claim that he is seeking a speedy disposition of the same.

For his part, Atty. Calayan explained that the underlying factor that spurred his alleged relentless filing of purported unnecessary pleadings was the placing of CEFI, of which he was the President and Chairman, under an onerous receivership in 2007 as initiated by his mother and siblings. According to him, the negative impression created by the presence of a receiver resulted in the suffering by CEFI of a substantial decrease in enrollment, and demoralization of its faculty and employees. Moreover, the order requiring CEFI to pay the receiver ₱50,000.00 per month only imposed an unnecessary burden considering that the company still had loans to pay. It was in his consequent desire to save CEFI from further damage that Atty. Calayan implored the aid of the courts through the filing of motions and pleadings. But he asserts that these pleadings were far from being violative of any rule nor were they prohibited. As such, Atty. Calayan sought the indulgence of the Court, claiming that he never intended on harassing any judge or party-litigant with his actions. In support of his stance, he cited the doctrine enunciated in *In the Matter of the Proceedings for Disciplinary Action Against Atty. Almacen, et al. v. Yaptinchay (Almacen)*[7] that encourages a lawyer's criticism of erring magistrates. At any rate, Atty. Calayan asserts the mootness of the instant complaint against him in view of the fact that the cases had already been transferred to the courts of Makati City and that his motion for reconsideration had already been denied. In the end, he genuinely apologized for his overzealousness, explaining that his was an extraordinary predicament for CEFI was the only legacy left of his family. He hopes that the Court understands why he could not help but lose objectivity and

[7] 142 Phil. 353 (1970).

become emotional in pursuing the present cases which involve not just strangers, but members of his family.[8]

In a Report and Recommendation[9] dated September 28, 2012, the Investigating Commissioner of the Commission on Bar Discipline of the Integrated Bar of the Philippines (*IBP*) recommended that Atty. Calayan be meted with a penalty of Censure with a warning that a similar infraction will merit a stiffer penalty.

In a Resolution[10] dated March 21, 2013, the Board of Governors (*BOG*) of the IBP approved, with modification, the Report and Recommendation of the Investigating Commissioner suspending Atty. Calayan from the practice of law for a period of three (3) months. Subsequently, in another Resolution[11] dated March 22, 2014, the BOG denied Atty. Calayan's Motion for Reconsideration there being no cogent reason to reverse the previous findings.

The Court's Ruling

After a judicious review of the instant case, we adopt the findings of the Investigating Commissioner, affirmed by the BOG, that Atty. Calayan must be held administratively liable for his infractions, in violation of the Code of Professional Responsibility (*CPR*) and the Lawyer's Oath, specifically, Canon 8; Rule 10.03, Canon 10; and Rule 12.04, Canon 12 of the CPR which provide as follows:

> CANON 8 - A lawyer shall conduct himself with courtesy, fairness and candor towards his professional colleagues, and shall avoid harassing tactics against opposing counsel.
>
> x x x x x x x x x
>
> CANON 10 - A lawyer owes candor, fairness and good faith to the Court.

---

[8] *Rollo*, pp. 15-22.

[9] *Id.* at 27-31.

[10] *Id.* at 277-278.

[11] *Id.* at 276-276A.

x x x x x x x x x

Rule 10.03 - A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

x x x x x x x x x

CANON 12 - A lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.

x x x x x x x x x

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

Here, Atty. Calayan never denied the fact that he engaged in an indiscriminate filing of pleadings, motions, and civil, criminal and even administrative cases against several trial court judges, lawyers, and members of his family. He did not deny initiating complaint after complaint not only against the adverse parties to the controversy, but even their respective counsels who were merely doing their duty to represent their clients. Neither did he deny instituting administrative complaints against all those judges who handled his cases, as well as countless manifestations and motions before them. As Judge Diaz put it, he relentlessly filed cases against her and her fellow judges and unnecessary pleadings "almost every day," to the point that no judge from the Lucena City trial court wanted to have anything to do with a case involving Atty. Calayan. Against Judge Diaz alone, Atty. Calayan filed two (2) petitions before the CA, challenging her letter, as well as an administrative complaint, sending her an advanced copy thereof. It seemed as though he spared no judge from his complaints and, in the case of Judge Alpajora, the Investigating Commissioner observed that Atty. Calayan made sure that the same would turn out agonizing for him by filing the case just a few months before his retirement in January 2009. As expected, the case had delayed the approval of Judge Alpajora's retirement benefits.[12]

As earlier alluded to, the administrative case against Judge Alpajora was dismissed, but his counter-complaint was converted

---

[12] *Id.* at 30.

into an administrative case against Atty. Calayan, in *Alpajora v. Calayan*.[13] There, Atty. Calayan's propensity in filing cases was likewise revealed in that before the case was transferred to Judge Alpajora's *sala*, Atty. Calayan had already filed thirteen (13) civil and special actions before the RTC of Lucena City, while eighteen (18) repetitious pleadings were subsequently filed before his *sala*. But Atty. Calayan did not stop there. Against his opposing counsels and their respective clients, he filed nine (9) criminal charges and four (4) administrative cases. As the Court observed in *Alpajora*, these acts manifested Atty. Calayan's malice in effectively paralyzing not only the magistrates from their administration of justice, but even these lawyers from exerting their utmost effort in protecting their clients' interest.

In his defense, Atty. Calayan argued that he was not violating any rule in filing his complaints and that he was, in fact, even encouraged by the Court in *Almacen* to raise any criticism against erring magistrates. But the contention hardly absolves Atty. Calayan of his indiscretions. It may be true that based on *Almacen*, the decisions of courts and judges are always subject to scrutiny and the right of lawyers to expose the formers' errors and inconsistencies. But it was never the intention of *Almacen* to grant these lawyers, such as Atty. Calayan, an unbridled right to disregard all respect towards the magistrates and to file any and all kinds of pleadings, motions, and complaints as they please. Accordingly, *Almacen* cautioned all members of the Bar:

> But it is the cardinal condition of all such criticism that it shall be bona fide, and shall not spill over the walls of decency and propriety. A wide chasm exists between fair criticism, on the one hand, and abuse and slander of courts and the judges thereof, on the other. Intemperate and unfair criticism is a gross violation of the duty of respect to courts. It is such a misconduct that subjects a lawyer to disciplinary action.
>
> For, membership in the Bar imposes upon a person obligations and duties which are not mere flux and ferment. His investiture into

[13] *Supra* note 4.

the legal profession places upon his shoulders no burden more basic, more exacting and more imperative than that of respectful behavior toward the courts. He vows solemnly to conduct himself "with all good fidelity ... to the courts"; and the Rules of Court constantly remind him "to observe and maintain the respect due to courts of justice and judicial officers." The first canon of legal ethics enjoins him "to maintain towards the courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance."[14] (Citations omitted)

On the basis of the foregoing, we agree with the Investigating Commissioner in finding that there was indeed a demonstration of a rebellious, disruptive, and boisterous attitude from Atty. Calayan. Contrary to his claims, his rampant filing of pleading after pleading, most of which were eventually dismissed or rejected for being unsubstantiated by any convincing proof, can hardly support his claims of good faith. It is well to remember that justice is what the facts and the law dictate, and not that which a lawyer wants it to be. As such, he does not possess the right to attack the judgment of a court merely for being adverse to his position.[15] To the Court, Atty. Calayan grossly abused his right to recourse to the courts when he filed series of actions essentially involving the same subject matter or substantially an identical relief. As duly observed by Judge Diaz, it is rather inconsistent for a lawyer to file endless complaints against the judges handling his case and, at the same time, claim that he is seeking a speedy disposition thereof.

Time and again, the Court has repeatedly emphasized that the practice of law is imbued with public interest and that a lawyer owes substantial duties not only to his client, but also to his brethren in the profession, to the courts, and to the public, and takes part in the administration of justice, one of the most important functions of the State, as an officer of the court. Accordingly, lawyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity, and fair dealing. Settled is the principle that the practice

---

[14] *In the Matter of the Proceedings for Disciplinary Action Against Atty. Almacen, et al. v. Yaptinchay*, *supra* note 7, at 371.

[15] *Rollo*, pp. 30-31.

of law is not a right, but a privilege bestowed by the State on those who show that they possess, and continue to possess, the qualifications required by law for the conferment of such privilege: Membership in the bar is a privilege burdened with conditions. A high sense of morality, honesty, and fair dealing is expected and required of a member of the bar. The nature of the office of a lawyer requires that he shall be of good moral character. This qualification is not only a condition precedent to the admission to the legal profession, but its continued possession is essential to maintain one's good standing in the profession.[16]

Notwithstanding the discussion above, however, the Court refrains from imposing another penalty on Atty. Calayan in light of our recent ruling involving essentially the same parties in *Alpajora v. Calayan*.[17] In said case, the Court had already suspended Atty. Calayan from the practice of law for two (2) years, with a stern warning that a repetition of the same or a similar offense will warrant the imposition of a more severe penalty. This penalty was for the same conduct he exhibited towards his opposing counsels and judges handling the same intra-corporate dispute involving him and his family.

In *Leyrit, et al. v. Solas*,[18] the Court similarly abstained from imposing a separate penalty on respondent therein, Nicolasito Solas, the Clerk of Court of the Municipal Trial Court in Cities (*MTCC*) of Iloilo City, for his same act of notarizing sworn applications for Mayor's and business permits, affidavits, and other private or commercial documents, which had no relation to his office as MTCC Clerk of Court. We elucidated:

> It must be noted that then MTCC Executive Judge Jose R. Astorga had also filed on 5 July 1996 an administrative complaint against respondent for various irregularities in the latter's performance of his duties as Clerk of Court of the MTCC, Iloilo City, including notarizing private documents not related to his official functions. Executive Judge Astorga's administrative complaint was docketed as A.M. No. P-01-1484. On 17 July 2001, the Court rendered its

---

[16] *Michelle Yap v. Atty. Grace C. Buri*, A.C. No. 11156, March 19, 2018.

[17] *Supra* note 4.

[18] 619 Phil. 668 (2009).

Decision in A.M. No. P-01-1484 finding respondent guilty of abuse of authority and imposing upon him a fine of Five Thousand Pesos (₱5,000.00) with a warning that a repetition of the same or a similar act in the future will be dealt with more severely.

Since the documents that respondent notarized in abuse of his authority as a notary public ex officio in A.M. No. P-01-1484 and the present administrative complaints appear to be the same, and respondent has already been penalized for such notarial services rendered in excess of his authority, the imposition of another penalty upon him for exactly the same charge is inappropriate, as it will constitute double penalty.[19]

Applying the aforequoted pronouncement to the case before us, we accordingly rule that while we agree with the findings of the Investigating Commissioner and the BOG that Atty. Calayan is guilty of violating the CPR and the Lawyer's Oath, he cannot be made to suffer a penalty separate and distinct from that imposed in *Alpajora v. Calayan*[20] for the same will effectively constitute double penalty.

WHEREFORE, the Court **ADOPTS** and **APPROVES**, with **MODIFICATION**, the Resolutions of the Board of Governors of the Integrated Bar of the Philippines dated March 21, 2013 and March 22, 2014. Thus, Atty. Ronaldo Antonio V. Calayan is hereby **STERNLY WARNED** that a similar misconduct in the future shall be dealt with more severely.

Let a copy of this Decision be furnished the Office of the Bar Confidant and the Integrated Bar of the Philippines for their information and guidance. The Court Administrator is directed to circulate this Decision to all courts in the country.

SO ORDERED.

Reyes, J. Jr., Carandang,[*] *Lazaro-Javier*, and *Inting*,[**] *JJ.*, concur.

---

[19] *Id.* at 681-682.

[20] *Supra* note 4.

[*] Designated as additional member, in lieu of Associate Justice Alfredo Benjamin S. Caguioa, per Special Order No. 2734 dated November 8, 2019.

[**] Designated as additional member per Special Order No. 2726 dated October 25, 2019.

FIRST DIVISION

[A.C. No. 10540. November 28, 2019]
(Formerly CBD Case No. 07-2105)

SPOUSES ELMER and MILA SORIANO, *complainants, vs.* **ATTY. GERVACIO B. ORTIZ, JR. and ATTY. ROBERTO B. ARCA,** *respondents.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; NOTARIES PUBLIC; SHOULD NOT NOTARIZE DOCUMENTS UNLESS THE PERSON WHO SIGNED THE SAME IS THE VERY PERSON WHO EXECUTED AND PERSONALLY APPEARED BEFORE HIM TO ATTEST TO THE CONTENTS AND THE TRUTH OF WHAT ARE STATED THEREIN; CASE AT BAR. — [I]n *Agbulos v. Atty. Viray*, the Court suspended Atty. Viray from the practice of law for one (1) year and disqualified him from being commissioned as notary public for a period of two (2) years for notarizing a document without ascertaining the identity of the affiant and merely relying on the assurance of his client and the presentation of a CTC despite the requirement of the rules on the presentation of competent evidence of identity such as an identification card with photograph and signature. The Court therein ruled that with this indiscretion, Viray failed to ascertain the genuineness of the affiant's signature which turned out to be a forgery. Thus, in *Agbulos*, we pronounced: To be sure, a notary public should not notarize a document unless the person who signed the same is the very same person who executed and personally appeared before him to attest to the contents and the truth of what are stated therein. Without the appearance of the person who actually executed the document in question, the notary public would be unable to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act or deed. x x x Applying the foregoing pronouncements to the instant case, the Court finds the recommendations of the Investigating Commissioner and BOG to be well taken. We remain unconvinced by the excuses interposed by Arca who, in his Answer to the Complaint, essentially relied on the presumption that he performed his duties according to law. In his Petition, moreover,

Arca no longer denied the accusations against him and simply sought the Court's compassion for a lesser penalty. But to recall, Arca notarized the subject documents on the mere presentation of CTCs secured from the City of Manila when the Spouses Soriano are residents of Molino, Cavite. In addition, it has not escaped the Court's attention that Arca negligently notarized not just one mortgage on March 8, 2006 for ₱60,000.00 but two mortgages, the second one on May 8, 2006 for an additional ₱200,000.00. As such, we cannot grant Arca's request for the mitigation of his penalty in light of applicable case law that dictate otherwise.

2. ID.; ID.; ID.; A NOTARIZED DOCUMENT IS ENTITLED TO FULL FAITH AND CREDIT UPON ITS FACE, HENCE A NOTARY PUBLIC MUST OBSERVE WITH UTMOST CARE THE BASIC REQUIREMENTS IN THE PERFORMANCE OF HIS DUTIES. — Indeed, notarization is not an empty, meaningless routinary act but one invested with substantive public interest. The notarization by a notary public 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 duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined.

APPEARANCES OF COUNSEL

Dominica Llera-Agno for complainants.

D E C I S I O N

PERALTA, *C.J.*:

Before the Court is a Complaint[1] filed by complainants, the spouses Elmer and Mila Soriano (*the Spouses Soriano*), on October 23, 2007 against respondents, Atty. Gervacio B. Ortiz, Jr. and Atty. Roberto B. Arca, for allegedly notarizing

[1] *Rollo*, pp. 2-5.

documents without the presence of the complainants in violation of the Notarial Law.

The antecedent facts are as follows:

In their complaint, the Spouses Soriano alleged that they are the registered owners of a parcel of land located at Barrio Bagbagan, City of Muntinlupa, covered by Transfer Certificate of Title (*TCT*) No. 162098. According to them, they intended on selling the property, to one of their sisters. In order to assess the amount of tax that will be due from such sale, Marciana Reyes, sister of complainant Mila Soriano, entrusted the owner's copy of the title to a certain Susan Manito sometime in February 2006. But the title and other pertinent documents were never returned to Reyes. Subsequently, Reyes came to know from persons close to a certain Gaila Montero that the title was mortgaged to the latter in the amount of ₱260,000.00. At first, Reyes was afraid to tell the Spouses Soriano about her discovery, but when she could no longer solve the problem herself, she had no choice but to inform them of the same. The Spouses Soriano immediately went to the house of Montero, introduced themselves to her, and tried to secure a copy of the alleged mortgage contract. Montero told them to come back the next day. Upon their return, the Spouses Soriano were surprised to be confronted by persons claiming to be from the Criminal Investigation and Detection Group (*CIDG*) who wanted to take them to Camp Crame, Quezon City but they refused to go.[2]

Instead, the Spouses Soriano went to the Register of Deeds (*RD*) of Muntinlupa City where they discovered that a Deed of Mortgage dated March 8, 2006 was registered and annotated at the back of their title under Entry No. 64418. Based on said deed, they appear to be the mortgagors of the subject property covering a loan obtained from Montero in the amount of ₱60,000.00. They, however, assail the authenticity of the Deed of Mortgage. They deny the signatures appearing thereon for being clearly different from their actual signatures. They also deny having appeared before the notary public listed thereon

[2] *Id.* at 2-3.

in the persons of respondents Ortiz and Arca. Neither have they authorized any other person to mortgage the subject property on their behalf. According to the Spouses Soriano, moreover, the Community Tax Certificates (*CTC*) indicated in the deed do not belong to them for in the acknowledgment portion thereof, it was stated that their certificates were secured from the City of Manila when they are residents of Molino, Cavite.[3]

On August 16, 2006, the Spouses Soriano went back to the RD of Muntinlupa City and to their surprise, a new annotation appeared on their title. This time, a document entitled Supplemental to the Deed of Mortgage was registered under Entry No. 64467 and was notarized by respondent Arca. In the said document, it again appears that the Spouses Soriano secured an additional ₱200,000.00 from Montero using the same title as collateral. As with the first annotation, the Spouses Soriano deny having mortgaged the subject property to Montero for an additional loan, having signed the said Supplemental, and having appeared before respondent Arca.[4] Consequently, they filed a civil case for the recovery of the owner's duplicate copy of TCT and nullification of mortgages. They also caused the annotation of the Notice of *Lis Pendens* on the title under Entry No. 64808 and inscribed on August 29, 2006.[5]

By way of defense, respondent Ortiz denied having prepared and notarized the Deed of Mortgage between the Spouses Soriano and Montero. He also maintained that the parties never appeared before him on March 8, 2006. According to Ortiz, he was conferred a notarial commission in Manila for two (2) years beginning on the year 2004 and ending on December 31, 2005. In the early part of 2005, however, Ortiz received information that his signature was being forged. For this reason, he made a written request to the Executive Judge of Manila for the pre-termination of his notarial commission, which was granted on June 4, 2005. Thus, for all legal intents and purposes, his notarial commission for the City of Manila

---

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

[4] *Id.* at 4.

[5] *Id.* at 4-5.

ended on June 4, 2005. Ortiz, subsequently, applied for another notarial commission, this time, at the City of Makati which was granted from June 21, 2005 to December 31, 2006. From this, it is clear that on March 8, 2006, the date of the execution of the Deed of Mortgage, Ortiz was no longer commissioned as notary public in the City of Manila.[6]

For his part, respondent Arca did not deny notarizing the subject documents and even admitted the same. Instead, he refuted the claims of the Spouses Soriano that they never appeared before him and that the signatures on the documents do not belong to them. For Arca, these claims are self-serving and must not be sustained. He also maintained that since the Spouses Soriano sought the revocation of the mortgages, they cannot thereafter assert the nullity thereof since revocation implies that the mortgages are valid. Finally, Arca insisted that it is the Executive Judge and not the Commission on Bar Discipline that has jurisdiction over the case, because the Spouses Soriano were seeking to discipline him as a notary public and not as a lawyer.[7]

In a Report[8] dated September 21, 2010, the Investigating Commissioner of the Commission on Bar Discipline (*CBD*) of the Integrated Bar of the Philippines (*IBP*) recommended that the complaint against respondent Ortiz be dismissed for insufficiency of evidence. But with respect to respondent Arca, it was recommended that he be suspended from the practice of law for a period of one (1) year, that his notarial commission be revoked, and that he be disqualified from reappointment as notary public for a period of two (2) years.[9]

In a Resolution[10] dated December 29, 2012, the Board of Governors (*BOG*) of the IBP approved, with modification, the

---

[6] *Id.* at 80-83.

[7] *Id.* at 26-41.

[8] *Id.* at 372-388.

[9] *Id.* at 388.

[10] *Id.* at 370-371.

Report and Recommendation of the Investigating Commissioner. With respect to respondent Ortiz, the BOG dismissed the complaint against him. With respect to respondent Arca, the BOG resolved to suspend him from the practice of law for a period of six (6) months, revoke his notarial commission, if commissioned, and disqualify him from reappointment as notary public for a period of two (2) years.

In another Resolution[11] dated March 22, 2014, however, the BOG affirmed, with modification, its earlier resolution, and reverted back to the recommendation of the Investigating Commissioner. Thus, with respect to respondent Ortiz, the BOG resolved to dismiss the complaint against him. With respect to respondent Arca, the BOG resolved to suspend him from the practice of law for a period of one (1) year, revoke his notarial commission, if commissioned, and disqualify him from reappointment as notary public for a period of two (2) years.

In his Petition for Review, respondent Arca questions why the BOG, after modifying the recommendation of the Investigating Commissioner to suspend him from the practice of law from one (1) year to six (6) months, reverted back to the one (1) year-suspension that the Investigating Commissioner originally recommended without citing any reason for its change of mind. Ultimately, Arca seeks the Court's compassion considering that the instant case is his first offense. Citing several jurisprudential teachings, he claims that the penalty of suspension from the practice of law for a period of one (1) year and disqualification from reappointment as notary public for a period of two (2) years is inappropriate since his omission relates to his actuations as notary public and not as a lawyer. Instead, he believes that the penalty of suspension from the practice of law for a period of three (3) months and disqualification from reappointment as notary public for a period of three (3) years is more in line with his infraction.[12]

---

[11] *Id.* at 369.

[12] *Id.* at 400-415.

The Court's Ruling

In view of the circumstances of the instant case, the Court finds no cogent reason to reverse the findings of the BOG.

With respect to respondent Ortiz, the Court sustains the dismissal of the complaint against him for insufficiency of evidence. As the Investigating Commissioner found, it appears that Ortiz had no participation in the execution of the questioned documents as he immediately sought the pre-termination of his notarial commission upon his discovery of forgery. He exercised earnest efforts to protect the sanctity of his notarized documents. Indeed, the fact remains that on the date of the execution of the Deed of Mortgage, Ortiz was no longer commissioned as notary public in the City of Manila.

As for respondent Arca, the Court likewise sustains the BOG's resolution to suspend him from the practice of law for a period of one (1) year, revoke his notarial commission, if commissioned, and disqualify him from reappointment as notary public for a period of two (2) years. In his petition, Arca argues that the case of *Tabas v. Atty. Mangibin*[13] used by the Investigating Commissioner as basis for his penalty is inapplicable to his case. Instead, he contends that what should govern are Our rulings in *Soriano v. Atty. Basco*[14] where we merely imposed the penalty of disqualification from being commissioned as notary public and *Father Aquino v. Atty. Pascua*[15] where we imposed a lighter penalty of suspension from the practice of law for a period of three (3) months.

The contention is devoid of merit.

In *Soriano*, Atty. Basco was disqualified from being commissioned as notary public for a period of one (1) year for his failure to enter in his notarial register pertinent information relating to a Deed of Sale he had notarized as well as his failure

---

[13] 466 Phil. 296 (2004).

[14] 507 Phil. 410 (2005).

[15] 564 Phil. 1 (2007).

to send a copy of the document to the clerk of court. The Court therein ruled that these formalities are mandatory and cannot simply be neglected.[16]

In *Aquino*, Atty. Pascua was suspended from the practice of law for a period of three (3) months and revoked his notarial commission for his failure to make the proper entry in this notarial register. While Pascua claims that the omission was unintentional due to the oversight of his staff, the Court held that "his failure to enter into his notarial register the documents that he admittedly notarized is a dereliction of duty on his part as a notary public and he is bound by the acts of his staff."[17] The Court, nonetheless, took into consideration the fact that the omission was Pascua's first offense. Thus, a three (3)-month suspension was imposed.

The aforementioned pronouncements, however, cannot find application in the present case. Instead, we agree with the Investigating Commission and hold that the doctrine enunciated in *Tabas* is more appropriate. There, the Court suspended Atty. Mangibin from the practice of law for a period of one (1) year and disqualified him from being commissioned as notary public for a period of two (2) years for notarizing a document without ascertaining their identities. In particular, he notarized a document upon the request of a certain person claiming to be a mortgagee which discharged a piece of real property from a mortgage attached thereto. It turns out, however, that she was not the real mortgagee of the property and because of his recklessness, the mortgagor was able to mortgage the property again, this time, in her favor. The Court found that Mangibin should have requested other forms of identification from the false mortgagee who merely presented her CTC, considering the ease with which CTCs may be obtained and the gravity of the effects of his notarization. Because of his carelessness, Mangibin merely took the word of the false mortgagee and failed to notice the glaring difference in the signature of the real

---

[16] *Soriano v. Atty. Basco, supra* note 14, at 414.

[17] *Father Aquino v. Atty. Pascua, supra* note 15, at 4.

mortgagee in the deed of real estate mortgage from her purported signature in the questioned discharge of real estate mortgage.[18]

Similarly, in *Agbulos v. Atty. Viray*,[19] the Court suspended Atty. Viray from the practice of law for one (1) year and disqualified him from being commissioned as notary public for a period of two (2) years for notarizing a document without ascertaining the identity of the affiant and merely relying on the assurance of his client and the presentation of a CTC despite the requirement of the rules on the presentation of competent evidence of identity such as an identification card with photograph and signature. The Court therein ruled that with this indiscretion, Viray failed to ascertain the genuineness of the affiant's signature which turned out to be a forgery.[20] Thus, in *Agbulos*, we pronounced:

> To be sure, a notary public should not notarize a document unless the person who signed the same is the very same person who executed and personally appeared before him to attest to the contents and the truth of what are stated therein. Without the appearance of the person who actually executed the document in question, the notary public would be unable to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act or deed.
>
> x x x x x x x x x
>
> Respondent's failure to perform his duty as a notary public resulted not only damage to those directly affected by the notarized document but also in undermining the integrity of a notary public and in degrading the function of notarization. He should, thus, be held liable for such negligence not only as a notary public but also as a lawyer. The responsibility to faithfully observe and respect the legal solemnity of the oath in an acknowledgment or *jurat* is more pronounced when the notary public is a lawyer because of his solemn oath under the Code of Professional Responsibility to obey the laws and to do no falsehood or consent to the doing of any. Lawyers commissioned as

---

[18] *Tabas v. Atty. Mangibin, supra* note 13, at 304.

[19] 704 Phil. 1 (2013).

[20] *Id.* at 7.

notaries public are mandated to discharge with fidelity the duties of their offices, such duties being dictated by public policy and impressed with public interest.[21]

Applying the foregoing pronouncements to the instant case, the Court finds the recommendations of the Investigating Commissioner and BOG to be well taken. We remain unconvinced by the excuses interposed by Arca who, in his Answer to the Complaint, essentially relied on the presumption that he performed his duties according to law. In his Petition, moreover, Arca no longer denied the accusations against him and simply sought the Court's compassion for a lesser penalty. But to recall, Arca notarized the subject documents on the mere presentation of CTCs secured from the City of Manila when the Spouses Soriano are residents of Molino, Cavite. In addition, it has not escaped the Court's attention that Arca negligently notarized not just one mortgage on March 8, 2006 for ₱60,000.00 but two mortgages, the second one on May 8, 2006 for an additional ₱200,000.00. As such, we cannot grant Arca's request for the mitigation of his penalty in light of applicable case law that dictate otherwise.

Thus, in view of the foregoing, the Court finds the penalty of suspension from the practice of law for a period of one (1) year, revocation of notarial commission, if commissioned, and disqualification from reappointment as notary public for a period of two (2) year is in line with existing jurisprudence.[22] Indeed, notarization is not an empty, meaningless routinary act but one invested with substantive public interest. The notarization by a notary public 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

---

[21] *Id.* at 7-9.

[22] *Id.* at 9, citing *Isenhardt v. Atty. Real*, 682 Phil. 19, 27 (2012); *Atty. Linco v. Atty. Lacebal*, 675 Phil. 160, 168 (2011); *Lanuzo v. Atty. Bongon*, 587 Phil. 658, 662 (2008).

requirements in the performance of his duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined.[23]

WHEREFORE, with respect to respondent Atty. Gervacio B. Ortiz, Jr., Court resolves to **DISMISS** the complaint against him for insufficiency of evidence. With respect to respondent Atty. Roberto B. Arca, however, the Court finds him **GUILTY** of breach of the 2004 Rules on Notarial Practice and the Code of Professional Responsibility. Accordingly, the Court **SUSPENDS** him from the practice of law for one (1) year; **REVOKES** his incumbent commission, if any; and **PROHIBITS** him from being commissioned as a notary public for two (2) years, effective immediately. He is also **WARNED** that a repetition of the same or similar act in the future shall be dealt with more severely.

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 and be it entered into respondent Roberto B. Arca's personal record.

SO ORDERED.

Reyes, J. Jr., *Carandang*,[*] *Lazaro-Javier*, and *Inting*,[**] *JJ.*, concur.

---

[23] *Id.* at 8.

[*] Additional member in lieu of Associate Justice Alfredo Benjamin S. Caguioa, Special Order No. 2734 dated November 8, 2019.

[**] Additional member per Special Order No. 2726 dated October 25, 2019.

FIRST DIVISION

[A.M. No. P-11-2968. November 28, 2019]
(Formerly OCA I.P.I. No. 10-3535-P)

SOLOMON SON, *complainant, vs.* **ROLANDO C. LEYVA, Sheriff IV, Regional Trial Court, Branch 74, Antipolo City, Rizal,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; SHERIFFS; GROSS NEGLECT OF DUTY AND GROSS INCOMPETENCE IN THE PERFORMANCE OF OFFICIAL DUTIES; PATENT VIOLATION OF THE PROCEDURE IN THE EXECUTION OF JUDGMENT FOR MONEY BY A SHERIFF, A CASE OF. — Records show that respondent failed to follow the procedures laid down under Section 9, Rule 39 of the Rules of Court for the proper implementation of the writ of execution and Section 11, Rule 13 of the same rules for the proper service of notices x x x. Respondent, therefore, is liable for gross neglect of duty and gross incompetence in the performance of his official duties. x x x The rule commands that the executing officer shall enforce the judgments for money in this order: First, the officer must demand from the judgment obligor to pay in cash the judgment obligation; Second, if the judgment obligor fails to pay in cash, the officer shall proceed to levy on the personal properties of the judgment obligor; and Third, if there are no personal properties, the officer shall then levy on the real properties of the judgment obligor. Here, respondent did not attempt to demand from BMC or complainant Son for payment of the judgment obligation nor levy on BMC's personal properties. Instead, respondent immediately sent BMC and its counsel on record, Atty. Isagani Rizon, copies of the notice of levy, writ of execution and Order, respectively. Albeit, they were all returned to sender. Respondent, nonetheless, claims that it was futile to demand a cash payment from BMC allegedly because its address was unknown. In fact, the notices he sent were allegedly all returned to sender. Nothing here, however, justifies respondent's patent violation of the procedure in the execution of judgment for money. This only shows that

respondent directly sent notice of levy, instead of demanding for cash payment first.

2. ID.; ID.; ID.; ID.; WHEN WRITS ARE PLACED IN THE HANDS OF SHERIFFS, IT IS THEIR MINISTERIAL DUTY TO PROCEED TO EXECUTE THEM IN ACCORDANCE WITH THE RULES. — Well-settled is the rule that when writs are placed in the hands of sheriffs, it is their ministerial duty to proceed to execute them in accordance with the rules. A purely ministerial act or duty is one which an officer or tribunal performs in the context of a given set of facts, in a prescribed manner and without regard to the exercise of his own judgment upon the propriety or impropriety of the act done. Where a requirement is made in explicit and unambiguous terms, no discretion is left to the sheriff – he must see to it that its mandate is obeyed.

3. REMEDIAL LAW; CIVIL PROCEDURE; FILING AND SERVICE OF PLEADINGS, JUDGMENTS AND OTHER PAPERS; SERVICE OF NOTICES SHALL EITHER BE DONE PERSONALLY OR BY REGISTERED MAIL AND A PARTY WHO RESORTS TO SERVICE THROUGH PRIVATE COURIER SHOULD HAVE JUSTIFIABLE REASON AND SHOULD EXPLAIN WHY PROPER MODES OF SERVICES WERE NOT AVAILED OF. — Even respondent's service of the notices was also improper. Under Section 5 of Rule 13 of the Revised Rules of Court, service of notices shall either be done personally or by registered mail. Here, aside from failing to demand cash payment first from BMC, respondent also erroneously served the notices through LBC without any explanation why personal service or service by registered mail was not made in violation of Sections 8 and 11, Rule 13 of the Rules of Court x x x. Respondent failed to explain why he served the notice of levy through LBC, a private courier. A party who resorts to service through private courier should have justifiable reason and should explain why proper modes of services were not availed of. As it was, respondent failed to provide justification for his resort to service via private courier. Both the Investigating Judge and the OCA, thus, correctly observed that respondent did not exert diligent efforts to locate BMC's new address. Had respondent resorted to personal service, he could have easily located complainant and BMC's new address because it is just beside their previous office address. The

requirement of notice is based on the rudiments of justice and fair play. It frowns upon arbitrariness and oppressive conduct in the execution of an otherwise legitimate act. It is an amplification of the provision that every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith. An immediate enforcement of a writ does not mean the abdication of the notification requirement.

4. ID.; ID.; EXECUTION OF JUDGMENTS; EXECUTION OF JUDGMENTS FOR MONEY; SATISFACTION BY LEVY; THE EXECUTING OFFICER IS DUTY-BOUND TO DETERMINE THE VALUE OF THE PROPERTY BEING LEVIED TO DETERMINE IF IT IS SUFFICIENT TO SATISFY THE MONEY JUDGMENT AND LAWFUL FEES. — [E]ven granting that levy can be made directly on BMC's real property, the sheriff is mandated to sell only such portion of the personal or real property of the judgment obligor sufficient to satisfy the judgment and lawful fees. Here, the judgment debt was only ₱765,159.55, while the property levied upon had a fair market value of ₱19,890,000.00. Undeniably, respondent made an excessive levy on the property in question. On this score, respondent cannot negate liability by simply asserting that he did not have any authority to even ascertain how much the property actually cost. x x x Evidently, the executing officer is duty-bound to determine the value of the property being levied to determine if it is sufficient to satisfy the money judgment and lawful fees.

5. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; SHERIFFS; CANNOT JUST UNILATERALLY AND WHIMSICALLY CHOOSE HOW TO ENFORCE THE WRIT WITHOUT OBSERVING THE PROPER PROCEDURAL STEPS LAID DOWN BY THE RULES, OTHERWISE, IT WOULD AMOUNT TO GROSS NEGLECT OF DUTY. — [R]espondent committed illegal procedural shortcuts in the enforcement of the writ of execution. A sheriff cannot just unilaterally and whimsically choose how to enforce the writ without observing the proper procedural steps laid down by the rules, otherwise, it would amount to gross neglect of duty. Gross neglect of duty or gross negligence "refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation

where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property." It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable.

6. ID.; ID.; ID.; ID.; MUST DISCHARGE THEIR DUTIES WITH DUE CARE AND UTMOST DILIGENCE BECAUSE IN SERVING THE COURT'S WRITS AND PROCESSES AND IN IMPLEMENTING THE ORDERS OF THE COURT, THEY CANNOT AFFORD TO ERR WITHOUT AFFECTING THE EFFICIENCY OF THE ENFORCEMENT PROCESS OF THE ADMINISTRATION OF JUSTICE. — [R]espondent exhibited arrogance, if not incompetence in the performance of his official duties. Sheriffs and deputy sheriffs, as officers of the Court and, therefore, agents of the law, must discharge their duties with due care and utmost diligence because in serving the court's writs and processes and in implementing the orders of the court, they cannot afford to err without affecting the efficiency of the enforcement process of the administration of justice. With due acknowledgment of the vital role they play in the administration of justice, sheriffs should realize that they are frontline officials of whom much is expected by the public. Charged with the execution of decisions in cases involving the interest of litigants, they have the duty to uphold the majesty of the law as embodied in those decisions.

7. ID.; ID.; ID.; EVERY PUBLIC OFFICER IS BOUND TO USE REASONABLE SKILL AND DILIGENCE IN THE PERFORMANCE OF HIS OFFICIAL DUTIES, PARTICULARLY WHERE RIGHTS OF INDIVIDUALS MAY BE JEOPARDIZED BY HIS NEGLECT. — [P]ublic officers, as recipients of public trust, are under obligation to perform the duties of their offices honestly, faithfully and to the best of their ability. As trustees for the public, they should demonstrate courtesy and civility in their official actuations with the public. Every public officer is bound to use reasonable skill and diligence in the performance of his official duties, particularly where rights of individuals may be jeopardized by his neglect. In sum, ***he is bound*** *virtute offici,* ***to bring to the***

discharge of his duties that prudence, caution and attention which careful men usually exercise in the management of their own affairs.

8. ID.; ID.; ID.; SHERIFFS; GROSS NEGLECT OF DUTY AND GROSS INCOMPETENCE IN THE PERFORMANCE OF OFFICIAL DUTIES; PENALTY; IN THE DETERMINATION OF THE PENALTIES TO BE IMPOSED, MITIGATING AND/OR AGGRAVATING CIRCUMSTANCES ATTENDANT TO THE COMMISSION OF THE OFFENSE SHALL BE CONSIDERED. — Respondent committed two (2) offenses: a) gross neglect of duty; and b) gross incompetence in the performance of official duties. The OCA recommended the penalty of suspension from the service for six (6) months without pay. Canon IV, Section 6 of the Code of Conduct for Court Personnel provides that court personnel shall expeditiously enforce rules and implement orders of the court within the limits of their authority. Gross Neglect of Duty is punishable under paragraph (A), Section 50, Rule 10 of the 2017 Rules on Administrative Cases in the Civil Service with dismissal. While inefficiency and incompetence in the performance of official duties is punishable with suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal from service for the second offense. The Court had in certain instances dismissed government employees found guilty of gross neglect of duty in the performance of official duties x x x. Section 48, Rule 10 of the Revised Rules on Administrative Cases in Civil Service (RRACCS) provides that in the determination of the penalties to be imposed, mitigating and/or aggravating circumstances attendant to the commission of the offense shall be considered. The following shall be considered, *viz*: a. Physical illness; b. Good faith; c. Malice; d. Time and place of offense; e. Taking undue advantage of official position; f. Taking advantage of subordinate; g. Undue disclosure of confidential information; h. Use of government property in the commission of the offense; i. Habituality; j. Offense is committed during office hours and within the premises of the office or building; k. Employment of fraudulent means to commit or conceal the offense; l. ***First offense***; m. Education; n. ***Length of service***; or o. Other analogous circumstances. Notably, respondent sheriff has been in the service for more than twenty (20) years. He is about to reach the mandatory retirement age as manifested in his several motions for early resolution. Also, respondent is a

> first-time offender. Thus, imposition of his dismissal from service would be too harsh. While the Court is duty-bound to sternly wield a corrective hand to discipline its errant employees and to weed out those who are undesirable, the Court also has the discretion to temper the harshness of its judgment with mercy. x x x On humanitarian and equitable considerations here, *i.e.*, respondent's advanced age, and, in view of the mitigating circumstances of: a) being a first-time offender, and b) respondent's considerable length of government service, we adopt the OCA's recommendation to impose the penalty of suspension from the service for six (6) months and one (1) day without pay.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This is an administrative complaint[1] filed by Solomon Son (Son), Finance and Operations Manager of Baclaran Marketing Corporation (BMC), charging respondent Rolando C. Leyva, Branch Sheriff of Regional Trial Court (RTC) Branch 74, Antipolo City with grave misconduct, gross neglect of duty, dishonesty, gross ignorance of the law, and conduct prejudicial to the best interest of the service for levying and selling at public auction BMC's property to satisfy the money judgment against BMC amounting to ₱765,159.55 in Civil Case No. 1218-A. At the time of auction, the property had an assessed value of ₱33,395,000.00[2] and market value of ₱19,890,000.00.

Antecedents

In his Letter Complaint[3] dated October 28, 2010, Son essentially alleged:

---

[1] Letter Complaint dated October 28, 2010, *rollo*, p. 1.

[2] As of April 2008.

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

In Civil Case No. 1218-A, entitled "*Mamerto Sibulo, Jr. vs. Ricardo Mendoza and Baclaran Marketing Inc.*," for damages, the RTC Br. 74, Antipolo City, Rizal ruled in favor of BMC and dismissed the complaint against it. The complaint arose from a vehicular collision between Sibulo's car and BMC's truck.[4]

Aggrieved, Sibulo appealed to the Court of Appeals (CA) under CA-G.R. CV No. 17936, sans notice to BMC. Fifteen (15) years later or on May 9, 2005, the CA reversed the RTC through its Decision[5] dated May 9, 2005. Since BMC and Son were unaware of the said appeal, the aforesaid decision became final. Thereafter, a Writ of Execution[6] dated January 16, 2006 and Order dated February 23, 2006 ordering the levy of BMC's real properties, was issued.[7]

Without demanding cash payment from BMC or proceeding against its personal properties first, respondent, on April 17, 2006 immediately sold on public auction BMC's real property under TCT No. 34587. The money judgment against BMC amounted to ₱765,159.55. Subject property is a prime property located along Quirino Avenue, Parañaque City. It had an assessed value of ₱33,395,000.00 as of April 2008 and market value of ₱19,890,000.00 at the time of the auction. Clearly, there was an excessive levy in violation of Section 9, Rule 39 of the Rules of Court.

Respondent thus violated: (1) Section 15(d), Rule 39 of the Rules of Court which requires written notice of sale to the judgment obligor at least three (3) days before the sale; (2) Section 9(b), Rule 39 in relation to Section 7 (a), Rule 57 of the same rules when he failed to leave a copy of the order, together with the description of the property and notice that was attached, with the occupants of the property; and (3) Section 14, Rule 39

---

[4] *Id.* at 535.

[5] *Id.* at 14-28.

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

[7] *Id.* at 535-536.

of the Rules of Court when he did not make a return to the court immediately after the property was auctioned on April 17, 2006. He only submitted his Sheriff's Report on January 17, 2007 or more than nine (9) months after the auction sale was completed. Yet, he peremptorily issued the Certificate of Sale on the day of the auction sale itself.[8]

In his Comment[9] dated January 5, 2011, respondent denied the charges. He countered that he simply performed his ministerial duty of implementing the Writ of Execution dated January 16, 2006 and the Order dated February 23, 2006.

He separately served BMC and its counsel of record, Atty. Isagani Rizon, copies of the notice of levy, writ of execution, and the February 23, 2006 Order on March 13, 2006 and March 21, 2006, respectively. But these notices were both returned unserved with corresponding notations "Baclaran Marketing does not exist" and "CNEE moved out as per S/G Tiquio."

He also sent both BMC and Atty. Rizon copies of the Notice of Sheriff's Sale at their respective addresses. These were also returned unserved with notation "returned to sender, moved."

On March 24, 2006, respondent received the certificate of posting, followed by the affidavit of publication and issues of the Truth Seekers News all pertaining to the notice of sheriff's sale. Only then did he proceed with the auction sale of the property. On April 21, 2006, he sent copies of the Certificate of Sale to BMC and Atty. Rizon. But the same were again returned to sender with corresponding notations "no such company" and "returned to sender, unclaimed." He, nonetheless, submitted his Sheriff's Report informing the court of the full satisfaction of the writ of execution and order.

At any rate, BMC was at fault when it failed to inform the court of its new address. BMC could not have expected him to serve on it a formal demand to pay in cash or to locate its personal properties when its address was in fact unknown. It was beyond

---

[8] *Id*. at 537.

[9] *Id*. at 88-92.

his authority to determine if BMC was still conducting business on the levied property or that the levied property was in fact worth much more than BMC's obligation.[10]

In his Reply, complainant averred that respondent failed to exert all efforts to locate BMC's new office. In fact, its new office was just beside its former office. Respondent was duty-bound to determine the property's value to assess if it is sufficient to satisfy the judgment award.[11]

In his Rejoinder, respondent reiterated his arguments.

On June 16, 2011, the Office of the Court Administrator (OCA) recommended that the Letter Complaint be re-docketed as a regular administrative matter against respondent.[12]

In a Resolution dated August 17, 2011, the Court directed the parties to manifest if they were willing to submit the case for resolution on the basis of the pleadings filed. In his Manifestation dated November 16, 2011, complainant requested a formal hearing. Respondent, on the other hand, manifested that he was willing to have the instant case submitted for resolution on the basis of the pleadings submitted.[13]

On April 4, 2013, the OCA recommended to grant complainant's request for a formal hearing and referred the case to the Executive Judge of the RTC of Antipolo City, for investigation, report, and recommendation.

The Report and Recommendation of the Investigating Judge[14]

In its Report dated May 23, 2014,[15] the Investigating Judge found that there was substantial evidence to hold respondent

---

[10] *Id*. at 537-538.

[11] *Id*. at 538-539.

[12] *Id*. at 323.

[13] *Id*. at 539 and 653.

[14] *Id*. at 648-657.

[15] *Id*. at 7-10.

liable for: 1) failing to make a formal demand for payment of the judgment debt and computation of lawful fees; 2) levying on BMC's real property ahead of its available personal properties; and 3) excessively levying BMC's property.

The Investigating Judge found that respondent violated the procedure outlined in Section 9, Rule 39 of the Rules of Court. Respondent failed to demand payment of the monetary judgment from BMC before proceeding with the levy itself. He also failed to levy on BMC's personal properties first before proceeding against the subject real property. Hence, the levy thereon was premature. A sheriff who failed to limit the properties to be levied to the amount called for in the writ is guilty of misconduct,[16] *viz*:

> Thus, the administrative charges against respondent Sheriff [were] proven and [have] more than sufficient basis for disciplinary action. In fact, in the hearing of this case before the OCA, the recommendation is to find respondent Leyva GUILTY of Gross Neglect of Duty, who should be meted the penalty of six (6) months and one (1) day suspension without pay.
>
> RECOMMENDATION:
>
> In view of the foregoing attendant facts, this Office adopts the recommended penalty of your Honorable Division[17] with addition of a fine of Ten Thousand (₱10,000.00) Pesos with a stern warning that a repetition of the same or similar acts would be dealt with more severely.[18]

The Report and Recommendation of the Office of the Court Administrator (OCA)[19]

The OCA found respondent guilty of gross neglect of duty for failure to follow the mandatory procedure in the execution

---

[16] *Id*. at 656-657; citing *Policarpio v. Fajardo*, 78 SCRA 2010 (1977).

[17] This refers to the OCA and its Memorandum dated June 16, 2011.

[18] *Rollo*, p. 657.

[19] Penned by Deputy Court Administrator Raul Bautista Villanueva; *rollo*, unnumbered page.

of a money judgment and for making an excessive levy on BMC's real property which had a fair market value of ₱19,890,000.00 as compared to the judgment debt in the amount of only ₱765,159.55. Thus, the OCA recommended:

> Rule 10, Section 47 (items 1, 2 and 4) of the Revised Rules of Administrative Cases in the Civil Service treats of the penalty of fine in place of suspension and never as an additional or accessory penalty in view of modifying circumstances. An educated though limited review of existing jurisprudence reveals that the penalty of a fine is not imposed in addition to another penalty such as suspension but rather in lieu thereof. Hence, this Office is of the view that the recommendation of the Investigating Judge that respondent Sheriff Leyva be fined in the amount of ₱10,000.00 (emphasis ours) in addition [to] the six (6) months and one day suspension is not in order.
>
> Recommendation: It is respectfully recommended for the consideration of this Honorable Court that respondent Rolando C. Leyva, Sheriff IV, Regional Trial Court, Branch 74, Antipolo City, Rizal be found GUILTY of gross neglect of duty and be meted the penalty of suspension for six (6) months and one (1) day without pay with a STERN WARNING that a repetition of the same or any similar act would be dealt with more severely.[20]

Ruling

The Court adopts the Report and Recommendation of the OCA.

Records show that respondent failed to follow the procedures laid down under Section 9, Rule 39 of the Rules of Court for the proper implementation of the writ of execution and Section 11, Rule 13 of the same rules for the proper service of notices as discussed by the Investigating Judge and the OCA. Respondent, therefore, is liable for gross neglect of duty and gross incompetence in the performance of his official duties.

First. Section 9, Rule 39 of the Revised Rules of Court prescribes the procedure for executing judgments for money, *viz.*:

---

[20] OCA Recommendation, April 25, 2015.

Section 9. *Execution of judgments for money, how enforced. —*

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

x x x x x x x x x

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

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

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

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

x x x x x x x x x

(Italics and emphasis supplied.)

The rule commands that the executing officer shall enforce the judgments for money in this order: First, the officer must demand from the judgment obligor to pay in cash the judgment obligation; Second, if the judgment obligor fails to pay in cash, the officer shall proceed to levy on the personal properties of the judgment obligor; and Third, if there are no personal properties, the officer shall then levy on the real properties of the judgment obligor.

Here, respondent did not attempt to demand from BMC or complainant Son for payment of the judgment obligation nor levy on BMC's personal properties. Instead, respondent immediately sent BMC and its counsel on record, Atty. Isagani Rizon, copies of the notice of levy, writ of execution and Order, respectively. Albeit, they were all returned to sender.

Respondent, nonetheless, claims that it was futile to demand a cash payment from BMC allegedly because its address was unknown. In fact, the notices he sent were allegedly all returned to sender. Nothing here, however, justifies respondent's patent violation of the procedure in the execution of judgment for money. This only shows that respondent directly sent notice of levy, instead of demanding for cash payment first.

Well-settled is the rule that when writs are placed in the hands of sheriffs, it is their ministerial duty to proceed to execute them in accordance with the rules. A purely ministerial act or duty is one which an officer or tribunal performs in the context of a given set of facts, in a prescribed manner and without regard to the exercise of his own judgment upon the propriety or impropriety of the act done. Where a requirement is made in explicit and unambiguous terms, no discretion is left to the sheriff – he must see to it that its mandate is obeyed.[21]

Second. Even respondent's service of the notices was also improper. Under Section 5[22] of Rule 13 of the Revised Rules

---

[21] *Teodosio v. Somosa, et al.*, 612 Phil. 858, 873 (2004).

[22] Section 5. Modes of service. — Service of pleadings motions, notices, orders, judgments and other papers shall be made either personally or by mail. (3a)

of Court, service of notices shall either be done personally[23] or by registered mail.[24] Here, aside from failing to demand cash payment first from BMC, respondent also erroneously served the notices through LBC without any explanation why personal service or service by registered mail was not made in violation of Sections 8 and 11, Rule 13 of the Rules of Court, *viz.*:

Section 8. *Substituted service.* — If service of pleadings, motions, notices, resolutions, orders and other papers cannot be made under the two preceding sections, the office and place of residence of the party or his counsel being unknown, service may be made by delivering the copy to the clerk of court, with proof of failure of both personal service and service by mail. The service is complete at the time of such delivery.

x x x x x x x x x

Section 11. *Priorities in modes of service and filing.* — Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed.

Respondent failed to explain why he served the notice of levy through LBC, a private courier. A party who resorts to service through private courier should have justifiable reason

---

[23] Section 6. Personal service. — Service of the papers may be made by delivering personally a copy to the party or his counsel, or by leaving it in his office with his clerk or with a person having charge thereof. If no person is found in his office, or his office is not known, or he has no office, then by leaving the copy, between the hours of eight in the morning and six in the evening, at the party's or counsel's residence, if known, with a person of sufficient age and discretion then residing therein. (4a)

[24] Section 7. Service by mail. — Service by registered mail shall be made by depositing the copy in the post office in a sealed envelope, plainly addressed to the party or his counsel at his office, if known, otherwise at his residence, if known, with postage fully prepaid, and with instructions to the postmaster to return the mail to the sender after ten (10) days if undelivered. If no registry service is available in the locality of either the senders or the addressee, service may be done by ordinary mail. (5a; Bar Matter No. 803, 17 February 1998).

and should explain why proper modes of services were not availed of.[25] As it was, respondent failed to provide justification for his resort to service via private courier. Both the Investigating Judge and the OCA, thus, correctly observed that respondent did not exert diligent efforts to locate BMC's new address. Had respondent resorted to personal service, he could have easily located complainant and BMC's new address because it is just beside their previous office address.

The requirement of notice is based on the rudiments of justice and fair play. It frowns upon arbitrariness and oppressive conduct in the execution of an otherwise legitimate act. It is an amplification of the provision that every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.[26] An immediate enforcement of a writ does not mean the abdication of the notification requirement.[27]

Finally, even granting that levy can be made directly on BMC's real property, the sheriff is mandated to sell only such portion of the personal or real property of the judgment obligor sufficient to satisfy the judgment and lawful fees.[28]

Here, the judgment debt was only ₱765,159.55, while the property levied upon had a fair market value of ₱19,890,000.00. Undeniably, respondent made an excessive levy on the property in question. On this score, respondent cannot negate liability by simply asserting that he did not have any authority to even ascertain how much the property actually cost. Paragraphs 2 and 3, item b, Section 9, Rule 39 of the Revised Rules of Court provides:

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

---

[25] *PNB Marketing v. Deang Marketing Corp., et al.*, 593 Phil. 703, 712-713 (2008).

[26] *Raymundo v. Calaguas*, 490 Phil. 320, 325 (2005).

[27] *Id.,* citing *Manuel v. Escalante*, 436 Phil. 10 (2002).

[28] RULES OF COURT, Rule 39, Sec. 9, Par. B.

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

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

Evidently, the executing officer is duty-bound to determine the value of the property being levied to determine if it is sufficient to satisfy the money judgment and lawful fees.

Hence, whichever way it goes, respondent committed illegal procedural shortcuts in the enforcement of the writ of execution. A sheriff cannot just unilaterally and whimsically choose how to enforce the writ without observing the proper procedural steps laid down by the rules, otherwise, it would amount to gross neglect of duty.

Gross neglect of duty or gross negligence "refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property." It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable.[29]

The OCA stressed that respondent has been a sheriff since 1987, his long years in the service should have equipped him already with the requisite knowledge in the execution of money judgments.[30] Despite the clear provisions of the law, respondent insists on the correctness of his action in directly levying on BMC's real property.

---

[29] *Office of the Ombudsman v. De Leon*, 705 Phil. 26, 37-38 (2013).

[30] *Rollo*, unnumbered page.

Undoubtedly, respondent exhibited arrogance, if not incompetence in the performance of his official duties.

Sheriffs and deputy sheriffs, as officers of the Court and, therefore, agents of the law, must discharge their duties with due care and utmost diligence because in serving the court's writs and processes and in implementing the orders of the court, they cannot afford to err without affecting the efficiency of the enforcement process of the administration of justice. With due acknowledgment of the vital role they play in the administration of justice, sheriffs should realize that they are frontline officials of whom much is expected by the public. Charged with the execution of decisions in cases involving the interest of litigants, they have the duty to uphold the majesty of the law as embodied in those decisions.[31]

Further, public officers, as recipients of public trust, are under obligation to perform the duties of their offices honestly, faithfully and to the best of their ability. As trustees for the public, they should demonstrate courtesy and civility in their official actuations with the public. Every public officer is bound to use reasonable skill and diligence in the performance of his official duties, particularly where rights of individuals may be jeopardized by his neglect. In sum, ***he is bound*** *virtute offici,* ***to bring to the discharge of his duties that prudence, caution and attention which careful men usually exercise in the management of their own affairs.***[32]

Penalty

Respondent committed two (2) offenses: a) gross neglect of duty; and b) gross incompetence in the performance of official duties.

The OCA recommended the penalty of suspension from the service for six (6) months without pay.

Canon IV, Section 6 of the Code of Conduct for Court Personnel provides that court personnel shall expeditiously

---

[31] *V.C. Ponce Co., Inc. v. Judge Eduarte*, 397 Phil. 498, 510 (2000).

[32] *Id*.

enforce rules and implement orders of the court within the limits of their authority.[33] Gross Neglect of Duty is punishable under paragraph (A), Section 50, Rule 10 of the 2017 Rules on Administrative Cases in the Civil Service with dismissal. While inefficiency and incompetence in the performance of official duties is punishable with suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal from service for the second offense.[34]

The Court had in certain instances dismissed government employees found guilty of gross neglect of duty in the performance of official duties, *viz.*:

In ***Roxas v. Sicat***,[35] the Court dismissed the respondent sheriff for gross neglect of duty and inefficiency in the performance of official duties and for misconduct due to the irregularities in the conduct of the auction sale and his circumvention of the established rule on motions.

In ***Araza v. Garcia, et al.***,[36] the Court dismissed respondent sheriff from the service for not strictly following the terms of the writ and failing to take actual physical possession of the hardware materials levied upon and leaving them in the custody of the judgment debtor.

On the other hand, Section 48, Rule 10 of the Revised Rules on Administrative Cases in Civil Service (RRACCS) provides that in the determination of the penalties to be imposed, mitigating and/or aggravating circumstances attendant to the commission of the offense shall be considered. The following shall be considered, *viz*:

a. Physical illness;
b. Good faith;

---

[33] CODE OF CONDUCT FOR COURT PERSONNEL, Canon IV, Section 6.

[34] RULES ON ADMINISTRATIVE CASES IN CIVIL SERVICE, Section 50, Rule 10, (2017).

[35] A.M. No. P-17-3639, January 23, 2018.

[36] 381 Phil. 808, 818 (2000).

c. Malice;
d. Time and place of offense;
e. Taking undue advantage of official position;
f. Taking advantage of subordinate;
g. Undue disclosure of confidential information;
h. Use of government property in the commission of the offense;
i. Habituality;
j. Offense is committed during office hours and within the premises of the office or building;
k. Employment of fraudulent means to commit or conceal the offense;
l. ***First offense***;
m. Education;
n. ***Length of service***; or
o. Other analogous circumstances.[37]

Notably, respondent sheriff has been in the service for more than twenty (20) years. He is about to reach the mandatory retirement age as manifested in his several motions for early resolution. Also, respondent is a first-time offender. Thus, imposition of his dismissal from service would be too harsh. While the Court is duty-bound to sternly wield a corrective hand to discipline its errant employees and to weed out those who are undesirable, the Court also has the discretion to temper the harshness of its judgment with mercy.[38]

In ***OCA v. Ret. Judge Chavez, et al.,***[39] the Court cited instances where the imposition of penalties have been tempered due to the presence of mitigating circumstances, *viz.*:

In *Judge Isidra A. Arganosa-Maniego v. Rogelio T Salinas*,[40] the Court suspended the respondent who was guilty of grave misconduct and dishonesty for a period of one (1) year without pay, taking into account the mitigating circumstances of: first offense, ten (10) years

---

[37] Italics and emphasis supplied.

[38] *OCA v. Ret. Judge Chavez, et al.*, 815 Phil. 41, 46 (2017).

[39] *Id*.

[40] 608 Phil. 334, 349 (2009).

in government service, acknowledgment of infractions and feeling of remorse, and restitution of the amount involved.

In *Alibsar Adoma v. Romeo Gatcheco and Eugenio Taguba*,[41] the Court suspended one of the respondents for one (1) year without pay, after finding him guilty of grave misconduct, dishonesty, and conduct prejudicial to the best interests of the service. The respondent was a first-time offender.

And, in *Horacio B. Apuyan, Jr. and Alexander O. Eugenio v. Alfredo G. Sta. Isabel*,[42] the Court imposed the same penalty of one (1)-year suspension without pay to the respondent who was a first-time offender of the offenses of grave misconduct, dishonesty, and conduct grossly prejudicial to the best interests of the service.[(Italics in the original, citations omitted.) As regards judges, in *Office of the Court Administrator v. Aguilar*,[43] we imposed the penalty of six months suspension instead of dismissal from service after taking into consideration the mitigating circumstances of dismissal of related criminal cases for lack of probable cause, good faith, respondent judge's strong credentials for appointment as judge, length of government service, first time offense, and remorse and promise to be more accurate and circumspect in future submissions before us.

In *Re: Petition for the Dismissal from Service and/or Disbarment of Judge Baltazar R. Dizon*,[44] the Court reconsidered our earlier Decision dismissing from service the respondent judge and lowered the penalty to suspension from February 23, 1988 until the date of promulgation of the Resolution on May 31, 1989 after considering the mitigating circumstances of length of government service, lack of corrupt motives, environmental difficulties such as overloaded docket, unceasing strain caused by hearings on complex cases and lack of libraries, decent courtrooms, office equipment, supplies and other facilities, and humble repentance.

In *Rubin, et al. v. Judge Corpus-Cabochan*,[45] the Court considered the mitigating circumstances of first offense in respondent judge's

---

[41] 489 Phil. 273, 282 (2005).

[42] 474 Phil. 1, 20 (2004).

[43] 666 Phil. 11, 29 (2011).

[44] A.C. No. 3086, May 31, 1989, 173 SCRA 719.

[45] 715 Phil. 318, 334-335 (2013).

almost twenty-three (23) years of government service, frail health, case load and candid admission of infraction in determining that the appropriate penalty to be imposed on respondent judge who was found guilty of gross inefficiency was admonition.

In *Fernandez v. Judge Vasquez*,[46] the Court appreciated the mitigating circumstances of unblemished judicial service and first offense in imposing the penalty of fine of ₱50,000 against respondent judge who was held guilty of dishonesty, an offense punishable with dismissal even on the first commission. The fine was imposed in lieu of suspension from office which can no longer be imposed due to respondent judge's retirement.

In *Perez v. Abiera*,[47] the Court imposed the penalty of fine equivalent to three-month salary of respondent judge, deductible from his retirement benefits, after appreciating the mitigating circumstances of length of service and poor health.

On humanitarian and equitable considerations here, *i.e.*, respondent's advanced age, and, in view of the mitigating circumstances of: a) being a first-time offender, and b) respondent's considerable length of government service, we adopt the OCA's recommendation to impose the penalty of suspension from the service for six (6) months and one (1) day without pay.

ACCORDINGLY, respondent Rolando C. Leyva, Sheriff IV of the Regional Trial Court-Branch 74, Antipolo City is found GUILTY of gross neglect of duty and gross incompetence in the performance of official duties. He is meted the penalty of **SUSPENSION** of six (6) months and one (1) day without pay with **STERN WARNING** that a repetition of the same or any similar act would be dealt with more severely.

SO ORDERED.

Peralta, C.J., Reyes, J. Jr., and *Inting,*[*] *JJ.,* concur.

Caguioa, J., on official leave.

---

[46] 669 Phil. 619, 638 (2011).

[47] A.C. No. 223-J, June 11, 1975, 64 SCRA 302.

[*] Additional member per Special Order No. 2726 dated October 25, 2019.

FIRST DIVISION

[A.M. No. P-14-3259. November 28, 2019]
(Formerly OCA IPI No. 14-4302-P)

COMPLAINT AGAINST EMILIANA A. LUMILANG, Court Interpreter III, Regional Trial Court, Branch 10, Malaybalay City, Bukidnon.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; LAW ON PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; AS OFFICERS OF THE COURT AND AGENTS OF THE LAW, THEY MUST DISCHARGE THEIR DUTIES WITH DUE CARE AND UTMOST DILIGENCE; CASE AT BAR. — The Constitution mandates all public officers and employees to serve with responsibility, integrity, and efficiency. For public office is a public trust. Those who work in the Judiciary must be examples of responsibility, competence, and efficiency. They must discharge their duties with due care and utmost diligence, since they are officers of the Court and agents of the law. Indeed, any conduct, act or omission on the part of those who would violate the norms of public accountability and diminish or even just tend to diminish the faith of the people in the Judiciary shall not be countenanced.

2. ID.; ID.; ID.; REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; GRAVE OFFENSES; INEFFICIENCY AND INCOMPETENCE IN THE PERFORMANCE OF OFFICIAL DUTIES; COMMITTED IN CASE AT BAR. — Here, respondent failed to meet the exacting standards required of a court employee. She hardly refutes the persistent accusation that she is careless, does not have a good command of the English language, and frequently erred in interpreting the testimonies given in open court by litigants and witnesses. Her bare assertions that her work requires her to respond spontaneously to the statements asked of her to translate; she merely translates what she hears; and she has been performing her duties with compassion and humility do not disprove her incompetence and inefficiency which are matters of record. On this score, respondent has not shown an honest to goodness effort to improve herself despite the lawyer's repeated complaints pertaining to

her inaccurate translations and even after she got an unsatisfactory performance rating for the semester January to June 2009 from the Branch Clerk of Court. Surely, the Court cannot countenance respondent's incompetence and inefficiency. For an erroneous interpretation of testimonies given in open court, no matter how innocent, is fatal as it could affect the outcome of the case: it can either put an innocent man in jail or let a guilty offender go scot-free. Section 46(B) of the Revised Rules on Administrative Cases in the Civil Service (RRACCS) classifies inefficiency and incompetence in the performance of official duties as a grave offense punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense, and dismissal from the service for the second offense. The same rule, however, grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty. Indeed, while we are duty-bound to sternly wield a corrective hand to discipline our errant employees and to weed out those who are undesirable, we also have the discretion to temper the harshness of its judgment with mercy. Considering that this is respondent's first infraction, the penalty of suspension from the service for three (3) months, as recommended by the OCA, will suffice.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case and the Proceedings Below

On October 7, 2008, the Office of the Court Administrator (OCA) received an anonymous complaint[1] charging respondent Emiliana A. Lumilang with incompetence and misconduct relative to the performance of her duties and functions as Court Interpreter III of the Regional Trial Court (RTC)-Branch 10, Malaybalay City, Bukidnon.

The complaint essentially alleged: Respondent cannot be relied upon to properly translate into English the testimonies of litigants and witnesses using the Visayan dialect as she has a very poor command of the English language. As a result, the

[1] *Rollo*, pp. 19-20, 33.

transcripts of stenographic notes (TSNs) bore the erroneously translated testimonies of the witnesses. On several occasions, the lawyers themselves had to interpret the testimonies of their respective witnesses from Visayan to English to get the record to reflect the correct testimonies. Respondent's grossly erroneous translations can put an innocent man in jail.

Respondent is also arrogant in the workplace. One time, a lawyer asked for a copy of the TSN to which respondent angrily responded, "I have a lot of work to do, I am fed up, I cannot do it anymore." Because of her incompetence and arrogant conduct, respondent should be immediately replaced by one who is qualified, kind, and competent on the job.[2]

In her Comment,[3] respondent countered, in the main: As Court Interpreter III, her task is to translate what she actually heard during hearings and not to transcribe stenographic notes. She has been faithfully, kindly and humbly performing her duties and responsibilities like preparing and attaching the minutes and certificates of arraignment to the corresponding case record.

On October 21, 2008, the OCA initially referred the case to Executive Judge Josefina G. Bacal for discreet investigation, report, and recommendation.[4] But it took Judge Bacal over two (2) years before she finally submitted her Report[5] on June 24, 2011. She recommended that the complaint be dismissed, giving credence to respondent's assertion that she could speak and write in English and preparing stenographic notes was not part of her job.

Finding the report insufficient, the OCA referred[6] the case to then Acting Executive Judge Dennis Z. Alcantar, RTC, Malaybalay City, Bukidnon, for a more thorough investigation.

---

[2] *Id.* at 19.

[3] *Id.* at 7 and 11.

[4] *Id.* at 3.

[5] *Id.* at 10.

[6] *Id.* at 21, 49.

Findings and Recommendation of Acting Executive Judge Alcantar

In his Report[7] dated September 25, 2012, Acting Executive Judge Alcantar recommended that respondent be held administratively liable for incompetence. Several interviews and conferences with court personnel and lawyers who appeared before RTC-Branch 10 invariably revealed respondent's incompetence in performing her job as court interpreter. Respondent has not been able to correctly, nay, accurately translate into English the statements and testimonies given in the Visayan dialect. To this, respondent failed to give a satisfactory explanation. As for her alleged arrogant reply to a lawyer's request for stenographic notes, this could no longer be ascertained as it happened way back in 2008.

Report and Recommendation of the OCA

The OCA, through Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Jenny Lind R. Aldecoa-Delorino, recommended[8] that the case be re-docketed as a regular administrative matter; that respondent be held liable for inefficiency and incompetence in the performance of official duties; and, thus, suspended for three (3) months without pay, effective immediately, with stern warning that a repetition of the same or similar offense shall be dealt with more severely.

The OCA found sufficient evidence of respondent's incompetence as court interpreter. Atty. Isidro Caracol (then President of the Integrated Bar of the Philippines-Bukidnon Chapter) and Atty. Iris Tumampos-Panganiban (Clerk of Court V, Branch 10, RTC-Malaybalay City, Bukidnon) attested to respondent's recklessness and repeated mistakes whenever she interprets the testimonies of litigants and witnesses. She has a poor command of the English language. In fact, respondent was given an "Unsatisfactory" rating for the semester January

---

[7] *Id.* at 51-53.

[8] Dated June 9, 2014.

to June 2009 by the Clerk of Court[9] and had been informed of her deficiency by the lawyers who have pending cases before Branch 10, RTC-Malaybalay City. Despite this, respondent failed to show any improvement in the performance of her duties.[10]

As for respondent's purportedly arrogant and impolite response to a request for TSN by a local lawyer, the OCA echoed the observation of Acting Executive Judge Alcantar that the same can no longer be determined due to the long lapse of time since the incident happened in 2008.

Ruling

The Court adopts the factual findings, legal conclusions, and recommendation of the OCA.

The Constitution mandates all public officers and employees to serve with responsibility, integrity, and efficiency. For public office is a public trust. Those who work in the Judiciary must be examples of responsibility, competence, and efficiency. They must discharge their duties with due care and utmost diligence, since they are officers of the Court and agents of the law. Indeed, any conduct, act or omission on the part of those who would violate the norms of public accountability and diminish or even just tend to diminish the faith of the people in the Judiciary shall not be countenanced.[11]

As the Court pronounced in ***Judge Domingo-Regala v. Sultan***:[12]

> No other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than the judiciary. The conduct and behavior of everyone connected with an office charged with the dispensation of justice, from the presiding judge to the lowliest clerk, must always be beyond reproach and

---

[9] *Rollo*, p. 63.

[10] *Id.* at 68.

[11] See *Erlinda C. Mendoza v. Pedro S. Esguerra, Process Server, RTC, Br. 89, Baloc, Sto. Domingo, Nueva Ecija*, 703 Phil. 435, 439 (2013).

[12] 492 Phil. 482 (2005).

must be circumscribed with the heavy burden of responsibility. Public officers must be accountable to the people at all times and serve them with the utmost degree of responsibility and efficiency. Any act which falls short of the exacting standards for public office, especially on the part of those expected to preserve the image of the judiciary, shall not be countenanced. It is the imperative and sacred duty of each and everyone in the court to maintain its good name and standing as a true temple of justice.[13]

Here, respondent failed to meet the exacting standards required of a court employee. She hardly refutes the persistent accusation that she is careless, does not have a good command of the English language, and frequently erred in interpreting the testimonies given in open court by litigants and witnesses. Her bare assertions that her work requires her to respond spontaneously to the statements asked of her to translate; she merely translates what she hears; and she has been performing her duties with compassion and humility do not disprove her incompetence and inefficiency which are matters of record. On this score, respondent has not shown an honest to goodness effort to improve herself despite the lawyer's repeated complaints pertaining to her inaccurate translations and even after she got an unsatisfactory performance rating for the semester January to June 2009 from the Branch Clerk of Court.[14] Surely, the Court cannot countenance respondent's incompetence and inefficiency. For an erroneous interpretation of testimonies given in open court, no matter how innocent, is fatal as it could affect the outcome of the case: it can either put an innocent man in jail or let a guilty offender go scot-free.

Section 46(B) of the Revised Rules on Administrative Cases in the Civil Service (RRACCS) classifies inefficiency and incompetence in the performance of official duties as a grave offense punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense, and dismissal from the service for the second offense.

---

[13] *Id.* at 490-491.

[14] *Rollo*, p. 63.

The same rule,[15] however, grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty.[16] Indeed, while we are duty-bound to sternly wield a corrective hand to discipline our errant employees and to weed out those who are undesirable, we also have the discretion to temper the harshness of its judgment with mercy.[17] Considering that this is respondent's first infraction, the penalty of suspension from the service for three (3) months, as recommended by the OCA, will suffice.

As for respondent's purported arrogant reaction to a local lawyer's request for TSN, respondent cannot be held administratively liable therefor in the absence of any substantiating evidence on record.

ACCORDINGLY, the Court finds **Emiliana A. Lumilang**, Court Interpreter III, Regional Trial Court (RTC)-Branch 10, Malaybalay City, Bukidnon **GUILTY** of inefficiency and incompetence in the performance of official duties. She is **SUSPENDED** for three (3) months without pay, effective immediately, with **STERN WARNING** that a repetition of the same or similar offense shall be dealt with more severely.

The Office of the Court Administrator is ordered to immediately serve a copy of this Resolution on Emiliana A. Lumilang for the purpose of reckoning the date of her suspension from the service. Let a copy of this Resolution be attached to the personnel records of respondent.

SO ORDERED.

Peralta, C.J. (*Chairperson*)*, Reyes, J. Jr.*, and *Inting*,[*] *JJ.*, concur.

Caguioa, J., on official leave.

---

[15] Sections 48 and 49, Rule X, RRACCS.

[16] *Alano v. Sahi*, 737 Phil. 16, 24-25 (2014).

[17] *Office of the Court Administrator v. Chavez*, 815 Phil. 41, 46 (2017), citing *Baculi v. Ugale*, 619 Phil. 686, 692 (2009).

[*] Additional member per Special Order No. 2726 dated October 25, 2019.

FIRST DIVISION

[A.M. No. P-19-4020. November 28, 2019]
(Formerly OCA I.P.I. No. 03-1824-P)

ELIZABETH D. GADONG, *petitioner, vs.* **JOSEPHINE BUTLIG, Court Stenographer I, Municipal Circuit Trial Court-Margosatubig, Zamboanga del Sur,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; THE REQUIRED QUANTUM OF PROOF IN ADMINISTRATIVE PROCEEDINGS IS SUBSTANTIAL EVIDENCE; DESISTANCE OR RECANTATION OF THE COMPLAINANT DOES NOT RESULT IN THE DISMISSAL OF AN ADMINISTRATIVE COMPLAINT AS LONG AS THE REQUIRED EVIDENCE IS SATISFIED. — The required quantum of proof to sustain a finding of guilt in administrative disciplinary proceedings is substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Here, the Court finds that evidence on record satisfies this requirement despite the recantation of complainant Elizabeth and her witnesses.. Mere desistance or recantation by the complainant does not necessarily result in the dismissal of an administrative complaint against any member or employee of the Judiciary. Administrative actions cannot depend on the will or pleasure of the complainant who may, for reasons of his or her own, condone what may be detestable under our Code of Conduct and most especially our laws. Otherwise, the efforts of this Court in improving the delivery of justice would be put to naught by private arrangements between parties to disciplinary proceedings. A recantation, like any other testimony, is subject to the test of credibility. Although findings on credibility of witnesses are generally entitled to great weight, the Court will not shy away from re-examining such findings when cogent reasons call for it, as here.

2. ID.; ID.; ID.; ID.; CIRCUMSTANCES IN CASE AT BAR SHOW THAT RESPONDENT IS INDEED GUILTY OF IMMORALITY; PENALTY. — [E]vidence 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 approve as probable under the circumstances. Here, Josephine's claim that she had been texting Leopoldo to help the latter reach a settlement for a reckless imprudence case deserves scant consideration. For Josephine herself admitted that said case had already been settled as early as 2001. Yet, as Elizabeth discovered, the two (2) remained in contact and had in fact been meeting up in 2002 and 2003. Josephine was lying through her teeth on May 22, 2002 when she told Elizabeth that they were on their way to see her relatives in Macasing for the settlement. If it were true, Josephine had no reason to lie about renting the van for Php200.00 to go to the provincial jail. More, it is indeed quite peculiar, if not contrary to common experience, that Josephine did not bother seeking police assistance when Leopoldo allegedly snatched her handbag and cellphone. For a woman who claimed having been stalked and forcibly undressed by a rejected suitor, it is uncanny that Josephine charged Leopoldo with robbery only, not for any attempt to violate her honor. From these circumstances, the Court is convinced that Josephine and Leopoldo had an illicit affair. Josephine is, therefore, and indeed, guilty of immorality. Under Civil Service Commission (CSC) Resolution No. 991936 dated August 31, 1999, otherwise known the Revised Uniform Rules on Administrative Cases in the CSC which is applicable at the time the offense was committed, disgraceful and immoral conduct merits a penalty of suspension for six (6) months and one (1) day to one (1) year for the first offense.

APPEARANCES OF COUNSEL

Felix M. Escalante, Jr. for petitioner.
Elvin Kein M. Nacilla for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

Respondent Josephine Butlig, Court Stenographer I, Municipal Circuit Trial Court, Margosatubig, Zamboanga del Sur, is charged with immorality for allegedly engaging in an illicit relation with Leopoldo Gadong, husband of complainant Elizabeth Gadong.

In her Sworn-Complaint[1] dated November 14, 2003 filed before this Court, Elizabeth alleged that on April 22, 2002, around 4 o'clock in the afternoon, her husband Leopoldo arrived home from a weeklong vacation in Iloilo City. He left his cellphone on top of the living room table before going to sleep. Elizabeth's sister Rosamie picked up the cellphone to play a game, but immediately handed it to Elizabeth when she discovered love messages from "Joy," Josephine's nickname.[2]

Elizabeth confronted Leopoldo who could not explain the text messages. She then called Josephine about the issue, but the latter denied sending love messages to Leopoldo. Josephine claimed that someone had borrowed her cellphone and used it to send them. Unconvinced, Elizabeth invited Josephine to meet her at the plaza.[3]

There, around 7 o'clock in the evening, she showed Josephine the text messages. The latter again denied sending them to Leopoldo and said she had been using the phone of her sister-in-law Edida Butlig. Shortly after, Leopoldo arrived. Elizabeth confronted both of them, but the two (2) strongly denied having an affair.[4]

On May 22, 2002, Elizabeth went to the Government Service Insurance System - Pagadian City Branch to follow-up her loan. She looked outside from the third floor of the building and was surprised to see their family van parked near the stairs of Plaza Luz. She also saw a woman wearing a dark blue uniform follow her husband inside the van. She immediately went down the building to follow them but was unable to reach the van on time. Thus, she boarded a tricycle and instructed the driver to follow the van.[5]

---

[1] *Rollo*, p. 5.

[2] *Id*. at 224.

[3] *Id*.

[4] *Id*.

[5] *Id*. at 224-225.

When the van parked near Hiker's Palace, Elizabeth told the tricycle driver to stop in front of the building. She then started hitting the side mirror of the van, forcing Leopoldo to open the door. She saw Josephine seated beside her husband. Josephine tried to get out of the vehicle but Leopoldo told her to stay inside. When Elizabeth confronted them, Josephine told her that she rented the van for Php200.00 because she had to go to the Provincial Jail. Later, Josephine changed her alibi and said they were on their way to Macasing to settle the reckless imprudence case that one of her relatives filed against Leopoldo.[6]

On April 3, 2003, Elizabeth called Edida to arrange a meeting at the Cathedral. There, Elizabeth told Edida that Leopoldo and Josephine were having an affair. Edida replied that she, too, was growing suspicious because she has seen Leopoldo go into Josephine's house twice.[7]

On October 28, 2003, around 2 o'clock in the afternoon, somebody informed Elizabeth that Leopoldo and Josephine were together in an apartment unit below the Arro Calibration Center in Pagadian City. Immediately, she and her daughter Ma. Eleosa went to the said place. She knocked on the door and was greeted by Leopoldo. From the doorway, she saw Josephine at the corner of the room, naked and holding her bag to cover her breasts. She rushed inside and pulled Josephine's hair, while Ma. Eleosa took pictures. Josephine, however, grabbed the camera and destroyed it. Leopoldo intervened and told Josephine to wait in the comfort room. Meanwhile, Elizabeth instructed her daughter to call the police.[8]

A few minutes later, policemen arrived and brought Leopoldo and Josephine to the police station. There, Josephine, on bent knees, promised to end her affair with Leopoldo.[9]

---

[6] *Id*. at 225.

[7] *Id*. at 224.

[8] *Id*. at 225.

[9] *Id*.

In her Comment[10] dated February 12, 2004, Josephine denied the charge. She stated that she came to know Leopoldo sometime in 2001 due to a vehicular accident which involved him and a relative of hers. Leopoldo sought her assistance to reach a settlement. From then on, Leopoldo would frequent the court to see her, to the extent of following her around like an *"asong ulol."*[11]

Although Leopoldo was persistent in courting her, her conscience dictated that she be faithful to her marital vows. This was known to her co-employees to whom she confided in about her situation. At times, she would even ask them to keep her company to discourage Leopoldo from stalking her. On several occasions, she even reported Leopolda's stalking to the police station at Margosatubig, Zamboanga del Sur.[12] She denied ever sending love messages to Leopoldo.[13]

As for the October 28, 2003 incident, Elizabeth lied when she claimed she caught her and Leopoldo in a compromising situation. What truly happened was Leopoldo forcibly took her handbag containing her money and cellphone and deceived her into following him to an apartment unit below the Arro Calibration Center. Inside the apartment unit, Leopoldo made sexual advances on her but she resisted. Leopoldo nevertheless succeeded in tearing the blouse she was wearing. A few minutes later, Elizabeth and Ma. Eleosa arrived and mauled her.[14]

Because of what happened, she filed criminal cases before the City Prosecutor's Office of Pagadian City for robbery against Leopoldo, and for physical injuries and slander against Elizabeth and Ma. Eleosa. The present administrative complaint is Elizabeth's way of pressuring her to withdraw these criminal cases.[15]

---

[10] *Id*. at 17.

[11] Report of Judge Goan dated March 3, 2015, p. 4; Unnumbered *Rollo* page.

[12] *Id*.

[13] *Id*. at 5.

[14] *Id*. at 4.

[15] *Id*. at 4-5.

In her Reply dated March 24, 2005, Elizabeth maintained that everything she said about respondent was true and that her husband even admitted his illicit affair with respondent.[16]

Josephine was merely using the criminal charges against her and her family as leverage to force her to withdraw the administrative complaint. Further, Josephine's alleged fidelity to her marital vows should not be believed because she had been separated from her husband for years and was reputed in the locality for indulging in dalliances with different men.[17]

Due to the conflicting allegations of the parties, the case was referred to the Executive Judge of the Regional Trial Court for Pagadian City, Zamboanga del Sur for investigation.[18]

First Investigation

During the course of the investigation, Elizabeth testified on the allegations in her Sworn-Complaint.[19] On the other hand, Ma. Eleosa corroborated Elizabeth's allegations regarding the October 28, 2003 incident.[20]

Leopoldo himself also testified. He stated that while driving their family van one day, he met an accident which led to the filing of a case against him for reckless imprudence resulting to homicide. Josephine helped him reach a settlement for the case. Later, he courted her and they entered into a relationship in 2001. From then on, he would fetch Josephine from work to bring her home.[21]

On October 28, 2003, he and Josephine had a misunderstanding. He noticed that her cellphone was constantly ringing so he grabbed it. He chanced upon some text messages from another

---

[16] *Id*. at 5.

[17] *Id*.

[18] *Rollo*, p. 59.

[19] *Id*. at 224-225.

[20] *Id*. at 226.

[21] *Id*.

man which made him jealous. He then went ahead to the Arro Calibration Center with her phone and handbag to force her to follow him there. They finished their argument in the room he rented. To simmer down his temper, Josephine undressed. Suddenly, someone knocked on the door. When he opened it, his wife and daughter barged in. They saw Josephine naked, frantically trying to cover herself. A quarrel ensued.[22]

For her part, Josephine reiterated the defenses she raised in her Comment.[23] Her co-employees Rizalina Imbing, Jocelyn Palo and Victoria Bayawa testified that Leopoldo had been following Josephine wherever she went. He would even wait for hours in their office just to find an opportunity to accompany her home. Whenever Leopoldo was not able to chance upon Josephine at the courthouse, he would mess up her things on her table, without her consent and unmindful of other people inside the office.[24]

SPO4 Matias Cinco also testified for respondent. He stated that Josephine went to the police station at Margosatubig, Zamboanga del Sur, crying because Leopoldo kept on following her. She was feeling harassed so she sought help from the police. He had no knowledge of any relationship between Josephine and Leopoldo until the latter himself told him about it. He warned Leopoldo to stop harassing Josephine.[25]

First Report and Recommendation

In his Report on the Investigation with the Corresponding Recommendation[26] dated May 10, 2005, Executive Judge Harun B. Ismael submitted the following findings and recommendations:

---

[22] *Id*. at 226-227.

[23] *Id*. at 227-228.

[24] *Id*. at 229.

[25] *Id*.

[26] *Id*. at 222.

a. Elizabeth's accusation that Leopoldo and Josephine were having an illicit affair was not proven by hard evidence;[27]

b. The October 28, 2003 incident at Arro Calibration Center should be regarded as a natural reaction of a person engrossed with jealousy;[28]

c. Josephine was a victim of circumstances; she was merely duped by Leopoldo to follow him to the Arro Calibration Center to redeem her handbag and cellphone;[29] and

d. Although the immorality charge against Josephine should be dismissed for lack of concrete evidence, a reprimand and a fine of five hundred pesos (Php500.00) should nevertheless be imposed against her for committing a disgraceful act.[30]

In a Memorandum dated November 16, 2005,[31] the Office of the Court Administrator (OCA) disagreed with these findings and recommended a reinvestigation. It noted that Judge Ismael dismissed the October 28, 2003 confrontation without delving deeper into the following issues:[32]

a. Josephine did not seek help from nor report to the police the alleged snatching by Leopoldo of her cellphone and handbag;

b. Despite Leopoldo's alleged sexual advances on Josephine on October 28, 2003, Josephine charged Leopoldo with robbery only, sans attempted rape, acts of lasciviousness, or forcible abduction;

---

[27] *Id*. at 230.

[28] *Id*.

[29] *Id*. at 232.

[30] *Id*. at 233.

[31] Memorandum of the Office of Court Administrator dated November 4, 2015, p. 5; Unnumbered *Rollo* page.

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

c. Judge Ismael failed to exert earnest efforts to compel the attendance of the wife and son of the apartment owner who were present during the October 28, 2003 incident to provide an unbiased version of the facts and accurately shed light on the incident;

d. In one of her affidavits, Josephine admitted that the reckless imprudence case against Leopoldo was already settled in 2001. But during the investigation, witnesses testified that the two (2) were still seen together in 2002 and 2003; and

e. Judge Ismael failed to reconcile his recommendation with his findings. He recommended the dismissal of the complaint for lack of concrete evidence and that respondent be absolved from the charges, yet recommended that respondent be reprimanded and be fined Php500.00 for committing a disgraceful act. He failed to specify which act of respondent he found disgraceful.

Following the recommendation of the OCA, the Court issued a Resolution dated January 25, 2006 remanding the case to Judge Ismael for further investigation. But in view of Judge Ismael's retirement on June 6, 2006, the case was referred to the new Executive Judge, Rolando L. Goan.[33]

Second Investigation

On February 5, 2015, during the second round of investigation, Elizabeth, Leopoldo, and Ma. Eleosa took the witness stand once again to identify their Judicial Affidavits.[34] But in a surprising turn of events, Elizabeth's position shifted. She portrayed herself as a jealous wife who mistakenly thought her husband Leopoldo was having an affair with Josephine.

---

[33] *Id*. at 6.

[34] Report of Judge Goan dated March 3, 2015, p. 24; Unnumbered *Rollo* page.

Elizabeth's Judicial Affidavit was replete with recantations. On the alleged amorous text messages from Josephine which were stored in Leopoldo's cellphone, Elizabeth testified:

Q: Why did you file that Administrative Complaint against her?
A: I filed the Administrative case against the respondent because I got jealous with my husband when my sister Rosamie C. Dacalos referred to me the text messages from the cellphone of my husband which I mistakenly thought were amorous text messages coming from respondent.

Q: Why did you get jealous after reading those text messages?
A: Being a wife and a mother, I naturally felt jealous as I thought then that my husband had betrayed me and our daughter. It was only later that I learned that indeed my husband and respondent were texting each other but the sole reason was due to the case filed against my husband for Reckless Imprudence Resulting to Homicide wherein the victim happened to be the relative of the respondent.

x x x x x x x x x

Q: You mean to say that only because they were texting each other that you got jealous and immediately concluded that they were having an illicit affair despite the fact that respondent was only trying to help your husband in that case wherein the victim was the relative of the respondent?
A: Yes, sir.[35]

On the May 24, 2002 incident:

Q: What happened when you were there?
A: xxx I later on saw my husband enter the driver's side of the van and he was followed by a woman who entered the passenger side.

Q: What did you feel when you saw this?
A: I again felt so jealous. I likewise felt exhilarated as I thought I now have proof that my husband is indeed philandering with another woman.

x x x x x x x x x

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

Q: Did you observe anything unusual between respondent and your husband while they were seated inside the van?
A: None Sir. They were actually seated in such a way that respondent was a paying passenger to the driver, who was then my husband.

Q: But what did you feel when you saw them inside the van?
A: Although it is not unusual for me to see my husband ferrying women-passengers who are seated on the front seat of our van, at that time I was consumed by jealousy and I felt enraged.[36]

Finally, on the October 28, 2003 incident at the Arro Calibration Center:

Q: Okay on October 28, 2003, do you remember where you were?
A: Yes, sir.

Q: I and my daughter, Maria Eleosa Faith was informed by some friends that the bag of a certain girl was taken by my husband. I was very surprised about it. Later on, I learned that this girl is actually the respondent, Josephine Butlig. I also learned that since there was an important personal belongings inside the bag, she chased my husband until such time that they reached Arro Calibration Center.

Q: Was there something that happened?
A: I heard from the surrounding that they have an arguments there when we reached there Josephine Butlig crying because of her bag that my husband refused to return.

Q: Was the bag retrieved by Josephine Butlig from the possession of your husband?
A: Yes sir upon our arrival he turned over the bag.

Q: What happened next?
A: As a wife, I got angry to my husband and to the respondent.

Q: What is the action if any by Josephine Butlig against your husband?
A: She got angry also but during that time it is my honest belief that they have an illicit relation as a consequence thereof all these incidents was due to the instant of my husband.

---

[36] *Id*. at 27-28.

Q: Were there other occasions wherein you saw them meeting each other to confirm your suspicion that they were having illicit relations?
A: None, sir. I only saw them in those instances I mentioned earlier.

Q: In all those occasions you have stated, can you prove that they have really an illicit relationship?
A: I really cannot confirm it, sir. This time sir I now realize that I got mistaken with my allegations because I was only enraged and blinded by my jealousy as a wife.[37]

Leopoldo and Ma. Eleosa corroborated this new narrative.[38]

Meanwhile, Josephine maintained her defense of denial which was corroborated by her witness Gerardo Dumaldal.[39]

Second Report and Recommendation

In his Report[40] dated March 3, 2015, Judge Goan recommended that Josephine be absolved of liability[41] since Elizabeth herself and her witnesses recanted their testimonies.[42] Judge Goan even noticed that the parties treated each other with politeness, bordering on friendship.[43] As Elizabeth admitted, she was merely enraged and blinded by jealousy when she filed her Sworn-Complaint. She mistakenly believed that Leopoldo and Josephine were having an affair.[44]

Even without the recantation of Elizabeth and her witnesses, the complaint would still have failed because their testimonies

---

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

[38] *Id*. at 30.

[39] *Id*.

[40] Unnumbered *Rollo* page.

[41] Report of Judge Goan dated March 3, 2015, p. 31; Unnumbered *Rollo* page.

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

[43] *Id*. at 30.

[44] *Id*.

were self-serving. It was simply a case of a family which stood united against Josephine to protect Leopoldo from the criminal case she had filed against him.[45]

Too, there was no proof that Josephine had been living immorally to the extent of dragging down the image of the Judiciary. On the contrary, Josephine's co-workers never complained about her conduct and even testified in her favor. In the absence of proof that Josephine engaged in immoral conduct, Judge Goan recommended that the administrative complaint be dismissed.[46]

Memorandum of the OCA

In its Memorandum dated November 4, 2015,[47] the OCA recommended:

1. The instant administrative case be re-docketed as a regular administrative matter;

2. The charge of immorality against respondent Court Stenographer Josephine M. Butlig, Municipal Circuit Trial Court, Margosatubig, Zamboanga del Sur, be **DISMISSED** for insufficiency of evidence; and

3. Respondent Josephine M. Butlig be found **GUILTY** of conduct unbecoming a public employee for her indecorous and scandalous involvement in an incident that occurred on 28 October 2003 outside the court but during office hours and be **FINED** in the amount of Ten Thousand Pesos (Php 10,000.00), and **ADMONISHED** to be more circumspect in her personal affairs, with a **STERN WARNING** that the repetition of any similar act will merit a more severe sanction.[48]

It agreed with Judge Goan that the charge of immorality must be dismissed because of Elizabeth, Leopoldo, and Ma. Eleosa's

---

[45] *Id.* at 31.

[46] *Id*.

[47] Unnumbered *rollo* page.

[48] Memorandum of the Office of Court Administrator dated November 4, 2015, pp. 11-12; Unnumbered *Rollo* page.

recantation. It found no substantial evidence that Josephine entered into an immoral sexual relation with Leopoldo.[49]

The OCA, nevertheless, opined that Josephine should not be completely exonerated from disciplinary action. For records revealed that the October 28, 2003 incident had indeed transpired. On that Tuesday, around 2 o'clock in the afternoon, during office hours, Josephine voluntarily followed Leopoldo to an apartment below the Arro Calibration Center in Pagadian City and was later found without her blouse in a room with Leopoldo. Elizabeth and Ma. Eleosa arrived and quarreled with Josephine. A few minutes later, policemen also arrived at the scene. The parties were brought to the police station and the incident was blottered.[50]

Josephine's disgraceful involvement in the incident tainted the image of the Judiciary and constituted conduct unbecoming of a public employee. Thus, the OCA recommended that she be fined in the amount of Php10,000.00 and admonished to behave with decorum and circumspection even in the conduct of her personal affairs.[51]

Threshold Issue

May respondent be sanctioned for immorality despite the recantation of complainant and her witnesses?

Ruling

We answer in the affirmative.

Court personnel must be free from any whiff of impropriety, not only with respect to their duties in the judicial branch but also to their behavior outside the court as private individuals. There is no dichotomy of morality; a court employee is also judged by his or her private morals. These exacting standards of morality and decency have been strictly

---

[49] *Id.* at 10.

[50] *Id.* at 11.

[51] *Id.*

adhered to and laid down by the Court to those in the service of the judiciary.[52]

Here, Elizabeth's Sworn-Complaint essentially alleged that Josephine had maintained an affair with her husband Leopoldo. Indubitably, such charge, if proven, constitutes immorality that warrant disciplinary action. Thus, in ***Banaag v. Espeleta***,[53] respondent court interpreter therein was found guilty of immorality for engaging in an amorous relationship with a married man. Similarly, in ***Sealana-Abbu v. Laurenciana-Hurafio,***[54] the Court suspended two (2) court stenographers who were engaged in an illicit relationship.

The required quantum of proof to sustain a finding of guilt in administrative disciplinary proceedings is substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[55] Here, the Court finds that evidence on record satisfies this requirement despite the recantation of complainant Elizabeth and her witnesses.

Mere desistance or recantation by the complainant does not necessarily result in the dismissal of an administrative complaint against any member or employee of the Judiciary. Administrative actions cannot depend on the will or pleasure of the complainant who may, for reasons of his or her own, condone what may be detestable under our Code of Conduct and most especially our laws. Otherwise, the efforts of this Court in improving the delivery of justice would be put to naught by private arrangements between parties to disciplinary proceedings.[56]

A recantation, like any other testimony, is subject to the test of credibility. Although findings on credibility of witnesses are generally entitled to great weight, the Court will not shy

---

[52] *Marquez v. Clores-Ramos,* 391 Phil. 1, 12 (2000).

[53] A.M. No. P-11-3011, December 16, 2011.

[54] 558 Phil. 24, 34 (2007).

[55] *Babante-Caples v. Caples,* 649 Phil. 1, 5-6 (2010).

[56] *Bayaca v. Judge Ramos,* 597 Phil. 86, 96 (2009).

away from re-examining such findings when cogent reasons call for it,[57] as here.

A perusal of Elizabeth's Judicial Affidavit allows us to filter with ease which narrations were sincere and which were concocted:

First. Elizabeth claimed that the text messages from Josephine which she read on Leopoldo's cellphone were not amorous at all; Leopoldo and Josephine were merely arranging a settlement for the reckless imprudence case that Josephine's relatives filed against Leopoldo. There would have been a world of a difference, however, between the tenor of an amorous text message and an assistance for settlement. So much so that the Court is not convinced that Elizabeth would have mistaken one for the other.

Second. Elizabeth claimed that the exchange of text messages between Leopoldo and Josephine and their subsequent meet-up on May 24, 2002 were actually for purposes of settling the reckless imprudence case against Leopoldo. The Court finds this hard to believe since Josephine herself admitted the case was already settled as early as 2001.[58]

Finally. Elizabeth testified that she misinterpreted the incident at the Arro Calibration Center; Josephine was merely duped into following Leopoldo into the apartment and the two (2) were not having an affair. But between her allegations in her Sworn-Complaint dated November 14, 2003 and her initial testimony on the one hand, and those in her Judicial Affidavit on the other, the former deserves more weight and credit. Not only was Elizabeth's recantation done twelve (12) years after the alleged incident making it doubtful, her Sworn-Complaint and her earlier testimony conform with human nature and experience.

The Court, therefore, rejects Elizabeth's recantation and finds the allegations in her Sworn-Complaint dated November 14,

---

[57] *People v. Bensurto*, 802 Phil. 766, 774-775 (2016).

[58] Memorandum of the Office of Court Administrator dated November 4, 2015, p. 5; Unnumbered *Rollo* page.

2003, as supported by her testimony and those of her witnesses during the first investigation, more credible.

But even if the Court disregards the testimony of Elizabeth, the admissions of Leopoldo and Josephine are independently sufficient to establish Josephine's guilt.

During the initial investigation, Leopoldo admitted to courting Josephine after the latter helped him reach a settlement for the reckless imprudence case against him. According to Leopoldo, they started their relationship in 2001 and from then on, he would fetch Josephine from work and brought her home.

On October 28, 2003, he and Josephine had a misunderstanding. He noticed that her cellphone was constantly ringing and he got jealous when he chanced upon some text messages thereon from another man. He then went ahead to the Arro Calibration Center with Josephine's phone and handbag to force her to follow him there. They finished their argument in the room he rented. Then, to simmer down his temper, Josephine undressed. Suddenly, someone came knocking at the door. When he opened it, his wife and daughter barged in. They saw Josephine naked and frantically trying to cover herself. A quarrel instantly followed.[59]

Josephine did not deny being in contact with Leopoldo, albeit they were merely trying to reach a settlement for a reckless imprudence case against the latter. And while Josephine admitted that Leopoldo had been courting her, she denied having ever entered into an illicit relationship with him.

As for the October 28, 2003 incident, she essentially admitted that when Leopoldo opened the door to the room, Elizabeth and Ma. Eleosa saw her without a blouse. She countered, though, that she merely wanted to recover her handbag and cellphone from Leopoldo but got duped into following Leopoldo inside the apartment in the process.

We are not convinced.

---

[59] *Rollo,* pp. 226-227.

To begin with, 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 approve as probable under the circumstances.[60]

Here, Josephine's claim that she had been texting Leopoldo to help the latter reach a settlement for a reckless imprudence case deserves scant consideration. For Josephine herself admitted that said case had already been settled as early as 2001.[61] Yet, as Elizabeth discovered, the two (2) remained in contact and had in fact been meeting up in 2002 and 2003. Josephine was lying through her teeth on May 22, 2002 when she told Elizabeth that they were on their way to see her relatives in Macasing for the settlement. If it were true, Josephine had no reason to lie about renting the van for Php200.00 to go to the provincial jail.

More, it is indeed quite peculiar, if not contrary to common experience, that Josephine did not bother seeking police assistance when Leopoldo allegedly snatched her handbag and cellphone. For a woman who claimed having been stalked and forcibly undressed by a rejected suitor, it is uncanny that Josephine charged Leopoldo with robbery only, not for any attempt to violate her honor.

From these circumstances, the Court is convinced that Josephine and Leopoldo had an illicit affair. Josephine is, therefore, and indeed, guilty of immorality.

Under Civil Service Commission (CSC) Resolution No. 991936 dated August 31, 1999, otherwise known the Revised Uniform Rules on Administrative Cases in the CSC which is applicable at the time the offense was committed, disgraceful and immoral conduct merits a penalty of suspension for six (6) months and one (1) day to one (1) year for the first offense.[62]

---

[60] *People v. Mon,* G.R. No. 235778, November 21, 2018.

[61] Memorandum of the Office of Court Administrator dated November 4, 2015, p. 5; Unnumbered *Rollo* page.

[62] *Supra* note 55.

Thus, in ***Elape v. Elape***,[63] Process Server Alberto R. Elape was suspended for six (6) months and one (1) day for maintaining an illicit relationship. In ***Banaag v. Espeleta***,[64] respondent court interpreter therein would have been suspended for six (6) months and one (1) day for immorality had she not peremptorily resigned from her post.

So must it be.

ACCORDINGLY, premises considered, **Josephine Butlig** is found **GUILTY** of **immorality** and **SUSPENDED** for **six (6) months and one (1) day without pay** with **STERN WARNING** that commission of the same or similar offenses shall be dealt with more severely.

SO ORDERED.

Peralta, C.J., Reyes, J. Jr., and *Inting,*[*] *JJ.,* concur.

Caguioa, J., on official leave.

FIRST DIVISION

[G.R. No. 211149. November 28, 2019]

OSCAR LL. ARCINUE, *petitioner, vs.* **ALICE ILALO S. BAUN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; CONFINED TO REVIEW OF LEGAL, NOT

---

[63] 574 Phil. 550, 555 (2008).

[64] *Supra* note 53.

[*] Additional member per Special Order No. 2726 dated October 25, 2019.

FACTUAL, ISSUES; CASE AT BAR. — First, in petitions for review on *certiorari* under Rule 45 of the Rules of Court, the Court is narrowly confined to the review of legal issues. Hence, the Court will not take cognizance of the factual issues here, let alone, calibrate anew the evidence which had already been thoroughly evaluated and considered twice by the tribunals below. In ***Lorzano v. Tabayag, Jr.***, the Court held that the propriety of the award of damages is a question of fact, thus: For the same reason, we would ordinarily disregard the petitioner's allegation as to the propriety of the award of moral damages and attorney's fees in favor of the respondent as it is a question of fact. Thus, questions on whether or not there was a preponderance of evidence to justify the award of damages or whether or not there was a causal connection between the given set of facts and the damage suffered by the private complainant or whether or not the act from which civil liability might arise exists are questions of fact. Here, petitioner is essentially questioning his liability for damages claiming he did not act in bad faith in his dealings with ACLC and respondent Baun. His argument, however, requires a re-examination of the evidence presented by the parties during trial which the Court is precluded from doing so. This is especially true where the trial court's findings are adopted and affirmed by the Court of Appeals as in this case. While it is true that there are recognized exceptions to the general rule that only questions of law may be entertained in a Rule 45 petition, none obtains in this case.

2. **ID.; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE OF DECEASED PERSONS; ACTIONS WHICH SURVIVE THE DEATH OF A PARTY; RECOVERY OF DAMAGES FOR AN INJURY TO PERSON OR PROPERTY; AN ACTION FOR DAMAGES CAUSED BY TORTIOUS CONDUCT SURVIVES THE DEATH OF A PARTY; CASE AT BAR. —** Section 1, Rule 87 of the Rules of Court enumerates the following actions which survive the death of a party, thus: (1) recovery of real or personal property, or an interest from the estate; (2) enforcement of liens on the estate; and (3) **recovery of damages for an injury to person or property**. Here, both the trial court and the Court of Appeals found petitioner to have acted in bad faith to the damage and prejudice of respondent. The lower courts thus ruled that petitioner's tortious acts were in violation of Articles 19, 20, and 21 of the Civil Code warranting payment of damages. In ***Board of Liquidators v. Heirs of Kalaw***,

the Court ruled that an action for damages caused by tortious conduct survives the death of a party. For it falls under suits to recover damages for an injury to person or property, real or personal. The Court further emphasized that injury to property is not limited to injuries to specific property, but extends to other wrongs by which personal estate is injured or diminished. To maliciously cause a party to incur unnecessary expenses, as in this case, is certainly injury to that party's property. Verily, the Court finds no cogent reason to reverse the consistent findings of the courts below holding petitioner for damages.

3. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; FORBEARANCE OF MONEY; INTEREST RATES; MODIFICATION OF INTEREST RATE, WARRANTED IN CASE AT BAR. —** The Court, nonetheless, modifies the interest rate imposed on the monetary awards to conform with the guidelines laid down in ***Lara's Gift Shop & Decors, Inc. v. Midtown Industrial Sales, Inc.***, *viz*: xxx xxx xxx 2. **In the absence of stipulated interest**, in a loan or **forbearance of money**, goods, credits or judgments, the **rate of interest on the principal amount shall be the prevailing legal interest prescribed by the *Bangko Sentral ng Pilipinas***, which shall be **computed from default**, *i.e.*, from extrajudicial or judicial demand in accordance with Article 1169 of the Civil Code, **UNTIL FULL PAYMENT**, without compounding any interest unless compounded interest is expressly stipulated by law or regulation. **Interest due on the principal amount accruing as of judicial demand shall SEPARATELY earn legal interest at the prevailing rate prescribed by the *Bangko Sentral ng Pilipinas*, from the time of judicial demand UNTIL FULL PAYMENT.**

4. **ID.; ID.; FORBEARANCE OF MONEY REFERS TO ARRANGEMENTS OTHER THAN LOAN AGREEMENTS, WHERE A PERSON ACQUIESCES TO THE TEMPORARY USE OF HIS MONEY PENDING HAPPENING OF CERTAIN EVENTS OR FULFILLMENT OF CERTAIN CONDITIONS; CASE AT BAR. —** In ***Estores v. Spouses Supangan***, the Court explained the meaning of forbearance of money, *viz*: **Forbearance of money**, good or credits should therefore **refer to arrangements other than loan agreements, where a person acquiesces to the temporary use of his money**, goods or credits **pending happening of certain events or fulfillment of certain conditions**. In this

case, the respondent-spouses parted with their money even before the conditions were fulfilled. They have therefore allowed or granted forbearance to the seller (petitioner) to use their money pending fulfillment of the conditions. **They were deprived of the use of their money for the period pending fulfillment of the conditions and when those conditions were breached, they are entitled not only to the return of the principal amount paid, but also to compensation for the use of their money.** And the compensation for the use of their money, absent any stipulation, should be the same rate of legal interest applicable to a loan since the use or deprivation of funds is similar to a loan. Here, respondent paid petitioner ₱85,000.00 conditioned upon the supposed transfer of petitioner's franchise rights to operate ACLC's computer school. The transfer, however, never took place albeit petitioner retained respondent's payment. Respondent is thus entitled not only to the return of the principal amount she paid, but also to compensation for the use of her money.

APPEARANCES OF COUNSEL

Nolan R. Evangelista for petitioner.
Decano Law Office for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This petition seeks to nullify the following dispositions of the Court of Appeals in CA-G.R. CV No. 96157:

1. Decision[1] dated July 17, 2013 affirming the decision of the Regional Trial Court - Branch 57, San Carlos City, Pangasinan finding petitioner liable for damages.

2. Resolution[2] dated January 28, 2014 denying petitioner's motion for reconsideration.

---

[1] Penned by Associate Justice Danton Q. Bueser, with Justices Amelita G. Tolentino and Ramon R. Garcia, concurring, *rollo*, pp. 31-39.

[2] *Rollo*, pp. 41-42.

Antecedents

On October 1, 1990, AMA Computer Learning Center (ACLC) granted petitioner Oscar Arcinue a franchise to operate a computer training school under ACLC's name in Dagupan City, Pangasinan. The franchise was for ten (10) years subject to strict compliance with the parties' Agreement for Franchise Operations.[3] Section 21 thereof partly reads:

> 21. Franchisee may transfer its right of franchise to another entity or person within the ten-year term; provided that the transferee shall be acceptable to Franchisor and hence subject to prior approval of Franchisor before effecting the transfer, and that the transferee shall continue to have the rights of the franchise only within the unexpired period of the term.[4]

Three (3) years later, Arcinue still had not commenced operation. Not only that. He also sold his franchise to respondent Alice Ilalo S. Baun for ₱85,000.00 without ACLC's prior approval. After the sale though, Baun immediately took steps to set-up the computer school. She leased a building and hired an architect for renovations to conform with ACLC's specifications.[5] Upon ACLC's inspection, however, the proposed school building did not meet its standards since the total floor area was inadequate. More, ACLC found out that Baun was a director of a school in San Carlos, Pangasinan which likewise offered computer courses.[6]

Through a letter dated November 19, 1994, ACLC advised Arcinue it still considered him as the franchisee and not Baun for they had not received any confirmation or document from him with respect to the transfer of rights. ACLC thus directed Arcinue to send them the corresponding documents for transfer of franchise not later than January 1995; otherwise, it will be

---

[3] *Id.* at 43-46.

[4] *Id.* at 46.

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

[6] *Id.* at 63.

constrained to terminate the existing franchise. ACLC did not receive any response from Arcinue.

A year later, on November 20, 1995, Arcinue sent ACLC a handwritten note stating that Baun had two (2) proposed buyers for the franchise. ACLC responded under letter dated November 29, 1995 that since there was no document acknowledging Baun as franchisee, the sale or transfer of Arcinue's franchise should still be coursed through him (Arcinue). ACLC also furnished Arcinue with guidelines for sale or transfer of franchise.[7] Arcinue again did not reply.

Consequently, in 1997, ACLC terminated Arcinue's franchise for his continuous failure to operate and for having assigned his franchise to Baun without its prior approval.[8]

On September 11, 1997, Baun filed the complaint below against Arcinue and ACLC for specific performance and damages to enforce her rights as transferee of Arcinue's franchise.

Trial on the merits ensued. Baun completed her presentation of evidence on April 30, 2002.[9] She, however, died on June 21, 2009. She was survived by her siblings whom the trial court allowed to substitute as plaintiff in the proceedings below.[10]

The Ruling of the RTC

On October 8, 2010, the Regional Trial Court - Br. 57, San Carlos City, Pangasinan found that Arcinue's transfer of franchise to Baun was never approved by ACLC. Baun, therefore, never had any right which she could have enforced against ACLC.

Arcinue, on the other hand, had acted in bad faith in his dealings with ACLC and Baun. Not only did he fail to set-up the computer school as stipulated in the franchise agreement with ACLC, he also profited from it by selling his franchise to

---

[7] *Id.* at 64-65.

[8] *Id.* at 65-66.

[9] *Id.* at 66.

[10] *Id.* at 33.

Baun, sans ACLC's prior approval. Consequently, ACLC lost its potential income during the seven (7)-year period within which Arcinue failed to operate the computer school. Too, Baun suffered pecuniary loss when she paid Arcinue ₱85,000.00 for the transfer of franchise and incurred expenses in setting up the computer school without ACLC's approval. The trial court thus ruled that Arcinue's acts were in violation of Articles 19, 20, and 21 of the Civil Code[11] which warranted payment of damages, *viz*:

> WHEREFORE, premises considered, this case is DISMISSED as against defendant AMA.
>
> Defendant Arcinue is hereby ordered to pay:
>
> A. To the estate of the late plaintiff Alice Ilalo S. Baun:
>
> 1) The sum of ₱85,000.00 as actual damages, with legal interest at six percent (6%) per annum or a fraction thereof, from the time he unjustly received the said amount from the plaintiff in 1993 until the same is paid in full;
>
> 2) The sum of ₱50,000.00 as exemplary damages; and
>
> 3) The sum of ₱50,000.00 as moral damages.
>
> B. To defendant AMA:
>
> 1) The sum of ₱100,000.00 as temperate damages in lieu of actual damages since while this defendant offered in evidence a list of figures of projected income losses in the seven years that defendant Arcinue failed to open and operate its computer school in Dagupan City, it failed to substantiate the same with sufficient specifics and thus the Court finds the same speculative.
>
> 2) The sum of ₱50,000.00 as exemplary damages; and

---

[11] Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

Article 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

Article 21. Any person who willfully causes loss or injury to another in manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

3) The sum of ₱25,000.00 as moral damages.

SO ORDERED.

Arcinue appealed to the Court of Appeals but only impleaded Baun as defendant-appellee. Thus, the trial court's decision had become final and executory insofar as ACLC is concerned.

The Proceedings Before the Court of Appeals

On appeal, Arcinue argued that he did not act in bad faith in his dealings with ACLC and Baun. The transfer of his franchise to Baun was impliedly approved by ACLC when its employees, on several occasions, met with Baun and provided her assistance in setting-up the computer school, *i.e.*, they interviewed her; directed her to look for a school site in Dagupan City; surveyed the proposed site; and gave her advertising materials. In the end, however, ACLC still did not approve the transfer of franchise. Thus, it was ACLC who acted in bad faith, not him. Further, the case should have been dismissed when Baun died since an action for specific performance and damages is a personal action which did not survive Baun's death.

The Court of Appeals' Ruling

By the trial court's Decision dated July 17, 2013,[12] the Court of Appeals affirmed. It found sufficient proof that Arcinue sold his franchise to Baun without prior notification and approval of ACLC. The transfer was done knowingly in contravention of Arcinue's Agreement for Franchise Operations with ACLC.

ACLC, on the other hand, could not have acted in bad faith. For it never approved or granted a franchise in Baun's favor. Baun was thus a mere stranger or a third-party who can never be benefited by the franchise agreement.

The Court of Appeals, nonetheless, found that Baun suffered damages due to Arcinue's tortious acts. The case was therefore for "recovery of damages for an injury to person or property" which survives even after a party's death.[13]

---

[12] *Id.* at 31-39.

[13] CA Decision dated July 17, 2013, p. 8.

Arcinue sought a reconsideration which was denied under Resolution dated January 28, 2014.[14]

The Present Petition

Arcinue now seeks affirmative relief from the Court. He reiterates that it was ACLC which acted in bad faith and not him.[15] Too, Baun's death rendered her complaint dismissible.[16]

In her Comment,[17] respondent defends the award of damages to her as she had sufficiently established her entitlement thereto.

In his Reply,[18] Arcinue claims he acted in good faith when he transferred his franchise to Baun; hence, he should not be held liable for damages.

Core Issue

Did the Court of Appeals err in affirming petitioner's liability for damages?

Ruling

We deny the petition.

First, in petitions for review on *certiorari* under Rule 45 of the Rules of Court, the Court is narrowly confined to the review of legal issues. Hence, the Court will not take cognizance of the factual issues here, let alone, calibrate anew the evidence which had already been thoroughly evaluated and considered twice by the tribunals below.[19]

In ***Lorzano v. Tabayag, Jr.***,[20] the Court held that the propriety of the award of damages is a question of fact, thus:

---

[14] *Rollo*, pp. 41-42.

[15] *Id.* at 17-19.

[16] *Id.* at 23.

[17] *Id.* at 107-113.

[18] *Id.* at 125-128.

[19] *Gatan v. Vinarao*, G.R. No. 205912, October 18, 2017, 842 SCRA 602, 610.

[20] 681 Phil. 39, 49-50 (2012).

For the same reason, we would ordinarily disregard the petitioner's allegation as to the propriety of the award of moral damages and attorney's fees in favor of the respondent as it is a question of fact. Thus, questions on whether or not there was a preponderance of evidence to justify the award of damages or whether or not there was a causal connection between the given set of facts and the damage suffered by the private complainant or whether or not the act from which civil liability might arise exists are questions of fact.

Here, petitioner is essentially questioning his liability for damages claiming he did not act in bad faith in his dealings with ACLC and respondent Baun. His argument, however, requires a re-examination of the evidence presented by the parties during trial which the Court is precluded from doing so. This is especially true where the trial court's findings are adopted and affirmed by the Court of Appeals as in this case. While it is true that there are recognized exceptions to the general rule that only questions of law may be entertained in a Rule 45 petition, none obtains in this case.[21]

Second, Section 1, Rule 87 of the Rules of Court enumerates the following actions which survive the death of a party, thus: (1) recovery of real or personal property, or an interest from the estate; (2) enforcement of liens on the estate; and (3) **recovery of damages for an injury to person or property**.[22]

Here, both the trial court and the Court of Appeals found petitioner to have acted in bad faith to the damage and prejudice of respondent. The lower courts thus ruled that petitioner's tortious acts were in violation of Articles 19, 20, and 21 of the Civil Code[23] warranting payment of damages.

---

[21] *Clemente v. Court of Appeals*, 771 Phil. 113, 121 (2015).

[22] Section, Rule 87 of the Rules of Court provides: *Actions which may and which may not be brought against executor or administrator*. – No action upon a claim for the recovery of money or debt or interest thereon shall be commenced against the executor or administrator; but to recover real or personal property, or an interest therein, from the estate, or to enforce a lien thereon, and actions to recover damages for an injury to person or property, real or personal, may be commenced against him.

[23] Article 19. Every person must, in the exercise of his rights and in the

In ***Board of Liquidators v. Heirs of Kalaw***,[24] the Court ruled that an action for damages caused by tortious conduct survives the death of a party. For it falls under suits to recover damages for an injury to person or property, real or personal. The Court further emphasized that injury to property is not limited to injuries to specific property, but extends to other wrongs by which personal estate is injured or diminished. To maliciously cause a party to incur unnecessary expenses, as in this case, is certainly injury to that party's property.[25]

Verily, the Court finds no cogent reason to reverse the consistent findings of the courts below holding petitioner for damages. The Court, nonetheless, modifies the interest rate imposed on the monetary awards to conform with the guidelines laid down in ***Lara's Gift Shop & Decors, Inc. v. Midtown Industrial Sales, Inc.***, *viz*:[26]

x x x x x x x x x

2. **In the absence of stipulated interest**, in a loan or **forbearance of money**, goods, credits or judgments, the **rate of interest on the principal amount shall be the prevailing legal interest prescribed by the *Bangko Sentral ng Pilipinas***, which shall be **computed from default**, *i.e.*, from extrajudicial or judicial demand in accordance with Article 1169 of the Civil Code, **UNTIL FULL PAYMENT**, without compounding any interest unless compounded interest is expressly stipulated by law or regulation. **Interest due on the principal amount accruing as of judicial demand shall SEPARATELY earn legal interest at the prevailing rate prescribed by the *Bangko Sentral ng***

---

performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

Article 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

Article 21. Any person who willfully causes loss or injury to another in manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

[24] 127 Phil. 399, 414 (1967).

[25] *Id.*

[26] G.R. No. 225433, August 28, 2019. (Emphasis supplied)

> ***Pilipinas*, from the time of judicial demand UNTIL FULL PAYMENT.**
>
> x x x x x x x x x

In ***Estores v. Spouses Supangan***,[27] the Court explained the meaning of forbearance of money, *viz*:

> **Forbearance of money**, good or credits should therefore **refer to arrangements other than loan agreements, where a person acquiesces to the temporary use of his money**, goods or credits **pending happening of certain events or fulfillment of certain conditions**. In this case, the respondent-spouses parted with their money even before the conditions were fulfilled. They have therefore allowed or granted forbearance to the seller (petitioner) to use their money pending fulfillment of the conditions. **They were deprived of the use of their money for the period pending fulfillment of the conditions and when those conditions were breached, they are entitled not only to the return of the principal amount paid, but also to compensation for the use of their money.** And the compensation for the use of their money, absent any stipulation, should be the same rate of legal interest applicable to a loan since the use or deprivation of funds is similar to a loan. (emphases supplied)

Here, respondent paid petitioner ₱85,000.00 conditioned upon the supposed transfer of petitioner's franchise rights to operate ACLC's computer school. The transfer, however, never took place albeit petitioner retained respondent's payment. Respondent is thus entitled not only to the return of the principal amount she paid, but also to compensation for the use of her money.

Considering that respondent filed the complaint below against petitioner on September 11, 1997, the legal interest rate of twelve percent (12%) *per annum* applies here from judicial demand on September 11, 1997 until June 30, 2013. Beginning July 1, 2013, the effectivity of the Bangko Sentral ng Pilipinas-Monetary Board Circular No. 799, the new legal interest rate of six percent (6%) *per annum* must apply until full payment.

---

[27] 686 Phil. 86, 96-97 (2012).

More, ***Lara's Gift Shop & Decors, Inc.*** ordains that interest due on the principal amount shall also earn legal interest at the prevailing rate prescribed by the Bangko Sentral ng Pilipinas from the time of judicial demand until full payment. Thus, the interest due on the principal amount which petitioner owes shall also earn twelve percent (12%) interest *per annum* from judicial demand on September 11, 1997 until June 30, 2013, and six percent (6%) *per annum* from July 1, 2013 until full payment.

WHEREFORE, the petition is **DENIED**. The Decision dated July 17, 2013 and Resolution dated January 28, 2014 of the Court of Appeals in CA G.R. CV No. 96157 are **AFFIRMED with MODIFICATION**. Petitioner **Oscar LL. Arcinue** is **ORDERED** to pay the following to the estate of Alice Ilalo S. Baun:

1) ₱85,000.00 as actual damages, with legal interest at twelve percent (12%) *per annum* from judicial demand on September 11, 1997 until June 30, 2013 and six percent (6%) *per annum* from July 1, 2013 until full payment;

2) Legal interest on the interest due in (1) at the rate of twelve percent (12%) *per annum* from judicial demand on September 11, 1997 up to June 30, 2013, and six percent (6%) *per annum* from July 1, 2013 until full payment;

3) ₱50,000.00 as exemplary damages;

4) ₱50,000.00 as moral damages; and

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

SO ORDERED.

Peralta, C.J., Reyes, J. Jr., and *Inting*,* *JJ.*, concur.

Caguioa, J., on official leave.

---

* Additional member per Special Order No. 2726, dated October 25, 2019.

FIRST DIVISION

[G.R. No. 223046. November 28, 2019]

ENGRACIO U. ANG, JR., *petitioner, vs.* **SPOUSES BENJAMIN M. BITANGA and MARILYN ANDAL BITANGA, MANILA GOLF & COUNTRY CLUB, INC., BANK OF THE PHILIPPINE ISLANDS-STOCK TRANSFER OFFICE and WILFRED T. SIY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; CONCLUSIVENESS OF JUDGMENT; MATTERS SETTLED IN A FINAL ORDER ASSUMED BINDING AND CONCLUSIVE EFFECT ON THE PETITIONER, AS WELL AS ON THE OTHER PARTIES IN THE SAME CASE, AND CAN NO LONGER BE DISTURBED OR RELITIGATED IN ANY FUTURE LAWSUIT BETWEEN THEM; THE CAUSE OF ACTION IN CIVIL CASE NO-13-682 HAS ALREADY BEEN PRECLUDED BY THE FINALITY OF THE REGIONAL TRIAL COURT'S ORDER IN THE INDIRECT CONTEMPT CASE. — The complaint in Civil Case No. 13-682 fails not by reason of *litis pendentia* or the pendency of the *certiorari* case before the CA, but because the main cause of action therein has already been precluded by the finality of the July 19, 2012 Order of the RTC-QC in the indirect contempt case. This remains true even though Civil Case No. 13-682 and the indirect contempt case may have different objectives and ask for distinct reliefs. The Order of the RTC-QC, dismissing the charges of indirect contempt against MGCCI and Siy, attained immediate finality upon its promulgation. Thus, under the rule of *conclusiveness of judgment*, a variant of *res judicata*, matters settled in that final order already assumed binding and conclusive effect on the petitioner, as well as on the other parties in the same case, and can no longer be disturbed or relitigated in *any* future lawsuit between them. Among the matters settled in the said Order is the fact that the September 28, 2001 notice of garnishment was not addressed and validly delivered to MGCCI. The conclusiveness of the above factual finding is fatal to petitioner's cause in Civil Case No. 13-682. Petitioner's main

claim in his complaint was wholly dependent on the assumption that Pyramid was able to obtain an attachment on Bitanga's MGCCI stocks before Siy was able to purchase them. Such assumption, however, was already contradicted by the final order of the RTC-QC which effectively denounced the very existence of such an attachment.

2. ID.; ID.; ID.; THE FINALITY OF THE ORDER IN THE INDIRECT CONTEMPT CASE IS UNAFFECTED BY THE FILING OF THE *CERTIORARI* CASE BEFORE THE COURT OF APPEALS, AS THE *CERTIORARI* CASE IS NEITHER AN APPEAL FROM NOR A CONTINUATION OF THE INDIRECT CONTEMPT CASE, BUT AN ORIGINAL ACTION FOUNDED UPON A CAUSE OF ACTION THAT IS DISTINCT FROM THE ONE IN THE INDIRECT CONTEMPT CASE. — The finality of the order in the indirect contempt case was unaffected by the filing of the *certiorari* case before the CA. The *certiorari* case is neither an appeal from nor a continuation of the indirect contempt case. It is an original action founded upon a cause of action that is distinct from the one in the indirect contempt case. At any rate, the possibility of conflict between the outcome of the *certiorari* case and the indirect contempt case has since been reduced to nil. As it happened, the CA had already issued a decision and a resolution in the *certiorari* case which dismissed Pyramid's petition and upheld the order of the RTC-QC in the indirect contempt case. Those decision and resolution already became final and executory on March 19, 2016. With that, we deny the instant appeal.

3. ID.; ID.; ID.; NO APPEAL COULD LIE AGAINST A JUDGMENT OR FINAL ORDER THAT DISMISSES A CHARGE OF INDIRECT CONTEMPT ON THE MERITS; THUS, IT BECOMES FINAL AND EXECUTORY UPON ITS PROMULGATION. — As it absolved MGCCI and Siy from the charge of indirect contempt, the July 19, 2012 Order of the RTC-QC became final and executory immediately upon its promulgation. This is due to the norm, observed in our jurisdiction, that regards as *unappealable* any judgment or final order that dismisses on the merits a charge of indirect contempt. The norm referred to is based on Section 11, Rule 71 of the Rules of Court. The provision states that judgments and final orders in indirect contempt proceedings may be appealed in

the same manner as in criminal cases x x x. Section 11, Rule 71 of the Rules of Court, simply put, made the rules of appeal in criminal cases applicable to indirect contempt proceedings. In the seminal case of *In the Matter of Contempt Proceedings Against Mison, Jr., et al.*, we held that, as a consequence of the subject provision, the rule in criminal cases which prohibits acquittals from being appealed became apt in contempt proceedings with respect to decisions dismissing charges of contempt, *viz.*: It has been held that a "contempt proceeding" is not a "civil action" but is a separate proceeding of a criminal nature and of summary character in which the court exercises but limited jurisdiction. A charge for contempt of court partakes of the nature of a criminal action even when the act complained of is an incident of a civil action. As such, the mode of procedure and rules of evidence in contempt proceedings are assimilated as far as practicable to those adapted to criminal prosecutions. Therefore, a judgment in contempt proceedings is subject to review only in the manner provided for review of judgments in criminal cases. **In fact, Section 10 of the Rules of Court [now Section 11 of Rule 71] provides that the appeal in contempt proceedings may be taken as in criminal cases. Hence, as in criminal proceedings, an appeal would not lie from the order of dismissal of, or an exoneration from, a charge of contempt of court.** x x x. Verily, since no appeal could lie against it, a judgment or final order dismissing a charge of indirect contempt on the merits-like an acquittal in a criminal case—necessarily becomes final and executory upon its promulgation. Such, therefore, is the status of the July 19, 2012 Order of the RTC-QC when petitioner filed his complaint in Civil Case No. 13-682.

4. ID.; ID.; ID.; *RES JUDICATA*; BAR BY FORMER JUDGMENT RULE AND CONCLUSIVENESS OF JUDGMENT RULE; THE "BAR BY FORMER JUDGMENT RULE" CONSIDERS THE FINAL JUDGMENT IN A PREVIOUS CASE AS AN ABSOLUTE BAR TO A SUBSEQUENT CASE BETWEEN THE SAME PARTIES, BASED ON THE SAME CLAIM, DEMAND OR CAUSE OF ACTION AS THE PREVIOUSLY DECIDED CASE; THE "CONCLUSIVENESS OF JUDGMENT RULE" CONSIDERS THE FINAL JUDGMENT IN A PREVIOUS CASE NOT AS AN ABSOLUTE BAR TO A SUBSEQUENT CASE BETWEEN THE SAME PARTIES, INVOLVING DIFFERENT CLAIM, DEMAND OR CAUSE

OF ACTION, BUT MERELY AS HAVING A PRECLUSIVE EFFECT ON THE LATTER CASE INSOFAR AS THE MATTERS ALREADY SETTLED IN THAT FINAL JUDGMENT ARE CONCERNED; ELABORATED. — The finality of the July 19, 2012 Order of the RTC-QC in the indirect contempt case meant that the said order, as well as the matters settled therein, became conclusive upon the petitioner and the other parties of that case. This as much is clear by the principle of *res judicata*. *Res judicata* is a legal principle that regards a final judgment on the merits of a case as conclusive between the parties to such case and their privies. The principle, in our jurisdiction, may be applied in two (2) ways. The first way, which is known as the "*bar by former judgment rule*," considers the final judgment in a previous case as an absolute bar to a subsequent case between the same parties. For this variant of *res judicata* to apply, however, it is essential that the subsequent case was prosecuted between the same parties and on the same claim, demand or cause of action as the previously decided case. In *Gomeco Metal Corp. v. Court of Appeals, et al.*, we identified the circumstances that must obtain in order for the bar by former judgment rule to apply: 1. There is a judgment in a case that: a. disposed of such case on the merits, b.was issued by a court of competent jurisdiction, c. has attained final and executory status; 2. There is another case subsequently filed in court; 3. Between the previous case and the subsequent case, there is an identity of parties; and 4. The previous case and the subsequent case are based on the same claim, demand or cause of action. The second way or the "*conclusiveness of judgment rule*," on the other hand, considers the final judgment in a previous case not as an absolute bar to a subsequent case between the same parties, but merely as having a preclusive effect on the latter case insofar as the matters already settled in that final judgment are concerned. This variant of *res judicata* applies when there is an identity of parties, but not of claim, demand or cause of action, between the subsequent case and the previously decided case. The circumstances that must concur in order for the conclusiveness of judgment rule to apply are the same as those needed for the bar by judgment rule to set in, except for the last circumstance. In the application of the conclusiveness of judgment rule, the previous case and the subsequent case must *not* be based on the same claim, demand or cause of action, but only pass upon the same matters or issues.

In this case, we find that the second variant of *res judicata*, or the conclusiveness of judgment rule, may be applied to Civil Case No. 13-682 insofar as the matters already settled in the indirect contempt case are concerned.

5. ID.; PROVISIONAL REMEDIES; ATTACHMENT; PETITIONER IS NOT ENTITLED TO HAVE THE STOCK CERTIFICATE TRANSFERRED IN HIS NAME AS THE STOCKS OF THE CORPORATION WERE NEVER ATTACHED IN FAVOR OF HIS PREDECESSOR-IN-INTEREST BECAUSE THE NOTICE OF GARNISHMENT HAD NOT BEEN ADDRESSED AND DELIVERED TO THE SAID CORPORATION; IN ORDER TO PLACE A SHARE OF STOCK OF A CERTAIN CORPORATION UNDER LEVY ON ATTACHMENT, THE NOTICE INDICATING THE ATTACHMENT OF SUCH STOCK, AS WELL AS A COPY OF THE WRIT OF ATTACHMENT, MUST HAVE BEEN FIRST DELIVERED TO THE APPROPRIATE OFFICER OF THAT VERY CORPORATION. — Among the matters settled in the July 19, 2012 Order of the RTC-QC in the indirect contempt case is the fact that the September 28, 2001 notice of garnishment was not addressed and validly delivered to MGCCI. x x x. The finding that the September 28, 2001 notice of garnishment had not been addressed and delivered to MGCCI effectively means that Pyramid, petitioner's predecessor-in-interest, was not able to secure any attachment on Bitanga's MGCCI stocks. Our rule of procedure are clear that in order to place a share of stock of a certain corporation under levy on attachment, the notice indicating the attachment of such stock, as well as a copy of the writ of attachment, must have been first delivered to the appropriate officer of that very corporation x x x. Petitioner, in his complaint in Civil Case No. 13-682, cannot validly allege the existence of an attachment on Bitanga's MGCCI stocks in favor of Pyramid. As can be observed, the allegation openly contradicts a factual finding of the July 19, 2012 Order of the RTC-QC in the indirect contempt case and, therefore, if allowed to be raised, invites a redetermination of such finding, in violation of the conclusiveness of judgment rule. Petitioner, under the principle of *res judicata*, is already bound by the findings in the indirect contempt case and is thus precluded from asserting a position contrary to such findings in Civil Case No. 13-682. Being so precluded, however, is clearly detrimental to petitioner's cause of action in Civil Case No. 13-682. The assumption that

Pyramid was able to secure an attachment on Bitanga's MGCCI stocks is so central to petitioner's complaint that, without it, the complaint can no longer stand as a viable legal action. Petitioner cannot assert a better right to MC No. 2544 than Siy, and so entitled to have the said stock certificate transferred in his name, if Bitanga's MGCCI stocks were never attached in favor of Pyramid in the first place. Hence, for the above reasons, we sustain the dismissal of petitioner's complaint albeit on the ground that its cause of action has already been negated by *res judicata*.

6. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE FILING OF THE *CERTIORARI* CASE BEFORE THE COURT OF APPEALS CANNOT FORESTALL THE ORDER OF THE REGIONAL TRIAL COURT IN THE INDIRECT CONTEMPT CASE FROM ATTAINING FINAL AND EXECUTORY STATUS, EVEN THOUGH A POTENTIAL OUTCOME OF THE *CERTIORARI* CASE COULD BE THE NULLIFICATION OF THE SAID ORDER FOR BEING RENDERED BY THE REGIONAL TRIAL COURT EITHER WITH GRAVE ABUSE OF DISCRETION OR LACK OF JURISDICTION. — It is true that at the time petitioner filed his complaint in Civil Case No. 13-682, a *certiorari* case assailing the July 19, 2012 Order of the RTC-QC in the indirect contempt case was already filed and had been pending before the CA. We find, however, that the filing and pendency of such *certiorari* case do little, if anything at all, to alter the conclusion we have reached. The finality of the order in the indirect contempt case, it should be stressed, was unaffected by the filing and pendency of the *certiorari* case before the CA. The *certiorari* case is not an appeal or a continuation of the indirect contempt case. It is an elementary tenet in remedial law that the remedy of *certiorari* under Rule 65 of the Rules of Court is an original and independent action whose purpose and scope of review are completely different from an appeal. x x x Since the *certiorari* case is not deemed a continuation of the indirect contempt case, it cannot be said that the filing of the former could have forestalled the order in the latter case from attaining final and executory status. This is true even though a potential outcome of the *certiorari* case could be the nullification of the July 19, 2012 Order in the indirect contempt case for being rendered by the RTC-QC either with grave abuse of discretion or lack of jurisdiction.

APPEARANCES OF COUNSEL

Verano Law Firm for petitioner.

BPI Legal Affairs and Dispute Resolution Division for respondent Bank of the Philippine Islands-Stock Transfer Office.

Quiason Makalintal Barot Torres Ibarra Sison & Damaso for respondent Wilfred T. Siy.

Ocampo Manalo Valdez & Lim Law Firm for respondent Manila Golf & Country Club, Inc.

D E C I S I O N

PERALTA, *C.J.*:

At bench is a petition for review on *certiorari*[1] assailing the Orders dated October 7, 2014[2] and June 15, 2015[3] of the Regional Trial Court (*RTC*), Branch 66, Makati City in Civil Case No. 13-682.

The facts:

The Construction Agreement, Compromise Agreement and Contract of Guaranty[4]

Pyramid Construction Engineering Corporation (*Pyramid*) is a domestic construction firm.

In 1997, Macrogen Realty (*Macrogen*) engaged the services of Pyramid for the construction of a shopping mall in Sucat, Parañaque City. A corresponding construction agreement was

---

[1] *Rollo*, vol. I, pp. 11-48. The petition was filed under Rule 45 of the Rules of Court.

[2] *Id.* at 54-60. The Order was penned by Presiding Judge Joselito C. Villarosa.

[3] *Id.* at 52-53. The Order was penned by Presiding Judge Joselito C. Villarosa.

[4] Portions of this section were derived from the factual narration in the case of *Bitanga v. Pyramid Construction Engineering Corp.*, 585 Phil. 537 (2008).

executed by Macrogen and Pyramid on March 26, 1997. Pyramid began working on the construction project in May 1997.[5]

In August 1998, Pyramid stopped work on the project due to Macrogen's failure to settle its outstanding obligations under the construction agreement. On September 1, 1998, Pyramid initiated arbitration proceedings before the Construction Industry Arbitration Commission (*CIAC*) in order to compel Macrogen to settle its debts.[6]

On April 17, 2000, however, Pyramid and Macrogen entered into a compromise agreement which effectively abated the progress of the arbitration proceedings. Under the terms of the compromise agreement, Macrogen agreed to pay Pyramid the amount of ₱6,000,000.00 in six (6) equal monthly installments beginning in June 2000.[7]

The fulfillment by Macrogen of the above obligation was secured by a guaranty of respondent Benjamin Bitanga (*Bitanga*), the president of Macrogen. In the contract of guaranty he executed in favor of Pyramid, Bitanga "*absolutely, unconditionally and irrevocably*" guaranteed the full and complete payment by Macrogen of its obligation under the compromise agreement in the amount of ₱6,000,000.00.[8]

The CIAC approved the compromise agreement on April 25, 2000.[9]

Yet, as it happened, Macrogen failed to pay any of the monthly installments agreed upon under the compromise agreement. Thus, on September 7, 2000, Pyramid filed with the CIAC a motion for the issuance of a writ of execution against Macrogen. The CIAC granted the motion.[10]

---

[5] *Id.* at 540.

[6] *Id.*

[7] *Id.*

[8] *Id.* at 541-542.

[9] *Id.* at 542.

[10] *Id.*

On November 29, 2000, the sheriff of the CIAC filed a return on the writ of execution, stating that he was unable to locate any property of Macrogen, *except* the latter's bank deposit in the amount of ₱20,242.23 with Planter's Bank, Buendia Branch.[11]

On January 3, 2001, Pyramid sent a written demand to Bitanga, as guarantor of Macrogen, to pay the latter's unpaid obligation under the compromise agreement or to point out available properties of Macrogen within the country sufficient to cover such obligation. This demand, however, went unheeded.[12]

Complaint for Specific Performance, Notice of Garnishment and Execution Sale

In September 2001, Pyramid filed before the RTC, Quezon City (*QC*) a complaint for specific performance,[13] with an application for the issuance of a writ of preliminary attachment, against Bitanga and the latter's wife, Marilyn. In it, Pyramid sought to enforce the contract of guaranty, and hold Bitanga and his wife liable for the remaining debt of Macrogen under the compromise agreement. The complaint was docketed as Civil Case No. Q-01-45041 and raffled to Branch 96 of the RTC-QC.

On September 10, 2001, the RTC-QC granted Pyramid's application and issued a writ of preliminary attachment.

Implementing the above writ, the sheriff[14] of the RTC-QC issued a notice of garnishment[15] on September 28, 2001. According to Pyramid, the said notice was intended to place under attachment the shares of stock of Bitanga in respondent

---

[11] *Id.*

[12] *Id.*

[13] *Rollo*, vol. I, pp. 78-91. The complaint was docketed as Civil Case No. Q-01-45041 and raffled to Branch 96 of the RTC-QC.

[14] Namely, Deputy Sheriff Jose G. Martinez. See *rollo*, vol. I, p. 93.

[15] *Rollo*, vol. I, pp. 92-93.

Manila Golf & Country Club, Inc. (*MGCCI*), covered by Membership Certificate (*MC*) No. 2254.[16]

Pyramid claimed that the notice of garnishment was served on the corporate secretary of MGCCI[17] who, in turn, forwarded the same to MGCCI's stock transfer agent, respondent Bank of the Philippine Islands-Stock Transfer Office (*BPI-STO*).[18]

On November 29, 2002, the RTC-QC rendered a Partial Decision[19] finding Bitanga and his wife solidarily liable to Pyramid for the remaining debt of Macrogen under the compromise agreement. Accordingly, the trial court directed Bitanga and his wife to pay Pyramid the sum of ₱5,979,757.77 (*i.e.*, the difference between the ₱6,000,000.00 original amount of obligation under the compromise agreement *less* the ₱20,242.23 from Macrogen's account with Planter's Bank). Bitanga and his wife appealed to the Court of Appeals (*CA*).[20]

On April 11, 2006, the CA issued a Decision modifying the RTC-QC's Decision.[21] The CA maintained Bitanga's liability as a guarantor, but absolved Bitanga's wife from any liability to Pyramid. Undeterred, Bitanga next appealed to this Court.[22]

On August 28, 2008, this Court rendered its Decision[23] in *G.R. No. 173526*, denying Bitanga's appeal and affirming the CA's Decision. This Decision eventually became final and,

---

[16] See *rollo*, vol. I, pp. 62-63.

[17] Namely, Alfonso Reyno III. See *rollo*, vol. I, p. 94.

[18] See *rollo*, vol. I, p. 95.

[19] *Rollo*, vol. I, pp. 96-101. The Partial Decision was penned by then Judge Lucas P. Bersamin (now a retired Chief Justice of the Supreme Court).

[20] Prior to the appeal, the RTC-QC issued an Order dated January 26, 2003 (*id.* at 102), denying the motion for reconsideration of Bitanga and his wife.

[21] *Rollo*, vol. II, p. 863.

[22] Prior to the appeal, the CA issued a Resolution dated July 5, 2006, denying the motion for reconsideration of Bitanga. See *rollo*, vol. II, p. 861.

[23] *Rollo*, vol. II, pp. 863-880.

thereupon, was remanded to the RTC-QC, the court of origin, for execution.

On March 4, 2009, the RTC-QC responded with a writ of execution. Pursuant to such writ, the sheriff[24] of the RTC-QC caused the sale in public auction of, among others,[25] Bitanga's stocks or membership certificate in MGCCI—the same stocks thought to be under attachment by virtue of the notice of garnishment dated September 28, 2001. In that auction, Pyramid emerged as the winning bidder and was subsequently awarded with a corresponding certificate of sale[26] on March 13, 2009.

Buoyed by the certificate of sale, Pyramid promptly requested MGCCI for the transfer of MC No. 2254—the membership certificate covering Bitanga's stocks—in its (Pyramid's) name. This request, however, was turned down by MGCCI.[27]

In its letter to Pyramid dated April 27, 2009, MGCCI explained that it could not accommodate the aforesaid request because MC No. 2254 was no longer Bitanga's since July 30, 2008.[28] MGCCI disclosed that, as of the said date, MC No. 2254 was already transferred to, and recorded in the books of the corporation under the name of, respondent Wilfred Siy (*Siy*),[29] pursuant to a Deed of Absolute Sale[30] executed by Bitanga.

Bitanga, as it turned out, sold his MGCCI stocks to Siy on March 3, 2008.[31] The sale was then recorded in the books of

---

[24] Namely, Sheriff IV Joseph Bisnar. See *rollo*, vol. II, p. 847.

[25] The auction also involved the sale of Bitanga's share in the capital stock of Sta. Elena Golf Club, Inc. See *rollo*, vol. II, p. 881.

[26] *Rollo*, vol. I, p. 279.

[27] Letter of MGCCI (by its counsel, Ocampo & Manalo) to Pyramid dated April 27, 2009. *Id.* at 123-125.

[28] *Id.* at 123. The letter was received by Pyramid on May 5, 2009 (see *rollo*, vol. I, p. 172).

[29] *Id.*

[30] *Id.* at 127-128.

[31] *Id.* at 127.

MGCCI and, in due course, precipitated the transfer of MC No. 2544 to Siy.

MGCCI professed that it allowed the aforementioned transfer because, at the time, it knew of no attachment on Bitanga's stocks in favor of Pyramid. MGCCI denied receiving the notice of garnishment dated September 28, 2001 and of being informed by BPI-STO about any such notice.[32] Pyramid, though, was unconvinced.

Indirect Contempt Case and Certiorari Case

Believing that the sale and the consequent transfer of MC No. 2544 to Siy entailed violations of the notice of garnishment dated September 28, 2001, Pyramid filed before the RTC-QC a petition for *indirect contempt*[33] against MGCCI, Bitanga and Siy. This petition was docketed as SCA No. Q-10-66500 and was raffled to Branch 99 of the RTC-QC.

The RTC-QC initially adjudged[34] MGCCI, Bitanga and Siy guilty of indirect contempt; MGCCI was ordered to pay a fine, while Bitanga and Siy were meted prison sentences in addition to the fine.[35] Yet, upon motions for reconsideration of MGCCI and Siy, the RTC-QC subsequently reversed itself. In an Order[36] dated July 19, 2012, the trial court exonerated both MGCCI and Siy from any liability for indirect contempt.

---

[32] *Id.* at 124.

[33] Filed on February 16, 2010. *Id.* at 169-175.

[34] In a Decision dated September 26, 2011 (*id.* at 298-304), the RTC-QC, through Presiding Judge Afable Cajigal, found MGCCI, Bitanga and Siy guilty of indirect contempt, and directed each of them to pay a fine of ₱30,000.00. Against such Decision, Pyramid, MGCCI and Siy filed their respective motions for reconsideration. On March 13, 2012, the RTC-QC acted upon Pyramid's motion by issuing an Order (*id.* at 310-311) modifying the September 26, 2012 Decision to the extent that Bitanga and Siy, in addition ₱30,000.00 fine, were also sentenced to suffer imprisonment of not exceeding six (6) months.

[35] *Id.* at 311.

[36] *Id.* at 176-184. The Order was penned by Presiding Judge Afable Cajigal.

The RTC-QC found that neither MGCCI nor Siy is capable of violating the September 28, 2001 notice of garnishment.[37] Such notice, as discovered by the trial court, was not actually addressed and delivered to MGCCI or Siy but to a completely different entity, *i.e.*, the Manila Polo Club.[38] In other words, the September 28, 2001 notice of garnishment never imposed any duty or obligation upon MGCCI or Siy that they, in turn, could breach.

The RTC-QC thus concluded that, since the notice of garnishment dated September 28, 2001 was not addressed or delivered to either MGCCI or Siy, there was actually no writ, order or court process that had been disobeyed by Siy when he purchased MC No. 2254 from Bitanga, or by MGCCI when it allowed the transfer of MC No. 2254 to Siy.[39] Accordingly, the trial court ruled that MGCCI and Siy cannot be cited in contempt for such sale and transfer.

Pyramid challenged the July 19, 2012 Order of the RTC-QC *via* a petition for *certiorari*[40] with the CA. This petition was docketed as CA-G.R. SP No. 127909.

Meanwhile, Pyramid assigned all of its rights and interests as judgment creditor in Civil Case No. Q-01-45041 to petitioner.[41]

Civil Case No. 13-682

During the pendency of CA-G.R. SP No. 127909, petitioner, as assignee of Pyramid, filed before the RTC-Makati another complaint[42] against Bitanga, MGCCI, Siy and BPI-STO. The complaint was docketed as **Civil Case No. 13-682** and raffled to Branch 66 of the RTC-Makati.

---

[37] *Id.* at 182.

[38] *Id.* at 177.

[39] *Id.* at 182.

[40] Under Rule 65 of the Rules of Court. The petition was docketed as CA-G.R. SP No. 127909.

[41] *Rollo*, vol. I, pp. 73-77.

[42] The complaint was denominated as one for "*annulment of sale*," "*specific performance*" and "*damages*." It was filed on June 5, 2013. *Id.* at 61-72.

In the complaint, petitioner mainly[43] sought to compel MGCCI to transfer MC No. 2254 in his name. He insists that the September 28, 2001 notice of garnishment was duly served upon MGCCI and that, consequently, Bitanga's stocks had been validly attached in favor of Pyramid prior to them being purchased by Siy. Petitioner thus claims that, in view of the prior attachment on Bitanga's stocks, he—as the assignee of Pyramid—has the better right over such stocks than Siy and is entitled to the registration of MC No. 2544 in his name.

MGCCI,[44] Siy[45] and BPI-STO[46] filed separate answers in due course. The answers of MGCCI and Siy, though, raised common affirmative defenses.

In their answers, both MGCCI and Siy argued that petitioner's complaint ought to be dismissed on any or all of the following grounds: failure of the complaint to state a cause of action, *litis pendentia* or willful and deliberate forum shopping.[47] A preliminary conference to hear these grounds was set by the RTC-Makati on March 26, 2014.[48]

On October 7, 2014, the RTC-Makati issued an Order[49] dismissing, *with prejudice*, petitioner's complaint primarily on the ground of *litis pendentia*. It opined that the petitioner's complaint was barred by virtue of the *certiorari* case pending with the CA in CA-G.R. SP No. 127909.

Petitioner filed a motion for reconsideration, but such motion was denied by the RTC-Makati in its Order[50] dated June 15, 2015.

---

[43] Petitioner also asked for the recovery of damages against Bitanga, MGCCI, Siy and BPI-STO on account of their collective bad faith.

[44] *Rollo*, vol. I, pp. 210-240.

[45] *Id.* at 149-166.

[46] *Id.* at 185-197.

[47] *Id.* at 155-161, 213-224.

[48] *Rollo*, vol. II, p. 773.

[49] *Rollo*, vol. I, pp. 54-60. The Order was penned by Presiding Judge Joselito C. Villarosa.

[50] *Id.* at 52-53. The Order was penned by Presiding Judge Joselito C. Villarosa.

Hence, petitioner's direct appeal to this Court.[51] In this appeal, petitioner raises the solitary legal issue of whether the RTC-Makati erred in dismissing his complaint on the ground of *litis pendentia*. He argues in the affirmative and pleas for the reinstatement of Civil Case No. 13-682.

OUR RULING

We sustain the dismissal of petitioner's complaint in Civil Case No. 13-682, albeit for a reason different from that provided by the RTC-Makati.

The complaint in Civil Case No. 13-682 fails not by reason of *litis pendentia* or the pendency of the *certiorari* case before the CA, but because the main cause of action therein has already been precluded by the finality of the July 19, 2012 Order of the RTC-QC in the indirect contempt case. This remains true even though Civil Case No. 13-682 and the indirect contempt case may have different objectives and ask for distinct reliefs.

The Order of the RTC-QC, dismissing the charges of indirect contempt against MGCCI and Siy, attained immediate finality upon its promulgation. Thus, under the rule of *conclusiveness of judgment*, a variant of *res judicata*, matters settled in that final order already assumed binding and conclusive effect on the petitioner, as well as on the other parties in the same case, and can no longer be disturbed or relitigated in *any* future lawsuit between them. Among the matters settled in the said Order is the fact that the September 28, 2001 notice of garnishment was not addressed and validly delivered to MGCCI.

The conclusiveness of the above factual finding is fatal to petitioner's cause in Civil Case No. 13-682. Petitioner's main claim in his complaint was wholly dependent on the assumption that Pyramid was able to obtain an attachment on Bitanga's MGCCI stocks before Siy was able to purchase them. Such assumption, however, was already contradicted by the final order of the RTC-QC which effectively denounced the very existence of such an attachment.

---

[51] *Id.* at 11-51.

The finality of the order in the indirect contempt case was unaffected by the filing of the *certiorari* case before the CA. The *certiorari* case is neither an appeal from nor a continuation of the indirect contempt case. It is an original action founded upon a cause of action that is distinct from the one in the indirect contempt case.

At any rate, the possibility of conflict between the outcome of the *certiorari* case and the indirect contempt case has since been reduced to nil. As it happened, the CA had already issued a decision[52] and a resolution[53] in the *certiorari* case which dismissed Pyramid's petition and upheld the order of the RTC-QC in the indirect contempt case. Those decision and resolution already became final and executory on March 19, 2016.[54]

With that, we deny the instant appeal.

I

In invoking *litis pendentia* as the chief ground for the dismissal of petitioner's complaint, the RTC-Makati overlooked the finality of the July 19, 2012 Order of the RTC-QC in the indirect contempt case and its effect on Civil Case No. 13-682. In our view, that final order is the real reason why petitioner's complaint in Civil Case No. 13-682 is liable to being dismissed. Petitioner's complaint fails because the main cause of action therein had already been precluded by the July 19, 2012 Order of the RTC-QC in the indirect contempt case.

July 19, 2012 Order of the RTC-QC in the Indirect Contempt Case was Already Final When Petitioner Filed His Complaint in Civil Case No. 13-682

As it absolved MGCCI and Siy from the charge of indirect contempt, the July 19, 2012 Order of the RTC-QC became final and executory immediately upon its promulgation. This is due

---

[52] *Rollo*, vol. II, pp. 1131-1148.

[53] *Id.* at 1181-1182.

[54] *Id.* at 1383-1384.

to the norm, observed in our jurisdiction, that regards as *unappealable* any judgment or final order that dismisses on the merits a charge of indirect contempt.

The norm referred to is based on Section 11, Rule 71 of the Rules of Court. The provision states that judgments and final orders in indirect contempt proceedings may be appealed in the same manner as in criminal cases, *viz.*:

> **Section 11.** *Review of judgment or final order; bond for stay.* – **The judgment or final order of a court in a case of indirect contempt may be appealed to the proper court as in criminal cases.** But execution of the judgment or final order shall not be suspended until a bond is filed by the person adjudged in contempt, in an amount fixed by the court from which the appeal is taken, conditioned that if the appeal be decided against him he will abide by and perform the judgment or final order. (Emphasis supplied)

Section 11, Rule 71 of the Rules of Court, simply put, made the rules of appeal in criminal cases applicable to indirect contempt proceedings. In the seminal case of *In the Matter of Contempt Proceedings Against Mison, Jr., et al.*,[55] we held that, as a consequence of the subject provision, the rule in criminal cases which prohibits acquittals from being appealed became apt in contempt proceedings with respect to decisions dismissing charges of contempt, *viz.*:

> It has been held that a "contempt proceeding" is not a "civil action" but is a separate proceeding of a criminal nature and of summary character in which the court exercises but limited jurisdiction. A charge for contempt of court partakes of the nature of a criminal action even when the act complained of is an incident of a civil action. As such, the mode of procedure and rules of evidence in contempt proceedings are assimilated as far as practicable to those adapted to criminal prosecutions. Therefore, a judgment in contempt proceedings is subject to review only in the manner provided for review of judgments in criminal cases. **In fact, Section 10 of the Rules of Court [now Section 11 of Rule 71] provides that the appeal in contempt proceedings may be taken as in criminal cases. Hence, as in criminal proceedings, an appeal would not lie from the order**

[55] 144 Phil. 63 (1970).

of dismissal of, or an exoneration from, a charge of contempt of court.[56] (Emphasis supplied, citations omitted)

In the 2013 case of *Digital Telecommunications Philippines, Inc. v. Cantos*,[57] we substantially reiterated the above pronouncement:

Indeed, contempt is not a criminal offense. However, a charge for contempt of court partakes of the nature of a criminal action. Rules that govern criminal prosecutions strictly apply to a prosecution for contempt. **In fact, Section 11 of Rule 71 of the Rules of Court provides that the appeal in indirect contempt proceedings may be taken as in criminal cases. This Court has held that an alleged contemner should be accorded the same rights as that of an accused. Thus, the dismissal of the indirect contempt charge against respondent amounts to an acquittal, which effectively bars a second prosecution.**[58] (Emphasis supplied, citations omitted)

Verily, since no appeal could lie against it, a judgment or final order dismissing a charge of indirect contempt on the merits—like an acquittal in a criminal case—necessarily becomes final and executory upon its promulgation. Such, therefore, is the status of the July 19, 2012 Order of the RTC-QC when petitioner filed his complaint in Civil Case No. 13-682.

July 19, 2012 Order of the RTC-QC in the Indirect Contempt Case Has Preclusive Effect on Civil Case No. 13-682, Even if the Two Cases Do Not Involve the Same Claim, Demand and Cause of Action

The finality of the July 19, 2012 Order of the RTC-QC in the indirect contempt case meant that the said order, as well as the matters settled therein, became conclusive upon the petitioner and the other parties of that case. This as much is clear by the principle of *res judicata*.[59]

---

[56] *Id.* at 66.

[57] 722 Phil. 10 (2013).

[58] *Id.* at 21.

[59] A Latin phrase that means "*matter already adjudged.*"

Res judicata is a legal principle that regards a final judgment on the merits of a case as conclusive between the parties to such case and their privies.[60] The principle, in our jurisdiction, may be applied in two (2) ways.

The first way, which is known as the "*bar by former judgment rule*," considers the final judgment in a previous case as an absolute bar to a subsequent case between the same parties.[61] For this variant of *res judicata* to apply, however, it is essential that the subsequent case was prosecuted between the same parties and on the same claim, demand or cause of action as the previously decided case.

In *Gomeco Metal Corp. v. Court of Appeals, et al.*,[62] we identified the circumstances that must obtain in order for the bar by former judgment rule to apply:

1. There is a judgment in a case that:
   a. disposed of such case on the merits,
   b. was issued by a court of competent jurisdiction,
   c. has attained final and executory status;
2. There is another case subsequently filed in court;
3. Between the previous case and the subsequent case, there is an identity of parties; and
4. The previous case and the subsequent case are based on the same claim, demand or cause of action.

The second way or the "*conclusiveness of judgment rule*," on the other hand, considers the final judgment in a previous case not as an absolute bar to a subsequent case between the same parties, but merely as having a preclusive effect on the latter case insofar as the matters already settled in that final judgment are concerned.[63] This variant of *res judicata* applies

---

[60] *Gomeco Metal Corp. v. Court of Appeals, et al.*, 793 Phil. 355, 371 (2016).

[61] *Id.* at 371-372. See also Section 47(b), Rule 39 of the Rules of Court.

[62] *Id.* at 372-373.

[63] *Id.* at 373-374. See also Section 47(c), Rule 39 of the Rules of Court.

when there is an identity of parties, but not of claim, demand or cause of action, between the subsequent case and the previously decided case.

The circumstances that must concur in order for the conclusiveness of judgment rule to apply are the same as those needed for the bar by judgment rule to set in, except for the last circumstance.[64] In the application of the conclusiveness of judgment rule, the previous case and the subsequent case must *not* be based on the same claim, demand or cause of action, but only pass upon the same matters or issues.[65]

In this case, we find that the second variant of *res judicata*, or the conclusiveness of judgment rule, may be applied to Civil Case No. 13-682 insofar as the matters already settled in the indirect contempt case are concerned. The circumstances necessary for such an application, as mentioned above, are present:

First. The July 19, 2012 Order of the RTC-QC in the indirect contempt case satisfies the first circumstance. The order, by exonerating MGCCI and Siy from the charge of indirect contempt, indubitably brought the merits of the indirect contempt case to a close. And, as discussed above, such order has already attained final and executory status.

Second. Civil Case No. 13-682 satisfies the second and third circumstances. Petitioner, who is a successor-in-interest of a party (Pyramid) to the indirect contempt case, filed his complaint in Civil Case No. l3-682 on June 5, 2013—almost a year after the July 19, 2012 Order in the indirect contempt case was promulgated.[66] In the complaint, petitioner impleaded as defendants MGCCI, Siy and Bitanga—who were also impleaded as parties in the indirect contempt case. Hence, Civil Case No. 13-682 is a subsequent case that involves

---

[64] *Id.* at 374.

[65] *Id.*

[66] *Id.* at 61.

substantially the same parties as the previously decided indirect contempt case.

Third. Yet, the indirect contempt case and Civil Case No. 13-682 are based on distinct causes of action and prayers for relief. The indirect contempt case was filed by Pyramid for the purpose of securing punishment against MGCCI, Siy and Bitanga for their supposed violation of a notice of garnishment.[67] On the other hand, petitioner filed his complaint in Civil Case No. 13-682 mainly for the purpose of compelling MGCCI to transfer MC No. 2544 in his name, after MGCCI allegedly refused to do so upon demand.[68] Clearly, the relief sought for in one case cannot be obtained in the other, and *vice versa*.

But while they are based on separate causes of action and claims of relief, the indirect contempt case and Civil Case No. 13-682 touch on common factual issues. The resolution of those issues in the indirect contempt case, however, has to have precedence over Civil Case No. 13-682. Pursuant to the conclusiveness of judgment rule, matters that have been finally resolved in the indirect contempt case can no longer be disturbed, relitigated or redetermined in Civil Case No. 13-682.

Application of Conclusiveness of Judgment Rule is Fatal to Petitioner's Complaint in Civil Case No. 13-682

Among the matters settled in the July 19, 2012 Order of the RTC-QC in the indirect contempt case is the fact that the September 28, 2001 notice of garnishment was not addressed and validly delivered to MGCCI. The order was quite categorical on this:[69]

> Verily, [MGCCI] and Siy cannot and could not be held liable for alleged disobedience or resistance of a lawful writ, process or order of the [c]ourt, when Bitanga sold his share. **There was no order or writ addressed and delivered to [MGCCI] and Siy specifically**

---

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

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

[69] *Id.* at 181-182.

directing/ordering them to do/perform something which they willingly/intentionally disobeyed or resisted to do/perform.

x x x x x x x x x

It is evident [that] the [September 28, 2001 notice of garnishment] allegedly disobeyed or resisted was not addressed to them [*i.e.*, MGCCI and Siy], nor required them to do/perform a specific act which they intentionally and willfully disobeyed or resisted. Neither [MGCCI] nor Siy could have complied with the [notice of garnishment]. x x x. **The attachment is ineffective.** (Emphasis supplied)

As can be observed from the earlier narration, and even from the language used by the order itself, the above factual finding was the main reason behind the RTC-QC's decision to exonerate MGCCI and Siy from indirect contempt. The RTC-QC absolved MGCCI and Siy precisely because it found that the notice of garnishment dated September 28, 2001 was not addressed or delivered to either MGCCI or Siy.

The finding that the September 28, 2001 notice of garnishment had not been addressed and delivered to MGCCI effectively means that Pyramid, petitioner's predecessor-in-interest, was not able to secure any attachment on Bitanga's MGCCI stocks. Our rule of procedure are clear that in order to place a share of stock of a certain corporation under levy on attachment, the notice indicating the attachment of such stock, as well as a copy of the writ of attachment, must have been first delivered to the appropriate officer of that very corporation:

RULE 57
Preliminary Attachment

x x x x x x x x x

Section 7. *Attachment of real and personal property; recording thereof*. — Real and personal property shall be attached by the sheriff executing the writ in the following manner:

x x x x x x x x x

(c) Stocks or shares, or an interest in stocks or shares, of any corporation or company, **by leaving with the president or managing**

agent thereof, a copy of the writ, and a notice stating that the stock or interest of the party against whom the attachment is issued is attached in pursuance of such writ[.] (Emphasis supplied)

A look at petitioner's complaint in Civil Case No. 13-682, however, reveals that it was wholly dependent on the contrary assumption that Pyramid was able to obtain an attachment on Bitanga's MGCCI stocks. Petitioner, in his complaint, sought the transfer of MC No. 2544 in his name because of his belief that he has better rights thereto than Siy on account of the existence of a prior attachment on Bitanga's MGCCI stocks.[70] As petitioner alleged in his complaint:[71]

3.2. Undeniably, [petitioner], as assignee-in-fact of Pyramid has a valid and rightful claim to [MGCCI] Certificate of Membership No. [2544]. Considering that Pyramid, [petitioner's] assignor-in-interest, had properly garnished said [MGCCI] shares, which was even acknowledged by [MGCCI's] then Corporate Secretary, Atty. Alfonso G. Reyno III, and stock transfer agent, BPI-STO, it behooved upon [MGCCI], to have preserved the subject [MGCCI] shares for the benefit of Pyramid and the latter's assignee until the final disposition of Civil Case No. Q-01-45041. x x x.

x x x x x x x x x

3.5. Considering that the notice of garnishment had been served upon [MGCCI] at the time when the shares were still registered in the name of x x x Bitanga and there being no other preferred lien thereon, the right of Pyramid and [petitioner] as Pyramid's assignee should have been given preference over and above any other conveyance, more specifically that in favor of x x x Siy.

3.6. **To state otherwise, the conveyance made by [MGCCI] in favor of x x x Siy cannot defeat and is subject to the right of Pyramid and [petitioner] as Pyramid's assignee in Civil Case No. Q-01-45041 over the subject shares. This is because a purchaser of attached property acquires it subject to an attachment legally and validly levied thereon.** Accordingly, the right of x x x Siy as purchaser of the [MGCCI] shares is only subordinate to that of Pyramid as judgment creditor and the highest bidder in the execution sale

---

[70] *Id.* at 65-66.

[71] *Id.*

held in connection therewith, and that of [petitioner], as Pyramid's assignee. (Emphasis supplied, citation omitted)

Thus surface the reason why the petitioner's complaint in Civil Case No. 13-682 must be dismissed.

Petitioner, in his complaint in Civil Case No. 13-682, cannot validly allege the existence of an attachment on Bitanga's MGCCI stocks in favor of Pyramid. As can be observed, the allegation openly contradicts a factual finding of the July 19, 2012 Order of the RTC-QC in the indirect contempt case and, therefore, if allowed to be raised, invites a redetermination of such finding, in violation of the conclusiveness of judgment rule. Petitioner, under the principle of *res judicata*, is already bound by the findings in the indirect contempt case and is thus precluded from asserting a position contrary to such findings in Civil Case No. 13-682.

Being so precluded, however, is clearly detrimental to petitioner's cause of action in Civil Case No. 13-682. The assumption that Pyramid was able to secure an attachment on Bitanga's MGCCI stocks is so central to petitioner's complaint that, without it, the complaint can no longer stand as a viable legal action. Petitioner cannot assert a better right to MC No. 2544 than Siy, and so entitled to have the said stock certificate transferred in his name, if Bitanga's MGCCI stocks were never attached in favor of Pyramid in the first place.

Hence, for the above reasons, we sustain the dismissal of petitioner's complaint albeit on the ground that its cause of action has already been negated by *res judicata*.

II

It is true that at the time petitioner filed his complaint in Civil Case No. 13-682, a *certiorari* case assailing the July 19, 2012 Order of the RTC-QC in the indirect contempt case was already filed and had been pending before the CA. We find, however, that the filing and pendency of such *certiorari* case do little, if anything at all, to alter the conclusion we have reached.

The finality of the order in the indirect contempt case, it should be stressed, was unaffected by the filing and pendency of the *certiorari* case before the CA. The *certiorari* case is not an appeal or a continuation of the indirect contempt case. It is an elementary tenet in remedial law that the remedy of *certiorari* under Rule 65 of the Rules of Court is an original and independent action whose purpose and scope of review are completely different from an appeal's.[72] In *Sy v. Commission on Settlement of Land Problems*,[73] we held:

> In *Bañaga v. COSLAP*, the remedy availed of was a special civil action for *certiorari* under Rule 65. **Strictly speaking, the remedy of *certiorari* under Rule 65 is not a component of the appeal process. It is an original and independent action that is *not* a part of the trial which resulted in the rendition of the judgment complained of. In contrast, the exercise of our appellate jurisdiction refers to a process which is but a continuation of the original suit. A writ of *certiorari* is intended to redress grave abuse of discretion or lack of jurisdiction on the part of the respondent tribunal.** (Emphasis supplied, italics in the original, citations omitted)

Since the *certiorari* case is not deemed a continuation of the indirect contempt case, it cannot be said that the filing of the former could have forestalled the order in the latter case from attaining final and executory status.[74] This is true even though a potential outcome of the *certiorari* case could be the nullification of the July 19, 2012 Order in the indirect contempt case for being rendered by the RTC-QC either with grave abuse of discretion or lack of jurisdiction.[75]

---

[72] *Sy v. Commission on Settlement of Land Problems*, 417 Phil. 378, 393 (2001).

[73] *Id.*

[74] A contrary view would only allow the circumvention of our procedural rules relating to the finality of judgments.

[75] At most, the pendency of the *certiorari* case could have been considered by the RTC-Makati as a ground for the suspension of Civil Case No. 13-682. Such suspension may be carried out on the strength of precedents such as *Quiambao v. Hon. Osorio* (242 Phil. 441,446 [1988]), *Judge Tamin v. Court of Appeals* (284-A Phil. 376, 390 [1992]) and *Security Bank Corp.*

At any rate, the chance that the July 19, 2012 Order of the RTC-QC in the indirect contempt case would be nullified has now been reduced to nil.

As it was, on June 30, 2015, the CA rendered a Decision[76] in the *certiorari* case wherein it dismissed Pyramid's petition and upheld the validity of the July 19, 2012 Order of the RTC-QC in the indirect contempt case. This Decision was then followed by a Resolution[77] dated February 24, 2016 wherein the CA denied Pyramid's motion for reconsideration. Records reveal that the Resolution of the CA became final and executory on March 19, 2016.[78]

The complete and final termination of the *certiorari* case leaves no question as to the binding effect of the July 19, 2012 Order of the RTC-QC upon Civil Case No. 13-682. Hence, we maintain the dismissal of petitioner's complaint on the ground that its cause of action has already been negated by *res judicata*.

WHEREFORE, premises considered, the instant petition is **DENIED**. The Orders dated October 7, 2014 and June 15, 2015 of the Regional Trial Court, Branch 66, Makati City in Civil Case No. 13-682, insofar as they effectively dismissed petitioner Engracio U. Ang, Jr.'s complaint, are **AFFIRMED**.

---

v. Judge Victoria (505 Phil. 682, 700 [2005]) which recognized the power of a trial court to, in its discretion, suspend a case on account of the pendency of another non-criminal case if the "*rights of parties to the [former case] cannot be properly determined until the questions raised in the [latter case] are settled"* or in order *"to avoid multiplicity of suits and prevent vexatious litigations, conflicting judgments, confusion between litigants and courts*."

[76] *Rollo*, vol. II, pp. 1131-1148. The Decision was penned by Associate Justice Elihu A. Ybañez, with the concurrence of Associate Justices Isaias P. Dicdican and Victoria Isabel A. Paredes.

[77] *Id.* at 1181-1182. The Resolution was penned by Associate Justice Elihu A. Ybañez, with the concurrence of Associate Justices Franchito N. Diamante and Victoria Isabel A. Paredes.

[78] *Id.* at 1383-1384.

SO ORDERED.

Reyes, J. Jr., Carandang,[*] *Lazaro-Javier*, and *Inting*,[**] *JJ.*, concur.

FIRST DIVISION

[G.R. No. 225756. November 28, 2019]

VICTORINO G. RANOA, *petitioner, vs.* **ANGLO-EASTERN CREW MANAGEMENT PHILS., INC., ANGLO-EASTERN CREW MGT. (ASIA) LTD., and/or CAPT. GREGORIO B. SIALSA, and COURT OF APPEALS (TENTH DIVISION),** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; BEING NOT A TRIER OF FACTS, IT IS NOT THE SUPREME COURT'S FUNCTION TO ANALYZE OR WEIGH EVIDENCE ALL OVER AGAIN; AN EXCEPTION IS WHEN THE FINDINGS OF THE COURT OF APPEALS ARE CONTRARY TO THOSE OF THE LABOR ARBITER AND THE NLRC. — [B]eing not a trier of facts, it is not the Court's function to analyze or weigh evidence all over again in view of the corollary legal precept that the factual findings of the Court of Appeals are conclusive and binding on this Court. The Court, nevertheless, may proceed to probe and resolve factual issues presented here because the findings of the Court of Appeals are contrary to those of the labor arbiter and the NLRC.

---

[*] Designated as additional member, in lieu of Associate Justice Alfredo Benjamin S. Caguioa, per Special Order No. 2734 dated November 8, 2019.

[**] Designated additional member per Special Order No. 2726 dated October 25, 2019.

2. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (POEA-SEC); REQUIRED TO BE INTEGRATED IN EVERY SEAFARER'S CONTRACT. — *The employment of seafarers is governed by the contracts they sign at the time of their engagement. So long as the stipulations in said contracts are not contrary to law, morals, public order, or public policy, they have the force of law as between the parties. While the seafarer and his employer are governed by their mutual agreement, the POEA Rules and Regulations require that the POEA-SEC be integrated in every seafarer's contract.* Petitioner's employment is governed by the contract he executed with private respondents on March 19, 2013, the POEA-SEC, and the Collective Bargaining Agreement (CBA) between the parties.

3. ID.; ID.; COMPENSABILITY OF ILLNESSES; WHEN IS AN ILLNESS CONSIDERED PRE-EXISTING; TO EQUATE WITH FRAUDULENT MISREPRESENTATION, THE FALSITY MUST BE COUPLED WITH INTENT TO DECEIVE AND TO PROFIT FROM THAT DECEPTION. — Pursuant to the 2010 POEA-SEC, an illness shall be *considered as pre-existing* if prior to the processing of the POEA contract, *any* of the following conditions is present: (a) the advice of a medical doctor on treatment given for such continuing illness or condition; or (b) the seafarer had been diagnosed and has knowledge of such illness or condition but failed to disclose the same during the PEME, and such cannot be diagnosed during the PEME. More, to speak of fraudulent misrepresentation is not only to say that a person failed to disclose the truth but that he or she deliberately concealed it for a malicious purpose. To equate with fraudulent misrepresentation, the falsity must be coupled with intent to deceive and to profit from that deception.

4. ID.; ID.; ID.; IN CASE OF CONFLICT BETWEEN THE FINAL ASSESSMENT OF THE COMPANY-DESIGNATED PHYSICIAN AND THE SECOND OPINION FROM A PHYSICIAN OF CHOICE OF THE SEAFARER, REFERRAL TO A THIRD DOCTOR IS MANDATORY; INITIATIVE FOR REFERRAL TO A THIRD DOCTOR SHOULD COME FROM THE SEAFARER; CASE AT BAR. — As mandated, upon repatriation, the seafarer concerned shall be examined and treated by the company-designated physician.

If the seafarer disagrees with the final assessment of the company-designated physician, the former may procure a second opinion from a physician of his or her choice. In case of a conflicting assessment, the parties may resort to a third doctor. As stated, the company-designated doctors here gave petitioner a Grade 12 disability rating, while petitioner's chosen physician, Dr. Pascual, opined that petitioner was suffering from Stage 2 Hypertension and Coronary Heart Disease and concluded that he is "*unfit to work as a seaman*." There is no dispute that petitioner was not referred to a third doctor, which fact eventually became the core issue here. Petitioner insists that private respondents had the duty to refer him to a third doctor. He claimed private respondents did not, as the latter even ignored him. Private respondents, on the other hand, maintained they were never informed that petitioner consulted another doctor, much less, the findings of that doctor. Believing they had complied with their obligations to petitioner, they were surprised to have received a notice of the case from the labor arbiter's office. In ***Dohle Philman Manning Agency, Inc. v. Doble***, the Court held that referral to a third doctor is mandatory in disability claims. There, the Court ruled that should the seafarer fail to comply therewith, he or she would be in breach, as a consequence, of the POEA-SEC, and the assessment of the company designated physician shall be final and binding. ***INC Navigation Co. Philippines, Inc., et al. v. Rosales*** decreed that at this point, the matter of referral to a third doctor pursuant to the pertinent provision of the POEA-SEC is a settled ruling. x x x Here, there was nothing on record showing that petitioner had furnished petitioner with a copy of Dr. Pascual's findings and conclusions. Nor was there anything to show that he informed them of such contrary medical conclusion. Clearly, petitioner did not "*fully disclose the contrary assessment*" to private respondents as mandated under the POEA-SEC and jurisprudence. If petitioner truly wanted to be referred to a third doctor, then he should have fully informed private respondents of Dr. Pascual's contrary findings and demanded that he be referred to a third doctor. Only after upon such full disclosure and demand to be referred to a third doctor does the employer's duty to activate the third doctor provision arise. For another, in ***Generato M. Hernandez v. Magsaysay Maritime Corporation, et al.*** the Court clarified that the initiative for referral to a third doctor should come from the employee, *i.e.*, petitioner himself. *He must actively or expressly request for it.*

APPEARANCES OF COUNSEL

Ayubo and Martin Law Offices for petitioner.
Nolasco & Associates Law Office for respondents.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This petition for review on *certiorari*[1] seeks to reverse the Decision[2] dated February 29, 2016 of the Court of Appeals in CA-G.R. SP No. 140690 holding that petitioner Victorino G. Ranoa[3] was not entitled to permanent disability benefits.

Antecedents

On March 19, 2013, private respondent Anglo-Eastern Crew Management Phils., Inc., for and on behalf of its principal, private respondent Anglo-Eastern Crew Management (Asia) Ltd., hired petitioner as Master of its vessel "Genco Bay" for six (6) months with a monthly salary of USD1,943.00.[4]

Petitioner's responsibilities included commanding the ship in the transport of passengers and cargo, setting the course of the ship, inspecting the ship for safe and efficient operation, coordinating the activities of other crew members concerned for signaling devices, and calculating landfall sighting.[5]

Prior to his deployment, petitioner underwent routinary Pre-Employment Medical Examination (PEME). In the process,

---

[1] *Rollo*, pp. 9-29.

[2] Penned by now retired Associate Justice Florito S. Macalino and concurred in by Associate Justice Mariflor P. Punzalan Castillo and Associate Justice Zenaida T. Galapate-Laguilles, *rollo*, pp. 72-86.

[3] Sometimes spelled as "Rañoa."

[4] *Rollo*, p. 73.

[5] *Id.*

petitioner was asked whether he was aware of, diagnosed with, or treated for hypertension and heart disease, among others. Petitioner answered in the negative. Based on the results of his examination, petitioner was declared fit for sea duty and got deployed on March 26, 2013.[6]

On May 21, 2013, barely two (2) months on board, petitioner suffered dizziness, vomiting, chest pain, shortness of breath, and cold sweat. He was brought to a doctor in London who noted his elevated blood pressure at 170/100mmHg. Consequently, he got repatriated on May 26, 2013. As soon as he arrived back in the country, he was referred to company-designated doctors Karen Frances Hao-Quan and Marianne C. Sy.[7]

The doctors' initial finding was "*(t)o Consider Cardiac (Dysrythmia); To Consider Coronary Artery Disease; Hypertensive Cardiovascular Disease*." On October 24, 2013, the doctors issued a Grade 12 disability rating.[8]

Dissatisfied, he sought the opinion of a private doctor, Dr. Antonio C. Pascual of the Philippine Heart Center on April 1, 2014. Dr. Pascual found him to be suffering from Stage 2 hypertension and coronary artery disease and advised him to continue with his medication and treatment. Dr. Pascual, thus, opined that petitioner was unfit for sea duties.[9]

Petitioner averred that despite this finding, private respondents refused to award him total and permanent disability benefits. Hence, he got constrained to file the complaint below for permanent total disability benefits.[10]

Private respondents, on the other hand, argued that petitioner willfully concealed the fact that he was previously diagnosed

---

[6] *Id.* at 73 and 101.

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

[8] *Id.* at 74.

[9] *Id.* at 12, 57 and 74.

[10] *Id.* at 13.

with coronary artery disease and had undergone coronary angiogram. Assuming that petitioner was entitled to disability benefits, he was only entitled to Grade 12 disability benefits, as opined by the company-designated doctors.[11]

The Labor Arbiter's Ruling

By Decision dated October 1, 2014,[12] Labor Arbiter Eric V. Chuanico granted petitioner's claim for total and permanent disability benefits, *viz.*:

> **WHEREFORE**, (p)remises (c)onsidered, this Office finds the Complainant to be (t)otally and (p)ermanently (d)isabled. Respondents, jointly and severally are held liable to the Complainant the amount of US$155,257.00 or its Philippine Peso (e)quivalent at the time of payment as total and permanent disability benefit plus (d)amages of Php100,000.00 as well as to pay (attorney's fees equivalent to ten percent (10%) of the total award.
>
> Complainant's other claims are denied for lack of merit.
>
> **SO ORDERED.**[13]

Labor Arbiter Chuanico found private respondents' charge of concealment of material fact to be unsubstantiated. He held that the company-designated doctors should have required petitioner to present his previous diagnoses to ascertain all available information surrounding his illness. Private respondents' failure to require petitioner to present his previous medical records led to no other conclusion but that the statements made in the company-designated doctors' sworn affidavit were "*nothing more than self-serving allegations bereft of any credence*." As such, he cannot consider this allegation relevant, nay, applicable to the charge of material concealment against petitioner. Too, sustaining the allegation would violate the principle of privileged communication, hence, inadmissible in evidence.

---

[11] *Id.* at 40-41.

[12] *Id.* at 36-53.

[13] *Id.* at 53.

Records showed that petitioner was asymptomatic when he boarded the vessel. He was also deemed fit for sea duties. If petitioner already had a heart condition prior to boarding, then the same would have been reflected in his PEME, but it was not. Petitioner, therefore, was deemed fit prior to assuming his duties. His work on board caused or at least contributed to the development of his illness; thus, the same is compensable.

The National Labor Relations Commission's (NLRC) Ruling

On private respondents' appeal, the NLRC affirmed with modification through its Decision dated January 30, 2015,[14] to wit:

> WHEREFORE, the appeal is PARTLY MERITORIOUS and GRANTED. The Labor Arbiter's award of damages amounting to ₱100,000.00 is hereby DELETED.
>
> All other dispositions in the judgment aquo (sic) is hereby AFFIRMED.
>
> SO ORDERED.[15]

The NLRC held that petitioner was not guilty of concealment or misrepresentation when he did not disclose that he had previously undergone an angiogram. It said that an angiogram was neither an illness nor an operation, it was simply a "*procedure preparatory to an operation*." Since nothing serious came out of it, petitioner did not conceal anything when he did not indicate it in his PEME. In any case, he was found fit for sea duties. More, cardiovascular disease was one of the occupational diseases listed under Section 32-A of the Philippine Overseas Employment Administration — Standard Employment Contract (POEA-SEC).

Private respondents, too, may not insist that petitioner was only entitled to Grade 12 disability benefits in accordance with the company-designated doctors' findings. Petitioner's

---

[14] Penned by Presiding Commissioner Alex A. Lopez and concurred in by Commissioner Pablo C. Espiritu, Jr., *id.* at 55-67.

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

personal physician found him unfit for sea duties. In any event, it was not the injury which was being compensated, but the incapacity to work resulting in the impairment of one's earning capacity. Petitioner had been out of work for more than two hundred and forty (240) days. By operation of law, he was already deemed totally and permanently disabled to resume work as a seafarer.

Considering, however, that private respondents promptly attended to petitioner's medical need upon his repatriation, the award of damages was unnecessary.

Private respondents' motion for reconsideration was denied under Resolution dated March 31, 2015.[16]

The Court of Appeals' Ruling

On private respondents' petition for *certiorari*, the Court of Appeals, in its Decision dated February 29, 2016,[17] reversed the NLRC Decision.

The Court of Appeals held that while petitioner was indeed diagnosed with hypertensive cardiovascular disease and minor coronary artery disease, he failed to prove the existence of the circumstances to make the disease compensable under the POEA-SEC. Petitioner did not show that he was indeed exposed to a certain degree of strain in work that would contribute to the deterioration of his health. His employment contract even showed that he was required to work for only six (6) hours a day.

Private respondents' doctors, on the other hand, were consistent in finding that even prior to boarding, petitioner already had cardiovascular disease. These two (2) company-designated physicians from different hospitals swore that petitioner told them he had previously been diagnosed with hypertension and took medicines therefor for a year. Petitioner did not refute this. Notably too, there was no iota of evidence

---

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

[17] *Id.* at 72-86.

showing that petitioner was complying with his prescribed medications for such illness. Petitioner was even advised during treatment to quit smoking.

Petitioner cannot deny his existing illness, albeit he was found fit to work after his PEME. Jurisprudence had consistently held that a PEME is generally not exploratory in nature, nor a thorough examination of an applicant's medical condition. Neither can petitioner argue that the revelation by the company-designated doctors that he had been previously diagnosed with a heart ailment was a fruit of the poisonous tree. This principle applies only to unreasonable searches and seizures.

Lastly, petitioner did not even ask to be referred to a third doctor after his chosen physician came out with a finding contrary to those of the company-designated doctors. The POEA-SEC commands such referral and so does jurisprudence. This is specially applicable here considering that merely seven (7) days after consulting with his private doctor, petitioner already sought legal recourse.

The Present Petition

Petitioner now seeks affirmative relief from the Court and prays that the dispositions of the Court of Appeals be reversed and set aside.

Petitioner's Position[18]

Petitioner argues that he is not guilty of material concealment. Aside from the company-designated doctors' self-serving allegations that he supposedly mentioned to them that he was previously diagnosed with hypertension and underwent coronary angiogram in 2010, there is nothing on record to support the same. Dr. Sy even mentioned that he purportedly showed him and the other doctor a copy of the result of his angiogram. If this were true, Dr. Sy should have then obtained a copy of the same when his treatment was ongoing.

---

[18] See Petition for Review on *Certiorari* dated September 9, 2016, *id.* at 9-29.

In any event, disclosing to others what he supposedly told the company-designated doctors is a blatant violation of the privileged communication between doctor and patient. Thus, it is inadmissible in evidence. Too, sans any proof that the angiogram showed abnormal findings and continuing illness, it cannot be said that he was guilty of concealment. At any rate, he was deemed fit for duty as a result of his PEME.

His illness is total and permanent. Although the company-designated physicians rated him with Grade 12 disability, the same is not binding. He had the option of consulting a second physician of his choice. His chosen physician found him to be unfit for sea duties. In fact, as of October 24, 2013, he was still suffering from episodes of palpitation and skip beats. Also, his constant exposure to stress is a known risk factor of his illness. As he was cautioned not to expose himself to strenuous activities, hence, he could no longer resume his sea duties. From the time he was medically repatriated, he had not engaged in any occupation.

More, contrary to the Court of Appeals' ruling, referral to a third doctor is not mandatory. In any case, the process of choosing and appointing a third doctor rests on private respondents, not on him.

Private Respondents' Position[19]

Private respondents assert that petitioner's arguments are a mere rehash of the matters already resolved by the Court of Appeals. Petitioner willfully concealed the fact of his previous illness. When he was asked during his PEME whether he got hospitalized due to or whether he was aware of any medical problems like hypertension and heart disease, petitioner answered in the negative despite knowing full well that he had been diagnosed with this illness and had in fact undergone coronary angiogram. For this, he was even prescribed with certain medications which he took for one (1) year. It was only when

---

[19] See Comment dated November 25, 2016, *id.* at 93-124; and Memorandum of Arguments dated June 21, 2018, *id.* at 188-235.

he got medically repatriated on May 26, 2013 that he essentially admitted to the company-designated doctors his past diagnoses. Being a pre-existing condition, therefore, petitioner's illness is non-compensable.

Petitioner cannot also fault them for not securing copies of his past medical records. During the proceedings before the labor arbiter and the NLRC, they had repeatedly requested the labor tribunals to require petitioner's doctors to submit the latter's medical records. But the labor tribunals simply brushed aside their requests. In any case, the company-designated doctors had stated under oath what petitioner had told them regarding his past illness. Dr. Sy attested that petitioner showed her the result of his angiogram but did not give her a copy thereof. Jurisprudence teaches that notarized documents are accorded full faith and credence.

Petitioner cannot invoke the doctor-patient privileged communication rule. This rule applies only to civil cases and not to labor cases. Also, the privileged communication only pertains to those that would "*blacken the reputation of the patient*" which is not the case here.

Further, petitioner should have demanded referral to a third doctor instead of immediately filing the complaint below. As the Court of Appeals correctly held, referral to a third doctor is mandatory.

More important, petitioner was not totally and permanently disabled. As proved by two (2) Overseas Filipino Worker (OFW) Information from the POEA, petitioner was subsequently engaged by TDG Crew Management Inc. in December 2016 and by Seacrest Maritime Management Inc. in December 2017.[20]

Issues

1. Is petitioner guilty of material concealment of a previous medical condition?

---

[20] See Urgent Manifestation dated January 19, 2018, *id.* at 181-183.

2. Is referral to a third doctor mandatory?

3. Is petitioner entitled to total and permanent disability benefits?

Ruling

To begin with, being not a trier of facts, it is not the Court's function to analyze or weigh evidence all over again in view of the corollary legal precept that the factual findings of the Court of Appeals are conclusive and binding on this Court. The Court, nevertheless, may proceed to probe and resolve factual issues presented here because the findings of the Court of Appeals are contrary to those of the labor arbiter and the NLRC.[21]

The employment of seafarers is governed by the contracts they sign at the time of their engagement. So long as the stipulations in said contracts are not contrary to law, morals, public order, or public policy, they have the force of law as between the parties. While the seafarer and his employer are governed by their mutual agreement, the POEA Rules and Regulations require that the POEA-SEC be integrated in every seafarer's contract.[22]

Petitioner's employment is governed by the contract he executed with private respondents on March 19, 2013, the POEA-SEC, and the Collective Bargaining Agreement (CBA) between the parties.

First Issue
No material concealment

Private respondents deny petitioner's claim for disability benefits on ground of material concealment of his alleged pre-existing or previous diagnosis with hypertension and coronary artery disease.

---

[21] See *Status Maritime Corporation, et al. v. Sps. Margarito B. Delalamon and Priscila A. Delalamon*, 740 Phil. 175, 189 (2014).

[22] See *C.F. Sharp Crew Management, Inc., et al. v. Legal Heirs of the Late Godofredo Repiso*, 780 Phil. 645, 665-666 (2016).

Pursuant to the 2010 POEA-SEC, an illness shall be *considered as pre-existing* if prior to the processing of the POEA contract, *any* of the following conditions is present: (a) the advice of a medical doctor on treatment given for such continuing illness or condition; or (b) the seafarer had been diagnosed and has knowledge of such illness or condition but failed to disclose the same during the PEME, and such cannot be diagnosed during the PEME.[23] More, to speak of fraudulent misrepresentation is not only to say that a person failed to disclose the truth but that he or she deliberately concealed it for a malicious purpose. To equate with fraudulent misrepresentation, the falsity must be coupled with intent to deceive and to profit from that deception.[24]

Here, none of these conditions obtains. Consider:

One. Although the company-designated doctors stated that petitioner supposedly admitted to them that he was diagnosed with and treated for hypertension and coronary artery disease in 2010, petitioner had invariably denied it. Notably, private respondents themselves had not adduced evidence to prove that indeed, petitioner was already suffering from hypertension and coronary artery disease as far back as 2010.

Thus, without anything to substantiate petitioner's so-called previous diagnosis, there was nothing he could have concealed from private respondents.

Two. Petitioner passed the PEME prior to his boarding. He was declared fit to work by the company-designated doctors. Had petitioner been already suffering from hypertension and coronary artery disease, this would have been reflected in his physical examination. On this score, ***Philsynergy Maritime, Inc., et al. v. Columbano Pagunsan Gallano, Jr.***[25] is apropos:

---

[23] *Philsynergy Maritime, Inc., et al. v. Columbano Pagunsan Gallano, Jr.*, G.R. No. 228504, June 6, 2018.

[24] *Antonio B. Manansala v. Marlow Navigation Phils., Inc., et al.*, G.R. No. 208314 August 23, 2017, 837 SCRA 492, 508.

[25] *Supra* note 23.

At any rate, it is well to note that had respondent been suffering from a pre-existing hypertension at the time of his PEME, **the same could have been easily detected by standard/routine tests conducted during the said examination, *i.e.*, blood pressure test, electrocardiogram, chest x-ray, and/or blood chemistry**. However, respondent's PEME showed normal blood pressure with no heart problem, which led the company-designated physician to declare him fit for sea duty. (Emphasis supplied)

Thus, petitioner cannot be said to have had any pre-existing illness prior to boarding.

Three. Assuming that petitioner was indeed previously diagnosed with hypertension and coronary artery disease, he still could not be guilty of material concealment. There was no proof that petitioner "*deliberately concealed*" his illness for a malicious purpose. It was not shown that petitioner had the "*intent to deceive*" and to "*profit from that deception*." Consequently, petitioner cannot be considered guilty of concealment as to disqualify him from claiming disability benefits.

Second and Third Issues
Referral to a third doctor is mandatory
Petitioner is only entitled to Grade 12 disability benefits

Upon his repatriation, petitioner was diagnosed to be suffering from hypertension and coronary artery disease. The company-designated doctors gave petitioner's illness a Grade 12 rating.[26] But Dr. Pascual, petitioner's chosen doctor, found petitioner to be suffering from Stage 2 Hypertension and Coronary Heart Disease for which the latter is found to be "*unfit to work as a seaman*."

The POEA-SEC, as amended by POEA Memorandum Circular No. 10, series of 2010, the governing law at the time petitioner was employed in 2013, sets the procedure for disability claims, to wit:

---

[26] *Rollo*, pp. 229-235.

x x x x x x x x x

SECTION 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

1. The employer shall continue to pay the seafarer his wages during the time he is on board the ship;

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated. However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.

x x x x x x x x x

For this purpose, **the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return** except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

> **If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the (e)mployer and the seafarer. The third doctor's decision shall be final and binding on both parties.** (Emphases supplied)

As mandated, upon repatriation, the seafarer concerned shall be examined and treated by the company-designated physician. If the seafarer disagrees with the final assessment of the company-designated physician, the former may procure a second opinion from a physician of his or her choice. In case of a conflicting assessment, the parties may resort to a third doctor.

As stated, the company-designated doctors here gave petitioner a Grade 12 disability rating, while petitioner's chosen physician, Dr. Pascual, opined that petitioner was suffering from Stage 2 Hypertension and Coronary Heart Disease and concluded that he is "*unfit to work as a seaman*."[27]

There is no dispute that petitioner was not referred to a third doctor, which fact eventually became the core issue here. Petitioner insists that private respondents had the duty to refer him to a third doctor. He claimed private respondents did not, as the latter even ignored him.[28] Private respondents, on the other hand, maintained they were never informed that petitioner consulted another doctor, much less, the findings of that doctor. Believing they had complied with their obligations to petitioner, they were surprised to have received a notice of the case from the labor arbiter's office.[29]

In ***Dohle Philman Manning Agency, Inc. v. Doble***,[30] the Court held that referral to a third doctor is mandatory in disability claims. There, the Court ruled that should the seafarer fail to comply therewith, he or she would be in breach, as a consequence, of the POEA-SEC, and the assessment of the company designated

---

[27] *Id.* at 74.

[28] *Id.* at 13.

[29] *Id.* at 96.

[30] G.R. No. 223730, October 4, 2017, 842 SCRA 204, 217.

physician shall be final and binding. ***INC Navigation Co. Philippines, Inc., et al. v. Rosales***[31] decreed that at this point, the matter of referral to a third doctor pursuant to the pertinent provision of the POEA-SEC is a settled ruling.

Further, petitioner cannot demand that private respondents initiate the referral to a third doctor.

For one, how could private respondents make the referral themselves when in the first place, petitioner had not even informed them or shown proof of such contrary assessment? ***Marlow Navigation Philippines, Inc., et al. v. Osias***[32] further enunciates:

> In *Carcedo*, the Court held that "[t]o definitively clarify how a conflict situation should be handled, **upon notification** that the seafarer disagrees with the company doctor's assessment based on the **duly and fully disclosed contrary assessment** from the seafarer's own doctor, the seafarer shall then signify his intention to resolve the conflict by the referral of the conflicting assessments to a third doctor whose ruling, under the POEA-SEC, shall be final and binding on the parties. **Upon notification, the company carries the burden of initiating the process for the referral to a third doctor** commonly agreed between the parties." (Emphases supplied)

Here, there was nothing on record showing that petitioner had furnished petitioner with a copy of Dr. Pascual's findings and conclusions. Nor was there anything to show that he informed them of such contrary medical conclusion. Clearly, petitioner did not "*fully disclose the contrary assessment*" to private respondents as mandated under the POEA-SEC and jurisprudence.

If petitioner truly wanted to be referred to a third doctor, then he should have fully informed private respondents of Dr. Pascual's contrary findings and demanded that he be referred to a third doctor. Only after upon such full disclosure

---

[31] 744 Phil. 774, 787 (2014).

[32] 773 Phil. 428, 446 (2015); also see *Dario A. Carcedo v. Maine Marine Philippines, Inc., et al.*, 758 Phil. 166, 189-190 (2015).

and demand to be referred to a third doctor does the employer's duty to activate the third doctor provision arise.

For another, in ***Generato M. Hernandez v. Magsaysay Maritime Corporation, et al.***,[33] the Court clarified that the initiative for referral to a third doctor should come from the employee, *i.e.*, petitioner himself. *He must actively or expressly request for it.*

Nevertheless, while the Court of Appeals correctly ruled that referral to a third doctor is mandatory, it erred in altogether dismissing petitioner's claim for disability benefits.

On compensable diseases, the 2010 POEA-SEC states:

x x x x x x x x x

SECTION 32 - A. OCCUPATIONAL DISEASES

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

1. The seafarer's work must involve the risks described herein;
2. The disease was contracted as a result of the seafarer's exposure to the described risks;
3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and
4. There was no notorious negligence on the part of the seafarer.

It further provides for the conditions before a cardiovascular disease may be deemed compensable, *viz.*:

11. Cardio-vascular events - to include heart attack, chest pain (angina), heart failure or sudden death. Any of the following conditions must be met:

a. If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by an unusual strain by reasons of the nature of his work

---

[33] G.R. No. 226103, January 24, 2018.

b. the strain of work that brings about an acute attack must be sufficient severity and must be followed within 24 hours by the clinical signs of a cardiac insult to constitute causal relationship

c. If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, **it is reasonable to claim a causal relationship**

d. if a person is a known hypertensive or diabetic, he should show compliance with prescribed maintenance medications and doctor-recommended lifestyle changes. The employer shall provide a workplace conducive for such compliance in accordance with Section 1(A) paragraph 5.

e. in a patient not known to have hypertension or diabetes, as indicated on his last PEME. (Emphasis supplied)

The Court gives emphasis to paragraph (c) of the foregoing conditions.

Prior to assuming his duties as Master of "Genco Bay" on March 26, 2013, petitioner was declared fit to work after PEME with the company-designated doctors. Clearly, petitioner was asymptomatic before being subjected to strain at work. He only showed signs and symptoms of hypertension and heart ailment while already performing his work aboard "Genco Bay" on May 21, 2013 where he experienced dizziness, vomiting, chest pain, shortness of breath, and cold sweat. These symptoms persisted way beyond the time he was medically repatriated. In fact, according to the report made by the company-designated doctors themselves, as of October 24, 2013 or five (5) months after repatriation, petitioner was still suffering from episodes of palpitation and skip beats.[34] Considering that petitioner was asymptomatic prior to boarding and that his symptoms persisted, it is reasonable to claim a causal relationship between petitioner's illness and his work.

[34] *Rollo*, p. 19.

As vessel Master, petitioner was constantly exposed to strenuous work, such as commanding the ship in its transport of passengers and cargo, setting the course of the ship, inspecting the ship for safe and efficient operation, coordinating the activities of other crew members concerned for signaling devices, and calculating landfall sighting.[35] Private respondents have not disputed this. Such strenuous activities could have led to or at least aggravated petitioner's heart ailment, thus making it a compensable work-related illness.

Petitioner, however, is not entitled to permanent and total disability benefits but only to Grade 12 disability benefits as found by the company-designated doctors. This is because petitioner inexplicably failed to comply with the POEA-SEC's mandated procedure for referral to a third doctor.

This case is similar to ***Generato M. Hernandez v. Magsaysay Maritime Corporation, et al.***,[36] In that case, the NLRC, the Court of Appeals, and the Court invariably found that Hernandez was not guilty of material and fraudulent misrepresentation. But the Court only sustained the Grade 11 rating given him by the company-designated doctor, thus:

> The rulings of the labor authorities are seriously flawed because they were rendered in total disregard of the POEA-SEC provision, which are deemed written in the contract of employment, on the prescribed procedure in the resolution of conflicting disability assessments of the company-designated physician and the seafarer's doctor. There is grave abuse of discretion, considering that, as labor dispute adjudicators, the LA and the NLRC are expected to uphold the law between the parties.
>
> It bears to stress that there is no issue as to the compensability of petitioner's health condition since the parties do not dispute that it is work-related. What remains to be resolved is whether he is entitled to the payment of permanent total disability benefits or to that which corresponds to Disability Grade 11 of the POEA-SEC.

---

[35] *Id.* at 73.

[36] *Supra* note 33.

Under Section 20(A)(3) of the 2010 POEA-SEC, "*[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 provision refers to the declaration of fitness to work or the degree of disability. It presupposes that the company-designated physician came up with a valid, final and definite assessment as to the seafarer's fitness or unfitness to work before the expiration of the 120-day or 240-day period. The company can insist on its disability rating even against a contrary opinion by another doctor, unless the seafarer signifies his intent to submit the disputed assessment to a third physician. The duty to secure the opinion of a third doctor belongs to the employee asking for disability benefits. He must actively or expressly request for it. In *INC Navigation Co. Philippines, Inc., et al. v. Rosales*, We opined:

> By so acting, **Rosales proceeded in a manner contrary to the terms of his contract with INC in challenging the company doctor's assessment; he failed to signify his intent to submit the disputed assessment to a third doctor and to wait for arrangements for the referral of the conflicting assessments of his disability to a third doctor.**
>
> Significantly, no explanation or reason was ever given for the omission to comply with this mandatory requirement; no indication whatsoever is on record that an earnest effort to secure compliance with the law was made; Rosales immediately filed his complaint with the LA. As we recently ruled in *Bahia Shipping Services, Inc., et al. v. Crisante C. Constantino*, when the seafarer challenges the company doctor's assessment through the assessment made by his own doctor, the seafarer shall so signify and the company thereafter carries the burden of activating the third doctor provision.
>
> To definitively clarify how a conflict situation should be handled, **upon notification that the seafarer disagrees with the company doctor's assessment based on the duly and fully disclosed contrary assessment from the seafarer's own doctor, the seafarer shall then signify his intention to resolve the conflict by the referral of the conflicting assessments to a third doctor whose ruling, under the POEA-SEC, shall be final and binding on the parties. Upon notification, the company carries the burden of initiating the process for**

the referral to a third doctor commonly agreed between the parties. In *Bahia*, we said:

> In the absence of any request from him (as shown by the records of the case), the employer-company cannot be expected to respond. As the party seeking to impugn the certification that the law itself recognizes as prevailing, Constantino bears the burden of positive action to prove that his doctor's findings are correct, as well as the burden to notify the company that a contrary finding had been made by his own physician. Upon such notification, the company must itself respond by setting into motion the process of choosing a third doctor who, as the POEA-SEC provides, can rule with finality on the disputed medical situation.

In *Dumadag*, the **seafarer's non-compliance with the conflict-resolution procedure results in the affirmance of the fit-to-work certification of the company-designated physician**. Dumadag pursued his claim without observing the laid-out procedure. He consulted doctors of his choice regarding his disability after the company-designated physician issued a fit-to-work certification for him. According to the Court, there is nothing inherently wrong with the consultations as the POEA-SEC and the CBA allow him to seek a second opinion. The problem only arose when he pre-empted the mandated procedure by filing a complaint for permanent total disability benefits on the strength of his chosen doctors' opinions, without referring the conflicting opinions to a third physician for final determination. The Court considered the filing of the complaint as a breach of Dumadag's contractual obligation and that the complaint should have been dismissed, for without a binding third opinion, the fit-to-work certification of the company-designated doctor stands. We have noted that the provision of the POEA-SEC is intended to settle disability claims voluntarily at the parties' level where the claims can be resolved more speedily than if they were brought to court.

The pronouncement in *Dumadag*, which was subsequently relied upon in a string of cases, is consistent with Our earlier ruling in *Vergara v. Hammonia Maritime Services, Inc., et al.*, which held:

> The POEA Standard Employment Contract and the CBA clearly provide that when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness or unfitness for work shall be determined by the company-designated

> physician. If the physician appointed by the seafarer disagrees with the company-designated physician's assessment, the opinion of a third doctor may be agreed jointly between the employer and the seafarer to be the decision final and binding on them.
>
> Thus, while petitioner had the right to seek a second and even a third opinion, the final determination of whose decision must prevail must be done in accordance with an agreed procedure. Unfortunately, the petitioner did not avail of this procedure; hence, we have no option but to declare that the company-designated doctor's certification is the final determination that must prevail. x x x

Here, **the Court is bound by the Grade 11 disability grading and assessment by the company-designated physician** that was timely rendered within the 120-day period. Petitioner neither questioned such diagnosis in accordance with the procedure set forth under the POEA-SEC nor contested the company-designated doctor's competence. To reiterate what has already been settled, the referral to a third physician is mandatory and non-compliance with the procedure may militate against the claim for permanent total disability in cases where the company-designated doctor declared otherwise. This is especially so if the seafarer failed to explain why recourse to the said remedy was not made.

Petitioner's filing of his claim before the labor arbiter was premature. In view of the fact that he did not observe the relevant provisions of the POEA-SEC after he received a definitive disability assessment from the company-designated physician, the Court is left without a choice but to uphold the certification issued with respect thereto. **Failure to follow the procedure is fatal and renders conclusive the disability rating issued by the company-designated doctor.** (Emphases supplied; citations omitted)

So must it be.

Another, it was the company-designated doctors who examined, treated, and monitored petitioner from the time he got repatriated. Dr. Pascual, on the other hand, only saw petitioner once, on April 1, 2014. He did not elaborate on how he came up with the conclusion that petitioner was unfit for sea duties. He did not even mention the specific physical examinations, if any, which were made on petitioner, how the latter responded thereto, and what petitioner's condition was before and after

the supposed treatment. A reading of Dr. Pascual's report shows that he based his conclusion on the results of the examinations that the company-designated physicians conducted on petitioner upon his repatriation.

Still another, the company-designated physicians gave their disability rating as early as October 2013; petitioner, however, only consulted Dr. Pascual in April 2014, or six (6) months after the rating was issued by the company-designated physicians. A number of things could have happened in a span of six (6) months. Petitioner did not allege that he maintained his medications or followed a diet in order to prevent recurrence or aggravation of his hypertension and coronary artery disease. On this point, ***Normilito R. Cagatin v. Magsaysay Maritime Corporation, et al.***[37] states:

> In contrast, petitioner presents the report of his own physician, Dr. Collantes, who examined him almost seven (7) months after he was declared "fit to work" by Dr. Cruz. The Court finds, however, that this **later report by petitioner's chosen doctor is not as reliable as that of the company-designated physician**.
>
> As respondents contend, **it is unknown what transpired** between January 15, 2002 (when petitioner was declared "fit to work" by the company-designated physician) and August 9, 2002 (when he was declared "unfit to work at sea" by his own physician). It was petitioner's duty as claimant to enlighten the labor tribunals as well as the courts as to what transpired in these seven (7) months. Not having performed this duty, the Court agrees with the Court of Appeals that this non-disclosure should be interpreted against petitioner. **The withholding of information as to what happened in the months between the time he was declared "fit to work" up to the time he was declared otherwise, or "unfit to work at sea," opens petitioner's claims to much speculation and conjecture, which makes the grant of his claims for disability benefits untenable.**
>
> **This lack of forthrightness on the part of petitioner impels this Court to favor the earlier report of the company-designated physician,** Dr. Cruz, over that of petitioner's chosen physician, Dr. Collantes. There are other cogent reasons, however. *First*, it is

---

[37] 761 Phil. 64, 81-82 (2015).

obvious in the report of Dr. Collantes that **he only saw petitioner once**, or on August 6, 2002, while Dr. Cruz and his team examined and treated petitioner several times, for a period of five (5) months. *Second*, Dr. Collantes **did not perform any sort of diagnostic test or examination on petitioner**, unlike Dr. Cruz before him. It has been held **in cases of disability benefits claims that in the absence of adequate tests and reasonable findings to support the same, a doctor's assessment should not be taken at face value. Diagnostic tests and/or procedures as would adequately refute the normal results of those administered to the petitioner by the company-designated physicians are necessary for his claims to be sustained**. (Emphases supplied; citations omitted)

Montierro v. Rickmers Marine Agency Phils., Inc.[38] decreed:

Further, a juxtaposition of the two conflicting assessments reveals that the certification of Montierro's doctor of choice pales in comparison with that of the company-designated physician. Fitting is the following discussion of the CA:

x x x x x x x x x

> **Having extensive personal knowledge of the seafarer's actual medical condition, and having closely, meticulously and regularly monitored and treated his injury for an extended period, the company-designated physician is certainly in a better position to give a more accurate evaluation of Montierro's health condition. The disability grading given by him should therefore be given more weight** than the assessment of Montierro's physician of choice. (Emphasis supplied)

In fine, as between the company-designated physicians who have all the medical records of petitioner for the duration of his treatment and as against the latter's chosen physician who merely examined him for a day as an outpatient, the former's finding must prevail.[39]

---

[38] 750 Phil. 937, 947-948 (2015).

[39] See *Nonay v. Bahia Shipping Services, Inc., et al.*, 781 Phil. 197, 229 (2016).

Lastly, there was absolutely no conclusive proof that petitioner's hypertension and coronary artery disease actually prevented him from working again as a seaman. In fact, as private respondents manifested[40] and as proved by the POEA's OFW Information,[41] TDG Crew Management Inc., for and on behalf of Dalex Shipping Company S/A, employed petitioner on board its vessel on a three (3)-month contract. This was processed on December 21, 2016. Another POEA OFW Information[42] shows that on December 1, 2017, Seacrest Maritime Management Inc., for and on behalf of Sea Vision Shipping Inc., hired petitioner as Master of its vessel on a six (6)-month contract. These clearly show that petitioner is still able to perform his usual work, notwithstanding Dr. Pascual's assessment that he was supposedly already totally and permanently disabled for sea duties.

ACCORDINGLY, the petition is **PARTLY GRANTED** and the Decision dated February 29, 2016 and Resolution dated July 22, 2016 of the Court of Appeals in CA-G.R. SP No. 140690 are **AFFIRMED with MODIFICATION**. Private Respondents Anglo-Eastern Crew Management Phils., Inc. and Anglo-Eastern Crew Mgt. (Asia) Ltd. are ordered to **PAY** petitioner Victorino G. Ranoa the following:

1. The amount in US dollars or its Philippine Peso equivalent at the time of payment for Grade 12 disability rating in accordance with the Collective Bargaining Agreement;
2. Ten percent (10%) of the total monetary award as attorney's fees; and
3. Interest of these amounts at the rate of six percent (6%) *per annum* from the date of finality of this decision until fully paid.[43]

---

[40] *Rollo*, pp. 181-183.

[41] *Id.* at 184.

[42] *Id.* at 185.

[43] *Jessie C. Esteva v. Wilhelmsen Smith Bell Manning, Inc., et al.*, G.R. No. 225899, July 10, 2019.

SO ORDERED.

Peralta, C.J. (Chairperson), Reyes, J. Jr., and *Inting,*[*] *JJ.,* concur.

Caguioa, J., on official leave.

FIRST DIVISION

[G.R. No. 226908. November 28, 2019]

PASAY CITY ALLIANCE CHURCH/CAMACOP/REV. WILLIAM CARGO, *petitioners, vs.* **FE BENITO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; STATE PRINCIPLES; THE SEPARATION OF CHURCH AND STATE SHALL BE INVIOLABLE; THE STATE WILL NOT INTERFERE IN MATTERS THAT ARE PURELY ECCLESIASTICAL; ECCLESSIASTICAL AFFAIR, DEFINED. — In our jurisdiction, we hold the Church and the State to be separate and distinct from each other. "Give to Ceasar what is Ceasar's and to God what is God's." There is no question among the parties in this case that our constitutionally protected policy is non-interference by the State in matters that are purely ecclesiastical. It is also settled that religious associations can be employers for whom religious ministers often perform dual roles. They not only minister to the spiritual needs of their members in most instances, but also take on administrative functions in their organizations. Our sole concern here is whether or not the matter at hand is an ecclesiastic matter over which our labor tribunals are deprived of jurisdiction. In *Pastor Austria v. NLRC*, as reiterated in *United*

---

[*] Additional member per Special Order No. 2726 dated October 25, 2019.

Church of Christ in the Philippines, Inc. v. Bradford United Church of Christ, Inc., we already defined which matters are outside the jurisdiction of civil courts and tribunals. Thus: An **ecclesiastical affair** is one that concerns doctrine, creed, or form [of] worship of the church, or the **adoption and enforcement within a religious association of needful laws and regulations for the government of the membership**, and the **power of excluding from such associations those deemed unworthy of membership**. Based on this definition, an ecclesiastical affair **involves the relationship between the church and its members** and **relate to matters of faith**, religious doctrines, worship and **governance of the congregation**. To be concrete, examples of this so-called ecclesiastical affairs to which the State cannot meddle are proceedings for excommunication, ordinations of religious ministers, administration of sacraments and other **activities x x x attached [with] religious significance**.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; MERE FACT THAT A TERMINATION DISPUTE INVOLVES A CHURCH AND ITS RELIGIOUS MINISTER DOES NOT *IPSO FACTO* CLOTHE A CASE WITH RELIGIOUS SIGNIFICANCE; ENFORCEMENT OF A RELIGIOUS DENOMINATION'S INTERNAL RULES IN THE GOVERNANCE OF ITS MEMBER CHURCHES IS RELIGIOUS IN NATURE; CASE AT BAR. — As shown in *Pastor Austria*, the mere fact that a termination dispute involves a church and its religious minister does not *ipso facto* clothe a case with religious significance. The Adventist minister in *Pastor Austria* was removed for alleged misappropriation of denominational funds, willful breach of trust, serious misconduct and other grounds found in the Labor Code. While the said grounds for termination may reflect on a minister's fitness to continue as such, the facts in *Pastor Austria* indicate that the grounds for the minister's dismissal from service were secular in nature. Furthermore, the Seventh Day Adventist Church in that case admitted before the Labor Arbiter that the minister was its employee, only to belatedly raise the issue of jurisdiction on appeal. In contrast, the petitioners already questioned the Labor Arbiter's jurisdiction at the inception of this case. At the center of the present controversy is the enforcement of a religious denomination's internal rules in the governance of its member churches.

> Petitioners' contention that there was no dismissal to speak of and the matter concerns their right to transfer or reassign one of their licensed ministers is well taken. We find the claimed right to be infused with religious color because it bears down on the relationship of a church and its members in faith-based matters. If a church or religious association has the sole prerogative to exclude members perceived to be unworthy in light of its doctrinal standards, all the more does it have sole prerogative in determining who are best fit to minister to its members in activities attached with religious significance. x x x Guided by the foregoing, we hold that the termination of a religious minister's engagement at a local church due to administrative lapses, when it relates to the perceived effectivity of a minister as a charismatic leader of a congregation, is a prerogative best left to the church affected by such choice. If a religious association enacts guidelines that reserve the right to transfer or reassign its licensed ministers according to what it deems best for a particular congregation, ministry or undertaking in pursuit of its mission, then the State cannot validly interfere.

APPEARANCES OF COUNSEL

Sua & Alambra Law Offices for petitioners.
Yambot Lopez Law Offices for respondent.

D E C I S I O N

REYES, J. JR.,[*] *J.*:

This is a Petition for Review on *Certiorari*[1] seeking the reversal of the Decision[2] dated May 13, 2016 and the Resolution[3] dated September 8, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 140572. *Via* the assailed issuances,

---

[*] Acting Working Chairperson.

[1] *Rollo*, pp. 7-19.

[2] Penned by Associate Justice Pedro B. Corales, with Associate Justices Sesinando E. Villon and Rodil V. Zalameda (now a Member of the Court), concurring; *id.* at 21-33.

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

the CA annulled the Resolutions,[4] respectively dated January 12, 2015 and February 27, 2015, of the National Labor Relations Commission (NLRC), which set aside the disposition of the Labor Arbiter for want of jurisdiction.

The facts are not in dispute.

Petitioner Pasay City Alliance Church (PCAC) is one of the local churches of its co-petitioner, Christian and Missionary Alliance Churches of the Philippines (CAMACOP), a religious society registered with the Securities and Exchange Commission.[5]

Respondent Fe P. Benito (Benito), on the other hand, is a licensed Christian Minister of CAMACOP.[6] After completing a degree in Religious Education from CAMACOP's Ebenezer Bible College and Seminary as one of PCAC's scholars, Benito eventually served as PCAC's Head of Fellowship and Discipleship.[7] In 2005, Benito was appointed Head of PCAC's Membership and Evangelism Ministry, which was renamed Pastoral Care and Membership in 2009.[8] Benito served without a written contract.[9] Pastoral Care and Membership is under the supervision of the Church Ministry Team (CMT) and co-petitioner Reverend William Cargo (Rev. Cargo).[10]

The present controversy stemmed from CAMACOP and PCAC's policy requiring pastors or ministers without written contracts to tender a courtesy resignation every year. The policy is expressed in Article VII, Section 3(2) of CAMACOP's Amended Local Church Administrative and Ministry Guidelines, worded as follows:

---

[4] *Id.* at 35-43.

[5] *Id.* at 11 and 22.

[6] *Id.*

[7] *Id.* at 11, 35 and 37.

[8] *Id.* at 35-36.

[9] *Id.* at 11.

[10] *Id.* at 22.

Appointment and Confirmation

1) A minister, duly licensed by CAMACOP, may apply or be invited by the local church through the District Ministry Supervisor (DMS).

2) His ministry in the local church shall be affirmed by the DMS in writing.

3) His term of ministry shall be determined mutually with the church and confirmed by the District Ministry Supervisor. In the absence of a contract[,] the pastor should tender a courtesy resignation every year.[11]

Pastors who are not reappointed to their previous posts may reapply, in which case, they are assigned to another position, local church or specialized ministry.[12] Notwithstanding the adoption and ratification of this policy by CAMACOP's member congregations in 2005, the practice of requiring courtesy resignations in PCAC began implementation only in 2009, after Rev. Cargo assumed as Senior Pastor or during his leadership.[13]

In compliance, Benito tendered her courtesy resignation as Head of Pastoral Care and Membership on January 30, 2011.[14] The CMT reappointed Benito to the same position for another year.[15]

When the CMT convened the following year, or on February 12, 2012, it then decided not to reappoint Benito and recommended that she reapply to a more suitable position, citing the following:

a) *Sinabi ni* Ptr. Fe [*na kasama*] *sa* ministries *niya ang* Evangelism[,] *tapos hindi niya nagagawa ang pagsishare sa* new attendees.

b) *Hindi nabigay ang* speaker's honorarium (Ptr. Wee) *kaagad*. *Naibigay ito pagkatapos ng* 2 Sundays *ng kanyang pagspeak*.

---

[11] *Id.* at 11.

[12] *Id.* at 22.

[13] *Id.* at 36.

[14] *Id.* at 22 and 36.

[15] *Id.*

c) *Si* Ptr. Carl *ang nakalagay na* speaker[,] *pero si* Ptr. Cargo *ang nagsalita. Nung tinanong ni* Ptr. Carl *si* Ptr. Fe[,] *nakalimutan daw nya kung sino ang* speaker *ng* Sunday *na yun*.

d) *Walang* program *ng* 2 Sundays (1st and 2nd Sunday *ng* January S1-3 (*sic*). *Dahil daw may bagong* program *naipapalabas*.

e) *Walang ginawa ang* PCAC *nung pagkamatay ni* Ruth[.] [A]s membership head *dapat umaksyon sya*. *Mga* youth *naka-hang sa* baptism *kasi inulit pa ni* Ptr. Fe *ang* baptism class. I can say no *na sa kanyang* position.[16] (Italics supplied)

The decision not to extend Benito's term was not immediately pursued by the CMT, and Benito held the post for another year.[17]

On February 17, 2013, Benito complied anew and submitted a courtesy resignation, without prejudice to the CMT's evaluation.[18] Upon instructions, Benito also submitted her credentials to help the CMT in determining whether or not her term should be extended.[19] Meanwhile, on May 29, 2013, Benito was instructed to endorse her workload and turnover the prayer ministry to another pastor.[20]

Finally, Benito was informed, through a letter dated December 15, 2013, of the CMT's decision to uphold its February 12, 2012 recommendation to the District Ministry Supervisor regarding the non-extension of her engagement as PCAC's Head of Pastoral Care and Membership.[21]

Aggrieved, Benito filed a complaint for illegal dismissal, damages and attorney's fees before the Labor Arbiter, anchored on the claim that she had already attained regular status by operation of law and entitled to security of tenure in view of her long years of service with PCAC.

---

[16] *Id.* at 23.

[17] *Id.* at 23 and 36.

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.*

In response, PCAC questioned the Labor Arbiter's jurisdiction and asserted that Benito's vocation and ministry are not governed by the Labor Code, but by CAMACOP's Local Church Administrative and Ministry Guidelines and its By-Laws. According to PCAC, Benito's insistence on her right to security of tenure, which she takes to mean a lifetime assignment to her position, undermines CAMACOP's guidelines in routinely assigning their licensed ministers from one local church or ministry to another. It added that the non-renewal or non-extension of Benito's term is not even identical or tantamount to illegal dismissal as she was not even dismissed as a minister, but she simply refused to participate in the process of her transfer.

Benito countered that PCAC "hired" her, provided her with a monthly wage, decided which ministry she would be assigned, issues directives on her behavior and, in this instance, dismissed her from her duties. From these, Benito insists that all the elements of an employer-employee relationship are present.

Resolving the complaint, the Labor Arbiter ruled that an employment relationship existed between the parties, in view of the various letters and memoranda from PCAC concerning Benito's time-in and time-out, work assignments, and performance evaluations. The Labor Arbiter also considered her payslips and deductions for Social Security System (SSS), Philhealth, and Pag-ibig contributions. Concluding that Benito was illegally dismissed due to her involuntary resignation and the lack of evidence to justify non-renewal of her appointment, the dispositive portion of the Labor Arbiter's September 29, 2014 Decision reads:

WHEREFORE, foregoing premises considered, judgment is hereby rendered:

1. declaring the existence of an employer-employee relationship between the parties;

2. finding complainant to have been illegally dismissed; and

3. ordering Pasay City Alliance Church/Christian and Missionary Alliance Churches of the Philippines[,] Inc., to pay complainant

> Fe P. Benito the aggregate amount of Three Hundred Thirty Thousand Nine Hundred Forty One Pesos (₱330,941.00) representing separation pay and backwages.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[22]

On appeal, however, the NLRC overturned the Labor Abiter's Decision, ruling that the non-renewal of Benito's appointment to her previous position, due to a church policy requiring ministers to tender a courtesy resignation yearly for their possible reassignment, should be treated as an ecclesiastical matter outside of the labor tribunal's jurisdiction. As disposed in its January 12, 2015 Resolution:

> **WHEREFORE**, premises considered, the appeal is **GRANTED**. The 29 September 2014 Decision of Labor Arbiter Veneranda C. Guerrero is **REVERSED** and **SET ASIDE** and a new one entered **DISMISSING** the complaint for want of jurisdiction.
>
> SO ORDERED.[23] (Emphases in the original)

Benito moved for reconsideration, but this was denied by the NLRC on February 27, 2015.[24]

When Benito challenged the NLRC's resolutions before the CA, the latter annulled the resolutions. Taking the view that the decision not to renew Benito's appointment was secular in nature and not an ecclesiastical affair, the *fallo* of the CA's assailed decision reads:

> **WHEREFORE**, the instant petition for *certiorari* is hereby **GRANTED**. The January 12, 2015 and February 27, 2015 Resolutions of the National Labor Relations Commission in NLRC LAC No. 11-002948-14 are hereby **ANNULLED** and **SET ASIDE**. The case is **REMANDED** to the National Labor Relations Commission for resolution of the validity of herein petitioner's dismissal from employment with utmost dispatch.

---

[22] *Id.* at 9 and 25-26.

[23] *Id.* at 40-41.

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

SO ORDERED.[25] (Emphases in the original)

The CA subsequently denied[26] petitioners' motion for reconsideration on September 8, 2016. Hence, petitioners are now before this court, raising the sole issue of:

WHETHER OR NOT THE COURT OF APPEALS ERRED IN DECLARING THAT THE "TERMINATION" OF RESPONDENT FE BENITO BY PETITIONER PCAC IS NOT AN "ECCLESIASTICAL AFFAIR" BUT INSTEAD A SEVERANCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP OVER WHICH THE LABOR ARBITER HAS JURISDICTION[.][27]

In particular, petitioners reassert that the non-renewal or non-extension of Benito's tenure is a consequence of the enforcement of validly enacted ecclesial regulations of the CAMACOP, and not based on any of the grounds provided in our Labor Code. They contend that the matter of who are fit to be the congregation's ministers, including where and how ministering is to be conducted, is undoubtedly church or denomination-related. Thus, a minister or pastor's fitness to continue in a particular ministry or congregation is an ecclesiastical affair over which our labor tribunals have no jurisdiction.

Petitioners also invite our attention to the fact that Benito continues to be a licensed minister of CAMACOP. It is only her relationship with PCAC, one of CAMACOP's local churches, that was severed. Thus, Benito is bound to be reassigned to other local churches under CAMACOP. According to petitioners, this prerogative is akin to a Catholic priest's reassignment to another parish or diocese, in consonance with the rules of the Catholic church or a religious order.

They also contend that the CA and Benito's reliance on *Pastor Austria v. NLRC*[28] is misplaced because the causes for

---

[25] *Id.* at 32.

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

[27] *Id.* at 12.

[28] 371 Phil. 340 (1999).

termination of the Adventist minister in *Pastor Austria* were unrelated to his ministry, while the non-extension of Benito's term with a local church under CAMACOP is due to the enforcement of denominational rules. Thus, petitioners opine that a blanket interpretation of Section 1, Rule I, Book VI of the Implementing Rules and Regulations of the Labor Code[29] goes against religious freedom and the separation of church and state.

Finally, petitioners argue that while membership in the SSS, Pag-ibig and Philhealth ordinarily denotes an employment relationship, the peculiar activity or undertaking that PCAC is engaged in should primarily be taken into account. They reasoned that PCAC should not be faulted for looking after the well-being of its ministers and members by enrolling them with the SSS, Pag-ibig and Philhealth, as they also have families to tend to and are not exempt from the perils of old age and illness.

On April 11, 2017, Benito submitted a Comment and Opposition to the Petition (with notice of counsel's change of address).[30] Benito echoes the CA's reasoning that religious organizations are clearly covered by our Labor Code on termination of employment, and while the case involves church and its religious minister as regards an internal church policy, it automatically confer the issue with religious significance.

Undeterred, petitioners filed a Reply[31] on October 6, 2017, stating that the policy requiring annual courtesy resignations from licensed ministers is their assurance that ministers continue to be theologically, intellectually and morally fit, in accordance with the faith and mission of their church. Petitioners argue

---

[29] This Rule shall apply to all establishments and undertakings, whether operated for profit or not, including educational, medical, charitable and religious institutions and organizations, in cases of regular employment with the exception of Government and its political subdivisions including government-owned or controlled corporations.

[30] *Rollo*, pp. 50-61.

[31] *Id.* at 65-68.

that it is an opportunity for ministers whose terms have ended to seek other forms of ministry within the umbrella of CAMACOP in light of their peculiar gifts, endowments and charisma.

We find merit in the petition.

In our jurisdiction, we hold the Church and the State to be separate and distinct from each other.[32] "Give to Ceasar what is Ceasar's and to God what is God's."[33]

There is no question among the parties in this case that our constitutionally protected policy is non-interference by the State in matters that are purely ecclesiastical. It is also settled that religious associations can be employers for whom religious ministers often perform dual roles. They not only minister to the spiritual needs of their members in most instances, but also take on administrative functions in their organizations. Our sole concern here is whether or not the matter at hand is an ecclesiastic matter over which our labor tribunals are deprived of jurisdiction.

In *Pastor Austria v. NLRC*,[34] as reiterated in *United Church of Christ in the Philippines, Inc. v. Bradford United Church of Christ, Inc.*,[35] we already defined which matters are outside the jurisdiction of civil courts and tribunals. Thus:

> An **ecclesiastical affair** is one that concerns doctrine, creed, or form [of] worship of the church, or the **adoption and enforcement within a religious association of needful laws and regulations for the government of the membership**, and the **power of excluding from such associations those deemed unworthy of membership**. Based on this definition, an ecclesiastical affair **involves the relationship between the church and its members** and **relate to matters of faith**, religious doctrines, worship and **governance of the congregation**. To be concrete, examples of this so-called ecclesiastical affairs to which the State cannot meddle are proceedings for excommunication, ordinations of religious ministers, administration

---

[32] *Taruc v. Bishop De la Cruz*, 493 Phil. 292, 296 (2005).

[33] *Id.*

[34] 371 Phil. 340, 353 (1999).

[35] 688 Phil. 408, 419-420 (2012).

of sacraments and other **activities x x x attached [with] religious significance**.[36] (Emphasis supplied, citation omitted)

As shown in *Pastor Austria*, the mere fact that a termination dispute involves a church and its religious minister does not *ipso facto* clothe a case with religious significance. The Adventist minister in *Pastor Austria* was removed for alleged misappropriation of denominational funds, willful breach of trust, serious misconduct and other grounds found in the Labor Code. While the said grounds for termination may reflect on a minister's fitness to continue as such, the facts in *Pastor Austria* indicate that the grounds for the minister's dismissal from service were secular in nature. Furthermore, the Seventh Day Adventist Church in that case admitted before the Labor Arbiter that the minister was its employee, only to belatedly raise the issue of jurisdiction on appeal. In contrast, the petitioners already questioned the Labor Arbiter's jurisdiction at the inception of this case.

At the center of the present controversy is the enforcement of a religious denomination's internal rules in the governance of its member churches. Petitioners' contention that there was no dismissal to speak of and the matter concerns their right to transfer or reassign one of their licensed ministers is well taken. We find the claimed right to be infused with religious color because it bears down on the relationship of a church and its members in faith-based matters. If a church or religious association has the sole prerogative to exclude members perceived to be unworthy in light of its doctrinal standards, all the more does it have sole prerogative in determining who are best fit to minister to its members in activities attached with religious significance.

We disagree with the CA's interpretation that the non-renewal of Benito's appointment was due to her inefficiency as an administrative officer for her ministry and, thus, purely secular. This conclusion ignores the significance of Benito's position under contention, as the Head of Pastoral Care and Membership,

---

[36] *Pastor Austria v. NLRC*, *supra* note 34, at 353.

formerly known as Membership and Evangelism Ministry. It also overlooks the fine line between efficiency and effectiveness. Here, the CMT cited failure on Benito's part to "share" with new attendees, Benito's inaction on the death of a member, and several other administrative lapses that impact on the conduct of PCAC's ecclesiastical activities, such as evangelism, baptism and Sunday praise or worship activities.

Guided by the foregoing, we hold that the termination of a religious minister's engagement at a local church due to administrative lapses, when it relates to the perceived effectivity of a minister as a charismatic leader of a congregation, is a prerogative best left to the church affected by such choice. If a religious association enacts guidelines that reserve the right to transfer or reassign its licensed ministers according to what it deems best for a particular congregation, ministry or undertaking in pursuit of its mission, then the State cannot validly interfere. Indeed:

> It is not for the courts to exercise control over church authorities in the performance of their discretionary and official functions. Rather, it is for the members of religious institutions/organizations to conform to just church regulations. In the words of Justice Samuel F. Miller:
>
> ... all who unite themselves to an ecclesiastical body do so with an implied consent to submit to the Church government and they are bound to submit to it.[37] (Citation omitted)

As a licensed minister of CAMACOP, Benito was aware of is policy requiring annual courtesy resignations that give its local churches a free hand in assigning, reassigning or transferring pastors and ministers, subject to reasonable guidelines and supervision. We cannot interfere with the implementation of the policy, much less subject a religious congregation to a minister in whom it appears to have lost confidence.

WHEREFORE, the petition is hereby **GRANTED**. The May 13, 2016 Decision and the September 8, 2016 Resolution

---

[37] *Taruc v. Bishop De la Cruz*, 493 Phil. 292, 297 (2005).

of the Court of Appeals in CA-G.R. SP No. 140572 are **REVERSED** and **SET ASIDE**. Accordingly, Fe P. Benito's illegal dismissal complaint before the National Labor Relations Commission is **DISMISSED** for want of jurisdiction.

SO ORDERED.

Peralta, C.J. (Chairperson), Lazaro-Javier, and *Inting*,[**] *JJ.*, concur.

Caguioa, J. (Working Chairperson), on official leave.

FIRST DIVISION

[G.R. No. 240230. November 28, 2019]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROGELIO DIVINAGRACIA, JR.** ***y*** **DORNILA,**[*] ***a.k.a.*** **"Ensol" and ROSWORTH SY** ***y*** **BERSABAL,** ***a.k.a.*** **"Roro",** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS UNDER SECTION 5, ARTICLE II THEREOF; ELEMENTS. — In order to secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs under Section 5, Article II of R.A. No. 9165, the prosecution must prove with moral certainty: (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.

2. ID.; ID.; CHAIN OF CUSTODY RULE; TWO-FOLD PURPOSE. — The legality of entrapment operations involving illegal drugs

---

[**] Additional Member per Special Order No. 2726.

[*] "Dornilla" in some parts of the *rollo*.

begins and ends with Section 21, Article II of R.A. No. 9165. Section 21, Article II of R.A. No. 9165, provides the chain of custody rule, outlining the procedure police officers must follow in handling the seized drugs, in order to preserve their integrity and evidentiary value. x x x The Implementing Rules and Regulations of R.A. No. 9165, (IRR) on the other hand, filled in the void of the law by providing the details as to the place where the physical inventory and photographing of seized items should be accomplished and added a proviso on permissible deviation from the strict compliance with what the law requires on justifiable grounds. x x x Succinctly stated, the law commands that the seized drugs must be inventoried and photographed immediately after seizure and that the same must be conducted in the presence of the accused or his representative or counsel, and three other witnesses, namely: (a) a representative from the media; (b) a representative of the DOJ; and (c) an elected public official. Compliance with the requirements forecloses opportunities for planting, contaminating, or tampering of evidence in any manner. Non-compliance, on the other hand, is tantamount to failure in establishing the identity of *corpus delicti*, an essential element of the offense of illegal sale of dangerous drugs, thus, engendering the acquittal of an accused. Such stringent requirement was placed as a safety precaution against potential abuses by law enforcement agents who might fail to appreciate the gravity of the penalties faced by those suspected to be involved in the sale, use or possession of illegal drugs. In *People v. Malabanan*, the Court enunciated the two-fold purpose Section 21 seeks to achieve, *viz*: The procedure set forth under Section 21 of R.A. No. 9165 serves a two-fold purpose. *First*, it protects individuals from unscrupulous members of the police force who are out to brandish the law on the innocent for personal gain or otherwise. *Second*, a faithful compliance of Section 21 of R.A. No. 9165 benefits the police and the entire justice system as it assures the public that the accused was convicted on the strength of uncompromised and unquestionable evidence. It dispels any thought that the case against the accused was merely fabricated by the authorities.

3. ID.; ID.; ID.; WHEN NON-COMPLIANCE WITH THE PROCEDURE MAY BE ALLOWED. — To be sure, non-compliance with the mandatory procedure under Section 21, Article II of R.A. No. 9165 and its IRR does not *per se* render the confiscated drugs inadmiss[i]ble, as the desire for a perfect

and unbroken chain of custody rarely occurs, but only triggers the operation of the saving clause enshrined in the IRR of R.A. No. 9165. However, for the above-saying clause to apply, the prosecution must explain the reasons behind the procedural lapses, and the integrity and value of the seized evidence had nonetheless been preserved. Stated otherwise, before a deviation from the mandatory procedural requirements under Section 21 may be allowed, the following requisites must be satisfied: (1) justifiable grounds must be shown to exist warranting a departure from the rule on strict compliance; and (2) the apprehending team must prove that the integrity and the evidentiary value of the seized items had been properly preserved. However, in order for such saving mechanism to apply, the prosecution must first recognize the lapse or lapses in the prescribed procedures and then explain the lapse or lapses. Also, 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.

APPEARANCES OF COUNSEL

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

D E C I S I O N

REYES, J. JR.,[**] ***J.*:**

The Case

Before this Court is an appeal from the Decision[1] dated January 12, 2018 of the Court of Appeals (CA) CA-G.R. CR HC No. 08978 which affirmed the Amended Decision[2] dated September 6, 2016 of the Regional Trial Court (RTC) of Parañaque City, Branch 259, finding accused-appellants Rogelio Divinagracia, Jr. *y* Dornila, *alias* "Ensol" (Divinagracia) and Rosworth Sy *y*

[**] Acting Working Chairperson.

[1] Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Rosmari D. Carandang (now a Member of the Court) and Zenaida T. Galapate-Laguilles concurring; CA *rollo*, pp. 128-144.

[2] *Id.* at 63-73.

Bersabal, *alias* "Roro" (Sy) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165 (R.A. No. 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The facts

The CA summarized the facts of the case as follows:

Two (2) Informations dated 17 April 2013 were filed against [accussed-appellants] which charged them with violation of Section 5, Article II, of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, for the illegal sale of dangerous drugs; and against [Sy] for violation of Section 12, Article II, of Republic Act No. 9165, for the possession of a drug paraphernalia.

The Informations read:

Criminal Case No. 11[-0464]

That on or about the 25th day of April, 2011 in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and both of them mutually helping and aiding one another, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport one (1) self-sealing transparent plastic bag marked as 'EP' weighing 14.58 grams of Marijuana fruiting tops to police Poseur[-]Buyer PO3 Edwin Plopinio, the content of said plastic bag when tested was found positive to be Marijuana, a dangerous drug.

Criminal Case No.11-0465

That on or about the 25th day of April, 2011 in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously possess or have under his control one (1) improvised glass pipe marked as 'RB', an equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing an[y] dangerous drug into the body, in violation of the above-cited law.

[Accused-appellants] were arraigned on 5 May 2011, wherein they pleaded not guilty.

During the trial, the Prosecution presented the following witnesses: Police Officer Edwin Plopinio (**PO3 Plopinio**); Police Inspector Richard Allan Mangalip (**P/Insp. Mangalip**); Police Officer Rolly Burgos (**PO2 Burgos**); Kagawad Cho Villar (**Kagawad Villar**); and Police Officer Mildred Kayat (**PO3 Kayat**).

The Prosecution alleged the following facts:

On 25 April 2011, at around 6:50 p.m., PO3 Plopinio was stationed at the Station Anti-Illegal Drugs Special Operation Task Group (SAID-SOTG), Parañaque City, when a confidential informant arrived and informed them that a certain alias Ensol (later on identified as [Divinagracia]), was selling marijuana in Barangay Don Bosco, Parañaque City.

In response to the information, Police Inspector Roque Tome, the Chief of SAID-SOTG, ordered the team of PO3 Plopinio, PO3 Sarino, PO2 Julaton, PO2 Del Rosario, PO2 Ocampo and PO2 Burgos to conduct a buy-bust operation and to arrest [Divinagracia]. PO3 Plopinio was assigned as the poseur-buyer, PO2 Burgos as the immediate back-up, and the others as perimeter back-ups. PO3 Plopinio was provided with a five hundred peso bill with serial number KA281867, on which he placed his initials "EP."

At around 8:45 p.m., the policemen went to Brgy. Don Bosco in Parañaque City. Before heading to the target location, PO3 Plopinio and the informant went out of the vehicle and walked towards Doña Soledad Extension, while the rest of the policemen followed behind. When PO3 Plopinio and the informant saw two (2) male persons standing near a parked van on the road, the informant identified the man wearing a white shirt as [Divinagracia]. PO3 Plopinio claimed that when they approached [Divinagracia], the informant introduced PO3 Plopinio to [Divinagracia] as a user of marijuana and that PO3 Plopinio will buy marijuana worth five hundred pesos (Php 500.00). [Divinagracia] replied "*tamang-tama mayroon pang isang (1) plastic itong kasama ko (just in time, my friend still has one (1) plastic with him*." Thereafter, PO3 Plopinio handed the marked money to [Divinagracia] who placed the marked money inside the latter's right pocket. Afterwards, [Divinagracia] asked his friend (who was later on identified as [Sy]) to and over a zip-lock plastic sachet containing suspected marijuana fruity tops.

When PO3 Plopinio receive the zip-lock plastic sachet from [Divinagracia], he performed the pre-arranged signal (to reverse the cap he was wearing) in order to signal the other policemen that the sale has been consummated. Immediately after executing the pre-arranged signal, PO3 Plopinio introduced himself as a policeman and arrested [Divinagracia], while PO2 Burgos rushed towards [Sy] and arrested the latter.

When PO3 Plopinio ordered the appellants to empty their pockets, [Divinagracia] surrendered the marked money from his right pocket. On the other hand, [Sy] surrendered an improvised glass pipe which contained suspected marijuana. Thereafter PO3 Plopinio conducted an inventory of the seized items. PO3 Plopinio marked the zip-lock plastic sachet with his initials "EP", while the improvised glass pipe was marked with PO2 Burgos' initials "RB". The Receipt/Inventory of Property Seized was signed by PO3 Plopinio and Kagawad Villar, the Kagawad of Brgy. Don Bosco, Parañaque City. PO2 Julaton took pictures of the proceedings and the seized items.

Afterwards, the police took [accused-appellants] to the police station and prepared the Request for Drug Test of [accused-appellants], as well as the Request for Laboratory Examination of the zip-lock plastic sachet containing suspected marijuana and the improvised glass pipe. PO3 Plopinio prepared the Chain of Custody Form which stated that he transferred the seized items to PO2 Julaton, the investigating officer, for documentation.

On 26 April 2011, both the [accused-appellants] and the seized items were taken to the PNP Crime Laboratory for laboratory examination. At 12:20 a.m., PO3 Plopinio delivered the Request for Laboratory Examination and transferred custody over the seized items to PO3 Kayat of the PNP Crime Laboratory. Immediately afterwards, PO3 Kayat gave the seized items to P/Insp. Mangalip for laboratory testing.

Thereafter, P/Insp. Mangalip issued Physical Science Report No. D-190-11S which stated that he received the seized items at "0020H 26 April 2011" and that the laboratory examination conducted on the seized items marked as "EP" and "RB" resulted positive for the presence of Marijuana, a dangerous drug.

PO2 Burgos corroborated the material allegations of PO3 Plopinio. PO2 Burgos testified that he is the immediate backup of PO3 Plopinio, and that he is the one who arrested [Sy].

Kagawad Villar testified that he was the Barangay Kagawad of Barangay Don Bosco, Parañaque City, at the time of the incident. He claimed that in the evening of 25 April 2011, he was in his house when he received a radio call from the radio operator of Brgy. Don Bosco that a buy bust operation was held at Doña Soledad extension and that the arresting team was asking him to witness the inventory. When he arrived at the scene of the crime, he saw Police Inspector Roque Tome, the Chief of SAID-SOTG, and his men with the [accused-appellants]. He further claimed that he saw a plastic sachet containing dried marijuana leaves, a small pipe, and a five hundred peso bill. He averred that he signed the Receipt/Inventory of Property Seized, which stated the items seized from the [accused-appellants].

When the Prosecution offered the testimonies of PO3 Kayat and P/Insp. Mangalip, the following facts were stipulated by the parties:

PO3 Kayat:

that he was the one who received the request for laboratory examination together with the specimen reflected in the said request; that his name is shown in the rubber stamp by the PNP Crime Lab as the one who received from Officer Plopinio the request for laboratory examination; that on the very same day that he received the request together with the specimen, he immediately turned over the same to Forensic Chemist Richard Allan Mangalip for laboratory examination as shown in Physical Science Report No. D-190-11S and Chemist Mangalip received the said request on the same time and date received by Officer Kayat x x x

P/Insp/ Mangalip:

that he received a request for Laboratory Examination on April 26, 2011 at 0020H; that he conducted an examination on one (1) self-sealing transparent plastic bag containing dried suspected marijuana fruiting tops and one (1) self-sealing transparent bag containing one (1) improvised glass pipe without markings containing partially burnt dried suspected marijuana leaves; that he reduced his findings by way of Physical Science Report No. D-190-llS in connection with the laboratory examination he conducted resulting therein that the specimen gave positive result to the test for the presence of marijuana; that he would be able to identify the specimen; that he would be able to identify the result together with his signature and the signature of superiors.

On the other hand, the Defense presented the [accused-appellants] as witnesses. The facts according to the Defense, are as follows:

[Sy] testified that on 25 April 2011, at about 9:30 p.m., he alighted from a tricycle at the Doña Soledad extension when he saw a certain Police Officer Ocampo **(PO2 Ocampo)**. [Sy] claimed that PO[2] Ocampo was his former arresting officer in a different case. [Sy] claimed that PO2 Ocampo demanded [₱]20,000.00 from him. [Sy] averred that when he replied that he does not have any money, he was suddenly handcuffed by PO2 Ocampo and ordered to go with the latter. Thereafter, a vehicle suddenly parked in front of them. [Sy] claimed that he did not know [Divinagracia] and that he only came to know about the latter when he met [Divinagracia] who was inside the vehicle.

During his cross-examination, [Sy] admitted that he did not report the alleged extortion to the authorities and that he did not file any case against PO2 Ocampo.

[Divinagracia] testified that on 25 April 2011, at around 9:00 p.m., he was walking home from work when four (4) persons approached him and introduced themselves as police officers. He claimed that he was asked by the police officers if he was "Nognog", and when he told the police officers that he was not Nognog, he was asked by the police officers to go with them for verification purposes. When [Divinagracia] refused to go with the police officers, he was immediately held by two (2) police officers and was boarded into a red vehicle. He claimed that the four (4) officers took him at Taiwan Street, Doña Soledad, where he saw another group of police officers and another person who was handcuffed. [Divinagracia] was taken outside of the vehicle and was handcuffed together with the other person who tuned out to be [Sy]. Afterwards, the police took out a plastic sachet containing dried leaves and took pictures of the said plastic sachet with them. Thereafter, a [*barangay*] personnel arrived and was told by the police officers that they caught Nognog (referring to [Divinagracia]). However, the [*barangay*] personnel told the police officers that [Divinagracia] is not Nognog because the former knows who Nognog is. [Divinagracia] noticed that the [*barangay*] personnel and one of the police officers talked to each other and thereafter, he and [Sy] were taken to the Police Station where they were detained.

During his cross-examination, [Divinagracia] admitted that prior to the incident, he had no encounter or misunderstanding with the police officers who arrested him. Moreover, he admitted that he did

not bother to know the names of the police officers who arrested him, nor did he bother to file a case against the said police officers.[3]

The Ruling of the RTC

On August 20, 2016, the RTC rendered a Decision finding the accused-appellants guilty in Criminal Case No. 11-0464 for the illegal sale of dangerous drugs in violation of Section 5, Article II of R.A. No. 9165, thereby sentencing them to suffer the penalty of imprisonment of 12 years and one day as minimum to 17 years as maximum, and to pay a fine of ₱400,000.00. As regards Criminal Case No. 11-0465, however, Sy was acquitted of the charge for violation of Section 12, Article II of the same law.[4]

On September 6, 2016, the RTC rendered an Amended Decision[5] amending the original penalty imposed upon the accused-appellants in its August 20, 2016 Decision to life imprisonment and a fine of one million pesos each.[6]

In convicting the accused-appellants for violation of Section 5, Article II of R.A. No. 9165, the RTC was convinced that the prosecution was able to prove with moral certainty the elements of the crime. It brushed aside the defense proffered by the accused-appellants of denial and frame-up for their failure to present any evidence of ill motive on the part of the prosecution witnesses to falsely impute the commission of the said crime upon them. The RTC explained that without proof of ill motive, the testimonies of the police officers are entitled to great respect and they are presumed to have performed their duties in a regular manner.

While the RTC recognized that the police officers failed to comply with the procedure under Section 21 of R.A. 9165 in that no representative of the Department of Justice (DOJ) and

---

[3] *Id.* at 129-135.

[4] RTC records, pp. 561-571.

[5] *Supra* note 2.

[6] See RTC records, pp. 573-574.

the media were present after seizure, it nevertheless held that the integrity and evidentiary value of the seized drugs had been duly preserved by the unbroken chain of custody of the *corpus delicti*.

Thus, the trial court disposed in this wise:

> WHEREFORE, premises considered the Court finds accused **ROGELIO DIVINAGRACIA[,] JR[.] y DORONILA @ ENSOL** and **ROSWORTH SY y BERSABAL @ RORO** in Criminal Case No. 11-0464 for Violation of Sec. 5, Art. II of RA 9165 for sale of MARIJUANA with a total weight of 14.58 grams, **GUILTY** beyond reasonable doubt and are hereby sentenced to suffer the penalty of **life imprisonment and to pay a fine of one million pesos (Ph[P]1,000,000.00) each**.
>
> In Criminal Case No. 11-0465 for Violation of Section 12, Article II of RA 9165, the Court finds accused **ROSWORTH SY y BERSABAL @ RORO NOT GUILTY** on the ground of reasonable doubt.
>
> It appearing that accused **ROGELIO DIVINAGRACIA[,] JR[.] y DORONILA @ ENSOL and ROSWORTH SY y BERSABAL @ RORO** are presently detained at Bureau of Jail Management and Penology [BJMP], Parañaque City and considering the judgment of conviction and the penalties imposed, the Branch Clerk of Court is hereby directed to prepare the *Mittimus* for the immediate transfer of the said accused from the BJMP, Parañaque City to the New Bilibid Prisons, Muntinlupa City pursuant to *Supreme Court OCA Circular No. 163-2013*.
>
> The sachet of marijuana marked "EP" weighing 14.58 grams and improvised glass pipe tooter subject of these cases, are forfeited in favor of the government and the Branch Clerk of Court is directed to immediately turn over the same to the Philippine Drug Enforcement Agency (PDEA) for proper disposal pursuant to Section 21 of RA 9165 and Supreme Court OCA Circular No. 51-2003.
>
> SO ORDERED.[7]

Aggrieved, accused-appellants elevated their case to the CA *via* a Notice of Appeal.[8]

---

[7] *Supra* note 2, at 73.

[8] CA *rollo*, pp. 13-14.

The Ruling of the CA

In its assailed Decision, the CA affirmed the findings of the RTC that the elements for the prosecution of offenses involving the illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165 had been shown to exist. It also agreed with the lower court that non-compliance by the police officers with the procedure laid down in Section 21, Article II of R.A. No. 9165 was not fatal to the prosecution's cause considering that it was able to sufficiently prove the unbroken chain of custody of the zip lock plastic sachet containing marijuana, from the moment it came into the possession of PO3 Plopinio, the poseur-buyer, until the same was brought to the crime laboratory for testing, and its subsequent presentation in court. The CA brushed aside accused-appellants' defenses of alibi, denial and frame-up for being unmeritorious in light of their failure to present strong and concrete evidence that would support their claim as well as any ill motive on the part of the police officers to concoct the false charge against them. Such defenses cannot prevail over the positive assertions of the police officers who were presumed to have performed their official duties in a regular manner. The dispositive portion of the CA Decision reads:

> **WHEREFORE**, the instant appeal is hereby **DENIED**. The Amended Decision dated 6 September 2016 issued by the Regional Trial Court of Parañaque City, Branch 259, in Criminal Case Nos. 11-0464 and 11-0465, is hereby **AFFIRMED**.
>
> **SO ORDERED.**[9]

Hence, this appeal. Accused-appellants center their defense on the failure of the police officers to comply with the mandatory procedure in Section 21, Article II of R.A. No. 9165 relative to the handling of the seized marijuana. In particular, they contend that the police officers conducted the inventory without the presence of a representative from the DOJ and the media. Even if Kagawad Villar, a *barangay* elected official, signed the inventory receipt, he did not witness the actual seizing and

---

[9] *Supra* note 1, at 143.

marking of the confiscated item. Accused-appellants likewise question the credibility of the witnesses presented by the prosecution on the ground that there were inconsistencies in their respective testimonies, such as: the number of members that comprised the buy-bust team; the person who prepared and signed the spot report; and the manner by which the arresting officers secured the presence of Kagawad Villar for the inventory. Accused-appellants also put in issue the failure of the police officers to indicate the amount and serial number of the marked money used in the Pre-Operation Form, Coordination Form and the Spot Report.

The Issue

The primordial issue for determination is whether accused-appellants are guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165.

The Ruling of the Court

In order to secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs under Section 5, Article II of R.A. No. 9165, the prosecution must prove with moral certainty: (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.[10] It is likewise indispensable for a conviction that the drugs subject of the sale be presented in court and its identity established with moral certainty through an unbroken chain of custody over the same. In cases like this, it is incumbent that the prosecution must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.[11]

The legality of entrapment operations involving illegal drugs begins and ends with Section 21, Article II of R.A. No. 9165.[12]

---

[10] *People v. Lumaya*, G.R. No. 231983, March 7, 2018.

[11] *People v. Año*, G.R. No. 230070, March 14, 2018.

[12] *People v. Luna*, G.R. No. 219164, March 21, 2018.

Section 21, Article II of R.A. No. 9165, provides the chain of custody rule, outlining the procedure police officers must follow in handling the seized drugs, in order to preserve their integrity and evidentiary value.[13] It 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*. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursor 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, 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

The Implementing Rules and Regulations of R.A. No. 9165, (IRR) on the other hand, filled in the void of the law by providing the details as to the place where the physical inventory and photographing of seized items should be accomplished and added a proviso on permissible deviation from the strict compliance with what the law requires on justifiable grounds. 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 precursor and essential chemicals, as

---

[13] *Belmonte v. People*, 811 Phil. 844, 856 (2017).

well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

> (a) The apprehending office/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.]
>
> x x x x x x x x x

Succinctly stated, the law commands that the seized drugs must be inventoried and photographed immediately after seizure and that the same must be conducted in the presence of the accused or his representative or counsel, and three other witnesses, namely: (a) a representative from the media; (b) a representative of the DOJ; and (c) an elected public official.[14] Compliance with the requirements forecloses opportunities for planting, contaminating, or tampering of evidence in any manner. Non-compliance, on the other hand, is tantamount to failure in establishing the identity of *corpus delicti*, an essential element of the offense of illegal sale of dangerous drugs, thus, engendering the acquittal of an accused.[15] Such stringent requirement was placed as a safety precaution against potential abuses by law

---

[14] *People v. Malabanan*, G.R. No. 241950, April 10, 2019.

[15] *People v. Adobar*, G.R. No. 222559, June 6, 2018.

enforcement agents who might fail to appreciate the gravity of the penalties faced by those suspected to be involved in the sale, use or possession of illegal drugs.[16] In *People v. Malabanan*,[17] the Court enunciated the two-fold purpose Section 21 seeks to achieve, *viz*:

> The procedure set forth under Section 21 of R.A. No. 9165 serves a two-fold purpose. *First*, it protects individuals from unscrupulous members of the police force who are out to brandish the law on the innocent for personal gain or otherwise. *Second*, a faithful compliance of Section 21 of R.A. No. 9165 benefits the police and the entire justice system as it assures the public that the accused was convicted on the strength of uncompromised and unquestionable evidence. It dispels any thought that the case against the accused was merely fabricated by the authorities.

In the present case, it is undisputed that the police officers failed to comply with the three-witness rule under Section 21 mentioned above. The prosecution never hid this fact nor made any attempt to deny that only Kagawad Villar witnessed the inventory of the confiscated items. However, the prosecution takes exception to the three-witness rule on the ground that it had been able to sufficiently prove the integrity of the drugs seized from the accused-appellants as well as the unbroken chain of custody of the same. In short, they posited that since the prosecution had been able to show that the drugs sold by the accused-appellants were the very same drugs seized by the police officers, marked, inventoried and subjected to laboratory examination which tested positive for marijuana and ultimately presented before the court as evidence against them, the proper chain of custody of the drugs was sufficiently established.

Such contention has no merit. In *People v. Mendoza*[18] this Court stressed that:

---

[16] *People v. Calvelo*, G.R. No. 223526, December 6, 2017, 848 SCRA 225, 246.

[17] *Supra* note 14.

[18] 736 Phil. 749, 764 (2014). See also *People v. Crispo*, G.R. No. 230065, March 14, 2018.

The consequences of the failure of the arresting lawmen to comply with the requirements of Section 21[a] *supra*, were dire as far as the Prosecution was concerned. Without the insulating presence of the representative from the media or the Department of Justice, 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 RA No. 6425 (*Dangerous Drugs Act of 1972*) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody.

To be sure, non-compliance with the mandatory procedure under Section 21, Article II of R.A. No. 9165 and its IRR does not *per se* render the confiscated drugs inadmissible,[19] as the desire for a perfect and unbroken chain of custody rarely occurs,[20] but only triggers the operation of the saving clause enshrined in the IRR of R.A. No. 9165.[21] However, for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and the integrity and value of the seized evidence had nonetheless been preserved.[22] Stated otherwise, before a deviation from the mandatory procedural requirements under Section 21 may be allowed, the following requisites must be satisfied: (1) justifiable grounds must be shown to exist warranting a departure from the rule on strict compliance; and (2) the apprehending team must prove that the integrity and the evidentiary value of the seized items had been properly preserved.[23] However, in order for such saving mechanism to apply, the prosecution must first recognize the lapse or lapses

---

[19] *People v. Cabrellos*, G.R. No. 229826, July 30, 2018.

[20] *People v. Abdula*, G.R. No. 212192, November 21, 2018.

[21] *People v. Luna*, *supra* note 12.

[22] *People v. Ching*, 819 Phil. 565, 578 (2017), citing *People v. Almorfe*, 631 Phil. 51, 60 (2010).

[23] See *People v. Luna*, *supra* note 12.

in the prescribed procedures and then explain the lapse or lapses.[24] Also, 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.[25]

In this case, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses under Section 21, Article II of R.A. No. 9165 must be adduced.[26] Unfortunately, the prosecution did not do so. As a matter of fact, it did not offer any explanation why representative from the media and DOJ were not present at the place and time of the seizure, as well as in the inventory and photographing of the same. Considering that the first prong of the saving clause — presence of justifiable grounds for the non-compliance, was not complied with, any and all evidence tending to establish the chain of custody of the seized drugs become immaterial.[27] Even the identification of the seized evidence in court during the trial became ambiguous *and* unreliable, rendering the proof of the links in the chain of custody of the *corpus delicti* unworthy of belief.[28] Given that the prosecution failed to provide justifiable grounds for the glaring breaches of the mandatory requirements of Section 21, Article II of R.A. No. 9165, the accused-appellants' acquittal is perforce in order.

WHEREFORE, premises considered, the January 12, 2018 Decision of the Court of Appeals in CA-G.R. CR HC No. 08978 is **REVERSED** and **SET ASIDE**. Accused-appellants **Rogelio Divinagracia Jr. *y* Dornila, *alias* "Ensol"** and **Rosworth Sy *y* Bersabal, *alias* "Roro"** are **ACQUITTED**. The Director of the Bureau of Corrections is **ORDERED** to cause their immediate release, unless they are confined for any other lawful cause.

---

[24] *People v. Alagarme*, 754 Phil. 449, 461 (2015).

[25] *People v. Belmonte*, G.R. No. 224588, July 4, 2018.

[26] *People v. Cabrellos*, G.R. No. 229826, July 30, 2018.

[27] *People v. Luna*, *supra* note 12.

[28] *People v. Alagarme*, *supra* note 24.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is **DIRECTED** to report to this Court within five days from receipt of this Decision of the action he has taken. A copy of this Decision shall also be furnished the Director General of the Philippine National Police for his information.

SO ORDERED.

Peralta, C.J. (Chairperson), Lazaro-Javier, and *Inting,*[***] *JJ.*, concur.

Caguioa, J., *(Working Chairperson)*, on official leave.

FIRST DIVISION

[G.R. No. 246165. November 28, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOEFFREY MACASPAC *y* LLANETE and BRYAN MARCELO *y* PANDINO,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); SECTION 5, ARTICLE II THEROF; CORE ELEMENT OF ILLEGAL TRANSPORTING OF DANGEROUS DRUGS IS THE MOVEMENT OF THE DANGEROUS DRUGS FROM ONE PLACE TO ANOTHER; LAW DOES NOT DICTATE THE THRESHOLD HOW FAR THE DRUGS SHOULD HAVE BEEN TRANSPORTED IN ORDER TO FALL WITHIN THE LIMITS OF ILLEGAL TRANSPORTING OF DANGEROUS DRUGS; CASE AT BAR. — The core element of illegal transporting of dangerous drugs is the movement of

[***] Additional Member per Special Order No. 2726.

the dangerous drug from one place to another. As defined in ***People v. Mariacos***, "transport" means "to carry or convey from one place to another." In ***People v. Matio***, the Court noted there was no definitive moment when an accused "transports" a prohibited drug. When the circumstances establish the purpose of an accused to transport and the fact of transporting itself, there should be no question as to the perpetration of the criminal act. The fact that there is actual conveyance suffices to support a finding that the act of transporting was committed. Here, appellants claim there was no transporting of illegal drugs to speak of since they were not able to actually leave the premises of the SM MOA. The argument fails. x x x True, appellants were not able to completely leave the SM MOA premises because their car was blocked by Agent Otic and his team but the fact remains – they had already moved the drugs from the SM Hypermarket into the car and had actually started driving away with it. In fine, the essential element of moving the drugs from one place to another was already accomplished, no matter how far or near the same had gone from their place of origin. x x x Here, five hundred fifty-two (552) grams or half kilo of *shabu* is by no means a minuscule amount indicating as well appellants' intent to deliver and transport them in violation of Section 5, Article II of RA 9165.

2. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; LINKS THAT MUST BE ESTABLISHED. — To ensure the integrity of the seized drug, the prosecution must account for each link in its chain of custody: ***first***, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; ***second***, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; ***third***, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and ***fourth***, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.

3. ID.; ID.; ID.; ID.; PROSECUTION'S FAILURE TO PRESENT THE FORENSIC CHEMIST TO TESTIFY ON HOW THE SEIZED ITEMS WERE HANDLED AND TAKEN INTO CUSTODY WAS NOT FATAL TO THE ADMISSIBILITY OF THE SEIZED DRUGS, AS LONG AS THE CHAIN OF CUSTODY OF THE SEIZED DRUGS WAS CLEARLY ESTABLISHED. — [I]n ***People v. Galicia***, the Court decreed

that the prosecution's failure to present the forensic chemist to testify on how the seized items were handled and taken into custody was **not fatal** to the admissibility of the seized drugs. ***People v. Padua*** further elucidated, *viz.*: Further, **not all people who came into contact with the seized drugs are required to testify in court. There is nothing in Republic Act No. 9165 or in any rule implementing the same that imposes such requirement.** As long as the chain of custody of the seized drug was clearly established not to have been broken and that the prosecution did not fail to identify properly the drugs seized, **it is not indispensable that each and every person who came into possession of the drugs should take the witness stand.**
x x x

4. ID.; ID.; ID.; LIKELIHOOD OF TAMPERING, LOSS, OR MISTAKE WITH RESPECT TO A SEIZED ILLEGAL DRUG IS GREATEST WHEN THE ITEM IS SMALL AND IS ONE THAT HAS PHYSICAL CHARACTERISTICS FUNGIBLE IN NATURE. — [T]he Court keenly notes the large amount of *shabu* involved here — five hundred fifty-two (552) grams or more than half kilo. In ***Malillin v. People***, the Court stated that the likelihood of tampering, loss, or mistake with respect to a seized illegal drug is greatest when the item is small and is one that has physical characteristics fungible in nature. To repeat, five hundred fifty-two (552) grams or more than half kilo of *shabu* is by no means a minuscule amount, thus, logically confirming the improbability of planting, tampering, or alteration.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IN THE ABSENCE OF IMPUTED MALICE ON THE PART OF A WITNESS TO TESTIFY AGAINST THE ACCUSED, HIS/HER TESTIMONY THAT IS CREDIBLE, STRAIGHTFORWARD, AND DIRECT DESERVES FULL FAITH AND CREDENCE; CASE AT BAR. — [B]oth the trial court and the Court of Appeals found Agent Otic's testimony to be credible, straightforward, and direct. More important, both courts found that Agent Otic was not shown, nay accused, to have been impelled by malice or ill will to falsely charge appellants with such heinous offense of illegal transporting of a huge amount of methamphetamine hydrochloride. In ***People v. Flor***, the Court gave full faith and credence to police officer's testimony in the absence of imputed malice on his part to testify

against the accused for violation of Section 5, Article II of RA 9165. Here, Agent Otic was not shown to have any ulterior motive to falsely charge appellants. The Court, therefore, finds no reason to doubt his credibility.

6. ID.; ID.; DISPUTABLE PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; CREDENCE SHOULD BE GIVEN TO THE NARRATION OF THE INCIDENT BY THE PROSECUTION WITNESSES ESPECIALLY WHEN THEY ARE POLICE OFFICERS WHO ARE NOT ONLY PRESUMED BUT HAVE BEEN CLEARLY SHOWN TO HAVE PERFORMED THEIR OFFICIAL DUTY IN A REGULAR MANNER. — [I]n cases involving violations of RA 9165, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are not only presumed but have been clearly shown to have performed their official duty in a regular manner. ***People v. Cabiles*** is apropos, *viz*.: The direct account of law enforcement officers enjoys the presumption of regularity in the performance of their duties. It should be noted that "**unless there is clear and convincing evidence that the police officers were inspired by any improper motive or did not properly perform their duty, their testimonies on the operation deserve full faith and credit**. "**Thus, unless the presumption is rebutted, it becomes conclusive**. Since, accused-appellant failed to present or refute the evidence presented against him, therefore, the conduct of the operation of the police officers prevails and is presumed regular.

7. ID.; ID.; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT WHICH ARE FACTUAL IN NATURE AND INVOLVE CREDIBILITY ARE ACCORDED RESPECT; ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS. — The Court accords great weight to the trial court's factual findings here, particularly as regards credibility of witnesses. For it had the opportunity to observe first-hand the deportment and demeanor of witnesses and it was in a position to discern whether or not they were telling the truth. More so because the trial court's factual findings here carried the full concurrence of the Court of Appeals itself. ***People v. Perondo*** is relevant: x x x **findings of the trial courts which are factual in nature and which involve credibility are accorded respect**

> when no glaring errors, gross misapprehension of facts, or speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. **The rule finds an even more stringent application where said findings are sustained by the Court of Appeals.** x x x

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Ulysses L. Gallego for accused-appellants.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

Appellants Joeffrey Macaspac *y* Llanete and Bryan Marcelo *y* Pandino assail the Court of Appeals' Decision dated May 30, 2018, affirming their conviction for violation of Section 5, Article II of Republic Act No. 9165 (RA 9165).

The Proceedings before the Trial Court

Appellants were charged[1] with violation of Section 5, Article II of RA 9165[2] for transporting five hundred fifty-

---

[1] Record, p. 1.

The Information reads:

That on or about the 13th of December 2015, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused JOEFFREY MACASPAC *Y* LLANETE and BRYAN MARCELO *Y* PANDINO, conspiring, confederating and mutually helping one another, without authority of law, did then and there willfully, unlawfully, and feloniously bring and transport 552 (Five Hundred Fifty Two) grams of Methamphetamine Hydrochloride (*shabu*), a dangerous drug, along SM Mall of Asia Complex, this city, using a Hyundai Accent vehicle with Plate No. AAV 8780. Contrary to law.

[2] Comprehensive Dangerous Drugs Acts of 2002.

two (552) grams of methamphetamine hydrochloride (*shabu*), a dangerous drug.

On arraignment, appellants pleaded not guilty.[3] Trial ensued.

Prosecution's Version

National Bureau of Investigation (NBI) Special Investigator Joel Otic testified that on December 13, 2015, around 4 o'clock in the afternoon, he received a report from a confidential informant that a drug trafficking group from San Pablo, Laguna was set to transport drugs to another drug trafficking group on the same day at the SM Mall of Asia (MOA). The confidential informant relayed further that for this transaction, the first group would use a silver Hyundai Accent with plate number AAV 8780, a white Mitsubishi Mirage with plate number ACA 3243, and a gray Mitsubishi van with plate number XLV 925.[4] Agent Otic, in turn, relayed the information to Chief Joel M. Tuvera, head of the Anti-Illegal Drugs Division (AIDD). Chief Tuvera approved the deployment of the team to the area. For this purpose, Agent Otic formed a team composed of Agent Fatima Liwalug, Agent Jerome Bomediano, Agent Bertrand Gamaliel Mendoza, Agent John Mark Santiago, Agent Melvin Escurel and Agent Salvador Arteche Jr. The team coordinated with the Philippine Drug Enforcement Agency (PDEA), the Pasay City Southern Police District, and the Security Manager of SM MOA, after which, it proceeded to the target area at the SM MOA.[5]

Section 5, Article II states: Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - 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 sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

[3] *Rollo*, p. 4.

[4] Record, p. 7.

[5] *Id.* at 7; *rollo*, p. 5.

Around 5 o'clock in the afternoon, a MOA Security personnel informed Agent Otic that he saw a Hyundai Accent with plate number AAV 8780 parked in front of the SM Hypermarket. The team drove there and spotted the vehicle with three (3) persons on board. They were later identified as Dario "Bong Cuenca" (who acted as driver)[6] and appellants Macaspac and Marcelo. Appellants alighted from the vehicle and walked toward the package counter of the SM Hypermarket where they claimed a plastic bag containing a box labeled "Zest O."

As soon as appellants had returned to their vehicle, Agents Mendoza and Escurel closed in, blocked the vehicle, and ordered the driver and appellants to step out. But Bong reacted by revving up the engine and swiftly heading to the direction of Agents Mendoza and Escurel with the clear intent of hitting them.[7] When he missed his targets, Bong revved up the engine anew, albeit this time, the car was blocked by Agent Otic's Toyota Fortuner. Agents Arteche and Santiago alighted from the Toyota Fortuner and ordered Bong and appellants to get off. But Bong once more accelerated the engine and tried anew to run over the agents. The police officers were then forced to shoot.[8] As a result, Bong and appellants got injured and were immediately brought to the San Juan de Dios Hospital in Pasay City. Bong died later that evening.[9]

Meantime, the police team inspected the Hyundai vehicle used by appellants. Agent Otic recovered from the backseat a "Zest O" box containing a plastic pack with white crystalline substance inside. Agent Otic did an inventory and marked the seized item with his initials "JLO" in the presence of media representative Ryan Ann, and Barangay Kagawad Andres Ileja of Barangay 76, Zone 10, Pasay City. Agent Liwalug took photographs of the seized item.[10]

---

[6] Record, p. 9.

[7] *Id*. at 8.

[8] *Rollo*, p. 6.

[9] *Id*.

[10] Record, p. 9.

Agent Otic also prepared a Request for Laboratory Examination and brought it to the NBI Manila's Forensic Chemist Division. Forensic Chemist Loreto Bravo received from Agent Otic the specimen and the request for its examination.

Per Certification dated December 14, 2015, Forensic Chemist Bravo confirmed that the specimen weighed five hundred fifty-two (552) grams and was found positive for methamphetamine hydrochloride (*shabu*), a dangerous drug.[11]

The prosecution submitted the following evidence: 1) Joint Affidavit of Arrest;[12] 2) Coordination Form;[13] 3) Pre-Operation Report;[14] 4) Coordination Letter;[15] 5) Inventory of Seized Item;[16] 6) Request for Laboratory Examination and Analysis;[17] 6) Certification (of the qualitative and quantitative results of the seized item);[18] and 7) Photographs of the seized item.[19]

Defense's Version

Appellants interposed denial. They testified that on December 13, 2015, around 4 o'clock in the afternoon, they went to the SM MOA to meet with Bong Cuenca, an interested car buyer. While they were strolling inside the mall, Bong called appellant Marcelo to meet him near the ferris wheel at the SM MOA.[20] There, they boarded Bong's Hyundai vehicle.[21] Suddenly, armed men ran towards them and a car blocked Bong's vehicle. Another group of armed men also started hitting the vehicle. Bong

---

[11] *Id*. at 90.

[12] *Id*. at 7.

[13] *Id*. at 11.

[14] *Id*. at 12.

[15] *Id*. at 15.

[16] *Id*. at 16.

[17] *Id*. at 17.

[18] *Id*. at 18.

[19] *Id*. at 19-20.

[20] TSN, November 11, 2016, p. 6.

[21] *Rollo*, p. 7.

accelerated the car causing the armed men to shoot as a result of which, they got wounded. They were brought to the San Juan de Dios Hospital for treatment.[22] After their discharge from the hospital, they were taken to the NBI where they got informed of the charge against them for illegal transporting of drugs.[23]

The Trial Court's Ruling

By Decision[24] dated March 14, 2017, the trial court found appellants guilty as charged, *viz.*:

> **WHEREFORE**, premises considered, the accused, **JOEFFREY MACASPAC and BRYAN MARCELO**, are hereby found **GUILTY** of transporting **552 grams** of *methamphetamine hydrochloride*, otherwise known as "shabu" as penalized under Section 5, Article II of Republic Act 9165, and are hereby sentenced to suffer a penalty of **LIFE IMPRISONMENT** and to pay a fine of **FIVE HUNDRED THOUSAND PESOS (₱500,000.00)**.
>
> The Branch Clerk of Court is hereby directed to coordinate with, and transmit to the PDEA, the one (1) sachet of representative sample earlier extracted from the specimen for its proper disposition.
>
> Furnish the Legal and Prosecution Service of the PDEA, the NBI, the prosecutor, the accused and his counsel, copies of this decision.
>
> SO ORDERED.

The trial court found that the elements of transporting drugs were all present here. Appellants had complete possession and control of the prohibited drugs from the time they picked up the same at the SM Hypermarket up until they boarded the drugs into Bong's car.[25] The trial court also noted that since appellants were actually in the act of committing an offense, the police officers had lawful reason to arrest them, search the vehicle, and seize the prohibited item found therein.[26] Had it

---

[22] TSN, November 11, 2016, p. 6.

[23] *Rollo*, p. 7.

[24] Penned by Judge Racquelen Abary-Vasquez, CA *rollo,* pp. 30-48.

[25] *Id*. at 39.

[26] *Id*. at 39-40.

not been for the timely interception by the police officers and NBI agents, both appellants and the five hundred fifty-two (552) grams of *shabu* would have freely moved out from the SM MOA undetected.[27]

Finally, there was substantial compliance with Section 21 of RA 9165. There was justifiable ground why the inventory and photograph of the seized item were not made in the presence of appellants as both of them were brought to the hospital for immediate treatment after sustaining gunshot wounds during the encounter. In any case, the integrity and evidentiary value of the seized item were preserved from the time it was seized until it was presented in court.[28]

The Proceedings before the Court of Appeals

On appeal, appellants faulted the trial court for giving credence to Agent Otic's testimony, albeit the same was allegedly only based on the reports of his team. During the operation, Agent Otic stayed inside the vehicle, hence, he had no personal knowledge that appellants indeed retrieved a box containing *shabu* from the SM Hypermarket and brought it to their vehicle. His testimony, therefore, deserved no probative weight.[29] Appellants further argued that the integrity and evidentiary value of the *corpus delicti* were not preserved because the "Zest O" box which supposedly contained the *shabu* was not marked nor included in the inventory.[30]

For its part, the Office of the Solicitor General (OSG) countered in the main: 1) the elements of transporting dangerous drugs under Section 5, Article II of RA 9165 were all sufficiently established; 2) appellants were caught *in flagrante delicto* while transporting five hundred fifty-two (552) grams of *shabu*;[31] 3) the chain of custody was followed, thus, preserving the integrity

---

[27] *Id*. at 40.

[28] *Id*. at 45.

[29] *Id*. at 24.

[30] *Id*. at 28.

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

and evidentiary value of the seized item;[32] and 4) Agent Otic's testimony was not hearsay as he was simply narrating independent relevant statements which led to appellants' lawful arrest.[33]

The Court of Appeals' Ruling

By a Decision[34] dated May 30, 2018, the Court of Appeals affirmed the trial court's ruling. It ruled that the prosecution sufficiently established the elements of illegal transporting of dangerous drugs. Appellants' possession of the five hundred fifty-two (552) grams of *shabu*, by itself, indicated appellants' purpose to transport the same.[35]

Another. Agent Otic's testimony was not hearsay. Being the team leader of the operation which coordinated with the PDEA, as well as the mall's security personnel, he had personal knowledge of the illegal transporting of the drugs in question. He was also personally present at the target area during the operation.[36]

Finally, the prosecution sufficiently proved that the chain of custody rule was duly complied with, preserving the integrity and evidentiary value of the *corpus delicti*.[37]

The Present Appeal

Appellants now seek affirmative relief from the Court and plead anew for a verdict of acquittal.

In compliance with the Resolution[38] dated June 10, 2019, the OSG manifested that in lieu of supplemental brief, it was adopting its brief before the Court of Appeals.[39]

---

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

[33] *Id*. at 65.

[34] *Rollo*, pp. 3-12.

[35] *Id*. at 10.

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

[37] *Id*. at 11

[38] *Id*. at 17.

[39] *Id*. at 26-28.

On August 28, 2019, appellant Macaspac filed a supplemental brief[40] reiterating there was no transporting of illegal drugs to speak of since the prosecution failed to show they transferred the alleged illegal drugs from one place to another.[41] Also, there was a gap in the chain of custody because the forensic chemist was not presented in court to testify whether the seized item he examined was the same item presented in court.

Issue

Did the Court of Appeals err when it affirmed appellants' conviction for illegal transporting of dangerous drugs under Section 5, Article II of RA 9165?

Ruling

The core element of illegal transporting of dangerous drugs is the movement of the dangerous drug from one place to another.[42] As defined in ***People v. Mariacos***,[43] "transport" means "to carry or convey from one place to another."[44]

In ***People v. Matio***,[45] the Court noted there was no definitive moment when an accused "transports" a prohibited drug. When the circumstances establish the purpose of an accused to transport and the fact of transporting itself, there should be no question as to the perpetration of the criminal act.[46] The fact that there is actual conveyance suffices to support a finding that the act of transporting was committed.[47]

---

[40] *Id*. at 32-38.

[41] *Id*. at 33.

[42] See *People v. Laba*, 702 Phil. 301, 308 (2013).

[43] See 635 Phil. 315, 333-334 (2010).

[44] *Id*.

[45] See 778 Phil. 509, 523 (2016).

[46] *Supra* note 43.

[47] *Id*.

Here, appellants claim there was no transporting of illegal drugs to speak of since they were not able to actually leave the premises of the SM MOA.[48]

The argument fails.

Records bear the following facts: 1) appellants picked up from the baggage counter of the SM Hypermarket a plastic bag containing a "Zest-O" box filled with *shabu*; 2) appellants walked towards the SM MOA where Bong Cuenca's car was waiting; 3) appellants loaded the *shabu* into the car and boarded; 4) as they and Bong were driving away, Agent Mendoza and Agent Escurel blocked them; 5) but instead of halting, Bong accelerated the engine and maneuvered to run over the agents; 6) when he missed his targets, Bong revved up the engine anew and maneuvered another time to run over the agents but this time, it was Agent Otic's Toyota Fortuner which blocked the vehicle; and 7) when the driver and appellants were asked to step out, the driver simply repeated what he did earlier, thus, forcing the agents to shoot. Bong and appellants were consequently injured and later brought to the hospital for treatment. Appellants survived, but the driver did not.

True, appellants were not able to completely leave the SM MOA premises because their car was blocked by Agent Otic and his team but the fact remains – they had already moved the drugs from the SM Hypermarket into the car and had actually started driving away with it. In fine, the essential element of moving the drugs from one place to another was already accomplished, no matter how far or near the same had gone from their place of origin.

People v. Asislo[49] aptly noted that the law does not dictate the threshold *how far* the drugs should have been transported in order to fall within the limits of illegal transporting of dangerous drugs. ***People v. Gumilao***[50] further elucidated that

---

[48] *Rollo*, p. 33.

[49] *Supra* note 45.

[50] See *People v. Gumilao*, G.R. No. 208755, October 5, 2016, citing *People v. Mariacos*, 635 Phil. 315, 333-334 (2010).

in cases of illegal transporting of prohibited drugs, it is immaterial whether or not the place of destination is reached.

We also reckon with the rule that the intent to transport illegal drugs is presumed whenever a huge volume thereof is found in the possession of the accused until the contrary is proved.[51]

In ***People v. Asislo***,[52] the Court found three (3) plastic bags of marijuana leaves and seeds as a considerable quantity of drugs and that possession of a similar amount of drugs showed appellant's intent to sell, distribute, and deliver the same.

Also, in ***People v. Alacdis***,[53] appellant was found in possession of almost one hundred ten (110) kilos of marijuana. The Court ruled that such sheer volume by itself clearly indicated one's purpose to transport these drugs.

Here, five hundred fifty-two (552) grams or half kilo of *shabu* is by no means a minuscule amount indicating as well appellants' intent to deliver and transport them in violation of Section 5, Article II of RA 9165.

So must it be.

Going now to the chain of custody rule, we reiterate that in illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution is, therefore, tasked to establish that the substance illegally possessed, sold, delivered, or transported by the accused is the same substance presented in court.[54]

To ensure the integrity of the seized drug, the prosecution must account for each link in its chain of custody:[55] ***first***, the

---

[51] See *People v. Asislo*, 778 Phil. 509 (2016); See *People v. Alacdis,* 811 Phil. 219, (2017).

[52] *Supra* note 45.

[53] See 811 Phil. 219, 232 (2017).

[54] See *People v. Barte*, 806 Phil. 533, 541-542 (2017).

[55] As defined in Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002:

seizure and marking of the illegal drug recovered from the accused by the apprehending officer; ***second***, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; ***third***, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and ***fourth***, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.[56]

Here, the prosecution sufficiently complied with the chain of custody rule, *viz.*:

One, in the place where the drugs were seized and in the presence of insulating witnesses, *i.e.*, media representative Ryan Ann and Barangay Kagawad Andres Ileja from Barangay 76, Zone 10, Pasay City, Agent Otic marked and inventoried the "Zest-O" Box containing the original packing of the five hundred fifty-two (552) grams of *shabu*,[57] while Agent Liwalug took photographs of the same. Notably, the prosecution recognized that at that time, appellants themselves were not around anymore because they were taken to the hospital for treatment of the injuries they sustained during the encounter.

Two, Agent Otic remained in custody of the seized item from the time it was seized until it was marked and inventoried. He testified, thus:

Q: So you were able to get the Zest-O on top of the seat?
A: Yes, ma'am.

---

x x x x x x x x x x x x

b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.]

x x x x x x x x x x x x

[56] See *People v. Dahil*, 750 Phil. 212, 231 (2015).

[57] Record, p. 79.

Q: Anything else?
A: After that, we conducted the inventory of the items seized in the presence of the witnesses, the barangay officials, MOA representatives and media representatives, ma'am.

x x x x x x x x x

Q: And then what happened next?
A: After that, we requested the media to take videos and photographs while I marked the seized items in their presence, ma'am.

Q: Who took the pictures?
A: From our side, it was Agent Liwalug, ma'am.

x x x x x x x x x

Q: And then?
A: We also requested the witnesses to sign the inventory sheet, ma'am.

Q: You, what did you do?
A: I was the one who conducted the markings and inventory, ma'am.[58]

Three, Agent Otic turned over the dangerous drugs to Forensic Chemist Loreto Bravo. We note that Agent Otic did not turn over the seized item to an investigator at the police station but remained in custody of the same until he turned it over to Forensic Chemist Bravo for qualitative examination. This is not a breach of the chain of custody. In ***People v. Santos***,[59] NBI Agent Saul was the one who seized the marijuana leaves and dangerous drugs paraphernalia from the accused. He, too, marked and inventoried the seized items. He did not turn them over to an investigator as he immediately submitted the same to the forensic chemist for qualitative examination. The Court ruled there was no breach in the chain of custody and the integrity and evidentiary value of the seized item remained intact from their seizure to their presentation as evidence in court.

Four, Forensic Chemist Bravo received the specimen and request for examination. Per Certification dated December 14,

---

[58] TSN, April 11, 2016, pp. 29-30.

[59] See G.R. No. 223142, January 17, 2018.

2015, he confirmed that the specimen yielded positive for methamphetamine hydrochloride. It is a matter of record that both the prosecution and the defense agreed to dispense with the testimony of Forensic Chemist Bravo, and in its stead, stipulated among others, that: 1) Forensic Chemist Bravo who conducted the laboratory examination of the specimen is a competent, qualified, and expert witness; 2) his findings per Certification dated December 14, 2015 showed that the seized item weighed five hundred fifty-two [552] grams and were found positive for methamphetamine hydrochloride; and 3) he had no personal knowledge of the offense imputed against appellants.

Forensic Chemist Bravo's Certification perfectly conformed with the specifications in the inventory prepared by Agent Otic, thus, leaving no doubt that the drugs received by Forensic Chemist Bravo for examination were the same ones seized by Agent Otic from appellants and eventually presented in court. To emphasize, the prosecution's formal offer of evidence indicated that Exhibit I-1-a represented the seized drugs themselves weighing five hundred fifty-two (552) grams.[60]

In ***People v. Moner***,[61] the Court affirmed the verdict of conviction. The Court noted that in lieu of the forensic chemist's testimony, the prosecution and the defense stipulated that the forensic chemist received the specimens for examination and her findings revealed the same yielded positive results for *shabu*.

In ***People v. Cutara***,[62] the forensic chemist did not testify in court. In lieu of his testimony, the prosecution offered as evidence his chemistry report showing that the seized item went through qualitative examination and yielded positive for *shabu*, and it was the same item presented in court as evidence. The Court held that the prosecution successfully established the links in the chain of custody over the seized drugs from the time of its confiscation, to its qualitative examination at the crime laboratory, up until it was offered in evidence. The totality of

---

[60] Record, p. 76.

[61] See G.R. No. 202206, March 5, 2018.

[62] See 810 Phil. 999, 1002, 1005 (2017).

the prosecution's evidence showed that the integrity of the seized items had been duly preserved and its chain of custody had been accounted for.

Too, in ***People v. Galicia***,[63] the Court decreed that the prosecution's failure to present the forensic chemist to testify on how the seized items were handled and taken into custody was **not fatal** to the admissibility of the seized drugs. ***People v. Padua***[64] further elucidated, *viz.*:

> Further, **not all people who came into contact with the seized drugs are required to testify in court. There is nothing in Republic Act No. 9165 or in any rule implementing the same that imposes such requirement.** As long as the chain of custody of the seized drug was clearly established not to have been broken and that the prosecution did not fail to identify properly the drugs seized, **it is not indispensable that each and every person who came into possession of the drugs should take the witness stand.** x x x (Emphasis and underscoring supplied)

In any event, the Court keenly notes the large amount of *shabu* involved here - - - five hundred fifty-two (552) grams or more than half kilo. In ***Malillin v. People***,[65] the Court stated that the likelihood of tampering, loss, or mistake with respect to a seized illegal drug is greatest when the item is small and is one that has physical characteristics fungible in nature. To repeat, five hundred fifty-two (552) grams or more than half kilo of *shabu* is by no means a minuscule amount, thus, logically confirming the improbability of planting, tampering, or alteration.

The Court has invariably ordained that while the chain of custody should ideally be perfect, in reality it is not, "as it is almost always impossible to obtain an unbroken chain." The most important factor is the preservation of the integrity and the evidentiary value of the seized items to determine the guilt or innocence of the accused,[66] as in this case.

---

[63] See G.R. No. 218402, February 14, 2018.

[64] See 639 Phil. 235, 251 (2010).

[65] See 576 Phil. 576, 588 (2008).

[66] See *Saraum v. People*, 779 Phil. 122, 133 (2016).

In another vein, both the trial court and the Court of Appeals found Agent Otic's testimony to be credible, straightforward, and direct. More important, both courts found that Agent Otic was not shown, nay accused, to have been impelled by malice or ill will to falsely charge appellants with such heinous offense[67] of illegal transporting of a huge amount of methamphetamine hydrochloride. In ***People v. Flor***,[68] the Court gave full faith and credence to police officer's testimony in the absence of imputed malice on his part to testify against the accused for violation of Section 5, Article II of RA 9165. Here, Agent Otic was not shown to have any ulterior motive to falsely charge appellants. The Court, therefore, finds no reason to doubt his credibility.

Be that as it may, in cases involving violations of RA 9165, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are not only presumed but have been clearly shown to have performed their official duty in a regular manner. ***People v. Cabiles***[69] is apropos, *viz*.:

> The direct account of law enforcement officers enjoys the presumption of regularity in the performance of their duties. It should be noted that "**unless there is clear and convincing evidence that the police officers were inspired by any improper motive or did not properly perform their duty, their testimonies on the operation deserve full faith and credit**. "**Thus, unless the presumption is rebutted, it becomes conclusive**. Since, accused-appellant failed to present or refute the evidence presented against him, therefore, the conduct of the operation of the police officers prevails and is presumed regular. (Emphasis and underscoring supplied)

Surely, appellants' bare denial cannot prevail over Agent Otic's positive testimony, much less, the presumption of regularity accorded him and his team in the performance of

---

[67] *Rollo*, p. 11; CA *rollo*, p. 45.

[68] See G.R. No. 216017, January 19, 2018.

[69] See 810 Phil. 969, 976 (2017).

their official duty. ***People v. Alcala***[70] stressed that the presumption of regularity in the performance of official duty and the findings of the trial court with respect to the credibility of witnesses supported by positive evidence shall prevail over appellant's self-serving defense of denial.

The Court accords great weight to the trial court's factual findings here, particularly as regards credibility of witnesses. For it had the opportunity to observe first-hand the deportment and demeanor of witnesses and it was in a position to discern whether or not they were telling the truth. More so because the trial court's factual findings here carried the full concurrence of the Court of Appeals itself. ***People v. Perondo***[71] is relevant:

x x x **findings of the trial courts which are factual in nature and which involve credibility are accorded respect** when no glaring errors, gross misapprehension of facts, or speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. **The rule finds an even more stringent application where said findings are sustained by the Court of Appeals.** x x x (Emphasis supplied).

All told, the Court of Appeals did not err when it affirmed the trial court's verdict of conviction against appellants for violation of Section 5, Article II of RA 9165.

As for the penalty, the same provision decrees:

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 sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or **transport** any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved xxx. (Emphasis and underscoring supplied)

---

[70] See 739 Phil. 189, 194-195 (2014).

[71] See 754 Phil. 205, 217 (2015).

Verily, the Court of Appeals correctly affirmed appellants' sentence to life imprisonment and fine of ₱500,000.00.

ACCORDINGLY, the appeal is **DISMISSED** and the Decision dated May 30, 2018 of the Court of Appeals in CA-G.R. CR HC No. 09437, is **AFFIRMED**. Appellants Joeffrey Macaspac *y* Llanete and Bryan Marcelo *y* Pandino are found **GUILTY** of illegal transporting of five hundred fifty-two (552) grams of methamphetamine hydrochloride, a dangerous drug, as defined and penalized under Section 5, Article II of Republic Act 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. They are sentenced to **LIFE IMPRISONMENT** and ordered to pay a **FINE** of ₱500,000.00 each.

SO ORDERED.

Peralta, C.J., Reyes, J. Jr., and *Inting,*[*] *JJ.,* concur.

Caguioa, J., on official leave.

THIRD DIVISION

[G.R. No. 245972. December 2, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARTIN H. ASAYTUNO, JR. and RENATO H. ASAYTUNO,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE AND ILLEGAL POSSESSION OF

[*] Designated as additional member per S.O. No. 2726 dated October 25, 2019.

DANGEROUS DRUGS; ELEMENTS. — To convict accused-appellants, the prosecution must establish beyond reasonable doubt the following elements of the offense of illegal sale of dangerous drugs: "(1) the identity of the buyer and the seller, [identity of] the object, and consideration [of the sale]; and (2) the delivery of the thing sold and the payment therefor[.]" As for the charge against Martin of illegal possession of dangerous drugs, the prosecution must establish beyond reasonable doubt: (1) the possession by the accused of an item or object identified to be a prohibited drug; (2) that the possession is not authorized by law; and (3) the free and conscious possession of the drug by the accused.

2. ID.; ID.; DRUG CASES; IN DRUG-RELATED CASES, THE *CORPUS DELICTI* IS THE SEIZED DRUGS THEMSELVES AND THE PROSECUTION MUST ESTABLISH THAT THE DRUGS PRESENTED IN COURT AS EVIDENCE ARE THE EXACT SAME DRUGS SEIZED FROM THE ACCUSED AND EXAMINED BY THE CRIME LABORATORY. — In drug-related cases, the *corpus delicti* – the body of the offense – is the seized drugs themselves. x x x The prosecution must establish that the drugs presented in court as evidence are the exact same drugs seized from the accused and examined by the crime laboratory. This is not merely a matter of procedural formalities, but is a matter rooted in the very core of the crime's commission. As this Court emphasized in *People v. Holgado*, the failure of the prosecution to establish the identity and integrity of the drugs presented as evidence "naturally raises grave doubt about any search being actually conducted and warrants the suspicion that the prohibited drugs were planted evidence." Particularity with respect to *corpus delicti* in drug-related cases proceeds from the peculiar nature of narcotic substances. x x x When a court cannot be assured that the drugs presented as evidence are exactly what the prosecution purports them to be, it cannot be assured that any activity or transaction pertaining to them truly proceeded, as the prosecution claims that they did. Thus, no conviction can ensue.

3. ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED DRUGS; CHAIN OF CUSTODY; STANDARDS ON CHAIN OF CUSTODY ESTABLISH A SEQUENTIAL MECHANISM OF AUTHENTICATION TO ENSURE THAT THE EVIDENCE

PRESENTED IN COURT IS WHAT IT IS CLAIMED TO BE. — Given the risks peculiar to narcotics, standards for their handling – which are stricter, than those pertaining to other materials – are apropos x x x. Standards on chain of custody establish a sequential mechanism of authentication to ensure that the evidence presented in court is what it is claimed to be. Under Dangerous Drugs Board Regulation No. 1, Series of 2002, chain of custody is the "duly recorded authorized movements and custody of seized drugs or controlled chemicals or plants [sic] sources of dangerous drugs or laboratory equipment at each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court and destruction." Section 21 of Republic Act No. 9165, outlines imperative procedures for the handling of seized drugs and related items x x x.

4. ID.; ID.; ID.; ID.; MARKING; FAILURE TO IMMEDIATELY MARK SEIZED DRUGS ENGENDERS AN INITIAL, FATAL GAP IN THE CHAIN OF CUSTODY. — In this case, the prosecution claims that after the initial sale, PO2 Limbauan pocketed the sachet handed to him. Following this, the buy-bust team and accused-appellants transferred to the East Rembo Barangay Hall. Only then was marking done. These actions are replete with fatal violations of chain of custody requirements. *People v. Sanchez* emphasized that marking is a separate and distinct step from inventory and photographing. It also emphasized that marking must be done "immediately upon confiscation" x x x. *People v. Coreche* explained that failure to immediately mark seized drugs engenders an initial, fatal gap in chain of custody x x x. The drugs allegedly obtained from accused-appellants should have been immediately marked at the moment of arrest and seizure. This is despite the police officers' claim that they needed to transfer because people had begun to gather. The buy-bust operation was a pre-planned activity. The police officers are rightly presumed to be aware that they were conducting an operation in a public place, and that their actions would rouse people's curiosity. They should have been prepared for and not have been rattled by the foreseeable contingencies. Even granting that there was a valid need to transfer, their failure to mark before departure, along with unclear precautionary measures taken while en route to the barangay hall, means that there was an intervening period during which the sachets remained unaccounted. x x x Other

than the standalone assurances of police officers who laid them out for inventory, there is, in this case, no guarantee that the items perused at the barangay hall were actually obtained from accused-appellants. Right at the onset, the chain of custody was jeopardized. From the beginning, there was doubt on the origin and identity of the items that would later be inventoried, photographed, examined, and presented as evidence. No amount of subsequent safety measures can cure this germinal defect.

5. ID.; ID.; ID.; ID.; THIRD-PARTY WITNESSES; THE TOTAL ABSENCE OF MANDATORY WITNESSES DURING APPREHENSION, AND THOSE SAME WITNESSES' INADEQUACY DURING INVENTORY AND PHOTOGRAPHING, REVEAL A SORELY LACKING ATTEMPT AT COMPLYING WITH STATUTORY REQUIREMENTS. — Considering that the incidents of this case transpired in 2015, after Republic Act No. 10640's amendments took effect in 2014, the presence of two (2) third-party witnesses was imperative: first, that of an elective official; and second, that of a media *or* National Prosecution Service representative. *People v. Tomawis* explained that the third-party witnesses required by Section 21 must be present even at the time of apprehension x x x. The prosecution here admits that the police officers did not bother to secure the presence of any of the required third-party witness during the actual buy-bust and apprehension. It acknowledged that the police officers only subsequently called for an elected barangay official for the conduct of inventory, but no one immediately came. Even as Kagawad Awit later arrived at the barangay hall, his singular presence was insufficient. A media *or* National Prosecution Service representative needed to be with him to witness the inventory and taking of photographs. The total absence of mandatory witnesses during apprehension, and those same witnesses' inadequacy during inventory and photographing, reveal a sorely lacking attempt at complying with statutory requirements.

6. ID.; ID.; ID.; REQUIREMENTS; NON-COMPLIANCE THEREWITH MAY BE EXCUSED PROVIDED THAT THERE ARE JUSTIFIABLE REASONS AND PROOF THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE EVIDENCE WERE MAINTAINED. — Non-compliance with Section 21 (1)'s requirements may be excused, provided

that there are: (1) justifiable reasons; and (2) proof that the integrity and evidentiary value of the evidence were maintained. x x x The prosecution failed to satisfy these requirements. It claimed that the buy-bust team was unable to immediately do the marking at the place of the arrest because an elective official did not immediately come to the site of arrest. Far from justifying the buy-bust team's deviation, this only underscores their dereliction. x x x [T]he third-party witnesses needed to be present during the actual apprehension. Had this requirement been met, there would not have been a need to wait, and therefore no pretense of a justification for failing to immediately conduct marking. The prosecution cannot use the police officers' dereliction as its own justification. x x x The prosecution also claimed that the police officers had to leave the arrest site before marking because people began to gather around the area. The mere assembling of people does not equate to danger that compromises the activities of law enforcers. It does not mean that the arrest site is no longer a viable place for completing necessary procedures. To reiterate, the buy-bust operation was a prearranged activity. The buy-bust team was supposed to have been prepared for the very likely eventuality that their actions in a public place would invite curiosity. It does not speak well of police officers to claim to feel insecure in performing their functions under benign and calculable conditions. Also, the prosecution claimed that the police officers had to conduct the marking, inventory, and photographing at the barangay hall instead of the police station due to the station's distance from the arrest site. This seems to be more of an afterthought of a justification. On cross-examination, PO2 Limbauan admitted to not even being aware of the rule that the conduct of inventory and photographing must either be at the operatives' office or the nearest police station. This admitted lack of knowledge betrays why there was a propensity to deviate from legal requirement. It is an obliviousness that this Court cannot reward by a favorable judgment.

7. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; PROOF BEYOND REASONABLE DOUBT; REQUIRES MORAL CERTAINTY AND THIS CANNOT PROCEED FROM THE ASSERTIONS OF PERSONS WHO CANNOT THEMSELVES BE RELIED UPON TO GIVE CREDIBLE ACCOUNTS. — It is particularly notable that great care was supposed to have attended the

preparations for buy-bust operations. For one, police officers hatched an operation a day before it was actually effected. Moreover, there was coordination with the Philippine Drug Enforcement Agency. The targets of the operation were supposedly knowing and much engaged drug traffickers. Despite this, the prosecution claims that not even one (1) gram of shabu was recovered from them. The results of the buy bust operation are grossly disproportionate to the supposed profile of its targets and the alleged nature of their activities. The prosecution's own avowals on the planning and preparation made by police officers implies — as a logical consequence — that there should have been a proportionately substantial yield. The miniscule amount allegedly obtained hearkens to the dangers attendant to the seizure of narcotics, chiefly, the risk of planting and tampering. The non-compliant manner of conducting the buy bust operation, coupled with its dubious yield, only enforces reasonable doubt on the propriety of police operations and ultimately, on accused-appellants' guilt. It does not escape this Court's attention that, apart from maintaining their innocence, accused-appellants charged the police officers who apprehended them with larceny. Specifically, Martin recalled being grabbed, handcuffed, and frisked, after which ₱20,000.00 was forcibly taken from him. Proof beyond reasonable doubt requires moral certainty. Moral certainty cannot proceed from the assertions of persons who cannot themselves be relied upon to give credible accounts not only because they take liberties with legal requirements, but worse, because they are potential authors of criminal acts themselves.

8. ID.; ID.; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; CANNOT BE AVAILED OF WHEN THERE ARE ALLEGATIONS OF WRONGDOING AND COUNTERVAILING INDICATORS OF IRREGULARITY. — For miniscule amounts of drugs seized, on the basis of testimonies of law enforcers who are potentially illicit themselves, and without the assuring presence and testimonies of third-party witnesses, the Regional Trial Court and the Court of Appeals were quick to convict accused-appellants. The Regional Trial Court even referenced the supposed presumption of regularity in the performance of official duties. This presumption of regularity cannot avail here. To begin with, with the police officer's manifest noncompliance, there is nothing "regular" to even consider. Worse, there are

allegations of wrongdoing and countervailing indicators of irregularity. The Regional Trial Court was quick to dismiss the defense's claims as independently not credible with hardly an explanation, other than a quick and sweeping reference to a presumption of regularity. This is a betrayal of the standard of proof beyond reasonable doubt. It failed to consider that it was the prosecution's duty to prove its own case on its own merits, and not merely on the basis of imputed weaknesses of the defense. Ultimately, the prosecution remained grossly wanting in establishing accused-appellants' guilt with moral certainty.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONEN, *J.*:

Law enforcers' failure to strictly comply with the Comprehensive Dangerous Drugs Act's chain of custody requirements engenders the prosecution's failure to establish the *corpus delicti* in drug offenses.[1] This is especially true for cases that involve miniscule amounts of dangerous drugs.[2] When there is doubt on the identity and integrity of the *corpus delicti*, an accused's acquittal must necessarily follow.[3]

This resolves an appeal from the assailed Decision[4] of the Court of Appeals in CA-G.R. CR-HC No. 08002. This Decision

---

[1] *People v. Dela Cruz*, 744 Phil. 816, 825-826 (2014) [Per *J.* Leonen, Second Division] citing *People v. Morales*, 630 Phil. 215 (2010) [Per *J.* Del Castillo, Second Division].

[2] *People v. Holgado*, 741 Phil. 78, 81 (2014) [Per *J.* Leonen, Third Division].

[3] *People v. Coreche*, 612 Phil. 1238, 1245-1246 (2009) [Per *J.* Carpio, First Division].

[4] *Rollo*, pp. 3-16. The Decision dated March 22, 2018 was penned by

affirmed the Regional Trial Court's prior Decision[5] finding accused-appellants Martin H. Asaytuno, Jr. (Martin) and Renato H. Asaytuno (Renato) guilty beyond reasonable doubt of illegal sale of dangerous drugs, in violation of Section 5[6] of Republic Act No. 9165, otherwise known as the Comprehensive

---

Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justice Ricardo R. Rosario and Associate Justice Ronaldo Roberto B. Martin of the Fourteenth Division, Court of Appeals, Manila.

[5] CA *rollo*, pp. 14-21. The Decision dated October 19, 2015 was penned by Judge Josephine M. Advento-Vito Cruz of Branch 135, Regional Trial Court of Makati.

[6] Republic Act No. 9165 (2002), Sec. 5 provides:

Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. — 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 sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemicals trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

Dangerous Drugs Act of 2002. The same Regional Trial Court Decision found Martin guilty beyond reasonable doubt of illegal possession of dangerous drugs, in violation of Section 11[7] of Republic Act No. No. 9165.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

[7] Republic Act No. 9165 (2002), Sec. 11 provides:

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

(1) 10 grams or more of opium;

(2) 10 grams or more of morphine;

(3) 10 grams or more of heroin;

(4) 10 grams or more of cocaine or cocaine hydrochloride;

(5) 50 grams or more of methamphetamine hydrochloride or "*shabu*";

(6) 10 grams or more of marijuana resin or marijuana resin oil;

(7) 500 grams or more of marijuana; and

(8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDMA) or "ecstasy", paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamine (LSD), gamma hydroxybutyrate (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, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

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

(1) Life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantity of methamphetamine hydrochloride or "*shabu*" is ten (10) grams or more but less than fifty (50) grams;

In an Information,[8] which was the subject of Criminal Case No. 15-547, Martin and Renato were charged with illegal sale of dangerous drugs, as follows:

The undersigned prosecutor accuses MARTIN ASAYTUNO JR. *y* HALILI @ Jun and RENATO ASAYTUNO *y* HALILI @ Ato of the crime of violation of REPUBLIC ACT 9165 Sec. 5, committed as follows:

> On the 25th day of February 2015, in the city of Makati, the Philippines, accused, conspiring and confederating together, without the necessary license or prescription and without being authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver, and give away Methamphetamine Hydrochloride weighing zero point forty three (0.43) gram, a dangerous drug, in consideration of Php1,000.

CONTRARY TO LAW.[9]

---

(2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) 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 three hundred (300) grams or more but less than five hundred (500) grams of marijuana; and

(3) Imprisonment of twelve (12) years and one (I) 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.

[8] CA *rollo*, pp. 10-11.

[9] *Id.* at 10.

In another Information,[10] which was the subject of Criminal Case No. 15-548, Martin was charged with illegal possession of dangerous drugs, as follows:

> The undersigned prosecutor accuses MARTIN ASAYTUNO JR. *y* HALILI @ Jun of the crime of violation of REPUBLIC ACT 9165 Sec. 11, committed as follows:
>
> > On the 25th day of February 2015, in the city of Makati, the Philippines, accused, not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his possession, direct custody and control a total of zero point twenty nine (0.29) grams of Methamphetamine Hydrochloride, a dangerous drug, in violation of the above-cited law.
>
> CONTRARY TO LAW.

Upon arraignment, both Martin and Renato pleaded "not guilty" to the offenses charged.[11]

The prosecution presented the following as witnesses: (1) P/Insp. Crisanto Racoma (P/Insp. Racoma); PO2 Sherwin Limbauan (PO2 Limbauan); (2) PO1 Mario Pagulayan (PO1 Pagulayan); (3) Barangay Kagawad Virgilio S. Awit (Kagawad Awit); and (4) PCI May Andrea Bonifacio (PCI Bonifacio).[12]

According to the prosecution, following a report made on the drug activities of an *alias* "Jun" at Barangay East Rembo, Makati City, P/Supt. Mario Ignacio directed that a buy-bust operation be conducted. A briefing for the operation was held by P/Insp. Racoma at around 9:00 p.m. on February 24, 2015.[13] PO2 Limbauan was designated as the poseur-buyer, while PO1 Pagulayan was designated as the back-up operative. PO2

---

[10] *Id.* at 12-13.

[11] *Id.* at 19.

[12] *Id.* at 15.

[13] *Id.* at 17.

Limbauan was given a marked[14] ₱1,000.00 peso bill to be used as buy-bust money.[15]

Thereafter, PO1 Pagulayan coordinated with the Philippine Drug Enforcement Agency and secured Coordination Form No. 0215-00272.[16] However, upon verification with their informant, the buy-bust team learned that Jun was no longer in the area. Because of this, the team suspended the operation and instructed the informant to contact them once Jun is spotted in the area.[17]

At around 6:00 p.m. the following day, February 25, 2015, the informant called PO2 Limbauan and informed him that Jun was again seen in Barangay East Rembo. PO2 Limbauan and the rest of the buy-bust team then proceeded to 27th Avenue, Barangay East Rembo to meet with the informant. From there, PO2 Limbauan and the informant walked to the target area at 24th Avenue, Barangay East Rembo while the rest of the team formed a perimeter around the area.[18]

Upon reaching the area, PO2 Limbauan and the informant saw two (2) men standing together at a sidewalk. The informant identified the taller of the two (2) as Jun. When the informant and PO2 Limbauan approached the two (2) men, the informant introduced PO2 Limbauan as a friend looking to purchase *shabu*.[19]

Jun asked PO2 Limbauan on how much *shabu* he intended to buy to which PO2 Limbauan answered ₱1,000.00 worth. Jun then instructed his companion, *alias* "Ato," to receive the

---

[14] *Id.* at 44. The Regional Trial Court and Court of Appeals Decisions as well as plaintiff-appellee's brief do not indicate that the bill given to PO2 Limbauan was marked. Accused-appellant's brief, however, states in the portion containing the prosecution's evidence that the one thousand peso bill was "previously marked."

[15] *Id.* at 17.

[16] *Rollo*, p. 5.

[17] CA *rollo*, p. 43, Brief for the Accused-Appellant.

[18] *Id.*

[19] *Id.* at 18.

payment. PO2 Limbauan proceeded to hand Ato the marked ₱1,000.00 bill, while Jun gave PO2 Limbauan one (1) plastic sachet which appeared to contain *shabu*. Soon after, PO2 Limbauan pocketed the sachet and executed the pre-arranged signal by scratching his ear.[20]

At that moment, PO2 Limbauan grabbed both Jun and Ato, introduced himself as a police officer, and frisked Jun. He recovered the marked ₱1,000.00 bill along with two (2) other sachets of suspected *shabu*. Meanwhile, nothing was recovered from Ato.[21]

Jun was identified as Martin H. Asaytuno, Jr., while Ato was identified as Renato H. Asaytuno, the accused-appellants. PO2 Limbauan called for an elected barangay official for the conduct of inventory, but no one immediately came. When people began to gather around the area, the operatives decided to bring Martin and Renato, as well as the seized evidence, to the East Rembo Barangay Hall.[22]

At the barangay hall, an inventory was conducted in the presence of Kagawad Awit. The plastic sachet handed by Martin to PO2 Limbauan was marked "SCL." The sachets retrieved by PO1 Pagulayan while frisking Martin were marked "SCL-1" and "SCL-2". Photographs were then taken during the inventory.[23]

The Inventory Receipt was received by PO3 Voltaire Esguerra (PO3 Esguerra), who then prepared the Letter Requests for a Laboratory Examination and Drug Test.[24] PO3 Esguerra delivered the sachets to the Southern Police District for a chemical analysis which was conducted by PCI Bonifacio.[25]

---

[20] *Id.* at 44.

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.* at 18.

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

The chemistry report prepared by PCI Bonifacio indicated that the contents of all three sachets tested positive for *shabu*.[26]

Renato, Martin, and Martin's daughter, Meg Maxeem T. Asaytuno (Maxeem), testified for the defense.[27]

Testifying in his defense, Martin recalled that sometime between 12:00 and 12:30 a.m. on February 26, 2015, he was inside his room with his fifteen-year-old daughter, Maxeem, in their house at 179-B 24th Avenue, East Rembo, Makati City. He was then folding newly washed clothes while his brother, Renato, was asleep in another room.[28]

Suddenly, several persons who Martin later learned were police officers, entered the house. They were accompanied by an *alias* "Boteng." Martin was instantly grabbed, handcuffed, and frisked, after which his identification card and money worth ₱20,000.00 (given to him by another sibling) were taken from his wallet. The police officers demanded that Martin bring out *shabu*, but Martin denied having any.[29] After the police failed to locate any *shabu* inside Martin's room, they brought Martin outside where he saw Renato also handcuffed.[30]

Renato testified that on the same date and time, he was suddenly woken up by someone and found a gun pointed to his face. He was handcuffed by the same person while another searched his room. They later identified themselves as police officers from the Station Anti-Illegal Drugs Special Operation Task Group of Makati City. When the police officers found nothing illegal among his belongings, he was brought out of his room and saw his brother, Martin, also handcuffed.[31]

---

[26] *Id.* at 45.

[27] *Id.* at 19.

[28] *Id.* at 19.

[29] *Id.*

[30] *Id.* at 45.

[31] *Id.*

Martin and Renato were brought out of their house and were forced to board a vehicle parked along 24th Avenue, East Rembo. They were then taken to the office of the Station Anti-Illegal Drugs Special Operation Task Group where they were detained.[32]

After trial, the Regional Trial Court rendered its Decision[33] convicting Martin and Renato. The dispositive portion of the Decision read:

> WHEREFORE, judgment is hereby rendered:
>
> 1. In Criminal Case No. 15-547, finding accused MARTIN ASAYTUNO *y* HALILI @ "Jun" and RENATO ASAYTUNO *y* HALILI @ "Ato" GUILTY BEYOND REASONABLE DOUBT of the crime of Violation of Section 5 of R.A. 9165, judgment is hereby rendered sentencing them to suffer life imprisonment and to pay a fine of ₱500,000 pesos; and
>
> 2. In Criminal Case No. 15-548, finding the accused MARTIN ASAYTUNO *y* HALILI @ "Jun" GUILTY BEYOND REASONABLE DOUBT for Violation of Section 11 Article II of R.A. 9165, judgment is hereby rendered sentencing said accused to suffer imprisonment for an indeterminate term of twelve (12) years and one (1) day as minimum, to fourteen (14) years as maximum, to pay a fine of Php300,000.00 pesos (sic) and to pay the costs.
>
> Let the zero point forty three (0.43) gram and zero point twenty nine (0.29) gram of methamphetamine hydrochloride (shabu) be turned over to PDEA for proper disposition.
>
> SO ORDERED.[34]

In its assailed Decision,[35] the Court of Appeals sustained the Regional Trial Court in holding that all the elements of

---

[32] *Id.* at 19.

[33] *Id.* at 14-21.

[34] *Id.* at 21.

[35] *Rollo*, pp. 3-16.

the offenses charged were proven beyond reasonable doubt.[36] It noted that even though the chain of custody requirements were not strictly complied with, deviations were founded on justifiable reasons. In any case, the seized items' integrity was maintained.[37] The dispositive portion of the Decision reads:

> **WHEREFORE,** premises considered, the Consolidated Decision dated October 19, 2015 of the Regional Trial Court, Branch 135, Makati City in Criminal Cases No. 15-547 and 15-548 is **AFFIRMED** *in toto*.
>
> **SO ORDERED.**[38] (Emphasis in the original)

Aggrieved, accused-appellants filed their Notice of Appeal,[39] which was given due course by the Court of Appeals.[40] In this Court's June 3, 2019 Resolution,[41] the parties were allowed to file supplemental briefs. Both the Office of the Solicitor General[42] and accused-appellants[43] manifested that they were no longer intending to file Supplemental Briefs.

For this Court's resolution are the issues of: (1) whether or not accused-appellants Martin H. Asaytuno, Jr. and Renato H. Asaytuno are guilty beyond reasonable doubt of the offense of illegal sale of dangerous drugs; and (2) whether or not accused-appellant Martin H. Asaytuno, Jr. is guilty beyond reasonable doubt of the offense of illegal possession of dangerous drugs.

---

[36] *Id.* at 10.

[37] *Id.* at 11.

[38] *Id.* at 15.

[39] *Id.* at 17-18.

[40] *Id.* at 20.

[41] *Id.* at 22-23.

[42] *Id.* at 32-36.

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

I

To warrant a conviction, the offense charged against an accused must be proven beyond reasonable doubt.[44] An accused enjoys the constitutionally protected right to be presumed innocent, and cannot be convicted without the moral certainty occasioning proof beyond reasonable doubt.[45]

To convict accused-appellants, the prosecution must establish beyond reasonable doubt the following elements of the offense of illegal sale of dangerous drugs: "(1) the identity of the buyer and the seller, [identity of] the object, and consideration [of the sale]; and (2) the delivery of the thing sold and the payment therefor[.]"[46] As for the charge against Martin of illegal possession of dangerous drugs, the prosecution must establish beyond reasonable doubt: (1) the possession by the accused of an item or object identified to be a prohibited drug; (2) that the possession is not authorized by law; and (3) the free and conscious possession of the drug by the accused.[47]

In drug-related cases, the *corpus delicti* – the body of the offense – is the seized drugs themselves.[48] Specifically

---

[44] RULES OF COURT, Rule 133, Sec. 2 provides:

Section 2. Proof beyond reasonable doubt. — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

[45] *Macayan, Jr. v. People*, 756 Phil. 202, 213-214 (2015) [Per J. Leonen, Second Division] citing CONST., Art. III, Sec. 1; CONST., Art. III, Sec. 14 (2); *People v. Solayao*, 330 Phil. 811, 819 (1996) [Per J. Romero, Second Division]; and *Boac, et al. v. People*, 591 Phil. 508, 521-522 (2008) [Per J. Velasco, Jr., Second Division].

[46] *People v. Dumalo*, 584 Phil. 732, 738 (2008) [Per J. Ynares-Santiago, Third Division].

[47] *People v. Dela Cruz*, 744 Phil. 816, 825-826 (2014) [Per J. Leonen, Second Division] citing *People v. Morales*, 630 Phil. 215 (2010) [Per J. Del Castillo, Second Division].

[48] See *People v. Tomawis*, G.R. No. 228890, April 18, 2018, http://elibrary.

concerning illegal sale of dangerous drugs, *People v. Ameril* explained:[49]

> *The illegal drug itself constitutes the corpus delicti of the offense. Its existence must be proved beyond reasonable doubt.* "Proof beyond reasonable doubt demands that unwavering exactitude be observed in establishing the *corpus delicti*. The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed."[50] (Emphasis supplied)

The prosecution must establish that the drugs presented in court as evidence are the exact same drugs seized from the accused and examined by the crime laboratory.[51] This is not merely a matter of procedural formalities, but is a matter rooted in the very core of the crime's commission.[52] As this Court emphasized in *People v. Holgado*,[53] the failure of the prosecution to establish the identity and integrity of the drugs presented as evidence "naturally raises grave doubt about any search being actually conducted and warrants the suspicion that the prohibited drugs were planted evidence."[54]

Particularity with respect to *corpus delicti* in drug-related cases proceeds from the peculiar nature of narcotic substances. In *Mallillin v. People*:[55]

---

judiciary.gov.ph/thebookshelf/showdocs/1/64241, citing *People v. Suan*, 627 Phil. 174, 188 (2010) [Per *J.* Caguioa, Second Division].

[49] G.R. No. 222192, March 13, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65008> [Per *J.* Leonen, Third Division].

[50] *Id.* citing *Fajardo v. People*, 691 Phil. 752, 758-759 (2012) [Per *J.* Perez, Second Division].

[51] *Id.* citing *People v. Ismael*, 806 Phil. 29 (2017) [Per *J.* Del Castillo, First Division].

[52] *People v. Royol*, G.R. No. 224297, February 13, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65005> [Per *J.* Leonen, Third Division].

[53] 741 Phil. 78 (2014) [Per *J.* Leonen, Third Division].

[54] *Id.* at 91 citing *People v. Belocura*, 693 Phil. 476 (2012) [Per *J.* Bersamin, First Division].

[55] 576 Phil. 576 (2008) [Per *J.* Tinga, Second Division].

Indeed, the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives. *Graham vs. State* positively acknowledged this danger. In that case where a substance later analyzed as heroin — was handled by two police officers prior to examination who however did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession — was excluded from the prosecution evidence, the court pointing out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It ruled that unless the state can show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition, testimony of the state as to the laboratory's findings is inadmissible.

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases — by accident or otherwise — in which similar evidence was seized or in which similar evidence was submitted for laboratory testing.[56] (Citations omitted; emphasis supplied)

When a court cannot be assured that the drugs presented as evidence are exactly what the prosecution purports them to be, it cannot be assured that any activity or transaction pertaining to them truly proceeded, as the prosecution claims that they did. Thus, no conviction can ensue.

Given the risks peculiar to narcotics, standards for their handling — which are stricter, than those pertaining to other materials — are apropos:

Hence, *in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied*, a more exacting standard that entails a chain of

[56] *Id.* at 588-589.

custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.[57] (Emphasis supplied)

Standards on chain of custody establish a sequential mechanism of authentication to ensure that the evidence presented in court is what it is claimed to be.[58] Under Dangerous Drugs Board Regulation No. 1, Series of 2002, chain of custody is the "duly recorded authorized movements and custody of seized drugs or controlled chemicals or plants [sic] sources of dangerous drugs or laboratory equipment at each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court and destruction."[59]

Section 21 of Republic Act No. 9165, outlines imperative procedures for the handling of seized drugs and related items:

SECTION 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign

---

[57] *Id.* at 589.

[58] *Id.* at 588.

[59] As quoted in *People v. Havana*, 776 Phil. 462, 471 (2016) [Per J. Del Castillo, Second Division].

> 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.
>
> (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;
>
> (3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: Provided, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued immediately upon completion of the said examination and certification[.]

II

In this case, the prosecution claims that after the initial sale, PO2 Limbauan pocketed the sachet handed to him.[60] Following this, the buy-bust team and accused-appellants transferred to the East Rembo Barangay Hall. Only then was marking done.[61] These actions are replete with fatal violations of chain of custody requirements.

---

[60] CA *rollo*, p. 44.

[61] *Id.* at 46-47; and *rollo*, p. 12.

People v. Sanchez[62] emphasized that marking is a separate and distinct step from inventory and photographing. It also emphasized that marking must be done "immediately upon confiscation":

> [T]he venues of the physical inventory and photography of the seized items differ and depend on whether the seizure was made by virtue of a search warrant or through a warrantless seizure such as a buy-bust operation.
>
> In **seizures covered by search warrants**, the physical inventory and photograph must be conducted in the place where the search warrant was served. On the other hand, in case of **warrantless seizures such as a buy-bust operation**, the physical inventory and photograph shall be conducted at the nearest police station or office of the apprehending officer/team, whichever is practicable; however, nothing prevents the apprehending officer/team from immediately conducting the physical inventory and photography of the items at the place where they were seized, as it is more in keeping with the law's intent of preserving their integrity and evidentiary value.
>
> *What Section 21 of R.A. No. 9165 and its implementing rule do not expressly specify is the matter of "marking" of the seized items in warrantless seizures to ensure that the evidence seized upon apprehension is the same evidence subjected to inventory and photography when these activities are undertaken at the police station rather than at the place of arrest. Consistency with the "chain of custody" rule requires that the "marking" of the seized items — to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence — should be done (1)* ***in the presence of the apprehended violator (2) immediately upon confiscation*****. This step initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting as well the apprehending officers from harassment suits based on planting of evidence under Section 29 and on allegations of robbery or theft.**
>
> For greater specificity, "marking" means the placing by the apprehending officer or the *poseur-buyer* of his/her initials and signature on the item/s seized.[63] (Citations omitted; emphasis supplied)

---

[62] 590 Phil. 214 (2008) [Per *J.* Brion, Second Division].

[63] *Id.* at 240-241 citing CLARENCE PAUL OAMINAL, TEXTBOOK

People v. Coreche[64] explained that failure to immediately mark seized drugs engenders an initial, fatal gap in chain of custody:

> Crucial in proving chain of custody is the marking of the seized drugs or other related items immediately after they are seized from the. accused. *Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contraband are immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings, obviating switching, "planting", or contamination of evidence.*
>
> Long before Congress passed RA 9165, this Court has consistently held that failure of the authorities to immediately mark the seized drugs raises reasonable doubt on the authenticity of the *corpus delicti* and suffices to rebut the presumption of regularity in the performance of official duties, the doctrinal fallback of every drug-related prosecution. Thus, in *People v. Laxa* and *People v. Casimiro*, we held that the failure to mark the drugs immediately after they were seized from the accused casts doubt on the prosecution evidence, warranting acquittal on reasonable doubt. These rulings are refinements of our holdings in *People v. Mapa* and *People v. Dismuke* that doubts on the authenticity of the drug specimen occasioned by the prosecution's failure to prove that the evidence submitted for chemical analysis is the same as the one seized from the accused suffice to warrant acquittal on reasonable doubt.[65] (Citations omitted; emphasis supplied)

The drugs allegedly obtained from accused-appellants should have been immediately marked at the moment of arrest and seizure. This is despite the police officers' claim that they needed

---

ON THE COMPREHENSIVE DANGEROUS ACT OF 2002 (REPUBLIC ACT NO. 9165) 65 (2005). See: *People v. Laxa*, 414 Phil. 156 (2001) [Per *J.* Mendoza, Second Division]; *People v. Kimura*, 471 Phil. 895 (2004) [Per *J.* Austria-Martinez, Second Division]; *People v. Nazareno*, 559 Phil. 387 (2007) [Per *J.* Tinga, Second Division]; and *People v. Santos, Jr.*, 562 Phil. 458 (2007) [Per *J.* Tinga, Second Division].

[64] 612 Phil. 1238 (2009) [Per *J.* Carpio, First Division].

[65] *Id.* at 1245-1246.

to transfer because people had begun to gather. The buy-bust operation was a pre-planned activity. The police officers are rightly presumed to be aware that they were conducting an operation in a public place, and that their actions would rouse people's curiosity. They should have been prepared for and not have been rattled by the foreseeable contingencies. Even granting that there was a valid need to transfer, their failure to mark before departure, along with unclear precautionary measures taken while en route to the barangay hall, means that there was an intervening period during which the sachets remained unaccounted.

The prosecution's recollection of how PO2 Limbauan "pocketed"[66] the sachet supposedly sold to him fails to assuage doubts. *People v. Dela Cruz*[67] concerned a similar situation where, after sachets were supposedly taken from the accused, a police officer claimed to have kept those sachets in his pockets. *Dela Cruz* decried such a manner of handling as "fraught with dangers[,]" "reckless, if not dubious[,]" and "a doubtful and suspicious way of ensuring the integrity of the items":

> The circumstance of PO1 Bobon keeping narcotics in his own pockets precisely underscores the importance of strictly complying with Section 21. His subsequent identification in open court of the items coming out of his own pockets is self-serving.
>
> The prosecution effectively admits that from the moment of the supposed buy-bust operation until the seized items' turnover for examination, these items had been in the sole possession of a police officer. In fact, not only had they been in his possession, they had been in such *close proximity* to him that they had been nowhere else but in his own pockets.
>
> Keeping one of the seized items in his right pocket and the rest in his left pocket is a doubtful and suspicious way of ensuring the integrity of the items. Contrary to the Court of Appeals' finding that PO1 Bobon took the necessary precautions, we find his actions reckless, if not dubious.

---

[66] CA *rollo*, p. 44.

[67] *People v. Dela Cruz*, 744 Phil. 816 (2014) [Per *J.* Leonen, Second Division].

Even without referring to the strict requirements of Section 21, common sense dictates that a single police officer's act of bodily-keeping the item(s) which is at the crux of offenses penalized under the Comprehensive Dangerous Drugs Act of 2002, is fraught with dangers. One need not engage in a meticulous counter-checking with the requirements of Section 21 to view with distrust the items coming out of PO1 Bobon's pockets. That the Regional Trial Court and the Court of Appeals both failed to see through this and fell — hook, line, and sinker — for PO1 Bobon's avowals is mind-boggling.

Moreover, PO1 Bobon did so without even offering the slightest justification for dispensing with the requirements of Section 21.[68] (Emphasis supplied)

Other than the standalone assurances of police officers who laid them out for inventory, there is, in this case, no guarantee that the items perused at the barangay hall were actually obtained from accused-appellants. Right at the onset, the chain of custody was jeopardized. From the beginning, there was doubt on the origin and identity of the items that would later be inventoried, photographed, examined, and presented as evidence. No amount of subsequent safety measures can cure this germinal defect.

Another fatal defect is the absence of required third-party witnesses during apprehension. Even during the subsequent inventory and taking of photographs, not all the required witnesses were present.

Considering that the incidents of this case transpired in 2015, after Republic Act No. 10640's amendments took effect in 2014, the presence of two (2) third-party witnesses was imperative: first, that of an elective official; and second, that of a media *or* National Prosecution Service representative.

People v. Tomawis[69] explained that the third-party witnesses required by Section 21 must be present even at the time of apprehension:

---

[68] *Id.* at 834-835.

[69] G.R. No. 228890, April 18, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64241> [Per J. Caguioa, Second Division].

Section 21 plainly requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately after seizure and confiscation**. In addition, the inventory must be done **in the presence of the accused, his counsel, or representative, a representative of the DOJ, the media, and an elected public official**, who shall be required to sign the copies of the inventory and be given a copy thereof.

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. And only if this is not practicable, the IRR allows that the inventory and photographing could be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. **By the same token, however, this also means that the three required witnesses should already be physically present at the time of apprehension**-a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. Simply put, the buy-bust team has enough time and opportunity to bring with them said witnesses.

. . . . . .

The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest.

It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so - and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished - does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with

at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation."[70] (Emphasis supplied; citations omitted)

The prosecution here admits that the police officers did not bother to secure the presence of any of the required third-party witness during the actual buy-bust and apprehension. It acknowledged that the police officers only subsequently called for an elected barangay official for the conduct of inventory, but no one immediately came.[71] Even as Kagawad Awit later arrived at the barangay hall, his singular presence was insufficient. A media *or* National Prosecution Service representative needed to be with him to witness the inventory and taking of photographs.

The total absence of mandatory witnesses during apprehension, and those same witnesses' inadequacy during inventory and photographing, reveal a sorely lacking attempt at complying with statutory requirements. These only serve to compound the incipient flaws on marking and transit from the place of arrest to the barangay hall. They only amplify the need to acquit accused-appellants.

III

Non-compliance with Section 21 (1)'s requirements may be excused, provided that there are: (1) justifiable reasons; and (2) proof that the integrity and evidentiary value of the evidence were maintained.[72] *People v. Que*[73] explained:

---

[70] *Id.*

[71] *Id.*

[72] Republic Act No. 9165 (2002), as amended by Republic Act No. 10640 (2014), Sec. 21(1) provides:

> ... *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.

[73] G.R. No. 212994, January 31, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63900> [Per *J.* Leonen, Third Division].

In order that there may be conscionable non-compliance, two (2) requisites must be satisfied: *first, the prosecution must specifically allege, identify, and prove "justifiable grounds"*; second, it must establish that despite non-compliance, the integrity and evidentiary value of the seized drugs and/or drug paraphernalia were properly preserved. Satisfying the second requisite demands a showing of positive steps taken to ensure such preservation. Broad justifications and sweeping guarantees will not suffice.[74] (Emphasis supplied)

The prosecution failed to satisfy these requirements.

It claimed that the buy-bust team was unable to immediately do the marking at the place of the arrest because an elective official did not immediately come to the site of arrest.[75] Far from justifying the buy-bust team's deviation, this only underscores their dereliction. The preceding discussions noted that the third-party witnesses needed to be present during the actual apprehension. Had this requirement been met, there would not have been a need to wait, and therefore no pretense of a justification for failing to immediately conduct marking. The prosecution cannot use the police officers' dereliction as its own justification.

Moreover, where PO2 Limbauan was asked on cross examination about how long they waited for an elective official to arrive after calling for one, he stated that they had only waited one (1) minute before going to the barangay hall.[76] Waiting for just a minute is perfunctory at best. It hardly indicates an earnest attempt at conducting the marking right at the place of arrest in the presence of a mandatory witness.

The prosecution also claimed that the police officers had to leave the arrest site before marking because people began to gather around the area.[77] The mere assembling of people does not equate to danger that compromises the activities of law

---

[74] *Id.*

[75] CA *rollo*, p. 49.

[76] *Id.* at 50.

[77] *Rollo*, p. 12.

enforcers. It does not mean that the arrest site is no longer a viable place for completing necessary procedures. To reiterate, the buy-bust operation was a prearranged activity. The buy-bust team was supposed to have been prepared for the very likely eventuality that their actions in a public place would invite curiosity. It does not speak well of police officers to claim to feel insecure in performing their functions under benign and calculable conditions.

Also, the prosecution claimed that the police officers had to conduct the marking, inventory, and photographing at the barangay hall instead of the police station due to the station's distance from the arrest site.[78] This seems to be more of an afterthought of a justification. On cross-examination, PO2 Limbauan admitted to not even being aware of the rule that the conduct of inventory and photographing must either be at the operatives' office or the nearest police station.[79] This admitted lack of knowledge betrays why there was a propensity to deviate from legal requirement. It is an obliviousness that this Court cannot reward by a favorable judgment.

IV

This prosecution's case is not only compromised by non-compliance with statutory requirements. It is also tainted by dubious circumstances, as well as damaging counter-allegations which the prosecution failed to adequately address.

It is particularly notable that great care was supposed to have attended the preparations for buy-bust operations. For one, police officers hatched an operation a day before it was actually effected. Moreover, there was coordination with the Philippine Drug Enforcement Agency. The targets of the operation were supposedly knowing and much engaged drug traffickers. Despite this, the prosecution claims that not even one (1) gram of *shabu* was recovered from them.

---

[78] *Id.*

[79] CA *rollo*, pp. 54-55.

The results of the buy-bust operation are grossly disproportionate to the supposed profile of its targets and the alleged nature of their activities. The prosecution's own avowals on the planning and preparation made by police officers implies—as a logical consequence—that there should have been a proportionately substantial yield. The miniscule amount allegedly obtained hearkens to the dangers attendant to the seizure of narcotics, chiefly, the risk of planting and tampering. The non-compliant manner of conducting the buy bust operation, coupled with its dubious yield, only enforces reasonable doubt on the propriety of police operations and ultimately, on accused-appellants' guilt.

It does not escape this Court's attention that, apart from maintaining their innocence, accused-appellants charged the police officers who apprehended them with larceny. Specifically, Martin recalled being grabbed, handcuffed, and frisked, after which ₱20,000.00 was forcibly taken from him.[80]

Proof beyond reasonable doubt requires moral certainty. Moral certainty cannot proceed from the assertions of persons who cannot themselves be relied upon to give credible accounts not only because they take liberties with legal requirements, but worse, because they are potential authors of criminal acts themselves.

For miniscule amounts of drugs seized, on the basis of testimonies of law enforcers who are potentially illicit themselves, and without the assuring presence and testimonies of third-party witnesses, the Regional Trial Court and the Court of Appeals were quick to convict accused-appellants. The Regional Trial Court even referenced the supposed presumption of regularity in the performance of official duties.[81] This presumption of regularity cannot avail here. To begin with, with the police officer's manifest noncompliance, there is nothing "regular" to even consider. Worse, there are allegations of wrongdoing and countervailing indicators of irregularity.

---

[80] *Id.*

[81] *Id.* at 21.

The Regional Trial Court was quick to dismiss the defense's claims as independently not credible with hardly an explanation, other than a quick and sweeping reference to a presumption of regularity. This is a betrayal of the standard of proof beyond reasonable doubt. It failed to consider that it was the prosecution's duty to prove its own case on its own merits, and not merely on the basis of imputed weaknesses of the defense. Ultimately, the prosecution remained grossly wanting in establishing accused-appellants' guilt with moral certainty.

WHEREFORE, the Court of Appeals' March 22, 2018 Decision in CA-G.R. CR-H.C. NO. 08002 is **REVERSED AND SET ASIDE**. Accused-appellants MARTIN H. ASAYTUNO, JR. and RENATO H. ASAYTUNO are **ACQUITTED** for the prosecution's failure to prove their guilt beyond reasonable doubt. They are ordered immediately **RELEASED** from detention, unless they are confined for any other lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections for immediate implementation. He or she is directed to report to this Court, within five (5) days from receipt of this Decision, the action he or she has taken. Copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drugs Enforcement Agency for their information.

In view of the questionable circumstances attendant to this case, let copies of this Decision also be furnished to the Office of the Ombudsman, the National Police Commission, and the Secretary of the Interior and Local Government, for their proper evaluation in relation to the law enforcers involved.

Let entry of final judgement be issued immediately.

SO ORDERED.

Carandang, Lazaro-Javier,* and *Zalameda, JJ.*, concur.

Gesmundo, J., on official business.

---

* Designated additional Member per Special Order No. 2728.

EN BANC

[A.C. No. 11583. December 3, 2019]
(Formerly CBD Case No. 11-2878)

PILAR C. PROSPERO and CLARINDA P. CASTILLO, *complainants, vs.* **ATTY. JOAQUIN L. DELOS SANTOS and ATTY. ROBERTO A. SAN JOSE,** *respondents.*

SYLLABUS

1. LEGAL ETHICS; NOTARIES PUBLIC; A NOTARY PUBLIC SHOULD NOT NOTARIZE A DOCUMENT UNLESS THE PERSON WHO SIGNED THE SAME IS THE VERY SAME PERSON WHO EXECUTED AND PERSONALLY APPEARED BEFORE HIM TO ATTEST TO THE CONTENTS AND THE TRUTH OF WHAT ARE STATED THEREIN. — Atty. Delos Santos does not deny the fact that he prepared and notarized documents supposedly signed by Fermina. But it was firmly established by her death certificate that she had already died on May 8, 1983, long before the execution of the deed of sale on May 20, 2008. This fact, alone, is unacceptable and warrants disbarment. x x x Time and again, the Court has stressed that a notary public should not notarize a document unless the person who signed the same is the very same person who executed and personally appeared before him to attest to the contents and the truth of what are stated therein. Without the appearance of the person who actually executed the document in question, the notary public would be unable to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act or deed. As correctly noted by the Investigating Commissioner, for his knowledge or at least for his being placed in a position to reasonably know the death of Fermina, Atty. Delos Santos had knowingly taken part in a false and simulated transaction by making it appear that a vendor, long dead, executed a document of sale in favor of Pilar.

2. ID.; ID.; NOTARIZATION OF A DOCUMENT IS INVESTED WITH SUBSTANTIVE PUBLIC INTEREST, SUCH THAT ONLY THOSE WHO ARE QUALIFIED OR AUTHORIZED MAY ACT AS NOTARIES PUBLIC. — Indeed, it cannot be overemphasized that notarization of a document is not an empty

act or routine. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. Notarization converts a private document into a public document thus making that document admissible in evidence without further proof of its authenticity. A notarial document is by law entitled to full faith and credit upon its face. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument. Atty. Delos Santos' failure to perform his duty as a notary public resulted not only in damage to those directly affected by the notarized document, but also in a mockery of the integrity of a notary public and a degradation of the function of notarization.

APPEARANCES OF COUNSEL

Tapales Prodon & Wee-Toe Hio for complainants.
Sayuno Mendoza & San Jose Associates for respondent Roberto A. San Jose.

D E C I S I O N

***PER CURIAM*:**

Before the Court is a Complaint-Affidavit[1] filed by complainants, Pilar C. Prospero and Clarinda P. Castillo, on February 1, 2011, seeking the disbarment of respondents, Atty. Joaquin L. Delos Santos and Atty. Roberto A. San Jose, for gross professional misconduct, deceit, malpractice, and violation of the Code of Professional Responsibility *(CPR)* and Lawyer's Oath for their alleged falsification and notarization of documents leading to the fraudulent conveyance of a parcel of land owned by Pilar.

The antecedent facts are as follows:

In the complaint, it was narrated that Pilar and Clarinda are the niece and granddaughter, respectively, of the late Fermina Prospero, the registered owner of a parcel of land situated in

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

Barangays Sala and Marinig, Cabuyao, Laguna, denominated as Lot 2-B of Original Certificate of Title *(OCT)* No. (0-175) 0-116, and consisting of an aggregate area of 20,384 square meters. On April 11, 1972, Fermina sold to Pilar a portion thereof consisting of 10,000 square meters. While the sale was duly annotated in the title, no new Transfer Certificate of Title *(TCT)* was issued in Pilar's name.[2] Subsequently, Fermina died on May 8, 1983. But before she passed, she left a holographic will dated June 5, 1974 bequeathing the remaining 10,384 square meters to Pilar which was presented for probate before the Regional Trial Court *(RTC)* of Manila sometime in 1984. As of the date of Pilar's complaint, however, the provisions of said will have yet to be fully implemented.

Sometime in 2007, respondent Atty. Delos Santos and a certain real estate agent named Marilou Delos Santos were introduced to Pilar to discuss the possible sale of the subject property. Because Atty. Delos Santos was introduced to be a high-ranking official of the Municipality of Cabuyao, Laguna, who was in charge of approving plans for land development, he easily gained the trust of Pilar. As such, Atty. Delos Santos convinced Pilar that she could sell her 10,000 square meter share in the property, but she first needed to execute a Special Power of Attorney *(SPA)* and give him the owner's copy of the OCT. But instead of covering only the 10,000 square meter portion, he deliberately included the 10,384 square meter portion that Fernina bequeathed to Pilar. Without understanding the import of the SPA, Pilar, who was then already 88 years old, signed the same.[3]

Then, unknown to Pilar, Atty. Delos Santos falsified a Deed of Absolute Sale dated May 20, 2008 counterfeiting the signatures of Pilar and deceased Fermina making it appear that the latter sold to Pilar the entire 20,384 square meter lot. He also notarized the same as if the deceased Fermina appeared before him on said date and acknowledged her "free"

---

[2] *Id.* at 2-4.

[3] *Id.* at 5.

participation in the sale when, in fact, Fermina had long been dead at that time. Seemingly realizing that the May 20, 2008 Deed erroneously included the 10,000 square meter portion already owned by Pilar, Atty. Delos Santos falsified and notarized another document entitled Deed of Absolute Sale — Portion of Land also dated May 20, 2008, this time, supposedly conveying to Pilar only the remaining 10,384 square meter portion. Armed with the falsified Deed of Sale, Atty. Delos Santos was, consequently, able to secure the issuance of a new TCT No. T-707979 in the name of Pilar covering the entire 20,384 square meter lot without the knowledge and consent of the latter.[4]

According to Pilar, the falsity of both documents is plainly evident. *First,* Fermina could not have signed the documents as she was already dead as early as May 8, 1983. *Second,* the signatures of Pilar and Fermina affixed on the documents are glaringly different from the appearance and strokes of their original signatures on their Deed of Sale dated April 11, 1972. *Third,* not only are both dcuments dated May 20, 2008, they were also entered under the same entry in Atty. Delos Santos' notarial register as "Doc. No. 140, Page No. 28, Book No. XXXIV, Series of 2008." But basic is the rule under notarial practice that no two documents may have the same date of notarization and entry number in the notarial register of a notary public. To make matters worse, as certified by the Clerk of Court of the RTC of Biñan, Laguna, the document entered as "Doc. No. 140, Page No. 28, Book No. XXXIV, Series of 2008" in Atty. Delos Santos' notarial register was neither the Deed of Sale dated May 20, 2008, but an unrelated document entitled "*Katunayan sa Pagkakabili*" executed by a certain Carmela Bool on May 28, 2008.[5]

Unfortunately, Atty. Delos Santos did not stop there. Using the new TCT No. T-707979, he was able to facilitate the illegal transfer of the subject property to Hauskon Housing and

---

[4] *Id.* at 5-7.

[5] *Id.* at 6-7.

Construction Products Corporation, again, without the knowledge and consent of Pilar. Particularly, in his supposed capacity as Attorney-in-Fact, Atty. Delos Santos entered into a Deed of Absolute Sale dated June 13, 2008 purporting to convey the parcel of land to Hauskon for a price of ₱8,306,480.00. Said deed was irregularly notarized by respondent Atty. San Jose, the in-house counsel of Hauskon without competent evidence of identity and despite previous warnings from Clarinda of Atty. Delos Santos' lack of authority.

According to complainants Pilar and Clarinda, not only were they surprised that a new TCT No. T-707979 was already issued in Pilar's name, they were also disgruntled by information they were receiving that Atty. Delos Santos was selling the subject propety to Hauskon without Pilar's consent. But again, despite earnest efforts made by Clarinda to warn the officers of Hauskon, the latter nonetheless transacted with Atty. Delos Santos. They insisted that Pilar was fully aware of the transactions and even claimed that they paid her the amount of ₱8,306,480.00 in cold cash and argued that Pilar may have just forgotten of the same. To this, however, complainants assert that Atty. Delos Santos and Hauskon could not even produce any receipt acknowledging their alleged payment. In fact, seemingly pressured with the discovery of his anomalous dealings, Atty. Delos Santos even returned the owner's copy of OCT No. (0-175) 0-116 to Clarinda. He also surrendered a series of post-dated checks payable to him, each in the amount of ₱646,059.55, representing Hauskon's payment for the sale of the lot.[6]

But in a complete turnaround, Atty. Delos Santos falsified yet another Deed of Absolute Sale dated August 5, 2008 by, again, counterfeiting Pilar's signature, making it appear that she was selling the property to Hauskon for a purchase price of ₱3,669,120.00, and notarizing the same as if Pilar personally appeared before him. It was with the use of this deed that Atty. Delos Santos, in connivance with the representatives of Hauskon, was able to secure the cancellation of the previous

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

TCT No. T-707979 in the name of Pilar and the issuance of a new TCT No. T-723667 in the name of Hauskon.[7] Aggrieved, complainants Pilar and Clarinda filed the instant disbarment complaint against Atty. Delos Santos and Atty. San Jose.

On the one hand, Atty. San Jose, for his part, denied the accusations against him. He claimed that when he notarized the June 13, 2008 Deed of Sale, he was not aware of any defect in Atty. Delos Santos' authority as attorney-in-fact of Pilar.[8] On the other hand, Atty. Delos Santos failed to file his Comment and Position Paper despite his filing of Urgent Motions for Extension to File Answer. First, in his motion[9] dated March 23, 2011, he claimed that he was suffering from flu and bronchitis. Next, in his motion[10] dated April 27, 2011, he reasoned that he fell from his bike and suffered a broken rib. Then, when the case was called for hearing on August 23, 2011, Atty. Delos Santos failed to appear. Thus, for his failure to file his Answer and failure to appear, he was consequently declared in default. In a Motion for Reconsideration dated October 14, 2011, he claimed, first, that he only actually received the order declaring him in default a few days ago due to the mistake of his staff in misplacing said order during inventory, and second, that he be allowed to file his Answer to explain his side.[11]

In a Report and Recommendation[12] dated November 2, 2011, the Investigating Commissioner of the Commission on Bar Discipline *(CBD)* of the Integrated Bar of the Philippines *(IBP)* recommended first, that the complaint as to Atty. San Jose be dismissed, and second, that Atty. Delos Santos be disbarred. In a Resolution[13] dated September 27, 2014, the Board of

---

[7] *Id*. at 10.

[8] *Id*. at 255.

[9] *Id*. at 98-99.

[10] *Id*. at 127-128.

[11] *Id*. at 242-243.

[12] *Id*. at 253-258.

[13] *Id*. at 252.

Governors *(BOG)* of the IBP adopted and approved the Report and Recommendation of the Investigating Commissioner. Subsequently, the BOG issued another Resolution[14] on February 25, 2016 affirming its previous resolution and denying the Motion for Reconsideration of Atty. Delos Santos.

In a Motion for Reconsideration he filed on April 23, 2015, Atty. Delos Santos reiterated his reasons for failing to file his Answer, specifically, his back pains from his bicycle accident. On the issue of his alleged indiscretion, he explained that it was Pilar and Malou, the real estate agent, who were persistently requesting for his help to sell the subject property as Pilar badly needed the money. Out of pity for the old woman, Atty. Delos Santos acceded. Malou then introduced him to the officers of Hauskon who were very interested in buying the property. After a series of meetings some of which were attended by Pilar, Pilar and Malou brought to him a Deed of Sale and an SPA for his notarization without informing him of the fact that Fermina was already deceased. Atty. Delos Santos further sought the Court's compassion for he only accommodated Pilar's requests out of the goodness of his heart despite the fact that the circumstances were being made more and more complicated by Pilar's quarrels with her relatives. In fact, Pilar specifically requested that he keep the transactions a secret from her family. As such, it is hard for him to accept her accusations against him, especially after all that he has done for her. In the end, Atty. Delos Santos pled for a lesser penalty, if it is found that he, indeed, violated any law or rule along the way.[15]

The Court's Ruling

After a judicious review of the instant case, We sustain the recommendation of the Investigating Commissioner, as affirmed by the BOG, that the case against Atty. San Jose be dismissed but that the actuations of Atty. Delos Santos, however, warrant the penalty of disbarment from the practice of law.

---

[14] *Id*. at 290.

[15] *Id*. at 259-263.

With respect to Atty. San Jose, the Court finds no sufficient basis to impose on him the extreme penalty of disbarment. In discharging his duty as notary public, his good faith is apparent. As duly observed by the Investigating Commissioner, the fact that he notarized the falsified June 13, 2008 Deed of Sale does not indicate a wilful violation of his duty as Notary Public for he had reasonable ground to believe that the SPA granted in favor of Atty. Delos Santos was in force and effect. There is no showing, moreover, that Pilar had revoked said SPA by any of the modes allowed by law.[16] Accordingly, We affirm the dismissal of the complaint against Atty. San Jose.

Against Atty. Delos Santos, however, We find that the allegations in the complaint as well as the evidences presented sufficiently proved his fraudulent infractions. Prefatorily, it must be mentioned that Atty. Delos Santos did not file any Answer to the complaint nor did he appear at the scheduled hearing despite receiving notices thereof. Instead, he merely filed motions to extend the time to file an Answer and motions for reconsideration interposing various excuses such as the flu, back pains, or mistakes on the part of his staff. The Court, however, cannot countenance these unsubstantiated excuses. As far as this case is concerned, Atty. Delos Santos was given more than enough time and opportunity to explain his side.

But even if We consider the belated explanation in his Motion for Reconsideration, the outcome of this case will remain the same. In so many words, Atty. Delos Santos reasoned that it was Pilar, with the help of Malou, who was adamant in selling the subject property to Hauskon and that he merely accommodated her wishes out of the goodness of his heart. The contention, however, is untenable. As aptly found by the Investigating Commissioner, the evidence on record is too overwhelming to ignore.

At the outset, Atty. Delos Santos does not deny the fact that he prepared and notarized documents supposedly signed by Fermina. But it was firmly established by her death certificate

---

[16] *Id*. at 258.

that she had already died on May 8, 1983, long before the execution of the deed of sale on May 20, 2008. This fact, alone, is unacceptable and warrants disbarment. In *Fabay v. Atty. Resuena,*[17] the Court disbarred Atty. Resuena for notarizing documents without the personal appearance of the affiants who have long been dead at the time of execution thereof. Thus:

> **In the instant case, it is undisputed that Atty. Resuena violated not only the notarial law but also his oath as a lawyer when he notarized the subject SPA without all the affiant's personal appearance.** As found by the IBP-CBD, the purpose of the SPA was to authorize a certain Apolo D. Perez to represent the principals "to sue and be sued in any administrative or judicial tribunal in connection with any suit that may arise out of their properties." **It is, thus, appalling that Atty. Resuena permitted Remedios Perez to sign on behalf of Amador Perez and Valentino Perez knowing fully well that the two were already dead at that time and more so when he justified that the latter's names were nevertheless not included in the acknowledgment albeit they are signatories of the SPA.** Equally deplorable is the fact that Remedios was likewise allowed to sign on behalf of Gracia Perez and Gloria Perez, who were said to be residing abroad. Worse, he deliberately allowed the use of the subject SPA in an ejectment case that was filed in court. **In effect, Atty. Resuena, in notarizing the SPA, contented himself with Remedios' representation of four of the six principals of the SPA, doing away with the actual physical appearance of all the parties.** There is no question then that Atty. Resuena ignored the basics of notarial procedure and actually displayed his clear ignorance of the importance of the office of a notary public. Not only did he violate the notarial law, he also did so without thinking of the possible damage that might result front its non-observance.[18]

Time and again, the Court has stressed that a notary public should not notarize a document unless the person who signed the same is the very same person who executed and personally appeared before him to attest to the contents and the truth of what are stated therein. Without the appearance of the person who actually executed the document in question, the notary

---

[17] 779 Phil. 151 (2016).

[18] *Id*. at 159. (Emphasis ours)

public would be unable to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act or deed.[19] As correctly noted by the Investigating Commissioner, for his knowledge or at least for his being placed in a position to reasonably know the death of Fermina, Atty. Delos Santos had knowingly taken part in a false and simulated transaction by making it appear that a vendor, long dead, executed a document of sale in favor of Pilar.[20]

This propensity to deceive is further bolstered by the fact that Atty. Delos Santos made appear that the subject documents supposedly executed by the deceased Fermina were entered in his notarial register as "Doc. No. 140, Page No. 28, Book No. XXXIV, Series of 2008." But as certified by the Clerk of Court of the RTC of Biñan, Laguna, the document entered as such is not said deed of sale but an unrelated document entitled "*Katunayan sa Pagkakabili*" executed by a certain Carmela Bool. It was through these fraudulent deeds of sale that Atty. Delos Santos was able to register the subject property in Pilar's name, which further propelled him to commit subsequent falsities that ultimately resulted in the registration of the land in the name of Hauskon. While he may insist on his honest intentions to "help and serve" people such as the "very old" Pilar, he failed to explain the fact that the checks issued as payment for the parcel of land were all made in his name. In the face of these glaring infractions, the Court cannot simply uphold an indifference lest a grave and irreversible injustice might prevail.

Indeed, it cannot be overemphasized that notarization of a document is not an empty act or routine. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. Notarization converts a private document into a public document thus making that document admissible in evidence without further proof of its authenticity. A notarial document is by law entitled to full faith

---

[19] *Id*. at 158.

[20] *Rollo,* p. 257.

and credit upon its face. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument.[21] Atty. Delos Santos' failure to perform his duty as a notary public resulted not only in damage to those directly affected by the notarized document, but also in a mockery of the integrity of a notary public and a degradation of the function of notarization.

WHEREFORE, premises considered, the Court hereby **DISMISSES** the case against respondent Atty. Roberto A. San Jose, but **DECLARES** respondent Atty. Joaquin L. Delos Santos guilty of gross professional misconduct, deceit, malpractice as a notary public, and violation of the Code of Professional Responsibility and Lawyer's Oath. Accordingly, Atty. Delos Santos is **DISBARRED** from the practice of law, his name stricken off from the Roll of Attorneys, and is, likewise, **PERPETUALLY DISQUALIFIED** from being commissioned as a notary public.

Let a copy of this Decision be furnished the Office of the Bar Confidant, to be appended to Atty. Delos Santos' personal record. Further, let copies of this Decision be furnished the Integrated Bar of the Philippines and the Office of the Court Administrator for dissemination to all courts in the country for their information and guidance.

SO ORDERED.

Peralta, C.J., Leonen, Caguioa, Reyes, A. Jr., Reyes, J. Jr., Hernando, Lazaro-Javier, and *Inting, JJ.,* concur.

Perlas-Bernabe, Gesmundo, and *Carandang, JJ.,* on official business.

Zalameda, J., on official leave.

---

[21] *Fabay v. Atty. Resuena, supra,* note 15, at 158.

EN BANC

[A.M. No. P-19-4024. December 3, 2019]
(Formerly OCA I.P.I. No. 09-3282-P)

JOSELITO S. FONTILLA, *complainant, vs.* **JAIME S. ALCANTARA, Clerk of Court, Municipal Trial Court, Midsayap, Cotabato,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; DISHONESTY AND FALSIFICATION OF AN OFFICIAL DOCUMENT; MAKING A FALSE STATEMENT IN A PERSONAL DATA SHEET REQUIRED UNDER THE CIVIL SERVICE RULES AND REGULATIONS FOR EMPLOYMENT AMOUNTS TO DISHONEST AND FALSIFICATION OF AN OFFICIAL DOCUMENT WHICH WARRANT DISMISSAL FROM THE SERVICE UPON COMMISSION OF THE FIRST OFFENSE. — In a case with similar facts, *De Guzman v. Delos Santos*, the Court held that: ELIGIBILITY TO PUBLIC OFFICE x x x must exist at the commencement and for the duration of the occupancy of such office; it is continuing in nature. Qualification for a particular office must be possessed at all times by one seeking it. An appointment of one deemed ineligible or unqualified gives him no right to hold on and must through due process be discharged at once. x x x We recently ruled that making a false statement in a Personal Data Sheet required under Civil Service Rules and Regulations for employment in the government amounts to dishonesty and falsification of an official document which warrant dismissal from the service upon commission of the first offense. The Court reasoned that the "accomplishment of the Personal Data Sheet being a requirement under the Civil Service Rules and Regulations in connection with employment in the government, the making of an untruthful statement therein was therefore intimately connected with such employment[.] x x x" We have repeatedly said that persons involved in the dispensation of justice, from the highest official to the lowest clerk, must live up to the strictest standards of integrity, probity, uprightness, honesty and diligence

> in the public service. This Court will not tolerate dishonesty for the judiciary expects the best from all its employees who must be paradigms in the administration of justice. An employee who falsifies an official document to gain unwarranted advantage over other more qualified applicants to the same position and secure the sought-after promotion cannot be said to have measured up to the standards required of a public servant. x x x Public office is a public trust. A public officer or employee does not merely have an obligation to obey and respect the law; it is his sworn duty to do so. Assumption of public office is impressed with the paramount public interest that requires the highest standards of ethical conduct. A person aspiring to public office must observe honesty, candor and faithful compliance with the law. Nothing less is expected. This ideal standard ensures that only those of known probity, competence and integrity are called to the challenge of public service. Here, Judge Laquindanum determined that Alcantara is not a college degree holder and he misrepresented this fact in his PDS when he applied for the Clerk of Court position. The Court concurs with her findings and conclusion on dishonesty and falsification of a public document. The dishonesty is serious in nature as it affects his eligibility as Clerk of Court. Following our ruling in *Boston Finance and Investment Corp. v. Gonzalez*, we apply the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS) on the imposition of penalty. x x x Section 50, paragraph A, Rule 10 of the 2017 RACCS classifies serious dishonesty as a grave offense and is punishable by dismissal from the service.

APPEARANCES OF COUNSEL

Flauta Flauta & Associates for complainant.

D E C I S I O N

***PER CURIAM*:**

Dishonesty as to educational attainment and falsification of a public document are serious offenses punishable by dismissal from the service.

The Facts

Complainant Joselito S. Fontilla (Fontilla) charges respondent Jaime S. Alcantara (Alcantara), newly appointed Clerk of Court of the Municipal Trial Court (MTC), Midsayap, Cotabato, of dishonesty and falsification of public document in connection with his appointment as Clerk of Court.[1]

In a May 2, 2006 letter-complaint, Fontilla narrated that he inquired from the Office of the Commission on Higher Education (CHED), CARAGA Administrative Region (CARAGA Region), as to the authenticity and validity of Alcantara's school records. The CHED Assistant Regional Director, Dr. Anastacio P. Martinez (Dr. Martinez), showed him the office records, which revealed that: (1) Alcantara was never enrolled and not one of the graduates of the school; and (2) the school was never granted a program on Bachelor of Arts, Major in English. Fontilla requested for a certification, but the assistant regional director declined because their procedure is to issue a certification upon request by an employer.[2]

On July 7, 2006, the Office of the Court Administrator (OCA) wrote the CHED, CARAGA Region and requested for confirmation on the authenticity of Alcantara's transcript of records from Southwestern Agusan Colleges.[3]

On August 14, 2006, the CHED, CARAGA Regional Director, Joanna B. Cuenca, replied that their records do not show that Alcantara was granted Special Order (B) (R-X) No. 121-0152, Series of 1997, and he could not have obtained a Bachelor of Arts degree, Major in English on March 28, 1996.[4]

On August 9, 2007, the OCA endorsed the letter-complaint to Alcantara for his comment.[5] On October 22, 2007, Alcantara

---

[1] *Rollo*, p. 1.

[2] *Id.* at 7.

[3] *Id.* at 8.

[4] *Id.*

[5] *Id.* at 13.

filed his letter-comment and denied the charges against him. He recalled his 21 years of service in the judiciary, which began in 1986 as aide. His immediate supervisor advised him to finish his education and pursue a four-year course. He heeded the advice and enrolled at Notre Dame of Midsayap College in Cotabato. However, he temporarily stopped studying due to conflict in schedule. In 1990, he re-enrolled at Southwestern Agusan Colleges, which credited the subjects he took from his previous school. He again temporarily stopped studying for two school years, 1993-1994 and 1994-1995, due to financial difficulties in supporting a family.[6]

Alcantara attached a certification and an affidavit from the president of Southwestern Agusan Colleges in his letter-comment to explain the absence of his name in the list of graduates. The certification states that:

> THIS IS TO CERTIFY that MR. JAIME S. ALCANTARA, of legal age[,] Filipino, married, with residence and postal address at Midsayap, Cotabato, and an incumbent Clerk of Court II, Municipal Trial Court, Midsayap, Cotabato, graduated from this institution on March 28, 1996, in Bachelor of Arts (AB) Major in English.[7]
>
> x x x x x x x x x

The affidavit declares that:

> x x x x x x x x x
>
> That per records of SOUTHWESTERN AGUSAN COLLEGES, Bayugan, Agusan del Sur, Mr. JAIME S. ALCANTARA, who is currently employed as Clerk of Court II, Municipal Trial Court, Midsayap, Cotabato, graduated in BACHELOR OF ARTS (AB) [M]ajor in English, last March 28, 1996 x x x;
>
> That due to inadvertence on the part of the school the name of Mr. Jaime S. Alcantara was not included in the Master Lists of graduates of [BACHELOR] OF ARTS (AB) [M]ajor in English which was submitted to the COMMISSION ON HIGHER EDUCATION (CHED), REGION X, Butuan City;

---

[6] *Id.* at 18-19.

[7] *Id.* at 34.

That being the President of SOUTHWESTERN AGUSAN COLLEGES, Bayugan, Agusan del Sur, I will coordinate with the office concerned on what should be done to rectify and include the name of Mr. Jaime S. Alcantara in the Master Lists of graduates of BACHELOR OF ARTS (AB) [M]ajor in English, on March 28, 1996 from our school, with the records of COMMISSION ON HIGHER EDUCATION (CHED) REGION X, Butuan City[.][8]

x x x x x x x x x

Alcantara further claimed that Fontilla filed the complaint with malice and revenge because the latter believed that he had something to do with his administrative case on absence without official leave (AWOL). Fontilla was dropped from the rolls of the judiciary,[9] and may possibly deal with multiple suits due to non-remittance of monthly collections.[10]

On November 26, 2007, the OCA endorsed the matter to Executive Judge Lily Lydia A. Laquindanum (Judge Laquindanum) of the Regional Trial Court, Midsayap, Cotabato for discreet investigation and report.[11]

Letter-Report of Judge Laquindanum

On March 4, 2008, Judge Laquindanum submitted her Report[12] dated March 1, 2008, which contained an account of her interviews with various personalities.

In her interview with the employees of MTC, Midsayap, Cotabato, she gathered that: (1) they do not know exactly if Alcantara studied and in what school, but Alcantara mentioned to them that he took up a course; (2) there were times that he was absent in the office and they do not know where he went;

---

[8] *Id.* at 36.

[9] *Id.* at 20, 38; *Re: Absence Without Official Leave [AWOL] of Mr. Joselito Fontilla, Clerk of Court II, Municipal Trial Court, Midsayap, North Cotabato*, A.M. No. 05-2-37-MTC, March 30, 2005.

[10] *Id.* at 20, 39-45; *Re: Final Report on the Financial Audit Conducted at the Municipal Trial Court of Midsayap, North Cotabato*, 516 Phil. 434 (2006).

[11] *Rollo*, p. 49.

[12] *Id.* at 51-54.

and (3) Alcantara may have finished a course, but they were uncertain about it.[13]

On her telephone conversation with Claro G. Cortez (Cortez), President of Southwestern Agusan Colleges, she acquired the following information:

1. Alcantara was enrolled in Southwestern Agusan Colleges from 1990-1996 through distant learning arrangement. In exchange for daily school attendance, he was required to submit assignments, projects and term papers, and he took examination once a month for all his subjects. Cortez agreed to the special arrangement because Alcantara wanted to finish his education while working.[14]

2. Cortez assured Judge Laquindanum that Alcantara finished his course and graduated with a bachelor's degree in English. However, Alcantara was unable to submit the CHED requirements on time, so his name was probably not included in the list of graduates submitted to the CHED for the issuance of a special order. Cortez guaranteed Judge Laquindanum that Alcantara submitted all the requirements although the submission was late.[15]

3. Cortez mentioned that he was making arrangements with the CHED so that Alcantara would be issued a special order, and he asked to be given time until April 2008 to inform Judge Laquindanum whether a special order was issued in Alcantara's favor.[16]

4. In case the CHED would not issue a special order, Cortez suggested that Alcantara may cross-enroll in other schools in order to get the special order. Cortez cannot offer his school because its college closed in 2003.[17]

---

[13] *Id.* at 51.

[14] *Id.* at 52.

[15] *Id.*

[16] *Id.*

[17] *Id.*

Judge Laquindanum also interviewed Alcantara to get his side:

1. Alcantara confirmed that he studied at Southwestern Agusan Colleges from 1990 to 1996 and graduated with a Bachelor of Arts degree, Major in English.[18]

2. He stopped going to school in Midsayap, Cotabato because the night school did not offer all the subjects. He learned from a relative in Agusan that Southwestern Agusan Colleges offers a distant learning program. He spoke with the school president, who allowed him to enroll and agreed to a special arrangement. He was required to submit school projects and term papers, and to take examinations.[19]

3. He did not know why his name was not included in the list of graduates and blamed the school for it.[20]

4. When asked for proof of enrollment, he only presented two official receipts. He could no longer locate other school documents, which were lost when he moved from one house to another.[21]

5. He has been in the judiciary for more than 20 years and would not risk his years of service had he known that he would be facing this problem, which is not of his own making.[22]

Judge Laquindanum discovered that Fontilla suspected Alcantara of convincing retired MTC Judge Teresita Carreon-Llaban to declare him AWOL and to remove him from the roll of employees. Alcantara denied Fontilla's suspicion.[23]

---

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

[19] *Id.* at 53.

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

On December 16, 2009, the Court issued a Resolution[24] referring anew the administrative matter to Judge Laquindanum for further investigation and report.

The Formal Investigation

A preliminary hearing was conducted before trial proper. Fontilla presented three witnesses: (1) Dr. Martinez, Administrative Officer-in-Charge, CHED Assistant Regional Director, CARAGA Region;[25] (2) Luzvisminda Fermantes (Fermantes), Registrar, Notre Dame of Midsayap College;[26] and (3) Leah A. Tardo (Tardo), Chief Personnel Specialist of the Examination Services Division of the Civil Service Commission (CSC), Region 12.[27]

On May 19, 2010, Dr. Martinez testified that the CHED, CARAGA Region exercises jurisdiction over Southwestern Agusan Colleges, formerly Southern Mindanao Academy. He narrated that the CHED compels the school to apply for a special order before graduation so that the titles and degrees of the graduating students would be confirmed. The CHED requires the school to submit Form 9, containing the distribution of the courses completed in a particular curriculum program, distribution of credits earned, and remarks whether passed or failed. The school is also mandated to submit the list of graduating students, their diploma, and their National Statistics Office birth certificates. The CHED then evaluates whether the graduating students have completed all the minimum academic requirements. Once approved, the CHED would issue a special order number, which would be routed for encoding, and the Division Chief would verify and review the course status. The CHED issues a special order to the school, which then furnishes the graduating students of a certified true copy.[28]

---

[24] *Id.* at 63-64, 68.

[25] *Id.* at 499, 500.

[26] *Id.* at 499, 504.

[27] *Id.* at 499, 507.

[28] *Id.* at 500-502.

Dr. Martinez explained that the purpose of a special order is for a graduate to be issued a transcript of records (TOR) for employment or licensure examination purposes. He clarified that a graduating student is not considered a graduate unless issued a special order, even if he/she had attended the graduation ceremony.[29]

Dr. Martinez confirmed that in this case, Special Order No. (B) (R-X) 121-0152, Series of 1997 was issued to 25 graduates, of whom Alcantara was not included because his name was not in the enrollment list and promotional report of the school. There is no CHED record showing that Alcantara was enrolled at Southwestern Agusan Colleges, and he issued a certification attesting to this fact.[30] He also observed an irregularity in Alcantara's TOR, in which the remarks "graduated with the degree of Bachelor of Arts (AB) [M]ajor in English" appeared after the words "TOR Closed."[31]

Dr. Martinez presented before the trial court the: (1) fourth year record of enrollment for Bachelor of Arts, Major in English for school year 1996-1997; (2) list of graduates of Bachelor of Arts, Major in English from Southwestern Agusan Colleges; and (3) Special Order No. (B) (R-X) 121-0152, Series of 1997.[32]

During cross-examination, Dr. Martinez admitted that there is a possibility that a student's name may be inadvertently omitted from the enrollment list submitted by the school to the CHED. However, this may be corrected in a reconciliation meeting between the school registrar and the CHED supervisor-in-charge. They meet every semester to reconcile the enrollment list before the CHED Regional Office would submit it to the CHED Central Office.[33]

---

[29] *Id.* at 501.

[30] *Id.* at 502.

[31] *Id.* at 503.

[32] *Id.* at 501.

[33] *Id.* at 503.

Dr. Martinez relayed that in his 15 years of service he never encountered a problem on omission of a student's name in the enrollment list except that of Southwestern Agusan Colleges. He elucidated that the 1997 record was not yet under the CARAGA Region's jurisdiction, but of Region 10. This explains why "R-X" was indicated in the special order given to Southwestern Agusan Colleges. The records of that school were submitted to the CHED, Cagayan de Oro City, and the CARAGA Regional Office began to reconcile records only in the year 2000.[34]

On June 1, 2010, the second witness for the complainant, Fermantes, was presented. She was the registrar of Notre Dame of Midsayap College. She has been working in the registrar's office since June 1, 1980, and was appointed as school registrar on April 7, 2004. She is the records keeper of the school, and in-charge of submitting the enrollment list and promotional report to the CHED. The enrollment list contains the students' names, sex, course, year, major, and subjects officially enrolled with corresponding units. The list is submitted to the CHED one month after the first day of classes, and prepared in duplicate copies. On the other hand, the promotional report consists of the students' names as reflected in the enrollment list, subjects officially enrolled, and their final grades in each subject. The report is submitted to the CHED before or after the semester ends. The school registrar encloses an enrollment summary and endorsement to the enrollment list and promotional report for submission to the CHED.[35]

Fermantes acknowledged that as registrar, she submits to the CHED an application for special order, and it is issued on a student once he/she has completed the CHED and the school requirements. She narrated the steps taken for the issuance of a special order. A graduating student fills out an application for graduation indicating the course and subjects enrolled. The department head of a course and/or the deans conduct an initial evaluation, which would be endorsed to the registrar's office

---

[34] *Id.*

[35] *Id.* at 504.

for final evaluation. The registrar's office counterchecks the prospectus of a particular curriculum with the student's permanent records from first year to fourth year to determine if he/she took and passed the subjects. Once cleared, the registrar submits the necessary documents to the CHED, and the latter rechecks the documents. In the absence of error, the documents are forwarded to a supervisor with a recommendation for the issuance of a special order. The supervisor again re-assesses the documents, and if he finds no error, he/she recommends the preparation of a special order and forwards the documents to the Regional Director for approval. Once approved, the CHED informs the school so the latter can get a copy. The graduate can now request for a TOR and the special order.[36]

Fermantes explained how a special order should be indicated in the TOR. After the last subject, it should be indicated on the next line that a student graduated of a course, the special order number, the graduation date, the purpose of the TOR, and the line closing the TOR would be placed. In Alcantara's TOR, she opined that it was improperly closed because the remarks "graduated with the degree of Bachelor of Arts [M]ajor in English at Southwestern Agusan Colleges" were placed after the closing.[37]

Fermantes commented that it was impossible for a student who has been enrolled for many semesters to be excluded from the enrollment list. First, the registrar's office conducts internal checking from within its office down to the professors. Should there be an omission, it would have been discovered before the semester ends. Second, during the term, grading sheets were distributed to the teachers and should be returned after exam. They contain the students' names, day, time, and room. Should there be discrepancy in the grading sheets and the enrollment list, the school would inform the CHED to correct the list. Third, the school and the CHED reconcile their records.[38]

---

[36] *Id.* at 505-506.

[37] *Id.* at 506.

[38] *Id.* at 506-507.

Fermantes presented before the trial court Alcantara's school records in Notre Dame of Midsayap College, which showed that he was enrolled in the first and second semesters of 1987-1988 as AB-1 and in the first and second semesters of 1988-1989 as AB-2.[39]

The last witness for the complainant is Tardo, who was the Chief Personnel Specialist of the Examination Services Division of the CSC, Region 12. She testified that she keeps the records of those who took and passed the civil service examination. She presented to the trial court a certification from the regional director and a list of passing and failing examinees. The documents show that a certain Jaime D. Alcantara, and not Jaime S. Alcantara, took and passed the civil service examination on July 30, 1989. While she admitted the possibility of an error on their part, she pointed out that the examinees were the ones who filled out the required information in the picture seat plan for the July 30, 1989 civil service examination. Here, the middle initial of Jaime Alcantara was D.[40]

Tardo attested that in 1989, a person must be at least 18 years old, a Filipino citizen, and a graduate of a bachelor's degree before he/she can take the civil service examination. Examinees were required to attach a photocopy of their TOR in their application for examination, but the CSC did not verify it from the issuing school because of the number of examinees. She stated that she has no personal knowledge of the documents that Alcantara submitted. She ascertained that in 1989, the CSC was strict in requesting supporting documents from examinees who applied for certain examinations. She confirmed that there were years when the CSC allowed those who have not finished a bachelor's degree to take the civil service professional examination provided that they have completed at least two years in college and have rendered at least two years of service in the government. Their experience would offset the lack of the required

---

[39] *Id.* at 506.

[40] *Id.* at 507-508.

educational attainment. However, she could no longer recall if this was implemented in 1989.[41]

For the defense, Alcantara was the lone witness. He denied the accusations against him. He was appointed as Clerk of Court in 2005. He narrated that he took up Theoretical Studies in Bachelor of Science in Maritime Transportation at the Visayan Maritime Academy in Bacolod City for three years. In 1987, he enrolled at Notre Dame of Midsayap College in Cotabato, where he studied for three semesters and one summer. He stopped studying because he had already taken all the subjects offered. In 1991, he enrolled at Southwestern Agusan Colleges after learning from a relative that it was offering special arrangement to working students in the government.[42]

Alcantara recounted that he sent several communications and went to Southwestern Agusan Colleges and the CHED, CARAGA Region to clarify his school records.[43]

Alcantara was confronted why his TOR does not bear the signature of the school president on pages 2 to 5. He replied that he has no personal knowledge for the lack of signature as it was given to him after he requested for it.[44]

Alcantara was also asked regarding the civil service examination that he took on July 30, 1989. He claimed that he was the same Jaime D. Alcantara because his middle name was Delos Santos. He has been using S as middle initial, but when he took the exam, he was told to write D. He likewise admitted that when he took the exam, he was not yet a college graduate, but his former boss encouraged him to take it because he finished second year college and was a government employee. He indicated the said facts in his civil service examination application.[45]

---

[41] *Id.* at 508.

[42] *Id.* at 509-510.

[43] *Id.* at 510-511.

[44] *Id.* at 511.

[45] *Id.* at 511-512.

Alcantara recalled his special arrangement at Southwestern Agusan Colleges. He reported every Saturday and Sunday only. On Saturdays, he would arrive at around 12 noon, but was later changed to 7:00 a.m. or 8:00 a.m. He was the only student with a special arrangement. He had no classes and no teachers in all the subjects he had taken. He was given assignments, paper works, and reading materials, which he would accomplish in the library. If unfinished, he would bring them home. He took three examinations every semester. He finished his AB English course in 1996, but he did not attend the graduation and did not secure a TOR because he had an outstanding financial obligations in school. He was only issued a TOR and diploma in 2005 upon his request, for his application as Clerk of Court.[46] He testified that the affidavit and the certification from the school president were personally handed to him by Cortez a day after he went to the school.[47]

Alcantara presented, among other documents, (1) two official receipts from Southwestern Agusan Colleges; (2) affidavit of the president of Southwestern Agusan Colleges; (3) certification from the president of Southwestern Agusan Colleges; and (4) his TOR from Southwestern Agusan Colleges as part of his exhibits.[48]

Judge Laquindanum's Investigation Report

Judge Laquindanum issued an Investigation Report[49] dated September 30, 2010, containing the following findings and conclusions:

1. Alcantara did not present a witness from Southwestern Agusan Colleges to corroborate his claim that (a) the school was authorized to conduct special classes, (b) he studied under such special arrangement, (c) he graduated from the said school, and (d) to explain the absence of his name from the

---

[46] *Id.* at 512.

[47] *Id.* at 513.

[48] *Id.*

[49] *Id.* at 498-522.

enrollment list and promotional report. Judge Laquindanum found it unbelievable that no other person showed interest in the special classes.[50]

2. The official receipts presented as payments to Southwestern Agusan Colleges do not represent tuition fee, but miscellaneous and other expenses.[51]

3. Alcantara's name was not included in Southwestern Agusan Colleges' enrollment lists and promotional reports submitted to the CHED from 1991 to 1997.[52]

4. Omission of a student's name from the enrollment list would have been discovered before the semester ends, because a reconciliation meeting between the school and the CHED was being conducted every semester to straighten out the school records.[53]

5. Alcantara's name was not among the 25 graduates who were issued a CHED special order.[54]

6. Alcantara's TOR from Southwestern Agusan Colleges was improperly closed.[55]

7. Judge Laquindanum determined that it was contrary to human experience for a person eager to finish a bachelor's degree to let nine years pass before securing a TOR and only when he was applying for the position of Clerk of Court. Considering the long distance between Midsayap, Cotabato and Agusan del Sur, it was expected that he would secure a TOR after graduation to compensate his sacrifices.[56]

---

[50] *Id.* at 516, 519.

[51] *Id.* at 519.

[52] *Id.* at 516.

[53] *Id.*

[54] *Id.* at 517.

[55] *Id.*

[56] *Id.* at 519.

8. The affidavit and certification from the president of Southwestern Agusan Colleges have no probative value because he was not presented as witness to testify on the said documents.[57]

9. Dr. Martinez and Fermantes had sufficiently demonstrated that it was impossible for a student's name to be purposely or inadvertently omitted from the list of graduates, because of the tedious checking and rechecking of school records before the final list of graduates and special order would be released. Alcantara's name was neither in the CHED's records as having been enrolled at Southwestern Agusan Colleges in any of the semesters indicated in his TOR, nor in the list of graduates who have completed the Bachelor of Arts degree course.[58]

10. Judge Laquindanum concluded that Alcantara is not a college degree holder because he has not presented sufficient evidence to overcome the testimonies of Dr. Martinez and Fermantes, and his name does not appear in the CHED's records.[59] Judge Laquindanum concluded that the special order appearing in Alcantara's TOR was falsified.[60]

Judge Laquindanum elucidated that eligibility to public office must exist at the beginning and throughout the occupancy of the position. An ineligible or unqualified holder of a position has no right to retain his/her position and must be dismissed immediately after due process.[61]

Judge Laquindanum resolved that Alcantara has not enrolled, studied, and graduated at Southwestern Agusan Colleges. He is not a degree holder as required for his current position. He misrepresented his educational attainment to gain promotion

---

[57] *Id.* at 517.

[58] *Id.*

[59] *Id.* at 518-519.

[60] *Id.* at 517.

[61] *Id.*

as Clerk of Court. The information that he finished Bachelor of Arts, Major in English must have been written in his Personal Data Sheet (PDS), which was under oath when he applied for the Clerk of Court position. His misrepresentation in the PDS constitutes dishonesty by misrepresentation and falsification of a public document.[62]

Judge Laquindanum cited Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 or the Administrative Code of 1987, which states that dishonesty and falsification of a public document are grave offenses penalized by dismissal. Section 9 of the said rules provides that dismissal carries with it cancellation of eligibility, forfeiture of leave credits and retirement benefits, and disqualification for re-employment in the government. She referred the proper penalty to be imposed to the sound discretion of the Court Administrator.[63]

The OCA's Recommendation

On December 15, 2010, the Court referred the case to the OCA for evaluation, report and recommendation.[64] On May 12, 2011, the OCA resolved that there is no compelling reason to deviate from the findings and recommendations of Judge Laquindanum. The OCA concurred with the discussions in the Investigation Report. The OCA held that Alcantara is guilty of dishonesty and falsification of public documents and recommended his dismissal from the service, with forfeiture of all his retirement benefits, with prejudice to re-employment in the government, and without prejudice to the filing of criminal case against him.[65]

The OCA delineated Alcantara's accrued leave credits. Those leave credits he earned as Clerk of Court from August

---

[62] *Id.* at 520.

[63] *Id.* at 521-522.

[64] *Id.* at 623.

[65] *Id.* at 626-633.

11, 2005 to present are forfeited because of his ineligibility. Those he earned from September 1, 1986 to August 10, 2005 shall be given to him as he was qualified for the occupied positions.[66]

On June 22, 2011, the Court required the parties to manifest if they were willing to submit the case for decision/resolution on the basis of the pleadings/records on file.[67] Both parties were amenable to the Court's proposal.[68]

The Issue Presented

Whether or not Alcantara is guilty of dishonesty and falsification of a public document.

The Court's Ruling

The Court affirms the OCA's recommendation. We also uphold Judge Laquindanum's findings and conclusions, which were arrived at after an extensive investigation.

In a case with similar facts, *De Guzman v. Delos Santos*,[69] the Court held that:

> ELIGIBILITY TO PUBLIC OFFICE x x x must exist at the commencement and for the duration of the occupancy of such office; it is continuing in nature. Qualification for a particular office must be possessed at all times by one seeking it. An appointment of one deemed ineligible or unqualified gives him no right to hold on and must through due process be discharged at once.
>
> x x x x x x x x x
>
> We recently ruled that making a false statement in a Personal Data Sheet required under Civil Service Rules and Regulations for employment in the government amounts to dishonesty and falsification of an official document which warrant dismissal from the service upon commission of the first offense. The Court reasoned that the

---

[66] *Id.* at 632.

[67] *Id.* at 634.

[68] *Id.* at 637, 651.

[69] 442 Phil. 428, 432, 436-441 (2002).

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

In *Aquino v. The General Manager of the Government Service Insurance System*, this Court speaking through Associate Justice Jose B. L. Reyes ruled that misrepresentation by a government employee as to his educational attainment contained in a sworn application for civil service examination is an act of dishonesty and is expressly made a ground for disciplinary action under the Civil Service Rules. Acts of this kind, which combine both perjury and falsification of an official document, infirm a public officer's integrity and reliability, qualities that are necessarily connected with the discharge of his functions and duties.

x x x x x x x x x

We have repeatedly said that persons involved in the dispensation of justice, from the highest official to the lowest clerk, must live up to the strictest standards of integrity, probity, uprightness, honesty and diligence in the public service. This Court will not tolerate dishonesty for the judiciary expects the best from all its employees who must be paradigms in the administration of justice. An employee who falsifies an official document to gain unwarranted advantage over other more qualified applicants to the same position and secure the sought-after promotion cannot be said to have measured up to the standards required of a public servant. While we commiserate with respondent who has been in the judiciary for twenty-six (26) years and who may have been simply motivated by a desire to improve his family's lot, we simply cannot condone the means resorted to which was not justified by its end. x x x

x x x x x x x x x

Under the laws governing our civil service, dishonesty is classified as a grave offense the penalty of which is dismissal from the service at the first infraction. For having misrepresented the fact that he was a college graduate when in reality he was not, we are constrained to hold respondent liable for dishonesty by misrepresentation and falsification of an official document. As an accessory penalty, his retirement benefits are forfeited due to the falsehood and deceit that have marked his assumption into office, traits that are undesirable and unbecoming of a public officer or employee. With respect to

accrued leave credits, there must be a distinction between credits earned prior to 10 December 1991 and those earned from 10 December 1991 to the present. Delos Santos is entitled to credits earned prior to 10 December 1991, if any, as he was employed in positions for which he was qualified. Credits earned from 10 December 1991 to the present, if any, are forfeited for the reason that his ineligibility to assume positions requiring a Bachelor's degree retroacts to the date of his appointment as Information Officer I on 10 December 1991.

Public office is a public trust. A public officer or employee does not merely have an obligation to obey and respect the law; it is his sworn duty to do so. Assumption of public office is impressed with the paramount public interest that requires the highest standards of ethical conduct. A person aspiring to public office must observe honesty, candor and faithful compliance with the law. Nothing less is expected. This ideal standard ensures that only those of known probity, competence and integrity are called to the challenge of public service. (Citations omitted)

Here, Judge Laquindanum determined that Alcantara is not a college degree holder and he misrepresented this fact in his PDS when he applied for the Clerk of Court position. The Court concurs with her findings and conclusion on dishonesty and falsification of a public document. The dishonesty is serious in nature as it affects his eligibility as Clerk of Court.

Following our ruling in *Boston Finance and Investment Corp. v. Gonzalez*,[70] we apply the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS) on the imposition of penalty.

[O]ffenses under civil service laws and rules committed by court personnel constitute violations of the [Code of Conduct for Court Personnel], 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 RRACCS, including Section 50 thereof.[71] (Emphasis and underscoring in the original)

---

[70] A.M. No. RTJ-18-2520, October 9, 2018.

[71] *Id.*

Section 50, paragraph A, Rule 10 of the 2017 RACCS classifies serious dishonesty as a grave offense and is punishable by dismissal from the service.

WHEREFORE, premises considered, the Court finds respondent Jaime Delos Santos Alcantara **GUILTY** of serious dishonesty and falsification of a public document.

The Court imposes upon him the penalty of **DISMISSAL** from the service with **FORFEITURE** of all retirement benefits, except accrued leave credits from September 1, 1986 to August 10, 2005, and perpetual disqualification from holding public office in any branch or instrumentality of the government, including government-owned or controlled corporations.

The Office of the Court Administrator is **DIRECTED** to file the appropriate criminal charges against respondent Alcantara.

This Decision is immediately **EXECUTORY**.

SO ORDERED.

Peralta, C.J., Leonen, Caguioa, Reyes, A. Jr., Reyes, J. Jr., Hernando, Lazaro-Javier, and *Inting, JJ.*, concur.

Perlas-Bernabe, Gesmundo, and *Carandang, JJ.*, on official business.

Zalameda, J., on official leave.

SECOND DIVISION

[A.C. No. 12487. December 4, 2019]

FE EUFEMIA E. VALMONTE, *complainant, vs.* **ATTY. JOSE C. QUESADA, JR.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULES OF COURT; ATTORNEYS AND ADMISSION TO THE BAR; DISBARMENT AND SUSPENSION OF ATTORNEYS; UNAUTHORIZED PRACTICE OF LAW; CONSIDERED A WILLFUL DISOBEDIENCE TO A LAWFUL ORDER OF THE COURT WHICH IS A GROUND FOR DISBARMENT OR SUSPENSION. — On December 2, 2013, the Court promulgated a Resolution in the case of *Dagala* [v. Atty. Quesada, Jr.] suspending respondent from the practice of law for a period of one year effective from the date of his receipt of the said Resolution for failing to exercise the required diligence in handling the labor case of his client. In the absence of any contrary evidence, a letter duly directed and mailed is presumed to have been received in the regular course of mail. Here, respondent is presumed to have duly received the said Resolution. In March 2014, or three months after the promulgation of the Resolution suspending him from the practice of law, respondent filed the following pleadings before the RTC of Bauang, La Union, in Crim. Case No. 4573-BG: 1) Notice of Appearance with Motion on March 20, 2014; 2) Comment on the Opposition on May 9, 2014; and 3) Motion to Withdraw Appearance as Private Prosecutor on May 23, 2014. Respondent's acts of signing and filing of pleadings for his client in Crim. Case No. 4573-BG months after the promulgation of the Resolution are clear proofs that he practiced law during the period of his suspension. And as aptly found by the IBP, respondent's unauthorized practice of law is considered a willful disobedience to lawful order of the court, which under Section 27, Rule 138 of the Rules of Court is a ground for disbarment or suspension.

2. ID.; ID.; ID.; ID.; ID.; AN ADDITIONAL SUSPENSION OF SIX MONTHS IS IMPOSED ON LAWYERS WHO CONTINUE TO PRACTICE LAW DESPITE THEIR

SUSPENSION BUT WHILE THE COURT CAN NO LONGER IMPOSE THE PENALTY UPON A DISBARRED LAWYER, IT CAN STILL GIVE THE CORRESPONDING PENALTY ONLY FOR THE SOLE PURPOSE OF RECORDING IT IN HIS PERSONAL FILE IN THE OFFICE OF THE BAR CONFIDANT. — As to the penalty imposed, a review of recent jurisprudence reveals that the Court has consistently imposed an additional suspension of six months on lawyers who continue to practice law despite their suspension. However, considering that the Court had already imposed upon respondent the ultimate penalty of disbarment for his gross misconduct and willful disobedience of the lawful orders of the court in an earlier complaint for disbarment filed against him in *Zarcilla v. Quesada, Jr.*, the penalty of additional six months suspension from the practice of law can no longer be imposed upon him. The reason is obvious: "[o]nce a lawyer is disbarred, there is no penalty that could be imposed regarding his privilege to practice law." But while the Court can no longer impose the penalty upon the disbarred lawyer, it can still give the corresponding penalty only for the sole purpose of recording it in his personal file with the Office of the Bar Confidant (OBC), which should be taken into consideration in the event that the disbarred lawyer subsequently files a petition to lift his disbarment.

3. ID.; ID.; ID.; ID.; ID.; THE COURT MAY IMPOSE A FINE UPON A DISBARRED LAWYER FOUND TO HAVE COMMITTED AN OFFENSE PRIOR TO HIS DISBARMENT AS THE COURT DOES NOT LOSE ITS EXCLUSIVE JURISDICTION OVER THE OFFENSES COMMITTED BY A DISBARRED LAWYER WHILE HE WAS STILL A MEMBER OF THE LAW PROFESSION. — [T]he Court may also impose a fine upon a disbarred lawyer found to have committed an offense prior to his/her disbarment as the Court does not lose its exclusive jurisdiction over other offenses committed by a disbarred lawyer while he/she was still a member of the Law Profession. In fact, by imposing a fine, the Court is able "to assert its authority and competence to discipline all acts and actuations committed by the members of the Legal Profession."

D E C I S I O N

HERNANDO, *J.*:

Before the Court is a Complaint[1] disbarment dated November 11, 2014 filed by complainant Fe Eufemia Estalilla-Valmonte against respondent Atty. Jose C. Quesada, Jr. for violation of the Supreme Court's directive suspending him from the practice of law for a period of one (1) year pursuant to its December 2, 2013 Resolution in *Dagala v. Atty. Quesada, Jr.*[2]

The antecedent facts are as follows:

Complainant alleged that she is the wife of Marcelo A. Valmonte, Jr.; that her husband was charged with murder of her brother, Manalo Estalilla (Manolo); that the murder case, docketed as Crim. Case No. 4573-BG, entitled *People of the Philippines v. Marcelo A. Valmonte, Jr.*, was raffled to the Regional Trial Court (RTC) of Bauang, La Union, Branch 33; that in March 2014, respondent entered his appearance in the said case as private prosecutor on behalf of the common-law wife of Manalo; that respondent filed several pleadings in the said case; and that complainant later learned that respondent entered his appearance and filed pleadings in court while he was serving his suspension from the practice of law.

Despite due notice, respondent failed to file a comment and to appear during the mandatory conference before the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP).[3]

After considering the evidence presented by complainant, the Investigating Commissioner of the IBP submitted his Report and Recommendation[4] dated June 30, 2017 recommending that

---

[1] *Rollo*, pp. 5-7.

[2] 722 Phil. 447 (2013).

[3] *Rollo*, p. 31.

[4] *Id.* at 61-63.

respondent be meted the penalty of suspension for another year from the practice of law for his unauthorized practice of law.

Finding the Report and Recommendation of the Investigating Commissioner fully supported by the evidence on record and the applicable laws and jurisprudence, the Board of Governors of the IBP, on June 28, 2018, resolved to adopt the same.[5]

The Court's Ruling

The Court affirms the findings of the IBP, but with modifications as to its recommendations.

On December 2, 2013, the Court promulgated a Resolution in the case of *Dagala* suspending respondent from the practice of law for a period of one year effective from the date of his receipt of the said Resolution for failing to exercise the required diligence in handling the labor case of his client.[6] In the absence of any contrary evidence, a letter duly directed and mailed is presumed to have been received in the regular course of mail.[7] Here, respondent is presumed to have duly received the said Resolution.

In March 2014, or three months after the promulgation of the Resolution suspending him from the practice of law, respondent filed the following pleadings before the RTC of Bauang, La Union, in Crim. Case No. 4573-BG:

1) Notice of Appearance with Motion[8] on March 20, 2014;
2) Comment on the Opposition[9] on May 9, 2014; and
3) Motion to Withdraw Appearance as Private Prosecutor[10] on May 23, 2014.

---

[5] *Id.* at 59-60.

[6] *Dagala v. Atty. Quesada, Jr., supra* note 2.

[7] *Agner v. BPI Family Savings Bank, Inc.*, 710 Phil. 82, 87 (2013).

[8] *Rollo*, pp. 8-10.

[9] *Id.* at 11-13.

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

Respondent's acts of signing and filing of pleadings for his client in Crim. Case No. 4573-BG months after the promulgation of the Resolution are clear proofs that he practiced law during the period of his suspension. And as aptly found by the IBP, respondent's unauthorized practice of law is considered a willful disobedience to lawful order of the court, which under Section 27,[11] Rule 138 of the Rules of Court is a ground for disbarment or suspension.

As to the penalty imposed, a review of recent jurisprudence reveals that the Court has consistently impose an additional suspension of six months on lawyers who continue to practice law despite their suspension.[12]

However, considering that the Court had already imposed upon respondent the ultimate penalty of disbarment for his gross misconduct and willful disobedience of the lawful orders of the court in an earlier complaint for disbarment filed against him in *Zarcilla v. Quesada, Jr.*,[13] the penalty of additional six months suspension from the practice of law can no longer be

---

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

[12] *Paras v. Paras*, 807 Phil. 153, 162 (2017).

[13] A.C. No. 7186, March 13, 2018. In that case, although the allegations of falsification or forgery against respondent were not proven, the Court, nevertheless, found respondent guilty of violating the notarial law for notarizing a deed of sale and a joint-affidavit despite the fact that the parties therein could no longer execute the said documents and appear before respondent since they have long been deceased as evidenced by their death certificates. The Court also noted in the said case that respondent's act of notarizing the said deed of sale appeared to have been done to perpetuate a fraud.

imposed upon him. The reason is obvious: "[o]nce a lawyer is disbarred, there is no penalty that could be imposed regarding his privilege to practice law."[14]

But while the Court can no longer impose the penalty upon the disbarred lawyer, it can still give the corresponding penalty only for the sole purpose of recording it in his personal file with the Office of the Bar Confidant (OBC), which should be taken into consideration in the event that the disbarred lawyer subsequently files a petition to lift his disbarment.[15]

In addition, the Court may also impose a fine[16] upon a disbarred lawyer found to have committed an offense prior to his/her disbarment as the Court does not lose its exclusive jurisdiction over other offenses committed by a disbarred lawyer while he/she was still a member of the Law Profession.[17] In fact, by imposing a fine, the Court is able "to assert its authority and competence to discipline all acts and actuations committed by the members of the Legal Profession."[18]

All told, the Court finds respondent guilty of unauthorized practice of law. And although he has already been disbarred, the Court, nevertheless, deems it proper to give the corresponding penalty of six months suspension from the practice of law for the sole purpose of recording it in his personal file in the OBC. The Court, likewise, considers it necessary to impose upon respondent a penalty of fine in the amount of Php 40,000.00.[19]

---

[14] *Dumlao, Jr. v. Camacho*, A.C. No. 10498, September 4, 2018.

[15] *Id.*

[16] *Punla v. Maravilla-Ona*, A.C. No. 11149, August 15, 2017, 837 SCRA 145.

[17] *Domingo v. Revilla, Jr.*, A.C. No. 5473, January 23, 2018, 852 SCRA 360.

[18] *Id.* at 381.

[19] *Punla v. Maravilla-Ona*, *supra* note 16.

WHEREFORE, the Court hereby **FINDS** respondent Atty. Jose C. Quesada, Jr. **GUILTY** of unauthorized practice of law and is hereby **SUSPENDED** from the practice of law for a period of six (6) months. However, considering that he has already been disbarred, this penalty can no longer be imposed but nevertheless should be considered in the event that he should apply for the lifting of his disbarment. **ACCORDINGLY**, and **IN VIEW OF HIS CONTINUING DISBARMENT**, a penalty of **FINE** in the amount of Php 40,000.00 is imposed upon him.

Let a copy of this Decision be furnished to the Office of the Bar Confidant to be entered into the records of respondent Atty. Jose C. Quesada, Jr. Copies shall likewise be furnished to the Integrated Bar of the Philippines and the Office of the Court Administrator, which shall circulate the same to all courts in the country for their information and guidance.

SO ORDERED.

Reyes,[*] *A. Jr. (Acting Chairperson)* and *Inting, JJ.*, concur.

Perlas-Bernabe, J., on official business.

Zalameda,[**] *J.*, on official leave.

---

[*] Per Special Order No. 2750 dated November 27, 2019.

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

SECOND DIVISION

[G.R. No. 197164. December 4, 2019]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **BENEDICTA MALLARI and CHI WEI-NENG,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; COURT OF TAX APPEALS (CTA); REVISED RULES OF THE CTA; MOTION FOR RECONSIDERATION; MUST BE FILED WITHIN FIFTEEN DAYS FROM THE DATE OF RECEIPT OF THE NOTICE OF THE ASSAILED DECISION, RESOLUTION OR ORDER, AND A PARTY WHO FAILS TO QUESTION AN ADVERSE DECISION BY NOT FILING THE PROPER REMEDY WITHIN THE PERIOD PRESCRIBED BY LAW FOR THE PURPOSE LOSES THE RIGHT TO DO SO. — Section 1, Rule 15 of A.M. No. 5-11-07-CTA, otherwise known as the Revised Rules of the CTA, states that an aggrieved party shall file a motion for reconsideration **within 15 days** from the date he/she received notice of the assailed decision, resolution or order of the court in question. A perusal of the records shows that the BIR Main Office and the Office of the City Prosecutor received the Notice of the December 14, 2009 Resolution of the CTA First Division on December 17, 2009 and December 21, 2009, respectively. From the date of receipt, petitioner only had until January 4, 2010 and January 5, 2010, respectively, to file its Motion for Reconsideration. Petitioner, however, filed its motion only on January 18, 2010 or 14 days beyond the prescribed period. Thus, we find no cogent reason to depart from the findings of the CTA Special First Division, which was affirmed by the CTA *En Banc*, that petitioner filed its Motion for Reconsideration beyond the 15-day reglementary period. Consequently, petitioner's failure to duly file on time a Motion for Reconsideration of the CTA First Division's December 14, 2009 Resolution resulted in losing its right to assail the CTA First Division's judgment before this Court. This is in accordance with the basic rule that a party who fails to question an adverse decision by not filing the proper remedy within the period prescribed by law for the purpose loses the right to do so.

2. ID.; CIVIL PROCEDURE; FILING AND SERVICE OF PLEADINGS, JUDGMENTS AND OTHER PAPERS; WHEN A PARTY IS REPRESENTED BY COUNSEL OF RECORD, SERVICE OF ORDERS AND NOTICES MUST BE MADE UPON HIS COUNSEL OR ONE OF THEM. — It is settled that when a party is represented by counsel of record, service of orders and notices must be made upon his/her counsels or one of them. Otherwise, notice to the client and to any other lawyer, not the counsel of record, is not notice in law. Petitioner, through ACP Mendoza, was properly served notice of the December 14, 2009 Resolution of the CTA First Division. A review of the records shows that the notices of the Resolutions dated October 7, November 10 and 26, 2009, respectively, were duly served on the Office of the City Prosecutor, through ACP Mendoza and now Court of Appeals Associate Justice Jhosep Y. Lopez, and the BIR Main Office, respectively. To note, ACP Mendoza was the same prosecutor who initiated the filing of the Information against Mallari and Wei-Neng for violation of the NIRC before the CTA. x x x [T]he services of notice made to the OCP through ACP Mendoza and the BIR Main Office, respectively, are deemed proper and are thus service of notice to petitioner itself.

3. LEGAL ETHICS; ATTORNEYS; ATTORNEY-CLIENT RELATIONSHIP; THE NEGLIGENCE AND MISTAKES OF A COUNSEL ARE BINDING ON THE CLIENT. — We stress the settled rule that the negligence and mistakes of a counsel are binding on the client. This is so because a counsel, once retained, has the implied authority to do all acts necessary or, at least, incidental to the prosecution and management of the suit in behalf of his/her client, petitioner in this case. As such, any act or omission by counsel within the scope of the authority is regarded, in the eyes of the law, as the act or omission of the client himself/herself. The alleged negligence of ACP Mendoza binds petitioner. There is evidence on record indicating that petitioner has been remiss in its duty to maintain communication with its counsel from time to time so as to be aware of the progress of its case. Had petitioner exercised that standard of care "which an ordinarily prudent man bestows upon his business," then it would have become aware of the previous resolutions issued by the CTA First Division ordering ACP Mendoza to submit the required documents. It did not do so. This only shows that petitioner likewise failed in its duty

to keep itself updated as to the status of its case. It should therefore suffer the consequences of the adverse judgment rendered against it. To impute negligence solely on the counsel would result to a never ending suit so long as new counsel could be employed who could allege and show that prior counsel had not been sufficiently diligent or experienced or learned.

4. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; BECOME FINAL AND EXECUTORY BY OPERATION OF LAW AND NOT BY JUDICIAL DECLARATION. — [T]he CTA First Division December 14, 2009 Resolution had already attained finality because of petitioner's failure to file a Motion for Reconsideration within the 15-day reglementary period allowed under the CTA's revised internal rules. We reiterate the settled pronouncement that "judgments or orders become final and executory by operation of law and not by judicial declaration. The finality of a judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected or no motion for reconsideration or new trial is filed. The court need not even pronounce the finality of the order as the same becomes final by operation of law."

5. ID.; ID.; ID.; DOCTRINE OF IMMUTABILITY; ONCE A DECISION OR RESOLUTION ATTAINS FINALITY, IT BECOMES IMMUTABLE AND UNALTERABLE, AND MAY NO LONGER BE MODIFIED IN ANY RESPECT. — [S]ince the December 14, 2009 Resolution of the CTA First Division has already attained finality, it now "becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land." Although there are recognized exceptions to this rule, petitioner failed to prove that the case falls under any of the instances.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Mario A. Saldevar for private complainant.
Eufemio Law Offices for respondents.

D E C I S I O N

HERNANDO, *J.*:

At bench is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the May 23, 2011 Decision[2] of the Court of Tax Appeals (CTA) *En Banc* which dismissed the petition for review filed by petitioner, the People, questioning the dismissal of C.T.A. Criminal Case No. O-151 by the CTA First Division in its December 14, 2009 Resolution[3] for failure to obey lawful orders of the court, and the subsequent dismissal of its motion for reconsideration in the CTA Special First Division March 17, 2010 Resolution[4] for being filed out of time.

The Factual Antecedents

On October 23, 2007, pursuant to Revenue Delegation Authority Order (RDAO) No. 2-2007,[5] Regional Director Alfredo V. Misajon (Misajon) of the Bureau of Internal Revenue (BIR), Revenue Region No. 6 of Manila (BIR Manila), filed a criminal complaint[6] against respondents Benedicta Mallari (Mallari) and Chi Wei-Neng (Wei-Neng), President and General Manager, respectively, of Topsun Int'l., Inc. (Topsun) for violation of Section 255 in relation to Sections 253 and 256 of the 1997 National Internal Revenue Code (NIRC) before the Office of the City Prosecutor (OCP) of Manila docketed

---

[1] *Rollo*, pp. 7-40.

[2] *Id.* at 41-50; penned by Associate Justice Amelia Cotangco-Manalastas and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda I. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, and Cielito N. Mindaro-Grulla. Associate Justice Olga Palanca-Enriquez with Dissenting and Concurring Opinion.

[3] *Id.* at 65-69; penned by Presiding Justice Ernesto D. Acosta and concurred in by Associate Justices Lovell R. Bautista and Caesar A. Casanova.

[4] *Id.* at 59-63.

[5] CTA *rollo*, pp. 95-96.

[6] *Id.* at 7-9.

as I.S. No. 08A-00131. The complaint stemmed from Topsun's outstanding Value Added-Tax (VAT) deficiency for the months of January to June 2000 in the amount of ₱3,827,564.64, and a compromise penalty of ₱25,000.00 for the same period. Topsun failed and refused to pay its outstanding obligations despite several demands and the service of the Warrant of Distraint and/or Levy.

Mallari, in her counter-affidavit,[7] denied that Topsun had any outstanding internal revenue tax liability as evidenced by the Certificate of No Tax Liability[8] dated October 15, 2003 issued by Revenue District Office No. 32.

In the Resolution[9] dated August 7, 2009, Assistant City Prosecutor of Manila Gideon C. Mendoza (ACP Mendoza) found probable cause to indict Mallari and Wei-Neng. He thus recommended the filing of an Information against them for violation of Section 255 in relation to Sections 253 and 256 of the NIRC before the CTA.

An Information[10] was subsequently filed before the CTA First Division which was docketed as Crim. Case No. O-151. It reads:

> The undersigned accuses BENEDICTA MALLARI and CHI WEI-NENG of Violation of Section 255 in relation to Section[s] 253(d) and 256 of the 1997 Tax Code, committed as follows:
>
> That on or about July 9, 2003 and continuously up to the present, in the City of Manila, the said accused, being then the President and General Manager of TOPSUN INTERNATIONAL INC., respectively, with new business address at JMBC Building, Zansibar corner Rockefeller Streets, Barangay San Isidro[,] Makati City, in said City, did then and there willfully, unlawfully fail, refuse and neglect to pay Deficiency Income Tax in the amounts of ₱3,827,564.64 and ₱25,000.00, respectively, due from said corporation for the taxable

---

[7] *Id.* at 15-18.

[8] *Id.* at 19.

[9] *Id.* at 3-6.

[10] *Id.* at 1-2.

year 2000 in the total amount of ₱3,852,564.64 under BIR Assessment Notice No. 32-Jan-Jun 2000, despite notice of said assessment, without formally protesting against or appealing the same, and repeated demands made upon him to do so, to the damage and prejudice of the Government of the Republic of the Philippines in the aforesaid sum of ₱3,852,564.64 Philippine Currency.

CONTRARY TO LAW.[11]

Attached to the Information were the following documents, among others:

1. Resolution dated August 7, 2009 of ACP Mendoza;[12]
2. Recommendation dated October 23, 2007 for criminal prosecution by Regional Director Misajon;[13]
3. Affidavit[14] dated October 3, 2007 of Atty. Ramon B. Lorenzo, Attorney I of the Legal Division of Revenue Region No. 6, BIR, Manila with Annexes.

In its Resolution[15] dated October 7, 2009, the CTA First Division observed that in the Department of Justice (DOJ) Resolution dated August 7, 2009, Mallari and Wei-Neng were charged with failure to pay overdue "*deficiency VAT*" in the amount of ₱3,827,564.64 and "*compromise penalty*" of ₱25,000.00. However, the Information stated that they failed to pay "*deficiency income tax*" in the said amounts. Further, the CTA First Division noted that the recommendation for the criminal prosecution or the filing of the criminal information for violation of the Tax Code was without the written approval of the Commissioner of the Internal Revenue (CIR). This approval should have been secured pursuant to Sections 220 and 221 of the NIRC, as amended, in relation to Section 2, Rule 9 of the

---

[11] *Id.* at 1.

[12] *Id.* at 3-6.

[13] *Id.* at 7-9.

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

[15] *Id.* at 39-43.

Revised Rules of the CTA. Lastly, the motion to adopt the allegations contained in the Counter-Affidavit of Mallari, and the Reply to the Counter-Affidavit and its Annexes were not attached to the Information.

Thus, the CTA ordered ACP Mendoza to comply with the following within five days from notice:

1. [T]o make the necessary formal correction in the Information against the accused, Benedict Mallari and Chi Wei-Neng;
2. [T]o submit the recommendation for criminal prosecution of the accused or approval of the filing of Information with the Court by the Commissioner of Internal Revenue;
3. [T]o present the "Motion to Adopt allegations contained in Counter-Affidavit of Benedicta Mallari" filed by accused Chi Wei-Neng as well as the "Reply to Counter-Affidavit" and its Annexes filed by Atty. Ramon B. Lorenzo; and
4. [T]o present other additional evidence, if any.[16]

Since ACP Mendoza had not yet complied with its October 7, 2009 Resolution, the CTA First Division issued another Resolution[17] on November 10, 2009 reiterating its directives in the October 7, 2009 Resolution. The CTA First Division likewise issued a warning that non-compliance with its orders will result in the dismissal of the case for failure to obey lawful order of the court.

Subsequently, by way of compliance, ACP Mendoza submitted the following: (a) the Amended Information;[18] (b) a certified true copy of RDAO No. 2-2007[19] dated March 1, 2007 of Commissioner Jose Mario C. Bunag of the BIR in lieu of the written approval of the CIR with respect to the filing of the present information; (c) the "Motion to Adopt Allegations

---

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

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

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

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

Contained in Counter-Affidavit of [Benedicta] Mallari";[20] and (d) the "Reply to Counter-Affidavit"[21] and its annexes.

On November 26, 2009, the CTA First Division issued yet another Resolution[22] noting that ACP Mendoza still failed to attach the CIR's recommendation for criminal prosecution of Mallari and Wei-Neng or the filing of information, among others. As such, it ordered the submission of the required recommendation in accordance with the NIRC.

However, ACP Mendoza, in his Compliance with Manifestation,[23] maintained that the authority of Regional Director Misajon is already sufficient pursuant to RDAO No. 2-2007 which authorizes Regional Directors to approve and sign approval and referral letters to authorize the institution of criminal actions for the National Office of the BIR as required by Section 220 of the NIRC including the filing of information before the courts.

Ruling of the Court of Tax Appeals First Division:

The CTA First Division, in its Resolution dated December 14, 2009, dismissed the criminal complaint for failure of ACP Mendoza to obey a lawful order of the court, *i.e.*, to submit a certified true copy of the Memorandum of the CIR authorizing Regional Director Misajon to prosecute and conduct proceedings. It ruled that RDAO No. 2-2007 is not sufficient as it merely empowers the signatory to sign approval and referral letters to authorize the institution of the criminal actions as distinguished from the written approval of the CIR to institute the case required under Sections 220 and 221 of the NIRC, as amended, and Section 2, Rule 9 of the Revised Rules of the CTA.

The pertinent portions of the December 14, 2009 Resolution read in this wise:

---

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

[21] *Id.* at 75-76.

[22] *Id.* at 67-70.

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

It is clear from the foregoing that [RDAO] No. 02-2007 merely empowers the signatory to sign approval and referral letters to authorize the institution of the criminal actions as distinguished from the written approval of the Commissioner of Internal Revenue to institute the case required under Sections 220 and 221 of the NIRC of 1997, as amended, and Section 2, Rule 9 of the Revised Rules of the Court of Tax Appeals.

Further, in the case of *People the Philippines v. Sia, et al.*, wherein the BIR counsels manifested and submitted certified true copies of [RDAO] No. 02-2007 dated March 1, 2007 and a Memorandum dated March 27, 2007 of the Commissioner of Internal Revenue which authorized specific BIR Personnel to prosecute and conduct criminal proceedings involving violations of tax laws, the Court allowed and noted both documents.

In the case at bar, considering that Assistant City Prosecutor Mendoza failed to submit a certificate copy of the Memorandum from the Commissioner of Internal Revenue authorizing Regional Director Alfredo V. Misajon to prosecute and conduct criminal proceedings and that he was previously given a non-extendible period of five (5) days to submit the said requirement, the Court cannot countenance the repeated failure to comply with the said order.

WHEREFORE, for failure to obey a lawful order of the Court, the case-in-caption is hereby DISMISSED.

SO ORDERED.[24] (Citation omitted)

ACP Mendoza received the said CTA First Division Resolution on January 13, 2010. Hence, on January 18, 2010, the special counsels/prosecutors of the BIR Manila filed their Entry of Appearance with Leave to Admit Attached Motion for Reconsideration.[25] In the attached Motion for Reconsideration, the prosecution maintained that Regional Director Misajon can sign approval and referral letters to authorize the institution of criminal actions/cases from the regional office with the courts, government agencies, or quasi-judicial bodies under Section 220 of the NIRC. This is in accordance with the delegated

---

[24] *Rollo*, pp. 68-69.

[25] *Id.* at 91-94.

authority vested by the CIR to Regional Directors under RDAO No. 2-2007. Further, the March 27, 2007 Memorandum issued by the CIR gives authority to specific BIR legal officers, including Atty. Ramon B. Lorenzo, to prosecute and conduct criminal proceedings with respect to violation of tax laws like in the instant case.

The prosecution likewise averred that in *People v. Sia* docketed as C.T.A. Crim. Case No. O-104 dated February 4, 2009, the CTA allowed and noted the certified true copies of RDAO No. 2-2007, and the March 27, 2007 Memorandum of the CIR. Thus, it prayed that it may be allowed to prosecute the accused in the interest of justice.

However, the CTA Special First Division, in its Resolution[26] dated March 17, 2010, denied the Motion for Reconsideration due to late filing. It observed that based on the records, the BIR received its December 14, 2009 Resolution on December 17, 2009, while the Office of the City Prosecutor received the same on December 21, 2009; hence, the prosecution had until January 4, 2010 and January 5, 2010, respectively, to file the Motion for Reconsideration. Regrettably, the prosecution filed its Motion for Reconsideration only on January 18, 2010 or 14 days late beyond the prescribed 15-day period for filing the same. Moreover, it failed to sufficiently explain why it belatedly filed its Motion for Reconsideration which could have allowed the relaxation of the procedural rules. Thus, the Motion for Reconsideration was deemed a mere scrap of paper for having been filed late.

Undaunted, the prosecution filed a Petition for Review[27] before the CTA *En Banc*. It averred that the BIR Manila was not officially notified of the December 14, 2009 Resolution of the CTA First Division. As a result thereof, it was only on January 18, 2010 wherein it filed its entry of appearance with motion to admit the attached motion for reconsideration. Further, the prosecution stressed that the CTA Special First

---

[26] *Id.* at 59-63.

[27] *Id.* at 97-108.

Division erred when it did not consider RDAO No. 2-2007 as basis for the regional directors to institute civil and criminal actions/cases.

Ruling of the Court of Tax Appeals En Banc:

In its Decision[28] dated May 23, 2011, the CTA *En Banc* dismissed the Petition for Review for lack of merit. It affirmed the findings of the CTA Special First Division that ACP Mendoza indeed failed to submit a Memorandum from the CIR authorizing Regional Director Misajon to prosecute and conduct criminal proceedings, in defiance of the lawful order of the CTA First Division. Moreover, the Motion for Reconsideration was belatedly filed. Consequently, the December 14, 2009 Resolution of the CTA First Division has already become final.

Hence, this Petition for Review.

Issues

The core issues to be resolved by this Court are: (a) whether the Resolution dated December 14, 2009 has already become final; and (b) whether a Regional Director can sign approvals and referral letters to authorize the institution of criminal actions/cases from the regional office with the courts, government agencies, or quasi-judicial bodies without the approval of the CIR.

The Court's Ruling

We **DENY** the petition.

Petitioner avers that the period for the filing of the Motion for Reconsideration has not yet run since it did not receive a proper notice of the December 14, 2009 Resolution of the CTA First Division. Besides, assuming that ACP Mendoza, the deputized special counsel, failed to timely file the said motion, his inadvertence cannot be imputed against the State especially on matters relating to the exercise of its inherent power to tax.

---

[28] *Id.* at 41-50.

We are not persuaded.

The Motion for Reconsideration was filed beyond the 15-day prescribed period.

Section 1, Rule 15 of A.M. No. 05-11-07-CTA, otherwise known as the Revised Rules of the CTA, states that an aggrieved party shall file a motion for reconsideration **within 15 days** from the date he/she received notice of the assailed decision, resolution or order of the court in question.

A perusal of the records shows that the BIR Main Office and the Office of the City Prosecutor received the Notice of the December 14, 2009 Resolution of the CTA First Division on December 17, 2009 and December 21, 2009, respectively. From the date of receipt, petitioner only had until January 4, 2010 and January 5, 2010, respectively, to file its Motion for Reconsideration. Petitioner, however, filed its motion only on January 18, 2010 or 14 days beyond the prescribed period. Thus, we find no cogent reason to depart from the findings of the CTA Special First Division, which was affirmed by the CTA *En Banc*, that petitioner filed its Motion for Reconsideration beyond the 15-day reglementary period.

Consequently, petitioner's failure to duly file on time a Motion for Reconsideration of the CTA First Division's December 14, 2009 Resolution resulted in losing its right to assail the CTA First Division's judgment before this Court. This is in accordance with the basic rule that a party who fails to question an adverse decision by not filing the proper remedy within the period prescribed by law for the purpose loses the right to do so.[29] As laid down in *Barrio Fiesta Restaurant v. Beronia*:[30]

> For purposes of determining its timeliness, a motion for reconsideration may properly be treated as an appeal. As a step to allow an inferior court to correct itself before review by a higher court, a motion for reconsideration must necessarily be filed within the period to appeal.

---

[29] *Lopez v. Court of Appeals*, G.R. Nos. 163959 & 177855, August 1, 2018.

[30] 789 Phil. 520, (2016).

When filed beyond such period, the motion for reconsideration *ipso facto* forecloses the right to appeal.[31]

Notice of the December 14, 2009 Resolution of the CTA First Division was properly served to petitioner.

Petitioner claims that the Notice of the CTA First Division Resolution dated December 14, 2009 was not properly served to the designated special prosecutors of the DOJ stated under Department Order No. 86 who would assist in the criminal case filed against Mallari and Wei-Neng, and that it should have been sent to BIR Regional Office in Manila and not to BIR Main Office.

We disagree.

It is settled that when a party is represented by counsel of record, service of orders and notices must be made upon his/her counsels or one of them. Otherwise, notice to the client and to any other lawyer, not the counsel of record, is not notice in law.[32]

Petitioner, through ACP Mendoza, was properly served notice of the December 14, 2009 Resolution of the CTA First Division.

A review of the records shows that the notices of the Resolutions dated October 7, November 10 and 26, 2009, respectively, were duly served on the Office of the City Prosecutor, through ACP Mendoza and now Court of Appeals Associate Justice Jhosep Y. Lopez, and the BIR Main Office, respectively. To note, ACP Mendoza was the same prosecutor who initiated the filing of the Information against Mallari and Wei-Neng for violation of the NIRC before the CTA. Interestingly, there is dearth of records showing that petitioner questioned the services of the notices that were made upon the

---

[31] *Id.* at 536 citing *Ponciano, Jr. v. Laguna Lake Development Authority*, 591 Phil. 194, 211 (2008) and *The Insular Life Assurance Co., Ltd. v. National Labor Relations Commission*, 240 Phil. 703, 711 (1987).

[32] *Cervantes v. City Service Corporation*, 784 Phil. 694, 699 (2016).

BIR Main Office and the named city prosecutors in the OCP with respect to the said Resolutions.

It is even more interesting that petitioner's alleged special counsels, Atty. Ramon B. Lorenzo of the BIR Manila and Atty. Mario A. Saldevar, filed an Entry of Appearance with Leave to Admit Attached Motion for Reconsideration only on January 18, 2010. Petitioner did not provide any valid justification as regards their belated entry of appearance. As special counsels, they should have been more vigilant in keeping track of the criminal case filed against Mallari and Wei-Neng as the State stands to suffer injury of failing to claim payment of taxes amounting to several millions of pesos. Hence, the services of notice made to the OCP through ACP Mendoza and the BIR Main Office, respectively, are deemed proper and are thus service of notice to petitioner itself.

The alleged negligence of special counsel, ACP Mendoza, binds petitioner.

Petitioner avers that assuming ACP Mendoza failed to duly file on time the motion for reconsideration, his act cannot be imputed against the State as it concerns the exercise of its inherent power to tax.

Its claim is unmeritorious.

We stress the settled rule that the negligence and mistakes of a counsel are binding on the client. This is so because a counsel, once retained, has the implied authority to do all acts necessary or, at least, incidental to the prosecution and management of the suit in behalf of his/her client, petitioner in this case. As such, any act or omission by counsel within the scope of the authority is regarded, in the eyes of the law, as the act or omission of the client himself/herself.[33]

The alleged negligence of ACP Mendoza binds petitioner.

There is evidence on record indicating that petitioner has been remiss in its duty to maintain communication with its

---

[33] *Bejarasco, Jr. v. People*, 656 Phil. 337, 340 (2011).

counsel from time to time so as to be aware of the progress of its case. Had petitioner exercised that standard of care "which an ordinarily prudent man bestows upon his business,"[34] then it would have become aware of the previous resolutions issued by the CTA First Division ordering ACP Mendoza to submit the required documents. It did not do so. This only shows that petitioner likewise failed in its duty to keep itself updated as to the status of its case. It should therefore suffer the consequences of the adverse judgment rendered against it. To impute negligence solely on the counsel would result to a never ending suit so long as new counsel could be employed who could allege and show that prior counsel had not been sufficiently diligent or experienced or learned.[35]

The December 14, 2009 Resolution of the CTA First Division has already become final.

Consequently, the CTA First Division December 14, 2009 Resolution had already attained finality because of petitioner's failure to file a Motion for Reconsideration within the 15-day reglementary period allowed under the CTA's revised internal rules.

We reiterate the settled pronouncement that "judgments or orders become final and executory by operation of law and not by judicial declaration. The finality of a judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected or no motion for reconsideration or new trial is filed. The court need not even pronounce the finality of the order as the same becomes final by operation of law."[36]

Thus, since the December 14, 2009 Resolution of the CTA First Division has already attained finality, it now "becomes

---

[34] *Tan v. Court of Appeals*, 524 Phil. 752, 760, citing *Leonardo v. S.T. Best, Inc.*, 466 Phil. 981, 989 (2004); See *Fernandez v. Tan Tiong Tick*, 111 Phil. 773, 779 (1961).

[35] *Id.*

[36] *Philippine Savings Bank v. Papa*, G.R. No. 200469, January 15, 2018.

immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land."[37] Although there are recognized exceptions[38] to this rule, petitioner failed to prove that the case falls under any of the instances.

Conclusion

All told, we find that the CTA *En Banc* did not commit any reversible error in upholding the CTA Special First Division Resolution dated March 17, 2010. The December 14, 2009 Resolution of the CTA First Division has already become final because of petitioner's belated filing of its Motion for Reconsideration. By virtue of the doctrine of immutability, the said Resolution can no longer be reviewed nor modified even it is meant to correct an erroneous conclusion of law and facts of the said tax court.

In view of the foregoing, there is no need to resolve the other issues raised by petitioner.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The December 14, 2009 Resolution of the Court of Tax Appeals, First Division, in C.T.A. Crim. Case No. O-151 had lapsed to finality and is already beyond our power to review.

SO ORDERED.

Reyes,[*] *A. Jr. (Acting Chairperson)* and *Inting, JJ.*, concur.

Perlas-Bernabe, J., on official business.

Zalameda,[**] *J.*, on official leave.

---

[37] *Chua v. Commission on Elections*, G.R. No. 236573, August 14, 2018, citing *Navarra v. Liongson*, 784 Phil. 942, 954 (2016).

[38] *Id.*

[*] Per Special Order No. 2750 dated November 27, 2019.

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

SECOND DIVISION

[G.R. No. 202676. December 4, 2019]

TELUS INTERNATIONAL PHILIPPINES, INC. and MICHAEL SY, *petitioners, vs.* **HARVEY DE GUZMAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT; QUESTIONS OF FACT CANNOT BE RAISED THEREIN; EXCEPTION; PRESENT IN CASE AT BAR. — We emphasize that questions of fact are generally beyond the domain of a Petition for Review under Rule 45 of the Rules of Court as it is limited to reviewing only questions of law. The rule, however, admits of exceptions wherein this Court expands the coverage of a Petition for Review to include a resolution of questions of fact. One of those exceptions is when the lower court committed misapprehension of facts or when relevant facts not disputed by the parties were overlooked which, if properly considered, would justify a different conclusion. Such exception finds application in the instant case considering that the findings of facts and conclusion by the NLRC differed from that of the Labor Arbiter as affirmed by the CA. This Court is thus compelled to take a second look at the facts of the case to determine whether the respondent was constructively dismissed or not.

2. POLITICAL LAW; LABOR; SECURITY OF TENURE; EMPLOYEES ARE GUARANTEED THAT THEY CAN ONLY BE TERMINATED FROM SERVICE FOR A JUST AND VALID CAUSE AND WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE AFTER DUE PROCESS. — Our labor laws and the Constitution afford security of tenure to employees so that one may have a reasonable expectation that they are secured in their work and that management prerogative, although unilaterally wielded, will not harm them. Employees are guaranteed that they can only be terminated from service for a just and valid cause and when supported by substantial evidence after due process.

3. ID.; ID.; RIGHTS OF EMPLOYERS; AN EMPLOYER HAS THE RIGHT TO REGULATE, ACCORDING TO HIS OWN DISCRETION AND JUDGMENT, ALL ASPECTS OF EMPLOYMENT, SUBJECT ONLY TO LIMITATIONS IMPOSED BY LABOR LAWS AND THE PRINCIPLES OF EQUITY AND SUBSTANTIAL JUSTICE. — [L]abor laws and the constitution recognize the right of the employers to regulate, according to his/her own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, the time, place and manner of work, work supervision, transfer of employees, lay-off of workers, and discipline, dismissal, and recall of employees. The only limitations to the exercise of this prerogative are those imposed by labor laws and the principles of equity and substantial justice.

4. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; FOSTERING A WORKING ENVIRONMENT THAT IS HOSTILE, DISCRIMINATORY, UNREASONABLE, AND INEQUITABLE THAT NATURALLY COMPELS AN EMPLOYEE TO GIVE UP HIS EMPLOYMENT THEREAT TO AVOID DIFFICULTIES JUST TO KEEP HIS EMPLOYMENT AMOUNTS TO CONSTRUCTIVE DISMISSAL. — [T]he series of actions done by Telus manifests that De Guzman was terminated in disguise and such actions amount to constructive dismissal. x x x Telus fostered a working environment that was hostile, discriminatory, unreasonable, and inequitable, which naturally compelled De Guzman to give up his employment thereat to avoid the difficulties he had to face just to keep his employment. The actions of Telus show that De Guzman was actually subsequently penalized with a much graver consequence than the supposed preventive suspension that he had undergone. If at all, Telus conveniently used "management prerogative" to mask its adverse actions, and washed its hands by conveniently claiming that it timely lifted the preventive suspension of De Guzman. It maintained that it did not at all penalize De Guzman, and in fact exonerated him and paid his salaries. It denied dismissing him, and further contended that it actually desired De Guzman to be reinstated to his former post but had to transfer him because of operation requirements. Telus handily turned the tables on De Guzman and made it appear that it was due to his hardheaded refusal that barred his reinstatement.

5. ID.; ID.; ID.; REINSTATEMENT; A MERE DESIRE TO REINSTATE AN EMPLOYEE TO HIS FORMER POSITION DOES NOT SATISFY THE REQUIREMENT OF THE LAW, FOR TO ALLOW IT, ESPECIALLY WHEN THERE IS NO BAR AT ALL TO ACTUAL REINSTATEMENT, AS SUBSTANTIAL COMPLIANCE TO THE NEED TO REVERT THE EMPLOYEE TO HIS FORMER POST WITHOUT DIMINUTION IN RANK OR IN PAY WOULD DEFEAT THE VERY ESSENCE OF THE CONSTITUTIONAL GUARANTEE OF SECURITY OF TENURE. — It should be noted that a mere desire to reinstate an employee to his/her former position does not satisfy the requirement of the law. Such cannot amount to substantial compliance on the part of the employer nor will it effectively negate the idea that the employee was not being dismissed after the period of preventive suspension. To allow "desire to reinstate," especially when there is no bar at all to actual reinstatement, as substantial compliance to the need to revert the employee to his/her former post without diminution in rank or in pay would defeat the very essence of the constitutional guarantee of security of tenure. Employees who had undergone preventive suspension and were found innocent of the offense charged would be at the mercy of the employer to be brought back to his/he former working post and status when in the first place, he/she had a vested right to the position from which he/she was ousted.

6. ID.; ID.; ID.; "FLOATING STATUS" OR TEMPORARY "OFF DETAIL" OF WORKERS; IMPLICITLY RECOGNIZED IN THE LABOR CODE AND IT REFERS TO SITUATIONS OF TEMPORARY RETRENCHMENT OR LAY-OFF DUE TO VALID OPERATION ISSUES, BUT IN ALL CASES THE TEMPORARY LAY-OFF WHEREIN THE EMPLOYEES CEASE TO WORK SHOULD NOT EXCEED SIX MONTHS. — Contrary to the stance of Telus, the floating status principle does not find application in the instant case. While it may be argued that the nature of the call center business is such that it is subject to seasonal peaks and troughs because of client pullouts, changes in clients' requirements and demands, and a myriad of other factors, the necessity to transfer De Guzman to another *practice/account* does not depend on Telus' third party-client/contracts. When the controversy arose, Telus had several clients in its roster to which it can easily assign De

Guzman as Quality Analyst without any hindrance. As x x x admitted by Telus, profiling interviews were not a condition precedent to the transfer. Moreover, as established before the Labor Arbiter, after the lifting of the preventive suspension of De Guzman by Telus, the company had several job vacancy postings for the position of Quality Analysts, the very position previously occupied by De Guzman. While there is no specific provision in the Labor Code which governs the "floating status" or temporary "off detail" of workers employed by agencies, it is implicitly recognized in Article 301 of the Labor Code which speaks of situations of temporary retrenchment or lay-off due to valid operation issues. x x x This situation applies not only in security services but also in other industries. Relevantly, it has been held that "[i]n all cases however, the temporary lay-off wherein the employees cease to work should not exceed six months, in consonance with Article 301 of the Labor Code. After six months, the employees should either be recalled to work or permanently retrenched following the requirements of the law. Otherwise, the employees are considered as constructively dismissed from work and the agency can be held liable for such dismissal." Moreover, this Court has held that placing employees in a valid "floating status" presupposes that there are more employees than work.

7. ID.; ID.; ID.; CONSTRUCTIVE DISMISSAL; IN CASE OF CONSTRUCTIVE DISMISSAL, THE EMPLOYEE IS ENTITLED TO FULL BACK WAGES, INCLUSIVE OF ALLOWANCES, AND OTHER BENEFITS OR THEIR MONETARY EQUIVALENT, AS WELL AS SEPARATION PAY IN LIEU OF REINSTATEMENT IF THE SAME IS NO LONGER FEASIBLE. — [A]n award of indemnity in favor of De Guzman is warranted. We have held that in case of constructive dismissal, the employee is entitled to full back wages, inclusive of allowances, and other benefits or their monetary equivalent, as well as separation pay in lieu of reinstatement if the same is no longer feasible. Finally, interest at the rate of twelve percent (12%) *per annum* must be imposed from the time his salary and other benefits were withheld until June 30, 2013, and at the rate of six percent (6%) *per annum* from July 1, 2013 until the date of finality of this judgment. All these monetary awards shall earn interest at six percent (6%) *per annum* from the date of finality of this judgment until full payment.

APPEARANCES OF COUNSEL

Jimenez Baroque & Salazar for petitioners.
De Pedro Law Office for respondent.

D E C I S I O N

HERNANDO, *J.*:

Before Us is a Petition for Review on *Certiorari*[1] filed by petitioner Telus International Philippines, Inc. (Telus) and Michael Sy assailing the March 15, 2012 Decision[2] and the July 9, 2012 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 114574 which reversed the ruling of the National Labor Relations Commission[4] (NLRC) and reinstated the ruling of the Labor Arbiter finding respondent Harvey de Guzman constructively dismissed.[5]

Factual Antecedents

Petitioners' Version

Telus asserted that it first hired respondent Harvey De Guzman (De Guzman) sometime in September 2004 as Inbound Sales Associate.[6] His last post prior to the controversy was Senior Quality Analyst for DELL After Point of Sale (DELL, APoS).[7]

On August 2, 2008, Telus received an escalation complaint[8] from Jeanelyn Flores (Flores), Team Captain of DELL APoS,

---

[1] *Rollo,* pp. 10-40.

[2] *Id.* at 42-55; penned by Associate Justice Manuel Barrios and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Apolinario D. Bruselas, Jr.

[3] *Id.* at 57-58; penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Apolinario D. Bruselas, Jr.

[4] CA *rollo,* pp. 44-58.

[5] *Id.* at 60-75.

[6] *Id.* at 96-100.

[7] *Id.* at 106-107.

[8] *Id.* at 135.

charging De Guzman of disrespect and ridicule towards a person.

The escalation complaint alleged that on July 31, 2008, Flores, while in the process of checking the work progress of all the agents to determine if coaching was required to improve their performance, sent a chat message to Quality Analysts (QA) directing them to do coaching. She messaged: "*QAs there are tons of avails, do your coaching.*"[9]

De Guzman who was among the QAs who received the message, replied: "*that is good, you can now do your huddle for your team.*"[10] Flores was offended when the other QAs exited the conversation and by De Guzman's reply as she felt that he was implying that she has no time for her team.

Later on, she chanced upon the August 1, 2008 IP switch conversation between De Guzman and a fellow agent, Rally Boy Sy (Rally Boy), wherein De Guzman made disrespectful remarks against her,[11] thus:

rallyboy.sy@chat.ambergris.prv [rallyboy]: guys
[rallyboy]: *dami* avail
[rallyboy]: do your coaching
harvey.deguzman / QAA E&A 10th Raffles QA Lab ext 3580
[harveydeguzman]: that is good
[harveydeguzman]: you can now do a huddle for your team
[harveydeguzman]: hahaha
[rallyboy]: hahaha
[rallyboy]: *sabihin ko nalang* avail you face
harveydeguzman:hahaha
[rallyboy]: *may* upload *pa kami?*
harveydeguzman: wait *lang*
[rallyboy]: *tang ina ah gugulpihin ko talaga yan*
[harveydeguzman]: *di pa maka gawa si nino*[12]

---

[9] *Id.* at 45.

[10] *Id.* at 135.

[11] *Rollo,* pp. 15-16.

[12] CA *rollo,* p. 211.

Acting on the complaint of Flores, Telus, on August 4, 2008, issued a Due Process form to De Guzman on charges of "[i]nsulting or showing discourtesy, disrespect, or arrogance towards superiors or co-team members [and a]busive behavior language which is outside the bounds of morality"[13] in violation of Section 2, Disorderly Conduct, Items 60 and 61 of Telus' Code of Conduct. At the same time, De Guzman was placed on preventive suspension and was directed to submit a written explanation to answer the charges on or before August 7, 2008. De Guzman complied and submitted his written explanation.[14]

On August 11, 2008, Telus conducted an administrative hearing on the matter. Upon termination of the investigation, Telus found De Guzman's not liable for the offenses charged and did not impose any disciplinary sanction against him. Accordingly, De Guzman's preventive suspension was lifted and he was fully compensated during the period.[15]

Telus, however, decided to remove De Guzman from his current designation and transfer him to another *practice*. On August 20, 2008, the Director of Contact Center Operation confirmed and requested the transfer of De Guzman citing operations reasons.[16] The day after, De Guzman applied for paid vacation leave from August 21 to September 26, 2008 or 26 days citing "Personal Reason[s]."[17]

Meanwhile, Telus scheduled De Guzman for a profile interview on September 16, 2008 which coincided with his leave of absence. On the said date, De Guzman notified his supervisor that he will not be able to attend the interview. When asked for the reason of his inability to attend, De Guzman failed to give an answer.[18]

---

[13] *Id.* at 102.

[14] *Id.* at 103.

[15] *Id.* at 213.

[16] *Id.* at 214.

[17] *Id.* at 215.

[18] *Id.* at 216-217.

Telus once again tried to schedule De Guzman for a profile interview on October 13, 2008 but he again failed to show up or even acknowledge such scheduled interview.[19]

Hence, Telus sent De Guzman a Return to Work Order dated October 13, 2008.[20] Later on, Telus found out that as early as September, 15, 2008, De Guzman already filed a complaint for constructive dismissal with monetary claims before the NLRC notwithstanding that he was still on paid vacation leave and was receiving all benefits during the said period.[21] Telus claimed that De Guzman was not at all dismissed from employment and was in fact scheduled for profile interviews to facilitate his transfer. Considering, however, his refusal to report for the interviews, he was not given any account and was placed on "floating status" allegedly because there was yet no available account for him.[22]

Respondent's Version

De Guzman, on the other hand, averred that he was a regular employee in good standing of Telus and had been with the company for the last four years since 2004. He was hired as a call center agent and eventually rose from the ranks; he was promoted to Junior Quality Analyst and, later on, to his last post as Senior Quality Analyst (SQA).[23]

As SQA, he supervised two teams composed of six agents. He was tasked to monitor and evaluate the calls taken by the agents and to ensure that the quality of handling the calls were met. He was required to make a report and submit the same to the Quality Analyst Supervisor, his immediate superior.[24]

---

[19] *Id.* at 220.

[20] *Id.* at 221.

[21] *Id.* at 18.

[22] *Id.* at 48.

[23] *Id.* at 9.

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

On July 31, 2008, during his night shift, De Guzman received from Flores an office chat message through the intranet system that can be shared and accessed by those in the company. The message states: *"QAs there are tons of avails, do your coaching."* De Guzman thus replied *"That's good, you can do a huddle for your team."*[25]

"QA" in call center parlance translates to Quality Analyst and "avails" means a decrease in the volume of calls received by agents and they may be coached and rated on a specific call for their improvement. Meanwhile, "Coaching/Huddle" means informing the agents on the quality of their performance during a telephone conversation and teaching them how to rectify their errors.[26]

Notably, Flores, as Team Captain, cannot order QAs to do coaching as her authority was limited only to her specific team. Hence, De Guzman excused himself by adding: *"Got to go."* No further messages were exchanged between the two of them.[27]

The following day, August 1, 2008, Rally Boy, a Junior Quality Analyst and a friend, initiated an exchange of messages via the same office intranet messaging. Since Rally Boy and De Guzman utilized the office intranet messaging system, Flores chanced upon the conversation which became the subject of her escalation complaint. She thus sent De Guzman an excerpt of the conversation and added "NICE!!!!!!". De Guzman no longer replied to the message.[28] The excerpt reads:

rallyboy.sy@chat.ambergris.prv [rallyboy]: guys
[rallyboy]: *dami* avail
[rallyboy]: do your coaching
harvey.deguzman I QAA E&A 10th Raffles QA Lab ext 3580
[harveydeguzman]: that is good
[harveydeguzman]: you can now do huddle for your team

---

[25] *Id.* at 10.

[26] *Id.*

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

[28] *Id.* at 12.

[harveydeguzman]: hahaha
[rallyboy]: hahaha
[rallyboy]: *sabihin ko nalang* avail you face
harveydeguzman:hahaha

NICE!!!!!!!!!!!!!!!!!!!!!!!![29]

On August 5, 2008, De Guzman received a call from his immediate QA Supervisor, Alfelyn "Joey" Caspellan (Joey), asking him to report to Michael Sy (Sy), Telus' Quality Analyst Manager. When he went to Sy's office, Sy gave him a copy of the Incident Report for the alleged issue that transpired on August 1, 2008. He was directed to give an answer on or before August 7, 2008. He was also informed right then and there that he was placed on indefinite preventive suspension effective immediately.[30]

De Guzman was shocked that he was being penalized for the exchange of messages he shared with Rally Boy without first affording him any opportunity to give his side of the story. To him, there was nothing wrong with his actions. It did not constitute any company violation to even merit an immediate preventive suspension.[31]

On August 7, 2008, De Guzman submitted his Reply[32] insisting that he did not in any way refer to Flores and is remark "you can now do your huddle for your team" was directed towards Rally's team's accountability. He also questioned his preventive suspension since based on the policies set in the company handbook, the action taken by the company was uncalled for. The relevant portion of his reply reads:

On the employee handbook, Sec (2) 60-61 both states that the disciplinary action are "Written Warning and may lead to Termination". Furthermore, on page 2 of the said document, it states that the rationale

---

[29] *Id.* at 211.

[30] *Id.* at 12.

[31] *Id.* at 12-13.

[32] *Id.* at 103.

for imposing preventive suspension is that, "the continued service of the team member poses an imminent threat to the lives and properties of the Company, his family and representatives as well as the offender's co-team members". For this reason may we ask for a written explanation why we are put in preventive suspension. As a Telus employee we believe that we also deserve fair due process. We can't see any reason why our stay in the company will bring any threat to our team members, co-workers nor the company because we don't have anything against any person in the company. Again the accusation is based on their assumptions.[33]

Feeling aggrieved, De Guzman filed a complaint before the Department of Labor and Employment (DOLE) for illegal suspension.[34] DOLE summoned Telus and De Guzman to come up with an amicable settlement, but the same failed. On August 17, 2008, after the termination of the proceedings in the DOLE, De Guzman received a text message from Joey telling him to report to Sy to know the status of his preventive suspension.[35]

On the evening of August 20, 2008, De Guzman, together with Rally Boy, went to Sy's office. Thereat, they were told that their suspension was lifted and that they were not liable for the incident that transpired on August 1, 2008. Nonetheless, they will be transferred to a different account and they were to report the next day in Market Market, BGC Branch.[36]

Thinking that everything was in order, they eagerly reported to their night shift schedule in Market Market. They waited, as per advise of Sy, for Director Charlene Briones. However, at around one o'clock in the morning they received a text message from Joey asking them to report to the Ortigas office instead. Despite the inconvenience, they left Market Market and went to the Ortigas office. Thereat, they were told by Joey that Sy made a mistake in instructing them to report for work and that Sy would still need to find an account for them.

---

[33] *Id.* at 158.

[34] *Id.* at 104.

[35] *Id.* at 14.

[36] *Id.*

Hence, they did not have any work yet despite the lifting of their suspension.[37]

De Guzman was then forced to apply for a vacation leave, while Sy was still looking for an account for them. In his desire to keep his job and to receive his salary, he exhausted his earned vacation leaves and used up 26 days from August 22 to September 26, 2008.[38]

On September 28, 2008, after all his vacation leaves were spent and a month after his preventive suspension, De Guzman inquired from Sy when he can report for work. He was told that he would still report to him but since there was no endorsement yet for another program, he was not yet required to return to work. As it is, he was considered as a "floater" and he will not get paid unless his floating status has been lifted. De Guzman was devastated and was surprised that he was suddenly considered as a "floater."[39]

On October 10, 2008, De Guzman received a message from Sy that there was a temporary endorsement in the Quality Analyst Core and he should report on October 11, 2008 for a profiling interview and that it was necessary to pass the same in order for him to get the position. De Guzman asked Sy why he needed to undergo such interview considering that he was not a new hire or a job applicant. Sy responded that passing the interview is a must as he was already considered a "floater." He was told that during his "floating" status he will not be compensated.[40]

Believing that he need not undergo such process and that he must be reinstated to his former position immediately, De Guzman did not report for the interviews. He alleged that he was already considered a regular employee having been with

---

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

[38] *Id.* at 15.

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

[40] *Id.*

the company for four years with an impeccable record and even promoted several times prior to such incident.[41]

The foregoing series of events led to De Guzman's filing of a complaint before the NLRC for constructive dismissal, money claims and damages against petitioners.[42]

The Ruling of the Labor Arbiter

The Labor Arbiter, in his Decision[43] dated June 30, 2009, adjudged Telus guilty of constructively dismissing De Guzman. The dispositive portion of the Decision reads:

> **WHEREFORE,** the foregoing premises considered, judgment is hereby rendered finding the respondents liable for illegally (constructively) dismissing the complainant. They are hereby ORDERED to pay, jointly and severally, the complainant his *separation pay, full backwages, moral and exemplary damages, and attorney's fees.*
>
> A detailed computation of the monetary awards, as of the date of this **Decision,** is embodied in Annex "A" which is hereby made an integral part hereof.
>
> All other claims of the parties are DENIED for lack of factual and legal bases.
>
> **SO ORDERED.**[44] (Emphasis and italics in the original.)

The Labor Arbiter held that since De Guzman was not immediately reinstated to his former position after his preventive suspension despite a finding that he was not guilty of the offense charged, coupled with the fact that he was transferred and had to undergo and pass the profile interview before he may be given a new account, conclusively supported the finding of constructive dismissal on the part of Telus.[45]

---

[41] *Id.* at 17.

[42] *Id.* at 106-109.

[43] *Id.* at 60-74.

[44] *Id.* at 74.

[45] *Id.* at 70-72.

Since there was already strained relations between the parties foreclosing the possibility of reinstatement, De Guzman was adjudged entitled to separation pay in lieu of reinstatement.[46]

Aggrieved by the Decision of the Labor Arbiter, Telus filed its Memorandum of Appeal before the NLRC.[47]

The Ruling of the NLRC

Upon review, the NLRC overturned the ruling of the Labor Arbiter.[48] The NLRC found that De Guzman failed to prove by substantial evidence that he was constructively dismissed. As borne out by the records, there was no termination that transpired. Telus was planning to reinstate De Guzman to his former position as QA Analyst after his preventive suspension. Hence, for all intents and purposes, De Guzman was still connected to Telus after the lifting of the suspension order.[49]

Contrary to the findings of the Labor Arbiter, it was De Guzman who ceased working with Telus after he opted not to report after the expiration of his vacation leave and because of his refusal to undergo the profiling interview for his new account/*practice.* Telus' decision to transfer him to another account and to require him to undergo profile interviews were valid exercises of management prerogative.

Considering too that the transfer was not for a lower rank, it was indeed a transfer in good faith. Moreover, Telus' justification of "operations purposes" in order to avoid any untoward incident between De Guzman and Flores was acceptable. The fact that such move to transfer resulted in De Guzman being a "floater" or on "floating status" was not a form of discrimination on the part of Telus.[50]

---

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

[47] *Id.* at 260-290.

[48] *Id.* at 58.

[49] *Id.* at 52.

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

The NLRC noted that in Telus' line of business, the availability of assignment of personnel depends on contracts entered by it with its client-third parties. Hence, some agents, like De Guzman, may be sidelined temporarily until such time that he is assigned to a new account. The same can be compared to being "off-detail" or "waiting to be posted" which are allowed by labor laws. All in all, there was no finding of constructive dismissal but a mere exercise of management prerogative.[51]

Thus, the dispositive portion of the January 22, 2010 Decision of the NLRC states:

> **WHEREFORE,** in view of the foregoing disquisitions, the appeal is **GRANTED.**
>
> Accordingly, the Decision dated 30 June 2009 is **REVERSED** and **SET ASIDE** and a new one is entered **DISMISSING** the complaint for illegal suspension, illegal dismissal and money claims for lack of merit.
>
> **SO ORDERED**.[52] (Emphasis in the original.)

Unsatisfied with the ruling of the NLRC, De Guzman filed a Motion for Reconsideration[53] but it was denied in the NLRC's Resolution[54] dated March 24, 2010. Thus, he filed a Petition for *Certiorari*[55] before the Court of Appeals.

The Ruling of the Court of Appeals

In its assailed judgment, the CA found that the NLRC committed grave abuse of discretion when it adjudged Telus not guilty of illegally dismissing De Guzman. It agreed with the findings of the Labor Arbiter that indeed De Guzman was constructively dismissed. The appellate court ratiocinated that the failure of Telus to immediately reinstate De Guzman to his former position after his exoneration marked his constructive

---

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

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

[53] *Id.* at 80-95.

[54] *Id*. at 77-79.

[55] *Id.* at 3-42.

dismissal. Worse, he was placed on floating status which was a discriminatory act that buttressed the act of dismissal by Telus.[56]

The series of harsh and unfair acts of Telus towards De Guzman were the following: 1) putting De Guzman on preventive suspension and failing to reinstate him to his former position after exonerating him; 2) initially advising De Guzman to report for work in Market Market and then taking it back as there was no account yet available to him; 3) putting him on floating status after all his leave credits were consumed and after a month from his exoneration; and 4) requiring him to undergo profiling interview and passing it to gain a new account clearly made his employment condition uncongenial, averse and intolerable. The prevailing discriminatory and hostile working environment hoisted by Telus against De Guzman clearly justified De Guzman's refusal to attend the profile interviews as the foregoing constituted constructive dismissal.[57]

De Guzman cannot also be considered to have abandoned his job as his acts before and after the cessation of work, especially the filing of the illegal dismissal complaint negated the same.[58]

In fine, the CA found that De Guzman was constructively dismissed. The dispositive portion of the judgment reads:

WHEREFORE, the foregoing considered, the petition is **GRANTED.** The assailed Decision dated 22 January 2010 and Resolution dated 24 March 2010 of the NLRC are hereby **REVERSED** and **SET ASIDE.** The Decision dated 30 June 2009 of Labor Arbiter Ligerio V. Ancheta is **REINSTATED.** The case is **REMANDED** to the Labor Arbiter for the recomputation of the total monetary benefits awarded and due to the petitioner in accordance with the decision.

SO ORDERED.[59]

---

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

[57] *Id.*

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

[59] *Id.* at 54.

Unsatisfied with the conclusion of the CA, Telus filed its Motion for Reconsideration but it was denied.[60] Hence, this Petition for Review[61] on *Certiorari* before this Court.

Our Ruling

The instant Petition for Review on *Certiorari* is **denied.**

Petitioner Telus interposes that the CA erred in taking into account the alleged inconveniences caused to De Guzman brought about by Telus' management's actions without considering the primordial issue of whether or not the company had the legal right to implement such actions. It argues that Telus' acts of transferring De Guzman to another *practice* or account, of requiring him to undergo profile interviews, and placing him on floating status pending his transfer to another *practice* or account, were all made in the exercise of management prerogatives. Telus merely exercised its rights and so, any inconvenience or injury that De Guzman may have suffered is *damnum absque injuria* that cannot legally give rise to a cause of action for constructive dismissal.[62]

Telus also submits that the CA erred in admitting the Petition for *Certiorari* filed therein considering that the accompanying Verification and Certification of Non-Forum shopping was defective which merits the outright dismissal of the Petition.

The arguments raised by Telus deserve scant consideration.

Exceptions to Questions of Law

At this juncture, We emphasize that questions of fact are generally beyond the domain of a Petition for Review under Rule 45 of the Rules of Court as it is limited to reviewing only questions of law. The rule, however, admits of exceptions wherein this Court expands the coverage of a Petition for Review to include a resolution of questions of fact. One of those exceptions

---

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

[61] *Id.* at 10-40.

[62] *Id.* at 20-21.

is when the lower court committed misapprehension of facts or when relevant facts not disputed by the parties were overlooked which, if properly considered, would justify a different conclusion.[63] Such exception finds application in the instant case considering that the findings of facts and conclusion by the NLRC differed from that of the Labor Arbiter as affirmed by the CA. This Court is thus compelled to take a second look at the facts of the case to determine whether the respondent was constructively dismissed or not.

Constructive Dismissal against Security of Tenure

Our labor laws and the Constitution afford security of tenure to employees that one may have a reasonable expectation that they are secured in their work and that management prerogative, although unilaterally wielded, will not harm them.[64] Employees are guaranteed that they can only be terminated from service for a just an valid cause and when supported by substantial evidence after due process.

Similarly, labor laws and the Constitution recognize the right of the employers to regulate, according to his/her own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, the time, place and manner of work, work supervision, transfer of employees, lay-off of workers, and discipline, dismissal, and recall of employees. The only limitations to the exercise of this prerogative are those imposed by labor laws and the principles of equity and substantial justice.[65]

---

[63] *Ico v. Systems Technology Institute, Inc.,* 738 Phil. 641, 665-666 (2014).

[64] See Article XVIII, Section 3 of the 1987 Constitution and Art. 3 of the Labor Code: Art. 3. *Declaration of basic policy*. The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.

[65] See *Philippine Span Asia Carriers Corporation v. Pelayo,* G.R. No. 212003, February 28, 2018, 856 SCRA 583.

After a judicious review of the acts of the case, this Court finds that De Guzman's security of tenure was disregarded and his employment was illegally terminated by Telus. The series of acts by the company seriously flouted De Guzman's right as a tenure employee.

In *Sumifru Philippines Corporation v. Baya*,[66] this Court explained what constitutes constructive dismissal:

> **"Constructive dismissal exists where there is cessation of work, because 'continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay' and other benefits. Aptly called a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not, constructive dismissal may, likewise, exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment." *In Peckson v. Robinsons Supermarket Corp.*, the Court held that the burden is on the employer to prove that the transfer or demotion of an employee was a valid exercise of management prerogative and was not a mere subterfuge to get rid of an employee; failing in which, the employer will be found liable for constructive dismissal,** *viz.*:
>
> > **In case of a constructive dismissal, the employer has the burden of proving that the transfer and demotion of an employee are for valid and legitimate grounds such as genuine business necessity. Particularly, for a transfer not to be considered a constructive dismissal, the employer must be able to show that such transfer is not unreasonable, inconvenient, or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits.** Failure of the employer to overcome this burden of proof, the employee's demotion shall no doubt be tantamount to unlawful constructive dismissal. (Emphasis Ours, citations omitted)

Based on the foregoing, the series of actions done by Telus manifests that De Guzman was terminated in disguise and such actions amount to constructive dismissal. We cite with approval the findings of the appellate court, to wit:

---

[66] 808 Phil. 365, 644 (2017).

Furthermore, it can easily be discerned that the series of harsh and unfair acts of the private respondents have made the employment condition of petitioner uncongenial, averse, and intolerable. ***First,*** after finding petitioner not liable for the offense charged, respondents, did not immediately reinstate petitioner to his former position. ***Second,*** private respondents informed petitioner that he was being transferred to a new account and directed to report to the Telus' branch office at Market, Market, Global City, Taguig City. However, after a few hours, respondents asked petitioner to just go home and wait since they needed time to search for his account. While waiting for the promised new account, petitioner was compelled to utilize his leave credits. ***Third,*** after his leave credits were consumed, private respondents placed petitioner on a floating status. It bears stressing that after more than one (1) month from his exoneration and the lifting of the suspension, private respondents have not assigned petitioner a new account. ***Finally,*** respondents required petitioner to undergo a profile interview supposedly to determine which account would he would best fit in. In this connection, while it was stressed that such profile interview was not a pre-qualification requirement for employment, petitioner nonetheless received a text message from his manager, respondent Michael Sy, informing him that he should pass the interview in order to be endorsed to a new account.[67]

The conclusion is all too clear that Telus fostered a working environment that was hostile, discriminatory, unreasonable, and inequitable that naturally compelled De Guzman to give up his employment thereat to avoid the difficulties he had to face just to keep his employment. The actions of Telus show that De Guzman was actually subsequently penalized with a much graver consequence than the supposed preventive suspension that he had undergone.

If at all, Telus conveniently used "management prerogative" to mask its adverse actions and washed its hands by conveniently claiming that it timely lifted the preventive suspension of De Guzman. It maintained that it did not at all penalize De Guzman and in fact exonerated him and paid his salaries. It denied dismissing him and further contended that it actually desired De Guzman to be reinstated to his former post but had to transfer

---

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

him because of operation requirements. Telus handily turned the tables on De Guzman and made it appear that it was due to his hardheaded refusal that barred his reinstatement.[68]

It should be noted that a mere desire to reinstate an employee to his/her former position does not satisfy the requirement of the law. Such cannot amount to substantial compliance on the part of the employer nor will it effectively negate the idea that the employee was not being dismissed after the period of preventive suspension. To allow "desire to reinstate," especially when there is no bar at all to actual reinstatement, as substantial compliance to the need to revert the employee to his/her former post without diminution in rank or in pay would defeat the very essence of the constitutional guarantee of security of tenure. Employees who had undergone preventive suspension and were found innocent of the offense charged would be at the mercy of the employer to be brought back to his/her former working post and status when in the first place, he/she had a vested right to the position from which he/she was ousted.

Validity of Transfer and Floating Status vis-a-vis Management Prerogative

Prescinding from the above, this Court cannot likewise subscribe to the argument of the company that placing De Guzman on "floating status" was perfectly acceptable under the labor laws. Telus compared De Guzman's circumstances to that of security guard on "off detail" and insists that the call center industry is on all fours with that of a security agency or bus companies to their drivers wherein placing the employees on floating status without salaries or financial benefit for an indefinite time is a valid recourse so long as it does not exceed six months.[69]

Contrary to the stance of Telus, the floating status principle does not find application in the instant case. While it may be

---

[68] *Id.* at 26-30.

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

argued that the nature of the call center business is such that it is subject to seasonal peaks and troughs because of client pullouts, changes in clients' requirements and demands, and a myriad other factors,[70] still, the necessity to transfer De Guzman to another *practice/*account does not depend on Telus' third party-client/contracts. When the controversy arose, Telus had several clients in its roster to which it can easily assign De Guzman as Quality Analyst without any hindrance. As earlier admitted by Telus, profiling interviews were not a condition precedent to the transfer. Moreover, as established before the Labor Arbiter, after the lifting of the preventive suspension of De Guzman by Telus, the company had several job vacancy postings for the position of Quality Analysts, the very position previously occupied by De Guzman.[71]

While there is no specific provision in the Labor Code which governs the "floating status" or temporary "off detail" of workers employed by agencies, it is implicitly recognized in Article 301 of the Labor Code which speaks of situations of temporary retrenchment or lay-off due to valid operation issues.[72]

Article 301 (formerly Article 286) of the Labor Code, provides:

ART. 301. [286] *When Employment not Deemed Terminated.* The bonafide suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

---

[70] Temporary lay-off: A concern in call centers, September 26, 2012, Joseph D. Angel, Business World Online. Website:http://www.bworldonline.com/content.php?section=Opinion&title=Temporary%20layoff:%20A%20concern%20in%20call%20centers&id=59070. Last visited November 6, 2019.

[71] CA *rollo,* p. 136.

[72] *Excocet Security and Allied Services Corp. v. Serrano,* 744 Phil. 403, 412 (2014).

This situation applies not only in security services but also in other industries. Relevantly, it has been held that "[i]n all cases however, the temporary lay-off wherein the employees cease to work should not exceed six months, in consonance with Article 301 of the Labor Code. After six months, the employees should either be recalled to work or permanently retrenched following the requirements of the law. Otherwise, the employees are considered as constructively dismissed from work and the agency can be held liable for such dismissal."[73]

Moreover, this Court has held that placing employees in a valid "floating status" presupposes that there are more employees than work. In *ICT Marketing Services, Inc. v. Sales,*[74] We elaborated on the concept of "floating status," to wit:

> **In placing respondent on "floating status," petitioner further acted arbitrarily and unfairly, making life unbearable for her. In so doing, it treated respondent as if she were a new hire; it improperly disregarded her experience, status, performance, and achievements in the company; and most importantly, respondent was illegally deprived of her salary and other emoluments.** For her single absence during training for the Bank of America account, she was refused certification, and as a result, she was placed on floating status and her salary was withheld. **Clearly, this was an act of discrimination and unfairness considering that she was not an inexperienced new hire, but a promising and award-winning employee who was more than eager to succeed within the company.** This conclusion is not totally baseless, and is rooted in her outstanding performance at the Washington Mutual account and her complaint regarding the incentives, which only proves her zeal, positive work attitude, and drive to achieve financial success through hard work. But instead of rewarding her, petitioner unduly punished her; instead of inspiring her, petitioner dashed her hopes and dreams; in return for her industry, idealism, positive outlook and fervor, petitioner left her with a legacy of, and awful examples in, office politicking, intrigue, and internecine schemes.

---

[73] *Superior Maintenance Services, Inc. v. Bermeo,* G.R. No. 203185, December 5, 2018.

[74] 769 Phil. 498, 521-523 (2015).

In effect, respondent's transfer to the Bank of America account was not only unreasonable, unfair, inconvenient, and prejudicial to her; it was effectively a demotion in rank and diminution of her salaries, privileges and other benefits. She was unfairly treated as a new hire, and eventually her salaries, privileges and other benefits were withheld when petitioner refused to certify her and instead placed her on floating status. Far from being an "accommodation" as petitioner repeatedly insists, respondent became the victim of a series of illegal punitive measures inflicted upon her by the former.

Besides, as correctly argued by respondent, there is no basis to place her on "floating status" in the first place since petitioner continued to hire new CSRs/TSRs during the period, as shown by its paid advertisements and placements in leading newspapers seeking to hire new CSRs/TSRs and other employees. True enough, the placing of an employee on "floating status" presupposes, among others, that there is less work than there are employees; but if petitioner continued to hire new CSRs/TSRs, then surely there is a surplus of work available for its existing employees: there is no need at all to place respondent on floating status. If any, respondent – with her experience, knowledge, familiarity with the workings of the company, and achievements – should be the first to be given work or posted with new clients/accounts, and not new hires who have no experience working for petitioner or who have no related experience at all. Once more, experience, common sense, and logic go against the position of petitioner.

The CA could not be more correct in its pronouncement that placing an employee on floating status presents dire consequences for him or her, occasioned by the withholding of wages and benefits while he or she is not reinstated. To restate what the appellate court cited, "[d]ue to the grim economic consequences to the employee, the employer should bear the burden of proving that there are no posts available to which the employee temporarily out of work can be assigned." However, petitioner has failed miserably in this regard. (Emphasis ours, citations omitted)

In the instant case, Telus did not provide any valid justification or presented proof that there was indeed a deficit of account that bars the immediate transfer of De Guzman or that the company was sustaining losses that would justify placing De Guzman on floating status. Hence, the unwarranted acts of Telus evidently constitute proof of the constructive dismissal of De Guzman.

To say that Telus merely exercised its rights and that any inconvenience or injury that De Guzman may have suffered resulted merely in *damnum absque injuria* which cannot legally give rise to a cause of action for constructive dismissal, is abhorrent considering the fact that his being placed on a "floating status" without valid reasons violated his security of tenure and resulted in unfavorable economic consequences to De Guzman.

Validity of Verification and Certification of Non-Forum Shopping

Telus insists that De Guzman did not submit a duly executed Verification and Certification of Non-Forum Shopping when he filed his Petition for *Certiorari* before the CA. It alleged that his signature therein was forged and the same may easily be ascertained when compared with his signatures in the previous pleadings. Telus insisted that this issue was raised before the appellate court but it was not passed upon. Hence, the Petition for *Certiorari* ought to have been dismissed outright. Notably, up until now, De Guzman refused to acknowledge or validate the authorship of the assailed signature. Due to the foregoing, Telus insists that it was deprived of due process.[75]

In *Traveño v. Bobongon Banana Growers Multi-Purpose Cooperative,*[76] the Court restated the jurisprudence pronouncements respecting non-compliance with the requirements on, or submission of defective, verification and certification against forum shopping:

1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and noncompliance with the requirement on or submission of defective certification against forum shopping.

2) **As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The Court may order its submission or correction**

---

[75] *Rollo,* pp. 591-593.

[76] 614 Phil. 222, 231-232 (2009).

or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.

3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.

4) **As to certification against forum shopping non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."**

5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioner's share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.

6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf. (Emphasis Ours)

The issue as to alleged defective Verification and Certification of Non- Forum Shopping appended to the Petition for *Certiorari* filed before the appellate court is rendered moot given the full resolution of the said Petition. We find that said court properly dispensed with the issue of the alleged defective Verification and Certification of Non-Forum Shopping given the overriding merits of the case. Indeed per jurisprudence, strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.

Moreover, We agree with De Guzman that a mere allegation of forgery will not suffice to declare the petition as defective.

It is De Guzman's own lookout to assail the alleged forgery and as manifested, he is willing to attest to the authenticity of the signature if so required.[77]

Pecuniary Awards

Finally, with the foregoing pronouncements, an award of indemnity in favor of De Guzman is warranted. We have held that in case of constructive dismissal, the employee is entitled to full back wages, inclusive of allowances, and other benefits or their monetary equivalent, as well as separation pay in lieu of reinstatement if the same is no longer feasible.[78] Finally, interest at the rate of twelve percent (12%) per *annum* must be imposed from the time his salary and other benefits were withheld until June 30, 2013, and at the rate of six percent (6%) per *annum* from July 1, 2013 until the date of finality of this judgment. All these monetary awards shall earn interest at six percent (6%) per *annum* from the date of finality of this judgment until full payment.[79]

All told, this Court finds no reason to overturn the ruling of the CA as to its finding that Harvey De Guzman was constructively dismissed. All the substantive and procedural issues raised in this Petition were squarely addressed in the assailed judgment in accord with law and existing jurisprudence and with due regard to extant facts and evidence.

WHEREFORE, the Petition for Review on *Certiorari* is hereby **DENIED** for lack of merit. The March 15, 2012 Decision of the Court of Appeals in CA-G.R. SP No. 114574 is hereby **AFFIRIMED** with **MODIFICATION** in that petitioner Telus International Philippines, Inc. and Michael Sy are ordered to **PAY** respondent Harvey De Guzman the following:

1) Full backwages, inclusive of allowances and all other legally earned and accrued benefits from the time the same were withheld until finality of this Decision;

---

[77] *Rollo,* pp. 573-575.

[78] *ICT Marketing Services, Inc. v. Sales, supra* note 74, at 523-524.

[79] See *Nacar v. Gallery Frames,* 716 Phil. 267, 278-283 (2013).

2) Separation pay in lieu of reinstatement equivalent to one (1) month salary for every year of service; and

3) Moral and exemplary damages in the amount of ₱25,000.00 each; and

4) Attorney's fees equivalent to ten percent (10%) of the total monetary award.

Moreover, the total monetary award shall **EARN** legal interest at twelve percent (12%) per *annum* from the time his salary and other benefits were withheld until June 30, 2013 and at the rate of six percent (6%) per *annum* from July 1, 2013 until the date of finality of this judgment. All the said monetary awards shall be subject of legal interest of six percent (6%) *per annum* from the date of finality of this judgment until full payment.

The Computation Division of the National Labor Relations Commission is hereby ordered to **COMPUTE** and **UPDATE** the award as herein determined **WITH DISPATCH.**

SO ORDERED.

Reyes, A. Jr.[*] *(Acting Chairperson)* and *Inting, JJ.,* concur

Perlas-Bernabe, J., on official business.

Zalameda,[**] *J.,* on official leave.

---

[*] Per Special Order No. 2750 dated November 27, 2019.

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

SECOND DIVISION

[G.R. No. 223485. December 4, 2019]

DEL MONTE FRESH PRODUCE (PHIL.), INC., *petitioner, vs.* **REYNALDO P. BETONIO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL BY *CERTIORARI* UNDER RULE 45 OF THE 1997 RULES OF CIVIL PROCEDURE; THE JURISDICTION OF THE COURT IS LIMITED ONLY TO REVIEWING ERRORS OF LAW; EXCEPTION; PRESENT IN CASE AT BAR. — [I]t is to be emphasized that the Court is not a trier of facts; thus, its jurisdiction is limited only to reviewing errors of law. The rule, however, admits of certain exceptions, one of which is where the findings of fact of the quasi-judicial bodies and the appellate court are contradictory. Considering the divergent positions of the NLRC and the CA in this case, the Court deems it necessary to review, re-evaluate, and re-examine the evidence presented and draw conclusions therefrom.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES; LOSS OF TRUST AND CONFIDENCE; CONDITIONS. — It is well-settled that to justify a valid dismissal based on loss of trust and confidence, the concurrence of two conditions must be satisfied: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence. These two requisites are present in this case. Anent the first requisite, it should be noted that Betonio was the Senior Manager for Port Operations of DMFPPI. x x x [A]s the Senior Manager for Port Operations of DMFPPI, [he] was expected to be always on top of any situation that may occur at the port. Such intricate position undoubtedly required the full trust and confidence of DMFPPI. Indubitably, Betonio, held a position of trust and confidence in the company. As to the second requisite, that there must be an act that would justify the loss of trust and confidence, the degree of proof required in proving loss of trust and confidence differs between a managerial employee and a rank and file

employee. x x x Betonio was not an ordinary company employee. His position as DMFPPI's Senior Manager for Port Operations was clearly a position of responsibility demanding an extensive amount of trust from DMFPPI. The proper operation of port activities depended mainly on his strict compliance with the protocols, and his prompt and regular coordination with the other departments. x x x However, Betonio failed to properly manage the port.

3. ID.; ID.; ID.; ID.; ID.; AN EMPLOYER CANNOT BE COMPELLED TO RETAIN AN EMPLOYEE WHO IS GUILTY OF ACTS INIMICAL TO HIS INTERESTS, ESPECIALLY WHEN CIRCUMSTANCES EXIST JUSTIFYING LOSS OF CONFIDENCE TO THE EMPLOYEE, AND THIS IS MORE SO IN CASES INVOLVING MANAGERIAL EMPLOYEES OR PERSONNEL OCCUPYING POSITIONS OF RESPONSIBILITY. — It has long been established that an employer cannot be compelled to retain an employee who is guilty of acts inimical to his interests, especially when circumstances exist justifying loss of confidence to the employee. This is more so in cases involving managerial employees or personnel occupying positions of responsibility, such as Betonio's position. x x x In this case, it cannot be disputed that Betonio committed lapses and inefficiencies in the performance of his duty as DMFPPI's Senior Manager for Port Operations. While there may be a debate whether his negligence was gross and habitual, the factual background of the case undoubtedly shows that he breached his duties as to be unworthy of the trust and confidence of DMFPPI. After an assiduous review of the facts as contained in the records, the Court is convinced that Betonio was validly dismissed on the ground of DMFPPI's loss of trust and confidence on him.

4. ID.; ID.; ID.; IN CASES WHERE A VALID CAUSE OF DISMISSAL EXISTS BUT THE EMPLOYER FAILS TO OBSERVE DUE PROCESS IN DISMISSING THE EMPLOYEE, THE LAW AND JURISPRUDENCE ALLOW THE AWARD OF NOMINAL DAMAGES IN FAVOR OF THE EMPLOYEE. — [A]lthough there was a just cause for Betonio's dismissal, he was not afforded procedural due process. Under the internal rules of DMFPPI, the administrative committee will first come up with a recommendatory report on the case of Betonio; that if the top management disagrees with the committee's recommendation, they will reconvene to discuss

the decision to be adopted. While the administrative committee found Betonio to be inefficient and ineffectual in the operation of the port, it opined that his lapses were not enough for his dismissal. Consequently, the top management disagreed to the administrative committee's recommendation. However, instead of reconvening with the administrative committee to discuss the final decision to be adopted on Betonio's case, DMFPPI unilaterally proceeded to terminate Betonio's employment. This deprived Betonio of his last chance to be heard by DMFPPI. Following the prevailing jurisprudence on the matter, if the dismissal is based on a just cause, then the noncompliance with the procedural due process should not render the termination from employment illegal or ineffectual. Instead, the employer must indemnify the employee in the form of nominal damages. The law and jurisprudence allow the award of nominal damages in favor of an employee in a case where a valid cause for dismissal exists but the employer fails to observe due process in dismissing the employee. Considering all the circumstances surrounding this case, the Court finds the award of nominal damages in the amount of ₱30,000.00 to be in order.

5. ID.; ID.; ID.; SEPARATION PAY; MAY BE GRANTED TO AN EMPLOYEE WHO IS DISMISSED FOR A JUST CAUSE AS A MEASURE OF SOCIAL JUSTICE OR ON GROUNDS OF EQUITY. — While We uphold the dismissal of Betonio, the Court, as a measure of social justice and equitable concession, grants financial assistance to him. As a general rule, an employee who has been dismissed for any of the just causes enumerated under Article 297[282] of the Labor Code is not entitled to separation pay. However, by way of exception, separation pay or financial assistance may be granted to an employee who was dismissed for a just cause as a measure of social justice or on grounds of equity. The Court thoroughly discussed this concept in *Solid Bank Corp. v. NLRC, et al.* Applying in this case the concept of equity or the principle of social and compassionate justice to the cause of labor, the Court agrees with the NLRC, in the Decision dated December 29, 2011, that Betonio is entitled to separation pay as a measure of financial assistance—equivalent to one month salary for every year of service, a fraction of at least six months being considered as one whole year. This is in consideration of the fact that Betonio's dismissal was not due to any act attributable to his moral character.

APPEARANCES OF COUNSEL

Francis U. Ku & Associates for petitioner.
Lopoz Fuentes-Lopoz & Sevilleno for respondent.

D E C I S I O N

INTING, *J.*:

Before the Court is an Appeal by *Certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure seeking to nullify and set aside the Decision[2] dated May 13, 2015 and Resolution[3] dated February 16, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 05508-MIN. The CA dismissed for lack of merit the Petition for *Certiorari* with prayer for Preliminary Injunction and Temporary Restraining Order[4] filed by Del Monte Fresh Produce (PHIL.), Inc. (DMFPPI), praying for the following reliefs: (1) the issuance of a Writ of *Certiorari* to annul the Resolutions dated November 20, 2012 and February 27, 2013 of the National Labor Relations Commission (NLRC); and 2) the reinstatement of the Decision dated December 29, 2011 of the NLRC, which dismissed the complaint filed by Reynaldo, P. Betonio (Betonio).

The Antecedents

DMFPPI is a corporation engaged in the business of providing technical assistance, inspection, and coordination services to Del Monte Fresh International, Inc. (DMFII).

On September 1, 2008, Betonio was employed by DMFPPI as its Manager for Port Operations at Tadeco Wharf, San Vicente,

---

[1] *Rollo*, Volume 1, pp. 3-72.

[2] *Rollo*, Volume 2, pp. 649-664; penned by Associate Justice Edward B. Contreras with Associate Justices Rafael Antonio M. Santos and Pablito A. Perez, concurring.

[3] *Id.* at 710-716; penned by Associate Justice Rafael Antonio M. Santos with Maria Filomena D. Singh and Perpetua T. Atal-Paño, concurring.

[4] *Id.* at 543-629.

Panabo, Davao del Norte. On April 1, 2009, he was promoted as Senior Manager whose duty is to ensure prompt, efficient, and accurate loading and shipment of fruits to the market of DMFII. Further, he must ascertain that the bananas delivered to the port will be promptly loaded to their assigned vessels, or immediately placed in cold storage to avoid deterioration.[5]

Beginning April 2010, the Human Resource (HR) Department of DMFPPI received reports/complaints about Betonio's inefficiencies in the operation of the port. The reports/complaints came from the managers and directors of different departments of DMFPPI, the market of Del Monte International in Japan, and the local growers of DMFPPI.[6]

On account of the problems, reports, and complaints received by the HR Department of DMFPPI, HR Manager Ma. Cirila Canseco (Canseco) informed Betonio of the management's plan to commence disciplinary action against him. Canseco told Betonio that the charge against him would be gross and/or habitual neglect of duties, punishable with dismissal. To allegedly save Betonio from the embarrassment of going through an administrative investigation of his case, and for him to maintain an unblemished record of employment, Canseco gave Betonio the choice of having a graceful exit by tendering his voluntary resignation. However, Betonio decided to go through a formal investigation of his case.[7]

Through a Show Cause Memo[8] dated June 21, 2010, Betonio was charged with gross and habitual neglect of duties, and breach of trust and confidence. Betonio was required to explain the 12 infractions he allegedly committed, as follows:

1. Banana Shipment Monitoring: Non-compliance to the procedures you proposed, agreed with Anflo/Tadeco, and confirmed by internal audit which is doing count/tally using the tag and to

---

[5] *Id.* at 650.

[6] *Rollo*, Volume 1, p. 171.

[7] *Id.* at 171-172.

[8] *Rollo*, Volume 1, pp. 174-176.

stop the old system in arriving at the breakdown of bananas loaded to the vessel per grower, which is the total load less other growers equals Tadeco.
Reported: April 21, 2010

2. Alarming boxes balance on the ground at 11 AM as reported on April 27, 2010,
April 30, 2010.

3. Reduction of the vessel loading capacity of Orion Reefer by almost 10,000 less without coordinating and allegedly upon the instruction of the ship captain.
Reported: April 22, 2010

4. Huge discrepancy between the shipping advice and actual DMG loaded to Alcantara-68 bound for Kobe.
Reported: May 4, 2010

5. Failure to follow loading instructions and erroneous cold storage monitoring report
    a. 7.2k 6 hands to Korea to be loaded to Almeria 4/30/10 but were not loaded, instead kept at the cold storage and expected to stay further for 9 days before the next vessel arrival. This was not reflected in the cold storage monitoring report.
    Reported: May 5, 2010

6. Failure to follow loading instructions
    a. Organic boxes not loaded but still kept at the cold storage
    Reported: May 7, 2010

    b. RC's not loaded
    Reported: May 7, 2010

    c. Load RC to Valencia but not followed as evidenced in the daily monitoring of boxes on the ground. Coordination with Banana Production was also not done.
    Reported: May 8, 2010

    d. Loading instructions not followed for Cordoba Carrier V-66 for Japan and Korea.
    Reported: May 14, 2010

7. Erroneous Actual Loading Report - Alcantara Carrier V-69 vs Delivery Report
    a. Crate Pack

b. Variances in the box count (loaded vs. delivered)
Reported: May 8, 2010

8. Boxes with 7 days at the cold storage
Reported: May 12, 2010

9. Failure to maximize loading efficiency of the vessel. Instructed to prepare a structured & reliable plan for management review.
Reported: May 14, 2010

10. Excessive loading hours of Fruits to Vessel Alcantara 71
Reported: June 5, 2010

11. Inaccuracy in fruit loading to specified destination based on Banana Order
    a. Giralda 204 for Yoko
        i. Order 216 boxes, loaded 948 boxes
    b. Alcantara 71 for Moji
        i. Order 864 boxes, loaded 93 boxes
    Reported: June 10, 2010
12. Fruit overstay at the cold storage (6 RH for Japan: packed June 4)
Reported: June 12, 2010[9]

In his response to the Show Cause Memo,[10] Betonio explained point by point the infractions leveled against him, and denied having failed to execute his duties with utmost diligence.

On July 1, 2010, a meeting was conducted by the Administrative Committee wherein Betonio was made to explain the charges against him. In the Minutes of the meeting,[11] it was stated that the Administrative Committee will come up with a recommendatory report—that if the top management disagrees with the Administrative Committee's recommendation, they will reconvene to discuss the decision to be adopted.

While the Administrative Committee found Betonio inefficient in the management and operation of the port, it opined that his lapses were not enough for his dismissal. As such, the committee recommended that the charges against Betonio be dismissed.

---

[9] *Id.* at 174-175.

[10] *Id.* at 177-195.

[11] *Id.* at 197-212.

Despite the Administrative Committee's recommendation, a Notice of Disciplinary Action[12] dated July 21, 2010 was issued by the top management, terminating Betonio's employment on the ground of gross and habitual neglect of duties and breach of trust and confidence.

The Ruling of the LA

On August 11, 2010, Betonio filed before the Labor Arbiter (LA) a Complaint[13] for illegal dismissal with money claims.

In a Decision[14] dated April 25, 2011, the Executive LA Elbert C. Restauro ruled in favor of Betonio, holding DMFPPI liable for illegally dismissing him. The LA ordered DMFPPI to pay Betonio the total sum of ₱2,201,109.19 representing his separation pay, full backwages, and attorney's fees. According to the LA, while it is true that Betonio had committed errors and lapses in the performance of his duties and responsibilities, those lapses or errors did not amount to gross and habitual neglect of duty as contemplated by law.

Aggrieved, DMFPPI elevated the case before the NLRC.

The Ruling of the NLRC

In a Decision[15] dated December 29, 2011, the NLRC reversed the LA's Decision, and ruled in favor of DMFPPI. The NLRC held that while Betonio cannot be dismissed on the ground of gross and habitual neglect of duty, he may be dismissed on the ground of loss of trust and confidence as he was a Senior Manager of DMFPPI. According to the NLRC, Betonio's breach of DMFPPI's trust and confidence was amply proven by substantial evidence. However, in the dissenting opinion[16] of Commissioner

---

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

[13] *Id.* at 76-77.

[14] *Id.* at 269-285.

[15] *Id.* at 382-400; penned by Presiding Commissioner Bario-Rod M. Talon with Commissioners Dominador B. Medroso, Jr., concurring and Proculo T. Sarmen, dissenting.

[16] *Id.* at 401-408.

Proculo T. Sarmen (Commissioner Sarmen), he affirmed the LA's Decision.

Betonio filed a Motion for Reconsideration[17] of the NLRC's Decision. Pending resolution of his motion, the case was re-raffled to Commissioner Sarmen, as the new *ponente* of the case.

In a Resolution[18] dated November 20, 2012, the NLRC reversed itself and reinstated the ruling of the LA in favor of Betonio. The Resolution was dissented to by the Presiding Commissioner Bario-Rod M. Talon (Presiding Commissioner Talon).

DMFPPI moved for a reconsideration[19] of the November 20, 2012 Resolution of the NLRC, but it was denied on February 27, 2013.[20] Presiding Commissioner Talon again dissented to the denial of DMFPPI's Motion for Reconsideration.

Aggrieved, DMFPPI filed a Petition for *Certiorari* with prayer for Preliminary Injunction and Temporary Restraining Order[21] before the CA.

The Ruling of the CA

On July 29, 2013, the CA granted DMFPPI's application for TRO.[22] In the Resolution[23] dated October 16, 2013, the CA issued the Writ of Preliminary Injunction[24] prayed for by DMFPPI, enjoining the implementation of the Resolutions dated

---

[17] *Id.* at 409-422.

[18] *Id.* at 460-469.

[19] *Id.* at 470-534.

[20] *Rollo*, Volume 2, pp. 537-542.

[21] *Id.* at 543-629.

[22] *Id.* at 631-635; penned by Associate Justice Edgardo T. Lloren with Associate Justices Marie Christine Azcarraga-Jacob and Edward B. Contreras, concurring.

[23] *Id.* at 639-641.

[24] *Id.* at 642-643.

November 20, 2012 and February 27, 2013 of the NLRC. Consequently, DMFPPI's Petition for *Certiorari* with Preliminary Injunction and Temporary Restraining Order was submitted for decision.

On May 13, 2015, the CA rendered a Decision[25] affirming the November 20, 2012 and February 27, 2013, Resolutions of the NLRC in favor of Betonio.[26] The CA ruled that Betonio should only be liable for ordinary breach, not for breach of trust and confidence; as such, dismissal from employment was too harsh and incommensurate to his infractions. According to the CA, admonition, warning, reprimand or suspension would have been sufficient punishment for Betonio. The CA likewise opined that DMFPPI should have taken into account the recommendation of the Administrative Committee to dismiss the charges against Betonio.

Lastly, the CA found that Betonio's termination was made without due process of law. According to the CA, Betonio was informed of his termination from employment as early as June 1, 2010. Having been notified of his dismissal on June 1, 2010, the issuance of his Show Cause Memo dated June 22, 2010; the subsequent creation of Administrative Committee; and the hearing conducted on July 1, 2010 were empty ceremonies to show compliance with due process of law. All told, the CA held DMFPPI liable for illegally dismissing Betonio.

DMFPPI moved for a reconsideration[27] of the CA's Decision, but it was denied on February 16, 2016.[28]

Hence, the instant petition.

DMFPPI imputes error on the part of the CA in affirming the November 20, 2012 and February 27, 2013 Resolutions of

---

[25] *Id.* at 649-664.

[26] *Id.* at 663.

[27] *Id.* at 665-690.

[28] *Id.* at 710-716; penned by Associate Justice Rafael Antonio M. Santos with Associate Justices Maria Filomena D. Singh and Perpetua T. Atal-Paño.

the NLRC in favor of Betonio. It argues that even if Betonio cannot be dismissed on the ground of gross and habitual neglect of duty, he may be terminated on the ground of loss of trust and confidence as he was a senior manager of DMFPPI.

DMFPPI contends that Betonio's breach of trust and confidence was amply proven by substantial evidence, which consisted of the Affidavits of its General Manager, its HR Manager, and the Senior Director for Banana Production. Likewise, DMFPPI maintains that the emails, reports, and complaints of some of its employees and clients established Betonio's incompetence—a ground for it to lose trust and confidence in Betonio.

The core issues at hand are the following:

1. Whether or not Betonio was legally dismissed on the ground of loss of trust and confidence; and
2. Whether or not his dismissal was made with due process of law

The Court finds merit in the petition.

At the outset, it is to be emphasized that the Court is not a trier of facts; thus, its jurisdiction is limited only to reviewing errors of law. The rule, however, admits of certain exceptions, one of which is where the findings of fact of the quasi-judicial bodies and the appellate court are contradictory.[29] Considering the divergent positions of the NLRC and the CA in this case, the Court deems it necessary to review, re-evaluate, and re-examine the evidence presented and draw conclusions therefrom.

After a thorough examination of the records, the Court agrees with the findings and conclusion of the NLRC in the Decision dated December 29, 2011 that Betonio's dismissal from employment on the ground of loss of trust and confidence was valid.

---

[29] *APQ Shipmanagement Co., Ltd., et al. v. Caseñas*, 735 Phil. 300, 310 (2014).

It is well-settled that to justify a valid dismissal based on loss of trust and confidence, the concurrence of two conditions must be satisfied: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence.[30]

These two requisites are present in this case.

Anent the first requisite, it should be noted that Betonio was the Senior Manager for Port Operations of DMFPPI. In charge of the operations at the port, he was required to ensure that the correct volume and pack type of bananas were promptly and accurately loaded on the vessels for specific market destinations. For this purpose, Betonio was expected to regularly prepare a stowage plan for each vessel, taking into account different data coming from various departments of DMFPPI — such as the Production Planning Department and the Banana Production Department. For the Production Planning Department to know how much boxes of fruits were to be harvested and delivered to the port, Betonio needed to provide them data on the total volume of fruits he had actually loaded on the vessels. For other departments to be able to monitor the accurate and timely shipment of bananas to specific markets, Betonio also needed to regularly and promptly supply information on them. In cases of deviation from the normal standard procedure in the port, Betonio should promptly report the deviation to all concerned departments in order for the affected market to make the necessary arrangements to address the changes. Betonio also needed to ascertain that bananas which were not for immediate loading to the vessel be at once placed in the cold storage to preserve their quality, to avoid deterioration.

From the foregoing, Betonio, as the Senior Manager for Port Operations of DMFPPI, was expected to be always on top of any situation that may occur at the port. Such intricate position undoubtedly required the full trust and confidence of DMFPPI. Indubitably, Betonio, held a position of trust and confidence in the company.

---

[30] *Cadavas v. Court of Appeals*, G.R. No. 228765, March 20, 2019 citing *Vilchez v. Free Port Service Corp., et al.*, 763 Phil. 32, 39 (2015).

As to the second requisite, that there must be an act that would justify the loss of trust and confidence, the degree of proof required in proving loss of trust and confidence differs between a managerial employee and a rank and file employee.[31] In *Lima Land, Inc., et al. v. Cuevas*,[32] the Court distinguished between managerial employees and rank-and-file personnel insofar as terminating them on the basis of loss of trust and confidence; thus:

> But as regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. x x x[33]
>
> As firmly entrenched in our jurisprudence, loss of trust and confidence, as a just cause for termination of employment, is premised on the fact that an employee concerned holds a position where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected. The betrayal of this trust is the essence of the offense for which an employee is penalized.
>
> It must be noted, however, that in a plethora of cases, this Court has distinguished the treatment of managerial employees from that of rank-and-file personnel, insofar as the application of the doctrine of loss of trust and confidence is concerned. Thus, with respect to rank-and-file personnel, loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient.[34]

Set against these parameters, Betonio's employment, as DMFPPI's Senior Manager for Port Operations, may be terminated for breach of trust under Article 312[297](c) of the Labor Code of the Philippines (Labor Code).

As earlier discussed, Betonio was not an ordinary company employee. His position as DMFPPI's Senior Manager for Port

---

[31] *SM Development Corp. v. Ang*, G.R. No. 220434, July 22, 2019.

[32] 635 Phil. 36 (2010).

[33] *Id.* at 49 citing *Triumph International (Phils.), Inc. v. Apostol, et al.*, 607 Phil. 157, 174 (2009).

[34] *Id.* at 48. Citations omitted.

Operations was clearly a position of responsibility demanding an extensive amount of trust from DMFPPI. The proper operation of port activities depended mainly on his strict compliance with the protocols, and his prompt and regular coordination with the other departments. Significantly, the nature of goods which Betonio was tasked to handle for DMFPPI were all fresh fruits which were extremely perishable in nature. On account of this, time was certainly of the essence in loading them on the vessels or storing them in cold storage.

However, Betonio failed to properly manage the port. The General Manager of DMFPPI, Mr. Guido Bellavita (Mr. Bellavita), noticed the problems that transpired in the operation of the port, to wit: (1) inaccurate loading/shipment of fruits on the vessels; (2) delay in the loading of fruits in the cold storage; (3) fruit overstay in the cold storage; and (4) erroneous reporting to the other departments. According to Mr. Bellavita's Affidavit[35] dated October 22, 2010, the above problems were deviations from the normal procedure that could have been avoided through close monitoring of port activities and constant communication with the other departments. As Betonio's lapses affected not only the operations of the port, but also DMFPPI's market, Mr. Bellavita called the attention of Betonio to address the problems. However, despite this, the same problems recurred.

DMFPPI's Senior Director for Banana Production, Mr. Juan Carlos Arredondo (Mr. Arredondo), likewise, noticed similar lapses and inefficiencies on the part of Betonio. In his Affidavit,[36] he told that: (1) the loading capacity of the vessels were not maximized by Betonio; (2) he was heavily dependent on his subordinates and not fully cognizant of what was going on in his department; and (3) whenever problems would occur in the port, Betonio was quick to come up with convenient excuses by pointing the blame on others instead of taking full responsibility for the lapses of his department.

---

[35] *Rollo*, Volume 1, pp. 129-133.

[36] *Id.* at 147-148.

In fact, beginning April 2010, the HR Department of DMFPPI received reports/complaints about Betonio's inefficiencies in the operation of the port. The reports/complaints came from managers and directors of different departments of DMFPPI, the market of Del Monte International in Japan, and the local growers of DMFPPI. This was reported by no less than the HR Manager of DMFPPI.

One of Betonio's gross transgressions was the discrepancy between the fruits ordered by the clients in Japan and those he actually shipped. In one instance, Betonio shipped 948 boxes of fruits to Japan when only 216 boxes were ordered. Also, Betonio only shipped 93 boxes to Moji, Japan when the order was 864 boxes. This incident resulted in substantial monetary damages to DMFPPI, not to mention the damage it caused to DMFPPI's reputation and standing in the market. Genera] Manager Bellavita attested to the prejudice suffered by DMFPPI due to Betonio's failure to maximize the vessel's loading capacity, and the mix up in the loading and shipment of bananas to the Japan market, *viz*.:

> 6.4. The lapses and inefficiencies of Mr. Betonio and his department resulted in extra costs to DMFPPI and DMFII. His failure to maximize the loading capacity of vessels by as much as 10,000 boxes of bananas per vessel had deprived DMFII of the corresponding income that those excluded bananas would have fetched in the market. Not only that, the fewer boxes of bananas shipped had effectively increased the cost of each box of bananas actually delivered to the market. Likewise, the grossly erroneous mix-up in the loading of bananas had completely upset DMFII's contractual obligations with its market in Japan.[37]

The infractions of Betonio were duly set forth in the Show Cause Memo issued to him, charging him with gross and habitual neglect of duties and breach of trust and confidence. For the CA, the 12 infractions committed by Betonio from April 2010 until June 2010 were not habitual; hence, he should only be meted out an admonition, warning, reprimand or suspension.

---

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

According to the CA, dismissal from employment was too harsh and incommensurate to the infractions committed by Betonio.

We disagree.

It has long been established that an employer cannot be compelled to retain an employee who is guilty of acts inimical to his interests,[38] especially when circumstances exist justifying loss of confidence to the employee. This is more so in cases involving managerial employees or personnel occupying positions of responsibility, such as Betonio's position. In *Jumuad vs. Hi-Flyer Food, Inc. and/or Montemayor*,[39] the Court held:

> x x x In breach of trust and confidence, so long as it is shown that there is some basis for management to lose its trust and confidence, and that the dismissal was not used as an occasion for abuse, as a subterfuge for causes which are illegal, improper, and unjustified and is genuine, that is, not a mere afterthought intended to justify an earlier action taken in bad faith, the free will of management to conduct its own business affairs to achieve its purpose cannot be denied.[40]

In this case, it cannot be disputed that Betonio committed lapses and inefficiencies in the performance of his duty as DMFPPI's Senior Manager for Port Operations. While there may be a debate whether his negligence was gross and habitual, the factual background of the case undoubtedly shows that he breached his duties as to be unworthy of the trust and confidence of DMFPPI. After an assiduous review of the facts as contained in the records, the Court is convinced that Betonio was validly dismissed on the ground of DMFPPI's loss of trust and confidence on him.

Finally, although there was a just cause for Betonio's dismissal, he was not afforded procedural due process. Under the internal rules of DMFPPI, the administrative committee will first come up with a recommendatory report on the case of Betonio; that if the top management disagrees with the

---

[38] *SM Development Corp. v. Ang, supra* note 31.

[39] 672 Phil. 730 (2011).

[40] *Id.* at 743.

committee's recommendation, they will reconvene to discuss the decision to be adopted.

While the administrative committee found Betonio to be inefficient and ineffectual in the operation of the port, it opined that his lapses were not enough for his dismissal. Consequently, the top management disagreed to the administrative committee's recommendation. However, instead of reconvening with the administrative committee to discuss the final decision to be adopted on Betonio's case, DMFPPI unilaterally proceeded to terminate Betonio's employment. This deprived Betonio of his last chance to be heard by DMFPPI.

Following the prevailing jurisprudence on the matter, if the dismissal is based on a just cause, then the noncompliance with the procedural due process should not render the termination from employment illegal or ineffectual.[41] Instead, the employer must indemnify the employee in the form of nominal damages. The law and jurisprudence allow the award of nominal damages in favor of an employee in a case where a valid cause for dismissal exists but the employer fails to observe due process in dismissing the employee.[42] Considering all the circumstances surrounding this case, the Court finds the award of nominal damages in the amount of ₱30,000.00 to be in order.

While We uphold the dismissal of Betonio, the Court, as a measure of social justice and equitable concession, grants financial assistance to him. As a general rule, an employee who has been dismissed for any of the just causes enumerated under Article 297[282] of the Labor Code is not entitled to separation pay. However, by way of exception, separation pay or financial assistance may be granted to an employee who was dismissed for a just cause as a measure of social justice or on grounds of equity.[43] The Court thoroughly discussed this concept in *Solid Bank Corp. v. NLRC, et al.*[44]

---

[41] *SM Development Corp. v. Ang, supra* note 31.

[42] *Id.*

[43] *Security Bank Savings Corp., et al. v. Singson*, 780 Phil. 860, 867 (2016).

[44] 631 Phil. 158 (2010).

Applying in this case the concept of equity or the principle of social and compassionate justice to the cause of labor, the Court agrees with the NLRC, in the Decision dated December 29, 2011, that Betonio is entitled to separation pay as a measure of financial assistance—equivalent to one month salary for every year of service, a fraction of at least six months being considered as one whole year. This is in consideration of the fact that Betonio's dismissal was not due to any act attributable to his moral character.

WHEREFORE, the instant petition is **GRANTED**. The Decision dated May 13, 2015 and Resolution dated February 16, 2016 of the Court of Appeals in CA-G.R. SP No. 05508-MIN are **REVERSED** and **SET ASIDE**. The Decision dated December 29, 2011 of the National Labor Relations Commission is hereby **REINSTATED**. For noncompliance with procedural due process, the petitioner Del Monte Fresh Produce (Phil.), Inc. is **ORDERED** to pay respondent Reynaldo P. Betonio nominal damages in the amount of ₱30,000.00.

SO ORDERED.

Reyes, A. Jr.[*] and *Hernando, JJ.*, concur.

Perlas-Bernabe, S.A.J. (Chairperson), on official business.

Zalameda,[**] *J.*, on official leave.

---

[*] Designated acting chairperson per Special Order No. 2750 dated November 27, 2019.

[**] Designated additional member per Special Order No. 2724 dated October 25, 2019.

SECOND DIVISION

[G.R. No. 228088. December 4, 2019]

AUTOMATIC APPLIANCES, INC., SAMSON F. LIM, CORNELIO P. BUENAVENTURA and CHRISTINE M. PONTILLAS, *petitioners, vs.* **FRANCIA B. DEGUIDOY,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYMENT; DOCTRINE OF MANAGEMENT PREROGATIVE; GUIDELINES TO ENSURE THE BALANCE BETWEEN TENURIAL SECURITY AND MANAGEMENT PREROGATIVE. — [U]nder the doctrine of management prerogative, an employer possesses the inherent right to regulate, according to its "own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, the time, place and manner of work, work supervision, transfer of employees, lay-off of workers, and discipline, dismissal, and recall of employees." This wide sphere of authority to regulate its own business may only be curbed by the limitations imposed by labor laws and the principles of equity and substantial justice. The importance of discouraging interference is necessary to ensure that the employer may in turn expect good performance, satisfactory work, diligence, good conduct and loyalty from its employees. Accordingly, the employer may determine, in accordance with its sound business judgment, Its employees, work assignments. This discretion to impose work assignments, or corollarily, transfer the employees shall be based on the employer's assessment of the "qualifications, aptitudes and competence of its employees." The employer is allowed to move them around various areas of its business operations to ascertain where they will function with maximum benefit to the company. After all, the employer is in the best position to determine where its employees will thrive for the good of the company. It is imperative, however, to strike balance between the employees' tenurial security on the one hand, and the employer's management prerogative, on the other. In *Rural Bank of Cantilan, Inc. v. Julve,* and *Peckson v. Robinsons Supermarket Corporation, et al.,* the Court laid

down guidelines to ensure that both rights are protected: Concerning the transfer of employees, these are the following jurisprudential guidelines: (a) a transfer is a movement from one position to another of equivalent rank, level or salary without break in the service or a lateral movement from one position to another of equivalent rank or salary; (b) the employer has the inherent right to transfer or reassign an employee for legitimate business purposes; (c) a transfer becomes unlawful where it is motivated by discrimination or bad faith or is effected as a form of punishment or is a demotion without sufficient cause; (d) the employer must be able to show that the transfer is not unreasonable, inconvenient, or prejudicial to the employee.

2. ID.; ID.; ID.; ID.; TRANSFER OF EMPLOYEE IS NOT CONSTRUCTIVE DISMISSAL IN THE ABSENCE OF PROOF THAT IT INVOLVES DEMOTION IN RANK, DIMINUTION IN PAY OR WAS AN ACT OF DISCRIMINATION OR DISDAIN. — Jurisprudence holds that the management's decision to transfer an employee shall not be assailed as a form of constructive dismissal in the absence of proof that the re-assignment involves a demotion in rank, diminution in pay, or was an act of discrimination or disdain. In the instant case, the intended transfer did not involve a demotion in rank or diminution in pay, salaries and benefits. Deguidoy was simply asked to transfer to a different location were she will be occupying the same position and performing the same functions.

3. ID.; ID.; ID.; ID.; AS THERE WAS NO CONSTRUCTIVE DISMISSAL, THE EMPLOYEE SHALL BE REINSTATED TO HER FORMER POSITION WITHOUT BACKWAGES. — Considering that Deguidoy was not constructively dismissed, she shall be reinstated to her former position without any backwages. Deguidoy is ordered to report for work at the Tutuban branch. This is in accord with the Court's ruling in *Claudia's Kitchen, Inc. v. Tanguin,* where it was held that if "the employee was neither found to have been dismissed nor to have abandoned his/her work, the general course of action is for the **Court to dismiss the complaint, direct the employee to return to work, and order the employer to accept the employee.**"

APPEARANCES OF COUNSEL

Generosa R. Jacinto Law Firm for petitioners.
Legal Advocates for Workers' Interest (LAWIN) for respondent.

D E C I S I O N

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

The management enjoys the discretion to assign and transfer employees to other work stations. The transfer is valid inasmuch as it does not involve a demotion in rank or diminution in pay or benefits, and was carried out in good faith and justified by business exigencies.

This treats of the petition for review on *certiorari*[1] under Rule 45 of the Revised Rules of Court seeking the reversal of the Decision[2] dated March 31, 2016, and the Resolution[3] dated November 3, 2016, rendered by the Court of Appeals (CA) in CA-G.R. SP No. 138334, which affirmed with modification the ruling of the National Labor Relations Commission (NLRC) holding that respondent Francia B. Deguidoy (Deguidoy) was constructively dismissed by petitioner Automatic Appliances, Inc. (AAI).

AAI is a corporation organized and existing under the laws of the Philippines. Petitioners Samson F. Lim, Cornelio P. Buenaventura and Cristine M. Pontillas (Pontillas) are the former President, Vice President for Human Resource and Tutuban Branch Manager, respectively, of said corporation.[4]

The antecedent facts reveal that on June 3, 1998, AAI hired Deguidoy as a regular Sales Coordinator in its Cubao Branch.

---

[1] *Rollo,* pp. 10-45.

[2] Penned by Associate Justice Romeo F. Barza, with Associate Justices Ramon A. Cruz and Agnes Reyes-Carpio, concurring; *id.* at 48-63.

[3] *Id.* at 64-68.

[4] *Id.* at 12.

As a sales coordinator, she was tasked with selling merchandise and was required to maintain a branch sales quota.[5]

Sometime in 2013, AAI suffered a decline in its sales and experienced economic difficulties. Consequently, on March 6, 2013, it implemented cost-cutting measures, which included closing some of its branches. In line with the closure of its branches, AAI issued a Memorandum dated July 1, 2013, informing its employees of their re-shuffling and re-assignment to AAI's various branches. As a result, Deguidoy was re-assigned from the Cubao branch to the Tutuban Branch. She accepted her re-assignment.[6]

While at the Tutuban Branch, Deguidoy failed to reach her sales quota. Worse, the Branch Attendance Time Log Report showed that she incurred 29 days of unexplained absences from March to August 2013. Added to this, her sales performance continued to decline while her co-employees surpassed their sales quotas.[7]

Concerned about Deguidoy's dismal performance at work, on June 14, 2013, the management of AAI urged her to undergo counseling to improve her performance. During the counseling session, Deguidoy explained that her poor performance at work was due to her weight gain, which rendered it difficult to stand and perform her tasks as a Sales Coordinator. In response, AAI suggested a lateral transfer as a receptionist clerk or invoicing clerk, where she could work behind a desk. However, she refused the offer.[8]

Meanwhile, on August 2, 2013, AAI received a letter from the Tutuban Branch Manager Pontillas notifying the management about Deguidoy's poor work performance.[9] Pontillas likewise requested for additional sales personnel at the Tutuban Branch.

---

[5] *Id.* at 18-19.

[6] *Id.* at 20.

[7] *Id.*

[8] *Id.* at 21.

[9] *Id.*

Hearing this, AAI conducted a review of Deguidoy's records and sales outputs. This led to the discovery that Deguidoy incurred numerous absences and had a low sales output. AAI issued Attendance Infraction Memos dated August 27, 2013 and an Inefficiency and Gross Negligence Memo of even date. Deguidoy was placed under one-month suspension. She accepted the suspension and apologized for her faults.[10]

On October 7, 2013, Deguido reported back to work. On even date, AAI verbally informed her of an intended transfer to its Ortigas branch. Dismayed, Deguidoy left during her lunch break, and never returned.[11]

On October 11, 2013, AAI sent Deguidoy a letter requiring her to explain her failure to report for work. Deguidoy ignored the said letter. AAI sent another letter on October 19, 2013. Still, the same was unheeded.[12]

Unknown to AAI, on October 14, 2013, Deguidoy filed a case for illegal dismissal with money claims including 13th month pay.[13]

Ruling of the Labor Arbiter

On February 28, 2014, the Labor Arbiter (LA) rendered a Decision dismissing Deguidoy's complaint for illegal dismissal based on its finding that Deguidoy was not terminated, but was simply being transferred to another branch.[14]

However, the LA ordered the payment of proportionate 13th month pay.

The dispositive portion of the LA's decision reads:

WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the complaint for lack of merit. However, respondent

---

[10] *Id.* at 22.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.* at 51.

AUTOMATIC CENTER HOME APPPLIANCES, INC., is ordered to pay complainant proportionate 13th month pay.

1/1/13-10/7/13
476 x 26 x 9.23 = ~~₱~~9,519.20

In the meantime, Mr. Samson Lim, Nel P. Buenaventura and Ms. Cristine M. Pontillas are ordered DROPPED as party respondents.

SO ORDERED.[15]

In view of the LA decision, AAI sent Deguidoy a notice to report for work. However, instead of reporting back to work, Deguidoy filed a Partial Memorandum of Appeal before the National Labor Relations Commission (NLRC). On appeal, Deguidoy changed her cause of action from actual illegal dismissal to constructive dismissal.

Ruling of the NLRC

On July 28, 2014, the NLRC reversed and set aside the ruling of the LA, and held that Deguidoy was constructively dismissed. The NLRC theorized that AAI'S acts were calculated to dismiss Deguidoy from employment. Consequently, the NLRC ordered AAI to pay Deguidoy backwages and separation pay in lieu of reinstatement.[16]

The dispositive portion of the NLRC decision reads:

ACCORDINGLY, the decision appealed from is set aside and a new one **ENTERED** finding complainant [Deguidoy] illegally constructively dismissed. Respondent-appellees are hereby ordered to pay complainant: the amount already adjudged to her; her full backwages from August 27, 2013 up to the finality hereof; and, in lieu of reinstatement, to pay her separation pay at the rate of one (1) month pay from the date of hire on June 3, 1998 until the finality of this Decision.

SO ORDERED.[17] (Emphases in the original)

---

[15] *Id.*

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

[17] *Id.* at 52.

Dissatisfied with the ruling, AAI filed a Petition for *Certiorari* under Rule 65 of the Rules of Court with the CA.

Ruling of the CA

On March 31, 2016, the CA rendered the assailed Decision[18] affirming with modification the NLRC's ruling. The CA found that Deguidoy was constructively dismissed by AAI. According to the CA, Deguidoy was being transferred to the Ortigas branch, which was on the verge of being closed. Likewise, the evidence presented by AAI was not sufficient to prove that her transfer was intended to help her achieve a better sales performance. Neither was there sufficient evidence to prove that the Ortigas branch was less frequented by customers as claimed by AAI, and that Deguidoy's weight problem greatly affected her performance at work.[19] Accordingly, the CA ordered Deguidoy's reinstatement without loss of seniority rights and the payment of full backwages, which shall be computed from October 7, 2013 – the date when Deguidoy was notified of the intended transfer until her actual reinstatement.[20]

The dispositive portion of the assailed CA decision reads:

WHEREFORE, the foregoing considered, the instant petition is **PARTIALLY GRANTED.** The portion of the *Decision* dated July 28, 2014 of the [NLRC] ordering petitioners to pay private respondent full backwages from August 27, 2013 up to the finality of the decision and separation pay are **ANNULED** and **SET ASIDE.** Petitioners are hereby ordered to:

(a) REINSTATE [Deguidoy] to her former position without loss of seniority rights and other privileges;

(b) PAY [Deguidoy] backwages inclusive of allowances and other benefits or their monetary equivalent, computed from the time she was illegally dismissed on October 7, 2013, until her actual reinstatement.

---

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

[19] *Id.* at 59.

[20] *Id.* at 62.

The [LA] is hereby **ORDERED** to make another recomputation of the total monetary benefits due to petitioner in accordance with this Decision.

SO ORDERED.[21]

Undeterred, AAI filed the instant petition for review on *certiorari* under Rule 45 of the Revised Rules of Court.

The Issue

The crux of the instant case rests on whether or not Deguidoy was constructively dismissed by AAI.

AAI points out that Deguidoy's original allegation was that she was actually dismissed from her employment. She cannot conveniently change her theory on appeal, as the same is violative of the essence of due process.[22] As such, the allegation of constructive dismissal should not have been considered by the CA.[23]

Likewise, AAI claims that Deguidoy failed to support her charge of illegal dismissal - both actual and constructive. She was neither given a termination letter nor barred from the work premises. Neither was she constructively dismissed. AAI explains that its decision to transfer her to the Ortigas branch was a valid exercise of its management prerogative to streamline its operations. It was spurred by her poor performance and her inability to reach the sales quota. Moreover, it was Deguidoy who related that her weight gain had rendered it difficult to perform her work.[24]

Furthermore, AAI denies Deguidoy's claim that it wanted to get rid of her services. It points out that they constantly sent Deguidoy notices to report for work. However, the latter refused to comply with the said directives.[25]

---

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

[22] *Id.* at 28.

[23] *Id.* at 30.

[24] *Id.* at 34.

[25] *Id.* at 36.

In the same vein, AAI rebuts Deguidoy's claim that she was being eased out. It clarifies that at the time of the intended transfer, the Ortigas branch was fully operational and in need of additional personnel.[26]

On the other hand, Deguidoy maintains that her transfer was without any basis and was a ploy to ease her out. She claims that she was forced to leave her work due to the harassment she experienced in her workplace. Her previous work was rendered unreasonable, undesirable and unlikely.[27] She submits that the notices to report for work sent by AAI were a means of "harassing" her.[28]

Similarly, Deguidoy counters that the grounds given by AAI to justify her transfer, such as poor performance, tardiness, and even her weight, were not proven by substantial evidence. She avers that AAI failed to prove that her transfer was due to a genuine business necessity.[29]

Ruling of the Court

The instant petition is impressed with merit.

Management Enjoys the Prerogative to Transfer Its Employees and Regulate Their Work Assignments

Labor laws are not one-sided. Although the law bends over backwards to accommodate the need of the working class, not every labor dispute shall be decided in favor of labor.[30] Indeed, the Constitutional provisions on social justice as well as labor laws guarantee the protection of the employees' tenurial security. However, this tenurial security shall not grant the

---

[26] *Id.* at 36-37.

[27] *Id.* at 126-127.

[28] *Id.* at 127.

[29] *Id.*

[30] *Paredes v. Feed the Children Philippines, Inc., et al.,* 769 Phil. 418, 442 (2015).

employees a vested right to their desired position. Rather, management possesses the right to regulate all aspects of employment relating to the employees' work assignment and working methods.[31]

Particularly, under the doctrine of management prerogative, an employer possesses the inherent right to regulate, according to its "own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, the time, place and manner of work, work supervision, transfer of employees, lay-off of workers, and discipline, dismissal, and recall of employees."[32] This wide sphere of authority to regulate its own business may only be curbed by the limitations imposed by labor laws and the principles of equity and substantial justice. The importance of discouraging interference is necessary to ensure that the employer may in turn expect good performance, satisfactory work, diligence, good conduct and loyalty from its employees.[33]

Accordingly, the employer may determine, in accordance with its sound business judgment, its employees' work assignments. This discretion to impose work assignments, or corollarily, transfer the employees shall be based on the employer's assessment of the "qualifications, aptitudes and competence of its employees."[34] The employer is allowed to move them around various areas of its business operations to ascertain where they will function with maximum benefit to the company.[35] After all, the employer is in the best position to

---

[31] *Peckson v. Robinsons Supermarket Corp., et al.,* 713 Phil. 471, 480 (2013).

[32] *Rural Bank of Cantilan, Inc. v. Julve,* 545 Phil. 619, 624 (2007), citing *Baybay Water District v. Commission on Audit,* 425 Phil. 326, 343-344 (2002).

[33] *Rural Bank of Cantilan, Inc. v. Julve, id.* at 624, citing *Durban Apartments Corporation v. Catacutan,* 514 Phil. 187, 196 (2005).

[34] *Peckson v. Robinsons Supermarket Corp., et al., supra* note 31, at 481-482, citing *Philippine Japan Active Carbon Corporation v. NLRC,* 253 Phil. 149, 153 (1989).

[35] *Peckson v. Robinsons Supermarket Corp., et a1., id.*

determine where its employees will thrive for the good of the company.

It is imperative, however, to strike balance between the employees' tenurial security on the one hand, and the employer's management prerogative, on the other. In *Rural Bank of Cantilan, Inc. v. Julve,*[36] and *Peckson v. Robinsons Supermarket Corporation, et al.,*[37] the Court laid down guidelines to ensure that both rights are protected:

> Concerning the transfer of employees, these are the following jurisprudential guidelines: (a) a transfer is a movement from one position to another of equivalent rank, level or salary without break in the service or a lateral movement from one position to another of equivalent rank or salary; (b) the employer has the inherent right to transfer or reassign an employee for legitimate business purposes; (c) a transfer becomes unlawful where it is motivated by discrimination or bad faith or is effected as a form of punishment or is a demotion without sufficient cause; (d) the employer must be able to show that the transfer is not unreasonable, inconvenient, or prejudicial to the employee.[38] (Citations omitted)

Accordingly, the Court respects the right of the employer to re-assign its employees to other stations, provided that the transfer is not unreasonable, inconvenient, prejudicial, or involve a demotion in rank or a diminution of salaries, benefits, and other privileges. For as long as said conditions are met, the employee may not complain that the transfer amounts to a constructive dismissal.[39]

AAI's Decision to Transfer Deguidoy to its Ortigas Branch Was a Valid Exercise of its Management Prerogative. Her Intended Transfer was Not Akin to a Constructive Dismissal

---

[36] 545 Phil. 619 (2007).

[37] 713 Phil. 471 (2013).

[38] *Id.* at 481.

[39] *Id.* at 482-483.

It must be noted at the outset that Deguidoy was not actually transferred to the Ortigas branch. The facts show that on October 7, 2013, she was verbally informed that management intended to re-assign her at the Ortigas branch. Apparently, this offer did not sit well with her, and she went out of the Tutuban store, and no longer returned. Days after the said conversation, she immediately filed a case for illegal (actual) dismissal on October 14, 2013. Thereafter, she contumaciously ignored all the directives to report back to work.[40] She construed the management's decision to transfer her as a form of dismissal. This was based on her apprehension that the said branch was about to be closed.

The Court does not agree.

At any rate, even if the transfer actually took place, said transfer is not tantamount to a constructive dismissal. Essentially, "[c]onstructive dismissal exists where there is cessation of work, because 'continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay' and other benefits."[41] It is regarded as a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not. It may take place when the employer commits an act of clear discrimination, insensibility, or disdain, such that the employment becomes so unbearable on the part of the employee and leaves him/her no choice except to forego his/her continued employment.[42]

Deguidoy's Intended Transfer Did Not Involve a Demotion in Rank or A Diminution in Pay. Likewise, The Decision Was Spurred by A Genuine Necessity to Streamline the Business Operations

---

[40] *Rollo,* p. 22.

[41] *Cosue v. Ferritz Integrated Dev't. Corp., et al.,* 814 Phil. 77, 86-87 (2017).

[42] *Id.*

Jurisprudence holds that the management's decision to transfer an employee shall not be assailed as a form of constructive dismissal in the absence of proof that the re-assignment involves a demotion in rank, diminution in pay, or was an act of discrimination or disdain.[43]

In the instant case, the intended transfer did not involve a demotion in rank or diminution in pay, salaries and benefits. Deguidoy was simply asked to transfer to a different location where she will be occupying the same position and performing the same functions.

Equally important, the decision to transfer Deguidoy came after a painstaking evaluation of her performance at the Tutuban branch. This was spurred by a letter sent by Pontillas reporting Deguidoy's dismal performance at work. Because of the latter's inability to cope with the demands of her work, Pontillas even requested for additional staff who could carry Deguidoy's load.[44] Surely, an additional complement would have been unnecessary if Deguidoy was able to perform her work adequately.

It bears noting that AAI was engaged in the business of selling appliances and other similar product. Consequently, it had a right to aim for a high volume of sales output, and device of ways and means to achieve a high sales target. In relation thereto, Deguidoy, as a sales coordinator, was tasked to assist the branch in achieving a high output of sales. Unfortunately, however, Deguidoy's sales performance at the Tutuban branch was very meager compared to that of the branch top performer, and consisted of a small contribution to the total branch output. This was based on AAI's records.[45]

In addition to her low sales output, Deguidoy was found to have incurred numerous unexplained absences. She failed to report for work for a total of 29 days within a six-month period.

---

[43] *Verdadero v. Barney Autolines Group of Companies Transport, Inc., et al.,* 693 Phil. 646, 653 (2012).

[44] *Rollo,* pp. 21-22.

[45] *Id.* at 20.

From 2009 until 2013, AAI issued various notices requiring her to explain, which she ignored.[46]

It becomes all too apparent that AAI's decision to transfer Deguidoy to the Ortigas branch was triggered by the need to streamline its operations. The Tutuban branch needed manpower, whose functions Deguidoy could not fulfill. Meanwhile, the Ortigas branch was frequented by lesser customers, and was in need of additional personnel, for which Deguidoy could adequately respond. In fact, the re-assignment was viewed as a means to aid her increase her sales target.

Similar to the instant case, in *Peckson*,[47] the Court respected the management's decision to transfer its recalcitrant employee who was habitually tardy and inconsistent in attendance to a branch that would be less affected by her laziness. The Court explained:

> As a privilege inherent in the employer's right to control and manage its enterprise effectively, its freedom to conduct its business operations to achieve its purpose cannot be denied. We agree with the appellate court that the respondents are justified in moving the petitioner to another equivalent position, which presumably would be less affected by her habitual tardiness or inconsistent attendance than if she continued as a Category Buyer, a "frontline position" in the day-to-day business operations of a supermarket such as Robinsons.[48] (Citations omitted)

Equally important, in *Benguet Electric Cooperative v. Fianza*,[49] the Court emphasized that the management has the discretion to determine where its employees are best suited to work. In this regard, the transfer could not be assailed as a form of constructive dismissal, considering that the management had the prerogative to determine the place where the employee is best qualified to serve the interests of the business given the

---

[46] *Id.* at 19-20.

[47] *Supra* note 31.

[48] *Id.* at 482.

[49] 468 Phil. 980 (2004).

qualifications, training and performance of the affected employee.[50]

A similar pronouncement was reached in *Chateau Royale Sports and Country Club, Inc. v. Balba, et al.*,[51] where the Court respected the employer's assessment that the transfer would be in the best interest of the employee, despite the latter's protests. The Court further stressed that the employee may not assail the management's decision on the pretext of the inconvenience the transfer may cause. What matters is that the transfer is not unreasonable or oppressive, and will not lead to a demotion in rank, or diminution of benefits and salaries.[52]

AAI Did Not Act in Bad Faith in Informing Deguidoy of Her Intended Transfer

The records are bereft of proof that Deguidoy was discriminated against. In as early as March 6, 2013, AAI undertook a review of its company policies, rules and regulations, and sought to implement cost-cutting measures. This led to a decision to close down certain branches. In line with this, AAI implemented re-assignments and reshuffling of its personnel in its branches.[53] Deguidoy was merely one of the many employees transferred. She was never singled out.

Moreover, neither did AAI act with disdain against Deguidoy. On the contrary, it even sought ways to help improve her performance at the Tutuban branch. The management called Deguidoy's attention to discuss the reasons behind her dismal sales performance. Instead of imposing sanctions, the management even offered to give her counseling. During the counseling sessions, Deguidoy admitted that her poor

---

[50] *Id.* at 997.

[51] 803 Phil. 442 (2017).

[52] *Id.* at 451.

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

performance was due to her weight gain which rendered it difficult for her to stand and perform her tasks as a sales coordinator. This was supported by her medical records. Her Medical Certificate dated March 2, 2011 showed that she then weighed 151.8 pounds. A later Medical Examination Report dated June 18, 2014 confirmed that her weight ballooned to 176 pounds. Deguidoy stands at four feet and eight inches (4'8"). As a solution, the management offered her a lateral transfer as a receptionist clerk or invoicing clerk, where she would not need to stand for prolonged period of time. However, Deguidoy refused the offer and promised to improve her performance.[54]

The aforementioned reports likewise show that the CA erred in opining that there was no truth to AAI's purported claim that Deguidoy's weight gain affected her performance at work. Said documents likewise belie Deguidoy's contention that she was discriminated against because of her weight.

In *Best wear Garments v. De Lemos, et al.,*[55] the Court stressed that absent any proof of discrimination or disdain on the part of the employer in transferring its employees, it is unfair to charge the former with constructive dismissal simply on the employees' insistence that the transfer to a new work assignment was against their will.[56]

The Intended Transfer Was Not a Scheme to Dismiss Deguidoy

The Court does not agree with Deguidoy's claim that her transfer was a ploy to "ease her out" of the company.

It bears stressing that although the Ortigas branch closed on November 26, 2013,[57] what matters is that at the time the intended transfer was proposed to Deguidoy, the branch was

---

[54] *Id.* at 21.

[55] 700 Phil. 471 (2012).

[56] *Id.* at 480.

[57] *Rollo,* pp. 57-58.

still fully operational and in need of additional personnel.[58] Interestingly, the 168 branch, where Deguidoy requested to be transferred, likewise closed on February 21, 2014.[59] This just shows that at the time the notice was sent to Deguidoy, there was nothing questionable about AAI's offer.

Furthermore, said allegation that AAI was scheming to rid itself of Deguidoy's services, aside from being unsubstantiated, was disproved by the former's continuous efforts to call Deguidoy back to work. In fact, when the case was dismissed by the LA, AAI immediately issued a Notice to Report on April 11, 2014. This was followed by several directives to report back for work, consisting of a Notices to Return to Work dated April 23, 2014 and May 5, 2014.[60] Subsequently, another notice was sent after the CA decision, to which Deguidoy responded, but intimated that she was not yet ready to return. Instead, she filed for a vacation leave from May 16 to 20, 2016.[61]

Seemingly, it was actually Deguidoy who continuously and contumaciously refused to abide by the notices and orders sent by AAI. Worse, her conduct is not reflective of one who was treated with disdain or discriminated against. Rather, she immediately refused the intended transfer without discussing it further with her branch manager. She was a given a notice to explain why she left for work on October 7, 2013. However, instead of taking the opportunity to converse with the management, she opted to immediately file a case for illegal dismissal. Also, during the conferences before the LA, she obstinately insisted on being assigned to the 168 branch.[62]

Based on the foregoing, it is all too apparent that **Deguidoy was not constructively dismissed.** AAI's decision to transfer her to its Ortigas branch was the result of an assiduous review

---

[58] *Id.* at 36-37.

[59] *Id.* at 36.

[60] *Id.*

[61] *Id.* at 40.

[62] *Id.* at 14.

of the latter's work performance balanced alongside the company's business needs. It was backed by evidence consisting of Deguidoy's sales output and attendance records. In the same vein, AAI's re-assignments, for which Deguidoy was affected, was not a spur of the moment move. It began as a series of measures to streamline its operations. Deguidoy was not singled out or discriminated against.

Indeed, an employee enjoys the right to be protected against any act of discrimination or disdain which renders his/her continued employment unreasonable or unlikely. However, this should not be used by the employee as a bargaining chip to insist on his/her desired assignment. Management has the right to assign an employee at any station, if it believes that the transfer is best for its business. Absent any bad faith on its part, the Court shall not interfere with the management's prerogative.

Considering that Deguidoy was not constructively dismissed, she shall be reinstated to her former position without any backwages. Deguidoy is ordered to report for work at the Tutuban branch. This is in accord with the Court's ruling in *Claudia's Kitchen, Inc. v. Tanguin,*[63] where it was held that if "the employee was neither found to have been dismissed nor to have abandoned his/her work, the general course of action is for the **Court to dismiss the complaint, direct the employee to return to work, and order the employer to accept the employee.**"[64]

Be that as it may, the Court affirms the LA's award of proportionate 13th month pay for the year 2013 in favor of Deguidoy, inasmuch as the same award was not questioned by AAI.

WHEREFORE, premises considered, the instant petition is hereby **GRANTED.** The Decision dated March 31,2016, and the Resolution dated November 3, 2016, rendered by the Court

---

[63] 811 Phil. 784 (2017).

[64] *Id.* at 799. (Emphasis ours)

of Appeals in CA-G.R. SP No. 138334 are **REVERSED and SET ASIDE.** Francia B. Deguidoy is hereby ordered to **RETURN TO WORK** within fifteen (15) days from the receipt of this Decision. Automatic Appliances, Inc. is likewise ordered to **ACCEPT** Francia B. Deguidoy.

In addition, Automatic Appliances, Inc. is **ORDERED TO PAY** Francia B. Deguidoy her proportionate 13th month pay for the year 2013.

SO ORDERED.

Hernando and *Inting, JJ.,* concur.

Perlas-Bernabe, S.A.J., on official business.

Zalameda,[*] *J.,* on official leave.

SECOND DIVISION

[G.R. No. 228898. December 4, 2019]

MAUNLAD HOMES, INC., N.C. PULUMBARIT, INC., N.C.P. LEASING CORPORATION and NEMENCIO C. PULUMBARIT, SR., *petitioners, vs.* **UNION BANK OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; A CASE RIPE FOR ADJUDICATION BECOMES MOOT AND ACADEMIC WHEN AN EVENT SUPERVENES TO RENDER A JUDGMENT OVER THE ISSUES UNNECESSARY AND SUPERFLUOUS. — "The power of judicial review is *limited* to actual cases or controversies." There are two concepts that

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

affect the existence of an actual case or controversy for the courts to exercise the power of judicial review: the *first* is the concept of *ripeness* which relates to the premature filing of a case, while the *second* is the concept of *mootness* which pertains to a belated or unnecessary judgment on the issues. These concepts highlight the importance of timing in the exercise of judicial review. Thus, "an issue that was once ripe for resolution but whose resolution, since then, has been rendered unnecessary, needs no resolution from the Court, as it presents no actual case or controversy and likewise merely presents a hypothetical problem." In other words, a case, though once ripe for adjudication, becomes moot and academic "when an event *supervenes* to render a judgment over the issues unnecessary and superfluous."

2. ID.; ID.; ID.; ID.; IN THE CASE AT BAR, IN LINE WITH THE COURT'S RULING IN THE EJECTMENT CASE, FURTHER ADJUDICATION IN THE RELATED INJUNCTION CASE WAS RENDERED UNNECESSARY AND SUPERFLUOUS. — [T]he main issue in the injunction case, *i.e., whether Union Bank should be permanently enjoined from collecting rental payments from the tenants of the Maunlad Shopping Mall*, no longer need to be resolved by the RTC, given that the Contract to Sell, which allowed Maunlad Homes to possess the property and collect rentals from its tenants, had already been determined to be **without any force and effect** by the Court in the ejectment case. Consequently, Union Bank, being the owner of the commercial complex, cannot be legally enjoined from collecting rental payments from the property's tenants. x x x "There should be an end to litigation, for public policy dictates that once a judgment becomes final, executory, and unappealable, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party."

APPEARANCES OF COUNSEL

M.B. Tomacruz & Associates for petitioners.
Babaran & Associates Law Offices, co-counsel for petitioners.
Office of the General Counsel for respondent.

D E C I S I O N

INTING, *J.*:

We resolve the Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated September 13, 2016 and the Resolution[3] dated January 6, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 131962.

The Antecedents[*]

On July 5, 2002, Union Bank of the Philippines (Union Bank), as the seller, and Maunlad Homes, Inc. (Maunlad Homes), as the buyer, entered into a Contract to Sell[4] involving a commercial complex located in Malolos, Bulacan known as the Maunlad Shopping Mall.[5] The contract was basically a "buy-back agreement" of the property, which had been previously foreclosed by the bank. The terms of the contract allowed Maunlad Homes to retain possession and management of the Maunlad Shopping Mall, and collect rental payments from its tenants.[6]

Under the Contract to Sell, the purchase price of the Maunlad Shopping Mall was set at ₱150,988,586.16, with a downpayment of ₱2,400,000.00, and the balance of ₱148,588.586.16 to be paid per agreed amortization schedule over a 180-month period.[7]

---

[1] *Rollo*, pp. 11-43.

[2] *Id.* at 61-71; penned by Associate Justice Nina G. Antonia-Valenzuela with Associate Justices Jane Aurora C. Lantion and Amy C. Lazaro-Javier (now a Member of the Court), concurring.

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

[*] The facts are culled from the cases of *Maunlad Homes, Inc., et al. v. Union Bank of the Phils., et al.*, 595 Phil. 927 (2008) and *Union Bank of the Phils. v. Maunlad Homes, Inc., et al.*, 692 Phil. 667 (2012). Both cases were quoted by Maunlad Homes in its Petition for Review on *Certiorari*.

[4] *Rollo*, pp. 47-50.

[5] *Id.* at 18.

[6] *Id.*

[7] *Id.* at 47.

The contract also stipulated that in the event of *rescission* due to failure to pay the monthly amortizations or to comply with its terms and conditions, Maunlad Homes will be required to immediately vacate the property and voluntarily turn over possession thereof to Union Bank.[8]

Maunlad Homes, however, eventually defaulted in the payment of its monthly amortizations to the bank. Consequently, Union Bank sent Maunlad Homes a Notice of Rescission of Contract dated February 5, 2003, wherein the bank demanded payment of the installments due within 30 days from receipt; otherwise, it shall deem the contract automatically rescinded. Despite receipt of the notice, Maunlad Homes still failed to pay the monthly amortizations it owed to the bank.[9]

Thus, on November 19, 2003, Union Bank sent Maunlad Homes a letter requiring the latter to: (a) pay the rentals due; and (b) vacate the property and turnover possession thereof to the bank. As its demands were left unheeded, Union Bank filed an **ejectment case** (later decided by the Court in **G.R. No. 190071**) against Maunlad Homes before Branch 64, Metropolitan Trial Court (MeTC), Makati City, on February 19, 2004.[10]

Sometime in February 2004, Union Bank began to interfere in the operations and management of the Maunlad Shopping Mall, and convinced its tenants to pay rent directly to the bank instead.[11] This prompted Maunlad Homes to file an **injunction case** (later decided by the Court in **G.R. No. 179898**) against Union Bank before Branch 15, Regional Trial Court (RTC), Malolos City, to prevent the bank from collecting rental payments from the tenants of the commercial complex.[12]

---

[8] *Id.* at 32.

[9] *Id.*

[10] *Id.*

[11] *Id.* at 18.

[12] *Id.*

I. Proceedings in the Injunction Case

In its Order dated June 23, 2004, the RTC granted Maunlad Homes' application for preliminary injunction.[13] It explained as follows:

x x x Clearly, at this stage, [Maunlad Homes] x x x has the right to remain in continuous possession [of the property] **subject to the final outcome of the ejectment suit pending before the [MeTC] of Makati**. On the other hand, [Union Bank] cannot validly claim [ownership and possession of the property], even admitting the circumstances offered by it in evidence to be true and correct, because in this jurisdiction no one has the right to obtain possession of a piece of property without resorting to judicial remedies available under the circumstances. x x x[14] (Emphasis supplied)

On July 8, 2008, Union Bank moved to dissolve the writ of preliminary injunction, but the RTC denied the motion for lack of merit.[15] Consequently, Union Bank filed a petition for review on *certiorari* before the CA assailing the RTC Orders.

The CA granted the petition for *certiorari*, and reversed the RTC rulings for lack of factual and legal basis.[16] It held that:

x x x x x x x x x

In view of the absence of a **clear and unmistakable right** on the part of [Maunlad Homes, *et al.*], we cannot sustain their claim that they would suffer irreparable injury if injunctive relief is not granted in their favor. **Where the complainants' right or title is doubtful or disputed, injunction is not proper.** Thus, **the possibility of irreparable damage without proof of existing right is no ground for an injunction.**

x x x x x x x x x

On the other hand, in line with the petition before the Court, we find that [Union Bank] has sufficiently shown its right to the issuance

---

[13] *Id.*

[14] *Id.* at 19.

[15] *Id.* at 20.

[16] *Id.* at 21.

of not only preliminary injunction but also permanent injunction against [Maunlad Homes, *et al.*].[17] (Emphasis in the original.)

Maunlad Homes, thereafter, elevated the case to the Court *via* a petition for review on *certiorari* under Rule 45 of the Rules of Court.[18] The case was docketed as **G.R. No. 179898**, and in the Decision[19] dated December 23, 2008, the Court reversed and set aside the CA Decision, and reinstated the RTC Order dated June 23, 2004.[20]

The Court found it "highly premature for the CA to make a definitive resolution of the rights and obligations of the parties under the contract to sell."[21] The Court ruled that the CA should not have hastily concluded that Maunlad Homes had no right to collect the rental payments under the contract to sell because that issue had yet to be fully resolved by the RTC. Thus, the Court reinstated the writ of preliminary injunction and ordered the RTC to resolve with dispatch the issue of injunction, which mainly involved *the determination of the rights and obligations of Maunlad Homes and Union Bank under the Contract to Sell*.[22]

Union Bank moved for reconsideration, but the Court denied the motion in its Resolution dated November 22, 2010.[23] Notably, the Decision dated December 23, 2008 became *final* and *executory* on December 29, 2010.[24]

II. Proceedings in the Ejectment Case

---

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

[18] *Id.* at 22.

[19] *Maunlad Homes, Inc., et al. v. Union Bank of the Phils., et al.*, 595 Phil. 927 (2008).

[20] *Id.* at 937.

[21] *Id.*

[22] *Id.*

[23] *Rollo*, pp. 30-31.

[24] See Entry of Judgment, *id.* at 95.

Meanwhile, on May 18, 2005, the MeTC dismissed Union Bank's ejectment complaint for lack of jurisdiction. It held that the proper action to resolve the parties' conflicting claims of right of possession over the property on the basis of ownership was an *accion reivindicatoria*, over which it had no jurisdiction.[25]

On appeal, Branch 139, RTC, Makati City, affirmed the MeTC ruling in its Decision dated July 17, 2008. The RTC ruled that the issues raised in the ejectment complaint were beyond those commonly involved in an unlawful detainer suit. It also held that the proper venue for the ejectment case was in Malolos, Bulacan; notwithstanding, the waiver of venue stipulation in the Contract to Sell.[26]

Union Bank, thereafter, appealed the RTC Decision with the CA by filing a petition for review under Rule 42 of the Rules of Court.[27] The CA affirmed the RTC Decision *in toto*. The CA held that Union Bank's cause of action was premised on the interpretation and enforcement of the Contract to Sell, and the validity of the rescission of the contract, which were matters beyond the jurisdiction of the MeTC. It thus concluded that the dismissal of the ejectment complaint was proper.[28]

Aggrieved, Union Bank filed a petition for review on *certiorari* under Rule 45 of the Rules of Court before the Court assailing the CA ruling. The case was docketed as **G.R. No. 190071**, and in the Decision[29] dated August 15, 2012, the Court reversed and set aside the CA Decision.

The Court ordered Maunlad Homes to vacate the Maunlad Shopping Mall and to pay rentals-in-arrears and rentals accruing

---

[25] *Id.* at 32.

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

[27] *Id.* at 33.

[28] *Id.*

[29] *Union Bank of the Phils. v. Maunlad Homes, Inc., et al.*, 692 Phil. 667 (2012).

in the interim until it vacates the property, with legal interest of 6% *per annum*, from November 19, 2003, when the demand to pay and to vacate the property was made, up to the finality of the Decision. Thereafter, an interest of 12% *per annum* shall be imposed on the total amount due until full payment is made. The Court *remanded* the case to Branch 64, MeTC, Makati City, for the determination of the amount of rentals due.[30]

The Court ruled that the allegations of Union Bank in its ejectment complaint clearly demonstrated a cause of action for unlawful detainer, and vested the MeTC with jurisdiction over the case:[31] *first*, Maunlad Homes "maintained possession of the subject properties" pursuant to the Contract to Sell; *second*, Maunlad Homes "failed to faithfully comply with the terms of payment," which prompted Union Bank to rescind the contract; *third*, despite receipt of the Notice of Rescission dated February 5, 2003, Maunlad Homes "refused to turn over and vacate the subject premises[;]" and *fourth*, as a consequence, Union Bank filed an action for unlawful detainer before the MeTC on February 19, 2004, which is within one year from the date of the last demand.[32]

The Court stressed that "[t]he authority granted to the MeTC to preliminarily resolve the issue of ownership to determine the issue of possession ultimately allow[ed] it to interpret and enforce the contract or agreement between [Maunlad Homes] and [Union Bank]."[33]

Moreover, the Court found that "Maunlad Homes' act of withholding [its] installment payments rendered the contract [between the parties] ineffective and without force and effect, and **ultimately deprived itself of the right to continue possessing [the] Maunlad Shopping Mall**."[34]

---

[30] *Id.* at 681.

[31] *Id.* at 677.

[32] *Id.* at 676-677.

[33] *Id.* at 678.

[34] *Id.* at 680.

III. Proceedings after the finality of the Court's Decision in the Ejectment Case

To recall, the Court, in **G.R. No. 179898**, reinstated the writ of preliminary injunction issued by the RTC against Union Bank and remanded the case to the trial court for the resolution of the issue of injunction with dispatch.[35]

When the Decision dated August 15, 2012 attained finality on February 14, 2013,[36] Union Bank immediately moved for the dismissal of the injunction case before the RTC on the ground of *mootness*. It claimed that the legal and factual issues involved in the complaint for injunction had already been resolved in **G.R. No. 190071**.[37]

Ruling of the RTC

In its Order[38] dated February 14, 2013, the RTC denied the motion for lack of merit.[39] It ruled that the interpretation of the Contract to Sell in the Decision dated August 15, 2012 was merely *provisional* in order to resolve the issue of possession, *viz.*:

> As it stands, the ejectment suit only made a **provisional interpretation** of the contract to sell to determine possession. **The conclusive interpretation rests upon the injunction suit where the status *quo ante* was that [Maunlad Homes], after entering into a contract to sell, was not precluded by [Union Bank] from leasing the property.** As to whether or not the contract to sell was properly rescinded remained unresolved and only upon its determination lies the fate of the acts being restrained.[40] (Emphasis supplied.)

---

[35] *Maunlad Homes, Inc., et al. v. Union Bank of the Phils., et al., supra* note 19 at 937.

[36] See Entry of Judgment, *rollo*, pp. 97-98.

[37] *Id.* at 65-66.

[38] *Id.* at 86-91; penned by Judge Alexander P. Tamayo.

[39] *Id.* at 91.

[40] *Id.*

Union Bank moved for reconsideration but the RTC denied the motion in its Order[41] dated June 27, 2013. This prompted Union Bank to file a petition for *certiorari* before the CA to challenge the RTC Orders on the ground of grave abuse of discretion.[42]

Ruling of the CA

In its Decision dated September 13, 2016, the CA reversed and set aside the assailed RTC Orders and dismissed the Complaint for injunction for having been rendered moot by the Court's Decision dated August 15, 2012 in G.R. No. 190071.[43]

The CA ruled that there was no longer any basis to enjoin Union Bank from collecting rental payments from the tenants of the Maunlad Shopping Mall, considering the Court's final and executory ruling in G.R. No. 190071.[44] It explained that:

> There is here no more substantial relief which may be accorded to [Maunlad Homes] in this case. Notably, in this Complaint for injunction, [Maunlad Homes] premised their alleged right to possess the subject properties, and to lease out the stalls to the tenants, on the contract to sell. However, as we already stated, the Supreme Court, in G.R. No. 190071, already ruled with finality that the contract to sell executed by [Union Bank] and [Maunlad Homes] was ineffective and without force and effect. Since the contract to sell failed to have force and effect, [Maunlad Homes'] right to possess and lease out the subject properties, was also extinguished.[45]

Thus, the CA concluded that the RTC had gravely abused its discretion when it denied Union Bank's Motion to Dismiss.[46] Maunlad Homes moved for reconsideration, but the CA denied

---

[41] *Id.* at 92-93.

[42] *Id.* at 67.

[43] *Id.* at 70.

[44] *Id.*

[45] *Id.*

[46] *Id.* at 68.

the motion in its Resolution[47] dated January 6, 2017. As a result, Maunlad Homes filed the present Petition for Review on *Certiorari* assailing the CA Decision and Resolution.

Issue

The issue for the Court's resolution is *whether the CA correctly dismissed the Complaint for injunction for having been rendered moot by the Decision dated August 15, 2012 in G.R. No. 190071*.

The Court's Ruling

The petition is unmeritorious.

"The power of judicial review is *limited* to actual cases or controversies."[48] There are two concepts that affect the existence of an actual case or controversy for the courts to exercise the power of judicial review: the *first* is the concept of *ripeness* which relates to the premature filing of a case, while the *second* is the concept of *mootness* which pertains to a belated or unnecessary judgment on the issues.[49]

These concepts highlight the importance of timing in the exercise of judicial review.[50] Thus, "an issue that was once ripe for resolution but whose resolution, since then, has been rendered unnecessary, needs no resolution from the Court, as it presents no actual case or controversy and likewise merely presents a hypothetical problem."[51] In other words, a case, though once ripe for adjudication, becomes moot and academic "when an event *supervenes* to render a judgment over the issues unnecessary and superfluous."[52]

---

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

[48] *Bankers Association of the Philippines, et al. v. COMELEC*, 722 Phil. 92, 100 (2013). Italics supplied.

[49] *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. GCC Approved Medical Centers Association, Inc., et al.*, 802 Phil. 116, 145-146 (2016).

[50] *Id.* at 146.

[51] *Id.* at 147.

[52] *Id.*

In order to determine whether the Complaint for injunction has indeed become moot and academic, we must now carefully examine the Court's Decisions dated December 23, 2008 in **G.R. No. 179898** (the injunction case) and August 15, 2012 in **G.R. No. 190071** (the ejectment case).

In the **injunction case**, the Court found it *premature* for the CA to rule on Maunlad Homes' right to collect rental payments from the tenants of the Maunlad Shopping Mall as the issue had yet to be resolved by the RTC.[53]

At the time, what was at issue was the propriety of the RTC's issuance of a writ of preliminary injunction against Union Bank to enjoin the bank from collecting rental payments from the tenants of the Maunlad Shopping Mall. The Court found the issuance of the writ proper and directed the RTC to resolve the issue of permanent injunction with dispatch, *viz.*:

> In all, caution and the balance of convenience dictate that the RTC writ of injunction should be sustained. The issue of the rights and obligations of [Maunlad Homes] and [Union Bank] pursuant to the contract to sell should proceed and must be threshed out at trial. Meantime, the *status quo* needs to be preserved. The *status quo ante* in this case is the state of things before the filing of the complaint where [Maunlad Homes] [was] allowed to receive rental payments from the tenants of the commercial complex.[54]

The Court reiterated this point in its Resolution[55] dated November 22, 2010 wherein it denied Union Bank's Motion for Reconsideration, *viz.*:

> The findings and conclusions of the trial court on the propriety of the issuance of injunctive writs are premised solely on initial evidence, and should be considered merely as provisional. The contending rights and obligations of the parties based on the contract to sell or buy-

---

[53] *Maunlad Homes. Inc., et al. v. Union Bank of the Phils., et al., supra* note 35.

[54] *Id.*

[55] *Maunlad Homes, Inc., et al. v. Union Bank of the Phils., et al.*, 650 Phil. 119 (2010).

back agreement will still have to be determined with finality by the trial court. **The issue of whether there was delay in the payments under the contract to sell and whether the contract to sell is still subsisting must be determined first by the RTC.** It is only proper that all the incidents in the main case be resolved in the trial court for a just determination of all the factual matters.[56] (Emphasis supplied.)

Then came the ruling in the **ejectment case** wherein the Court categorically ruled that Maunlad Homes had lost its right to possess the property under the Contract to Sell when it defaulted in the payment of its monthly amortizations to Union Bank.[57] The Court explained that:

x x x After reviewing the terms of the contract between Union Bank and Maunlad Homes, we find no reasonable ground to exempt the present case from the general rule; the contract between Union Bank and Maunlad Homes is a contract to sell.

In a contract to sell, the full payment of the purchase price is a positive suspensive condition whose non-fulfillment is not a breach of contract, but merely an event that prevents the seller from conveying title to the purchaser. "The non-payment of the purchase price renders the contract to sell ineffective and without force and effect." **Maunlad Homes' act of withholding [its] installment payments rendered the contract [between the parties] ineffective and without force and effect, and ultimately deprived itself of the right to continue possessing [the] Maunlad Shopping Mall.**[58] (Emphasis supplied.)

The Court thus ordered Maunlad Homes to vacate the Maunlad Shopping Mall and to pay rentals-in-arrears and rentals accruing in the interim until it turned over possession of the property to Union Bank. The case was thereafter remanded to the MeTC of Makati City for the *determination of the amount of rentals due*.[59]

---

[56] *Id.* at 129.

[57] *Union Bank of the Phils. v. Maunlad Homes, Inc., et al., supra* note 29 at 680.

[58] *Id.* at 679-680.

[59] *Id.* at 681.

In light of these, it is quite obvious that the Court's ruling in the ejectment case had effectively rendered any further adjudication in the injunction case unnecessary and superfluous.

Simply put, the main issue in the injunction case, *i.e., whether Union Bank should be permanently enjoined from collecting rental payments from the tenants of the Maunlad Shopping Mall*, no longer need to be resolved by the RTC, given that the Contract to Sell, which allowed Maunlad Homes to possess the property and collect rentals from its tenants, had already been determined to be **without any force and effect** by the Court in the ejectment case. Consequently, Union Bank, being the owner of the commercial complex, cannot be legally enjoined from collecting rental payments from the property's tenants.

To allow the RTC to adjudicate the issue would run the risk of violating the doctrine of immutability of final judgments should it find the issuance of permanent injunctive relief in Maunlad Homes' favor to be proper. After all, the Court's definitive judgment in the ejectment case, being final and executory, "is no longer subject to change, revision, amendment or reversal."[60]

"There should be an end to litigation, for public policy dictates that once a judgment becomes final, executory, and unappealable, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party."[61] It is without a doubt in the interest of justice that we put an end to this litigation between the parties that started in 2003 and finally implement the Court's Decision dated August 15, 2012 in G.R. No. 190071, which had attained finality on February 14, 2013, or more than six years ago. To allow the losing party's dilatory schemes to prolong the case further would frustrate all the efforts, time and expenditure not just of the winning party, but also of the courts.[62]

---

[60] *Bongcac v. Sandiganbayan, et al.*, 606 Phil. 48, 55 (2009).

[61] *Philippine Trust Company v. Sps. Roxas*, 771 Phil. 98, 107 (2015).

[62] *Bongcac v. Sandiganbayan, et al., supra* at 56.

WHEREFORE, the Petition is **DENIED**. The Decision dated September 13, 2016 and the Resolution dated January 6, 2017 of the Court of Appeals in CA-G.R. SP No. 131962 are **AFFIRMED**.

SO ORDERED.

Reyes, A. Jr.[**] and *Hernando, JJ.*, concur.

Perlas-Bernabe, S.A.J. (Chairperson), on official business.

Zalameda,[***] *J.*, on official leave.

SECOND DIVISION

[G.R. No. 229703. December 4, 2019]

EDITHA SALINDONG AGAYAN, *petitioner, vs.* **KITAL PHILIPPINES CORP., RICARDO CONSUNJI III and JOCELYN CAVANEYRO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FINDINGS OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) AFFIRMED BY THE COURT OF APPEALS, RESPECTED. — [T]he question of whether petitioner was validly dismissed is a question of fact which is beyond the province of a petition for review on *certiorari*. A review of the CA decision in a labor case brought under Rule 45 of the Rules of Court is limited only to a review of errors of law imputed

---

[**] Designated acting chairperson per Special Order No. 2750 dated November 27, 2019.

[***] Designated additional member per Special Order No. 2724 dated October 25, 2019.

to the CA. x x x The Labor Arbiter and the NLRC have already determined the factual issues, except for the issue on petitioner's entitlement to the unpaid PLDT leasing commission, where they differ in findings. Then, the CA affirmed the NLRC's findings. These findings are accorded great respect, and are deemed binding on us as long as they are supported by substantial evidence.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; TWO-FOLD REQUIREMENTS FOR A VALID DISMISSAL. — The two-fold requirements for a valid dismissal are the following: (1) dismissal must be for a cause provided for in the Labor Code, which is substantive; and (2) the observance of notice and hearing prior to the employee's dismissal, which is procedural.

3. ID.; ID.; ID.; JUST CAUSES; WILLFUL DISOBEDIENCE. — Petitioner committed willful disobedience and breach of trust which are just causes for dismissal under the Labor Code. x x x Willful disobedience requires the concurrence of the following: the employee's assailed conduct has been willful or intentional, the willfulness being characterized by a "wrongful and perverse attitude;" and the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.

4. ID.; ID.; ID.; ID.; LOSS OF TRUST AND CONFIDENCE. — As regards loss of trust and confidence, for there to be a valid dismissal, the breach of trust must be willful, *i.e.*, it must be done intentionally, knowingly, and purposely, without justifiable excuse. In a dismissal based on this ground, the premise is that the employee concerned holds a position of trust and confidence. It is the breach of this trust that results in the employer's loss of confidence in the employee.

5. ID.; ID.; ID.; A VALID DISMISSAL DOES NOT WARRANT AWARD OF MORAL AND EXEMPLARY DAMAGES. — A dismissed employee is entitled to moral damages when the dismissal is attended by bad faith or fraud or constitutes an act oppressive to labor, or is done in a manner contrary to good morals, good customs or public policy. As for exemplary damages, they may be awarded if the dismissal is effected in a wanton, oppressive or malevolent manner. None of the circumstances were shown to be present in this case. Thus, petitioner is not entitled to either moral or exemplary damages.

APPEARANCES OF COUNSEL

Andres Padernal & Paras Law Offices for petitioner.
Britanico Sarmiento & Ringler Law Offices for respondents.

D E C I S I O N

INTING, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the Decision[2] dated September 22, 2016 and the Resolution[3] dated February 1, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 144376, which dismissed Editha Salindong Agayan's (petitioner) petition for *certiorari*, and effectively dismissing her complaint for illegal dismissal against Kital Philippines Corporation, Ricardo Consunji III and Jocelyn Cavaneyro (respondents).

The antecedents, as culled from the records, are as follows:

> Private Respondent Kital Philippines Corporation ("Kital") is a domestic corporation in the business of importing and exporting telecommunications, medical, cosmetic, and dental equipment, among others. Private Respondents Ricardo Consunji III ("Consunji") and Jocelyn Cavaneyro ("Cavaneyro") are the President of Kital and Head of Accounting, respectively.
>
> This case stemmed from a complaint filed by Petitioner against Private Respondents for illegal dismissal, non-payment of wages, service incentive leave pay, 13th month pay, retirement benefits, illegal suspension, moral damages, and exemplary damages.
>
> Records show that Petitioner was hired by Kital on 30 March 2011 to work as the Head of Telecommunications. Prior to her dismissal on 08 September 2014, Petitioner supposedly earned a monthly basic salary of Eighty Thousand Pesos (₱80,000.00), excluding other

---

[1] *Rollo*, Vol. I, pp. 10-43.

[2] *Id.* at 46-60; penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Fernanda Lampas Peralta and Nina G. Antonio-Valenzuela, concurring.

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

benefits, as well as commissions on sales based on the amount(s) collected.

Petitioner averred that, sometime in 2014, she received information of anomalies and dishonesty committed by Cavaneyro, specifically, that the latter had been terminated due to four (4) counts of dishonesty. Petitioner reported her findings to Consunji, the company President, for verification, but the same was not acted upon. Thereafter, Consunji's behavior became irritable as he would shout at and bully Petitioner. In one instance, Consunji ordered her to fire a certain Rosalinda Maranan ("Maranan"), an employee of Kital, but Petitioner refused to comply with the directive as she opined that there was no valid ground for termination. In another instance, Consunji demanded Petitioner to provide him with the names of Kital's Relations Managers (RMs), which are employees of other companies that assist Kital in doing business in exchange for a commission. Petitioner, however, did not provide the information asked of her as she believed that it was the company's practice that the RM's names should be kept confidential, and also that Consunji will use the same information to blackmail her in the future. Subsequently, the working relationships between Petitioner and Consunji and Cavaneyro worsened. Petitioner expressed her concerns via e-mail to the foreign principal of Kital, a certain Mr. Kuti Mor, and explained that Consunji had assaulted her and threatened her in the office. Eventually, petitioner was served a notice to explain and demanded to vacate the company premises. On 08 September 2014, Kital sent a notice of termination.

Petitioner claimed that she was illegally dismissed from employment without just cause due to Private Respondents' disdain for her. She did not follow the instructions to terminate Maranan because she, Petitioner, was Maranan's superior and believed in good faith that there was no justifiable ground for the dismissal in view of the latter's satisfactory performance. Furthermore, Petitioner insisted that the company was committed to keep the confidentiality of the names of the RMs, and that this was the practice for several years. She did not accede to Consunji's demand as she feared that the latter will use the same to harass her and cause her to submit to unjust orders. Additionally, Petitioner did not breach the trust and confidence reposed on her.

As a consequence of her unlawful dismissal, Petitioner alleged that she is entitled to reinstatement, backwages, and other monetary benefits such as service incentive leave pay and 13th month pay. Petitioner further claimed that she is also entitled to several

commissions including a PLDT leasing commission that she earned, but had not received amounting to Three Million Six Hundred Sixty Five Thousand Six Hundred Forty Eight Pesos and Ninety Centavos (₱3,665,648.90). Finally, as Private Respondents acted in bad faith in terminating her, she is likewise entitled to the payment of moral damages, exemplary damages, and attorney's fees.

For their part, Private Respondents countered that Petitioner committed several infractions in the course of her employment: she e-mailed Mr. Kuti Mor (Kital's foreign principal) and falsely accused Consunji and Cavaneyuro (*sic*) of creating chaos and disruption in the office; she refused to accept Consunji's authority as company president, even declaring that she will no longer report to him; she was organizing another company in direct or indirect competition with the business of Kital, and had formulated a business concept/plan for that purpose; she refused to follow the established disciplinary procedure(s) when she interfered and meddled in the disciplinary actions taken against Maranan; she refused to follow the lawful order of Consunji who had instructed her to provide him with a list of PLDT accounts and the names of RMs that handle the accounts; and she allowed Maranan to use the title of "Telecom Sales and Business Development Manager" despite the fact that no such position exists.

On 22 August 2014, Private Respondents sent Petitioner a notice informing her of the decision to impose preventive suspension of thirty (30) days, charging her with several violations of company policy, directing her to explain why she should not be subjected to disciplinary action in view of the foregoing incidents, and notifying her of a hearing to be held on 29 August 2014. Petitioner submitted her response on 27 August 2014, but did not attend the scheduled hearing. Subsequently, on 08 September 2014, a Notice of Termination was issued against Petitioner.[4]

In the Decision[5] dated July 14, 2015, Labor Arbiter Imelda C. Alforte-Ganancial (Labor Arbiter) dismissed petitioner's complaint for illegal dismissal for lack of merit. Nevertheless, the Labor Arbiter awarded to petitioner certain sums as stated in the *fallo* of the decision as follows:

---

[4] *Id.* at 47-49.

[5] *Id.* at 427-442.

WHEREFORE, premises considered, the complaint for illegal dismissal is hereby DISMISSED for lack of merit. However, respondent Kital Philippines Corporation is directed to pay complainant the following, to wit:

1)	Last Pay	- ₱72,527.70;
2)	PLDT Leasing unpaid commission	- ₱3,625,515.87; and
	TOTAL	- ₱3,698,043.57
3)	10%Attorney's fees	- ₱369,804.35
	GRAND TOTAL	- ₱4,067,847.92.

Other claims are DISMISSED for lack of merit.

SO ORDERED.[6]

Both parties appealed to the NLRC.

In the Decision[7] dated September 23, 2015, the NLRC modified the Labor Arbiter's Decision. The dispositive portion of the NLRC's Decision reads:

WHEREFORE, the appeal filed by complainant Editha Salindong Agayan is DISMISSED.

The appeal filed by Kital Philippines Corporation, Ricardo Consunji and Jocelyn Cavaneyro is PARTLY GRANTED.

The decision of the Labor Arbiter is MODIFIED, in that, respondents are ordered to pay complainant's salary plus allowances and benefits, equivalent to 27 days, plus 10% thereof as attorney's fees.

The PLDT leasing unpaid commission granted by the Labor Arbiter is DELETED.

SO ORDERED.[8]

---

[6] *Id.* at 441-442.

[7] *Id.* at 477-496; penned by Presiding Commissioner Gregorio O. Bilog III with Commissioners Erlinda T. Agus and Alan A. Ventura, concurring.

[8] *Id.* at 495.

Petitioner sought reconsideration of the NLRC Decision, but it was denied in the Resolution[9] dated November 26, 2015.

Petitioner thereafter filed a Petition for *Certiorari*[10] before the CA. However, in the Decision[11] dated September 22, 2016, the CA dismissed the petition and affirmed the NLRC. Petitioner's subsequent motion for reconsideration was denied in the Resolution[12] dated February 1, 2017.

Hence, this petition raising the following issues:

A.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED AND DECIDED IN A WAY NOT IN ACCORD WITH LAW AND APPLICABLE JURISPRUDENCE [IN AFFIRMING] THE NLRC DECISION AND FINDING THAT PETITIONER'S DISMISSAL IS VALID.

B.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED AND DECIDED IN A WAY NOT IN ACCORD WITH LAW AND APPLICABLE JURISPRUDENCE IN AFFIRMING THE NLRC DECISION AND RULING THAT PETITIONER IS NOT ENTITLED TO MORAL AND EXEMPLARY DAMAGES.

C.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED AND DECIDED IN A WAY NOT IN ACCORD WITH LAW AND APPLICABLE JURISPRUDENCE [IN AFFIRMING] THE NLRC DECISION AND RULING THAT PETITIONER IS NOT ENTITLED TO THE UNPAID PLDT LEASING COMMISSION.[13]

The Court's Ruling

The petition lacks merit.

---

[9] *Rollo*, Vol. II, pp. 540-550.

[10] *Id.* at 552-580.

[11] *Rollo*, Vol. I, pp. 46-60.

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

[13] *Id.* at 22.

Preliminarily, the question of whether petitioner was validly dismissed is a question of fact which is beyond the province of a petition for review on *certiorari*.[14] A review of the CA decision in a labor case brought under Rule 45 of the Rules of Court is limited only to a review of errors of law imputed to the CA.[15]

Thus:

> In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?[16] (Emphasis and italics omitted.)

The Labor Arbiter and the NLRC have already determined the factual issues, except for the issue on petitioner's entitlement to the unpaid PLDT leasing commission, where they differ in findings. Then, the CA affirmed the NLRC's findings. These findings are accorded great respect, and are deemed binding on Us as long as they are supported by substantial evidence.[17]

After a careful study of the case, We hold that the finding that petitioner's dismissal was valid has legal basis and is supported by the evidence on record and jurisprudence.

---

[14] *Skippers United Pacific, Inc. v. NLRC*, 527 Phil. 248, 256 (2006).

[15] *Abing v. NLRC, et al.*, 742 Phil. 647, 653 (2014).

[16] *Id.* at 653-654.

[17] *Hantex Trading Co., Inc. v. Court of Appeals*, 438 Phil. 737, 743 (2002).

The two-fold requirements for a valid dismissal are the following: (1) dismissal must be for a cause provided for in the Labor Code, which is substantive; and (2) the observance of notice and hearing prior to the employee's dismissal, which is procedural.[18]

Petitioner committed willful disobedience and breach of trust which are just causes for dismissal under the Labor Code.[19] In its Decision, the CA held:

> In this case, it is not disputed that Petitioner refused to follow Consunji's instruction to provide him with the list of names comprising the RMs (Relations Managers). As the chief executive of Kital, Consunji is ultimately responsible, *inter alia*, for the general oversight of company operations, and by virtue thereof, he has the right to direct his subordinates to furnish him with information relative to the business. Since the primary function of the RMs is to assist Kital in doing business, albeit for a commission, it stands to reason that Consunji's order to Petitioner was within the purview of the company's operations, and therefore, the said instruction was reasonable and lawful. In fact, the evidence on record is bereft of any evidence showing that there is a bonafide covenant/agreement to the effect that the identities of the RMs must be kept strictly confidential. Quite the opposite, in [the] past correspondence to Consunji, Petitioner had provided him with the names of the RMs as requested. It thus stands to reason that Petitioner was unjustified in complying with the directive given to her.
>
> Moreover, Petitioner's outright refusal to respect the authority of Consunji, her superior, strengthens the conclusion that she committed

---

[18] *Ranises v. NLRC*, 330 Phil. 936, 942 (1996) citing *San Miguel Corporation v. NLRC*, 294 Phil. 842 (1993); *China City Restaurant Corp. v. NLRC*, 291 Phil. 468 (1993); *Mapalo v. NLRC*, G.R. No. 107940, June 17, 1994, 233 SCRA 266.

[19] Art. 297[282] Termination by Employer. - An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work; x x x

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative; x x x

willful disobedience. Although perhaps there is nothing inherently wrong with the act of an employee in expressing his or her grievances to the company's principals, such is not the case here. It is highlighted that in an e-mail message addressed to Mr. Kuti Mor (the foreign principal of Kital), Petitioner proclaimed, "I already declare to him (sic) that I will no longer reporting to him (sic) starting the beginning of business hour today and moving forward." Considering that herein Petitioner is a former managerial employee, her declaration, by itself, is highly unprofessional as it serves no purpose except to sow great discord in a working environment. Lest other employees be influenced by such a negative, combative disposition, it behooves upon her to behave in a civil or diplomatic way towards the president of the company, which she failed to do. Hence, based on these circumstances, the wrongfulness or perverseness of Petitioner's conduct is apparent.

Second. Petitioner's actions also constitute **loss of trust and confidence** reposed on her.

x x x x x x x x x

It is not disputed that Petitioner had formulated a business concept/plan which appeared to be in conflict with the operations of Kital, Considering that Petitioner was the former Telecommunications Head of Kital, which is a managerial position, it logically follows that she necessarily has sufficient knowledge of the inner workings of the company. On this premise, it is not difficult to see why Private Respondents believed that Petitioner's actions were detrimental to the company since, naturally, the former would try to protect their own interests. Furthermore, jurisprudence has held that "[w]ith respect to a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal."[20] (Emphasis in the original.)

Willful disobedience requires the concurrence of the following: the employee's assailed conduct has been willful or intentional, the willfulness being characterized by a "wrongful and perverse attitude;" and the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.[21]

---

[20] *Rollo*, Vol. I, pp. 54-55.

[21] *Acesite Corp. v. National Labor Relations Commission*, 490 Phil. 249, 260 (2005).

Indeed, petitioner's refusal to provide Consunji the names of the RMs is not justified. She had no reason to keep the information confidential from the CEO of the company where she worked for Consunji, as the CEO, had every right to obtain this kind of information from petitioner, especially, as the latter herself admits that these RMs are non-employees of Kital. The RMs are actually from different companies, but, nevertheless, maintain a close association with Kital.

As regards loss of trust and confidence, for there to be a valid dismissal, the breach of trust must be willful, *i.e.*, it must be done intentionally, knowingly, and purposely, without justifiable excuse. In a dismissal based on this ground, the premise is that the employee concerned holds a position of trust and confidence. It is the breach of this trust that results in the employer's loss of confidence in the employee.[22]

As aforesaid, petitioner was the former Telecommunications Head of Kital which is a managerial position. She readily admits to having formulated a business plan which, as found below, seemed to be in conflict with the business operations of Kital. In attempting to defend her act, petitioner could only say that she did it because her relationship with Kital was already strained. But for obvious reasons, her justification is not acceptable. It is thus easy to see that there was sufficient basis for the loss of confidence on the part of Kital.

Further, petitioner is not entitled to the unpaid PLDT leasing commission.

Stated in Annex A[23] of petitioner's Employee Contract[24] with Kital are the Employee Benefits. Item No. 6 thereof on Commission reads:

---

[22] *Baron, et al. v. National Labor Relations Commission, et al.*, 627 Phil. 158, 171 (2010).

[23] *Rollo*, Vol. I, p. 65.

[24] *Id.* at 64-66.

6. Commission	₱20,000 committed PLDT commission for total minimum monthly collection of PhP1.2Million. If less, the commission will be pro-rated based on the amount of the collection. -New leasing/installation: 5% net profit (after recovering all expenses) x x x Note: Upon closing the deal, the first month commission will be given affront. Then the remaining commission will be after return of investment.

Petitioner submits that she is entitled to the 5% commission on the PLDT leasing/installation that she had obtained on behalf of Kital. According to her, upon Kital's recovery of expenses, such as cost of sales, and there is already a return of investment, she is entitled to the 5% commission regardless of whether or not there have actually been monthly collections. She illustrates in the following manner:

> x x x For example, if petitioner was able to obtain a One Million Peso (Php1,000,000.00) contract and Two Hundred Thousand Pesos (Php200,000.00) is the cost of sales (inclusive of sales, materials, equipments, etc.) then the basis for the five percent (5%) commission is Php1 Million less P200,000.00 or Eight Hundred Thousand Pesos (Php800,000.00). This is given after the cost of sales has been deducted. It does not depend on the monthly collections by the company, unlike the PLDT commissions.[25] (Underscoring omitted.)

The CA held that petitioner cannot claim for the amounts for contracts to expire in 2018 as these commissions may or may not accrue. To hold otherwise would not be fair to Kital.

Petitioner is imposing a manner of computation that has no sufficient basis. Viewed against the following findings of

---

[25] *Id.* at 33.

the NLRC Decision and CA Decision, petitioner's contentions easily fail.

As culled from the NLRC Decision:

> The PLDT commission should not extend beyond the complainant's employment contract. Complainant's computation of the leasing periods is based on the lease period itself, and not the actual lease payments made by the lessors until August 22, 2014, her date of suspension. The prospective claims have no support and basis as she was suspended without pay and the contract was subsequently terminated. Therefore, she is not entitled to such claims.
>
> As shown in the above Employee Benefit, the commissions are due upon actual monthly collections. The contract of lease with PLDT is up to 2018. *To pay her the 5% commission outright when there is no assurance that it would last until 2018 would not be in consonance with the terms of the Employee Benefit. It is a wrong business judgment to pay the commission outright at the time of sale. Either party may terminate the contract, which indeed happened. Complainant did not refute the respondent's claim that the contract was subsequently terminated.*
>
> There is a NOTE indicated therein that "Upon closing the deal, the first month commission will be given affront. Then the remaining commission will be after return of investment."
>
> It is therefore clear that the 5% commission is due monthly or upon payment of the lessee, not outright 5% commission. It is only the first month commission that is paid immediately.
>
> The complainant computed the purported PLDT commission based on the Installation Commission Report for 2011-2014 and the Estimated Monthly Revenues for contractual periods ranging from 48 to 60 months. It does not show the actual monthly payments. The computation should be based on actual collections as provided in the Employee Benefit.
>
> Although complainant is entitled to commissions, the same should be based on actual collections. Complainant failed to show proof of actual collections made.[26] (Citations omitted; italics supplied.)

---

[26] *Id.* at 493-494.

As culled from the CA Decision:

> The evidence on record shows that Petitioner had already been given her *PLDT commission* of ₱20,000.00 starting from June 2011 until August 2014.0n the other hand, however, she is not entitled to the *leasing commission*. By express stipulation in the Employee Benefits, it is clear that Petitioner is only entitled to receive leasing commissions upon actual collection, with the sole exception being the leasing commission of the first month. Since the leasing commission only accrues upon return of investment or actual collection, it was therefore erroneous for Petitioner to compute the amount due to her up to 2018, which is the end of the lease contracts. This is because Petitioner was placed under preventive suspension for thirty (30) days beginning on 22 August 2014, and shortly thereafter, her employment in Kital ceased on 08 September 2014. Besides, if for whatever reason it should occur that the lease contracts were terminated prior to 2018, then it would be contrary to fairness to hold Kital liable to pay Petitioner commissions that never came to fruition. Hence, the NLRC did not err in finding that Petitioner should be denied the unpaid PLDT leasing commission.[27] (Italics in the original.)

Further, the deletion of the award of moral and exemplary damages is sustained for lack of sufficient basis to justify them.

A dismissed employee is entitled to moral damages when the dismissal is attended by bad faith or fraud or constitutes an act oppressive to labor, or is done in a manner contrary to good morals, good customs or public policy.[28] As for exemplary damages, they may be awarded if the dismissal is effected in a wanton, oppressive or malevolent manner.[29] None of the circumstances were shown to be present in this case. Thus, petitioner is not entitled to either moral or exemplary damages.

WHEREFORE, the petition for review is **DENIED**. The Decision dated September 22, 2016 and the Resolution dated February 1, 2017 of the Court of Appeals in CA-G.R. SP No. 144376 are **AFFIRMED.**

---

[27] *Id.* at 58.

[28] *Quadra v. Court of Appeals*, 529 Phil. 218, 223 (2006).

[29] *Id.* at 223-224.

SO ORDERED.

Reyes,[*] *A. Jr.* and *Hernando, JJ.*, concur.

Perlas-Bernabe, S.A.J. (Chairperson), on official business.

Zalameda,[**] *J.*, on official leave.

SECOND DIVISION

[G.R. No. 240441. December 4, 2019]

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

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE (RPC); RAPE; ELEMENTS. — Article 266-A of the RPC, as amended by R.A. No. 8353, defines the crime of rape x x x Accordingly, to sustain a conviction for rape through sexual intercourse, the prosecution must prove the following elements beyond reasonable doubt, namely: (i) that the accused had carnal knowledge of the victim; and (ii) that said act was accomplished a) through the use of force or intimidation, or b) when the victim is deprived of reason

---

[*] Designated acting chairperson per Special Order No. 2750 dated November 27, 2019.

[**] Designated additional member per Special Order No. 2724 dated October 25, 2019.

[*] 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 [l][c]) dated September 5, 2017.

or otherwise unconscious, or c) by means of fraudulent machination or grave abuse of authority, or d) when the victim is under 12 years of age or is demented.

2. ID.; ID.; STATUTORY RAPE; CONSTRUED. — It cannot be gainsaid that "sexual congress with a girl under 12 years old is always rape." In statutory rape, force and intimidation are immaterial, and the only subject of inquiry is the age of the child and whether carnal knowledge in fact took place. The law presumes that the victim does not and cannot have a will of her own on account of her tender years. In the same vein, the child's consent is immaterial because of her presumed incapacity to discern evil from good.

3. ID.; ID.; RAPE THROUGH FORCE AND INTIMIDATION; MORAL ASCENDANCY OF APPELLANT AS COMMON-LAW SPOUSE OF VICTIM'S MOTHER TAKES THE PLACE OF FORCE AND INTIMIDATION AS AN ELEMENT OF RAPE. — Anent the charge of rape through force and intimidation, AAA credibly narrated that sometime in April 2002, XXX ordered her to go with him to the coconut kiln. AAA was left with no choice but to obey XXX, out of fear that he will kill her family if she refuses to give in to his advances. Undoubtedly, XXX succeeded in having carnal knowledge with AAA by intimidating her into submission. Added to this, AAA, being a child of tender years easily succumbed to XXX's intimidation and coercion. It must be remembered that AAA looked at XXX as her "*Tatay*." XXX's moral ascendancy as common-law spouse of the victims' mother takes the place of force and intimidation as an element of rape. It is well-settled that the term "intimidation" may also include moral intimidation and coercion, which are precisely what XXX used to overpower AAA.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE VICTIM'S BEHAVIOR AFTER THE RAPE INCIDENT AND HER FAILURE TO TIMELY REPORT THE ABUSE SHE EXPERIENCED DID NOT DESTROY HER CREDIBILITY. — XXX cannot attack AAA's credibility by claiming that her behavior and actuations after the rape incident are atypical of a rape victim. To begin with, there is no such thing as a typical reaction or norm of behavior among rape victims. The workings of the human mind when placed under emotional stress is unpredictable. Some victims may shout, some may faint, while

others may be shocked into insensibility. Not every victim can be expected to act with reason or conformably with the usual expectation of mankind. Certainly, it is unfair to expect and demand a rational reaction or a standard behavioral response from AAA, who was confronted with such startling and traumatic experience. Her failure to shout, or seek for help does not negate rape. Neither shall her refusal to get angry at XXX or leave her residence be taken against her. Furthermore, AAA's credibility is not affected by her delay in reporting the rape incident. In *People v. Gersamio* and *People v. Velasco,* the Court emphasized that the victim's failure to report the rape to other persons does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue and fabricated. Delay in prosecuting the offense is not an indication of a fabricated charge, and does not necessarily cast doubt on the credibility of the victim. This especially holds true if the victim faces the threat of physical violence. Unfortunately for the victim, pain and ignominy are better than risking having the offender make good his threats of retaliation. In fact, "it is not uncommon for a young girl to be intimidated and cowed into silence and conceal for some time the violation of her honor, even by the mildest threat against her life." In AAA's case, she was cowed into silence by XXX, who threatened to kill her family should she report the rape incident.

5. CRIMINAL LAW; SPECIAL PROTECTION LAW AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION (R.A. NO. 7610); CHILD PROSTITUTION AND OTHER SEXUAL ABUSE; ELEMENTS. — To sustain a conviction under Section 5 (b) (Child Prostitution and Other Sexual Abuse) of R.A. No. 7610 (Special Protection Law against Child Abuse, Exploitation and Discrimination), the prosecution must establish that: (i) the accused commits an act of sexual intercourse or lascivious conduct; (ii) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (iii) the child is below 18 years old. Parenthetically, "'lascivious conduct' means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person,

bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person." Furthermore, a child is deemed subjected to other sexual abuse when he or she indulges in lascivious conduct under the coercion or influence of any adult. XXX's acts of inserting his hands inside BBB's t-shirt, mashing her breasts, and caressing her legs to gratify his sexual desire, undoubtedly fall under the definition of lascivious conduct under Section 2(h) of the rules and regulations of R.A. No. 7610.

6. ID.; QUALIFIED RAPE; DEATH PENALTY REQUIRES THAT THE SPECIAL QUALIFYING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP ARE PROPERLY ALLEGED IN THE INFORMATION AND DULY PROVEN DURING THE TRIAL; CASE AT BAR. — Under Article 266-B of the RPC, the supreme penalty of death shall be imposed against the accused if the victim of rape is below 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. However, to justify the imposition of the death penalty, it is essential that the special qualifying circumstances of minority and relationship are properly alleged in the Information and duly proven during the trial. The RTC convicted XXX of qualified rape, in view of the qualifying circumstances of minority and relationship — XXX being the common law spouse of AAA's mother. A perusal of the Informations, however, reveal that what was alleged was that XXX was the "stepfather" of AAA. Because of this, the Court agrees with the CA that XXX may only be convicted of simple rape, due to the absence of proof that he was in fact AAA's stepfather. It does not help that the prosecution was able to establish that XXX was the common-law spouse of AAA's mother, as this circumstance was not alleged in the Information.

7. ID.; ID.; THE ALLEGATION THAT THE VICTIM IS THE STEPDAUGHTER OF THE ACCUSED REQUIRES COMPETENT PROOF. — It cannot be gainsaid that the terms "stepfather" and "common-law spouse" are two distinct terms that may not be used interchangeably. In *People v. Hermocilla*, the Court explained that "a stepdaughter is a daughter of one's spouse by previous marriage, while a stepfather is the husband of one's mother by virtue of a marriage subsequent to that of which the person spoken is the offspring." As such, the allegation

that the victim is the stepdaughter of the accused requires competent proof and should not be easily accepted as factually true. The bare contention that the accused was married to the victim's mother is not enough, in the same manner that the victim's reference to the accused as her stepfather will not suffice. Remarkably, in *People v. Abello*, the Court stressed that the best evidence of such relationship will be the marriage contract. This stricter requirement is only proper as relationship is an aggravating circumstance that increases the imposable penalty and hence must be proven by competent evidence.

8. ID.; SPECIAL PROTECTION LAW AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION (RA NO. 7610); CHILD PROSTITUTION AND OTHER SEXUAL ABUSE; PENALTY AND DAMAGES. — Section 5(b) of R.A. No. 7610 provides that the imposable penalty for lascivious conduct shall be *reclusion temporal*, in its medium period, to *reclusion perpetua*. x x x Applying the indeterminate sentence law, XXX shall be sentenced with a penalty consisting of a maximum term, which is the penalty under the RPC properly imposed after considering any attending circumstance, and a minimum term that is within the range of the penalty next lower than that prescribed by the RPC for the offense committed. Accordingly, the CA correctly imposed the penalty of fourteen (14) years and eight (8) months of *reclusion temporal*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum. The damages awarded by the CA must be modified to conform with the Court's recent pronouncement in the case of *People v. Tulagan*. XXX shall be liable for ₱50,000.00 civil indemnity; ₱50,000.00 moral damages; and ₱50,000.00 exemplary damages. In addition, XXX shall pay a fine of ₱15,000.00 as provided for in Section 31(f) of R.A. No. 7610 and as affirmed in *People v. Ursua*. Finally, the CA correctly ordered the payment of interest at the rate of six percent (6%) *per annum*, which shall run from the date of finality of this Decision until full satisfaction.

APPEARANCES OF COUNSEL

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

D E C I S I O N

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

In a criminal case where the life and liberty of the accused are at stake, every qualifying circumstance alleged in the Information must be proved as much as the crime itself. Thus, in the crime of rape and lascivious conduct under Republic Act (R.A.) No. 7610,[1] *an allegation that the accused is the common-law spouse of the victim's mother must be sufficiently established. Equally noteworthy, the terms "common-law spouse" and "step-parent" are distinct terms bearing different legal meanings, which may not be used interchangeably.*

This treats of the Notice of Appeal[2] under Section 13(c), Rule 124 of the Rules on Criminal Procedure, as amended by A.M. No. 00-5-03-SC filed by accused-appellant XXX, seeking the reversal of the Decision[3] dated January 25, 2018, rendered by the Court of Appeals (CA) in CA-G.R. CR-HC No. 08224, which affirmed the trial court's ruling convicting him of the crimes of Violation of Section 5(b), Article III of R.A. No. 7610; Rape under Article 266-A, paragraph 1(d) of the Revised Penal Code (RPC); and Rape under Article 266-A, paragraph 1(a) of the RPC.

The Antecedents

XXX was charged in three separate Informations with Violation of Section 5(b), Article III of R.A. No. 7610, Statutory Rape, and Rape under Article 266-A, paragraph 1(d) of the RPC, committed as follows:

---

[1] AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES (Approved on June 17, 1992).

[2] CA *rollo,* pp. 129-130.

[3] Penned by Associate Justice Victoria Isabel A. Paredes, with Presiding Justice and Chairperson Romeo F. Barza and Associate Justice Mario V. Lopez (now a Member of this Court), concurring; *id.* at 115-124.

Criminal Case No. IR-7893

That in the afternoon of December 2, 2006, inside their house at [redacted] Iriga City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, in total disregard of the minority and naivety of the complainant, did, then and there willfully, unlawfully and feloniously commit an act of lascivious conduct upon one BBB,[4] a 14-year old girl, by then and there pulling and removing the latter's blanket, placing his hand under the said minor's shirt, and caressing her breast and legs while whispering to the latter words in the dialect "*sige na* ", thereby causing psychological injury, fear, trauma and shock to the minor-complainant, to the latter's damage and prejudice in such amount as may be proven in court.

ACTS CONTRARY TO LAW.[5]

Criminal Case No. IR-7957

That sometime in August 1998 at around noontime and at the banana plantation in [redacted] Iriga City, Philippines and within the jurisdiction of this Honorable Court, the said accused, the step father of the complainant, taking advantage of the latter's minority, and armed with a bolo, by means of force and intimidation, did, then and there, willfully, unlawfully and feloniously have carnal knowledge of his stepdaughter AAA who was then 8 years old and a minor at the time of the incident, by inserting his penis into her vagina against the latter's will, to the damage and prejudice of the said AAA in such amount as may be proven in court.

ACTS CONTRARY TO LAW.[6]

Criminal Case No. IR-7958

That sometime in April 2002 in the evening and at the coprahan in [redacted] Iriga City, Philippines and within the jurisdiction

---

[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] CA *rollo,* pp. 80-81.

[6] *Id.* at 81.

of this Honorable Court, the said accused, the step father of the complainant, taking advantage of the latter's minority and armed with a bolo, by means of force, threat and intimidation, did, then and there, willfully, unlawfully and feloniously have carnal knowledge of his stepdaughter AAA who was then 13 years old and a minor at the time of the incident, by inserting his penis into her vagina against the latter's will, to the damage and prejudice of said AAA in such amount as may be proven in court.

ACTS CONTRARY TO LAW.[7]

XXX pleaded not guilty to the charges. Trial on the merits ensued thereafter.[8]

The antecedent facts reveal that AAA and BBB are daughters of CCC, a widow. In January 1997, CCC and XXX started living together in Iriga City.[9]

Sometime in August 1998, XXX ordered AAA to bring his bolo to the banana plantation in Iriga City. AAA was then 10 years old. When AAA handed over the bolo, XXX took hold of her, directed her to remove her clothes, and ordered her to lie down on the ground. XXX threatened to kill her, should she refuse to obey his command. Out of fear, AAA obliged. Then, XXX removed his own clothes and positioned himself on top of AAA. He forcibly had carnal knowledge of her. The rape lasted for about an hour. AAA cried the whole time. Then, XXX told AAA to get dressed and warned her not to tell the incident to anyone, or else he will harm her family.[10]

Sometime in April 2002, at around 11:00 p.m., AAA was sleeping inside their house when XXX woke her up. He told her to quietly go outside the house. Fearful of what he might do to her family, AAA obliged.[11]

---

[7] *Id.*

[8] *Id.*

[9] *Id.* at 83.

[10] *Id.*

[11] *Id.*

XXX took AAA to the coconut kiln. There, he ordered AAA to lie down on the floor. He removed her underwear, then took off his own clothes and laid on top of her. After which, he inserted his penis inside her vagina and made several push and pull movements. When he finished, he directed AAA to dress up and go back home.[12]

Sometime in December 2006, while BBB was sleeping in her room, she suddenly felt someone tugging her blanket. Upon waking, she saw XXX beside her. XXX inserted his hands under her shirt, mashed her breasts, and caressed her legs. She refused XXX's advances, which angered him. He warned her against talking back to him.[13]

Fearful that XXX might rape her, BBB reported the matter to their neighbor DDD.[14]

On December 8, 2006, AAA likewise reported the rape incident to the police authorities. Thereafter, AAA was referred to the City Health Office for medico-legal examination. The findings revealed that AAA had deep, healed lacerations in several positions on her hymen.[15]

XXX vehemently denied the charges leveled against him. He related that he started living with CCC when AAA was already 10 years old. As such, AAA's claim that she was raped when she was only 8 years old was untrue. Neither could he have raped her in April 2002, because at that time, CCC was already living in their house and would have thus immediately found out about the incident.[16]

Likewise, XXX averred that BBB's claim was untrue, considering that he no longer lived with them at the time of

---

[12] *Id.*

[13] *Id.* at 84.

[14] *Id.*

[15] *Id.*

[16] *Id.*

the alleged incident because he left after Typhoon Reming destroyed their house.[17]

Ruling of the RTC

On January 26, 2016, the RTC rendered a Joint Judgment[18] convicting XXX of the crimes of violation of Section 5(b), Article III of R.A. No. 7610, Statutory Rape under Article 266-A, paragraph 1(d) of the RPC, and Rape under Article 266-A, paragraph 1(a) of the RPC.

The dispositive portion of the RTC ruling reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding [XXX] *GUILTY* beyond reasonable doubt,
>
> in Criminal Case No. IR-7893 – for the crime of SEXUAL ABUSE under Section 5(b), Article III of [R.A. No.] 7610 and imposing upon him the penalty of *reclusion perpetua* and ordered to pay Private Complainant BBB the following: Php20,000.00 as civil indemnity, Php15,000.00 as moral damages, and Php15,000.00 as exemplary damages, with 6% annual interest from the time of finality of this judgment until full payment.
>
> in Criminal [Case] Nos. IR-7957 and 7958 – for the crimes of STATUTORY RAPE and RAPE under ART. 266-A respectively and imposing upon him the penalty of *reclusion perpetua* without the possibility of parole for each [crime]. He is further ordered to pay Private Complainant AAA the amount of Php75.000.00 as civil indemnity, Php75,000.00 as moral damages, and Php30,000.00 as exemplary damages, with 6% annual interest from the time of finality of this judgment until full payment.
>
> SO ORDERED.[19]

Aggrieved, XXX filed an appeal with the CA.

Ruling of the CA

On January 25, 2018, the CA rendered the assailed Decision,[20] affirming with modification the conviction meted by the RTC.

---

[17] *Id.* at 60.

[18] Rendered by Presiding Judge Manuel M. Rosales; *id.* at 57-66.

[19] *Id.* at 66.

[20] *Id.* at 115-124.

The CA held that XXX may only be convicted of simple rape in Criminal Case Nos. IR-7957 and IR-7958, considering that the allegation in the Information that XXX was AAA's stepfather was never actually proven during the trial. What was established was simply that XXX was the common law spouse of the victim's mother.[21]

Also, the CA increased the awards of exemplary damages from ₱30,000.00 to ₱75,000.00; while maintaining the awards of civil indemnity of ₱75,000.00; and moral damages of ₱75,000.00.[22]

As for Criminal Case No. IR-7893, for violation of Section 5(b), Article III of R.A. No. 7610, the CA held that the aggravating circumstance of relationship may not be considered, as the said circumstance was not alleged in the Information. Accordingly, absent any mitigating or aggravating circumstances, the penalty shall be applied in its medium period, which is *reclusion temporal* in its maximum period.[23]

As for the damages awarded, the CA affirmed the awards of civil indemnity, moral damages and exemplary damages of ₱75,000.00 each. In addition, the CA ordered XXX to pay a fine of ₱15,000.00.[24]

The dispositive portion of the assailed CA decision reads:

> WHEREFORE, premises considered, the instant appeal is DENIED. The assailed January 26, 2016 *Joint Judgment* of the [RTC], Branch 34, Iriga City, is MODIFIED, thus:
>
> (1) In Criminal Case Nos. IR-7957 and 7958, the penalty of *reclusion perpetua* is sustained for each count but the phrase "without the possibility of parole" is REMOVED pursuant to A.M. No. 15-08-02-SC; while the award of exemplary damages is INCREASED to Php 75,000.00 EACH count; and

---

[21] *Id.* at 122.

[22] *Id.*

[23] *Id.* at 123.

[24] *Id.*

(2) In Criminal Case No. IR-7893. The appellant is SENTENCED to an indeterminate penalty of imprisonment of fourteen (14) years and eight (8) months of *reclusion temporal* minimum, as minimum, to twenty (20) years of *reclusion temporal* maximum, as maximum; and he is further ORDERED to pay a FINE of Php 15,000.00.

The rest of the assailed Joint Judgment STANDS.

SO ORDERED.[25]

Aggrieved, XXX filed a Notice of Appeal[26] under Rule 124, Section 13(c) of the Rules of Criminal Procedure.

The Issue

The main issue raised for the Court's resolution is whether or not the prosecution proved beyond reasonable doubt XXX's guilt for the crimes charged.

XXX assails the credibility of AAA and BBB, alleging that their testimonies are inconsistent and incredible.[27] Particularly, he points out that in AAA's direct testimony, she claimed that she was first raped in August 1998, when she was just 8 years old. However, on cross-examination, AAA contradicted herself, and stated that she was 10 when she was first raped.[28] He avers that it was impossible for him to have committed the crime, as he started cohabiting with CCC when AAA was already 10 years old.[29]

In the same vein, XXX alleges that AAA's behavior after the purported rape renders her tale questionable. It was strange that AAA did not even bother to wake up her siblings, or seek help, despite knowing XXX's plan to rape her. Instead, she willingly walked with him to the coconut kiln. Also, it was odd that after the purported rape incident, AAA simply

---

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

[26] *Id.* at 129.

[27] *Id.* at 33.

[28] *Id.* at 39-40.

[29] *Id.* at 45.

returned to their house and went back to sleep as if nothing terrible happened. XXX urges that it is beyond comprehension that AAA still stayed with him, and still treated him as her stepfather, if he indeed defiled her.[30]

In addition, XXX contends that AAA's reason for reporting the rape incident was suspect, as she admitted that she filed the case out of fear that XXX will rape her sister BBB. According to XXX, this proves that she was merely coaxed by DDD to file charges against him. Added to all this, it took nine years from the first rape incident, and five years from the second incident, for AAA to report the rape.[31]

Similarly, XXX surmises that the lacerations in AAA's hymen could have been caused by other factors.[32]

Furthermore, XXX points out that the prosecution failed to prove the elements of force and intimidation. AAA admitted that he did not force or intimidate her into committing the sexual acts. Although she claimed that XXX threatened her, these threats were allegedly done after the commission of the rape, and thus, could not have been sufficient to subdue her.[33]

Anent BBB's accusation, XXX claims that he could not have sexually abused her on December 2, 2006, considering that at that time, BBB was already living with DDD, while he was living alone in a makeshift house in Iriga City.[34]

XXX likewise claims that the prosecution failed to prove all the elements for violation of Section 5(b), Article III of R.A. No. 7610. BBB did not claim that XXX forced her or intimidated her, or subdued the free exercise of her will.[35]

---

[30] *Id.* at 41.

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

[32] *Id.* at 47.

[33] *Id.* at 47-48.

[34] *Id.* at 45.

[35] *Id.* at 50.

On the other hand, the People, through the Office of the Solicitor General (OSG), counters that the prosecution sufficiently proved XXX's guilt beyond reasonable doubt. The OSG maintains that the prosecution sufficiently established all the elements for the crimes charged, and the testimonies of the victims AAA and BBB were worthy of credence.[36]

Ruling of the Court

The instant appeal is bereft of merit.

The Prosecution Established Beyond Reasonable Doubt the Guilt of XXX for the Crimes of Rape Under Article 266-A, 1(a) and 1(d)

Article 266-A of the RPC, as amended by R.A. No. 8353,[37] defines the crime of rape as follows:

Art. 266-A. ***Rape, When and How Committed.*** – Rape is committed –

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. Through force, threat or intimidation;

b. When the offended party is deprived of reason or is otherwise unconscious;

c. By means of fraudulent machination or grave abuse of authority;

d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present;

Accordingly, to sustain a conviction for rape through sexual intercourse, the prosecution must prove the following elements beyond reasonable doubt, namely: (i) that the accused had carnal knowledge of the victim; and (ii) that said act was accomplished a) through the use of force or intimidation, or b) when the victim is deprived of reason or otherwise unconscious, or c) by means

---

[36] *Id.* at 84-102.

[37] *The Anti-Rape Law of 1997.*

of fraudulent machination or grave abuse of authority, or d) when the victim is under 12 years of age or is demented.[38]

In the instant case, the Informations in Criminal Case Nos. IR-7957 and IR-7958, charge XXX with raping AAA twice.

The first rape incident took place in April 1998, when AAA was merely 10 years old. AAA's age was sufficiently established from her testimony, and confirmed through the presentation of her birth certificate, which indicates that she was born on February 19, 1988.[39] This proves that she was in fact 10 years old in April 1998.

It cannot be gainsaid that "sexual congress with a girl under 12 years old is always rape."[40] In statutory rape, force and intimidation are immaterial, and the only subject of inquiry is the age of the child and whether carnal knowledge in fact took place. The law presumes that the victim does not and cannot have a will of her own on account of her tender years. In the same vein, the child's consent is immaterial because of her presumed incapacity to discern evil from good.[41]

The fact of carnal knowledge was proven through the credible testimony of AAA, *viz.*:

Prosecutor Nonna Beltran:

Q: After giving to [XXX] the bolo, what happened?
A: He take [sic] hold of me.

Q: After that, what happened next?
A: He instructed me to remove my clothes and he asked me to lie down on the ground.

Q: Did you follow the instruction of your stepfather to remove your clothes?
A: Yes, ma'am.

---

[38] *People v. Esteban*, 735 Phil. 663, 670 (2014).

[39] CA *rollo*, p. 89.

[40] *People v. Sabal, Jr.*, 734 Phil. 742, 745 (2014), citing *People v. Perez,* 595 Phil. 1232, 1260 (2008).

[41] *People v. Sabal, id.*, citing *People v. Teodoro*, 622 Phil. 328, 342-343 (2009).

Q: Why did you obey that instruction of [XXX] to remove your clothes?
A: I obeyed to [sic] the instruction given to me by [XXX] because he said that if I will not obey him, he will kill my family.

Q: When [XXX] was uttering those words, where was then the bolo which you delivered to him?
A: The bolo was beside him.

x x x x x x x x x

THE COURT:
Q: The question is what [XXX] did to you and not what you did.
A: [XXX] raped me already.

Prosecutor Beltran:
Q: When [XXX] raped you, what was your position.
A: I was lying down on the ground.

Q: And what was then the position of your legs?
A: Open legs.

Q: And when you said you were already lying down and your legs were open, where was [XXX] in relation to you?
A: He was on top of me.

x x x x x x x x x

Q: When [XXX] laid down on top of you, what did he do in relation to your vagina?

x x x x x x x x x

A: **[XXX] inserted his penis to my vagina.**

Q: And what did you feel when [XXX] inserted his penis to your vagina?
A: I felt pain, ma'am.

Q: And after [XXX] was able to insert his penis to your vagina, what movement did he do if any?
A: He made a push and pull movement.[42] (Emphases ours)

---

[42] CA *rollo,* pp. 90-91.

XXX assails AAA's credibility by claiming that she made inconsistent statements regarding her age in April 1998. XXX points out that, during AAA's direct examination, she claimed that she was 8 years old when XXX first raped her. However, she later on stated during her cross examination that was already 10 years old when she was first raped.

XXX's argument fails to persuade.

"In statutory rape, time is not an essential element except to prove that the victim was a minor below twelve years of age at the time of the commission of the offense."[43] Thus, what matters in the instant case is the fact that the prosecution established that AAA was definitely short of 12 years when she was raped.

Anent the charge of rape through force and intimidation, AAA credibly narrated that sometime in April 2002, XXX ordered her to go with him to the coconut kiln. AAA was left with no choice but to obey XXX, out of fear that he will kill her family if she refuses to give in to his advances.[44] Undoubtedly, XXX succeeded in having carnal knowledge with AAA by intimidating her into submission.

Added to this, AAA, being a child of tender years easily succumbed to XXX's intimidation and coercion. It must be remembered that AAA looked at XXX as her "*Tatay*."[45] XXX's moral ascendancy as common-law spouse of the victims' mother takes the place of force and intimidation as an element of rape.[46] It is well-settled that the term "intimidation" may also include moral intimidation and coercion,[47] which are precisely what XXX used to overpower AAA.

---

[43] *People v. Teodoro, supra* note 41, at 344.

[44] CA *rollo,* p. 94.

[45] *Id.* at 95.

[46] *People v. Viernes,* 423 Phil. 463, 484 (2001).

[47] *Quimvel v. People,* 808 Phil. 889,930 (2017); *People v. Leonardo,* 638 Phil. 161, 186 (2010).

AAA's Behavior After the Rape Incidents, and Her Failure to Timely Report the Abuse She Experienced Do Not Destroy Her Credibility

XXX cannot attack AAA's credibility by claiming that her behavior and actuations after the rape incident are atypical of a rape victim. To begin with, there is no such thing as a typical reaction or norm of behavior among rape victims. The workings of the human mind when placed under emotional stress is unpredictable. Some victims may shout, some may faint, while others may be shocked into insensibility. Not every victim can be expected to act with reason or conformably with the usual expectation of mankind.[48] Certainly, it is unfair to expect and demand a rational reaction or a standard behavioral response from AAA, who was confronted with such startling and traumatic experience. Her failure to shout, or seek for help does not negate rape. Neither shall her refusal to get angry at XXX or leave her residence be taken against her.

Furthermore, AAA's credibility is not affected by her delay in reporting the rape incident.

In *People v. Gersamio*[49] and *People v. Velasco*,[50] the Court emphasized that the victim's failure to report the rape to other persons does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue and fabricated. Delay in prosecuting the offense is not an indication of a fabricated charge,[51] and does not necessarily cast doubt on the credibility of the victim.[52] This especially holds true if the victim faces the threat of physical violence.[53] Unfortunately for the victim, pain and

---

[48] *People v. Zafra*, 712 Phil. 559, 572 (2013).

[49] 763 Phil. 523 (2015).

[50] 722 Phil. 243 (2013).

[51] *People v. Gersamio, supra* note 49, at 536-537.

[52] *People v. Velasco, supra* note 50, at 253-254.

[53] *Id.* at 255.

ignominy are better than risking having the offender make good his threats of retaliation.[54] In fact, "it is not uncommon for a young girl to be intimidated and cowed into silence and conceal for some time the violation of her honor, even by the mildest threat against her life."[55] In AAA's case, she was cowed into silence by XXX, who threatened to kill her family should she report the rape incident.

The Prosecution Sufficiently Proved Beyond Reasonable Doubt that XXX is Guilty of Lascivious Conduct Under Section 5(b), Article III of R.A. No. 7610 Committed Against BBB

Essentially, Section 5(b) of R.A. No. 7610 states in no uncertain terms that:

> **Sec. 5.** *Child Prostitution and Other Sexual Abuse.* - Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.
>
> The penalty of reclusion temporal in its medium period to *reclusion perpetua* shall be imposed upon the following:
>
> x x x x x x x x x
>
> (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period.

---

[54] *People v. Gersamio, supra* note 49, at 536-537.

[55] *People v. Mantis*, 477 Phil. 275 (2004), citing *People v. Bea, Jr.*, 366 Phil. 334, 340-341 (1999).

To sustain a conviction under Section 5(b) of R.A. No. 7610, the prosecution must establish that: (i) the accused commits an act of sexual intercourse or lascivious conduct; (ii) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (iii) the child is below 18 years old.[56]

Parenthetically, "'lascivious conduct' means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person."[57]

Furthermore, a child is deemed subjected to other sexual abuse when he or she indulges in lascivious conduct under the coercion or influence of any adult.[58]

XXX's acts of inserting his hands inside BBB's t-shirt, mashing her breasts, and caressing her legs to gratify his sexual desire, undoubtedly fall under the definition of lascivious conduct under Section 2(h) of the rules and regulations of R.A. No. 7610.

XXX used his moral ascendancy over BBB, the daughter of his common-law spouse, in order to perpetrate his lascivious conduct. BBB lived with XXX during her formative years, and had always regarded him as her father. Added to this, BBB was afraid of him because he usually beat her and her family whenever he was in a bad mood.[59]

Finally, as established through BBB's testimony and birth certificate, she was only 14 years old when XXX molested her. BBB was born on September 11, 1992,[60] which makes her 14 years old when she was molested on December 2, 2006.

---

[56] *People v. Rayon, Sr.*, 702 Phil. 672, 684 (2013).

[57] *Id.* at 683.

[58] *People v. Montinola*, 567 Phil. 387, 407 (2008).

[59] CA *rollo*, p. 100.

[60] *Id.* at 99.

The following exchange reveals BBB's harrowing experience:

Prosecutor Nonna Beltran:
Q: Miss Witness, do you recall where were you in the early morning of December 2, 2006.
A: Yes, ma'am.

Q: Where were you?
A: I was then in the room sleeping.

x x x x x x x x x

Q: While you said you were sleeping, what happened?
A: I was awakened when I felt the blanket was being pulled away.

x x x x x x x x x

Q: After you were awakened, what happened next?
A: As I have said, after I was awakened, I saw [XXX] on my side and I noticed that he inserted his hand under my shirt.

x x x x x x x x x

Q: You said that [XXX] inserted his hand inside your shirt. What did he do?
A: He mashed my breast and legs.

Q: Both your two (2) breasts?
A: Yes, ma'am.

x x x x x x x x x

Q: What did you do, Miss Witness, during that time when [XXX] was mashing your breasts?
A: I told him not to do that to me, ma'am.

x x x x x x x x x

Q: What did [XXX] tell you?
A: [XXX] was angry and he said, "*di mo ko pag orag-oragan.*"

Q: What did you feel when [XXX] uttered those words to you?
A: I felt afraid.

Q: When he said, "orag-oragan," what did [XXX] meant by that?
A: To my understanding, he might harm me, ma'am."[61]

[61] *Id.* at 98-99.

Against this factual backdrop, all that XXX offers are the weak defenses of denial and alibi. In addition, he claims that BBB's testimony is questionable, as she was uncertain on whether the rape took place on December 2 or December 6.

These contentions fail to persuade.

The defenses of denial and alibi are always viewed with disfavor as they can easily be concocted. Besides, these defenses easily falter against BBB's positive and categorical identification of XXX as her defiler.

Anent BBB's alleged uncertainty as to the precise date of the sexual molestation, it bears stressing that the precise date and time of the commission of the offense is not an essential element of lascivious conduct. Regardless of whether the abuse took place on December 2 or 6, is immaterial, considering that BBB was able to prove that it in fact took place, and that she was 14 years old when she was abused.

The Proper Penalty for Criminal Case Nos. IR-7957 and IR-7958 for Rape

Under Article 266-B of the RPC, the supreme penalty of death shall be imposed against the accused if the victim of rape is below 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. However, to justify the imposition of the death penalty, it is essential that the special qualifying circumstances of minority and relationship are properly alleged in the Information and duly proven during the trial.[62]

The RTC convicted XXX of qualified rape, in view of the qualifying circumstances of minority and relationship – XXX being the common law spouse of AAA's mother. A perusal of the Informations, however, reveal that what was alleged

---

[62] *People v. Lomaque*, 710 Phil. 338, 354 (2013).

was that XXX was the "stepfather" of AAA. Because of this, the Court agrees with the CA that XXX may only be convicted of simple rape, due to the absence of proof that he was in fact AAA's stepfather. It does not help that the prosecution was able to establish that XXX was the common-law spouse of AAA's mother, as this circumstance was not alleged in the Information.

It cannot be gainsaid that the terms "stepfather" and "common-law spouse" are two distinct terms that may not be used interchangeably. In *People v. Hermocilla*,[63] the Court explained that "a stepdaughter is a daughter of one's spouse by previous marriage, while a stepfather is the husband of one's mother by virtue of a marriage subsequent to that of which the person spoken is the offspring."[64] As such, the allegation that the victim is the stepdaughter of the accused requires competent proof and should not be easily accepted as factually true. The bare contention that the accused was married to the victim's mother is not enough, in the same manner that the victim's reference to the accused as her stepfather will not suffice.[65] Remarkably, in *People v. Abello*,[66] the Court stressed that the best evidence of such relationship will be the marriage contract. This stricter requirement is only proper as relationship is an aggravating circumstance that increases the imposable penalty and hence must be proven by competent evidence.[67]

Notably, the cases of *People v. Barcela*,[68] and *People v. Salvador*,[69] bear similar factual moorings with the instant case. In *Barcela*, the Information stated that the accused was the

---

[63] 554 Phil. 189 (2007).

[64] *Id.* at 197.

[65] *People v. Lomaque, supra* note 62.

[66] 601 Phil. 373 (2009).

[67] *Id.* at 396-397.

[68] 734 Phil. 332 (2014).

[69] 790 Phil. 782 (2016).

stepfather of the rape victim, but what was proven during the trial was that the accused was merely the common-law spouse of the victim's mother. The Court refused to apply the qualifying circumstance of relationship, considering that the relationship alleged in the information was different from that actually proven during the trial. The Court held that a contrary ruling will run counter to Barcela's right to be informed of the charge lodged against him.[70]

The same circumstances existed in the case of *Salvador*, where the Information filed against therein accused-appellant charged him with raping his stepdaughter, but a perusal of the records showed that therein accused-appellant was only the common-law husband of the victim's mother. In this case, the Court stated that even if it was proven that therein accused-appellant was indeed the common law spouse of the victim's mother, this cannot be appreciated, since the information did not specifically allege it as a qualifying circumstance.[71]

Applying the foregoing pronouncements to the instant case, the qualifying circumstance of relationship cannot be used against XXX. The allegation in the Information that he was AAA's stepfather was not proven during the trial, and hence, shall not be used against him. In the same vein, although the prosecution proved that he was in fact CCC's common-law spouse, this too shall not be appreciated against him, as this circumstance was not specified in the Information. Accordingly, the CA correctly downgraded the offense to simple rape for both Criminal Case Nos. IR-7957 and IR-7958.

The Proper Penalty for Criminal Case No. IR-7893 for Lascivious Conduct under Section 5(b) of R.A. No. 7610

---

[70] *People v. Barcela, supra* note 68, at 340-341.

[71] *People v. Salvador, supra* note 69, at 791-792.

Section 5(b) of R.A. No. 7610 provides that the imposable penalty for lascivious conduct[72] shall be *reclusion temporal,* in its medium period, to *reclusion perpetua*.[73]

It must be noted that the RTC erred in appreciating the qualifying circumstance of relationship, as the Information for Criminal Case No. IR-7893 failed to specifically allege the relationship between XXX and BBB.

Applying the indeterminate sentence law, XXX shall be sentenced with a penalty consisting of a maximum term, which is the penalty under the RPC properly imposed after considering any attending circumstance, and a minimum term that is within the range of the penalty next lower than that prescribed by the RPC for the offense committed. Accordingly, the CA correctly imposed the penalty of fourteen (14) years and eight (8) months of *reclusion temporal*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum.

The damages awarded by the CA must be modified to conform with the Court's recent pronouncement in the case of *People v. Tulagan*.[74] XXX shall be liable for ₱50,000.00 civil indemnity; ₱50,000.00 moral damages; and ₱50,000.00 exemplary damages. In addition, XXX shall pay a fine of ₱15,000.00 as provided for in Section 31(f) of R.A. No. 7610 and as affirmed in *People v. Ursua*.[75]

---

[72] *People v. Ursua*, 819 Phil. 467, 480-481 (2017).

In *People v. Ursua,* the Court enunciated that "[i]f the victim is exactly twelve (12) years of age, or more than twelve (12) but below eighteen (18) years of age, or is eighteen (18) years or older but is unable to fully take care of herself/himself or protect herself/himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the crime should be designated as "Lascivious Conduct under Section 5(b) of R.A. No. 7610," and the imposable penalty is *reclusion temporal*, in its medium period, to *reclusion perpetua*."

[73] *Id.*

[74] *People of the Philippines v. Salvador Tulagan*, G.R. No. 227363, March 12, 2019.

[75] 819 Phil. 467 (2017).

Finally, the CA correctly ordered the payment of interest at the rate of six percent (6%) *per annum*, which shall run from the date of finality of this Decision until full satisfaction.

WHEREFORE, premises considered, the instant appeal is **DISMISSED for lack of merit.** The Decision dated January 25, 2018 of the Court of Appeals in CA-GR. CR-HC No. 08224, convicting accused-appellant XXX of Rape under Article 266-A, paragraph 1(d) of the Revised Penal Code, Rape under Article 266-A, paragraph 1(a) of the Revised Penal Code, and Lascivious Conduct under Section 5(b) of Republic Act No. 7610, is **AFFIRMED with modification,** in that, in Criminal Case No. IR-7893 for Lascivious Conduct under Section 5(b) of Republic Act No. 7610, XXX is declared liable to pay BBB ₱50,000.00 as civil indenmity; ₱50,000.00 as moral damages; and ₱50,000.00 as exemplary damages, in addition to a fine of ₱15,000.00.

All amounts due shall earn a legal interest of six percent (6%) *per annum* from the date of finality of this Decision until full satisfaction.

All other aspects of the CA decision are affirmed.

SO ORDERED.

Hernando and *Inting, JJ.*, concur.

Perlas-Bernabe, S.A.J. (Chairperson), on official business.

Zalameda,[**] *J.*, on official leave.

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

FIRST DIVISION

[A.C. No. 9176. December 5, 2019]

AGUSTIN ABOY, SR., *complainant, vs.* **ATTY. LEO B. DIOCOS,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; IN ADMINISTRATIVE PROCEEDINGS AGAINST LAWYERS, THE BURDEN OF PROOF RESTS ON THE COMPLAINANT. — [I]t must be emphasized that in administrative proceedings against lawyers, the burden of proof rests on the complainant, and he/she must establish the case against the respondent by clear, convincing and satisfactory proof, disclosing a case that is free from doubt as to compel the exercise by the Court of its disciplinary power. The oft-repeated rule is that "mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation likewise cannot be given credence."

2. ID.; ID.; ATTORNEY-CLIENT RELATIONSHIP; IMBUED WITH UTMOST TRUST AND CONFIDENCE, SUCH THAT CLIENTS ARE LED TO EXPECT THAT THEIR LAWYER WOULD BE EVER-MINDFUL OF THEIR CAUSE AND, ACCORDINGLY, EXERCISE THE REQUIRED DEGREE OF DILIGENCE IN HANDLING THEIR AFFAIRS. — Atty. Diocos is not without fault. It appeared that the complaint was dismissed due to lack of cause of action, yet, no appeal was made. Indeed, as the IBP noted, although complainant failed to prove that the case was not appealed because they failed to give the amount being asked of them by Atty. Diocos, it is still apparent that the period to appeal was simply allowed to lapse. It does not matter if Atty. Diocos thought the court *a quo's* decision to dismiss the case was lawful, he is still bound by his duty to inform his clients the next steps to take and the possible consequences of their action or inaction. He should have notified his clients of the adverse decision within the period to appeal to give his clients time to decide whether to seek an appellate review. Neither does the failure of his clients to pay him fees warrant abandoning the case. It must be stressed that an attorney-client relationship is imbued with utmost trust and confidence,

such that clients are led to expect that their lawyer would be ever-mindful of their cause and, accordingly, exercise the required degree of diligence in handling their affairs. Accordingly, lawyers are required to maintain, at all times, a high standard of legal proficiency, and to devote their full attention, skill, and competence to their cases, regardless of their importance, and whether they accept them for a fee or for free.

3. ID.; ID.; COMPETENCE, NOT ONLY IN THE KNOWLEDGE OF THE LAW, BUT ALSO IN THE MANAGEMENT OF THE CASES BY GIVING THESE CASES APPROPRIATE ATTENTION AND DUE PREPARATION, IS EXPECTED FROM A LAWYER. — It is not enough that lawyers inform their clients of the dismissal of the case. It is also the lawyer's duty to give information as to why the case was dismissed. To be clear, a lawyer need not wait for their clients to ask for information but must advise them without delay about matters essential for them to avail of legal remedies. A lawyer so engaged to represent a client bears the responsibility of protecting the latter's interest with utmost diligence. The lawyer bears the duty to serve his client with competence and diligence, and to exert his best efforts to protect, within the bounds of the law, the interest of his or her client. Accordingly, competence, not only in the knowledge of law, but also in the management of the cases by giving these cases appropriate attention and due preparation, is expected from a lawyer.

4. ID.; ID.; A LAWYER WHO TRANSGRESSES ANY OF HIS DUTIES IS ADMINISTRATIVELY LIABLE AND SUBJECT TO THE COURT'S DISCIPLINARY AUTHORITY, AND THE DETERMINATION OF WHETHER HE SHOULD BE DISBARRED OR MERELY SUSPENDED FOR A PERIOD INVOLVES THE EXERCISE OF SOUND JUDICIAL DISCRETION. — We cannot stress enough that being a lawyer is a privilege with attached duties and obligations. Lawyers bear the responsibility to meet the profession's exacting standards. A lawyer is expected to live by the lawyer's oath, the rules of the profession and the Code of Professional Responsibility. The duties of a lawyer may be classified into four general categories namely duties he owes to the court, to the public, to the bar and to his client. A lawyer who transgresses any of his duties is administratively liable and subject to the

> Court's disciplinary authority. x x x The determination of whether an attorney should be disbarred or merely suspended for a period involves the exercise of sound judicial discretion. This Court has imposed the penalties ranging from reprimand, warning with fine, suspension and, in grave cases, disbarment for a lawyer's failure to file a brief or other pleading. In this case, this Court finds that it should impose a more severe sanction, considering the gravity of Atty. Diocos' cavalier action toward his client's cause.

D E C I S I O N

PERALTA, *C.J.*:

For resolution is an Administrative Complaint[1] filed by Agustin Aboy *(complainant)* against respondent Atty. Leo B. Diocos *(Atty. Diocos)* for estafa, abuse of power, and administrative connivance with Judge Winston M. Villegas and Atty. Rod Salazar, President of Pepsi Cola Production of the Philippines.

The facts are as follows.

Complainant alleged that he is the President of all the holders of Pepsi Cola 349 cap holders in Negros Oriental which is a winning code in a promo held by the Pepsi Cola Company. Atty. Diocos, on the other hand, was hired by the cap holders as counsel in their complaint for specific performance, sum of money, breach of contract and damages against Pepsi Cola Company. The association's then first president, Tumolac, and Atty. Diocos agreed that the latter would get 20% if the case progresses in court.[2] He further averred that Atty. Diocos collected ₱150.00 each from all the cap 349 holders which summed up to more than five hundred persons.[3] The subject case was, subsequently, filed in court and tried before the sala of Judge Winston Villegas *(Judge Villegas)*.

---

[1] *Rollo,* pp. 1-11.

[2] *Id*.

[3] *Id.* at 2.

On November 7, 2007,[4] however, Judge Villegas ordered the dismissal of the case for lack of cause of action. After learning the same, complainant and Gloria Ruamar *(Ruamar),* the president of the cap holders succeeding Tumolak, went to Judge Villegas to ask for a copy of his order but the latter allegedly refused to accede to their request. They then approached Atty. Diocos to ask for the same Order, but he refused as well, and instead asked them to produce ₱90,000.00 so that he will appeal their case. Disappointed, Ruamar and complainant asked Atty. Diocos to withdraw his services so they can hire another counsel to appeal their case, but he failed to issue his withdrawal.

In 2009, complainant and Ruamar went back to Judge Villegas to ask for a copy of the Decision and this time they were able to secure a copy of the Decision. They found out that the ground for the dismissal of their case was the failure of Atty. Diocos to pay docket fees. Complainant, however, alleged that they lost the copy of the Decision and when they asked for another copy, they discovered that the ground for the dismissal was changed to absence of cause of action. Complainant, thus, accused Atty. Diocos of conniving with Judge Villegas in dismissing their case.

Hence, this instant administrative complaint against Atty. Diocos.

On September 12, 2011, the Court resolved to require Atty. Diocos to file his Comment on the charges against him.[5]

In his Comment[6] dated November 7, 2011, Atty. Diocos admitted that Tumolac engaged his services to prosecute the cause of the 349 cap holders, but denied that he had collected the amount of ₱150.00 from each of the members.[7] He also denied that complainant had been authorized to act as president of the cap holders.

---

[4] *Id.* at 84-94.

[5] *Id.* at 176.

[6] *Id.* at 213-217.

[7] *Id.* at 214.

Atty. Diocos contend that he gave his clients a copy of the Decision and told them to photocopy it since they are more than one hundred in number. He claimed that under the law, the counsel is not dutybound to furnish his clients a copy of the Decision in a case he handles. As to the request of withdrawal, he claimed that he could not have done it since the case was already terminated with finality.

He maintained that the case of the cap holders has no cause of action and that his clients failed to pay him his attorney's fees. Hence, he prayed for the dismissal of this administrative complaint.

In a Resolution[8] dated February 15, 2012, the Court resolved to refer the instant complaint for investigation, report and recommendation.

In its Report and Recommendation[9] dated April 28, 2013, Investigating Commissioner Oliver A. Cachapero recommended that Atty. Diocos be censured for his negligence as counsel to his client.

In Resolution No. XX-2013-627[10] dated May 11, 2013, the Board of Governors of the Integrated Bar of the Philippines *(IBP)* resolved to adopt and approve with modification the Report and Recommendation of the Investigating Commissioner, and instead recommended that Atty. Diocos be suspended from the practice of law for three (3) months.

Aggrieved, on September 3, 2013, Atty. Diocos filed a Motion for Reconsideration.[11] Meanwhile, complainant filed a Motion[12] to direct Atty. Diocos to return and surrender to him the amount of Three Hundred Sixty-Four Million Five Hundred Twenty Thousand Pesos (₱364,520,000.00), plus damages.

---

[8] *Id*. at 219-220.

[9] *Id*. at 331-334.

[10] *Id*. at 330.

[11] *Id*. at 343-350.

[12] *Id*. at 355.

In an Extended Resolution[13] dated February 1, 2017, the IBP-Board of Governors resolved to deny Atty. Diocos' Motion for Reconsideration dated September 3, 2013 and complainant's Motion to return and surrender to complainant the amount of Three Hundred Sixty-Four Million Five Hundred Twenty Thousand Pesos (₱364,520,000.00), plus damages. It further affirmed the Board of Governors' Resolution No. XX-2013-627 dated May 11, 2013, which adopted and approved with modification the Report and Recommendation of the Investigating Commissioner, and instead recommended that Atty. Diocos be suspended from the practice of law for three (3) months.

In Resolution No. XXII-2017-971 dated April 19, 2017, the Board of Governors resolved to approve the release of the Extended Resolution dated February 1, 2017.

The Issue Before the Court

The essential issue in this case is whether or not respondent should be held administratively liable for violating the Code of Professional Responsibility.

The Court's Ruling

We adopt the findings of the IBP-Board of Governors, except the recommended penalty.

At the onset, it must be emphasized that in administrative proceedings against lawyers, the burden of proof rests on the complainant, and he/she must establish the case against the respondent by clear, convincing and satisfactory proof, disclosing a case that is free from doubt as to compel the exercise by the Court of its disciplinary power.[14] The oft-repeated rule is that "mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation likewise cannot be given credence."[15]

---

[13] *Id*. at 615-619.

[14] *Advincula v. Atty. Macabata,* 546 Phil. 431, 445-446 (2007).

[15] *Cabas v. Atty. Sususco, et al.,* 787 Phil. 167, 174 (2016).

In the instant case, there is no question that Atty. Diocos is the counsel of the complainants in view of his own admission in his Comment dated November 7, 2011. However, complainant failed to prove and substantiate that Atty. Diocos had indeed collected ₱150.00 from each of the cap holders. There was neither any receipt nor affidavit from the cap holders that would show that Atty. Diocos collected the amount of ₱150.00 from each of the cap holders.

Complainant also failed to prove that there were two versions of the decisions, *i.e.*, one where their case was dismissed due to non-payment of docket fees but later changed to absence of cause of action. Indeed, the best way to prove this allegation is to present copies of the two versions of the disputed decision but complainant failed to do.[16]

However, Atty. Diocos is not without fault. It appeared that the complaint was dismissed due to lack of cause of action, yet, no appeal was made. Indeed, as the IBP noted, although complainant failed to prove that the case was not appealed because they failed to give the amount being asked of them by Atty. Diocos, it is still apparent that the period to appeal was simply allowed to lapse. It does not matter if Atty. Diocos thought the court *a quo's* decision to dismiss the case was lawful, he is still bound by his duty to inform his clients the next steps to take and the possible consequences of their action or inaction. He should have notified his clients of the adverse decision within the period to appeal to give his clients time to decide whether to seek an appellate review. Neither does the failure of his clients to pay him fees warrant abandoning the case.

It must be stressed that an attorney-client relationship is imbued with utmost trust and confidence, such that clients are led to expect that their lawyer would be ever-mindful of their cause and, accordingly, exercise the required degree of diligence in handling their affairs. Accordingly, lawyers are required to maintain, at all times, a high standard of legal

---

[16] *Rollo,* p. 571.

proficiency, and to devote their full attention, skill, and competence to their cases, regardless of their importance, and whether they accept them for a fee or for free.[17] Rule 18.03 of Canon 18 of the Code of Professional Responsibility is instructive:

CANON 18 — A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

Rule 18.03 — A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

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

It is not enough that lawyers inform their clients of the dismissal of the case. It is also the lawyer's duty to give information as to why the case was dismissed. To be clear, a lawyer need not wait for their clients to ask for information but must advise them without delay about matters essential for them to avail of legal remedies.[18] A lawyer so engaged to represent a client bears the responsibility of protecting the latter's interest with utmost diligence. The lawyer bears the duty to serve his client with competence and diligence, and to exert his best efforts to protect, within the bounds of the law, the interest of his or her client. Accordingly, competence, not only in the knowledge of law, but also in the management of the cases by giving these cases appropriate attention and due preparation, is expected from a lawyer.[19]

In *Abay v. Atty. Montesino,*[20] it was explained that regardless of a lawyer's personal view, the latter must still present every remedy or defense within the authority of the law to support his client's cause:

---

[17] *Samonte v. Atty. Jumamil*, 813 Phil. 795, 802 (2017).

[18] *Spouses Montecillo v. Atty. Gatchalian,* 811 Phil. 636, 643 (2017).

[19] *Solidon v. Atty. Macalalad,* 627 Phil. 284, 291 (2010).

[20] 462 Phil. 496 (2003).

Once a lawyer agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. He must serve the client with competence and diligence, and champion the latter's cause with wholehearted fidelity, care, and devotion. Otherwise stated, he owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his client's rights, and the exertion of his utmost learning and ability to the end that nothing be taken or withheld from his client, save by the rules of law, legally applied. **This simply means that his client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land and he may expect his lawyer to assert every such remedy or defense.** If much is demanded from an attorney, it is because the entrusted privilege to practice law carries with it the correlative duties not only to the client but also to the court, to the bar, and to the public. A lawyer who performs his duty with diligence and candor not only protects the interest of his client; he also serves the ends of justice, does honor to the bar, and helps maintain the respect of the community to the legal profession.[21]

In *In Re: Vicente Y. Bayani*,[22] the Court reminded lawyers that their actions or omissions are binding on their clients and that they are expected to be acquainted with the rudiments of law and legal procedure, and that anyone who deals with them has the right to expect not just a good amount of professional learning and competence but also a whole-hearted fealty to their client's cause.

We cannot stress enough that being a lawyer is a privilege with attached duties and obligations. Lawyers bear the responsibility to meet the profession's exacting standards. A lawyer is expected to live by the lawyer's oath, the rules of the profession and the Code of Professional Responsibility. The duties of a lawyer may be classified into four general categories namely duties he owes to the court, to the public, to the bar and to his client. A lawyer who transgresses any of his duties is administratively liable and subject to the Court's disciplinary authority.

---

[21] *Id*. at 505-506. (Emphasis ours)

[22] 92 Phil. 229, 231-232 (2000).

In *Reyes v. Vitan,*[23] we reiterated that the act of receiving money as acceptance fee for legal services in handling the complainant's case and, subsequently, in failing to render the services, is a clear violation of Canon 18 of the Code of Professional Responsibility. We made the same conclusion in *Canoy v. Atty. Ortiz,*[24] where we emphatically stated that the lawyer's failure to file the position paper was *per se* a violation of Rule 18.03 of the Code of Professional Responsibility.[25]

The determination of whether an attorney should be disbarred or merely suspended for a period involves the exercise of sound judicial discretion. This Court has imposed the penalties ranging from reprimand, warning with fine, suspension and, in grave cases, disbarment for a lawyer's failure to file a brief or other pleading. In this case, this Court finds that it should impose a more severe sanction, considering the gravity of Atty. Diocos' cavalier action toward his client's cause.

WHEREFORE, respondent Atty. Leo B. Diocos is found **GUILTY** of violating Rule 18.03 and 18.04, Canon 18 of the Code of Professional Responsibility. He is hereby **SUSPENDED** from the practice of law for a period of one (1) year, effective upon his receipt of this Decision with a stern **WARNING** that a repetition of the same or similar wrongdoing will be dealt with more severely.

Let a copy of this Decision be attached to Atty. Diocos' personal record with the Office of the Bar Confidant, and copies be furnished to all chapters of the Integrated Bar of the Philippines and to all courts of the land.

SO ORDERED.

Caguioa, Reyes, J. Jr., Lazaro-Javier, and *Inting,*[*] *JJ.,* concur.

---

[23] 496 Phil. 1, 4 (2005).

[24] 493 Phil. 553, 560 (2005).

[25] *Samonte v. Atty. Jumamil, supra* note 17.

[*] Additional member per Special Order No. 2726 dated October 25, 2019.

FIRST DIVISION

[A.C. No. 12202. December 5, 2019]
(Formerly CBD Case No. 15-4535)

JERRY F. VILLA, *complainant, vs.* **ATTY. PAULA DIMPA**[*] **BEATRIZ DEFENSOR-VELEZ,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; RULE 1.01, CANON 1 PROVIDES THAT A LAWYER SHALL NOT ENGAGE IN UNLAWFUL, DISHONEST, IMMORAL OR DECEITFUL CONDUCT; VIOLATED WHEN RESPONDENT LAWYER EVADED PAYMENT OF A JUST DEBT AND EVEN ISSUED A WORTHLESS CHECK; PENALTY. — Here, the following facts are undisputed: respondent incurred a Php200,000.00 loan from complainant; the loan was covered by the parties' Memorandum of Agreement dated September 23, 2014; respondent issued a PNB check as payment for the loan, albeit when presented on its due date, it was dishonored due to insufficiency of funds; and respondent invariably ignored the various demands for payment served on her by complainant and his counsel. The record speaks for itself. Respondent evaded payment of a just debt, for which she even issued a worthless check. In so doing, she violated Rule 1.01, Canon 1 of the CPR, *viz.*: "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." x x x Such conduct is unbecoming and does not speak well of a member of the bar, for a lawyer's professional and personal conduct must at all times be kept beyond reproach and above suspicion." "Respondent's failure to pay her just loan was willful in character and implied a wrongful intent and not a mere error in judgment. x x x As a member of the Bar, respondent's act equates to such willful dishonesty and immoral conduct as to undermine the public confidence in the legal profession which cannot be justified by her so-called dire financial condition.

---

[*] Respondent's name in the roll of attorneys is spelled "Dimpna" but she is referred to as Paula "Dimpa" in the *Rollo*.

x x x [W]e find the recommended penalty of one (1) year suspension from the practice of law to be in accordance with prevailing jurisprudence.

2. ID.; ID.; ID.; BLATANT DISRESPECT OF THE PROCEEDINGS BEFORE THE IBP-CBD WARRANTS A ₱10,000 FINE. — We further agree with the finding that respondent had shown a brazen disregard for the lawful orders and processes of the IBP-CBD. In ***Tomlin II v. Moya II,*** we held that failure to comply with the orders of the IBP without justifiable reason manifested respondent's disrespect of judicial authorities for which he was reminded that the IBP has disciplinary authority over him by virtue of his membership therein. To repeat, [the case of] *Lim [v. Rivera]* characterized this disobedience as a violation of Section 3, Rule 138, Rules of Court. And in ***Robiñol v. Bassig,*** we imposed a fine of ten thousand pesos (Php10,000.00) on a lawyer for his repeated and unjustified refusal to comply with the lBP's lawful directives, x x x We find it proper to likewise fine respondent here for her blatant disrespect of the proceedings before the IBP-CBD.

APPEARANCES OF COUNSEL

Narzal B. Mallares for complainant.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case and the Proceedings Below

By letter-complaint[1] dated March 4, 2015, Jerry F. Villa alleged that he and respondent Atty. Paula D.B. Defensor-Velez were both engaged in the business of providing security services. Through her "sweet talk" and persistent prodding, respondent was able to convince him to lend her the amount of Two Hundred Thousand Pesos (Php200,000.00) which she claimed she desperately needed for payroll of her security guards. Relying on respondent's representations that she would not risk destroying her integrity as a lawyer by in foolishness or reneging on her

[1] With annexes, *rollo* at pp. 2-9.

commitment, he tried hard to raise the money, even going to the extent of borrowing from a financier who usually helped him whenever he encountered the same problem.

They executed a Memorandum of Agreement[2] dated September 23, 2014 with him, detailing the loan amount and interest. Respondent also undertook to issue a postdated check to cover the loan. But after getting what she wanted, she cut all contact with him and "vanished in [to] thin air."[3] When he deposited the PNB check on its due date, it was dishonored for being drawn against insufficient funds.[4] He sent demand letters[5] to respondent but she ignored them. Because of respondent's "scandalous and anomalous" conduct, he got constrained to initiate the present complaint.

Proceedings before the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD)

Despite receipt of the Orders dated March 4, 2015 and November 23, 2015 from the IBP-CBD, directing her to respond to the letter-complaint, respondent failed to do so. She also failed to attend the mandatory conference/hearing called by the IBP-CBD and to file the required conference brief. Thus, she was deemed to have waived her right to participate in the proceedings.

The Findings and Recommendation of the IBP-CBD

The Investigating Commissioner noted respondent's continuing disregard of the IBP-CBD's processes showing her contumacious predilection to ignore letters and notices sent her. This, together with respondent's act of evading lawful demands to pay her debt cannot shield her from liability arising from this complaint.[6]

---

[2] Annex A ofthe Complaint, *id.* at 5.

[3] *Id.* at 2.

[4] Annex B of the Complaint, *id.* at 6.

[5] Annexes C and D of the Complaint, *id.* at 7-8.

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

On the merits, the Investigating Commissioner found respondent guilty of violating Rule 1.01, Canon 1 of the Code of Professional Responsibility (CPR), *viz.*: "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." Based on the evidence on record, respondent engaged in improper and wrongful conduct when she failed to pay her just loan willfully, albeit she knew it was already due and demandable. Worse, she even issued a worthless check notwithstanding that as a lawyer she knew its legal consequences. Although as a rule a lawyer may not be disciplined for failure to pay a debt or for actions or conduct in his or her non-professional or private life, the Supreme Court has held that the issuance of a worthless check to cover a financial obligation is gross misconduct.[7]

Further, respondent transgressed Rule 1.02 of the CPR, *i.e.* "[a] lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system." Quite apart from her ignoble behavior towards complainant, respondent's blatant disrespect and contempt against the proceedings of the IBP-CBD cannot be taken lightly. It, too, warranted disciplinary action.

Verily, the Investigating Commissioner recommended that respondent be **suspended from the practice of law for one (1) year,** without prejudice to complainant's judicial recourse to collect respondent's indebtedness.

Findings and Recommendation of the IBP Board of Governors

By Board Resolution No. XXII-2017-1165[8] dated June 17, 2017, the IBP Board of Governors resolved to adopt in full the findings and recommendation of the Investigating Commissioner.

Ruling

We adopt the factual findings and approve with modification the recommendation of the IBP Board of Governors.

---

[7] *Id.* at 33-34, citing *Lao v. Medel*, 453 Phil. 115, 121-122 (2003).

[8] *Id.* at 28.

In ***Dayan Sta. Ana Christian Neighborhood Association, Inc. v. Espiritu***,[9] we expounded on the nature of the legal profession as a noble calling intrinsically linked to public trust, *viz.*:

> The fiduciary duty of a lawyer and advocate is what places the law profession in a unique position of trust and confidence, and distinguishes it from any other calling. Once this trust and confidence is betrayed, the faith of the people not only in the individual lawyer but also in the legal profession as a whole is eroded. To this end, all members of the bar are strictly required to at all times maintain the highest degree of public confidence in the fidelity, honesty and integrity of their profession. The nature of the office of a lawyer requires that he shall be of good moral character. This qualification is not only a condition precedent to admission to the legal profession, but its continued possession is essential to maintain one's good standing in the profession. Law is a noble profession, and the privilege to practice it is bestowed only upon individuals who are competent intellectually, academically, and, equally important, morally. Because they are vanguards of the law and the legal system, lawyers must at all times conduct themselves, especially in their dealings with their clients and the public at large, with honesty and integrity in a manner beyond reproach.[10]

Here, the following facts are undisputed: respondent incurred a Php200,000.00 loan from complainant; the loan was covered by the parties' Memorandum of Agreement dated September 23, 2014; respondent issued a PNB check as payment for the loan, albeit when presented on its due date, it was dishonored due to insufficiency of funds; and respondent invariably ignored the various demands for payment served on her by complainant and his counsel.

The record speaks for itself. Respondent evaded payment of a just debt, for which she even issued a worthless check. In so doing, she violated Rule 1.01, Canon 1 of the CPR, *viz.*: "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct."

---

[9] 528 Phil. 1 (2006).

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

We have emphasized time and again that "[a]ny wrongdoing which indicates moral unfitness for the profession, whether it be professional or non-professional, justifies disciplinary action. Thus, [respondent] may be disciplined for evading payment of a debt validly incurred. Such conduct is unbecoming and does not speak well of a member of the bar, for a lawyer's professional and personal conduct must at all times be kept beyond reproach and above suspicion."[11]

Respondent's failure to pay her just loan was willful in character and implied a wrongful intent and not a mere error in judgment. She undeniably engaged in improper or wrongful conduct and violated the mandate that "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct."[12]

She also committed misconduct when she issued a worthless check, an offense punishable under Batas Pambansa Blg. 22.[13] On this score, ***Ong v. Delos Santos***[14] is apropos:

> Being a lawyer, Atty. Delos Santos was well aware of the objectives and coverage of Batas Pambansa Blg. 22. If he did not, he was nonetheless presumed to know them, for the law was penal in character and application. His issuance of the unfunded check involved herein knowingly violated Batas Pambansa Blg. 22, and exhibited his indifference towards the pernicious effect of his illegal act to public interest and public order. He thereby swept aside his Lawyer's Oath that enjoined him to support the Constitution and obey the laws.
> x x x

As a member of the Bar, respondent's act equates to such willful dishonesty and immoral conduct as to undermine the public confidence in the legal profession which cannot be justified by her so-called dire financial condition.[15]

---

[11] See *Grande v. de Silva,* 455 Phil. 1, 7 (2003).

[12] Rule 1.01, Canon 1, CPR; see also, *Sosa v. Mendoza,* 756 Phil. 490, 496 (20I5).

[13] See, for example, *Enriquez v. De Vera,* 756 Phil. 1, 10 (2015).

[14] 728 Phil. 332, 338 (2014).

[15] See, *Wong v. Maya II*, 590 Phil. 279, 289 (2008).

In another vein, respondent's flagrant disregard of the legal processes and directives of the IBP-CBD to respond to the complaint and personally appear before it during the mandatory conference cannot be countenanced. We held in ***Lim v. Rivera:***[16]

> [R]espondent's failure to answer the complaint against him and his failure to appear at the scheduled mandatory conference/hearing despite notice are evidence of his flouting resistance to lawful orders of the court and illustrate his despiciency for his oath of office in violation of Section 3, Rule 138, Rules of Court. Respondent should stand foremost in complying with the directives of the IBP Commission on Bar Discipline not only because as a lawyer, he is called upon to obey the legal orders of duly constituted authorities, as well as court orders and processes, but also because the case involved the very foundation of his right to engage in the practice of law. Therefore, his lack of concern or interest in the status or outcome of his administrative case would show how much less he would regard the interest of his clients.

In ***Lim,*** we pronounced that the appropriate penalty for an errant lawyer is a matter of sound judicial discretion depending on the circumstances of each case.

Lim also involved a lawyer who incurred a debt, issued a postdated check that was eventually dishonored, failed to settle his obligation despite repeated demands, and flouted the orders of the IBP-CBD. We found him guilty of violating Rule 1.01, Canon 1 of the CPR and the Lawyer's Oath and suspended him for one (1) year from the practice of law.[17]

In ***Lao v. Medel,***[18] we suspended respondent from the practice of law for one (1) year for gross misconduct and violation of Rule 1.01, Canon 1 of the CPR. In that case, respondent obtained a loan of Php22,000.00 from complainant and issued several postdated checks to cover the same but they were all dishonored. His offense was further compounded by his arrogant and

---

[16] A.C. No. 12156, June 20, 2018.

[17] *Id.*

[18] *Supra* note 7, at 120, 123-124.

disrespectful treatment of complainant and the Investigating Commissioner during one of the hearings.

De Jesus v. Collado is also precedent for imposing a one (1) year suspension on a lawyer who issued worthless checks to cover her financial obligations despite knowing she had insufficient funds. We considered that issuance of checks in violation of B.P. Blg. 22 as serious misconduct on the part of a member of the Bar, apart from being a sufficient justification to dismiss respondent (who was a court attorney) from the service of the Court.[19]

And in ***Sosa v. Mendoza,***[20] we pronounced that respondent's failure to honor his just debt constituted dishonest and deceitful conduct. This dishonest conduct was compounded by his flimsy excuses and his issuance of a check that was dishonored upon presentment. Verily, therefore, we find the recommended penalty of one (1) year suspension from the practice of law to be in accordance with prevailing jurisprudence.

We further agree with the finding that respondent had shown a brazen disregard for the lawful orders and processes of the IBP-CBD. In ***Tomlin II v. Moya II*** we held that failure to comply with the orders of the IBP without justifiable reason manifested respondent's disrespect of judicial authorities for which he was reminded that the IBP has disciplinary authority over him by virtue of his membership therein.[21] To repeat, Lim characterized this disobedience as a violation of Section 3, Rule 138, Rules of Court. And in ***Robiñol v. Bassig,***[22] we imposed a fine of ten thousand pesos (Php10,000.00) on a lawyer for his repeated and unjustified refusal to comply with the IBP's lawful directives, thus:

For his behavior, Atty. Bassig committed an act in violation of Canon 11 of the Code of Professional Responsibility, to wit:

---

[19] *De Jesus v. Collado,* 290-A Phil. 410, 415 (1992).

[20] 756 Phil. 490, 499 (2015).

[21] 518 Phil. 325, 332 (2006).

[22] A.C. No. 11836, November 21,2017, 845 SCRA 447.

Canon 11 — A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others.

His attitude of refusing to obey the orders of the IBP indicates his lack of respect for the IBP's rules and regulations, but also towards the IBP as an institution. Remarkably, the IBP is empowered by this Court to conduct proceedings regarding the discipline of lawyers. Hence, it is but proper for Atty. Bassig to be mindful of his duty as a member of the bar to maintain his respect towards a duly constituted authority.

Verily, Atty. Bassig's conduct is unbecoming of a lawyer, for lawyers are particularly called upon to obey court orders and processes and are expected to stand foremost in complying with court directives being themselves officer of the court. In disregarding the orders of the IBP, he exhibited a conduct which runs contrary to his sworn duty as a officer of the court.

We find it proper to likewise fine respondent here for her blatant disrespect of the proceedings before the IBP-CBD.

ACCORDINGLY, respondent Atty. Paula Dimpa Beatriz Defensor-Velez is found **GUILTY** of:

(1) violating Rule 1.01, Canon 1 of the Code of Professional Responsibility for which she is **SUSPENDED** from the practice of law for one (1) year to commence immediately from receipt of this Decision. She is **DIRECTED** to immediately manifest to the Court the date that she has commenced to serve her suspension, copy furnished all courts and quasi-judicial bodies where she has entered her appearance as counsel; and

(2) violating Section 3, Rule 138 of the Rules of Court and Canon 11 of the Code of Professional Responsibility for which she is **ORDERED** to immediately pay a **FINE** in the mount of **Ten Thousand Pesos** (₱10,000.00) upon receipt of this Decision.

In both cases, respondent is **WARNED** that a repetition of the same or similar offense or offenses will warrant a more severe penalty.

Let copies of this Resolution 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.

Peralta, C.J. (Chairperson), Caguioa, Reyes, J. Jr., and *Inting,*[**] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 204487. December 5, 2019]

NATIONAL TELECOMMUNICATIONS COMMISSION, *petitioner, vs.* **BRANCOMM CABLE AND TELEVISION NETWORK CO.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; A CASE, EVEN IF ELEVATED VIA RULE 45, IS STILL BOUND BY THE INTRINSIC LIMITATIONS OF A RULE 65 *CERTIORARI* PROCEEDING AS IT DOES NOT ADDRESS MERE ERRORS OF JUDGMENT, UNLESS THE ERROR TRANSCENDS THE BOUNDS OF THE TRIBUNAL'S JURISDICTION. — The function of a petition for review on *certiorari* is to enable this Court to determine and correct any error of judgment committed in the exercise of jurisdiction. However, much like in labor cases, when this Court reviews the legal correctness of the CA's decision in resolving a petition for *certiorari* under Rule 65, it still evaluates the case in the prism of whether the latter tribunal correctly determined the presence or absence of grave abuse of discretion on the part of the court or other tribunal *a quo.* Even if elevated via Rule 45, it is still bound by the

---

[**] Designated as additional member per S.O. 2726 dated October 25, 2019.

intrinsic limitations of a Rule 65 *certiorari* proceeding as it does not address mere errors of judgment, unless the error transcends the bounds of the tribunal's jurisdiction.

2. POLITICAL LAW; ADMINISTRATIVE LAW; NATIONAL TELECOMMUNICATIONS COMMISSION (NTC); NATURE AND FUNCTIONS. — The NTC is mandated, under Executive Order (E.O.) No. 546, among others, to establish and prescribe rules, regulations, standards and specifications in all cases related to the issued Certificate of Public Convenience, promulgate rules and regulations as public safety and interest may require, and supervise and inspect the operation of radio stations and telecommunications facilities. Under Section 16 of E.O. No. 546, the NTC likewise exercises quasi-judicial powers. The scope of such function to implement the necessary rules and regulations was later on expanded in E.O. No. 205 to include the operation of CATV services. Finally, Republic Act No. 7925 or the Public Telecommunications Policy Act of the Philippines (PTPA) was enacted which provided for the power and functions of the NTC and which governed the issuance or granting of franchises to qualified entities.

3. ID.; ID.; ID.; NTC PROCEEDINGS FOR THE ISSUANCE OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY (CPCN); APPLICATION PROCEEDING AND COMPLAINT PROCEEDING, DISTINGUISHED. — Under Section 16 of the PTPA, the NTC has the power to impose conditions on the issuance of a franchise such as the Certificate of Public Convenience and Necessity (CPCN) and a certificate of authority, so that qualified entities may lawfully engage in the operation of public telecommunications services such as providing CATV. Pursuant to its power to promulgate rules as well as its power to adopt "an administrative process which would facilitate the entry of qualified service providers" under Section 5 (a) of the PTPA, the NTC adopted the NTC Rules. Under the NTC Rules, there are two (2) major categories or sets of procedures: (a) Procedure in **Application** (Part II); and Procedure in **Complaints** (Part III). In an *application proceeding,* an applicant "seeks authorization or permission to undertake any matter or activity" within the NTC's regulatory power or the object is to obtain a CPCN or any other form of authority from the NTC; while in a *complaint proceeding,* the object is to subject a holder of a CPCN (or any other NTC authority) or

any other person operating a service or activity, or possessing any instrument or equipment without any NTC license or permit, to any penalty or disciplinary measure for violation of any provision of law, rules and regulations.

4. ID.; ID.; ID.; ID.; ID.; DISTINCTION, DISCUSSED; IN CONCLUSION, THE NTC'S APPLICATION PROCEEDINGS PERTAIN TO ITS PURELY ADMINISTRATIVE FUNCTION WHILE THE COMPLAINT PROCEEDINGS PERTAIN TO ITS QUASI-JUDICIAL FUNCTION. — On the one hand, a *purely administrative proceeding* is one which does not involve the settling of disputes involving conflicting rights and obligations. It is merely concerned with either: (a) the direct implementation of laws to certain given facts as a consequence of regulation; or (b) an undertaking to gather facts needed to pursue a further legal action or remedy in the case of investigation. In other words, it does not make binding pronouncements as to a party's rights and/or obligations as a result of a conflict or controversy whether legal or factual. Covered by this type of proceeding is an agency's grant or denial of applications, licenses, permits, and contracts which are executive and administrative in nature. On the other hand, a *quasi-judicial* proceeding is the power to hear and determine questions of fact to which the legislative policy is to apply, and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. It involves: (a) taking and evaluating evidence; (b) determining facts based upon the evidence presented; and (c) rendering an order or decision supported by the facts proved. In other words, it involves a determination, with respect to the matter in controversy, of what the law is; what the legal rights and obligations of the contending parties are; and based thereon and the facts obtaining, the adjudication of the respective rights and obligations of the parties. In the case of the NTC, the foregoing discussion inevitably leads to the legal conclusion that ***application proceedings*** pertain to its *purely administrative function* while ***complaint proceedings*** pertain to its *quasi-judicial function.* Application proceedings involve the NTC's assessment of an applicant's requirements with the object of determining whether a grant of authorization or permission to undertake a regulated activity is warranted. Here, an applicant is being scrutinized of its fitness to secure a license. Relatively, complaint proceedings involve the NTC's assessment and settling

of the contending parties' respective rights and obligations in a legal dispute. Here, pieces of evidence are weighed and legal arguments are considered before upholding or revoking a party's authorization or permission to undertake a regulated activity.

5. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS CLAUSE; SUBSTANTIVE DUE PROCESS AND PROCEDURAL DUE PROCESS; DISCUSSED. — In our jurisdiction, the constitutional guarantee of due process is not limited to an exact definition — it is flexible in that it depends on the circumstances and varies with the subject matter and the necessities of the situation. However undefined, due process has always been consistently divided into two components: (a) substantive due process; and (b) procedural due process. Substantive due process is one which requires the intrinsic validity of the law in interfering with the rights of the person to his life, liberty, or property; while procedural due process involves the basic rights of notice and hearing, as well as the guarantee of being heard by an impartial and competent tribunal. The former component of due process bars certain arbitrary, wrongful government actions "regardless of the fairness of the procedures used to implement them." Comparatively, the latter form of due process strictly requires one who could be potentially deprived of life, liberty or property through a proceeding to be given notice and a real opportunity to be heard. Stated differently, the Due Process Clause provides that certain substantive rights — life, liberty, and property cannot be deprived except pursuant to constitutionally adequate procedures.

6. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; RIGHT TO PROCEDURAL DUE PROCESS; WHAT IT INCLUDES. — As applied to administrative proceedings to which this case pertains, procedural due process has been recognized to include the following: (a) the right to actual or constructive notice of the institution of proceedings which may affect a respondent's legal rights; (b) a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights; (c) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as impartiality; and (d) a finding by said tribunal which is supported by substantial evidence submitted for consideration during the

hearing or contained in the records or made known to the parties affected.

7. ID.; ID.; ID.; ID.; THE DUE PROCESS CLAUSE IS SET IN MOTION ONLY WHEN THERE IS ACTUAL OR A RISK OF AN IMPENDING DEPRIVATION OF LIFE, LIBERTY OR PROPERTY; PROPERTY, DISCUSSED. — [A]n important concept to remember in procedural due process is that the Due Process Clause is set in motion only when there is actual or a risk of an impending *deprivation* of life, liberty or property. Accordingly, "life," "liberty," and "property" are broad terms and are purposely left to gather meaning from experience. In the case of "property" to which this case involves, it has been commonly understood to include *interests* therein which pertain to some form of benefit enjoyed by owners. Thus, to have a "property interest" in a benefit, a person or entity must clearly have a ***legitimate claim of entitlement*** to it which is more than an abstract need, desire or unilateral expectation.

8. ID.; ID.; ID.; ID.; ID.; A LICENSE IS NOT A CONTRACT, PROPERTY OR PROPERTY RIGHT PROTECTED BY THE DUE PROCESS CLAUSE. — In this case, Brancomm's right to due process was never violated by the NTC as the former had not established or demonstrated any vested right worthy of legal protection. A license does not vest absolute rights to the holder. It is not a contract, property or a property right protected by the due process clause of the Constitution. Relatedly, there certainly is no such thing as a vested right to expectation of future profits which can be gained from possession of a franchise.

9. ID.; ID.; NATIONAL TELECOMMUNICATIONS COMMISSION (NTC); NTC PROCEEDINGS FOR THE ISSUANCE OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY (CPCN); SINCE NO ADJUDICATION OF RIGHTS ARE INVOLVED, THE NTC'S ACT OF PROCESSING THE CERTIFICATE OF AUTHORITY APPLICATIONS IS NOT QUASI-JUDICIAL ACT BUT PURELY ADMINISTRATIVE ACT. — [P]roceedings related to permit applications are non-adversarial in nature for there are virtually no contending parties. Although an administrative agency may entertain oppositors to an application, such undertaking does not automatically convert the proceeding to a quasi-judicial one for a couple of reasons: (a) the subject of

application proceedings pertain only to an applicant's privilege to engage in a regulated activity—it does not vest or deprive a party to such proceedings of any right or legally protected interest; and (b) oppositions to applications merely ***aid*** an administrative agency's function in regulating or assessing an applicant's legal fitness to hold a franchise. Besides, the State may choose to require procedures for reasons other than protection against deprivation of substantive rights, but in making that choice the State *does not create* an independent substantive right. Such procedures are commonly utilized in aid of purely administrative proceedings such as permit or license applications where an implementing agency follows a set of guidelines in evaluating an applicant's fitness to possess a franchise. The NTC, although utilizing procedures that are quasi-judicial in nature, does not adjudicate rights as the end-result involves a grant or denial of the permit or franchise such as CPCN or a certificate of authority application. x x x Since no adjudication of rights are involved, the NTC's act of processing the certificate of authority applications is not a quasi-judicial act but a purely administrative act.

10. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION MUST BE ALLEGED AND PROVED TO EXIST. — [G]rave abuse of discretion must be alleged and proved to exist for a petition for *certiorari* to prosper. As such, "grave abuse of discretion" has been defined as a capricious or whimsical exercise of judgment that is patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law. It also includes a virtual refusal to act in contemplation of law or an exercise of power in an arbitrary and despotic manner by reason of passion or personal hostility. Thus, mere abuse of discretion is not enough in order to oust the court of its jurisdiction— it must be **grave**.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Hernandez Surtida Galicia Attorneys-at-Law for respondent.

D E C I S I O N

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

The Facts and The Case

Before this Court is a Petition for Review on *Certiorari*[1] seeking to reverse and set aside the March 20, 2012 Decision[2] and the August 14, 2012 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 111019 which nullified and set aside the March 13, 2009 Omnibus Order[4] and the subsequent July 17, 2009 Order[5] of petitioner National Telecommunications Commission (NTC). The Orders of the NTC denied respondent Brancomm Cable and Television Network Co.'s (Brancomm) Opposition and Omnibus Motion to Dismiss the separate applications filed by Cable Link & Holdings Corporation (Cable Linlc) for the issuance of certificates of authority to install, operate and maintain a Cable Antenna Television (CATV) system in the Province of Pampanga.

On November 4, 2008, Cable Link filed four applications for the issuance of certificates of authority to install, operate and maintain CATV systems in the Municipalities of Sta. Ana,[6] Candaba,[7] Mexico[8] and Arayat,[9] all in the Province of Pampanga. The verification and certification against forum shopping of these applications were signed by its counsel, Atty. Basilio B. Bolante (Atty. Bolante).[10]

---

[1] *Rollo,* pp. 8-42.

[2] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Jane Aurora C. Lantion and Agnes Reyes-Carpio (Ret.), concuring; *id.* at 45-60.

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

[4] CA *rollo,* pp. 42-45.

[5] *Id.* at 47-53.

[6] Docketed as NTC BMC Case No. 2008-150; *rollo*, pp. 123-125.

[7] Docketed as NTC BMC Case No. 2008-152; *id.* at 126-128.

[8] Docketed as NTC BMC Case No. 2008-153; *id.* at 129-131.

[9] Docketed as NTC BMC Case No. 2008-154; *id.* at 132-134.

[10] *Id.* at 125, 128, 131, 134.

During the scheduled hearing on November 25 and 26, 2008 for the presentation of Cable Link's evidence on compliance with the jurisdictional requirements of its applications in NTC BMC Case Nos. 2008-150, 2008-152 and 2008-153, Brancomm opposed the same and manifested that it was not furnished with copies of Cable Link's applications as well as the annexes attached thereto in violation of Section 2, Rule 8 of the 2006 Revised Rules of Practice and Procedure of the National Telecommunications Commission (NTC Rules).[11] Despite Brancomm's opposition, Nilo L. Lozada, NTC's hearing officer, proceeded with the hearing on the jurisdictional requirements of the applications instead of resetting the same.[12]

On November 26, 2008, Cable Link furnished Brancomm with copies of the attachments of its applications consisting of three documents, namely:[13] (1) Certificate of Filing of Amended Articles of Incorporation; (2) Amended Articles of Incorporation and By-Laws; and (3) Republic Act No. 9382.[14]

On December 5, 2008, Brancomm filed its Opposition and Omnibus Motion[15] which sought for the following: (a) dismissal of the applications docketed as NTC BMC Case Nos. 2008-150, 2008-152 and 2008-153 on the ground that the one who signed the verification and certification of non-forum shopping of the same was not shown to have been expressly authorized to do so; the jurat that appears on the verification pages of the applications bore no competent evidence of identity of the person representing the applicant and did not indicate if the notary public personally knows the applicant or the person representing the latter; and the applications failed to comply

---

[11] *Id.* at 47, 371.

[12] *Id.* at 47, 371-372.

[13] *Id.* at 47.

[14] AN ACT GRANTING THE CABLE LINK AND HOLDING CORPORATION A FRANCHISE TO CONSTRUCT, INSTALL, ESTABLISH, OPERATE AND MAINTAIN CABLE/COMMUNITY ANTENNAE TELEVISION SYSTEMS IN THE PHILIPPINES.

[15] CA *rollo*, pp. 92-111.

with NTC Office Order No. 106-10-2007 which prescribed the minimum requirements for the acceptance of applications for CATV system; and (b) annulment of the proceedings that transpired on November 25, 2008 for failure of Cable Link to furnish Brancomm with copies of the affidavits of its witnesses three days before the scheduled hearing in violation of its right to due process as well as Section 5, Rule 11 of the NTC Rules.[16]

On March 13, 2009, the NTC issued an Omnibus Order[17] in NTC BMC Case Nos. 2008-150, 2008-152 and 2008-154, the dispositive portion of which reads:

> **WHEREFORE,** Oppositor Brancomm's Opposition and Omnibus Motion is hereby denied for lack of merit. For related reasons above discussed, Oppositor ACCTN's Opposition with Motion Not to Give Application Due Course or, in the alternative, Motion to Direct Applicant to Re-file Present [C]ase Due to Failure to Comply with Minimum Mandatory Requirements for CATV Application is likewise **DENIED** for lack of merit.

In denying Brancomm's Opposition and Omnibus Motion, NTC ratiocinated that the Minutes of the Special Meeting of the Board of Directors[18] dated October 31, 2008, that Cable Link submitted ratified whatever action Atty. Bolante has undertaken in its behalf such as the filing of the said applications. Also, the purported lack of verification of the applications is a matter of form which cannot be a ground for their outright dismissal. The defective jurat had already been cured by Cable Link's submission of amended ones that are compliant with the 2004 Rules on Notarial Practice.[19] The NTC likewise held that the alleged failure of Cable Link to attach in its applications evidence of its technical and financial capabilities does not merit their outright dismissal under NTC

---

[16] *Rollo,* pp. 47-48; 372-374.

[17] CA *rollo,* pp. 42-45.

[18] *Rollo,* pp. 186-188.

[19] *Id.* at 192-197.

Office Order No. 106-10-2007 as the requirement to submit the documents specified in the office order was meant only to expedite the evaluation of the applications. Contrary to the assertion of Brancomm, it was not denied of due process despite the fact that it was not given copies of the testimonies of Cable Link's witnesses three days before the scheduled hearing considering that it will be given ample time to scrutinize and review said testimonies before Brancomm conducts its cross examination.

Not accepting defeat, Brancomm moved for reconsideration[20] but the same was denied by the NTC in its Order[21] dated July 17, 2009, the dispositive portion of which reads:

> **WHEREFORE,** premises considered, Oppositor's Motion for Reconsideration is hereby **DENIED** for lack of merit. The Omnibus Order dated March 13, 2009 issued by the Hearing Officer is hereby modified to the extent that Oppositor's Opposition to this application shall stand and included in the evaluation of the present application on the merits.
>
> Let the continuation of the hearing of this case be set on **JULY 28, 2009 at 9:30 in the morning.**

Undeterred, Brancomm elevated the matter before the CA via a Petition for *Certiorari* and Prohibition[22] seeking to annul and set aside the March 13, 2009 Omnibus Order and the July 17, 2009 Order of the NTC.

On March 20, 2012, the CA rendered its Decision[23] annulling and setting aside the assailed Orders of the NTC. It held that while the applications of Cable Link contain verifications and certifications against forum shopping, the same do not show that the person who signed the same had the authority to do so. Cable Link was aware of such defect as it, in fact, tried to correct the same by subsequently submitting a Resolution passed by

---

[20] *Id.* at 295-305.

[21] CA *rollo*, pp. 47-53.

[22] *Id.* at 3-40.

[23] *Supra* note 2.

its Board of Directors showing the person's authority to sign the said verifications and certifications. However, instead of clearing doubts, the Resolution posed even more questions given that the Resolution vested the authority to sign the verifications and certifications not on Atty. Bolante, but on another person. NTC cannot excuse Cable Link's failure to submit verifications and certifications on non-forum shopping that are proper in form and substance by construing the rules liberally in its favor given that there could be no substantial compliance with the rules when the wording of the Board Resolution was explicit and unequivocal that it authorizes another person to sign the verification and certification on non-forum shopping.

Contrary to the ruling of the NTC, the CA ruled that Cable Link's failure to comply with NTC Office Order No. 106-10-2007 merits its applications' outright dismissal for the reason that the very wording of the said office order clearly provides that an applicant for the issuance of a certificate of authority to operate a CATV system should submit to the NTC at least the documents that were enumerated therein before the NTC could act upon the application. The contention of the NTC that the requirement of the submission of the documents mentioned in the office order is merely for purposes of facility is contrary to the directive of the office order and the liberal application of the rules is unwarranted. Furthermore, NTC denied Brancomm of its right to due process when it went ahead to hear Cable Link's applications and even allowed it to present its witnesses even if Brancomm was not furnished with the affidavit of the witness Cable Link was going to present three days in advance. While the requirement under Section 5, Rule 11 of the NTC Rules requiring the submission to the opposing party of the said affidavit three days before the scheduled hearing is preceded by the phrase, *"as far as practicable,"* it does not necessarily follow that the mandate of the provision could be dispensed with altogether. Technical rules may be relaxed only when there are underlying considerations that necessitate its relaxation, and only for the furtherance of justice and to benefit the deserving.

Undeterred, NTC filed the present petition premised on the following grounds:

The Issues

I.

The Court of Appeals committed grave error in not holding that Atty. Basilio B. Bolante had ample authority to sign, in behalf of Cable Link, the verification and certification of non-forum shopping of the applications filed in BMC Case Nos. 2008-150, 2008-152 and 2008-154.

II.

The Court of Appeals committed grave error in ruling that the failure of Cable Link to comply with NTC Office Order No. 106-10-2007 was fatal to its Applications.

III.

The Court of Appeals committed grave error in ruling that respondent was denied due process.

IV.

The Court of Appeals committed grave error in not taking into consideration that petitioner, being the government agency entrusted with the regulation of activities coming under its special and technical forte, and possessing the necessary rule-making power to implement its objectives, is in the best position to interpret its own rules, regulations and guidelines.

V.

The Court of Appeals committed grave error in not ruling on the issue of the impropriety of the remedy resorted to by respondent.[24]

The Arguments of the Parties

NTC argues that contrary to the findings of the CA, Atty. Bolante had sufficient authority to sign the verification and the certification of non-forum shopping portion of Cable Link's applications given that he was designated as the corporation's legal counsel and representative during the October 31, 2008

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

Special Meeting of the Board of Directors of Cable Link. The pertinent portion of the minutes of the said special meeting reads as follows:

> **RESOLVED,** as it hereby resolved that the President, **MR. ARMANDO M. MERILLENO**, be empowered and authorized to sign and execute any and all papers and documents including but not limited to application/petition, motion or memorandum necessary and required before the Commission or any other government agencies in connection with any application filed or to be filed, including the verification thereof as well as the power to engage the services of legal, technical and financial personnel to prepare the needed studies and testify on the same. hereinafter
>
> **RESOLVED FURTHER,** that **MR. ARMANDO M. MERILLENO** be authorized to exercise such other powers as may be necessary or needed for the attainment of this resolution, to do and perform any all acts and whatever undertaking's that may be necessary or required for the faithful execution of the foregoing.
>
> **RESOLVED,** FINALLY, that any and all applications, petitions, motions, and memoranda, among others filed or initiated by **ATTY. BASILIO B. BOLANTE** who is hereby designated as the corporation's legal counsel/representative before the National Telecommunications Commission or any office or agency of the government are hereby adopted, ratified, affirmed and confirmed.[25]

Aside from bestowing upon Atty. Bolante ample authority to sign the said verification and certification of non-forum shopping in behalf of Cable Link's applications, the resolution passed by the corporation likewise ratified the acts of Atty. Bolante, adopted the contents of the applications and conferred upon Atty. Bolante the power to perform acts necessary or incidental to his authority to represent Cable Link before the NTC. Even assuming that Mr. Armando M. Merilleno (Mr. Merilleno) was the one authorized by Cable Link to sign and execute the required papers and documents before the NTC, there is nothing in the board resolution which suggests that the power to sign the verification and certification was solely vested on Mr. Merilleno. Inasmuch as Atty. Bolante was appointed as

---

[25] *Id.* at 187.

Cable Link's representative before the NTC, such appointment necessarily carried with it all powers essential to carry out such mandate, including the power to sign the verifications and certifications of the applications.[26]

Be that as it may, NTC contends that any official, employee or representative of a corporation can sign the verification and certification without need of a board resolution for as long as such person is in a position to verify the truthfulness and the correctness of the allegations in the petition. Here, Atty. Bolante was designated not only as the representative of Cable Link, but as its counsel as well. As such, he was in a position to verify the truthfulness and correctness of the allegations in all the applications he himself prepared because he attended the special board meeting of Cable Link where the applications were presented and read before the entire Board of Directors, and the allegations of which were adopted during the said meeting. Hence, Atty. Bolante clearly had authority to sign the verification and certification of non-forum shopping in behalf of the corporation.[27]

Even assuming that the verification was defective, NTC argues that the same does not affect the validity or efficacy of a pleading, and does not divest it of jurisdiction to take cognizance of the applications, since the verification is merely a formal, and not a jurisdictional requirement.[28] Also, NTC's acceptance of Cable Link's applications was in keeping with the liberal construction under Section 3, Rule 1 of the NTC Rules, and consistent with jurisprudential pronouncements that rules of procedure are, as a matter of course, construed liberally in proceedings before administrative bodies given that it is not bound by the technical niceties of law and procedure and the rules obtaining in the courts of law. Besides, the outright dismissal of the applications for containing a defective verification would serve no beneficial purpose because Cable Link could easily take steps to cure the

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

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

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

defect of the applications and refile them. In such event, Cable Link would be obliged to pay anew filing fees when it refiles its applications which is contrary to the avowed policy of construing the NTC Rules liberally in order to promote public interest and assist the parties in obtaining just, speedy and inexpensive determination of their cases. Moreover, the requirement under the Rules of Court that judicial initiatory pleadings must be accompanied with a certification of non-forum shopping cannot be strictly applied to pleadings filed before the NTC given that the NTC Rules do not require pleadings filed before it to contain the said certification.[29]

Contrary to the ruling of the CA, NTC avers that there is nothing in NTC Office Order No. 106-10-2007 that would even remotely suggest that the non-submission of all the documents enumerated therein shall result to the outright dismissal of an application. NTC insists that the attachment of all the documents listed under the said office order was only meant to expedite the resolution of the application for CATV operation and nothing more. Thus, if the hearing officer believes that waiting for the submission of all the documents would only lead to unnecessary delay in the resolution of the applications given that the applicant would have to present the remaining documents during trial under pain of denial of the applications, there would be no prejudice to interested third parties if the hearing officer takes cognizance of the applications pending submission of all the required documents.[30]

NTC likewise claims that the CA gravely erred in ruling that Cable Link's failure to furnish Brancomm with copies of its applications and the affidavits of its intended witnesses in advance violated the latter's right to due process, and is a ground for the immediate dismissal of the former's applications considering that such requirement is not mandatory, but only permissive as clearly provided under Section 5, Rule 11 of the NTC Rules. Besides, even if Brancomm was not given advance

---

[29] *Id.* at 25-28.

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

copies of the affidavits of Cable Link's witnesses, it was not deprived of the opportunity to conduct an extensive cross-examination. Brancomm could very well hear the witness's testimony and then sought for the deferment of the cross-examination, pursuant to Section 13, Rule 11 of the NTC Rules, to give it sufficient time to study the direct testimony of Cable Link's witnesses as contained in their affidavits which Brancomm was not provided beforehand.[31]

NTC adds that the CA's interpretation of NTC Office Order No. 106-10-2007 and the above-mentioned NTC Rules as mandatory in character conflicts with the interpretation given to them by the NTC that said office order and Rules are merely directory. As the government agency entrusted with the regulation of activities coming under its technical expertise, and possessed with the necessary rule-making power to implement its objectives, the NTC's interpretation of its own set of rules must be respected. Furthermore, to sanction the CA's rigid interpretation of these procedural rules would run counter to the settled principle that rules of procedure before administrative bodies are, as a matter of course, construed liberally, and would be inconsistent with NTC's policy that its rules should be liberally construed in order to protect and promote public interest in a suitable manner and to assist the parties in obtaining just, speedy and inexpensive determination of every case before the NTC.[32] Moreover, NTC contends that courts may not interfere with purely administrative and discretionary functions, except when the issuing authority has gone beyond its statutory authority, exercised unconstitutional powers or clearly acted arbitrarily and without regard to its duty or with grave abuse of discretion. In this case, NTC was not shown to have abused its discretion when it accepted Cable Link's applications for consideration inasmuch as it did so only to enable it to intelligently decide whether the applications should be granted or not.[33]

---

[31] *Id.* at 31-34; 517.

[32] *Id.* at 35-37.

[33] *Id.* at 517-518.

NTC also points out that the CA gravely erred in not ruling on the propriety of the remedy of *certiorari* availed of by Brancomm when it questioned its July 17, 2009 Order. The NTC argues that Brancomm availed of the wrong remedy when it filed a *certiorari* petition before the CA inasmuch as its Opposition and/or Motion to Dismiss were still pending consideration and evaluation alongside Cable Link's applications. What Brancomm should have done was to wait for the resolution of Cable Link's applications, and appeal the same via Rule 43 should the same be not favorable to it.[34] Also, by allowing Brancomm's Opposition to stand, it means that the NTC has yet to deliberate upon, evaluate and consider Cable Link's applications. Thus, no injurious effect has yet been inflicted upon Brancomm that is correctible by a *certiorari* petition.[35]

Brancomm counters that the *certiorari* petition it filed was the proper remedy to question NTC's March 13, 2009 Omnibus Order and July 17, 2009 Order considering that both orders were merely interlocutory orders. While it may be true that interlocutory acts may be assigned as errors in the regular course of an appeal, such remedy is not adequate in Brancomm's case since prejudice may have already been caused to it in the interim. Thus, the *certiorari* petition was resorted to as it was the only recourse available to it to promptly relieve it of the injurious effects of the judgment and acts of NTC. Besides, the July 17, 2009 Order would show that only the Opposition interposed by Brancomm is still pending consideration and evaluation by NTC. Its Omnibus Motion (Motion to Dismiss and Motion to Annul) was not ordered included in the evaluation of Cable Link's applications as falsely claimed by NTC. Thus, the denial of its Omnibus Motion is properly assailable through the writ of *certiorari*.[36]

Anent Atty. Bolante's act of signing the verification and certification of non-forum shopping in behalf of Cable Link's

---

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

[35] *Id.* at 515-516.

[36] *Id.* at 447-449.

applications for CATV, Brancomm points out that the same verification and certification made no mention that he was authorized by Cable Link's Board of Directors to file and/or sign the same. As such, Atty. Bolante is deemed to have filed the applications in his personal capacity. Not being the real party in interest, the applications Atty. Bolante filed, verified and certified stated no cause of action and is dismissible on such ground pursuant to Section 1, paragraph (g) of Rule 16 of the Rules of Court and *Casimiro v. Roque.*[37] The belated filing of the October 31, 2008 Board Resolution passed by the Board of Directors of Cable Link is not sufficient to cure the fatal defect of the verification and certification for the reason that, although the Board Resolution ratified the filing of any and all petitions, motions, and memoranda filed or initiated by Atty. Bolante, it did not explicitly vest him with authority to sign the verification and certification against forum shopping nor ratified his act of signing the same. The clear and unambiguous wording of the Board Resolution would readily reveal that the one authorized by the Board of Directors to sign and execute any and all papers in connection with Cable Link's applications, including the verification was not Atty. Bolante, but Armando M. Merilleno, Cable Link's President. The Board Resolution merely ratified the act of Atty. Bolante in filing the applications and no other. Furthermore, Brancomm contends that the NTC could not excuse the defective verification and certification on the ground that Section 3, Rule 1 of the NTC Rules provides for the Rules' liberal application inasmuch as NTC failed to give sufficient reason for the disregard of the mandatory character of the rules on verification and certification, and substantiate the existence of public interest that would be prejudiced in case of the dismissal of Cable Link's applications on account of the defective verification and certification. Since Cable Link's applications lacked the proper verification and certification, the NTC should have denied the same.[38]

---

[37] 98 Phil. 880, 884-886 (1956).

[38] *Rollo,* pp. 450-457.

Even if it were to concede that the lack of verification and certification is only a formal defect, the same would still result to the striking off of the applications filed given that Section 2, Rule 6 of the NTC Rules strictly provides that only pleadings, motions, documents and other papers which conform to the formal requirements of the NTC Rules shall be accepted for filing.[39]

Brancomm do not agree with NTC that non-compliance with NTC Office Order No. 106-10-2007 does not warrant the outright dismissal of the applications. It argues that the wording of the said office order categorically prescribed the minimum requirements for the acceptance of an application to operate and maintain CATV systems in the country. Considering that the office order is geared towards the expeditious resolution of cases, it stands to reason that compliance with the requirements set forth therein is mandatory. The absence of the minimum requirements strips the NTC of jurisdiction to accept Cable Link's applications much less hear and decide the same. Thus, when NTC accepted the applications and acted on them, it clearly acted with grave abuse of discretion amounting to lack or excess of jurisdiction.[40]

Brancomm maintains that its right to due process was violated when Cable Link failed to furnish it with copies not only of the annexes referred to in its applications, but also of the affidavits of its witnesses notwithstanding the mandatory requirement laid down in Section 3, Rule 6 of the NTC Rules. Cable Link's non-compliance with the mandate of the said rule, as a matter of fact, resulted to the failure of the NTC to acquire jurisdiction over its applications. Thus, NTC gravely abused its discretion when it ruled that Cable Link complied with the jurisdictional requirements relative to its applications. What the NTC should have done instead was to cause the striking off of the documents filed before it pursuant to Section 2, Rule 6 of the NTC Rules.[41]

---

[39] *Id.* at 457-458.

[40] *Id.* at 458-460.

[41] *Id.* at 460-462.

Even assuming that NTC could validly exercise jurisdiction over the applications of Cable Link despite said defects, NTC should have at least deferred the hearing on the applications, as provided by Section 3, Rule 8 of the NTC Rules, until after it had complied with the required service of all the annexes attached to its applications. In this case, the hearing on jurisdictional compliance in the applications were scheduled on November 25 and 26, 2008. However, it was only on November 26, 2008, when Brancomm received the attachments of Cable Link's applications in NTC BMC Case Nos. 2008-150, 2008-152 and 2008-153 in clear violation of the dictates of Section 2, Rule 8 of the NTC Rules that all pleadings, documents and other papers, together with all annexes attached thereto shall be served to all the affected parties at least 15 days before the hearing date. Such notwithstanding, the NTC hearing officer allowed the proceedings to continue on November 25, 2008 and even directed Cable Link to present its first witness, whose affidavit was not provided at least three days before the scheduled hearing pursuant to Section 5, Rule 11 of the NTC Rules, and testify on financial documents consisting of credit facilities which were never mentioned nor attached to the affidavits of the said witness despite Brancomm's repeated objections. While the NTC Rules may be liberally construed, such liberal construction does not authorize the blatant disregard of Brancomm's right to be given the opportunity to scrutinize, peruse, examine, study and pore over the affidavits and documents of the applicant's witnesses before they were presented and offered as evidence in clear violation of its right to due process. That Brancomm will be given copies of affidavits and annexes attached to the applications, and that it will be allowed to conduct its cross examination on the next scheduled trial date does not cure the fact that the proceedings before the NTC was a nullity right from the beginning as it violated the very Rules NTC promulgated and gave Cable Link undue advantage at the expense of Brancomm.[42]

Brancomm contends further that NTC cannot justify the abuse of its discretion in (1) ruling that the October 31, 2008 Board

[42] *Id.* at 462-464.

Resolution belatedly submitted by Cable Link is sufficient to render the verification and certification of non-forum shopping signed by Atty. Bolante valid; (2) accepting Cable Link's applications absent the minimum requirements imposed by NTC Office Order No. 106-10-2007; (3) ruling that Cable Link complied with the jurisdictional requirements despite its failure to furnish Brancomm, the oppositor, with the annexes attached to its applications; (4) denying Brancomm of due process when NTC proceeded to hear Cable Link's applications over which it has not validly acquired jurisdiction and even allowed Cable Link to present its witnesses; and (5) allowing Cable Link to present its first witness and testify on financial matters, the documents pertaining thereto as well as the affidavit of the said witness not having furnished to it beforehand so as to give it sufficient time to examine the same by insisting on the liberal interpretation of NTC's own rules and invoking its exclusive authority to interpret the same given that its rules are coached in basic and ordinary terms, not necessitating NTC's technical expertise to construe its construction. To sanction NTC's disregard of all the requirements it alone imposed for the acceptance of CATV applications *sans* any justification would result in a bizarre situation where an administrative agency can suspend its own rules anytime it pleases, thereby placing upon the applicant the power to decide whether it wants to comply with the NTC Rules or not, thus running counter to the rule enunciated in Section 4, Rule 11 of the NTC Rules which states that the NTC hearing commissioner or officer shall take full control of the proceedings.

The Ruling of the Court

Preliminary Considerations

The function of a petition for review on *certiorari* is to enable this Court to determine and correct any error of judgment committed in the exercise of jurisdiction.[43] However, much like in labor cases, when this Court reviews the legal correctness of the CA's decision in resolving a petition for *certiorari* under

---

[43] See: *Marasigan v. Fuentes,* 776 Phil. 574, 581 (2016), citations omitted.

Rule 65, it still evaluates the case in the prism of whether the latter tribunal correctly determined the presence or absence of grave abuse of discretion on the part of the court or other tribunal *a quo*.[44] Even if elevated *via* Rule 45, it is still bound by the intrinsic limitations of a Rule 65 *certiorari* proceeding as it does not address mere errors of judgment, unless the error transcends the bounds of the tribunal's jurisdiction.[45]

At this point, the Court now proceeds to determine whether the CA erred in holding that the NTC *gravely* abused its discretion in allowing Cable Link to proceed with its application proceedings.

Nature and Functions of the NTC

The NTC is mandated, under Executive Order (E.O.) No. 546,[46] among others, to establish and prescribe rules, regulations, standards and specifications in all cases related to the issued Certificate of Public Convenience, promulgate rules and regulations as public safety and interest may require, and supervise and inspect the operation of radio stations and telecommunications facilities.[47] Under Section 16 of E.O. No. 546, the NTC likewise exercises quasi-judicial powers. The scope of such function to implement the necessary rules and regulations was later on expanded in E.O. No. 205[48] to include the operation of CATV services. Finally, Republic Act No. 7925[49] or the Public Telecommunications Policy Act of the

---

[44] See: *Our Haus Realty Development Corporation v. Parian,* 740 Phil. 699, 709 (2014).

[45] See: *Inocente v. St. Vincent Foundation for Children and Aging, Inc.,* 788 Phil. 62, 73-74 (2016).

[46] Creating a Ministry of Public Works and a Ministry of Transportation and Communications (July 23, 1979).

[47] See: Section 15 (e), (g) and (h).

[48] Regulating the Operation of Cable Antenna Television (CATV) Systems in the Philippines, and for Other Purposes (June 30, 1987).

[49] AN ACT TO PROMOTE AND GOVERN THE DEVELOPMENT OF PHILIPPINE TELECOMMUNICATIONS AND THE DELIVERY OF PUBLIC TELECOMMUNICATIONS SERVICES (March 1, 1995).

Philippines (PTPA) was enacted which provided for the power and functions of the NTC and which governed the issuance or granting of franchises to qualified entities.

Nature of NTC Proceedings

Under Section 16 of the PTPA, the NTC has the power to impose conditions on the issuance of a franchise such as the Certificate of Public Convenience and Necessity (CPCN) and a certificate of authority, so that qualified entities may lawfully engage in the operation of public telecommunications services such as providing CATV. Pursuant to its power to promulgate rules as well as its power to adopt "an administrative process which would facilitate the entry of qualified service providers" under Section 5 (a) of the PTPA, the NTC adopted the NTC Rules. Under the NTC Rules, there are two (2) major categories or sets of procedures: (a) Procedure in **Application** (Part II); and Procedure in **Complaints** (Part III). In an *application proceeding,* an applicant "seeks authorization or permission to undertake any matter or activity" within the NTC's regulatory power[50] or the object is to obtain a CPCN or any other form of authority from the NTC;[51] while in a *complaint proceeding,* the object is to subject a holder of a CPCN (or any other NTC authority) or any other person operating a service or activity, or possessing any instrument or equipment without any NTC license or permit, to any penalty or disciplinary measure for violation of any provision of law, rules and regulations.[52]

As to the nature of the aforementioned NTC proceedings, there is a need to distinguish between purely administrative proceedings and quasi-judicial proceedings.

On the one hand, a *purely administrative proceeding* is one which does not involve the settling of disputes involving conflicting rights and obligations. It is merely concerned with either: (a) the direct implementation of laws to certain given

---

[50] Section 3, Rule 4, Part I of the NTC Rules.

[51] Section 1, Rule 7, Part II of the NTC Rules.

[52] Section 1, Rule 10, Part III of the NTC Rules.

facts as a consequence of regulation; or (b) an undertaking to gather facts needed to pursue a further legal action or remedy in the case of investigation. In other words, it does not make binding pronouncements as to a party's rights and/or obligations as a result of a conflict or controversy whether legal or factual. Covered by this type of proceeding is an agency's grant or denial of applications, licenses, permits, and contracts which are executive and administrative in nature.[53]

On the other hand, a *quasi-judicial proceeding* is the power to hear and determine questions of fact to which the legislative policy is to apply, and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law.[54] It involves: (a) taking and evaluating evidence; (b) determining facts based upon the evidence presented; and (c) rendering an order or decision supported by the facts proved.[55] In other words, it involves a determination, with respect to the matter in controversy, of what the law is; what the legal rights and obligations of the contending parties are; and based thereon and the facts obtaining, the adjudication of the respective rights and obligations of the parties.[56]

In the case of the NTC, the foregoing discussion inevitably leads to the legal conclusion that ***application proceedings*** pertain to its *purely administrative function* while ***complaint proceedings*** pertain to its *quasi-judicial function.*

Application proceedings involve the NTC's assessment of an applicant's requirements with the object of determining whether a grant of authorization or permission to undertake a regulated activity is warranted. Here, an applicant is being scrutinized of its fitness to secure a license. Relatively, complaint proceedings involve the NTC's assessment and settling of the contending parties' respective rights and obligations in a legal

---

[53] See: *Liwat-Moya v. Ermita,* G.R. No. 191249, March 14, 2018, citations omitted.

[54] *Bedol v. Comelec,* 621 Phil. 498, 510 (2009).

[55] *Ligtas v. People,* 766 Phil. 750, 771 (2015), citations omitted.

[56] *Encinas v. PO1 Agustin, Jr.,* 709 Phil. 236, 256 (2013), citations omitted.

dispute. Here, pieces of evidence are weighed and legal arguments are considered before upholding or revoking a party's authorization or permission to undertake a regulated activity.

On the Proceedings Affecting Cable Link's Applications

It is settled in the records that the proceeding in this case indisputably pertains to Cable Link's applications for the issuance of a certificate of authority to operate a CATV. As such, the Court now proceeds to determine whether the petitioner: (a) violated due process requirements by allowing the hearing of Cable Link's applications despite Brancomm's alleged loss of opportunity to examine the subject applications and their accompanying requirements; and (b) abused its discretion in not considering Cable Link's applications as ridden with fatal defects.

I. On Due Process

In our jurisdiction, the constitutional guarantee of due process is not limited to an exact definition—it is flexible in that it depends on the circumstances and varies with the subject matter and the necessities of the situation.[57] However undefined, due process has always been consistently divided into two components: (a) substantive due process; and (b) procedural due process. Substantive due process is one which requires the intrinsic validity of the law in interfering with the rights of the person to his life, liberty, or property; while procedural due process involves the basic rights of notice and hearing, as well as the guarantee of being heard by an impartial and competent tribunal.[58] The former component of due process bars certain arbitrary, wrongful government actions "regardless of the fairness of the procedures used to implement them."[59] Comparatively, the latter form of due process strictly requires one who could

---

[57] *Saunar v. Ermita,* G.R. No. 186502, December 13, 2017, 848 SCRA 351, 362.

[58] *Secretary of Justice v. Lantion,* 379 Phil. 165, 202-203 (2000).

[59] *Zinermon v. Burch,* 494 U.S. 113 (1990), https://caselaw.findlaw.com/us-supreme-court/494/113.html.

be potentially deprived of life, liberty or property through a proceeding to be given notice and a real opportunity to be heard.[60] Stated differently, the Due Process Clause provides that certain substantive rights — life, liberty, and property — cannot be deprived except pursuant to constitutionally adequate procedures.[61]

As applied to administrative proceedings to which this case pertains, procedural due process has been recognized to include the following: (a) the right to actual or constructive notice of the institution of proceedings which may affect a respondent's legal rights; (b) a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights; (c) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as impartiality; and (d) a finding by said tribunal which is supported by substantial evidence submitted for consideration during the hearing or contained in the records or made known to the parties affected.[62]

Finally, an important concept to remember in procedural due process is that the Due Process Clause is set in motion only when there is actual or a risk of an impending *deprivation* of life, liberty or property.[63] Accordingly, "life," "liberty," and "property" are broad terms and are purposely left to gather meaning from experience.[64] In the case of "property" to which

---

[60] *Disciplinary Board, Land Transportation Office v. Gutierrez,* 812 Phil. 148, 154 (2017).

[61] *Cleveland Board of Education v. Loudermill,* 470 U.S. 532 (1985, <https://caselaw.findlaw.com/us-supreme-court/470/532.html>.

[62] *Vivo v. Philippine Amusement and Gaming Corporation*, 721 Phil. 34, 43 (2013), citations omitted.

[63] It is well settled that "[t]he requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property." (*Santosky v. Kramer,* 455 U.S. 745 [1982], citations omitted).

[64] *National Mutual Insurance Co. v. Tidewater Transfer Co., Inc.,* 337 U.S. 582 (1949), <https://caselaw.findlaw.com/us-supreme-court/337/582.html>.

this case involves, it has been commonly understood to include *interests* therein which pertain to some form of benefit enjoyed by owners. Thus, to have a "property interest" in a benefit, a person or entity must clearly have a ***legitimate claim of entitlement*** to it which is more than an abstract need, desire or unilateral expectation.[65]

In this case, Brancomm's right to due process was never violated by the NTC as the former had not established or demonstrated any vested right worthy of legal protection. A license does not vest absolute rights to the holder.[66] It is not a contract, property or a property right protected by the due process clause of the Constitution.[67] Relatedly, there certainly is no such thing as a vested right to expectation of future profits which can be gained from possession of a franchise.[68]

As earlier explained, proceedings related to permit applications are non-adversarial in nature for there are virtually no contending parties. Although an administrative agency may entertain oppositors to an application, such undertaking does not automatically convert the proceeding to a quasi-judicial one for a couple of reasons: (a) the subject of application proceedings pertain only to an applicant's privilege to engage in a regulated activity–it does not vest or deprive a party to such proceedings of any right or legally protected interest; and (b) oppositions to applications merely ***aid*** an administrative agency's function in regulating or assessing an applicant's legal fitness to hold a franchise. Besides, the State may choose to require procedures for reasons other than protection against deprivation of substantive rights, but in making that choice the State *does not*

---

[65] See: *Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972), <https://caselaw.findlaw.com/us-supreme-court/408/564.html>.

[66] See: *Republic v. Rosemoor Mining and Development Corporation,* 470 Phil. 363, 369 (2004).

[67] *Oposa v. Hon. Factoran, Jr.,* 296 Phil. 694, 720 (1993).

[68] See: *Southern Luzon Drug Corporation v. Department of Social Welfare and Development,* 809 Phil. 315, 345 (2017); *Zabul v. Duterte,* G.R No. 238467, February 12, 2019.

create an independent substantive right.[69] Such procedures are commonly utilized in aid of purely administrative proceedings such as permit or license applications where an implementing agency follows a set of guidelines in evaluating an applicant's fitness to possess a franchise.

The NTC, although utilizing procedures that are quasi-judicial in nature, does not adjudicate rights as the end-result involves a grant or denial of the permit or franchise such as CPCN or a certificate of authority application. As pointed out earlier, "a license is merely a permit or privilege to do what otherwise would be unlawful, and is not a contract between the authority granting it and the person to whom it is granted; *neither is it property or a property right,* nor does it create a vested right."[70] Since no adjudication of rights are involved, the NTC's act of processing the certificate of authority applications is not a quasi-judicial act but a purely administrative act.

In application proceedings before the NTC, no one will be deprived of any vested right or legitimate claim of entitlement when there are deviations to procedural rules. Proceedings pertaining to permit applications merely enable and aid an administrative agency to properly assess the requirements submitted by an applicant whether he, she or it is entitled to be granted a State franchise to engage in a regulated activity. The only logical consequence or risk of an administrative agency's failure in properly assessing and verifying the fitness of an applicant to engage in such regulated activity is the eventual nullification of a subsequently granted or issued franchise for being unsanctioned by law. In other words, an erroneous issuance of a permit resulting from failure of an administrative agency to follow its application proceedings only results in a voidable franchise for failure to follow legal requirements. It does not grant due process rights to a third party oppositor to a permit or franchise application as the process involves only the

---

[69] *Olim v. Wakinekona,* 461 U.S. 238 (1983), citations omitted, https://caselaw.findlaw.com/us-supreme-court/461/238.html.

[70] *Chavez v. Hon. Romulo,* 475 Phil. 486, 512 (2004), citations omitted.

agency and the applicant. However, a voidable franchise may be attacked in a complaint proceeding and strict requirements of administrative due process will now apply.

Besides, the term "jurisdictional requirements" used in Section 3, Rule 8, Part II of the NTC Rules is actually a misnomer. In a general context, jurisdiction means "[t]he authority of law to act officially in a particular matter in hand."[71] And since only the law can vest jurisdiction or authority on an administrative agency to either perform a set of functions or act in a particular manner, it cannot technically vest or oust itself of jurisdiction by enacting its own rules of procedure. Instead, an administrative agency's jurisdiction is fixed by law and determined by examining the facts whether the conditions demonstrated satisfy statutory requirements for the assumption of jurisdiction. In other words, an administrative agency's procedural rules, especially relative to permit or franchise applications, do not determine the presence or absence of its own authority to conduct such proceedings. This is the reason why the last sentence of the same rule states that "[f]ailure to comply with the above provisions shall be subject to the sound discretion of the Commission who may *postpone* or *defer* the hearing of the case."[72] It demonstrates that failure to comply with "jurisdictional requirements" does not even divest the NTC of its jurisdiction to accept or warrant a dismissal of a certificate of authority application under the NTC Rules. Such rule presupposes that the NTC may suspend the application proceedings indefinitely until the applicant subsequently complies with all statutory requirements or order full compliance of such requirements; unless, of course, a ruling of dismissal is proper in cases where the applicant abandons its application or fails to exert efforts of compliance for an unreasonable length of time.

At this point, it now becomes immaterial whether it was proper for the NTC to allow the rectification of Cable Link's defective

---

[71] *Frazier v. Moffatt,* 108 Cal.App.2d 379 (1951), citing: Cooley on Torts, p. 417, <https://caselaw.findlaw.com/ca-court-of-appeal/1799037.html>.

[72] Section 3, Rule 8, Part II of the NTC Rules.

application (*i.e.* Atty. Bolante's alleged lack of authority to sign the verification and the certification of non-forum shopping portion of Cable Link's applications, failure to meet the prescribed minimum requirements for the acceptance of an application, failure to send potential oppositors copies of its applications and supporting documents, *etc.*) as Brancomm had *no legitimate interest* (such as the right to due process or supposed right to monopoly) which will be adversely affected. Brancomm basically had no right to due process at the stage of the subject application proceedings because it has failed to demonstrate any legitimate claim of entitlement, especially its interest to maintain its monopoly in providing CATV services in the areas covering Sta. Ana, Candaba, Mexico and Arayat, all in the Province of Pampanga. Here, Brancomm cannot be said to have been "deprived" of "property" without due process of law just because the NTC allowed Cable Link to rectify its defective applications.

More importantly, monopolies and combinations in restraint of trade have already been outlawed and punished even before the enactment of the Philippine Competition Act[73] by Article 186[74] of the Revised Penal Code. Even the second whereas clause [75] of E.O. No. 205 as well as Sections 5 (f)[76] and 17[77] of the

---

[73] R.A. No. 10667 (July 21, 2015).

[74] As amended by R.A No. 1956 (An Act Amending Article One Hundred and Eighty-Six of the Revised Penal Code, Concerning Monopolies and Combinations in Restraint of Trade [June 22, 1957]).

[75] WHEREAS, when the public interest so requires, **monopolies** in commercial mass media shall be **regulated** or **prohibited;** x x x (Emphasis supplied)

[76] Protect consumers against misuse of a telecommunications entity's monopoly or quasi-monopolistic powers by, but not limited to, the investigation of complaints and exacting compliance with service standards from such entity x x x.

[77] The Commission shall, however, retain its residual powers to regulate rates or tariffs when ruinous competition results or when a monopoly or a cartel or combination in restraint of free competition exists and the rates or tariffs are distorted or unable to function freely and the public is adversely affected. In such cases, the Commission shall either establish a floor or ceiling on the rates or tariffs.

PTPA empowers the NTC to curb monopolistic (and even quasi-monopolistic) behaviors of service providers which are inimical to healthy competition. Obviously, no legitimate interest or claim of entitlement can arise or result in something which is legally discouraged or declared to be unlawful.

However, this is not to say that the respondent has no interest at all to protect as regards Cable Link's certificate of authority applications as competing CATV service provider. Since NTC is tasked and empowered by E.O. No. 205 to regulate the CATV service industry, it may take into consideration the legitimate interests of *all* stakeholders during application proceedings. For example, if the NTC is able to determine from the application requirements submitted to it that a prospective entrant to the industry intends to use without compensation[78] or detrimentally displace the existing essential facilities of those already lawfully in operation, oppositors will undoubtedly be considered to have legitimate interests to be protected by the guarantee of due process. In which case, there will be a need to make binding pronouncements affecting legitimate interests or claims of entitlement. Consequently, the application proceedings will now be converted from purely administrative to quasi-judicial in nature thereby triggering the necessary application of due process requirements. Be that as it may, absent any legitimate interest on the part of stakeholders who may be potential oppositors, the process relative to certificate of authority applications cannot be considered as a quasi-judicial proceeding as it presents no justiciable controversy requiring the settlement of rights and obligations. In other words, there is *generally* nothing for the NTC to adjudicate in processes involving certificate of authority applications.

Finally, the records reveal that the application proceeding before the NTC relative to Cable Link's application is **still ongoing**. Moreover, it is also not disputed that Brancomm had

---

[78] It is important to point out that the added use generally contributes to the acceleration of an existing facility's depreciation rate. As such, the owner of the facility used and profited by another should be properly compensated for the gradual loss of property thru depreciation.

already been recognized by the NTC as a party to the instant application proceeding. As such, it is obvious that Brancomm has not yet been foreclosed with the opportunity to independently assess for itself the salient statutory requirements or documents submitted by Cable Link in its application. On this score, the CA's perception or finding of due process violation is premature at this stage in the application proceedings. Besides, it is only when NTC finally grants Cable Link's applications despite failure to comply with statutory requirements can Brancomm initiate the proper complaint proceedings governed by Part III of the NTC Rules.

II. On the Presence of Grave Abuse:

It is already settled in the foregoing discussions that Brancomm had not yet acquired any legitimate claim of entitlement to protect in the subject application proceedings involving Cable Link. Furthermore, it is likewise settled that Brancomm's right to due process has not been violated yet by the NTC which allowed Cable Link's certificate of authority application proceedings to continue and to be rectified.

On this score, the Court emphasizes that grave abuse of discretion must be alleged and proved to exist for a petition for *certiorari* to prosper.[79] As such, "grave abuse of discretion" has been defined as a capricious or whimsical exercise of judgment that is patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law.[80] It also includes a virtual refusal to act in contemplation of law or an exercise of power in an arbitrary and despotic manner by reason of passion or personal hostility.[81] Thus, mere abuse of discretion is not enough in order to oust the court of its jurisdiction — it must be **grave**.[82]

---

[79] *Government Service Insurance System Board of Trustees v. Court of Appeals, et al.,* G.R. No. 230953, June 20, 2018.

[80] *Rodriguez v. Presiding Judge of the RTC of Manila-Branch 17*, 518 Phil. 455, 462 (2006).

[81] *Philippine National Bank v. Gregorio,* 818 Phil. 321, 337 (2017).

[82] *Intec Cebu, Inc. v. Court of Appeals*, 788 Phil. 31, 42 (2016).

In the instant case, the records are bereft of any indication of any abuse on NTC's part in giving due course to Cable Link's applications. More so, assuming *arguendo* that there was "abuse" in allowing the subject application proceedings to continue, Brancomm was not able to prove or even explain in its petition for *certiorari* before the CA that the same was grave. Due to this failure to substantiate the existence of grave abuse on NTC's part, the CA erred in granting the respondent's petition for *certiorari.*

WHEREFORE, in view of the foregoing, the Court **REVERSES** the March 20, 2012 Decision and the August 14, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 111019 for erroneously ascribing grave abuse of discretion on the part of the National Telecommunications Commission's act of giving due course to Cable Link & Holdings Corporation's certificate of authority applications. Consequently, the March 13, 2009 Omnibus Order and the July 17, 2009 Order of the National Telecommunications Commission in NTC BMC Case Nos. 2008-150, 2008-152 and 2008-154 are hereby **REINSTATED.**

Costs against the respondent.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Lazaro-Javier, and *Inting,*[*] *JJ.*, concur.

[*] Additional Member per Special Order No. 2726.

FIRST DIVISION

[G.R. No. 207154. December 5, 2019]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **VENANCIO G. SANTIDAD,** *respondent.*

[G.R. No. 222046. December 5, 2019]

VENANCIO G. SANTIDAD, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED IN A PETITION FOR REVIEW ON *CERTIORARI* BECAUSE THE COURT IS NOT A TRIER OF FACTS; THE COURT IS CONSTRAINED TO REVIEW THE FACTUAL ISSUES RAISED WHERE THE FINDINGS AND CONCLUSIONS OF THE OMBUDSMAN ARE CONTRARY TO THE COURT OF APPEALS. — As a general rule, only questions of law may be raised in a petition for review on *certiorari* because the Court is not a trier of facts. When supported by substantial evidence, the findings of fact of the Court of Appeals are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the recognized exceptions. In this case, since the findings and conclusions of the Ombudsman are contrary to the Court of Appeals, a recognized exception, the Court is constrained to review the factual issues raised.

2. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; A PUBLIC OFFICER SHOULD EXERCISE A HIGHER DEGREE OF DILIGENCE AND GO BEYOND WHAT HIS SUBORDINATES HAD PREPARED PRIOR TO AFFIXING HIS SIGNATURE ON THE DOCUMENTS, IF ONLY TO DETERMINE THAT HE WAS NOT CONFORMING TO A FRAUDULENT TRANSACTION; THE NATURE OF THE PUBLIC OFFICERS' RESPONSIBILITIES AND THEIR ROLE IN THE PROCUREMENT PROCESS ARE COMPELLING

FACTORS THAT SHOULD HAVE LED THEM TO EXAMINE WITH GREATER DETAIL THE DOCUMENTS WHICH THEY ARE MADE TO APPROVE. — After a judicious review of the records, the Court finds that Santidad failed to observe a higher degree of diligence prior to affixing his signature on the IRPs. Notably, his certification authorized the full payment of the contract price for the twenty-one (21) units of Mitsubishi Delica vans despite the non-delivery of said vehicles. x x x. Contrary to the findings of the Court of Appeals, the Court observes that the documents prepared by Santidad's subordinates contained red flags that should have aroused a reasonable sense of suspicion or curiosity on him which should have prompted him to exercise proper diligence if only to determine that he was not conforming to a fraudulent transaction. x x x. Verily, the peculiar circumstances obtaining in these cases should have pricked Santidad's curiosity and prompted him, at the very least, to make inquiries into the transaction and verify whether there was delivery of the purchased vehicles to the DOTC, and whether there were deliveries made to the beneficiaries named in the IRPs. The discrepancies and irregularities enumerated x x x were sufficient to alert Santidad, if he was conscientious of his duties as he purports to be and was truly out to protect the interest of the government, that something was definitely amiss, and should have prodded him to exercise a higher degree of circumspection and go beyond what his subordinates had prepared. In *SPO1 Lihaylihay, et al. v. People,* the Court pointed out that the nature of the public officers' responsibilities and their role in the procurement process are compelling factors that should have led them to examine with greater detail the documents which they are made to approve.

3. ID.; ID.; ID.; A PUBLIC OFFICER'S HIGH POSITION IMPOSES UPON HIM GREATER RESPONSIBILITY AND OBLIGES HIM TO BE MORE CIRCUMSPECT IN HIS ACTIONS AND IN THE DISCHARGE OF HIS OFFICIAL DUTIES. — Santidad cannot trivialize his role in the procurement process as he was personally involved in every stage of the purchase of the missing vehicles. Also, it must be emphasized that Santidad's signing of the IRPs was one of the final steps needed for the release of payment to the contractor. As such, he had the power, if not the duty, to unearth and expose anomalous or irregular transactions. Santidad cannot blindly adhere to the findings and opinions of his subordinates, lest

he be reduced to a mere clerk who has no authority over his subordinates. As the Director of PSPMS-DOTC specifically tasked to procure the Mitsubishi Delica vans for Cong. Abaya's project, he should have closely examined and validated the veracity of his subordinates' reports. Indeed, the Court has pronounced that a public officer's high position imposes upon him greater responsibility and obliges him to be more circumspect in his actions and in the discharge of his official duties.

4. ID.; ID.; ID.; GROSS NEGLECT OF DUTY, DEFINED; RESPONDENT FOUND LIABLE FOR GROSS NEGLECT OF DUTY WHICH WARRANT HIS DISMISSAL FROM GOVERNMENT SERVICE EVEN FOR THE FIRST OFFENSE; THE DESIGNATION OF THE OFFENSE OR OFFENSES WITH WHICH A PERSON IS CHARGED IN AN ADMINISTRATIVE CASE IS NOT CONTROLLING, AND ONE MAY BE FOUND GUILTY OF ANOTHER OFFENSE WHERE THE SUBSTANCE OF THE ALLEGATIONS AND EVIDENCE PRESENTED SUFFICIENTLY PROVES ONE'S GUILT. — [T]he Court finds Santidad administratively liable for Gross Neglect of Duty or Gross Negligence, instead of Serious Dishonesty, warranting his dismissal from government service even for the first offense. Gross neglect of duty is defined as "[n]egligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property." It must be underscored that Santidad was also charged with Gross Neglect of Duty before the OMB. At any rate, the designation of the offense or offenses with which a person is charged in an administrative case is not controlling, and one may be found guilty of another offense where the substance of the allegations and evidence presented sufficiently proves one's guilt.

5. ID.; ID.; ID.; THE CONSTITUTIONAL STANDARD OF CONDUCT THAT "A PUBLIC OFFICE IS A PUBLIC TRUST AND PUBLIC OFFICERS AND EMPLOYEES MUST AT ALL TIMES BE ACCOUNTABLE TO THE PEOPLE, SERVE THEM WITH UTMOST RESPONSIBILITY, INTEGRITY, LOYALTY AND EFFICIENCY, ACT WITH PATRIOTISM

AND JUSTICE AND LEAD MODEST LIVES," IS NOT INTENDED TO BE MERE RHETORIC AND TAKEN LIGHTY BECAUSE THOSE IN THE PUBLIC SERVICE ARE ENJOINED TO FULLY COMPLY WITH THE SAME, OR RUN THE RISK OF FACING ADMINISTRATIVE SANCTIONS RANGING FROM REPRIMAND TO THE EXTREME PENALTY OF DISMISSAL FROM THE SERVICE. — Considering the sheer magnitude of the amount in taxpayers' money involved, Santidad should have exercised utmost care before signing the IRPs. By failing to do so, the taxpayers' money was spent without the corresponding procured vans having been delivered to the DOTC. Indeed, no rule is more settled than that a public office is a public trust and public officers and employees must, at all times, be accountable to the people. Santidad carelessly relied on the reports and submissions of his subordinates and affixed his signature on the IRPs. Plainly, he acted negligently, unmindful of the high position he occupied and the responsibilities it carried, and without regard to his accountability for the millions of pesos in taxpayers' money involved. A public office is a public trust and public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice and lead modest lives. This high constitutional standard of conduct is not intended to be mere rhetoric and taken lightly because those in the public service are enjoined to fully comply with this standard or run the risk of facing administrative sanctions ranging from reprimand to the extreme penalty of dismissal from the service. Unfortunately, Santidad failed miserably in this respect.

6. ID.; ID.; ID.; WHERE THERE ARE CIRCUMSTANCES THAT SHOULD HAVE ALERTED HEADS OF OFFICES TO EXERCISE MORE DILIGENCE IN THE PERFORMANCE OF THEIR DUTIES, THEY CANNOT ESCAPE LIABILITY BY CLAIMING THAT THEY RELIED IN GOOD FAITH ON THE SUBMISSIONS OF THEIR SUBORDINATES. — In a futile attempt to refute negligence on his part, Santidad invokes the *Arias* doctrine contending that he relied in good faith that his subordinates would perform their functions regularly. We beg to differ. In *Arias v. Sandiganbayan*, this Court held that a head office can rely on his subordinates to a reasonable extent, and there has to be some reason shown why any particular voucher must be examined in detail. Accordingly,

where there are circumstances that should have alerted heads of offices to exercise more diligence in the performance of their duties, they cannot escape liability by claiming that they relied in good faith on the submissions of their subordinates, and in such cases, our ruling in *Arias* does not apply. Otherwise stated, when a matter is irregular on the document's face, so much so that a detailed examination becomes warranted, the *Arias* doctrine is unavailing. Our pronouncement in *Arias* cannot be applied to exculpate Santidad in view of the presence of peculiar circumstances in the case at bench which should have caused Santidad to exercise a higher degree of circumspection and, necessarily, to conduct a detailed examination and carefully scrutinize the documents submitted to him by his subordinates. We must clarify that the Arias doctrine is not an absolute rule. It is not a magic cloak that can be used as a cover by public officer to conceal himself in the shadows of his subordinates and necessarily escape liability.

7. CRIMINAL LAW; FALSIFICATION OF PUBLIC DOCUMENTS; FALSIFICATION OF PUBLIC DOCUMENTS IS AN INTENTIONAL FELONY COMMITTED BY MEANS OF "*DOLO*" OR "MALICE" AND COULD NOT RESULT FROM IMPRUDENCE, NEGLIGENCE, LACK OF FORESIGHT OR LACK OF SKILL; INTENTIONAL AND CULPABLE FELONY, DISTINGUISHED. — The Court, however, finds Santidad's conviction for twenty-one (21) counts of Reckless Imprudence resulting to Falsification of Public Documents to be improper. Falsification of Public Documents is an intentional felony committed by means of "*dolo*" or "malice" and could not result from imprudence, negligence, lack of foresight or lack of skill. Felonies are committed not only by means of deceit *(dolo)*, but likewise by means of fault *(culpa)*. There is deceit when the wrongful act is performed with deliberate intent; and there is fault when the wrongful act results from imprudence, negligence, lack of foresight or lack of skill. "In intentional crimes, the act itself is punished; in negligence or imprudence [quasi offenses], what is principally penalized is the mental attitude or condition behind the act, the dangerous recklessness, lack of care or foresight, the *imprudencia punible*." In *Jabalde v. People*, the Court explained: [T]he term "*dolo*" or "malice" is a complex idea involving the elements of freedom, intelligence, and intent. The element of intent is described as the state of mind accompanying an act, especially a forbidden act. It refers

to the purpose of the mind and the resolve with which a person proceeds. On the other hand, the term "felonious" means, *inter alia*, malicious, villainous, and/or proceeding from an evil heart or purpose. With these elements taken together, the requirement of intent in intentional felony must refer to malicious intent, which is a vicious and malevolent state of mind accompanying a forbidden act. Intentional felony requires the existence of *dolus malus* – that the act or omission be done willfully, maliciously, with deliberate evil intent, and with malice aforethought. In culpable felonies or criminal negligence, the injury inflicted on another is unintentional, the wrong done being simply the result of an act performed without malice or criminal design.

8. ID.; ID.; ELEMENTS; FALSIFICATION OF PUBLIC DOCUMENTS BY MAKING UNTRUTHFUL STATEMENTS IN A NARRATION OF FACTS, ELEMENTS THEREOF. — A careful perusal of the provision of Article 171 of the Revised Penal Code, which defines and penalizes falsification of public documents, would readily reveal that the perpetrator must perform the prohibited act with deliberate intent in order to incur criminal liability thereunder. x x x. The crime of Falsification of Public Documents has the following elements: 1) the offender is a public officer, employee, or notary public; 2) he takes advantage of his official position; and 3) he falsifies a document by committing any of the acts enumerated in Article 171 of the Revised Penal Code. To warrant conviction for Falsification of Public Documents by making untruthful statements in a narration of facts under Article 171, paragraph 4 of the Revised Penal Code, the prosecution must establish beyond reasonable doubt the following elements: 1) the offender makes in a public document untruthful statements in a narration of facts; 2) he has a legal obligation to disclose the truth of the facts narrated by him; and 3) the facts narrated by him are absolutely false.

9. ID.; ID.; IN FALSIFICATION OF PUBLIC DOCUMENTS, THE OFFENDER IS CONSIDERED TO HAVE TAKEN ADVANTAGE OF HIS OFFICIAL POSITION IN MAKING THE FALSIFICATION WHEN HE HAS THE DUTY TO MAKE OR PREPARE OR, OTHERWISE, TO INTERVENE IN THE PREPARATION OF A DOCUMENT, OR HE HAS THE OFFICIAL CUSTODY OF THE DOCUMENT WHICH

HE FALSIFIES; IT IS NOT NECESSARY THAT THERE BE PRESENT THE IDEA OF GAIN OR THE INTENT TO INJURE A THIRD PERSON BECAUSE IN THE FALSIFICATION OF A PUBLIC DOCUMENT, WHAT IS PUNISHED IS THE VIOLATION OF THE PUBLIC FAITH AND THE DESTRUCTION OF THE TRUTH AS THEREIN SOLEMNLY PROCLAIMED. — In Falsification of Public Documents, the offender is considered to have taken advantage of his official position in making the falsification when (1) he has the duty to make or prepare or, otherwise, to intervene in the preparation of a document; or (2) he has the official custody of the document which he falsifies. By "legal obligation," it means that there is a law requiring the disclosure of the truth of the facts narrated. In falsification of public or official documents, it is not necessary that there be present the idea of gain or the intent to injure a third person because in the falsification of a public document, what is punished is the violation of the public faith and the destruction of the truth as therein solemnly proclaimed. Measured against the foregoing parameters, it is clear that the crime of Falsification of Public Documents, by its structure, could not be committed by means of *culpa*. Not to be overlooked is that this felony falls under the category of *mala in se* offenses that requires the attendance of criminal intent. A deliberate intent to do an unlawful act is inconsistent with the idea of a felony committed by means of *culpa*. Being an intentional crime, Falsification of Public Documents is conceptually incompatible with the element of imprudence obtaining in quasi-crimes. In fine, the crime of Falsification of Public Documents could not be committed by means of reckless imprudence.

10. ID.; ID.; ID.; TO BE CRIMINALLY LIABLE FOR FALSIFICATION OF PUBLIC DOCUMENTS BY MAKING UNTRUTHFUL STATEMENTS IN A NARRATION OF FACTS, THE PERSON MAKING THE NARRATION OF FACTS MUST BE AWARE OF THE FALSITY OF THE FACTS NARRATED BY HIM; JUDGMENT OF CONVICTION AGAINST THE RESPONDENT FOR THE CRIME OF RECKLESS IMPRUDENCE RESULTING TO FALSIFICATION OF PUBLIC DOCUMENTS WILL BE SET ASIDE WHERE THE PROSECUTION FAILED TO PROVE THE EXISTENCE OF MALICIOUS INTENT WHEN HE AFFIXED HIS SIGNATURE ON THE DOCUMENTS. —

Neither can Santidad be held criminally culpable for Falsification of Public Documents by making untruthful statements in a narration of facts (Article 171, paragraph 4 of the Revised Penal Code) inasmuch as the records do not show that the prosecution was able to prove the existence of malicious intent when he affixed his signature on the IRPs certifying the transfer of the subject Mitsubishi Delica vans to Cong. Abaya of the 4th District of Isabela. To be criminally liable for falsification by making untruthful statements in a narration of facts, the person making the narration of facts must be aware of the falsity of the facts narrated by him. Here, there is dearth of evidence to show that Santidad knew that there were no deliveries of vans to the recipients at the time he signed the IRPs. No matter how gross the nature and gravity of the imprudence or negligence attributable to Santidad, the same would not shatter the fine distinction between *dolo* and *culpa* so as to consider Santidad's act as one committed with malicious intent. In the light of the foregoing, the Court resolves to set aside the Sandiganbayan's judgment of conviction against Santidad for twenty-one (21) counts of Reckless Imprudence resulting to Falsification of Public Documents.

APPEARANCES OF COUNSEL

Bayaua & Associates Law Office for Venancio G. Santidad.

D E C I S I O N

PERALTA, *C.J.*:

Before the Court are two consolidated cases involving two Petitions for Review on *Certiorari*. The petition filed by the Office of the Ombudsman *(OMB)*, docketed as G.R. No. 207154, seeks to reverse and set aside the May 29, 2012 Decision[1] and the April 29, 2013 Resolution[2] of the Court of Appeals in C.A.

---

[1] *Rollo* (G.R. No. 207154), pp. 42-56. Penned by Associate Justice Angelita A. Gacutan, with the concurrence of Associate Justice Magdangal M. De Leon and Associate Justice Francisco P. Acosta.

[2] *Id.* at 58-60.

G.R. SP No. 119936; while the petition filed by Venancio G. Santidad, docketed as G.R. No. 222046, seeks to reverse and set aside the September 24, 2015 Decision[3] and the November 25, 2015 Resolution[4] of the Sandiganbayan in Criminal Case Nos. SB-10-CRM-0261 to SB-10-CRM-0281.

The Facts

The cases emanated from an Affidavit-Complaint[5] dated February 2, 2007 filed by Special Investigator Claro C. Ramos of the National Bureau of Investigation *(NBI)*, Isabela District Office, before the OMB charging Santidad and several others, who had signed the Invoice Receipts for Property *(IRPs)*, in relation to the transfer and receipt of twenty-one (21) units of Mitsubishi Delica vans, in violation of Article 171 of the Revised Penal Code and Republic Act No. 3019. After evaluation of the complaint, it was determined that Santidad and the other named respondents therein may also be held administratively liable for their actions and, thus, an administrative complaint for Dishonesty and Gross Neglect of Duty was later filed against them by the NBI before the OMB which was docketed as OMB-L-A-07-0166-B.

Upon a finding of probable cause, Santidad was indicted for twenty one (21) counts of Falsification of Public Documents defined and penalized under Article 171, paragraph 4 of the Revised Penal Code, in twenty-one (21) separate Informations filed before the Sandiganbayan. The accusatory portion of each of the Informations is similarly worded except as to the Engine Number, Chassis Number and Plate Number of the Mitsubishi Delica vans involved, to wit:

That on 29 March 2003, or sometime prior or subsequent thereto, in Mandaluyong City, and within the jurisdiction of this Honorable

---

[3] *Rollo* (G.R. No. 222046), pp. 44-107. Penned by Associate Justice Rafael R. Lagos, with the concurrence of Associate Justice Efren N. De la Cruz and Associate Justice Rodolfo A. Ponferrada.

[4] *Id.* at 128-132.

[5] *Rollo* (G.R. No. 207154), p. 610.

Court, the above-named accused, Venancio G. Santidad, a public officer, being then the Director of the Procurement Supply and Property Management Service of the Department of Transportation and Communications, acting in relation to his office and taking advantage of his official position, did there and then deliberately, willfully and feloniously falsify the Invoice Receipt of Property by making it appear that he had transferred to Congressman Antonio Abaya of the 4th District of lsabela a Delica Van with Engine No. x x x, Chassis No. x x x and Plate No. x x x, when in truth and in fact, no such vehicle was transferred by him, to the damage and prejudice of public interest.

CONTRARY TO LAW.[6]

When arraigned on August 2, 2012, Santidad pleaded not guilty to the charges. After the pre-trial was terminated, trial on the merits ensued.[7]

The prosecution evidence tends to show that the late Congressman Antonio M. Abaya of the 4th District of Isabela requested from the Office of the President for the release of funds to be utilized for the purchase of multi-cab vehicles to be distributed to and used by some 235 *barangays* in his district. Said request was approved and the amount of ₱10 million was allocated for the multi-cab vehicle project. The Department of Transportation and Communications *(DOTC)* was the procurement agency for the purchase of the vehicles.[8]

In a letter dated November 25, 2002, the DOTC informed Cong. Abaya of the availability of ₱8 million for his multi-cab vehicle project and was advised to directly coordinate with the Director of the DOTC's Procurement, Supplies, Property Management Service *(PSPMS)*, who at the time was Santidad, for the immediate utilization of the amount lest it be reverted to the Bureau of the Treasury if remained unobligated at the end of the year. In his December 2, 2002 letter, Cong. Abaya requested Santidad to facilitate the procurement of one (1) unit of Mitsubishi L-200 and one (1) unit of Nissan Pathfinder, while

---

[6] *Rollo* (G.R. No. 222046), p. 47.

[7] *Id.* at 54.

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

the remaining allotted amount shall be devoted for the purchase of several units of Mitsubishi Delica vans. On December 4, 2002, Allotment and Obligation Slip *(ALOBS)* No. LF (CO) 02-12-00478, with the PSPMS as payee, was prepared to allocate the amount of ₱7,720,000.00 for the purchase of the vehicles. On even date, Requisition and Issue Voucher *(RIV)* No. H-413-2002, for the amount of ₱7,720,000.00, was approved wherein Santidad certified that the requisitioned eighteen (18) units of Mitsubishi Delica vans, and the pick-up 4-wheeler and 6-wheeler trucks were necessary and would be used for the purposes for which they were intended.[9]

Thereafter, the project was bid out. The Pre-Bid Conference was attended by Robert T. Ngo, as the representative of the Office of Cong. Abaya, by Santidad, as Head of PSPMS, and by the representatives of the bidders Super Car Center, Microvan, Inc. and First Dekra Merchandising. During the said occasion, Santidad stressed that the vehicles must be first inspected at the PSPMS office before their delivery to the 4th District of Isabela. On January 22, 2003, the DOTC Bids and Awards Committee *(BAC)* declared Super Car Center as the winning bidder. Despite the award, Super Car Center, through its proprietor Super Sonic Claudio, apprised Cong. Abaya that the two (2) units of pick-up trucks previously offered for sale were no longer available. In his February 6, 2003 letter, Cong. Abaya requested the BAC Chairman to realign the budget for the two (2) trucks to cover the cost for the purchase of additional Mitsubishi Delica vans.[10] The congressman also sent Santidad a letter, likewise dated February 6, 2003, stating a schedule for the distribution of the vans and appended thereto the list of the recipients in the 4th District of Isabela.

On February 26, 2003, Cong. Abaya died of brain cancer.

In connection with Cong. Abaya's realignment request, the DOTC/PSPMS resolved to purchase three (3) more Mitsubishi Delica vans, in addition to the original procurement of 18

---

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

[10] *Id.* at 71.

units. Hence, a Purchase Order *(PO)*, with Control No. DOTC-2003-03-70, was issued in favor of Super Car Center as contractor/supplier for twenty-one (21) units of Mitsubishi Delica vans, with Land Transportation Office *(LTO)* Registration and Third Party Liability *(TPL)* Insurance, valued at Three Hundred Sixty Thousand Pesos (₱360,000.00) each or for a total amount of Seven Million Five Hundred Sixty Thousand Pesos (₱7,560,000.00). Santidad signed the recommending approval portion of the PO. On March 28, 2003, an unsigned Sales Invoice No. 0026, with handwritten specifications regarding the chassis and engine numbers of each van, was issued purportedly by Super Car Center in favor of the DOTC. Antonio D. Cruz, Storekeeper III of the DOTC Supply Division, executed a Certificate of Acceptance, likewise dated March 28, 2003, acknowledging receipt of the twenty-one (21) units of Mitsubishi Delica vans supposedly delivered by Super Car Center to the DOTC. The vans were allegedly inspected by Marcelo Desiderio, Jr., an Inspector of the DOTC Management Division, Ngo, as the representative of Cong. Abaya, and Cruz in Malinta, Bulacan on April 1, 2003. On even date, Desiderio prepared an Inspection Report.

Subsequently, Pablo Uy, Chief of the Property Utilization and Disposal Division *(PUDD)* of the DOTC, prepared twenty-one (21) IRPs to effect the turnover of the subject Mitsubishi Delica vans to the end-users/beneficiaries. Santidad had signed all the IRPs at the "Invoice" portion thereof, certifying that he had transferred the vehicle described in each of the IRPs to Cong. Abaya of the 4th District of Isabela. On the "Receipt" portion of each of the IRPs appeared the signature of the recipient certifying that he/she had received from the DOTC, through Santidad, the van indicated therein. Later, the total cost of the vehicles was paid to and received by Ngo, who was acting as attorney-in-fact of Super Car Center.

Juliet Macato, the Audit Team Leader of the Commission on Audit *(COA)*, Region II, sent a letter dated May 30, 2005, informing Leoncio Kiat, then Mayor of Echague, Isabela, about the dropping of four (4) Mitsubishi Delica vans procured under Cong. Abaya's project from the books of the DOTC as the

same should had been properly recorded in the books of accounts of the Municipality of Echague, Isabela. In the same letter, Kiat was requested to give his evaluation on the status of the Mitsubishi Delica vans referred to, as well as their whereabouts. Kiat was further notified that the vehicles would be subjected to inspection. After receipt of this letter, Kiat sought the assistance of the National Bureau of Investigation *(NBI)*, requesting for an investigation of an alleged scam in the deliveries of the Mitsubishi Delica vans since he and the other three *barangay* captains in his municipality who had signed the IRPs have not received the vehicles described therein. According to Kiat, he and the three *barangay* captains named in the May 30, 2005 letter of Macato had signed the IRPs merely to accommodate the request of Cong. Abaya and to facilitate the immediate release of the vehicles.

The investigation separately conducted by the COA and the NBI yielded a common result – that none of the named recipients who acknowledged or signed the IRPs has actually received the subject vans. The follow-up investigation by the NBI further revealed that a) seven (7) vans, with Plate Nos. XHF 591, XTC 688, XEB 180, XEP 316, XGU 972, XDA 793 and XDA 803, were actually sold to third parties or have different owners; b) seven (7) vans, with Plate Nos. XFG 680, XCT 853, XDU 749, VDF 854, XEV 467, XHK 463 and XGU 942, were either non-existent or not registered with the LTO or their registrations pertain to different vehicles; while c) the remaining seven (7) vans, with Plate Nos. XET 465, XCM 630, XCM 843, XEE 956, XET 495, XHB 980 and XHB 490, were still registered in the name of Microvan, Inc., without having been delivered to either the DOTC or the named recipients.

Thereafter, the prosecution rested its case and formally offered its documentary evidence.

The defense presented Santidad who maintained that he affixed his signature on the IRPs because the same were duly supported by pertinent documents and the beneficiaries/end-users had already affixed their respective signatures therein. He contended

that he was merely performing a ministerial duty when he signed the IRPs considering that the procurement of the subject vehicles was made with the approval of the higher authorities of the DOTC.

Santidad testified that the late Cong. Abaya requested him to facilitate the purchase of the vehicles for the latter's multi-cab vehicle project; on January 22, 2003, the DOTC-BAC passed Resolution No. PD-220-07 declaring Super Car Center as the winning bidder for Cong. Abaya's project; the Accounting Division of the DOTC prepared PO No. 2003-03-70 and, later, Super Car Center issued Sales Invoice No. 0026 dated March 28, 2003 indicating the total selling price of ₱7,560,000.00; a Certificate of Acceptance, also dated March 28, 2003, was issued by Cruz who purportedly received the subject vans; on April 1, 2003, the DOTC, through its Management Division under the Finance and Comptroller Service, inspected the subject vans in Malinta, Bulacan; Management Division Inspector Desiderio prepared and certified as correct an Inspection Report dated April 1, 2003 which was noted by Management Division Chief Lalaine P. Cortes; thereafter, Uy prepared the IRPs and transmitted them to the named local officials of the 4th District of Isabela; payments for the purchased twenty-one (21) units of Mitsubishi Delica vans were processed by the Accounting Division; and, later, Land Bank Check No. 41232, dated June 11, 2003, and Check No. 31883, dated August 28, 2003, were released in favor of Super Car Center with the face values of ₱2,000,000.00 and ₱5,216,363.63, respectively, representing payment for the twenty-one (21) units of Mitsubishi Delica vans.

Insisting on his innocence of the offenses charged, Santidad pointed out that he cannot be faulted for relying on the regularity of the abovementioned documents prepared by the DOTC employees to support the IRPs. Santidad asserted that as the Director of PSPMS, he cannot be expected to personally inspect the vans delivered to the DOTC since the same is the responsibility of the Management Division. He disclaimed any knowledge anent the fraud committed in the purchase of the subject vans. He alleged that he did not obtain any advantage or benefit from the anomalous transaction and that he signed the IRPs in good faith.

Santidad recalled that as a matter of procedure then observed in his office, the recipient must first sign the IRP confirming receipt of the property before he affixes his signature thereon; he signs the IRP only when all the attachments are complete, in particular, he would look for and evaluate the Inspection Report and the Certificate of Acceptance specially when the supporting documents of the IRP are voluminous; he never inquired from Uy nor from Desiderio about the delivery of the subject vans; and the PUDD and the Management Division are tasked to deliver the vans to the actual end-users. With respect to the two IRPs which bore his signature but without the signature of the recipients, Santidad explained that he signed these IRPs because they were properly supported by a Certificate of Acceptance and an Inspection Report.

Santidad filed his Formal Offer of Evidence on November 27, 2014, while the prosecution filed its Comment/Opposition thereto on December 12, 2014.

Meanwhile, on July 13, 2010, the OMB rendered its assailed Decision[11] in OMB-L-A-07-0166-B, finding Santidad guilty of Serious Dishonesty and meted upon him the penalty of dismissal from the service with cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification from employment in the government service. The OMB held that when Santidad certified in the IRPs the transfer of possession of the subject twenty-one (21) units of Mitsubishi Delica vans to the beneficiaries, he knew that said act never took place since said vehicles were never delivered by the contractor to the DOTC. The OMB rejected the defense of good faith interposed by Santidad declaring that he was very much aware of the falsity of the statements contained in the IRPs at the time he signed them.

Santidad filed a motion for reconsideration but the same was denied by the OMB in its Order[12] dated April 28, 2011.

---

[11] *Rollo* (G.R. No. 207154), pp. 676-701.

[12] *Id.* at 702-707.

Aggrieved, Santidad filed a Petition for Review under Rule 43 of the Rules of Court before the Court of Appeals seeking for the reversal of the July 13, 2010 Decision of the OMB.

On May 29, 2012, the Court of Appeals rendered its assailed Decision absolving Santidad of his administrative liability for Serious Dishonesty on the ground of insufficiency of evidence. The dispositive portion of the said Decision states:

> WHEREFORE, premises considered, the petition is hereby GRANTED. The Decision dated July 13, 2010 of the Office of the Deputy Ombudsman for Luzon and its Order dated April 28, 2011 are hereby REVERSED and SET ASIDE and a new one entered ordering the reinstatement of petitioner Venancio G. Santidad with full back salaries and such other emoluments that he did not receive by reason of his removal[.]
>
> SO ORDERED.[13]

In stark contrast to the conclusion reached by the Ombudsman, the Court of Appeals found that Santidad could not be held administratively liable for Serious Dishonesty because he signed the IRPs in good faith, relying on the regularity of the supporting documents prepared by public officials in the performance of their duties, and on the signatures of the end-users/beneficiaries in the IRPs which confirmed the latter's receipt of the vehicles. The Court of Appeals added that there was no showing of any fact that should have raised a red flag that the transaction for the procurement of the vehicles was highly irregular.

The OMB filed an Omnibus Motion to Intervene and to Admit Attached Motion for Reconsideration[14] dated December 20, 2012. However, the Court of Appeals denied the OMB's motion for reconsideration per its Resolution dated April 29, 2013.

Unperturbed, the OMB elevated the matter to this Court via a Petition for Review on *Certiorari*, docketed as G.R. No. 207154, contending that the Court of Appeals seriously erred in issuing

---

[13] *Id.* at 55.

[14] *Id.* at 62-69.

the assailed May 29, 2012 Decision. The OMB posits that its findings of fact in OMB-L-A-07-0166-B are supported by substantial evidence and, thus, conclusive upon the reviewing authority.[15]

Later, the Sandiganbayan rendered its assailed September 24, 2015 Decision[16] finding Santidad guilty of Reckless Imprudence resulting to Falsification of Public Documents. The pertinent portion of the *fallo* of the said Decision reads:

> WHEREFORE, premises considered, this Court finds:
>
> x x x x x x x x x
>
> 4. In Criminal Case Nos. SB-10-CRM-0261 to SB-10-CRM-0281
>
> Accused Venancio Gonzales Santidad, GUILTY beyond reasonable doubt of Reckless Imprudence resulting to Falsification of Public Documents, as provided in Article 365 of the Revised Penal Code, and hereby sentence him to the indeterminate penalty of four (4) months of *arresto mayor* as minimum to two (2) years[,] ten (10) months and twenty one (21) days of *prision correccional* as maximum, for each count, and the accessory penalties thereof. Accused Santidad is also ordered to pay ₱360,000, for each count, as his civil liability, with interest of 12% *per annum* from finality of this judgment until its satisfaction.
>
> Costs *de officio*.
>
> SO ORDERED.[17]

According to the Sandiganbayan, Santidad made untruthful statements in the IRPs by certifying that he had transferred the subject vans to the 4th District of Isabela since it was duly proven that there were no such deliveries and Super Car Center, the contractor/supplier, was not the owner of the vehicles. The anti-graft court ruled that Santidad acted negligently when he failed to ascertain for himself the veracity of the narrations in the IRPs, particularly as to 1) whether the subject vans

---

[15] *Id.* at 23.

[16] *Rollo* (G.R. No. 222046), pp. 44-107.

[17] *Id.* at 105-107.

were actually delivered and received by the named recipients/beneficiaries; and 2) whether each of the subject vehicles has the corresponding LTO certificate of registration and TPL insurance as required by the DOTC. The Sandiganbayan, however, declared that not an iota of proof was presented showing that Santidad conspired with Ngo to defraud the government nor was there any showing that he acted with malice or that he falsified the IRPs in order to gain some benefit.

Santidad filed a motion for reconsideration but the same was denied by the Sandiganbayan via its assailed November 25, 2015 Resolution.[18]

Unfazed, Santidad filed a Petition for Review on *Certiorari*, docketed as G.R. No. 222046, beseeching the Court to reverse and set aside the Decision and the Resolution of the Sandiganbayan, and thereby submitting the following issues:

I.

WHETHER OR NOT THE RULE ON PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY PRECLUDES FINDING OF NEGLIGENCE AND RECKLESS IMPRUDENCE.

II.

WHETHER OR NOT THERE WAS A FAILURE OF THE PROSECUTION TO PROVE THE NEGLIGENCE AND IMPRUDENCE OF THE PETITIONER BEYOND REASONABLE DOUBT AMOUNTING TO FALSIFICATION OF DOCUMENTS.

III[.]

WHETHER OR NOT THE MINISTERIAL NATURE OF SIGNING THE IRPs PRECLUDE THE FINDING OF NEGLIGENCE[.][19]

The Court's Ruling

In the main, it is Santidad's stance that the prosecution failed to prove beyond reasonable doubt his criminal culpability for

---

[18] *Id.* at 128-132.

[19] *Id.* at 19-20.

twenty-one (21) counts of reckless imprudence resulting to falsification of public documents. Anent the administrative charge, Santidad submits that the Court of Appeals is correct in exonerating him from the charge of Serious Dishonesty considering that the same was not established by substantial evidence. He denies knowledge of the fraud perpetrated upon the government through the anomalous procurement of the subject vehicles and he maintains that he did not derive any benefit from the transaction. He posits that his act, consisting of certifying the transfer of possession of the subject vans to the end-users/ beneficiaries by affixing his signature on the IRPs, enjoys the presumption of regularity in the performance of official functions and that no evidence was adduced to show that he signed the IRPs with reckless imprudence prejudicial to the interest of the government.

He invokes the doctrine in *Arias v. Sandiganbayan*,[20] contending that he signed the IRPs after relying in good faith on the supporting documents, particularly, the Certificate of Acceptance and the Inspection Report which showed that the subject vans were delivered to the DOTC. He argues that to impute that his alleged negligence sprouted from his omission to verify the contents, correctness and completeness of each and every supporting document of the IRPs would go against all rationality and logic. He asserts that when he signed the IRPs, he was merely performing a ministerial function within the confines of his mandated duty.

G.R. No. 207154

The petition filed by the OMB is partly meritorious.

As a general rule, only questions of law may be raised in a petition for review on *certiorari* because the Court is not a trier of facts.[21] When supported by substantial evidence, the findings of fact of the Court of Appeals are conclusive and binding on the parties and are not reviewable by this Court,

---

[20] 259 Phil. 794 (1989).

[21] *Office of the Ombudsman v. Atty. Bernardo,* 705 Phil. 524, 534 (2013).

unless the case falls under any of the recognized exceptions.[22] In this case, since the findings and conclusions of the Ombudsman are contrary to the Court of Appeals, a recognized exception, the Court is constrained to review the factual issues raised.

In the case at bench, Santidad was charged with Gross Neglect of Duty and Serious Dishonesty before the Ombudsman which found him guilty solely of Serious Dishonesty, and imposed on him the supreme penalty of dismissal from government service with all its accessory penalties. The OMB declared that Santidad was dishonest because he certified the transfer of possession of the subject vehicles even though he knew that there were no such deliveries to the beneficiaries. On the other hand, the Court of Appeals exonerated Santidad of the charge of Serious Dishonesty, ratiocinating that he merely relied in good faith on the supporting documents prepared by his subordinates and that there were no indications that the transaction for the procurement of the subject vans was highly irregular.

After a judicious review of the records, the Court finds that Santidad failed to observe a higher degree of diligence prior to affixing his signature on the IRPs. Notably, his certification authorized the full payment of the contract price for the twenty-one (21) units of Mitsubishi Delica vans despite the non-delivery of said vehicles. For easy reference, the certification signed by Santidad, as appearing on the invoice portion of the twenty-one (21) IRPs, is reproduced hereto as follows:

---

[22] *Id.* at 534-535; (1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is a grave abuse of discretion; (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 findings 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 evidence on record.

I CERTIFY that upon authority of Sec. 76 of Presidential Decree No. 1445, I have transferred to 4TH DISTRICT OF ISABELA CONG. ANTONIO M. ABAYA the above listed articles/property of Dept. of Transportation & Communications.

Signed
VENANCIO G. SANTIDAD
Director III, PSPMS

Contrary to the findings of the Court of Appeals, the Court observes that the documents prepared by Santidad's subordinates contained red flags that should have aroused a reasonable sense of suspicion or curiosity on him which should have prompted him to exercise proper diligence if only to determine that he was not conforming to a fraudulent transaction.

Firstly, the Certificate of Acceptance dated March 28, 2003 is incomplete and irregular on its face. Nowhere in said certificate does it indicate the plate numbers of the Mitsubishi Delica vans, their LTO certificates of registration numbers and the TPL insurance contracts which is contrary to the requirement of the DOTC, as reflected in PO No. 2003-03-70, stating that the procured vehicles must be accompanied by said registration and insurance. That the Mitsubishi Delica vans were, nonetheless, accepted despite noncompliance with the aforesaid requirement should have placed Santidad on guard.

Secondly, while the Inspection Report dated April 1, 2003 made reference to PO No. 2003-03-70 which pertained to the procurement of twenty-one (21) units of Mitsubishi Delica vans, the same report also made reference to ALOBS No. LF (CO) 02-12-00478 and RIV No. H-413-2002 which pertained to the purchase of eighteen (18) units of Mitsubishi Delica vans, a pick-up 4-wheeler truck and a pick-up 6-wheeler truck. Thus, there is an apparent discrepancy regarding the type and number of vehicles that were supposedly inspected by Desiderio. This defect could not have escaped the attention of Santidad since after all, he was the one who approved RIV No. H-413-2002 and signed the recommending for approval portion of the PO.

Thirdly, the amount indicated in Disbursement Voucher Nos. 101-200304-0092 and 101-2003-0383, which became the bases for the release of Land Bank Check Nos. 41232 and 31883, with face values of ₱2,000,000.00 and ₱5,216,363.63, respectively, or for a full payment of ₱7,216,363.63, was way below the contract price of ₱7,560,000.00. It must be pointed out that the approved budget allocated for the project of Cong. Abaya was pegged at ₱7,720,000.00, as reflected in ALOBS No. LF (CO) 02-12-00478. Santidad was simply too uncaring to notice and rectify these discrepancies.

Fourthly, the realignment of the budget for the two units of pick-up trucks which were already bid out, because Super Car Center could not deliver them, would necessarily entail the preparation of another set of documents and the probable disqualification of the winning bidder. Such irregularity should have forewarned Santidad to make the necessary inquiries on the transaction.

Lastly, the IRPs appear spurious at face value. It bears stressing that out of the twenty-one (21) IRPs, only two (2) IRPs contained the date of receipt of the vehicles by the end-users/beneficiaries while the rest were undated. Meanwhile, the date of receipt indicated in the IRP for the delivery of the Mitsubishi Delica van to its beneficiary, *Barangay* Dappig, San Agustin, Isabela, was March 30, 2003;[23] while the date of receipt for the delivery of another Mitsubishi Delica van to its beneficiary, *Barangay* Bugallon Norte, Ramon, Isabela, was March 29, 2003.[24] Recall, however, that Desiderio, together with Ngo and Cruz, allegedly inspected the procured twenty-one (21) Mitsubishi Delica vans in Malinta, Bulacan only on April 1, 2003, as per the Inspection Report issued on even date. How then could these two beneficiaries receive the vehicles on the dates indicated on the IRPs when they were yet to be inspected on April 1, 2003, assuming there was in fact an inspection. The irregularities were too obvious but

---

[23] *Rollo* (G.R. No. 222046), p. 164.

[24] *Id.* at 173.

Santidad ignored them and signed the IRPs instead. Further, Santidad admitted during trial that he signed two (2) IRPs even without the signature of the recipients, contrary to his professed procedure that the recipient must first sign the IRP before he affixes his signature. His failure to satisfactorily justify such deviation has all the more showed that he is negligent in the performance of his assigned task.

Verily, the peculiar circumstances obtaining in these cases should have pricked Santidad's curiosity and prompted him, at the very least, to make inquiries into the transaction and verify whether there was delivery of the purchased vehicles to the DOTC, and whether there were deliveries made to the beneficiaries named in the IRPs. The discrepancies and irregularities enumerated above were sufficient to alert Santidad, if he was conscientious of his duties as he purports to be and was truly out to protect the interest of the government, that something was definitely amiss, and should have prodded him to exercise a higher degree of circumspection and go beyond what his subordinates had prepared. In *SPO1 Lihaylihay, et al. v. People*,[25] the Court pointed out that the nature of the public officers' responsibilities and their role in the procurement process are compelling factors that should have led them to examine with greater detail the documents which they are made to approve.

Santidad cannot trivialize his role in the procurement process as he was personally involved in every stage of the purchase of the missing vehicles. Also, it must be emphasized that Santidad's signing of the IRPs was one of the final steps needed for the release of payment to the contractor. As such, he had the power, if not the duty, to unearth and expose anomalous or irregular transactions. Santidad cannot blindly adhere to the findings and opinions of his subordinates, lest he be reduced to a mere clerk who has no authority over his subordinates. As the Director of PSPMS-DOTC specifically tasked to procure the Mitsubishi Delica vans for Cong. Abaya's project, he should have closely examined and validated the veracity of his subordinates' reports. Indeed, the Court has pronounced that a

[25] 715 Phil. 722, 732 (2013).

public officer's high position imposes upon him greater responsibility and obliges him to be more circumspect in his actions and in the discharge of his official duties.[26]

Had Santidad made the proper inquiries, he would have discovered the non-delivery of the procured Mitsubishi Delica vans. However, he did not do this at all. Instead, he simply sat back in his executive chair, satisfied himself as to the existence of the documents prepared by his subordinates, signed the IRPs and looked the other way, thus, ignoring the fact that the subject vans were never delivered to the DOTC. Perhaps, the most telling indication of the inexcusable lack of precaution on the part of Santidad is the non-existence of the subject vehicles.

Taken in the light of the foregoing disquisitions, the Court finds Santidad administratively liable for Gross Neglect of Duty or Gross Negligence, instead of Serious Dishonesty, warranting his dismissal from government service even for the first offense.[27] Gross neglect of duty is defined as "[n]egligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property."[28] It must be underscored that Santidad was also charged with Gross Neglect of Duty before the OMB. At any rate, the designation of the offense or offenses with which a person is charged in an administrative case is not controlling, and one may be found guilty of another offense where the substance of the allegations and evidence presented sufficiently proves one's guilt.[29]

---

[26] *Amit v. Commission on Audit, et al.,* 699 Phil. 9, 24 (2012).

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

[28] *Office of the Ombudsman v. Delos Reyes, Jr.,* 745 Phil. 366, 381 (2014).

[29] *Dr. Pia v. Hon. Gervacio, Jr., et al.,* 710 Phil. 196, 207 (2013).

Considering the sheer magnitude of the amount in taxpayers' money involved, Santidad should have exercised utmost care before signing the IRPs. By failing to do so, the taxpayers' money was spent without the corresponding procured vans having been delivered to the DOTC. Indeed, no rule is more settled than that a public office is a public trust and public officers and employees must, at all times, be accountable to the people.[30] Santidad carelessly relied on the reports and submissions of his subordinates and affixed his signature on the IRPs. Plainly, he acted negligently, unmindful of the high position he occupied and the responsibilities it carried, and without regard to his accountability for the millions of pesos in taxpayers' money involved.

A public office is a public trust and public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice and lead modest lives. This high constitutional standard of conduct is not intended to be mere rhetoric and taken lightly because those in the public service are enjoined to fully comply with this standard or run the risk of facing administrative sanctions ranging from reprimand to the extreme penalty of dismissal from the service.[31] Unfortunately, Santidad failed miserably in this respect.

In a futile attempt to refute negligence on his part, Santidad invokes the *Arias* doctrine contending that he relied in good faith that his subordinates would perform their functions regularly. We beg to differ.

In *Arias v. Sandiganbayan,*[32] this Court held that a head of office can rely on his subordinates to a reasonable extent, and there has to be some reason shown why any particular voucher must be examined in detail. Accordingly, where there

---

[30] Section 1, Article XI of the 1987 Constitution.

[31] *Amit v. COA, supra* note 26, at 25.

[32] *Supra* note 20, at 801.

are circumstances that should have alerted heads of offices to exercise more diligence in the performance of their duties, they cannot escape liability by claiming that they relied in good faith on the submissions of their subordinates, and in such cases, our ruling in *Arias* does not apply.[33] Otherwise stated, when a matter is irregular on the document's face, so much so that a detailed examination becomes warranted, the *Arias* doctrine is unavailing.

Our pronouncement in *Arias* cannot be applied to exculpate Santidad in view of the presence of peculiar circumstances in the case at bench which should have caused Santidad to exercise a higher degree of circumspection and, necessarily, to conduct a detailed examination and carefully scrutinize the documents submitted to him by his subordinates. We must clarify that the *Arias* doctrine is not an absolute rule. It is not a magic cloak that can be used as a cover by a public officer to conceal himself in the shadows of his subordinates and necessarily escape liability.[34]

G.R. No. 222046

Santidad was indicted for twenty-one (21) counts of Falsification of Public Documents under Article 171, paragraph 4 of the Revised Penal Code or Falsification of Public Documents by making untruthful statements in the narration of facts. After trial, the Sandiganbayan found him guilty of twenty one (21) counts of Reckless Imprudence resulting to Falsification of Public Documents instead. According to the Sandiganbayan, Santidad did not act with malicious intent to falsity the IRPs but merely failed to ascertain for himself the veracity of narrations in the documents in question before affixing his signature thereon. The anti-graft court observed that the reckless signing of the IRPs, without verifying the data therein, makes him criminally liable for such act.

---

[33] *Escobar v. People,* G.R. No. 205576, November 20, 2017, 845 SCRA 86, 119.

[34] *Typoco v. People,* 816 Phil. 914, 938 (2017).

The Court, however, finds Santidad's conviction for twenty-one (21) counts of Reckless Imprudence resulting to Falsification of Public Documents to be improper. Falsification of Public Documents is an intentional felony committed by means of "*dolo*" or "malice" and could not result from imprudence, negligence, lack of foresight or lack of skill.

Felonies are committed not only by means of deceit *(dolo)*, but likewise by means of fault *(culpa)*. There is deceit when the wrongful act is performed with deliberate intent; and there is fault when the wrongful act results from imprudence, negligence, lack of foresight or lack of skill.[35] "In intentional crimes, the act itself is punished; in negligence or imprudence [quasi offenses], what is principally penalized is the mental attitude or condition behind the act, the dangerous recklessness, lack of care or foresight, the *imprudencia punible*."[36]

In *Jabalde v. People*,[37] the Court explained:

> [T]he term "*dolo*" or "malice" is a complex idea involving the elements of freedom, intelligence, and intent. The element of intent is described as the state of mind accompanying an act, especially a forbidden act. It refers to the purpose of the mind and the resolve with which a person proceeds. On the other hand, the term "felonious" means, *inter alia*, malicious, villainous, and/or proceeding from an evil heart or purpose. With these elements taken together, the requirement of intent in intentional felony must refer to malicious intent, which is a vicious and malevolent state of mind accompanying a forbidden act.[38] (Citation omitted)

Intentional felony requires the existence of *dolus malus* - that the act or omission be done willfully, maliciously, with deliberate evil intent, and with malice aforethought.[39] In culpable felonies or criminal negligence, the injury inflicted

---

[35] Article 3, paragraphs 2 and 3 of the Revised Penal Code.

[36] *People v. Garcia,* 467 Phil. 1102, 1108 (2004).

[37] 787 Phil. 255 (2016).

[38] *Id.* at 272-273.

[39] *Villareal v. People,* 680 Phil. 527, 565 (2012).

on another is unintentional, the wrong done being simply the result of an act performed without malice or criminal design.[40]

A careful perusal of the provision of Article 171 of the Revised Penal Code, which defines and penalizes falsification of public documents, would readily reveal that the perpetrator must perform the prohibited act with deliberate intent in order to incur criminal liability thereunder, thus:

> Article 171. *Falsification by Public Officer, Employee or Notary or Ecclesiastical Minister.* – The penalty of *prision mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:
>
> 1. Counterfeiting or imitating any handwriting, signature, or rubric;
> 2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;
> 3. Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;
> 4. *Making untruthful statements in a narration of facts;*
> 5. Altering true dates;
> 6. Making any alteration or intercalation in a genuine document which changes its meaning;
> 7. Issuing in authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such copy a statement contrary to, or different from, that of the genuine original; or
> 8. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book. (Italics supplied)

The crime of Falsification of Public Documents has the following elements: 1) the offender is a public officer, employee, or notary public; 2) he takes advantage of his official position; and 3) he falsifies a document by committing any of the acts enumerated in Article 171 of the Revised Penal Code. To warrant conviction for Falsification of Public Documents by making untruthful statements in a narration of facts under Article 171,

---

[40] *People v. PO3 Fallorina,* 468 Phil. 816, 829 (2004).

paragraph 4 of the Revised Penal Code, the prosecution must establish beyond reasonable doubt the following elements: 1) the offender makes in a public document untruthful statements in a narration of facts; 2) he has a legal obligation to disclose the truth of the facts narrated by him; and 3) the facts narrated by him are absolutely false.[41]

In Falsification of Public Documents, the offender is considered to have taken advantage of his official position in making the falsification when (1) he has the duty to make or prepare or, otherwise, to intervene in the preparation of a document; or (2) he has the official custody of the document which he falsifies.[42] By "legal obligation," it means that there is a law requiring the disclosure of the truth of the facts narrated.[43] In falsification of public or official documents, it is not necessary that there be present the idea of gain or the intent to injure a third person because in the falsification of a public document, what is punished is the violation of the public faith and the destruction of the truth as therein solemnly proclaimed.[44]

Measured against the foregoing parameters, it is clear that the crime of Falsification of Public Documents, by its structure, could not be committed by means of *culpa*. Not to be overlooked is that this felony falls under the category of *mala in se* offenses that requires the attendance of criminal intent. A deliberate intent to do an untawful act is inconsistent with the idea of a felony committed by means of *culpa*. Being an intentional crime, Falsification of Public Documents is conceptually incompatible with the element of imprudence obtaining in quasi-crimes. In fine, the crime of Falsification of Public Documents could not be committed by means of reckless imprudence.

Neither can Santidad be held criminally culpable for Falsification of Public Documents by making untruthful statements in a narration of facts (Article 171, paragraph 4 of

---

[41] *Fullero v. People,* 559 Phil. 524, 539 (2007).

[42] *Galeos v. People,* 657 Phil. 500, 521 (2011).

[43] *Id.* at 524.

[44] *Regidor, Jr., et al. v. People, et al.,* 598 Phil. 714, 732 (2009).

the Revised Penal Code) inasmuch as the records do not show that the prosecution was able to prove the existence of malicious intent when he affixed his signature on the IRPs certifying the transfer of the subject Mitsubishi Delica vans to Cong. Abaya of the 4th District of Isabela. To be criminally liable for falsification by making untruthful statements in a narration of facts, the person making the narration of facts must be aware of the falsity of the facts narrated by him.[45] Here, there is dearth of evidence to show that Santidad knew that there were no deliveries of vans to the recipients at the time he signed the IRPs. No matter how gross the nature and gravity of the imprudence or negligence attributable to Santidad, the same would not shatter the fine distinction between *dolo* and *culpa* so as to consider Santidad's act as one committed with malicious intent.

In the light of the foregoing, the Court resolves to set aside the Sandiganbayan's judgment of conviction against Santidad for twenty-one (21) counts of Reckless Imprudence resulting to Falsification of Public Documents.

WHEREFORE, in G.R. No. 207154, the petition is **PARTLY GRANTED**. The May 29, 2012 Decision and the April 29, 2013 Resolution of the Court of Appeals in C.A. G.R. SP No. 119936 are hereby **SET ASIDE**. A new one is **ENTERED** finding Venancio G. Santidad **GUILTY** of **GROSS NEGLECT OF DUTY**. Accordingly, he is **DISMISSED** from government service with all the accessory penalties.

In G.R. No. 222046, the petition is **GRANTED**. The September 24, 2015 Decision and the November 25, 2015 Resolution of the Sandiganbayan in Criminal Case Nos. SB-10-CRM-0261 to SB-10-CRM-0281 are hereby **REVERSED** and **SET ASIDE**.

SO ORDERED.

Caguioa, Reyes, J. Jr., Lazaro-Javier, and *Inting,*[*] *JJ.,* concur.

---

[45] *United States v. Gonzaga Changco,* 14 Phil. 562, 564 (1909); The Revised Penal Code, Book Two, Seventeenth Edition, p. 225.

[*] Designated additional member per Special Order No. 2726 dated October 25, 2019.

FIRST DIVISION

[G.R. No. 213230. December 5, 2019]

NAOAKI HIRAKAWA represented by ERICA M. SHIBAMURA, *petitioner, vs.* **LOPZCOM REALTY CORPORATION and ATTY. GARI M. TIONGCO,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; PRINCIPLE OF RELATIVITY OF CONTRACTS; CONTRACTS CAN ONLY BIND THE PARTIES WHO ENTERED INTO IT, AND IT CANNOT FAVOR OR PREJUDICE A THIRD PERSON, EVEN IF HE IS AWARE OF SUCH CONTRACT AND HAS ACTED WITH KNOWLEDGE THEREOF. — [T]he Court agrees with the Court of Appeals that Hirakawa is not a party in the Deed of Sale dated December 28, 1995. Under the civil law principle of relativity of contracts, contracts can only bind the parties who entered into it, and it cannot favor or prejudice a third person, even if he is aware of such contract and has acted with knowledge thereof, *viz*: Art. 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law x x x For clarification, what Sakai assigned to Hirakawa on September 20, 1996, were his rights and interests over the four (4) PDCs which respondents issued him (Sakai), and not his interest in the Deed of Sale dated November 28, 1995 involving Windfields Subdivision. Therefore, he cannot sue for breach of contract insofar as such deed of sale is concern.

2. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; THE BODY RATHER THAN THE TITLE OF THE COMPLAINT DETERMINES THE NATURE OF THE ACTION. — Hirakawa's complaint is denominated as breach of contract and attachment. As stated, respondents moved to dismiss the complaint on ground of lack of cause of action. On one hand, the trial court denied the motion because the complaint was in fact, not solely for breach of contract but also for damages arising from respondents' alleged fraud, issuance of worthless

checks and other deceits. On the other hand, the Court of Appeals reversed and dismissed the complaint in its entirety. x x x Based on the allegations of the complaint, the cause or causes of action ultimately seeks payment of respondents' indebtedness of ₱114,027,812.22, and the corresponding claim for damages allegedly suffered by Hirakawa by reason of respondents' failure or refusal to settle their obligation. Indeed, allegations in the body of the pleading or the complaint, and not its title or nomenclature, determine the nature of an action, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted. Here, although the complaint was erroneously denominated as breach of contract, the allegations and the relief sought are plainly for collection of sum of money.

3. ID.; RULES OF PROCEDURE ARE INTENDED TO PROMOTE AND NOT DEFEAT SUBSTANTIAL JUSTICE; CASE AT BAR. — Time and again, the Court has relaxed the observance of procedural rules to advance substantial justice to relieve a party of an injustice not commensurate with the degree of non-compliance with the process required. Rules of procedure should not be applied in a very technical sense when it defeats the purpose for which it had been enacted, *i.e.*, to ensure the orderly, just and speedy dispensation of cases. x x x Dismissing the complaint now after more than a decade of waiting for full payment [for indebtness] would certainly be unjust for Hirakawa. The Court of Appeals' suggestion for Hirakawa to file a separate action for collection of sum of money, while in fact is already incorporated in the compliant, adds insult to injury. It certainly will not alleviate Hirakawa's situation here. x x x The case should, therefore, be remanded to the trial court for determination of the merits of Hirakawa's claim for sum of money with damages.

APPEARANCES OF COUNSEL

Nelson A. Loyola for petitioner.
Tiongco Siao Bello & Associates Law Offices for respondents.

D E C I S I O N

LAZARO-JAVIER, *J.*:

Antecedents

The Proceedings Before the Trial Court

Respondent Lopzcom Realty Corporation is a domestic corporation engaged in realty development while respondent Atty. Gari Tiongco is Lopzcom's President and Chairman. Petitioner Naoaki Hirakawa is a Japanese National represented by his agent Erica Shibamura.[1]

In his Complaint[2] dated March 22, 2010,[3] Hirakawa essentially alleged that on December 28, 1995, Takezo Sakai, acting for and on behalf of the stockholders and members of the Board of Directors of several corporations,[4] sold to respondent Lopzcom represented by its President and Chairman Tiongco, for One Hundred Million Pesos (₱100,000,000.00) a ninety-two (92) hectare subdivision project known as Windfields Subdivision, in Consolacion, Cebu City. As payment, Tiongco delivered to Sakai nine (9) Westmont Bank postdated personal checks all payable to the latter.[5]

On September 30, 1996, Sakai assigned, transferred and conveyed to Hirakawa, all his rights and interest on the four (4) out of the nine (9) postdated checks, *viz*:[6]

i. Check No. 016909 dated Oct. 30, 1996 for ₱5,000,000.00

ii. Check No. 016910 dated Oct. 30, 1997 for ₱20,000,000.00

---

[1] *Rollo,* p. 89.

[2] *Id.* at 182-211.

[3] Filed on June 22, 2010.

[4] Cebu Arabella Builders Corporation, Maruni International Markets, Inc. and Royal Heights Golf Club of Cebu, Inc., and Royal Sports and Cultural Complex, Inc.

[5] *Rollo,* 185-187.

[6] *Id.* at 188-189.

iii. Check No. 016911 dated Oct. 30, 1998 for ₱20,000,000.00

iv. Check No. 016912 dated Oct. 30 1999 for ₱20,000,000.00[7]

The total amount of the postdated checks assigned to Hirakawa was sixty-five million pesos (₱65,000,000.00). It represented Sakai's share in the sale proceeds of Windfields Subdivision. Lopzcom and Tiongco were informed of the assignment and agreed to be bound by it.[8]

Upon encashment of the first check, Hirakawa requested Lopzcom and Tiongco to replace the remaining postdated checks with new ones reflecting his name as payee. Respondents acceded and replaced the remaining checks with PDCP Development Bank postdated Check Nos. 0050992, 0050993 and 005994 all payable to Hirakawa. The new checks were all drawn against Tiongco's personal account in PDCP.[9]

When PDCP Check No. 0050992 became due on October 30, 1997, Tiongco requested Hirakawa not to deposit the same and asked for additional time within which to pay the obligation. He also offered to pay Hirakawa eighteen percent (18%) interest per annum for the overdue account, which the latter accepted. But PDCP Check Nos. 0050993 and 0050994 were dishonored on October 30, 1998 and October 30, 1999, respectively, because Tiongco's account was already closed.[10]

On February 9, 1999, respondents proposed to assign to Hirakawa their shares of stock in a golf course project which they will develop through a joint venture with Sta. Lucia Realty Development Corporation, as full payment of their ₱40,000,000.00 outstanding obligation. Hirakawa agreed, hence, Lopzcom through Tiongco executed the Deed of Assignment in favor of Hirakawa.[11]

---

[7] *Id.* at 278.

[8] *Id.* at 188.

[9] *Id.* at 189-190.

[10] *Id.* at 190-191.

[11] *Id.* at 191-193.

In 2002, or three years after the execution of the Deed of Assignment, Hirakawa discovered that the golf course was never developed and no certificates of stock of the supposed golf course project were issued in his name. Hirakawa was, therefore, compelled to demand that Tiongco pay their outstanding obligation. The latter instead issued two (2) PNB postdated Check Nos. 0012469 and 0012470 for ₱20,000,000.00 each, payable on October 30, 2004 and October 30, 2005 respectively.[12]

When PNB check No. 0012469 became due on October 30, 2004, Tiongco pleaded for a one-year extension with eighteen percent (18%) interest per annum, to which Hirakawa again acceded. When the one-year extension period expired both checks still remained unfunded.[13]

On March 22, 2010, Hirakawa served respondents a final Notice of Demand for Payment of their outstanding obligation amounting to ₱60,000,000.00.[14] Respondents' total payment for a period of thirteen (13) years or until September 2009 was only ₱28,000,000.00. As of December 2009, their indebtedness amounted to ₱114,027,812.22, inclusive of interest.[15]

But despite Hirakawa's final demand, respondents still failed to pay their obligation. On June 22, 2010, Hirakawa sued respondents for Breach of Contract and Attachment before the Regional Trial Court.

On October 1, 2010, the trial court issued an *ex-parte* writ of preliminary attachment against respondents' properties subject to the posting and approval of bond in the amount of ₱114,027,812.22.[16]

---

[12] *Id.* at 194-195.

[13] *Id.* at 195.

[14] *Id.* at 91.

[15] *Id.*

[16] *Id.* at 256-263.

On October 11, 2010, respondents filed an Urgent Motion to Quash the writ of preliminary attachment. During the hearing thereof, the Branch Sheriff manifested that he already commenced garnishment proceedings on respondents' bank deposits. Respondents manifested their willingness to post counter-bond without objection from Hirakawa. Under Order dated October 21, 2010, the trial court discharged the Writ of Preliminary Attachment dated October 1, 2010 upon posting of respondents' counter-bond.[17]

Respondents then filed an undated Motion to Dismiss[18] the complaint on grounds that not being a party to subject contract, Hirakawa had no cause of action against them; and Hirakawa had no legal capacity to file a suit. Hirakawa filed his comment/opposition to the motion.

The Trial Court's Ruling

By Order[19] dated May 15, 2012, the trial court denied respondents' motion, *viz*:

> As aptly argued by the plaintiff, the instant case is not only for breach of contract as the complaint also alleges plaintiff's claim for damages arising from defendants' alleged fraud thru misrepresentations and issuance of worthless checks and other deceits. Anent defendants' claim that plaintiff has no legal capacity to file the instant case, the same is also bereft of merit as juridical capacity is inherent in every natural person. Undeniably, plaintiff is a natural person.
>
> WHEREFORE, the defendants' Motion to Dismiss filed on November 5, 2010 is hereby DENIED for lack of merit.[20]

Respondents' Motion for Reconsideration was denied under Order[21] dated August 28, 2012.

---

[17] *Id.* at 92.

[18] *Id.* at 266-273.

[19] *Id.* at 301.

[20] *Id.*

[21] *Id.* at 334.

On November 5, 2012, respondents went up to seek affirmative relief from the Court of Appeals via a petition for *certiorari* under Rule 65 of the Revised Rules of Court.[22]

Meanwhile, respondents filed before the trial court their Answer *Ad Cautelam*[23] dated May 29, 2013. They asserted that their obligation had been extinguished by payment and novation. Hirakawa admitted receipt of their ₱20,000,000.00 payments. They had also fully paid the balance of ₱40,000,000.00 through novation wherein they assigned shares of stock in their golf course project to Hirakawa. It was not true that the construction of the golf course project had not commenced. Hirakawa had no cause of action against them because a) Hirakawa was not a party in the contract between Lopzcom and Takezo Sakai; b) Hirakawa was not an assignee of the contract; c) Hirakawa was not authorized by the former owner of Windfields Subdivision to file the complaint; and d) Hirakawa being a foreign national had no personality to sue.[24]

The Court of Appeals' Ruling

By Decision[25] dated November 19, 2013, the Court of Appeals reversed. It noted that Hirakawa was not a party to the contract of sale and had no cause of action against respondents, thus:

> WHEREFORE, the petition is GRANTED. The assailed Orders, dated May 15, 2012 and August 28, 2012 of the Public Respondent Regional Trial Court in Civil Case No. 72547 denying petitioners' motion to dismiss are hereby REVERSED AND SET ASIDE, in that the complaint for breach of contract is dismissed without prejudice to the filing of an appropriate action with the proper court.[26]

---

[22] *Id.* at 335-376.

[23] *Id.* at 478-507.

[24] *Id.*

[25] *Rollo,* pp. 88-99. Penned by Associate Justice Noel G. Tijam (now a retired member of this Court), with Associate Justices Romeo F. Barza and Ramon A. Cruz, concurring.

[26] *Rollo,* p. 99.

Both parties sought a reconsideration.

By Resolution dated July 8, 2014[27] the Court of Appeals denied the parties' respective motions for reconsideration, *viz*:

x x x x x x x x x

Clearly, Petitioners' assailed portion of Our decision, referring to Our statement that Private Respondent can file a new separate action for collection of sum of money against the petitioners or bring a criminal case for bouncing checks xxx, cannot be subjected to a motion for reconsideration as the same was merely a collateral opinion of the Court and not material to the resolution of the case, hence, not binding upon the parties.[28]

x x x x x x x x x

WHEREFORE, Private Respondent's motion for reconsideration, motion to set the case for oral argument, and Petitioiners' partial motion for reconsideration are hereby DENIED for lack of merit. Our Decision, dated November 19, 2013 stands.[29]

The Present Petition

Hirakawa now urges the Court to nullify the assailed dispositions, on ground of lack or excess of jurisdiction. He asserts that: (a) the purpose of Rule 65 is to correct errors of jurisdiction and not errors of judgment; (b) jurisdiction is determined from the allegations of the complaint not from its denomination; c) the cause of action is determined from the allegation in the complaint.

On the other hand, respondents riposte that the petition should be dismissed, because Hirakawa has no cause of action against them. He was not allegedly a party in the Deed of Sale dated December 28, 1995, hence, he cannot sue for breach of contract based thereon.

---

[27] *Id.* at 156-162.

[28] *Id.* at 159.

[29] *Id.* at 161.

Issue

Did the Court of Appeals gravely err in dismissing the complaint below due to Hirakawa's lack of cause of action against respondents?

Ruling

At the outset, the Court agrees with the Court of Appeals that Hirakawa is not a party in the Deed of Sale dated December 28, 1995. Under the civil law principle of relativity of contracts, contracts can only bind the parties who entered into it, and it cannot favor or prejudice a third person, even if he is aware of such contract and has acted with knowledge thereof,[30] *viz*:

> Art. 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law xxx

For clarification, what Sakai assigned to Hirakawa on September 20, 1996, were his rights and interests over the four (4) PDCs which respondents issued him (Sakai), and not his interest in the Deed of Sale dated November 28, 1995 involving Windfields Subdivision. Therefore, he cannot sue for breach of contract insofar as such deed of sale is concern.

This brings Us to the question: May the complaint be dismissed outright on this ground alone?

On this score, We refer to the succeeding discussion.

The body rather than the title of the complaint determines the nature of the action.

Hirakawa's complaint is denominated as breach of contract and attachment. As stated, respondents moved to dismiss the complaint on ground of lack of cause of action.

---

[30] *Metropolitan Bank and Trust Co. v. Chiok,* 748 Phil. 392, 428 (2014).

On one hand, the trial court denied the motion because the complaint was in fact, not solely for breach of contract but also for damages arising from respondents' alleged fraud, issuance of worthless checks and other deceits.

On the other hand, the Court of Appeals reversed and dismissed the complaint in its entirety.

The complaint alleges:

> 9. On October 30, 1996 Plaintiff Naoaki Hirakawa, after due endorsement by the payees, deposited and collected WESTMONT BANK Check No. 016909 (Annex "I") for five million pesos (Php5,000,000.00) and thereafter requested defendant Atty. Gari Tiongco to change the payees of the Westmont Bank Check Nos. 016910 (Annex "J"); 016911 (Annex "K"); and 016912 (Annex "L") pursuant to the Deed of Assignment. Defendant Atty. Gari Tiongco knowing fully of the said assignment, agreed to Plaintiff's request and replaced the said checks and issued instead the following checks made payable to Plaintiff Naoaki Hirakawa and drawn on PDCP Development Bank as follows:[31]
>
> x x x x x x x x x
>
> 9.1 All the said Checks were drawn against the personal Account of Defendant ATTY. GARI TIONGCO at PDCP Development Bank-xxx[32]
>
> 10. On October 30, 1997 when defendants' obligation became due, defendant Atty. Tiongco negotiated with Plaintiff not to deposit PDCP Check No. 0050992 for Php20,000,00.00 (Annex "N") and sought for more time within which to pay the obligation. Defendant Atty. Tiongco offered to pay Plaintiff an interest of Eighteen percent (18%) on the overdue account to which request of extension of time and offer of interest payment Plaintiff agreed to.[33]
>
> 10.1 When PDCP Check No. 005099 became due on October 30, 1998, it was deposited by Plaintiff but the said check was returned by the drawee bank for the reason "ACCOUNT CLOSED" [xxx]

---

[31] *Rollo,* p. 189.

[32] *Id.* at 190.

[33] *Id.*

11. Sometime on February 9, 1999, Defendant Lopzcom Realty Corporation represented by Defendant Atty. Gari M. Tiongco, as Chairman of the Board, inveigled Plaintiff to forego collection on its obligation for the PDCP Checks due in 1998 and 1999 in the amount of Forty Million Pesos (₱40,000,000.00). Defendants executed a Deed of Assignment in favor of Plaintiff. The Pertinent provisions of the aid agreement states:[34]

x x x x x x x x x

WHEREAS, the ASSIGNOR has an existing obligation with the ASSIGNEE IN THE TOTAL AMOUNT OF FORTY MILLION PESOS (₱40,000,000.00) Philippine Currency, in connection with the purchase of the subdivision then known as the Windfields Subdivision in Tolo-tolo, Consolacion, Cebu.

x x x x x x x x x

WHEREAS, the ASSIGNOR has offered to assign part of his golf shares as payment of their obligation to the ASSIGNEE with an initial value of ₱350,000.00 per share; and that the total shares the Assignor is willing to assign is 115 shares;

WHEREAS, the ASSIGNEE is willing to accept the assignment as full payment of the forty million obligation of the ASSIGNOR;[35]

The complaint, thus, seeks the following relief:

WHEREFORE, it is respectfully prayed that pending trial on the merits of this case, a Writ of Preliminary Attachment be issued against defendants either ex-parte or upon motion with notice and hearing by the court and must require the sheriff of the court to attach so much of the property in the Philippines of the defendants not exempt from execution as [may] be sufficient to satisfy the applicant's demand including but not limited to Forty (40%) shares of stock of LOPZCOM REALTY CORPORATION pursuant to the stipulation in the DEED OF SALE (Annex "C") and/or such other amount or properties of Defendants as the Honorable Court may deem, sufficient and necessary to serve as security for the satisfaction of any judgment that may be recovered herein unless such party makes deposit or gives a bond as hereinafter provided in an amount equal to that fixed in the order,

---

[34] *Id.* at 190-191.

[35] *Id.* at 191-192.

which may be the amount sufficient to satisfy the applicant, exclusive of costs; And that after due hearing on the principal cause of action, judgment be rendered and issued ordering:

1. Defendant Corporation LOPZCOM REALTY CORPORATION and defendant ATTY. GARI TIONGCO jointly and severally liable for Breach of Contract and thus pay Plaintiff, in cash, the sum of ONE HUNDRED FOURTEEN MILLION TWENTY SEVEN THOUSAND EIGHT HUNDRED TWELVE PESOS AND TWENTY TWO CENTAVOS (₱114,027,812.22) inclusive of interest computed at the legal rate of Twelve (12%) Percent per annum from the stipulated dates of payment (i.e. October 1997, October 30, 1998 and October 30, 1999 respectively) up to December 2009 plus any other amount or interest that may be due to plaintiff up to the time of final judgment;

2. Defendant LOPZCOM REALTY CORPORATION and Defendant ATTY. GARI TIONGCO jointly and severally liable for wanton disregard for their contractual obligation and thus to pay Plaintiff damages as follows: MORAL DAMAGES for the mental and physical anguish caused to Plaintiff in the amount of Five Hundred Thousand Pesos (₱500,000.00); ACTUAL DAMAGES for the unnecessary travel expenses, actual losses as well as unrealized profits of Plaintiff in the amount of Five Hundred Thousand Pesos (₱500,000); And, to set as a deterrent to the serious [wrong doing] of, among others-the repeated issuance of unfunded checks, the amount of FIVE HUNDRED THOUSAND PESOS (₱500,000.00) as EXEMPLARY DAMAGES;

3. Defendants jointly and severally liable to Plaintiff for Costs of Litigation and Attorney's [Fees] amounting to THREE MILLION PESOS (₱3,000,000.00) and such other reliefs as the court may deem just and equitable under the circumstances.[36]

Based on the allegations of the complaint, the cause or causes of action ultimately seeks payment of respondents' indebtedness of ₱114,027,812.22, and the corresponding claim for damages allegedly suffered by Hirakawa by reason of respondents' failure or refusal to settle their obligation.

---

[36] *Id.* at 209-210.

Indeed, allegations in the body of the pleading or the complaint, and not its title or nomenclature, determine the nature of an action,[37] irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted.[38] Here, although the complaint was erroneously denominated as breach of contract, the allegations and the relief sought are plainly for collection of sum of money.

In ***Sps. Pajares v. Remarkable Laundry and Dry Cleaning,*** the Court explained the cause of actions which may arise from a breach of contract, *viz*:

> Breach of contract may give rise to an action for specific performance or rescission of contract. It may also be the cause of action in a complaint for damages filed pursuant to Art. 1170 of the Civil Code. Specific performance is "the remedy of requiring exact performance of a contract in the specific form in which it was made, or according to the precise terms agreed upon. It is the actual accomplishment of a contract by a party bound to fulfill it." Rescission of contract under Article 1191 of the Civil Code, on the other hand, is a remedy available to the obligee when the obligor cannot comply with what is incumbent upon him. It is predicated on a breach of faith by the other party who violates the reciprocity between them. Rescission may also refer to a remedy granted by law to the contracting parties and sometimes even to third persons in order to secure reparation of damages caused them by a valid contract; by means of restoration of things to their condition in which they were prior to the celebration of the contract.[39]

To repeat, what Hirakawa is simply asking for is the payment of the value of the checks assigned to him, its accrued interests, and the damages he suffered by reason of respondents' failure to fund the checks assigned to him. He does not ask for rescission of contract or restoration of things or the parties'

---

[37] *Fong v. Dueñas*, 759 Phil. 373, 383 (2015).

[38] *Anama v. Citibank, N.A. (formerly First National City Bank)*, G.R. No. 192048, December 13, 2017, 848 SCRA 459, 469; *City of Dumaguete v. Philippine Ports Authority*, 671 Phil. 610, 629 (2011).

[39] *Sps. Pajares v. Remarkable Laundry and Dry Cleaning,* 806 Phil. 39, 41-42 (2017).

respective situation. It does not at all seek that Windfields Subdivision which is the subject of the Deed of Sale dated December 28, 1995 be delivered to him.

In sum, the case is a simple collection suit.

In ***Bank Of Commerce v. Hon. Estela Perlas-Bernabe***[40] ***in her capacity as Presiding Judge of the Regional Trial of Makati City, Branch 142; Bancapital Development Corporation; and Exchange Capital Corporation,***[41] the Court ruled that the nature of a pleading is to be determined by the averments in it and not by its title. Hence, while petitioners Motion (to Recall the April 19, 2000 Order) was so denominated, it is not difficult to see that the remedy it was seeking was actually a reconsideration of the dismissal of the Receivership Case.

In ***Philimare, Inc./Marlow Navigation Co., Ltd. v. Benedicto F. Suganob,***[42] the Court treated the petition under Rule 43 as one filed under Rule 65. Rules of procedure may be relaxed to relieve a party of an injustice not commensurate with the degree of noncompliance with the process required. Moreover, averments in the pleadings, not the title, are controlling in determining the nature of the proceeding. Suganob categorized his petition before the Court of Appeals as a petition for review on *certiorari* (under Rule 43 of the Revised Rules of Civil Procedure). The contents of the petition, however, clearly revealed that the petition complied with the requirements of a petition for *certiorari*, albeit wrongly captioned as one for a petition for review under Rule 43. We emphasized that courts look beyond the form and consider substance as circumstances warrant. Thus, we ruled in that case that the Court of Appeals correctly treated Suganob's petition under Rule 43 as one being filed under Rule 65.

---

[40] A member of this Court.

[41] 648 Phil. 326, 338 (2010).

[42] 579 Phil. 706, 712 (2008).

In ***Fong v. Dueñas,***[43] the Court treated petitioner's complaint for sum of money and damages as one for rescission. A well-settled rule in procedural law is that the allegations in the body of the pleading or the complaint, and not its title, determine the nature of an action. An examination of Fong's complaint shows that although it was labeled as an action for a sum of money and damages, it was actually a complaint for rescission.

On the strength of ***Bank of Commerce, Philimare, Inc./ Marlow Navigation Co., Ltd., and Fong,*** among others, the Court of Appeals should not have decreed the dismissal of the case below but should have allowed it to proceed as one for collection of sum of money and damages.

Rules of Procedure are intended to promote and not defeat substantial justice.

Time and again, the Court has relaxed the observance of procedural rules to advance substantial justice to relieve a party of an injustice not commensurate with the degree of non-compliance with the process required. Rules of procedure should not be applied in a very technical sense when it defeats the purpose for which it had been enacted, *i.e.*, to ensure the orderly, just and speedy dispensation of cases.[44]

Here, respondents do not deny the following facts: a) on September 30, 1996, Sakai assigned to Hirakawa four (4) out of the nine (9) checks which respondents issued him as consideration for respondents' purchase of the Windfields Subdivision;[45] b) as soon as Hirakawa had encashed the first check, respondents on Hirakawa's request, replaced the remaining checks with new ones, this time in Hirakawa's name

---

[43] 759 Phil. 373, 383 (2015).

[44] *Trajano v. Uniwide Sales Warehouse Club,* G.R. No. 190253, June 11, 2014, 726 SCRA 298, 308-309.

[45] *Rollo,* p. 481.

as the payee;[46] c) after the lapse of almost three (3) years from September 30, 1996, respondents still owed Hirakawa a balance of ₱40,000,000.00; d) on February 9, 1999, respondents agreed to assign their shares of stock in a golf course which it will develop through a joint venture with Sta. Lucia Realty Development Corporation as full payment of their remaining obligation to Hirakawa in the amount of ₱40,000,000.00;[47] and e) no shares of stock, however, were actually issued to Hirakawa.

Indubitably, Hirakawa had waited fourteen (14) long years as of filing of the complaint in 2010, for Lopzcom and Tiongco's full payment of their obligation. But such payment seems to be not forthcoming. For while purporting to have assigned their shares of stock in the golf course project to Hirakawa as settlement of the remaining ₱40,000,000.00 indebtedness, respondents have not, to this date, delivered these shares of stock to Hirakawa.

Dismissing the complaint now after more than a decade of waiting for full payment would certainly be unjust for Hirakawa. The Court of Appeals' suggestion for Hirakawa to file a separate action for collection of sum of money, while in fact is already incorporated in the complaint, adds insult to injury. It certainly will not alleviate Hirakawa's situation here. To repeat, rules of procedure are intended to promote justice and efficacy in the judicial system and not as road blocks.

The case should, therefore, be remanded to the trial court for determination of the merits of Hirakawa's claim for sum of money with damages.

ACCORDINGLY, the Court **GRANTS** the petition, and **REVERSES** and **SET ASIDE** the Decision dated November 19, 2013 and Resolution dated July 8, 2014 of the Court of Appeals, in CA-G.R. SP No. 127233. The case is **REMANDED** to Regional Trial Court-Branch 154, Pasig City for resolution of the case on the merits with utmost dispatch.

---

[46] *Id*.

[47] *Id.* at 482; 491-492.

SO ORDERED.

Peralta, C.J., Caguioa, Reyes, J. Jr., and *Inting,*[*] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 215324. December 5, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JACKIE MAYCABALONG and DAVE PASILAN,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; ANTI-TRAFFICKING IN PERSONS ACT OF 2003 (REPUBLIC ACT NO. 9208); ELEMENTS. — In *People v. Casio* (Casio), the Court enumerated the elements of the crime: The elements of trafficking in persons can be derived from its definition under Section 3 (a) of Republic Act No. 9208, thus: (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." On February 6, 2013, the law was amended by R.A. No. 10364. *Casio*, likewise, enumerated the elements of the crime under the expanded definition: Under Republic Act No. 10364, the elements of trafficking in persons have been expanded to include the

---

[*] Additional member per Special Order No. 2726.

following acts: (1) The act of "recruitment, *obtaining, hiring, providing, offering, transportation, transfer, maintaining,* harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders[";] (2) The means used include "by means of threat, or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person"[;] (3) The purpose of trafficking includes "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[.]" Here, the offense was committed on June 18, 2009, prior to the amendment. Thus, the original provisions of R.A. No. 9208 are applicable.

2. ID.; ID.; THE TRAFFICKED VICTIM'S TESTIMONY THAT SHE HAD BEEN SEXUALLY EXPLOITED IS MATERIAL TO THE CAUSE OF THE PROSECUTION. — The prosecution established that on June 18, 2009, accused-appellants approached SPO3 Sabaldan and offered him the sexual services of four girls in exchange for money. The police operation had been the result of previous surveillance conducted within the area by the Task Force. x x x. In *People v. Rodriguez,* the Court held that the trafficked victim's testimony that she had been sexually exploited was "material to the cause of the prosecution." Here, AAA's testimony was corroborated by the testimonies of the police officers who conducted the entrapment operation.

3. ID.; ID.; THE CRIMINAL CASE OF TRAFFICKING IN PERSONS AS A PROSTITUTE IS AN ANALOGOUS CASE TO THE CRIMES OF SEDUCTION, ABDUCTION, RAPE, OR OTHER LASCIVIOUS ACTS, JUSTIFYING THE AWARD OF MORAL AND EXEMPLARY DAMAGES. — The Court, therefore, affirms the trial court's and the Court of Appeals' conviction of accused-appellants in violation of R.A. No. 9208, Section 4(a) and (e), as qualified by Section 6(c) and punished under Section 10(c). In *Casio*, however, this Court held that moral damages and exemplary damages must also be imposed. In *People v. Aguirre*: The criminal case of Trafficking in Persons as a Prostitute is an analogous case to the crimes of seduction, abduction, rape, or other lascivious acts. In fact, it is worse, thus, justifying the award of moral damages. Exemplary damages are imposed when the crime is aggravated, as in this

case. Thus, in line with jurisprudence, this Court deems it proper to impose moral damages of ₱500,000.00 and exemplary damages of ₱100,000.00.

APPEARANCES OF COUNSEL

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

D E C I S I O N

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

On appeal is the August 13, 2014 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01541 which affirmed the July 30, 2012 Decision[2] of the Regional Trial Court, Branch 17, Cebu City (RTC) in Criminal Case No. CBU-86397 finding accused-appellants Jackie Maycabalong and Dave Pasilan (accused-appellants) guilty of violating Section 4(a) and (e) in relation to Section 6(c) of Republic Act (R.A.) No. 9208 or the Anti-Trafficking in Persons Act of 2003.

The Facts

In an Information, dated June 20, 2009, accused-appellants were charged as follows:

That on or about the 18th day of June, 2009 and for sometime prior thereto, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping with each other, with deliberate intent, did, then and there[,] recruit, maintain and/or hire AAA, BBB, CCC and DDD[3] to engage in prostitution and pornography.

---

[1] Penned by Associate Justice Marie Christine Azcarraga-Jacob, with Associate Justices Ramon Paul L. Hernando (now a member of the Court) and Marilyn B. Lagura-Yap, concurring; *rollo*, pp. 4-32.

[2] Penned by Judge Silvestre A. Maamo, Jr.; CA *rollo*, pp. 27-37.

[3] The names of the victims are blotted out to protect their identity pursuant to Administrative Circular No. 83-2015 issued on July 27, 2015.

CONTRARY TO LAW.[4]

Upon arraignment, accused-appellants pleaded not guilty to the charge.

Version of the Prosecution

The prosecution presented DDD, SPO3 Raul Sabaldan (SPO3 Sabaldan), PO3 Jose Erwin Dumaguit (PO3 Dumaguit) and PO1 Linda Almohallas as witnesses. Their combined testimonies[5] tended to establish the following:

Sometime in June 2009, the Regional Anti-Human Trafficking Task Force (Task Force) of Region 7 received a report from an informant that there was trafficking of women for purposes of sexual exploitation in Barangay Capitol, Cebu City, particularly at Juana Osmeña Street along Baseline Bar and Restaurant. Acting on the tip, Police Inspector Reynaldo Valmoria (P/Insp. Valmoria) instructed his men to conduct surveillance operations in order to identify the persons involved in the illegal activities. In their three nights of surveillance, SPO3 Sabaldan and PO3 Dumaguit observed two persons, a man and a woman, who would habitually approach a vehicle before departing the area. Upon their return, they had girls with them and they made the girls board the vehicle until the vehicle would finally leave.[6]

After the surveillance, P/Insp. Valmoria called his men to a short briefing for the conduct of an entrapment operation against the two persons. During the briefing, SPO3 Sabaldan was designated as a police decoy to pose as a customer. He would be accompanied by an American police officer while the rest of the members of the Task Force would act as backup officers to arrest the suspects. The Task Force also contacted the Department of Social Welfare and Development (DSWD) to assist them in the rescue and turnover of the victims.[7]

---

[4] CA *rollo,* p. 27.

[5] *Id.* at 29-33.

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

[7] *Id.*

On June 18, 2009, at about 9:00 p.m., the Task Force proceeded to Juana Osmeña Street for the entrapment operation. When the Task Force was nearing Baseline Bar and Restaurant, they noticed the two persons along the road. They stopped their vehicle in front of the suspects. The male suspect, who turned out to be accused-appellant Pasilan, approached SPO3 Sabaldan's vehicle and told him, *"Sir[,] naa batan-on."* (Sir, there are youngsters). In reply, SPO3 Sabaldan said, *"[U]nsay batan-on[?] [B]asi mosabit ta ani."* (What youngsters? We might get in trouble for that.) Thereafter, the female suspect, later on identified as accused-appellant Maycabalong, appeared and haggled with SPO3 Sabaldan. Then, SPO3 Sabaldan parked the vehicle in a parking area near Baseline Bar and Restaurant, proceeded to its patio and continued the transaction with accused-appellants. Later on, accused-appellants left the area.[8]

At around midnight, accused-appellants arrived at a lodging house along Colon Street to inform DDD that they had customers who needed women. While accused-appellant Pasilan was convincing DDD to go with them, accused-appellant Maycabalong went upstairs to fetch her live-in partner, AAA, a friend of DDD. Later, accused-appellant Maycabalong, together with DDD and AAA, boarded a cab wherein accused-appellant Pasilan was waiting. DDD asked accused-appellant Pasilan how much the payment would be for their services. Accused-appellant Pasilan replied that it was ₱700.00 and that ₱400 would go to DDD and the rest to accused-appellants. Then, they proceeded towards Mango Avenue to search for two more girls, whom they found along 22nd Street, and whose names were later learned by DDD as CCC and BBB. Accused-appellants asked CCC and BBB if they needed customers and invited them to board the taxi.[9]

Upon reaching Baseline Bar and Restaurant at around 1:00 a.m., accused-appellant Pasilan disembarked from the cab and approached SPO3 Sabaldan's vehicle and talked to the latter.

---

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

[9] *Id.*

Accused-appellant Pasilan went back to their cab, knocked on the window and the four girls alighted therefrom. Accused-appellant Pasilan guided the girls toward the police officers. SPO3 Sabaldan chose DDD and AAA and gave accused-appellant Pasilan ₱2,100.00 consisting of two 500-peso bills and 11 100-peso bills. When accused-appellant Pasilan passed on the marked money to accused-appellant Maycabalong, SPO3 Sabaldan made the pre-arranged signal of "raising his short sleeves," signifying that the transaction was completed. At this point, accused-appellant Pasilan became suspicious and tried to escape. SPO3 Sabaldan identified himself as a police officer. Accused-appellant Pasilan resisted the arrest, resulting in a scuffle between him and the police officers. The policemen eventually prevailed. PO3 Dumaguit immediately handcuffed accused-appellant Pasilan and placed him under arrest. Accused-appellant Maycabalong, on the other hand, was held and arrested by PO1 Linda Almohallas. The four girls were rescued and brought by the DSWD team to the DSWD center. Accused-appellants were brought to the PNP Crime Laboratory for ultra-violet examination. The laboratory examination report showed that accused-appellants were found positive for the presence of ultraviolet powder in their hands.[10]

Version of the Defense

Accused-appellant Maycabalong admitted knowing accused-appellant Pasilan as well as AAA, BBB and CCC. She alleged that in the early morning of June 18, 2009, she was at the corner of Cebu Doctors Hospital when she was invited by AAA, her girlfriend, who was with Pasilan and DDD. They told her that they were going to stop by a certain place before going to eat. AAA was having a conversation with some men while she just waited nearby. She was surprised when suddenly there was a commotion. She was then taken inside a van where she was handcuffed and made to hold the money.[11]

---

[10] *Id.*

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

Accused-appellant Pasilan averred that he escorted AAA to Baseline Bar and Restaurant because AAA was not familiar with the place. AAA asked him to wait for her near the corner of Maria Cristina St. A waiter in the restaurant, who thought that he was the manager of the girls, asked him to fetch the latter. Then, the police arrived and he was handcuffed.[12]

The Regional Trial Court's Ruling

In a Decision, dated July 30, 2012, the RTC found accused-appellants guilty of violation of Section 4 in relation to Section 6 of R.A. No. 9208. It ruled that the prosecution was able to prove beyond reasonable doubt that accused-appellants transacted with the undercover police officers and offered the services of the girls for a fee. The *fallo* reads:

> WHEREFORE, all premises considered, accused Dave "Dongkoy" Pasilan and Jackie Maycabalong are hereby adjudged GUILTY beyond reasonable doubt of the crime of violation of Sec. 4 in relation to Sec. 6(c) of R.A. 9208 (Large Scale).
>
> Accordingly, each of the accused is sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of [₱]2,000,000.00. Furthermore, they are ordered to pay the victims the sum of [₱]500,000.00 as moral damages.
>
> SO ORDERED.[13]

Aggrieved, accused-appellants elevated an appeal before the CA.

The Court of Appeals' Ruling

In a Decision, dated August 13, 2014, the CA affirmed the conviction of accused-appellants. It held that accused-appellants committed the crime of trafficking in persons by offering the services of the girls to male patrons in exchange for money. As regards accused-appellants' averment regarding the failure of the surveillance team to know their names during the

---

[12] *Id.* at 34.

[13] *Id.* at 37.

surveillance, the CA ruled that the identification made by the police officers were not by names but by their visual observation of accused-appellants' nightly activities in the area. It added that since the police officers have already known accused-appellants by visual recognition, knowing their names during the surveillance operation was not necessary and essential. It disposed the case in this wise:

> **WHEREFORE,** all premises considered, the appealed ***Decision dated 30 July 2012*** of the Regional Trial Court, Branch 17, Cebu City, in Criminal Case No. CBU-86397, finding appellants Jackie Maycabalong and Dave Pasilan guilty of violation of Section 4 (a) and (e), in relation to Section 6 (c) of R.A. No. 9208, is hereby **AFFIRMED in toto.**
>
> **SO ORDERED.**[14]

Hence, this appeal.

Issue

Whether the guilt of accused-appellants for violation of Section 4 (a) and (e) in relation to Section 6 (c) of R.A. No. 9208 has been proven beyond reasonable doubt.

The Court's Ruling

Republic Act No. 9208 defines trafficking in persons as:

> 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 person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.

---

[14] *Rollo,* p. 31.

In *People v. Casio* (Casio),[15] the Court enumerated the elements of the crime:

> The elements of trafficking in persons can be derived from its definition under Section 3 (a) of Republic Act No. 9208, thus:
>
> (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."

On February 6, 2013, the law was amended by R.A. No. 10364. *Casio*, likewise, enumerated the elements of the crime under the expanded definition:

> Under Republic Act No. 10364, the elements of trafficking in persons have been expanded to include the following acts:
>
> (1) The act of "recruitment, *obtaining, hiring, providing, offering,* transportation, transfer*, maintaining,* harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders[";]
>
> (2) The means used include "by means of threat, or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person"[;]
>
> (3) The purpose of trafficking includes "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[.]"[16] (Emphasis in the original)

---

[15] 749 Phil. 458, 472-473 (2014).

[16] *Id.* at 474.

Here, the offense was committed on June 18, 2009, prior to the amendment. Thus, the original provisions of R.A. No. 9208 are applicable.

The prosecution established that on June 18, 2009, accused-appellants approached SPO3 Sabaldan and offered him the sexual services of four girls in exchange for money. The police operation had been the result of previous surveillance conducted within the area by the Task Force. DDD testified as follows:

ATTY. LUNA:

Q: At that time, June 18, do you know already Dave?
A: Yes

Q: How did you know him?
A: I met him before because his live-in partner brought me to the place of Dave.

Q: Where is that area you were refening to where you were brought by Mae?
A: Maria Christina near Baseline.

Q: What is his occupation?
A: Pimp.

Q: Let's go back to the time when they went to the place. While Dave was waiting in the taxi, what happened next after Jackie went upstairs to fetch her live-in partner?

x x x x x x x x x

A: He was waiting downstairs.

Q: Whom were you waiting?
A: Jackie and her live-in partner.

Q: Did Jackie and her live-in partner arrive or come back?
A: Yes.

Q: Even since they came back, Jackie and AAA, what happened?
A: We went directly to the taxi where Dave was waiting.

Q: Is there anything that Jackie told you?
A: I asked Jackie.

Q: What did you ask?
A: How much.

Q: To whom did you ask that question?
A: Dave.

Q: What was the reply?
A: [₱]700.00.

Q: When you said [₱]700.00, what was that for?
A: Payment for sexual services.

x x x x x x x x x

Q: According to you, you were looking for girls. Where did you head?
A: Towards Mango Avenue.

Q: Did you in fact arrive?
A: Yes, on the 22nd St., we found two more girls.

Q: When you said two more girls, do you know the purpose why you were looking for two girls?
A: So that the customers would have choices among the four of us.[17]

x x x x x x x x x

In *People v. Rodriguez*,[18] the Court held that the trafficked victim's testimony that she had been sexually exploited was "material to the cause of the prosecution." Here, AAA's testimony was corroborated by the testimonies of the police officers who conducted the entrapment operation.

The Court, therefore, affirms the trial court's and the Court of Appeals' conviction of accused-appellants in violation of R.A. No. 9208, Section 4(a) and (e), as qualified by Section 6(c) and punished under Section 10(c). In *Casio*, however, this Court held that moral damages and exemplary damages must also be imposed. In *People v. Aguirre*:[19]

The criminal case of Trafficking in Persons as a Prostitute is an analogous case to the crimes of seduction, abduction, rape, or other

---

[17] *Rollo,* pp. 21-23.

[18] G.R. No. 211721, September 20, 2017, 840 SCRA 388, 401.

[19] G.R. No. 219952, November 20, 2017, 845 SCRA 227, 246-247.

lascivious acts. In fact, it is worse, thus, justifying the award of moral damages. Exemplary damages are imposed when the crime is aggravated, as in this case. (Citations omitted)

Thus, in line with jurisprudence, this Court deems it proper to impose moral damages of ₱500,000.00 and exemplary damages of ₱100,000.00.

WHEREFORE, the Appeal is **DISMISSED**. The Court of Appeals August 13, 2014 Decision in CA-G.R. CR-HC No. 01541 is **AFFIRMED** with **MODIFICATION**. Accused-appellants **Jackie Maycabalong** and **Dave Pasilan** are found **GUILTY** beyond reasonable doubt of having violated Republic Act No. 9208, Section 4(a) and (e), as qualified by Section 6(c). They are **SENTENCED** to suffer the penalty of life imprisonment and to **PAY** a fine of Two Million Pesos (₱2,000,000.00). They are further **ORDERED** to **PAY** Five Hundred Thousand Pesos (₱500,000.00) as moral damages and One Hundred Thousand Pesos (₱100,000.00) as exemplary damages to each of the victims.

All damages awarded shall be subject to the rate of 6% interest per annum from the finality of this Decision until its full satisfaction.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa (Working Chairperson), *Lazaro-Javier,* and *Inting,*[*] *JJ.*, concur.

[*] Additional Member per Special Order No. 2726.

FIRST DIVISION

[G.R. No. 221313. December 5, 2019]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **EUGENIA UY, ROMUALDO UY, JOSE UY, RENATO UY, ARISTIO UY, and TERESITA UY-OLVEDA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM PROGRAM (REPUBLIC ACT NO. 6657); JUST COMPENSATION; THE NATURE AND CHARACTER OF THE LAND AT THE TIME OF TAKING IS THE PRINCIPAL CRITERION FOR DETERMINING HOW MUCH JUST COMPENSATION SHOULD BE GIVEN TO THE LANDOWNER; THUS, AS OF THAT TIME, ALL THE FACTS AS TO THE CONDITION OF THE PROPERTY AND ITS SURROUNDINGS, AS WELL AS ITS IMPROVEMENTS AND CAPABILITIES, SHOULD BE CONSIDERED. — One of the basic precepts governing eminent domain proceedings is that the nature and character of the land at the time of taking is the principal criterion for determining how much just compensation should be given to the landowner. In other words, as of that time, all the facts as to the condition of the property and its surroundings, as well as its improvements and capabilities, should be considered. The logic, thus, in the remand order for the limited purpose of accounting for the existing coconut trees on the 17-hectare coconut portion is consistent with this rule, because it is with reference to the exact condition of the property when it was taken by operation of the agrarian law at the beginning of the expropriation process. To be sure, from the taking of the property in 1995 and all the time during which this case was first elevated to the CA, then referred back to the agrarian court, and appealed anew to the CA, the subject property has likely undergone physical changes which might explain the differences in the numbers propounded by the agrarian court at the first instance, the court-appointed commissioners after the remand of the case, and the same agrarian court in its second ruling. At this

juncture, we find the valuation of the CA to be conclusively erroneous insofar as its determination exceeded the 17-hectare coconut land found to be the only point of contention between the parties.

2. ID.; ID.; ID.; THE DETERMINATION OF JUST COMPENSATION IS PRINCIPALLY A JUDICIAL FUNCTION OF THE REGIONAL TRIAL COURT (RTC) ACTING AS A SPECIAL AGRARIAN COURT, AND IN THE EXERCISE OF SUCH JUDICIAL FUNCTION, THE RTC MUST CONSIDER BOTH THE GUIDELINES SET FORTH IN R.A. NO. 6657 AND THE VALUATION FORMULA UNDER THE APPLICABLE ADMINISTRATIVE ORDER OF THE DEPARTMENT OF AGRARIAN REFORM (DAR), TO ENSURE THAT THE LANDOWNER IS GIVEN FULL AND FAIR EQUIVALENT OF THE PROPERTY EXPROPRIATED, IN AN AMOUNT THAT IS REAL, SUBSTANTIAL, FULL AND AMPLE. — Settled is the rule that in eminent domain, the determination of just compensation is principally a judicial function of the RTC acting as a special agrarian court. In the exercise of such judicial function, however, the RTC must consider both the guidelines set forth in R.A. No. 6657 and the valuation formula under the applicable Administrative Order of the DAR. These guidelines ensure that the landowner is given full and fair equivalent of the property expropriated, in an amount that is real, substantial, full and ample. *Land Bank of the Philippines v. Yatco Agricultural Enterprises, Land Bank of the Philippines v. Peralta,* and *Department of Agrarian Reform v. Spouses Sta. Romana* are instructive on this point. Yatco reiterated that the determination of just compensation is a judicial function and the RTC, acting as a special agrarian court, has the original and exclusive power to determine the same. It also emphasized that in the exercise of its function, the court must be guided by the valuation factors under Section 17 of R.A. No. 6657, translated into a basic formula embodied DAR A.O. No. 5-1998 to guarantee that the compensation arrived at would not be absurd, baseless, arbitrary or contradictory to the objectives of the agrarian reform laws. *Peralta* confirmed the mandatory character of the said guidelines under Section 17 of R.A. No. 6657 and restated that the valuation factors under R.A. No. 6657 had been translated by the DAR into a basic formula as outlined in the same DAR A.O. No. 5-1998.

3. ID.; ID.; ID.; THE SPECIAL AGRARIAN COURTS HAVE A WIDE LATITUDE OF DISCRETION IN FIXING JUST COMPENSATION AND MAY OPT TO OVERRULE THE COMMISSIONERS' FINDINGS, IF WARRANTED BY THE CIRCUMSTANCES OF THE CASE AND PROVIDED THAT THE AGRARIAN COURTS EXPLAIN THEIR DEVIATION; DEVIATION FROM THE FORMULA SANCTIONED BY LAW FOR THE DETERMINATION OF JUST COMPENSATION DUE TO THE LANDOWNERS NOT ADEQUATELY EXPLAINED BY THE AGRARIAN COURT IN THE CASE AT BAR. — In *Sta. Romana*, it was held that the RTC is not strictly bound by the formula created by the DAR, if the situations before it do not warrant its application. The RTC cannot be arbitrarily restricted by the formula outlined by the DAR. While the DAR provides a formula, "it could not have been its intention to shackle the courts into applying the formula in every instance. Thus, *Yatco* states that the RTC may relax the application of the DAR formula, if warranted by the circumstances of the case and provided the RTC explains its deviation from the factors or formula above-mentioned. x x x. While indeed special agrarian courts have a wide latitude of discretion in fixing just compensation and may, therefore, opt to overrule the commissioners' findings, we find, however, that the agrarian court's deviation in this case, while probably warranted by the circumstances, has not nevertheless been adequately explained in the February 26, 2006 Order. In particular, it did not state the reason in applying the rules on ratio and proportion between the numbers found by the commissioners and the data contained in the PCA certification which has already been found to be unreliable for purposes of the instant case. To repeat, the said certification could hardly be the basis — not even derivatively — of a just valuation because it pertains only to the average of the per-hectare number of coconut trees in the 22 municipalities within the locality, hence, is far from a reasonable estimate of the coconut population on the subject property. Suffice it to say that the said data must be taken proper judicial notice of, yet it does not appear that the parties have been heard thereon. It also bears to stress the conspicuous absence of any reference by the agrarian court to the formula sanctioned by law for the determination of just compensation, as well as the date when the property was taken so that the just compensation could be properly valued in relation thereto.

4. ID.; ID.; ID.; LAND VALUATION IS NOT AN EXACT SCIENCE, BUT AN EXERCISE FRAUGHT WITH INEXACT ESTIMATES REQUIRING INTEGRITY, CONSCIENTIOUSNESS AND PRUDENCE ON THE PART OF THOSE RESPONSIBLE FOR IT; THE FORMULA UNDER SECTION 17.A.1 OF DAR A.O. NO. 5-1998 MUST BE APPLIED IN THE DETERMINATION OF JUST COMPENSATION DUE TO THE LANDOWNERS IN CASE AT BAR. — Land valuation is not an exact science, but an exercise fraught with inexact estimates requiring integrity, conscientiousness and prudence on the part of those responsible for it. What is important ultimately is that the land value approximates, as closely as possible, what is broadly considered to be just. In this light, and given the shortcomings in the independent finding of the agrarian court on the specific issue of land valuation with respect to the coconut land, we take with approval the computation made by the CA based on raw data obtained by the commissioners during their inspection, and applying the guidelines under DAR A.O. No. 5-1998. Hence, inasmuch as there is no evidence or data on record on Comparative Sales pertaining to similar properties in the locality of the subject landholding, and whereas the Capitalized Net Income and Market Value are variables contained in the Commissioners' Report which appears to have been properly heard, the formula under Section 17.A.1 of DAR A.O. No. 5-1998 should be applied to determine the per-hectare value of the subject 17-hectare coconut land.

5. ID.; ID.; ID.; THE CONCEPT OF JUST COMPENSATION EMBRACES NOT ONLY THE CORRECT DETERMINATION OF THE AMOUNT TO BE PAID TO THE OWNER OF THE LAND, BUT ALSO THE PAYMENT WITHIN A REASONABLE TIME FROM ITS TAKING, FOR WITHOUT PROMPT PAYMENT, COMPENSATION CANNOT BE CONSIDERED "JUST" INASMUCH AS THE PROPERTY OWNER IS MADE TO SUFFER THE CONSEQUENCES OF BEING IMMEDIATELY DEPRIVED OF HIS LAND WHILE BEING MADE TO WAIT BEFORE ACTUALLY RECEIVING THE AMOUNT NECESSARY TO COPE WITH LOSS; THE PAYMENT OF INTEREST ON UNPAID JUST COMPENSATION IS A BASIC REQUIREMENT OF FAIRNESS, AS THE OWNER LOST NOT ONLY HIS PROPERTY BUT ALSO ITS INCOME-GENERATING POTENTIAL; JUST COMPENSATION DUE TO THE

PROPERTY OWNERS SHALL EARN LEGAL INTEREST FROM THE TIME OF TAKING OF THE PROPERTY UNTIL FULL PAYMENT THEREOF. — The concept of just compensation embraces not only the correct determination of the amount to be paid to the owners of the land, but also payment within a reasonable time from its taking. Indeed, without prompt payment, compensation cannot be considered "just" inasmuch as the property owner is made to suffer the consequences of being immediately deprived of his land while being made to wait before actually receiving the amount necessary to cope with loss. Thus, in A*po Fruits Corporation v. Land Bank of the Philippines*, we held that the payment of interest on unpaid just compensation is a basic requirement of fairness – The owner's loss, of course, is not only his property but also its income-generating potential. Thus, when property is taken, full compensation of its value must immediately be paid to achieve a fair exchange for the property and the potential income lost. The just compensation is made available to the property owner so that he may derive income from this compensation, in the same manner that he would have derived income from his expropriated property. If full compensation is not paid for the property taken, then the State must make up for the shortfall in the earning potential immediately lost due to the taking, and the absence of replacement property from which income can be derived; interest on the unpaid compensation becomes due as compliance with the constitutional mandate on eminent domain and as a basic measure of fairness. x x x In this light, we validate the pronouncement of the CA that petitioner is liable to pay interest on the just compensation still due the respondent property owners in this case, as just compensation is an effective forbearance on the part of the State. The just compensation due shall be based on the per-hectare value of the 17-hectare coconut land — herein determined to be ₱65,063.88 per hectare — compounded with the original valuation of the remaining cornland earlier determined without contest by the agrarian court, and finally deducting the amount of ₱516,484.84 originally tendered in 1999. Accordingly, petitioner's liability to pay interest shall be at 12% per annum, reckoned from the time of taking until June 30, 2013 — the effective date of Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013 which amended the rate of legal interest to 6%. From July 1, 2013, the applicable interest rate shall then be 6% per annum until respondents shall have been fully compensated for their property.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
Villanueva Law Office for respondents.

D E C I S I O N

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

In this Petition for Review, petitioner Land Bank of the Philippines (petitioner) assails the December 11, 2014 Decision[1] of the Court of Appeals in CA-G.R. SP No. 118230, which modified the ruling of the Regional Trial Court (RTC) of Lucena City, Branch 56, sitting as a Special Agrarian Court, on the issue of just compensation due herein respondents Eugenia Uy, Romualdo Uy, Jose Uy, Renato Uy, Aristio Uy, and Teresita Uy-Olveda (respondents) for their property taken under the Comprehensive Agrarian Reform Program (CARP).

The Facts

Respondents owned pieces of agricultural land in Matataja, Mulanay, Quezon which was devoted to coconut and corn production. A portion thereof had been brought under the Operation Land Transfer by virtue of Presidential Decree No. 27, and the rest, the subject property, has been placed in 1995 under CARP by virtue of Republic Act (R.A.) No. 6657.[2] Petitioner had initially valued the property at ₱516,484.84, and had, in 1999, tendered the same amount as just compensation. However, respondents rejected said valuation. When the Department of Agrarian Reform (DAR) issued Administrative Order No. 5, Series of 1998 (DAR A.O. No. 5-1998), petitioner updated the valuation to ₱1,048,635.38, but respondents still declined to accept. Forthwith, summary administrative

---

[1] Penned by then Court of Appeals Associate Justice Rodil V. Zalameda (now a Member of the Court), with Associate Justices Ramon M. Bato, Jr. and Victoria Isabel A. Paredes, concurring; *rollo*, pp. 44-63.

[2] *Rollo,* p. 14.

proceedings[3] commenced before the DAR Adjudication Board Provincial Adjudicator for Quezon Province and culminated in the affirmance of the latest valuation.[4]

Unsatisfied, respondents filed before the RTC of Lucena City a complaint for the determination of just compensation.[5] Sitting as a special agrarian court, the RTC rendered judgment on January 23, 2006 directing petitioner to recompute the just compensation due, but only for the portion of the land devoted to coconut production, inasmuch as the valuation of the portion planted with corn was not contested by the parties. In view of the divergent claims as to the number of coconut trees on the property, — *i.e.*, petitioner claiming there were 100 per hectare and respondents claiming there were 250 per hectare — the agrarian court specifically directed petitioner to perform the valuation based on the formula found in DAR A.O. No. 5-1998 in relation to the data on the local coconut population as certified by the Philippine Coconut Authority (PCA) and the Assessor's Office, with interest thereon for agrarian bonds, minus the amount already tendered and paid by petitioner.[6] The PCA certification, in particular, stated the average of 160 coconut trees per hectare in the locality.[7]

Petitioner appealed to the Court of Appeals (CA) in a petition docketed as CA-G.R. SP No. 93647.[8] In its June 29, 2007 Decision,[9] the CA declared the unreliability of the PCA certification for purposes of the coconut land valuation. It ordered the remand of the case to the agrarian court to determine anew the number of coconut trees on the coconut land for proper

---

[3] Pursuant to Section 16 of Republic Act No. 6657. The case was docketed as DARAB Case No. LV-0189-95; *id.*

[4] Decision dated July 22, 1997; *id.* at 197.

[5] *Id.* at 46.

[6] Penned by Judge Norma Chionglo-Sia; *id.* at 75-80.

[7] *Id.* at 78, 89-90.

[8] Entitled *Land Bank of the Philippines v. Uy*.

[9] *Rollo,* pp. 81-99.

appraisal, along with a directive to appoint commissioners for that purpose.

Per the Commissioners' Report, it appears that the commissioners had treated the entire property as coconut land appraised at the per-hectare value of ₱82,500.00 with 160 coconut trees per hectare, thereby making petitioner liable to pay ₱3,093.370.50 in just compensation for the entire property.[10] Subsequently, the agrarian court, at the instance of respondents, ordered the issuance of a writ of execution for the payment of said amount.[11] Petitioner opposed, based on prematurity of the issuance of the writ and on a lower valuation.

The Ruling of the Agrarian Court

The agrarian court issued an Order[12] on February 26, 2010 resolving petitioner's opposition. It found that the two lots covered by CARP in this case had an aggregate of 35.963 hectares devoted entirely to coconut production, appraised at ₱80,000.00 per hectare. Interestingly, it arrived at these figures by applying the rules on ratio and proportion between the number of coconut trees reported by the commissioners (212 per hectare) and the PCA data (160 per hectare), in relation to the PCA valuation of coconut lands at ₱60,000.00/hectare.[13] The disposition reads:

---

[10] *Id.* at 101-103.

[11] *Id.* at 113.

[12] *Id.* at 118-121.

[13] *Id.* at 120. The computation runs in this wise:

x x x x x x x x x

Total area covered by CARP – 35.963 ha.
Based on figures of PCA and Assessor's Office – there are 160 trees/ha. at ₱60,000.00/ha.
Based on Commissioners Report – there are 212 trees/ha.
By ratio and proportion – 160 trees/ha. divided by 212 trees/ha. is 75% only,
So $\frac{₱60,000.00/ha.}{75\%}$
= ₱80,000.00/ha.

x x x x x x x x x

WHEREFORE, premises considered, the Court resolves to reconsider and set aside its court order dated March 9, 2009 and instead a new order is hereby issued mandating the x x x Land Bank of the Philippines to pay [Eugenia Uy, et al.] the amount of ₱2,877,040.00 or less ₱516,484.[84] partial payment it advanced to the plaintiffs on November 19, 1999, leaving a balance of ₱2,360,555.20 with legal rate of interest per annum from 1995 until the full amount is fully paid.

SO ORDERED.[14]

Petitioner filed a motion for reconsideration, whereby it not only argued for a lower valuation of the 25.3660-hectare coconut portion at ₱65,063.88 per hectare, but also pointed out that a 10.5975-hectare portion of the landholding was in fact planted with corn and which had earlier been appraised at ₱18,361.94 per hectare. Per petitioner's own computation, it would be liable to pay ₱1,845,001.04 in just compensation for the entire property.[15]

With the denial of its motion for reconsideration,[16] petitioner once again appealed to the CA.[17]

The Ruling of the CA

In the now assailed Decision, the CA ruled that the agrarian court could not be faulted in treating the whole property as coconut land because that fact was never disputed by petitioner who is, thus, now estopped from claiming otherwise. It faulted the agrarian court, however, in failing to hear the parties on the application of the PCA data, considering that the same could not be taken judicial notice of. Be that as it may, it pointed out the inapplicability of said data, which it found to refer only to the average of the total number of coconut trees in the neighboring municipalities, hence, far from a reasonable estimate. Applying Section A.1 of DAR A.O. No. 5-1998 — because there was no

---

[14] *Id.* at 121.

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

[16] Order dated January 27, 2011, *id.* at 127.

[17] *Id.* at 126-166.

evidence of comparable sales on record and because the capitalized net income and market value were provided in the Commissioners' Report — it arrived at the valuation of ₱65,063.88 per hectare and pegged the just compensation for the whole 35.963-hectare property at ₱2,339,892.32. It then sanctioned the payment of interest on the said amount.

The CA ruled as follows:

WHEREFORE, premises considered, the Petition is PARTIALLY GRANTED. The assailed Orders are AFFIRMED with the following MODIFICATIONS —

1. The total just compensation is hereby computed at **two** million three hundred thirty-nine thousand eight hundred ninety-two pesos and 32/100 (₱2,339,892.32). From this amount ought to be deducted five hundred sixteen thousand four hundred eighty-four pesos and 80/100 (₱516,484.[84]), representing the amount initially paid/deposited by petitioner on 19 November 1999. As such, the total balance due to respondents is one million eight hundred twenty-three thousand four hundred seven pesos and 51/100 (₱1,823,407.51);

2. The balance payable shall earn legal interest at the rate of twelve percent per annum [(12% p.a)] from the time of taking until 30 June 2013. From 01 July 2013 until full payment, the computation of interest shall be at the new legal rate of six percent per annum (6% p.a.).

All other claims are hereby denied for lack of merit.

SO ORDERED.[18]

Hence, this Petition.

The Issues

1. WHETHER OR NOT THE CA GRAVELY ABUSED ITS DISCRETION IN RULING THAT THE ENTIRE SUBJECT PROPERTY WAS COCONUT [LAND;]

2. WHETHER OR NOT ESTOPPEL WILL LIE AGAINST THE PETITIONER; AND

---

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

3. WHETHER OR NOT THE PETITIONER SHOULD BE MADE LIABLE TO PAY INTEREST ON THE JUST COMPENSATION.[19]

The Ruling of the Court

There is partial merit in the Petition.

Prefatorily, we agree that the CA erred in finding the entire landholding to be coconut land and in declaring petitioner to be estopped from refuting the said finding.

The consistency by which petitioner has put forth the mixed nature of the entire landholding based on actual use as both coconut and corn-producing land is unmistakable in the proceedings below. In its comment on the Commissioners' Report and its opposition to the issuance of the writ of execution, petitioner has already called attention to portions of the earlier remand order which directed the recount of existing coconut trees on the coconut land, and which also affirmed the rest of the original findings of the agrarian court including the judgment on the cornland. In these pleadings, while arguing for a lower valuation based on its own accounting of the coconut population on the property, petitioner also alluded to the 10.5975-hectare corn portion of the land, the initial valuation of which has, in fact, never been questioned from the start.[20] This much is likewise apparent in petitioner's formal offer of evidence[21] containing documents denominated as "Land Use by Area in Hectares,"[22] the "Land Use Map,"[23] as well as the "Claim Folder Profile and Valuation Summary."[24] Moreover, in its motion for reconsideration of the February 26, 2010 Order, it called for the agrarian court to perform a separate valuation of the same

---

[19] *Id.* at 23.

[20] *Id.* at 107-108, 114-116.

[21] *Id.* at 198-201.

[22] *Id.* at 206.

[23] *Id.* at 211.

[24] *Id.* at 233.

corn-producing portion of the landholding.[25] Hence, that petitioner has admitted the nature of the landholding as purely coconut-producing land and is thereby estopped from claiming otherwise, is clearly a forgone and erroneous conclusion.

In this regard, there is validation on this point as found in the dispositive portion of the Decision in CA-G.R. SP No. 93647, which states –

> WHEREFORE, foregoing considered, the assailed Decision dated January 23, 2006, and Order, dated February 22, 2006 of the Regional Trial Court, Branch 56, Region IV, Lucena City, acting as a Special Agrarian Court in Civil Case No. 97-139 is PARTIALLY REVERSED insofar as it directed Land Bank of the Philippines to recompute the amounts due respondents on their coconut land based on the figures of the Philippine Coconut Authority and Assessor's Office: at 160 coconut trees per hectare or 2,720 trees for 17 hectares. Consequently, the case is REMANDED to the court *a quo* for the determination of the said matter with utmost dispatch. The trial judge is directed to appoint commissioners pursuant to Section 58 of RA 6657 to aid it in its examination and re-determination. The rest of the factual findings of the court *a quo*, being not disputed, are hereby AFFIRMED.
>
> SO ORDERED.[26]

In terms too plain to be mistaken, the above disposition has conclusively established that the entire property was planted with both corn and coconut when the same was taken by the State for distribution to landless farmers. As rightly asserted by petitioner, the original ruling on the cornland relative to its breadth and valuation, since uncontested, was among the findings that the above remand order had affirmed. The clear and precise directive to the agrarian court was only to determine the coconut tree population on the property for the proper appraisal of the coconut land which has been found to comprise only 17 hectares of the entire landholding.

One of the basic precepts governing eminent domain proceedings is that the nature and character of the land at the

---

[25] *Id.* at 124.

[26] *Id.* at 98.

time of taking is the principal criterion for determining how much just compensation should be given to the landowner. In other words, as of that time, all the facts as to the condition of the property and its surroundings, as well as its improvements and capabilities, should be considered.[27] The logic, thus, in the remand order for the limited purpose of accounting for the existing coconut trees on the 17-hectare coconut portion is consistent with this rule, because it is with reference to the exact condition of the property when it was taken by operation of the agrarian law at the beginning of the expropriation process.

To be sure, from the taking of the property in 1995 and all the time during which this case was first elevated to the CA, then referred back to the agrarian court, and appealed anew to the CA, the subject property has likely undergone physical changes which might explain the differences in the numbers propounded by the agrarian court at the first instance, the court-appointed commissioners after the remand of the case, and the same agrarian court in its second ruling. At this juncture, we find the valuation of the CA to be conclusively erroneous insofar as its determination exceeded the 17-hectare coconut land found to be the only point of contention between the parties.

Settled is the rule that in eminent domain, the determination of just compensation is principally a judicial function of the RTC acting as a special agrarian court. In the exercise of such judicial function, however, the RTC must consider both the guidelines set forth in R.A. No. 6657 and the valuation formula under the applicable Administrative Order of the DAR.[28] These guidelines ensure that the landowner is given full and fair equivalent of the property expropriated, in an amount that is real, substantial, full and ample.[29]

---

[27] *Apo Fruits Corp. v. Court of Appeals,* 565 Phil. 418, 434 (2007).

[28] *Department of Agrarian Reform v. Galle,* 741 Phil. 1, 4 (2014).

[29] *Spouses Mercado v. Land Bank of the Philippines,* 760 Phil. 846, 856 (2015).

Land Bank of the Philippines v. Yatco Agricultural Enterprises,[30] *Land Bank of the Philippines v. Peralta,*[31] and *Department of Agrarian Reform v. Spouses Sta. Romana*[32] are instructive on this point. *Yatco* reiterated that the determination of just compensation is a judicial function and the RTC, acting as a special agrarian court, has the original and exclusive power to determine the same. It also emphasized that in the exercise of its function, the court must be guided by the valuation factors under Section 17 of R.A. No. 6657, translated into a basic formula embodied DAR A.O. No. 5-1998 to guarantee that the compensation arrived at would not be absurd, baseless, arbitrary or contradictory to the objectives of the agrarian reform laws. *Peralta* confirmed the mandatory character of the said guidelines under Section 17 of R.A. No. 6657 and restated that the valuation factors under R.A. No. 6657 had been translated by the DAR into a basic formula as outlined in the same DAR A.O. No. 5-1998. In *Sta. Romana*, it was held that the RTC is not strictly bound by the formula created by the DAR, if the situations before it do not warrant its application. The RTC cannot be arbitrarily restricted by the formula outlined by the DAR. While the DAR provides a formula, "it could not have been its intention to shackle the courts into applying the formula in every instance. Thus, *Yatco* states that the RTC may relax the application of the DAR formula, if warranted by the circumstances of the case and provided the RTC explains its deviation from the factors or formula above-mentioned.

Section 17 of R.A. No. 6657 materially states:

SEC. 17. *Determination of Just Compensation.* – In determining just compensation, the cost of acquisition of the land, the current value of the like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and

---

[30] 724 Phil. 276 (2014).

[31] 734 Phil. 219 (2014).

[32] 738 Phil. 590 (2014).

economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

Whereas the formula in determining the land value under DAR A.O. No. 5-1998 reads:

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

Where: LV = Land Value
CNI = Capitalized Net Income
CS = Comparable Sales
MV = Market Value per Tax Declaration

The above formula shall be used if all the three factors are present, relevant, and applicable.

A.1 When the CS factor is not present and CNI and MV are applicable, the formula shall be:

LV= (CNI x 0.9) + (MV x 0.1)

A.2 When the CNI factor is not present, and CS and MV are applicable, the formula shall be:

LV= (CS x 0.9) + (MV x 0.1)

A.3 When both the CS and CNI are not present and only MV is applicable, the formula shall be:

LV = MV x 2

In no case shall the value of idle land using the formula MV x 2 exceed the lowest value of land within the same estate under consideration or within the same barangay or municipality (in that order) approved by LBP within one (1) year from receipt of claim folder.[33]

Essentially, the parties in this case have, since the inception of the proceedings, conceded the application of the above formula. In fact, neither of them had also disputed the other

---

[33] DAR Administrative Order No. 5 (1998) < https://media.dar.gov.ph/source/2018/09/12/ao-1998-05.pdf > (visited December 2, 2019).

variables to be factored in to the valuation, except only those pertaining to the coconut land's level of productivity per the PCA certification[34] — which is precisely the matter sought to be finally determined by the commissioners under the remand order.

While indeed special agrarian courts have a wide latitude of discretion in fixing just compensation and may, therefore, opt to overrule the commissioners' findings,[35] we find, however, that the agrarian court's deviation in this case, while probably warranted by the circumstances, has not nevertheless been adequately explained in the February 26, 2006 Order.[36] In particular, it did not state the reason in applying the rules on ratio and proportion between the numbers found by the commissioners and the data contained in the PCA certification which has already been found to be unreliable for purposes of the instant case. To repeat, the said certification could hardly be the basis — not even derivatively — of a just valuation because it pertains only to the average of the per-hectare number of coconut trees in the 22 municipalities within the locality, hence, is far from a reasonable estimate of the coconut population on the subject property. Suffice it to say that the said data must be taken proper judicial notice of,[37] yet it does not appear that the parties have been heard thereon. It also bears to stress the conspicuous absence of any reference by the agrarian court to the formula sanctioned by law for the determination of just compensation, as well as the date when the property was taken

---

[34] The Certification shows the farmgate price of coconut between ₱6.50 and ₱7.00 per kilo, or at the mean price of ₱6.75 per kilo; the market value of coconut lands at ₱50,000.00 to ₱60,000.00 per hectare, or at the mean price of ₱55,000.00 per hectare; and the number of coconuts a tree produces in a year and as to how many coconuts yield a kilo of copra, which is 32 coconuts a year per tree, with 4 coconuts comprising a kilo of copra.

[35] See *Land Bank of the Philippines v. Yatco Agricultural Enterprises, supra* note 30.

[36] See *Mateo v. Department of Agrarian Reform,* 805 Phil. 707, 729 (2017).

[37] *Rollo,* p. 57.

so that the just compensation could be properly valued in relation thereto.[38]

Land valuation is not an exact science, but an exercise fraught with inexact estimates requiring integrity, conscientiousness and prudence on the part of those responsible for it. What is important ultimately is that the land value approximates, as closely as possible, what is broadly considered to be just.[39] In this light, and given the shortcomings in the independent finding of the agrarian court on the specific issue of land valuation with respect to the coconut land, we take with approval the computation made by the CA based on raw data obtained by the commissioners during their inspection, and applying the guidelines under DAR A.O. No. 5-1998.

Hence, inasmuch as there is no evidence or data on record on Comparative Sales pertaining to similar properties in the locality of the subject landholding, and whereas the Capitalized Net Income and Market Value are variables contained in the Commissioners' Report which appears to have been properly heard,[40] the formula under Section 17.A.1 of DAR A.O. No. 5-1998 should be applied to determine the per-hectare value of the subject 17-hectare coconut land, hence —

LV = (CNI x 0.9) + (MV x 0.1) [per hectare]
LV = (₱66,780.00 x 0.[9]) + (₱49,618.80 x 0.[1]) [per hectare]
LV = ₱60,102.00 + ₱4,961.88 [per hectare]
LV = ₱65,063.88 per hectare[41]

We now resolve petitioner's liability to pay legal interest.

The concept of just compensation embraces not only the correct determination of the amount to be paid to the owners of the land, but also payment within a reasonable time from

---

[38] See *Land Bank of the Philippines v. Lajom,* 741 Phil. 655, 665 (2014).

[39] *Alfonso v. Land Bank of the Philippines,* 801 Phil. 217, 298 (2016), citing the Prefatory Statement in DAR A.O. No. 5 (1998).

[40] *Rollo,* pp. 109-112 and 114-117.

[41] *Id.* at 58.

its taking. Indeed, without prompt payment, compensation cannot be considered "just" inasmuch as the property owner is made to suffer the consequences of being immediately deprived of his land while being made to wait before actually receiving the amount necessary to cope with loss.[42] Thus, in *Apo Fruits Corporation v. Land Bank of the Philippines*,[43] we held that the payment of interest on unpaid just compensation is a basic requirement of fairness –

> The owner's loss, of course, is not only his property but also its income-generating potential. Thus, when property is taken, full compensation of its value must immediately be paid to achieve a fair exchange for the property and the potential income lost. The just compensation is made available to the property owner so that he may derive income from this compensation, in the same manner that he would have derived income from his expropriated property. If full compensation is not paid for the property taken, then the State must make up for the shortfall in the earning potential immediately lost due to the taking, and the absence of replacement property from which income can be derived; interest on the unpaid compensation becomes due as compliance with the constitutional mandate on eminent domain and as a basic measure of fairness.[44] x x x

In this light, we validate the pronouncement of the CA that petitioner is liable to pay interest on the just compensation still due the respondent property owners in this case, as just compensation is an effective forbearance on the part of the State. The just compensation due shall be based on the per-hectare value of the 17-hectare coconut land — herein determined to be ₱65,063.88 per hectare — compounded with the original valuation of the remaining cornland earlier determined without contest by the agrarian court, and finally deducting the amount of ₱516,484.84 originally tendered in 1999. Accordingly, petitioner's liability to pay interest shall be at 12% per annum, reckoned from the time of taking until

---

[42] *Land Bank of the Philippines v. Spouses Avancena*, 785 Phil. 755, 763-764 (2016).

[43] 647 Phil. 251 (2010).

[44] *Id.* at 276-277.

June 30, 2013 — the effective date of Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013 which amended the rate of legal interest to 6%. From July 1, 2013, the applicable interest rate shall then be 6% per annum until respondents shall have been fully compensated for their property.

WHEREFORE, the Decision of the Court of Appeals dated December 11, 2014 in CA-G.R. SP No. 118230 is hereby **MODIFIED**. Accordingly, petitioner is **DIRECTED** to pay the just compensation still due respondents Eugenia Uy, Romualdo Uy, Jose Uy, Renato Uy, Aristio Uy, and Teresita Uy-Olveda for the 17-hectare coconut land at the per-hectare value of ₱65,063.88 plus the original valuation attached to the cornland, minus the amount of ₱516,484.84 already tendered. From the time of taking until fully paid, the just compensation still due shall earn interest at 12% per annum until June 30, 2013, and at 6% per annum thereafter.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa (Working Chairperson), *Lazaro-Javier,* and *Inting,*[*] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 225181. December 5, 2019]

EAST WEST BANKING CORPORATION, *petitioner, vs.* **VICTORIAS MILLING COMPANY, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW, CIVIL PROCEDURE; APPEALS; DISMISSAL OF APPEALS BASED SOLELY ON TECHNICALITIES,

---

[*] Additional Member per Special Order No. 2726.

ESPECIALLY WHEN THE APPELLANT HAD SUBSTANTIALLY COMPLIED WITH THE JURISDICTIONAL REQUIREMENTS, IS FROWNED UPON. — Case law teaches us that dismissal of appeals based solely on technicalities, especially when the appellant had substantially complied with the jurisdictional requirements, is frowned upon. We do not see any cogent reason not to apply such principle in this case. Despite failure to furnish the CA with a copy of the instant petition, we cannot disregard the fact that a timely appeal was filed before this Court. Also, records show that the CA was furnished copies of the notices issued by this Court, as well as other pleadings pertaining to the instant petition. The CA was, thus, notified of the existence of the instant petition, which could have prompted it to be more circumspect in issuing the entry of judgment. For this reason, VMC's Motion to Dismiss is **DENIED**.

2. MERCANTILE LAW; CORPORATE REHABILITATION; RESPONDENT HAS ALREADY EFFECTIVELY EXERCISED ITS OPTION TO PAY/REDEEM THE CONVERTIBLE NOTES IN ACCORDANCE WITH THE TERMS OF THEIR AGREEMENT; A CONTRACT IS THE LAW BETWEEN THE PARTIES, AND COURTS HAVE NO CHOICE BUT TO ENFORCE SUCH CONTRACT SO LONG AS IT IS NOT CONTRARY TO LAW, MORALS, GOOD CUSTOMS, OR PUBLIC POLICY. — We find that the CA committed no reversible error in sustaining the SEC's denial of the Motion to Compel VMC to allow East West Bank to convert the CN into VMC's common shares. This is a classic case of interpretation of contracts. Both parties took a course of action, both invoking certain provisions of their agreement under the ARP, DRA, and the CN. VMC exercised its option to pay/redeem on one hand, while East West Bank insisted on exercising its option to convert. The controversy arose when East West Bank asserted that its option to convert is superior over VMC's option to pay/redeem. What is incumbent upon this Court, therefore, is to determine which party exercised its right or option in accordance with the terms of their agreement under the ARP, DRA, and CN to give effect to the basic rule that a contract is the law between the parties, and courts have no choice but to enforce such contract so long as it is not contrary to law, morals, good customs, or public policy. x x x. x x x [V]MC was mandated by their agreement to pre-pay its restructured loans when its

net cash flow exceeds the projected cash flow in a particular crop year. Upon full payment of said loans, VMC was further obligated to use its excess cash flow to pay or redeem the CNs it issued to its creditors. This is precisely what VMC undertook to accomplish when it sent written notices to its creditors to pay/redeem the CNs after it was able to settle all its restructured loans. x x x. It is clear from the provision of the [subject CN] that upon delivery of such notice to redeem, VMC has already effectively exercised its option to pay/redeem.

3. ID.; ID.; THE SECURITIES AND EXCHANGE COMMISSION (SEC) HEARING PANEL UNDULY SUPPLIED THE TERMS OF THE AGREEMENT WHEN IT RULED THAT THE PETITIONER HAS THE RIGHT TO REJECT RESPONDENT'S EXERCISE OF ITS OPTION AND PERFORMANCE OF ITS DUTY TO PAY/REDEEM THE CONVERTIBLE NOTES; A CONTRACT MUST BE INTERPRETED FROM THE LANGUAGE OF THE CONTRACT ITSELF ACCORDING TO ITS PLAIN MEANING; IT IS NOT THE PROVINCE OF THE COURT OR TRIBUNAL TO ALTER A CONTRACT BY CONSTRUCTION OR TO MAKE A NEW CONTRACT FOR THE PARTIES, FOR ITS DUTY IS CONFINED TO THE INTERPRETATION OF THE ONE WHICH THEY HAVE MADE FOR THEMSELVES, WITHOUT REGARD TO ITS WISDOM OR FOLLY, AS THE COURT CANNOT SUPPLY MATERIAL STIPULATIONS OR READ INTO THE CONTRACT WORDS WHICH IT DOES NOT CONTAIN. — East West Bank's refusal to allow VMC to exercise its option and perform its obligation to pay/redeem finds no basis in their agreement. As correctly ruled by the CA, the Panel erred in ruling that while it is mandatory for VMC to pay/redeem the CNs under Section 13.2 of the DRA and paragraph 5 of the ARP, East West Bank has no parallel mandatory obligation to accept the same under their agreement. It will be oft-repeated in this disquisition that the cardinal rule in contract interpretation is that a contract must be interpreted from the language of the contract itself according to its plain meaning. The court's or tribunal's purpose in examining a contract is to interpret the intent of the contracting parties, as objectively manifested by them. It is not the province of the court or tribunal to alter a contract by construction or to make a new contract for the parties; its duty is confined to the

interpretation of the one which they have made for themselves, without regard to its wisdom or folly, as the court cannot supply material stipulations or read into the contract words which it does not contain. In ruling that East West Bank has the right to reject VMC's exercise of its option and performance of its duty to pay/redeem the CNs, the Panel unduly supplied the terms of the agreement. Indeed, if it was the parties' intention to give East West Bank the superior right to disallow VMC's exercise of its option and/or compliance with its obligation to pay/redeem, then the ARP, DRA, and CN could have simply stated so but they did not. Further, to subscribe to such ruling would render nugatory the obligation mandated upon and/or option given to VMC to pay/redeem the CNs granted to VMC under the agreement. If a preferential right is given to East West Bank to reject VMC's payment/redemption, then no option and/or obligation to pay/redeem should have been given to VMC as the same can, at any rate, be overridden by East West Bank at its option.

4. ID.; ID.; PETITIONER HAS NO PREFERENTIAL RIGHT TO EXERCISE ITS OPTION TO CONVERT THE CONVERTIBLE NOTES (CN) TO COMMON SHARES; THE PROVISIONS OF COMPLEMENTARY CONTRACTS, LIKE THE ALTERNATIVE REHABILITATION PLAN (ARP), DEBT RESTRUCTURING AGREEMENT (DRA), AND CONVERTIBLE NOTES (CN), SHOULD BE READ IN THEIR ENTIRETY AND CONSTRUED TOGETHER TO ARRIVE AT THEIR TRUE MEANING. — East West Bank specifically invokes the following provision of the CN to support its contention that its option to convert is superior than VMC's option to pay/redeem, to wit: Notwithstanding the foregoing, the conversion of this Note into common shares of the Issuer at the option of the Holder during the conversion period shall prevail over the exercise by the Issuer of its option to redeem this Note. Foremost, a single provision in the CN cannot, however, be relied upon to give life to the intention of the parties. Well-established is the principle that provisions of complementary contracts, like the ARP, DRA, and CN, should be read in their entirety and construed together to arrive at their true meaning. As can be gleaned from the foregoing, the DRA was executed to give effect to the objective of the ARP, while the CN was issued as a debt reduction measure pursuant to the DRA. As such, their provisions cannot be segregated and then

made to control. Thus, one stipulation in the CN cannot be taken singly and disregard the others. As discussed, there was nothing in the parties' agreement that gives unbridled preferential right to East West Bank to exercise its option to convert.

5. ID.; ID.; THE DRA AND CN PROVISIONS ARE CLEAR THAT THE HOLDER OF THE CN MAY EXERCISE ITS RIGHT OR OPTION TO CONVERT ONLY "DURING THE DESIGNATED CONVERSION PERIODS;" WHERE THE LANGUAGE OF A WRITTEN CONTRACT IS CLEAR AND UNAMBIGUOUS, THE CONTRACT MUST BE TAKEN TO MEAN THAT WHICH, ON ITS FACE, IT PURPORTS TO MEAN, UNLESS SOME GOOD REASON CAN BE ASSIGNED TO SHOW THAT THE WORDS SHOULD BE UNDERSTOOD IN A DIFFERENT SENSE; THE INTENTION OF THE PARTIES MUST BE GATHERED FROM THE PLAIN AND LITERAL LANGUAGE OF SUCH AGREEMENT, AND FROM THAT LANGUAGE ALONE. — [E]ast West Bank's contention that its option to convert may be exercised at any time as the conversion schedule under the ARP, DRA, and CN pertains only to the actual conversion and not to the exercise of the right to convert, is unfounded. We emphasize the fundamental rule in the interpretation of contracts that where the language of a written contract is clear and unambiguous, the contract must be taken to mean that which, on its face, it purports to mean, unless some good reason can be assigned to show that the words should be understood in a different sense. The intention of the parties must be gathered from the plain and literal language of such agreement, and from that language alone. East West Bank's interpretation of this particular provision on the conversion schedule does not find support to the clear and simple language of the said provision and the relevant provisions thereto. The DRA and CN provisions are emphatic and clear that the holder of the CN may exercise its right or option to convert only "during the designated conversion periods."

6. ID.; ID.; RESPONDENT'S PAYMENT IN CHECKS DOES NOT AFFECT THE EFFICACY OR LEGAL RAMIFICATIONS OF THE EXERCISE OF ITS OPTION TO PAY/REDEEM THE CONVERTIBLE NOTES, AS THE PETITIONER DID NOT REFUSE TO ACCEPT THE SAME FOR NOT BEING A LEGAL TENDER; IN GENERAL, A CHECK DOES NOT

CONSTITUTE LEGAL TENDER, AND THAT THE CREDITOR MAY VALIDLY REFUSE IT AS PAYMENT; CONVERSELY, A CHECK MAY STILL BE A VALID PAYMENT IF THE CREDITOR DOES NOT REFUSE IT AS SUCH. — The matter of consignation is not at all relevant to the issue of whether or not VMC had effectively exercised its option to redeem the CN. The subject CN expressly states that "the Issuer may exercise its option to redeem [the CN] at any time prior to Final Redemption Date *by sending written notice thereof to the Holder*, which notice, when so sent, shall be deemed final and irrevocable." Clearly, by mere written notice, VMC had already effectively exercised its option to redeem. Neither will VMC's payment in checks affect the efficacy or legal ramifications of the exercise of its option to pay/redeem the CN. True, jurisprudence holds that, in general, a check does not constitute legal tender, and that the creditor may validly refuse it as payment. Conversely, a check may still be a valid payment if the creditor does not refuse it as such. In this case, VMC delivered written notices and checks several times to East West Bank to exercise its option to pay/redeem. Records, however, show no instance when East West Bank refused to accept the same for not being a legal tender. What East West Bank continuously refused to accept is VMC's exercise of its option to pay/redeem the CN, which refusal, as we have established, is improper and unfounded. East West Bank cannot, therefore, be allowed to use such afterthought as an excuse to justify its unfounded refusal to allow VMC to pay/redeem the CN. Thus, we still hold that VMC had already effectively exercised its option to pay/redeem the CN which East West Bank cannot validly refuse.

APPEARANCES OF COUNSEL

Divina Law for petitioner.
Paner Hosaka & Ypil for respondent.

D E C I S I O N

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

This is a Petition for Review on *Certiorari*[1] under Rule 45, seeking to annul and set aside the Decision[2] dated January 19, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 141969, which affirmed the Decision[3] dated August 11, 2015 of the Securities and Exchange Commission (SEC) *En Banc* in SEC *En Banc* Case No. 04-15-368. The CA's Resolution[4] dated May 16, 2016, which denied petitioner East West Banking Corporation's (East West Bank) motion for reconsideration is likewise impugned herein.

Factual Antecedents

On July 4, 1997, respondent Victorias Milling Company, Inc. (VMC) filed with the SEC, a Petition for Declaration of Suspension of Payments; the Approval of a Rehabilitation Plan; and the Appointment of a Management Committee, docketed as SEC Case No. 07-97-5693.[5]

Acting upon the said petition, SEC's Securities Investigation and Clearing Department (SICD), issued an Order dated July 8, 1997, that suspended all actions or claims against VMC pending before any court, tribunal, office, board, and/or the SEC.[6]

The appointed Management Committee of VMC submitted a Rehabilitation Plan, which was approved by the SICD in its Order dated June 2, 1999. On August 17, 1999, said Rehabilitation Plan was amended and further modified on

---

[1] *Rollo,* pp. 3-54.

[2] Penned by Associate Justice Franchito N. Diamante, with Associate Justices Rodil V. Zalameda (now a Member of the Court) and Carmelita Salandanan Manahan, concurring; *id.* at 61-83

[3] *Id.* at 127-146.

[4] *Id.* at 84-85.

[5] *Id.* at 62.

[6] *Id.*

August 19, 1999. Finally, on November 29, 2000, the SICD approved the Alternative Rehabilitation Plan[7] (ARP) proposed by the VMC Management Committee.[8]

To restructure VMC's outstanding loan obligation pursuant to the ARP, VMC and its creditors, which include East West Bank, executed a Debt Restructuring Agreement[9] (DRA) dated April 29, 2002. Therein, it was agreed that as a debt restructuring measure, VMC will issue long-term commercial papers or debt securities in the form of Convertible Notes (CN) in favor of VMC's creditors. These CNs may either be converted to common shares of VMC or paid/redeemed by VMC from the holders thereof in accordance with the terms and conditions set forth in the parties' agreement.

Accordingly, on September 1, 2003, VMC issued a CN[10] in favor of East West Bank with reference PN No. 898303000211, whereby VMC unconditionally promised to pay East West Bank in immediately available funds, the principal amount of ₱200,396,734.00.

On May 31, 2013, VMC was able to settle all its restructured loans. Hence, VMC started to pay/redeem the CNs from the respective holders thereof pursuant to the ARP and DRA. All creditors accepted VMC's payment/redemption except for East West Bank.[11]

From February 24, 2014 to April 2, 2014, VMC repeatedly sent written notices to East West Bank as regards its payment/redemption of the CN. East West Bank, however, refused to accept such payment/redemption and insisted on its right to convert the CN to VMC common shares.[12]

---

[7] *Id.* at 151-154.

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

[9] *Id.* at 155-208.

[10] *Id.* at 209-211.

[11] *Id.* at 69.

[12] *Id.* at 69-71.

On March 27, 2014, the East West Bank Board of Directors approved the sale of the CN. In a letter dated March 31, 2014, East West Bank informed VMC of said approval and that it has commenced the required publication therefor.

Insisting on its right and duty to pay/redeem the CN, in a letter dated March 26, 2014, VMC sent two checks, amounting to a total of ₱185,656,020.47 as partial payment/redemption.

In a letter dated April 2, 2014, East West Bank informed VMC that it will not avail of VMC's partial offer of redemption and as such, it returned the two checks.

On April 3, 2014, East West Bank reiterated to VMC that its Board of Directors had approved the sale of the CN and published on March 30-31, 2014, and April 1-5, 2014, the required notice therefor.

Thereafter, in a letter dated April 3, 2014, which was received by East West Bank on April 4, 2014, VMC transmitted additional checks, amounting to a total of ₱180,469,879.70 representing the final payment/redemption for the CN to complete its full amount, consisting of the principal plus interest.[13]

East West Bank, however, still refused to accept the offer of payment/redemption and returned all the checks to VMC.[14]

Thus, in a letter dated September 25, 2014, VMC consigned two checks to Atty. Luis Ma. G. Uranza, VMC's Rehabilitation Receiver, amounting to a total of ₱366,125,900.17, representing the total payment/redemption value of the CN.[15]

In a letter dated October 14, 2015, East West Bank notified VMC that it was exercising its option to convert 13% of its outstanding unconverted CN in accordance with Section 16(h)(v)[16] of the DRA and paragraph 5[17] of the CN. In response,

---

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

[14] *Id.* at 72.

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

[16] "(v) Any or all outstanding unconverted [CNs] which were not converted

VMC informed East West Bank that it has no outstanding CN in the records of VMC as the CN issued to it had already been paid/redeemed.[18]

This prompted East West Bank to file with the SEC a **Motion to Compel** VMC to convert 13% of its outstanding CN into VMC common shares.[19]

Proceedings Before the SEC

In an Order[20] dated March 19, 2015, the SEC Special Hearing Panel 1 (Panel) granted the said motion, thus:

Considering all the foregoing, [East West Bank's] Motion is hereby **GRANTED** subject to the following condition:

1. Adoption of a Board Resolution authorizing/confirming the refusal to accept the payment/redemption of the Convertible Note by VMC and the exercise of its right to convert the CN into VMC common shares;

Further, VMC is hereby directed to convert 13% of the outstanding unconverted convertible note held by [East West Bank] into VMC common shares within fifteen (15) days from presentation to it of the Board Resolution.

SO ORDERED.[21]

---

during the First, Second, Third, and Fourth Conversion Periods may be converted within a period beginning on the thirty first (31st) day after the end of the seventh (7th) year from Issue Date and shall expire sixty (60) days thereafter (the "Fifth Conversion Period")." *Id.* at 171.

[17] "The Holder has the right and option to convert this Note into common shares of the Issuer during the designated conversion periods x x x. A Final Conversion Period, x x x, shall be allowed for the conversion of any or all Notes which were not converted during the previous conversion periods." *Id.* at 209-210.

[18] *Id.* at 73.

[19] *Id.*

[20] *Id.* at 267-277.

[21] *Id.* at 277.

The Panel ratiocinated that while it is mandatory for VMC to pay/redeem the CNs under Section 13.2[22] of the DRA and paragraph 5(b)[23] of the ARP, it is not equally mandatory on the part of East West Bank to receive and accept the same.[24]

On appeal, in its August 11, 2015 Decision,[25] the SEC *En Banc* reversed and set aside the Panel's Order. The SEC *En Banc* examined the ARP, DRA, and CN and found that, contrary to the Panel's ruling, there was nothing in the DRA and CN that states that East West Bank is not obligated to accept the payment/redemption made by VMC. In fact, according to the SEC *En Banc*, East West Bank agreed and was bound by the provisions of the DRA on Mandatory Pre-Payment.[26]

The SEC *En Banc* also ruled that while it is true that East West Bank's right to convert shall prevail over VMC's right to pay/redeem under the CN, this is true and available only

---

[22] "13.2 In the event that the Restructured Loans are fully settled before the 15[-]year repayment period, VMC Cash Flow in excess of Capital Expenditure requirements shall be used to pay/redeem the [CN] (principal plus accumulated interest)." *Id.* at 167.

[23] "b. should the [₱]3.055 Billion restructured debt be fully settled before the 15-year repayment period, VMC cash flow shall in excess of Capital Expenditure requirements be used to pay/redeem the convertible notes (principal plus accumulated interest)." *Id.* at 153.

[24] *Id.* at 273-274.

[25] *Supra* note 3.

[26] "Section 13 — MANDATORY PRE-PAYMENT

13.1 In the event VMC's Net Cash Flow at the end of a crop year exceeds the Projected Net Cash Flow for that particular crop year as provided for in its [ARP], VMC shall pre-pay in inverse order (last maturities first) the Restructured Loans without penalty equal to Seventy[-]Five Percent (75%) of the incremental Net Cash Flow. The term Net Cash Flow is defined as Net Income After Tax plus Depreciation Charges plus Other Non-Cash Charges.

13.2 In the event that the Restructured Loans are fully settled before the 15[-]year repayment period, VMC Cash Flow in excess of Capital Expenditure requirements shall be used to pay/redeem the [CN] (principal plus accumulated interest)." *Id.* at 166-167.

during the conversion periods.[27] The holder's right to convert is not superior at all times because the terms and conditions of the DRA and CN provide otherwise. This holds especially true in this case when the right to convert was exercised by East West Bank outside of the conversion period and after VMC had already asserted its right to pay/redeem.[28]

It disposed, thus:

WHEREFORE, premises considered, the instant *Appeal* is hereby **GRANTED**. The Special Hearing Panel 1's Order dated 19 March 2015 is hereby **REVERSED AND SET ASIDE**. Thus, [East West Bank's] *Motion to Compel [VMC] to Allow [East West Bank] to Exercise its Option for the Conversion of the [Unconverted] [CN]* filed with the Special Hearing Panel 1 is hereby **DENIED**.

SO ORDERED.[29]

Aggrieved, East West Bank filed a petition for review before the CA.

The CA Ruling

In its January 19, 2016 assailed Decision, the CA affirmed the SEC *En Banc*'s Decision, finding that in redeeming the CN, VMC was merely complying with the "apparent, basic, and direct" language or terms of the ARP, DRA, and CN, which bind the parties. Pursuant to the agreement, the payment or redemption of the CN became final and irrevocable when VMC sent East West Bank a written notice that it was exercising its option or right to redeem the CN. East West Bank's refusal to accept and honor the payment/redemption for it to invoke its

---

[27] "The Issuer may exercise its option to redeem this Note at any time prior to Final Redemption Date by sending written notice thereof to the Holder, which notice, when so sent, shall be deemed final and irrevocable. Notwithstanding the foregoing, the conversion of this Note into common shares of the Issuer at the option of the Holder *during the conversion period* shall prevail over the exercise by the Issuer of its option to redeem this Note." *Id.* at 210. (Italics supplied)

[28] *Id.* at 143.

[29] *Id.* at 146.

right to convert the CN was unfounded as the payment/redemption was done outside the conversion period when East West Bank had no option to convert the CN.[30]

The CA also ruled that the SEC *En Banc's* Decision was consistent with the very purpose of rehabilitation proceedings, which is to enable the company subject thereof to gain a new lease on life and pay the claims of its creditors from its earnings. According to the CA, if VMC was prevented from paying/redeeming the CNs it issued, it will not be relieved of the weight of its outstanding debts.[31]

The CA, disposed thus:

> **WHEREFORE,** in view of the foregoing, the instant Petition is hereby **DENIED** and the Decision dated August 11, 2015 of the Securities and Exchange Commission *En Banc* in SEC EN Banc Case No. 04-15-368 (SEC Case No. 07-97-5693) is **AFFIRMED**.
>
> Consequently, [East West Bank's] application for injunctive relief is likewise **DENIED**.
>
> **SO ORDERED.**[32]

East West Bank's motion for reconsideration was likewise denied in the CA's May 16, 2016 assailed Resolution:

> Accordingly, the Motion for Reconsideration is hereby **DENIED**.
>
> **SO ORDERED.**[33]

Hence, this petition.

Ultimately, East West Bank's arguments are anchored upon its claim that its right or option to convert the CN to VMC's common shares is superior than VMC's right or option to pay/redeem the CN. VMC, on the other hand, subscribes to the SEC *En Banc* and the CA's findings and conclusion.

---

[30] *Id.* at 78-81.

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

[32] *Id.* at 83.

[33] *Id.* at 85.

In a Supplemental Comment/Opposition,[34] VMC manifested that on September 23, 2016, the CA has already issued an entry of judgment in this case considering that there was no petition filed before the Supreme Court. Apparently, East West Bank failed to furnish the CA with a copy of the instant petition. Thus, invoking Circular No. 19-91,[35] VMC seeks the outright dismissal of the instant petition.

A Motion to Dismiss[36] dated February 3, 2017, was thereafter filed for that purpose, arguing that the assailed CA Decision and Resolution had already became final and executory by virtue of the entry of judgment issued by the CA therefor.

Issues

(1) Should the Motion to Dismiss be granted?

(2) Did the CA err in sustaining the SEC's denial of East West Bank's Motion to Compel VMC to convert its CN to common stocks?

This Court's Ruling

We first address the procedural issue raised by VMC in its Motion to Dismiss.

Case law teaches us that dismissal of appeals based solely on technicalities, especially when the appellant had substantially complied with the jurisdictional requirements, is frowned upon.[37] We do not see any cogent reason not to apply such principle in this case. Despite failure to furnish the CA with a copy of the instant petition, we cannot disregard the fact that a timely appeal was filed before this Court. Also, records show that the CA was furnished copies of the notices issued

---

[34] *Id.* at 672-676.

[35] SUBJECT: PRESCRIBING STRICT COMPLIANCE WITH SECTIONS 3 AND 5 IN RELATION TO SECTION 10 OF RULE 13 OF THE RULES OF COURT ON SERVICE OR PETITION OR MOTION FOR EXTENSION, Effective August 13, 1991.

[36] *Rollo,* pp. 782-801.

[37] *Jaro v. Court of Appeals,* 427 Phil. 532, 535-536 (2002).

by this Court, as well as other pleadings pertaining to the instant petition. The CA was, thus, notified of the existence of the instant petition, which could have prompted it to be more circumspect in issuing the entry of judgment.

For this reason, VMC's Motion to Dismiss is **DENIED**.

Nevertheless, the Petition still fails substantively. We find that the CA committed no reversible error in sustaining the SEC's denial of the Motion to Compel VMC to allow East West Bank to convert the CN into VMC's common shares.

This is a classic case of interpretation of contracts. Both parties took a course of action, both invoking certain provisions of their agreement under the ARP, DRA, and the CN. VMC exercised its option to pay/redeem on one hand, while East West Bank insisted on exercising its option to convert. The controversy arose when East West Bank asserted that its option to convert is superior over VMC's option to pay/redeem.

What is incumbent upon this Court, therefore, is to determine which party exercised its right or option in accordance with the terms of their agreement under the ARP, DRA, and CN to give effect to the basic rule that a contract is the law between the parties, and courts have no choice but to enforce such contract so long as it is not contrary to law, morals, good customs, or public policy.[38]

It is imperative thus, to examine the relevant provisions of the ARP, DRA, and the subject CN.

Paragraph 5(b), Part IV of the ARP provides:

> b. should the [₱]3.055 Billion restructured debt be fully settled before the 15-year repayment period, **VMC cash flow shall in excess of Capital Expenditure requirements be used to pay/redeem the convertible notes (principal plus accumulated interest).** (Emphasis supplied)[39]

---

[38] *Norton Resources and Development Corporation v. All Asia Bank Corporation,* 620 Phil. 381, 391-392 (2009).

[39] *Rollo,* p. 76.

This was reiterated in Section 13 of the DRA, *viz.*:

Section 13
MANDATORY PRE-PAYMENT

13.1 **In the event VMC's Net Cash Flow at the end of a crop year exceeds the Projected Net Cash Flow for that particular crop year as provided for in its [ARP], VMC shall pre-pay** in inverse order (last maturities first) **the Restructured Loans** without penalty equal to Seventy[-]Five Percent (75%) of the incremental Net Cash Flow. The term Net Cash Flow is defined as Net Income After Tax plus Depreciation Charges plus Other Non-Cash Charges.

13.2 **In the event that the Restructured Loans are fully settled before the 15[-]year repayment period, VMC Cash Flow in excess of Capital Expenditure requirements shall be used to pay/redeem the [CN] (principal plus accumulated interest).**[40] (Emphases supplied)

Relatedly, the subject CN provides for VMC's unconditional promise to pay the CN value in immediately available funds:

CONVERTIBLE NOTE

Amount: PhP 200,396,734.00 Issue Date: September 1, 2003
Place of Issue: Makati City

FOR VALUE RECEIVED, [VMC], x x x (the "ISSUER") hereby unconditionally **promises to pay** [EAST WEST BANK] (the "HOLDER") x x x on September 1, 2018 **in immediately available funds,** the principal amount of TWO HUNDRED MILLION THREE HUNDRED NINETY SIX THOUSAND SEVEN HUNDRED THIRTY FOUR & 00/100 PESOS (PhP200,396,734.00) at the rate of Eight Percent (8%) per annum, subject to the terms and conditions provided hereinbelow.[41] (Emphasis Supplied)

Clearly from the foregoing, VMC was mandated by their agreement to pre-pay its restructured loans when its net cash flow exceeds the projected cash flow in a particular crop year. Upon full payment of said loans, VMC was further obligated to use its excess cash flow to pay or redeem the CNs it issued

---

[40] *Id.* at 166-167.

[41] *Id.* at 209.

to its creditors. This is precisely what VMC undertook to accomplish when it sent written notices to its creditors to pay/redeem the CNs after it was able to settle all its restructured loans.

The subject CN also provides that:

> [VMC] shall have the option to redeem this Note by paying [East West Bank] in cash an amount equivalent to the subscription price, plus all accrued interest beginning at the end of the third (3rd) year from the Issue Date and ending on the last day of the fifteenth (15th) year from Issue Date (the "Final Redemption Date"). **[VMC] may exercise its option to redeem this Note at any time prior to Final Redemption Date by sending written notice thereof to [East West Bank], which notice, when so sent, shall be deemed final and irrevocable.**[42] x x x. (Emphasis supplied)

It is clear from the said provision that upon delivery of such notice to redeem, VMC has already effectively exercised its option to pay/redeem. Notably, VMC's notices to pay/redeem were coupled with payments which were returned by East West Bank. East West Bank posits that it may refuse to accept such notice and instead opts to convert the CN to common stocks.

We cannot subscribe to East West Bank's position.

East West Bank's refusal to allow VMC to exercise its option and perform its obligation to pay/redeem finds no basis in their agreement. As correctly ruled by the CA, the Panel erred in ruling that while it is mandatory for VMC to pay/redeem the CNs under Section 13.2 of the DRA and paragraph 5 of the ARP, East West Bank has no parallel mandatory obligation to accept the same under their agreement.

It will be oft-repeated in this disquisition that the cardinal rule in contract interpretation is that a contract must be interpreted from the language of the contract itself according to its plain meaning.[43] The court's or tribunal's purpose in examining a

---

[42] *Id.* at 210.

[43] *Adriatico Consortium, Inc. v. Land Bank of the Philippines*, 623 Phil. 1027, 1040 (2009).

contract is to interpret the intent of the contracting parties, as objectively manifested by them.[44] It is not the province of the court or tribunal to alter a contract by construction or to make a new contract for the parties; its duty is confined to the interpretation of the one which they have made for themselves, without regard to its wisdom or folly, as the court cannot supply material stipulations or read into the contract words which it does not contain.[45]

In ruling that East West Bank has the right to reject VMC's exercise of its option and performance of its duty to pay/redeem the CNs, the Panel unduly supplied the terms of the agreement. Indeed, if it was the parties' intention to give East West Bank the superior right to disallow VMC's exercise of its option and/or compliance with its obligation to pay/redeem, then the ARP, DRA, and CN could have simply stated so but they did not. Further, to subscribe to such ruling would render nugatory the obligation mandated upon and/or option given to VMC to pay/redeem the CNs granted to VMC under the agreement. If a preferential right is given to East West Bank to reject VMC's payment/redemption, then no option and/or obligation to pay/redeem should have been given to VMC as the same can, at any rate, be overridden by East West Bank at its option.

East West Bank specifically invokes the following provision of the CN to support its contention that its option to convert is superior than VMC's option to pay/redeem, to wit:

> Notwithstanding the foregoing, the conversion of this Note into common shares of the Issuer at the option of the Holder during the conversion period shall prevail over the exercise by the Issuer of its option to redeem this Note.[46]

Foremost, a single provision in the CN cannot, however, be relied upon to give life to the intention of the parties. Well-established is the principle that provisions of complementary

---

[44] *Abad v. Goldloop Properties, Inc.,* 549 Phil. 641, 654 (2007).

[45] *Limpo v. Court of Appeals,* 517 Phil. 529, 535 (2006).

[46] *Rollo,* p. 210.

contracts, like the ARP, DRA, and CN, should be read in their entirety and construed together to arrive at their true meaning. As can be gleaned from the foregoing, the DRA was executed to give effect to the objective of the ARP, while the CN was issued as a debt reduction measure pursuant to the DRA. As such, their provisions cannot be segregated and then made to control.[47] Thus, one stipulation in the CN cannot be taken singly and disregard the others. As discussed, there was nothing in the parties' agreement that gives unbridled preferential right to East West Bank to exercise its option to convert.

At any rate, the invocation of such provision is misplaced. To reiterate for emphasis, said provision states that "notwithstanding [VMC's exercise of its option to pay/redeem the CN], the conversion of [the CN] into common shares of [VMC] at the option of [East West Bank] *during the conversion period* shall prevail over the exercise by [VMC] of its option to redeem this [CN]." It is undisputed that VMC exercised its option to pay/redeem the CN *outside* the conversion period. Thus, at such time, no preference was given to East West Bank's option to convert. In fact, East West Bank has no conversion privilege to exercise at all at that time considering that they were still outside the conversion period. It is, thus, improper and against the terms of their agreement, if not arbitrary on the part of East West Bank, to refuse and disallow VMC to exercise its option and perform its obligation to pay/redeem the CN.

Likewise, East West Bank's contention that its option to convert may be exercised at any time as the conversion schedule under the ARP, DRA, and CN pertains only to the actual conversion and not to the exercise of the right to convert, is unfounded.

We emphasize the fundamental rule in the interpretation of contracts that where the language of a written contract is clear and unambiguous, the contract must be taken to mean that which, on its face, it purports to mean, unless some good reason can

---

[47] *Spouses Rigor v. Consolidated Orix Leasing and Finance Corporation,* 436 Phil. 243, 249 (2002).

be assigned to show that the words should be understood in a different sense.[48] The intention of the parties must be gathered from the plain and literal language of such agreement, and from that language alone.[49]

East West Bank's interpretation of this particular provision on the conversion schedule does not find support to the clear and simple language of the said provision and the relevant provisions thereto. The DRA and CN provisions are emphatic and clear that the holder of the CN may exercise its right or option to convert only "during the designated conversion periods." Specifically, the DRA provides:

(h) Convertibility Feature:

The [CNs] shall be converted at the option of the [holder] thereof into common shares of VMC at a ratio of one (1) [CN] to One (1) common share of VMC, **subject to the following schedule:**[50] (Emphasis supplied)

---

[48] *Norton Resources and Development Corporation v. All Asia Bank Corporation,* 620 Phil. 381, 389 (2009).

[49] *Id.* at 388-389.

[50] (i) Maximum of Twenty Percent (20%) of the original Issue Amount of the Convertible Notes may be converted within a period beginning on the thirty first (31st) day after the end of the third (3rd) year from Issue Date and shall expire sixty (60) days thereafter (the "First Conversion Period"); (ii) Maximum of Twenty Percent (20%) of the original Issue Amount of the Convertible Notes may be converted within a period beginning on the thirty first (31st) day after the end of the fourth (4th) year from Issue Date and shall expire sixty (60) days thereafter (the "Second Conversion Period"); (iii) Maximum of Twenty Percent (20%) of the original Issue Amount of the Convertible Notes may be converted within a period beginning on the thirty first (31st) day after the end of the fifth (5th) year from Issue Date and shall expire sixty (60) days thereafter (the "Third Conversion Period"); (iv) Maximum of Twenty Percent (20%) of the original Issue Amount of the Convertible Notes may be converted within a period beginning on the thirty first (31st) day after the end of the sixth (6th) year from Issue Date and shall expire sixty (60) days thereafter (the "Fourth Conversion Period"); (v) Any or all outstanding unconverted Convertible Notes which were not converted during the First, Second, Third, and Fourth Conversion Periods may be converted within a period beginning on the thirty first (31st) day after the end of the seventh (7th) year from Issue Date and shall expire sixty (60) days thereafter (the "Fifth Conversion Period");

Even the invoked CN provision, above-cited, clearly provides that the holder's option to convert prevails only when the same is exercised during the conversion period.[51] The paragraph preceding said provision also provides:

> [East West Bank] has **the right and option to convert** this Note into common shares of the Issuer **during the designated conversion periods** x x x. A Final Conversion Period, x x x, shall be allowed for the conversion of any or all Notes which were not converted during the previous conversion periods.[52]

Again, if it was the parties' intention to give East West Bank the right to exercise its conversion privilege "at any time" then they could have simply stated so but they did not. In fact, in the same CN provision being invoked by East West Bank, as

---

(vi) After the Fifth Conversion Period, a maximum of Thirteen Percent (13%) of the Outstanding Unconverted Convertible Notes may be converted per year from the eight (8th) year to the fourteenth (14th) year. The Convertible Notes may be converted within a period beginning on the thirty first (31st) day after the end of each succeeding year from the Fifth Conversion Period and shall expire sixty (60) days thereafter. The term " Outstanding Unconverted Convertible Notes" is defined as the principal amount of the Convertible Notes outstanding as of the ninety-second (92nd) day after the end of the seventh (7th) year; and
(vii) Any or all Convertible Notes which were not converted during the previous conversion periods, may be converted within a period beginning on the sixtieth (60th) day before the end of the fifteenth (15th) year from Issue Date and shall expire thirty (30) days thereafter (the "Final Conversion Period").
The aggregate amount of Convertible Notes that may be converted into common shares of VMC shall not exceed Twenty Percent (20%) of the original Issue Amount of the Convertible Notes for each year covering the conversion period beginning the third (3rd) year to the sixth (6th) year. For the period beginning the eighth year to the fourteenth (14th) year, the annual aggregate amount of Convertible Notes that may be converted into common shares of VMC shall not exceed Thirteen Percent (13%) of the Outstanding Unconverted Notes. *Rollo,* pp. 170-171.

[51] Notwithstanding the foregoing, the conversion of this Note into common shares of the Issuer at the option of the Holder during the conversion period shall prevail over the exercise by the Issuer of its option to redeem this Note." *Id.* at 210.

[52] *Id.* at 209-210.

well as in Section 16(i) of the DRA quoted below, it was VMC which was granted the privilege to exercise its payment/ redemption option "at any time." The CN provides:

> The Issuer may exercise its option to redeem this Note **at any time** prior to Final Redemption Date by sending written notice thereof to the Holder, which notice, when so sent, shall be deemed final and irrevocable.[53] x x x (Emphasis supplied)

Section 16(i) of the DRA also provides:

> (i) Redemption at the Option of VMC (Call Option):
>
> VMC may redeem the [CNs] **at any time** at Issue Price plus accrued interest beginning at the end of the third (3rd) year from Issue Date and ending on Redemption Date which is at the end of the fifteen (15) years from Issue Date; Provided that, VMC shall use externally raised equity funds such as from rights offering.[54] x x x (Emphasis supplied)

It cannot be overemphasized, thus, that the option to convert may be exercised only during certain conversion periods, while the option to pay/redeem may be exercised at any time beginning at the end of the third year from issue date until its maturity. This cannot be said to go against the dictates of fairness and reason as what is of paramount consideration when the parties enter into the agreement is, precisely, VMC's rehabilitation, not the creditor's interest.

East West Bank further argues that the right to convert was purchased by the CN holders through substantial and valuable consideration and, as such, is a property right. East West Bank points out that the CN holders accepted the CNs, which merely offer a fixed rate of 8% per annum interest for 15 years, making it clearly inferior to the terms of an ordinary loan. According to East West Bank, CN holders merely rely upon the contingent benefit of the appreciation value of VMC's common stocks to compromise whatever they may lose for accepting the inferior

---

[53] *Id.* at 210.

[54] *Id.* at 171.

terms of the CNs. Thus, East West Bank posits that preference is reasonably given to the CN holders to exercise the option to convert, considering the value of the stocks come conversion period. For East West Bank, the CN is not a mere evidence of indebtedness as they grant a property right akin to capital investment.

We do not agree.

It is important to stress that the CN was issued to give effect to the objectives of the ARP and DRA. The DRA provides:

> WHEREAS, **to effect the terms of the restructuring of the Outstanding Loan Obligation as required under the [ARP],** the parties hereto have agreed to execute a debt restructuring agreement, subject to the terms and conditions herein set forth;[55] x x x (Emphasis supplied)
>
> Section 16
>
> CONVERSION OF ₱2.4 BILLION WORTH OF OUTSTANDING LOAN OBLIGATION INTO CONVERTIBLE NOTES
>
> 16. **As a debt reduction measure and as part of capital infusion feature of the [ARP],** VMC shall issue at least Two Billion Four Hundred Million Pesos (₱2.4 Billion) worth of long-term commercial papers or debt securities in the form of Convertible Notes, under the following terms and conditions:[56]
>
> x x x x x x x x x

Accordingly, contrary to East West Bank's contention, it became a "holder" of the CN not by purchase thereof as an investor but by virtue of its agreement to the terms of VMC's debt restructuring program pursuant to the rehabilitation process. Simply put, East West Bank, as a CN holder pursuant to a debt restructuring agreement to effect the rehabilitation of a distressed corporation, has a standing different from that of a plain investor. Having agreed to cooperate with the debt restructuring and reduction measures for VMC's rehabilitation,

---

[55] *Id.* at 162.

[56] *Id.* at 168.

East West Bank cannot argue for better terms in its favor. In executing the DRA, East West Bank, together with the other creditors, made a commitment indicating its readiness and willingness to contribute fund, which in this case is VMC's outstanding loan obligation and the acceptance of CNs therefor, to guarantee the continued successful operation of VMC during its rehabilitation. Thus, as specifically provided in the CN, "[t]he terms references, interpretation and construction of the content of this Note shall be construed according to the terms of the DRA executed by and among the Issuer and its creditors" pursuant to the ARP.

East West Bank cannot also argue that its plan to convert the entire CN to common stocks is actually in furtherance of the objectives of rehabilitation considering that the conversion of debt to equity requires no cash out on the part of VMC. It should be pointed out, however, that merely 13% of the subject CN was sought to be converted. In that case, VMC will still be indebted to East West Bank for the remaining unconverted 87%. While East West Bank argues that it will eventually convert the CN to common stocks, the remaining unconverted portion continues to incur an 8% interest pursuant to the DRA and the CN. Clearly, contrary to East West Bank's argument, this cannot be beneficial to VMC's rehabilitation at all. On the other hand, allowing VMC to exercise its option to pay/redeem the CN is actually fully satisfying its obligation with East West Bank, which settles its loan obligation and prevents the loan to incur more interests.

Finally, East West Bank points out that VMC failed to comply with the requirements for a valid tender of payment and consignation. As such, the consignation of the check payments to the SEC-appointed Receiver did not constitute payment that would prevent East West Bank to exercise its option to convert the outstanding CN.

We do not agree.

The matter of consignation is not at all relevant to the issue of whether or not VMC had effectively exercised its option to redeem the CN. The subject CN expressly states that "the Issuer

may exercise its option to redeem [the CN] at any time prior to Final Redemption Date *by sending written notice thereof to the Holder*, which notice, when so sent, shall be deemed final and irrevocable." Clearly, by mere written notice, VMC had already effectively exercised its option to redeem.

Neither will VMC's payment in checks affect the efficacy or legal ramifications of the exercise of its option to pay/redeem the CN. True, jurisprudence holds that, in general, a check does not constitute legal tender, and that the creditor may validly refuse it as payment. Conversely, a check may still be a valid payment if the creditor does not refuse it as such.[57] In this case, VMC delivered written notices and checks several times to East West Bank to exercise its option to pay/redeem. Records, however, show no instance when East West Bank refused to accept the same for not being a legal tender. What East West Bank continuously refused to accept is VMC's exercise of its option to pay/redeem the CN, which refusal, as we have established, is improper and unfounded. East West Bank cannot, therefore, be allowed to use such afterthought as an excuse to justify its unfounded refusal to allow VMC to pay/redeem the CN. Thus, we still hold that VMC had already effectively exercised its option to pay/redeem the CN which East West Bank cannot validly refuse.

In all, the SEC *En Banc*, as affirmed by the CA, unerringly denied East West Bank's Motion to Compel VMC to convert the CN into shares. VMC had effectively exercised its option to pay/redeem the subject CN and East West Bank has no legal or contractual basis to refuse to accept VMC's payment/ redemption, much less, to insist on the conversion of the subject CN to VMC's common shares.

WHEREFORE, premises considered, this petition is **DENIED**. The Decision dated January 19, 2016 and the Resolution dated May 16, 2016 of the Court of Appeals in CA-G.R. SP No. 141969 are hereby **AFFIRMED**.

---

[57] *Far East Bank and Trust Company v. Diaz Realty, Inc.*, 416 Phil. 147, 158 (2001).

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa (Working Chairperson), *Lazaro-Javier,* and *Inting,*[*] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 226920. December 5, 2019]

PACIFIC METALS CO., LTD., *petitioner, vs.* **EDGAR ALLAN TAMAYO, ERAMEN MINERALS, INC., and ENRIQUE FERNANDEZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE QUESTION OF WHETHER AN EMPLOYEE IS A REGULAR OR A PROJECT EMPLOYEE IS FACTUAL IN NATURE, AND THE FACTUAL FINDINGS OF THE COURT OF APPEALS ON THIS ARE BINDING ON THE SUPREME COURT, EXCEPT WHERE SUCH FACTUAL FINDINGS ARE CONTRARY TO THOSE OF THE LABOR TRIBUNALS. — The question of whether respondent is a regular or a project employee is factual in nature and as a general rule, the factual findings of the CA on this score are binding on the Supreme Court. The rule, however, admits of exceptions. Where the factual findings of the CA are contrary to those of the NLRC or LA, the Court is constrained to resolve it due to the incongruent findings of the NLRC and the CA. We are, therefore, constrained to revisit the factual milieu of the case in order to determine whether Tamayo is a regular employee of PAMCO and ERAMEN.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYMENT; A PROJECT EMPLOYEE IS ONE WHO HAS BEEN ASSIGNED TO CARRY OUT A SPECIFIC

---

[*] Additional Member per Special Order No. 2726.

PROJECT OR UNDERTAKING, THE DURATION AND SCOPE OF WHICH IS SPECIFIED AT THE TIME SUCH EMPLOYEE WAS ENGAGED FOR THAT PROJECT; A REGULAR EMPLOYEE IS AN EMPLOYEE WHO HAS BEEN ENGAGED TO PERFORM ACTIVITIES WHICH ARE USUALLY NECESSARY OR DESIRABLE IN THE USUAL BUSINESS OR TRADE OF THE EMPLOYER. — The principal test to determine if one is a project employee is whether such employee had been assigned to carry out a "specific project or undertaking," the duration and scope of which is specified at the time such employee was engaged for that project. This is clear from Article 280 of the Labor Code which distinguishes a "project employee" from a "regular employee," *viz*: Article 280. Regular and Casual Employment–The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, *except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee* or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season. An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered at least one year service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

3. ID.; ID.; ID.; THE LACK OF AN EMPLOYMENT CONTRACT WILL NOT HINDER THE DETERMINATION OF THE STATUS OF ONE'S EMPLOYMENT, FOR WHILE THE APPROPRIATE EVIDENCE SHOWING THAT A PERSON IS A PROJECT EMPLOYEE PERTAINS TO THE EMPLOYMENT CONTRACT SPECIFYING THE PROJECT AND ITS DURATION, THE EXISTENCE OF SUCH CONTRACT IS NOT ALWAYS CONCLUSIVE OF THE NATURE OF ONE'S EMPLOYMENT. — True, Tamayo's first engagement was in fact covered by a duly executed Service Contract, specifying the project for which he was hired and its two-month duration. But this is not the contested engagement

in this case. The controversy hinges on Tamayo's subsequent employment or his re-hiring and assignment as exploration manager for the ERAMEN/PAMCO Exploration Project. This engagement was not covered by any employment contract. Be that as it may, the lack of an employment contract would not hinder the determination of the status of Tamayo's employment. For while the appropriate evidence showing that a person is a project employee pertains to the employment contract specifying the project and its duration; the existence of such contract is not always conclusive of the nature of one's employment.

4. ID.; ID.; ID.; REGULAR EMPLOYMENT; EMPLOYEE WHEN DEEMED A REGULAR EMPLOYEE. — Based on Article 295 of the Labor Code, one is deemed a regular employee if one: a) had been engaged to perform tasks which are usually necessary or desirable in the usual business or trade of the employer, unless the employment is one for a specific project or undertaking or where the work is seasonal and for the duration of a season; or b) has rendered at least one (1) year of service, whether such service is continuous or broken, with respect to the activity for which he is employed and his employment continues as long as such activity exists.

5. ID.; ID.; ID.; THE MERE FACT THAT AN EMPLOYEE WORKED ON PROJECTS THAT ARE TIME-BOUND DOES NOT AUTOMATICALLY CHARACTERIZE HIM OR HER AS A PROJECT EMPLOYEE, FOR ONCE A PROJECT OR WORK POOL EMPLOYEE HAS BEEN CONTINUOUSLY, AS OPPOSED TO INTERMITTENTLY, REHIRED BY THE SAME EMPLOYER FOR THE SAME TASKS OR NATURE OF TASKS, AND THESE TASKS ARE VITAL, NECESSARY AND INDISPENSABLE TO THE USUAL BUSINESS OR TRADE OF THE EMPLOYER, THEN THE EMPLOYEE MUST BE DEEMED A REGULAR EMPLOYEE. — Tamayo is a licensed and registered geologist. x x x. [P]AMCO is engaged in the business of nickel ore importation. It does not simply involve sourcing out suppliers of raw materials; for sure, mineral importation takes more effort. Nickel ore is not readily available. Areas where to find it must first be determined and studied. Too, extensive work to finally generate it would involve manpower and substantial financing. And since the mineral comes from natural resources, there are environmental safety requirements that must be complied with. To accomplish this step by step process, PAMCO must rely on

the expertise of a geologist with knowledge of Philippine soil and its rich sources of minerals. The tasks ordinarily performed by a geologist, therefore, are necessary to the business which PAMCO was engaged in. It is, thus, undeniable that Tamayo is a regular employee of PAMCO, for he performs work that is usually necessary and desirable to PAMCO's business. Verily, the mere fact that respondents worked on projects that were time-bound did not automatically characterize them as project employees. The nature of their work was determinative, as the Court considers its ruling in ***DM Consunji, Inc., et al. v. Jamin*** that "[o]nce a project or work pool employee has been: (1) continuously, as opposed to intermittently, rehired by the same employer for the same tasks or nature of tasks; and (2) these tasks are vital, necessary and indispensable to the usual business or trade of the employer, then the employee must be deemed a regular employee." Here, although PAMCO persistently claims that Tamayo was only re-hired for two (2) more months following the expiration of his first two-month contract with the company, records bear that Tamayo rendered service much longer than two (2) months. He was made to stay on for a year for the work he rendered was in fact necessary and indispensable to PAMCO's usual trade or business.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & Delos Angeles for petitioner.

B. Jomento Law Firm for respondent Tamayo.

Mendoza & Pangan Law Firm for respondents ERAMEN & Fernandez.

D E C I S I O N

LAZARO-JAVIER, *J.*:

This Petition for Review[1] assails the following issuances of the Court of Appeals-Eleventh Division[2] in CA-G.R. SP No.

---

[1] Under Rule 45 of the Revised Rules of Court.

[2] Penned by Associate Justice Pedro B. Corales with concurrence of Associate Justice Sesinando E. Villon and Associate Justice Rodil V. Zalameda

135353 entitled *"Edgar Allan A. Tamayo v. National Labor Relations Commission, Pacific Metals Co., Eramen Minerals, Inc., Chitaru Okamura and Enrique Fernandez:"*

1. Decision[3] dated February 29, 2016, finding respondent Tamayo to be a regular employee of petitioner, thus, reversing the initial ruling of the labor arbiter, and affirmed by the NLRC, that he was a mere project employee;

2. Resolution[4] dated September 7, 2016, denying petitioner's motion for reconsideration.[5]

Antecedents

Petitioner Pacific Metals Co., Ltd., (PAMCO) is a foreign company engaged in the importation of nickel ore mined in the Philippines. Saprolite Ore refers to nickel ore suitable for smelting into ferronickel, the main raw material for production of stainless steel which is now widely used in manufacturing kitchen equipment, bathtubs, table and cookware, and medical and laboratory equipment, among others.[6]

PAMCO is registered in Japan and opened a Philippine Representative Office in April 2008. Chitaru Okamura is PAMCO's general manager and liaison officer for its Philippine office.[7]

In line with its desire to purchase high quality nickel ore from its target area, PAMCO negotiated to enter into an exploration agreement with Eramen Minerals, Inc. (ERAMEN) for the development of a target area covered by the latter's Mineral Production and Sharing Agreement (MPSA). ERAMEN is the exclusive contractor operating under MPSA No. 209-

---

(now a member of this Court), all members of the Eleventh Division, *Rollo*, pp. 423-437.

[3] *Id.*

[4] *Id.* at 479-481.

[5] *Id.* at 433-447.

[6] *Id.* at 19.

[7] Position Paper, *id.* at 80-81.

2005-III, registered with the Mines and Geosciences Bureau, Department of Environment and Natural Resources (DENR). PAMCO's target area is within the area covered by ERAMEN's MPSA which covered a four thousand six hundred nineteen (4,619) hectare land in Sta. Cruz and Candelaria, Zambales.[8] ERAMEN was represented by its president Enrique Fernandez.

In preparation for its joint venture business with ERAMEN, PAMCO engaged the services of respondent Edgar Allan Tamayo, a licensed and registered geologist. Tamayo signed up for a two-month employment contract, commencing on September 2010. In turn, PAMCO agreed to pay Tamayo ₱90,000.00 per month for his services. According to PAMCO, Tamayo's two-month engagement was extended for another two (2) months, or until January 31, 2011.[9]

On January 17, 2011, PAMCO and ERAMEN entered into an Exploration Agreement[10] wherein PAMCO shall provide financial and technical assistance to ERAMEN in the exploration project while PAMCO shall have the exclusive option to participate in the subsequent mining project for the purpose of purchasing saprolite ore which had been identified and exploited in the target area.

Tamayo was designated manager for the ERAMEN/PAMCO Exploration Project. As such, he was in charge of preparing the project reports and updates, and budget requests for approval of Fernandez, ERAMEN's president.[11] There is no showing, however, that Tamayo's engagement with the ERAMEN/PAMCO Exploration Project was covered by an employment contract.

Subsequently, by letter[12] dated November 29, 2011, Tamayo was informed that his services as exploration manager was

---

[8] *Rollo,* p. 20.

[9] *Id.* at 80-82.

[10] *Id.* at 145-153.

[11] *Id.* at 101.

[12] *Id.* at 123 (erroneously dated November 29, 2010).

terminated effective December 31, 2011 in view of the completion of the exploration aspect of the project.[13] For clearance purposes, Tamayo was requested to submit his Final Exploration Report and to turn-over the complete database of the Exploration Project, as well as all other documents, supplies, and equipment which were still in his custody to Emilio T. Figueroa III, General Manager for the Sta. Cruz Nickel project, or to Chief Accountant Emily Calanog.[14]

In response, Tamayo sent an email[15] to ERAMEN/Fernandez on December 13, 2011 to clarify the requirements for his clearance and to inform the company that he was waiving his last salary to cover office items which may have been lost.[16] Tamayo sent two (2) more e-mails thereafter, one on May 30, 2012 and another on January 12, 2013. In his first e-mail, Tamayo expressed his suspicion that there had been a connivance among some of the technical people involved in the exploration project and that his career with ERAMEN ended because of a "group from the [University of the Philippines] allegedly ganged up on him."[17] In his second e-mail, Tamayo informed PAMCO's Okamura and ERAMEN' Fernandez that he intended to file a complaint before the NLRC unless his demands were granted by the company, such as payment of backwages, termination of some administrative personnel, moral and "professional" damages of ₱10 Million, and other "terms and conditions to protect his future professional and moral interest."[18]

On December 12, 2012, Tamayo filed a complaint for illegal dismissal against PAMCO and ERAMEN. He prayed for backwages, separation pay, 13th month pay, moral and exemplary damages, and attorney's fees.

---

[13] *Id.* at 101-102.

[14] *Id.* at 123.

[15] *Id.* at 124.

[16] *Id.* at 102.

[17] *Id.* at 103.

[18] *Id.* at 133.

Proceedings Before The Labor Arbiter

Tamayo averred in his position paper[19] that PAMCO hired him as its Mineral Exploration and Drilling Manager in September 2010. His responsibilities included designing a drilling program, assessing technical data, managing exploration drilling activities, and preparing project budgetary requirements.[20] Aside from his main duties as geologist, PAMCO also tasked him to hire and teach locals in setting up their organization, coordinate with local government units (LGUs), and manage operations and construction. He even personally bought supplies from Divisoria for this purpose.[21]

Tamayo further alleged that on January 31, 2011, PAMCO entered into an Exploration Agreement with ERAMEN for exploration of minerals in a 4,619-hectare property located in Sta. Cruz and Candelaria, Zambales. This area was covered by the MPSA issued to ERAMEN. He was appointed Project Manager of the ERAMEN/PAMCO Exploration Project.[22]

After Okamura informed him that the exploration project was proceeding to the mining phase, and believing that he was instrumental in the project's success, Tamayo sent an e-mail[23] to Fernandez inquiring about his career path in the company. Fernandez did not reply.

Tamayo claimed that after his e-mail to Fernandez, he noticed a change in the attitude of other employees toward him. They were hostile, made up lies about him, and committed acts demonstrating a collective effort to drive him to resign from his post.[24]

---

[19] *Id.* at 53-73.

[20] *Id.* at 55.

[21] *Id.*

[22] *Id.* at 56.

[23] Dated November 4, 2011, *rollo,* p. 122.

[24] *Rollo,* p. 57.

Sometime in November 2011, Tamayo received a letter signed by Fernandez informing him that his work for the exploration project had already been concluded and his employment was only until December 31, 2011.[25]

Tamayo argued that he was a regular employee of PAMCO and/or of the ERAMEN/PAMCO Exploration Project, having rendered work directly related, nay, necessary and desirable, to the main business of the company and the exploration project. He should not be considered a project employee because the duration of his employment was not determined at the time of his engagement and his termination had not been reported to the Department of Labor and Employment (DOLE) in accordance with law.[26]

Being a regular employee, Tamayo claimed security of tenure. Termination of his employment, without valid or authorized cause, violated his security of tenure. Both PAMCO and ERAMEN should be held liable for his backwages, separation pay, 13th month pay, moral and exemplary damages, and attorney's fees.

PAMCO's Arguments

In its position paper,[27] PAMCO asserted that it hired Tamayo as exploration manager under a two-month employment contract, starting September 21, 2010. The contract was extended for another two (2) months and it ended on January 31, 2011. Thereafter, Tamayo was hired by ERAMEN and it (PAMCO) was not a party thereto.[28] Tamayo cannot claim to be its regular employee because it was clear in the service contract that he was hired as a consultant. Tamayo, thus, cannot demand payment for services he no longer rendered, more so, if he sought to collect the same under the guise of being illegally dismissed.[29]

---

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

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

[27] Dated May 31, 2013, *id.* at 79-86.

[28] *Rollo,* p. 82.

[29] *Id.* at 84.

ERAMEN's Arguments

ERAMEN, on the other hand, basically countered[30] that PAMCO initially hired Tamayo and later recommended him to the joint venture as exploration manager.[31] Tamayo was not illegally dismissed because he was a project employee whose services were deemed co-terminous with the project for which he was hired.[32] Thus, Tamayo may be terminated as soon as the exploration project was completed. Further, due process was observed in Tamayo's termination. Under Section 2, Rule 1 of the Implementing Rules of Book VI of the Labor Code, as amended by Department Order No. 10, effective June 22, 1997, if termination was due to contract or phase completion of a project, the employer must furnish the employee a written notice therefor within reasonable time from effectivity date of termination.[33] Here, Tamayo was sent the written notice a month before the intended termination. Notably, Tamayo was guilty of bad faith in refusing to submit his final report and using the same to get back at his former co-employees.[34]

Further, Tamayo was not entitled to reinstatement and backwages because he was not illegally dismissed. Neither was the award of moral and exemplary damages warranted absent a showing of bad faith on the part of his employers.[35] Attorney's fees cannot be awarded either because the complaint for illegal dismissal was based entirely on Tamayo's wrong assumption that he was illegally dismissed. Finally, Fernandez cannot be held solidarily liable with the company, sans any evidence that he acted maliciously in effecting Tamayo's termination.[36]

---

[30] Position Paper dated May 31, 2013, *id.* at 98-113.

[31] *Rollo,* p. 100.

[32] *Id.* at 106.

[33] *Id.* at 107-108.

[34] *Id.* at 108.

[35] *Id.* at 110.

[36] *Id.* at 111.

Labor Arbiter's Ruling

By Decision[37] dated August 30, 2013, Labor Arbiter Marie Josephine C. Suarez ruled that Tamayo was not a regular employee but a project employee of the ERAMEN/PAMCO Exploration Project. Tamayo himself was aware of such fact. This was clear when Tamayo inquired with Fernandez about the management's plan for his "career path" in the company. Hence, Tamayo was not illegally dismissed and his termination was due solely to contract completion. This notwithstanding, the labor arbiter still ordered ERAMEN to pay Tamayo's salary for December 2011 and 13th month pay for 2011, or the total amount of ₱180,000.00.

NLRC'S Ruling

On appeal, the NLRC affirmed under Decision[38] dated January 24, 2014. It sustained the labor arbiter's finding that Tamayo was not illegally dismissed, but was terminated due to project completion. The NLRC, however, modified the computation of Tamayo's 13th month pay to its pro-rated value of ₱82,500.00.

Tamayo's motion for reconsideration was denied under Resolution dated March 26, 2014.

Court of Appeals' Ruling

Tamayo elevated the case to the Court of Appeals (CA) *via* a petition for *certiorari*.[39]

By Decision[40] dated February 29, 2016, the CA reversed. It ruled that Tamayo was PAMCO's regular employee who had been illegally dismissed. The CA ordered Tamayo's reinstatement with backwages, *viz*:

---

[37] *Id.* at 192-197.

[38] *Id.* at 294-302.

[39] *Id.* at 337-351.

[40] *Id.* at 423-437.

WHEREFORE, the instant petition for *certiorari* is **GRANTED**. The January 24, 2014 Decision and March 26, 2014 Resolution of the National Labor Relations Commission, Fourth Division in NLRC LAC No. 10-002743-13 are hereby **REVERSED** and **SET ASIDE**. Private respondent Pacific Metals Co. is **ORDERED** to reinstate petitioner Edgar Allan A. Tamayo to his former position, or to an equivalent position if the same is no longer existing, without loss of seniority rights and privileges and pay his backwages computed from December 2011 up to the time of actual reinstatement plus attorney's fees equivalent to 10% of his monetary award.

SO ORDERED.

The CA held that the extension of Tamayo's employment with PAMCO did not have a specific duration. He was just required to render service until he got assigned to the ERAMEN/PAMCO Exploration Project. When Tamayo was re-hired after the expiration of his service contract, he ceased to be a project employee. This is clear from ***Pasos v. Philippine National Construction Corporation***[41] where it was ruled that when an employee's services are extended without any specification as to the duration, he is deemed to have become a regular employee of the company. In the same vein, when Tamayo was re-hired by PAMCO for an unspecified period and continuously worked for the project fo more than a year, he is deemed to have become a regular employee of PAMCO.[42]

PAMCO's motion for reconsideration was denied under Resolution dated September 7, 2016.

The Present Petition

PAMCO now faults the CA for brushing aside the factual findings and legal conclusion of the NLRC, the quasi-judicial agency with the expertise on matters relating to labor, which sustained the LA's ruling that Tamayo was a mere project employee whose employment got validly terminated due to contract completion. PAMCO also asserts that ERAMEN must

---

[41] 713 Phil. 416, 433 (2013).

[42] *Rollo,* pp. 432-433.

be solely liable to pay for Tamayo's money claims, if warranted, being the latter's real employer.

In his Comment[43] dated July 18, 2017, Tamayo argued that PAMCO failed to overturn the Court of Appeals' disposition that he was a regular employee of PAMCO.

By Comment dated July 28, 2017,[44] ERAMEN claimed that Tamayo was PAMCO's employee who got assigned to the joint exploration project. PAMCO cannot insist otherwise based on the Memorandum dated November 23, 2011 signed by its representative Emilio T. Figueroa, under which Tamayo was given authority to approve limited expenses for the project. For one, PAMCO invoked the document at such a late stage in the proceedings, *i.e.*, only in its motion for reconsideration with the Court of Appeals. It is a basic postulate that points of law, theories, and arguments not brought to the court's attention will not ordinarily be considered by a reviewing court. For another, even if the memorandum be given consideration, the same was issued by Figueroa who was then acting for the ERAMEN/PAMCO Exploration Project. This only showed that PAMCO effectively controlled the finances of the exploration agreement.

Issues

1. Is Tamayo a regular or project employee?

2. If Tamayo be deemed a regular employee, which between PAMCO and ERAMEN shall be liable to pay his backwages, 13th month pay, damages, and attorney's fees?

Ruling

Nature of Tamayo's employment

The question of whether respondent is a regular or a project employee is factual in nature and as a general rule, the factual findings of the CA on this score are binding on the Supreme

---

[43] *Id.* at 538-542.

[44] *Id.* at 515-532.

Court. The rule, however, admits of exceptions. Where the factual findings of the CA are contrary to those of the NLRC or LA, the Court is constrained to resolve it due to the incongruent findings of the NLRC and the CA.[45] We are, therefore, constrained to revisit the factual milieu of the case in order to determine whether Tamayo is a regular employee of PAMCO and/or ERAMEN.

The principal test to determine if one is a project employee is whether such employee had been assigned to carry out a "specific project or undertaking," the duration and scope of which is specified at the time such employee was engaged for that project.[46] This is clear from Article 280 of the Labor Code which distinguishes a "project employee" from a "regular employee," *viz*:

> Article 280. Regular and Casual Employment–The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, *except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee* or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.
>
> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered at least one year service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists. (Emphasis supplied.)

PAMCO asserts that Tamayo was a project employee because his employment contract with the company was pre-determined and had a specific duration, *i.e.*, two (2) months.

---

[45] *Filsystems, Inc. v. Puente,* 493 Phil. 923, 930 (2005).

[46] *Hanjin Heavy Industries and Construction Co. Ltd., et al. v. Ibañez, et al.,* 578 Phil. 497, 510 (2008).

We do not agree.

True, Tamayo's first engagement was in fact covered by a duly executed Service Contract,[47] specifying the project for which he was hired and its two-month duration. But this is not the contested engagement in this case. The controversy hinges on Tamayo's subsequent employment or his re-hiring and assignment as exploration manager for the ERAMEN/ PAMCO Exploration Project. This engagement was not covered by any employment contract.

Be that as it may, the lack of an employment contract would not hinder the determination of the status of Tamayo's employment. For while the appropriate evidence showing that a person is a project employee pertains to the employment contract specifying the project and its duration; the existence of such contract is not always conclusive of the nature of one's employment.[48]

In connection with Tamayo's subsequent engagement for the ERAMEN/PAMCO Exploration Project, he rendered services therefore from January 2011 until December 2011 then he got terminated due to alleged project completion.

That the exploration project was allegedly already completed does not suffice to convince that indeed the project had reached its conclusion. For no proof was adduced to substantiate this allegation. It is quite unconvincing that the exploration project was alleged to have already been completed or was even nearing completion, only one year after its commencement, considering that the project was actually good for five years. Surely, a project good for five years could not have been accomplished for such short period of one year.

More, it cannot go unnoticed that the supposed "project completion" happened when Tamayo was about to complete his first year of employment with PAMCO. It bears stress that it is common practice for employers to set the duration

---

[47] *Id.* at 185-186.

[48] See *Liganza v. RBL Shipyard Corporation*, 535 Phil. 662, 669 (2006).

of an employment contract to a period shorter than one year to prevent an employee from attaining regular employment status, conformably with Article 295[49] of the Labor Code. The termination of Tamayo's employment, therefore, just a few weeks short of his one-year anniversary as an employee is highly suspect. It is not remotely possible that the termination was done to prevent Tamayo from gaining the status of a regular employee.

Based on Article 295 of the Labor Code, one is deemed a regular employee if one: a) had been engaged to perform tasks which are usually necessary or desirable in the usual business or trade of the employer, unless the employment is one for a specific project or undertaking or where the work is seasonal and for the duration of a season; or b) has rendered at least one (1) year of service, whether such service is continuous or broken, with respect to the activity for which he is employed and his employment continues as long as such activity exists.

Tamayo is a licensed and registered geologist. The typical duties of a geologist are:

- Ensure that minerals are extracted from mines, pits and quarries in such a way that maximum profit is obtained with as little damage to the environment as possible

---

[49] Renumbered, formerly Art. 280.

ART. 280. Regular and casual employment. — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

- To work closely with the drill and blast engineers to determine the best way to blast all of the rock out of the pit floor
- Study and examine the minerals as they are extracted to assess their quality
- Analyze and interpret geological data using computer software
- Locate and estimate mineral ore deposits and prepare geological maps, charts and reports concerning mineral extraction
- Identify risks for natural disasters such as mud slides and earthquakes
- Investigate the composition of the earth's surface
- Collect samples of natural resources through drilling and other methods
- Communicate findings in the form of reports, meetings etc.
- Produce geological maps.[50]

Employer-Employee Relationship between Pamco and Tamayo

As stated, PAMCO is engaged in the business of nickel ore importation. It does not simply involve sourcing out suppliers of raw materials; for sure, mineral importation takes more effort. Nickel ore is not readily available. Areas where to find it must first be determined and studied. Too, extensive work to finally generate it would involve manpower and substantial financing. And since the mineral comes from natural resources, there are environmental safety requirements that must be complied with.

To accomplish this step by step process, PAMCO must rely on the expertise of a geologist with knowledge of Philippine soil and its rich sources of minerals. The tasks ordinarily performed by a geologist, therefore, are necessary to the business which PAMCO was engaged in. It is, thus, undeniable that Tamayo is a regular employee of PAMCO, for he performs work that is usually necessary and desirable to PAMCO's business.

Verily, the mere fact that respondents worked on projects that were time-bound did not automatically characterize them

[50] http://www.infomine.com/careers/job-descriptions/mine-geologist/ May 29, 2019.

as project employees. The nature of their work was determinative, as the Court considers its ruling in ***DM Consunji, Inc., et al. v. Jamin*** that "[o]nce a project or work pool employee has been: (1) continuously, as opposed to intermittently, rehired by the same employer for the same tasks or nature of tasks; and (2) these tasks are vital, necessary and indispensable to the usual business or trade of the employer, then the employee must be deemed a regular employee."[51]

Here, although PAMCO persistently claims that Tamayo was only re-hired for two (2) more months following the expiration of his first two-month contract with the company, records bear that Tamayo rendered service much longer than two (2) months. He was made to stay on for a year for the work he rendered was in fact necessary and indispensable to PAMCO's usual trade or business.

ACCORDINGLY, the petition is **DENIED** and the Decision dated February 29, 2016 and Resolution dated September 7, 2016 of the Court of Appeals in CA-G.R. SP No. 135353, **AFFIRMED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Reyes, J. Jr., and *Inting,*[*] *JJ.,* concur.

---

[51] *Romeo Alba v. Conrado G. Espinosa, et al.,* G.R. No. 227734, August 9, 2017, 837 SCRA 52, 68, citing *DM Consunji, Inc., et al. v. Jamin*, 686 Phil. 220 (2012).

[*] Designated as additional member per S.O. No. 2726 dated October 25, 2019.

FIRST DIVISION

[G.R. No. 227460. December 5, 2019]

PABLO UY, substituted by his heirs, namely: MYLENE D. UY, PAUL D. UY, and PAMELA UY DACUMA, *petitioners, vs.* **HEIRS OF JULITA UY-RENALES, represented by: JESSICA R. ROSERO, JOSELITO RENALES and JANET U. RENALES; JOVITO ROSERO and MARILYN RENALES,** *respondents.*

SYLLABUS

1. CIVIL LAW; SALES; A DEED OF ABSOLUTE SALE WHICH WAS NOT PROPERLY NOTARIZED BECAUSE COMPETENT EVIDENCE OF THE IDENTITY OF THE PARTIES THERETO WAS NOT PRESENTED BEFORE THE NOTARY PUBLIC, CANNOT BE PRESUMED TO HAVE BEEN REGULARLY EXECUTED. — The Court disagrees with the CA's finding that the Deed of Absolute Sale was properly notarized. According to the notarial law applicable during the time of the notarization of the Deed of Absolute Sale, "[e]very contract, deed, or other document acknowledged before a notary public shall have certified thereon that the parties thereto have presented their proper (cedula) residence certificates or are exempt from the (cedula) residence tax x x x." The presentation of competent evidence of identity is required where a document is acknowledged before a notary public "to ascertain the identity/identities of the person/s appearing before him and to avoid impostors." In the instant case, as confirmed by the RTC, the notary public, *i.e.,* Atty. Mendiola, admitted that he did not ask from Labnao any competent evidence of her identity and merely asked if she was the one who signed the document. On cross-examination, Atty. Mendiola unequivocally admitted that he "no longer verified the identity of the old woman[.]" Because the Deed of Absolute Sale was not properly notarized, it cannot be presumed, contrary to the CA's holding, to have been regularly executed.

2. ID.; ID.; CONTRACT OF SALE; ELEMENTS THEREOF; THE ABSENCE OF ANY OF THE ESSENTIAL ELEMENTS NEGATES THE EXISTENCE OF A PERFECTED CONTRACT

OF SALE; NO PARTICULAR FORM IS REQUIRED FOR THE VALIDITY OF A CONTRACT OF SALE BECAUSE IT IS A CONSENSUAL CONTRACT. — A contract is a *meeting of minds* between two persons whereby one binds himself/herself, with respect to the other, to give something or to render some service. Article 1458 of the Civil Code, in turn, defines a sale as a contract whereby one of the contracting parties, *i.e.,* the seller, obligates himself/herself to transfer the ownership and to deliver a determinate thing, and the other party, *i.e.,* the buyer, obligates himself/herself to pay therefor a price certain in money or its equivalent. Thus, the elements of a contract of sale are: (1) consent; (2) object; and (3) price in money or its equivalent. The absence of any of these essential elements negates the existence of a perfected contract of sale. A contract of sale is a consensual contract. Under Article 1475 of the Civil Code, the contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price. Because a contract of sale is a consensual contract, no particular form is required for its validity.

3. ID.; ID.; ID.; THE EXISTENCE, VERACITY, AND AUTHENTICITY OF A NOTARIZED WRITTEN DEED OF SALE DO NOT CONCLUSIVELY DETERMINE WHETHER ALL THE ESSENTIAL REQUISITES OF A CONTRACT OF SALE ARE PRESENT; EVEN IF THERE IS A DOCUMENT THAT PURPORTS TO BE A CONTRACT OF SALE, IF THERE IS STRONG COUNTERVAILING EVIDENCE ESTABLISHING THE WANT OF CONSENT OR MEETING OF THE MINDS, THERE IS NO CONTRACT OF SALE. — [E]ven if there is a document that purports to be a contract of sale, if there is strong countervailing evidence establishing the want of consent or meeting of the minds, there is no contract of sale. In *Spouses Salonga v. Spouses Concepcion*, it was held that the notarization of a document does not guarantee its validity because it is not the function of the notary public to validate an instrument that was never intended by the parties to have any binding legal effect. Neither is the notarization of a document conclusive as to the nature of the transaction, nor is it conclusive of the true agreement of the parties thereto. Simply stated, the existence, veracity, and authenticity of a notarized written deed of sale do not conclusively determine whether all the essential requisites of a contract are present. Applying the foregoing to the instant

case, as made clear in the respondents Heirs of Julita's Formal Offer of Exhibits/Documentary Evidence, there is no other documentary evidence that had been offered to prove that a contract of sale was entered into by the parties aside from the Deed of Absolute Sale. The only other evidence presented to prove the existence of a contract of sale is **the testimony of respondent Jessica**. A careful review of the sworn testimony of respondent Jessica reveals that the respondents Heirs of Julita never consented to enter into any contract of sale, completely belying the contents of the Deed of Absolute Sale. Otherwise stated, respondent Jessica's testimony establishes that there was, in fact, no meeting of the minds with respect to the alleged sale of the subject lot.

4. ID.; DONATIONS; DEED OF DONATION; THE DONATION OF AN IMMOVABLE PROPERTY IS VOID WHERE THE FORMALITIES OF MAKING AND ACCEPTING A DONATION WERE NOT OBSERVED. — What the Court deduces from the facts on record is that Labnao's intention was to ensure that her grandchildren — the respondents Heirs of Julita — would exclusively receive the subject lot. Thus, instead of simply donating the property, Labnao opted to simply simulate a contract of sale. Unfortunately, even as a transfer of the subject lot to the respondents Heirs of Julita, the Deed of Absolute Sale cannot be considered a valid donation. According to Article 749 of the Civil Code, in order for a donation of an immovable property to be considered valid, **the donation must be made in a public document,** specifying therein the property donated and the value of the charges which the donee must satisfy. In the instant case, as already explained, the Deed of Absolute Sale was not properly notarized, making it a private document. Hence, there was no donation made in a public document. Moreover, Article 749 of the Civil Code additionally requires that the donee manifests his/her acceptance of the donation of the immovable property in either the same public instrument or in a separate instrument. If the donee accepts the donation in a separate instrument, the donor should be notified thereof in an authentic form, and this step shall be noted in both instruments. In the instant case, there was no acceptance of any donation manifested by the respondents Heirs of Julita in the unilaterally executed Deed of Absolute Sale. There was also no separate instrument that was executed by the respondents Heirs of Julita for the purpose of accepting any donation from

their grandmother. Simply stated, the formalities of making and accepting a donation of an immovable property required under Article 749 of the Civil Code were not observed. The donation of real property is **void** without the formalities stated in Article 749. Even if it were a valid donation, it would have been collated back to the estate of Labnao pursuant to Articles 908 and 1064 of the Civil Code, and petitioner Uy and the respondents Heirs of Julita would have divided the estate of Labnao equally, with petitioner Uy inheriting in his own right and the respondents Heirs of Julita inheriting as a group *per stirpes* or by right of representation.

APPEARANCES OF COUNSEL

Teachie Felina O. Norombaba for petitioners.
Alfonso M. Cinco IV for respondents.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by petitioner Pablo Uy (petitioner Uy)[2] assailing the Decision[3] dated November 27, 2013 (assailed Decision) and Resolution[4] dated August 17, 2016 (assailed Resolution) rendered by the Court of Appeals (CA) in CA-G.R. CEB CV No. 03231.

In the assailed Decision and Resolution, the CA affirmed the Joint Decision[5] dated August 7, 2009 (Joint Decision)

---

[1] *Rollo,* pp. 3-25.

[2] Petitioner Uy has passed away. He is substituted by his legal representatives, *i.e.*, Mylene D. Uy, Paul D. Uy, and Pamela Uy Dacuma.

[3] *Rollo,* pp. 57-71. Penned by Associate Justice Ma. Luisa C. Quijano-Padilla, with Associate Justices Ramon Paul L. Hernando (now a Member of the Court) and Carmelita Salandanan-Manahan, concurring.

[4] *Id.* at 79-81. Penned by Associate Justice Gabriel T. Ingles, with Associate Justices Pamela Ann Abella Maxino and Marilyn B. Lagura-Yap, concurring.

[5] *Id.* at 26-55. Penned by Presiding Judge Agerico A. Avila.

rendered by the Regional Trial Court of Catbalogan, Samar, Branch 29 (RTC) in Civil Case No. 7400 for Declaration of Nullity of Deed of Sale, Reconveyance and Damages and Civil Case No. 7408 for Quieting of Title and Ownership.

The Essential Facts and Antecedent Proceedings

As culled from the recital of facts in the assailed Decision, the essential facts and antecedent proceedings of the instant case are as follows:

The instant case stems from the consolidation and joint trial conducted by the RTC over two cases filed by both parties: (1) Civil Case No. 7400 for Declaration of Nullity of Deed of Sale, Reconveyance and Damages filed by petitioner Uy; and (2) Civil Case No. 7408 for Quieting of Title and Ownership filed by the respondents Heirs of Julita Uy-Renales, namely respondent Jessica R. Rosero (respondent Jessica), respondent Joselito Renales (respondent Joselito), and respondent Janet Renales (respondent Janet) (collectively, the respondents Heirs of Julita).

The controversy is centered on Lot No. 43 (subject lot), with its improvement, erected thereon, *i.e.*, a building (subject building), containing an area of 198 square meters, more or less, particularly described as follows:

> A parcel of land (Lot No. 43, of the Cadastral Survey of Catbalogan, Cadastral Case No. 4, L.R.C. Cadastral Record No. 1378), situated in the Poblacion, Municipality of Catbalogan, Province of Samar. Bounded on the NE by Calle San Bartolome St.; on the SE by Lot No. 42; on the SW by Lots Nos. 665 and 45; and on the NW by Lot No. 44 x x x.[6]

The subject lot is covered by Transfer Certificate of Title No. (TCT) T-1467 (subject TCT)[7] registered in the name of petitioner Uy's mother, Eufronia Labnao (Labnao).

The relationship of the parties is as follows: Labnao had two children, *i.e.*, petitioner Uy and Julita Uy-Renales (Julita).

---

[6] *Id.* at 5.

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

Julita produced three children, *i.e.*, the respondents Heirs of Julita. Hence, petitioner Uy is the uncle of the respondents Heirs of Julita. Julita died intestate on May 9, 1976.

In his Complaint[8] for Declaration of Nullity of Deed of Sale, Reconveyance and Damages, petitioner Uy maintains that upon the death of Labnao in 1995, as the surviving offspring of Labnao, he became the owner of one-half share of the subject lot and subject building owned by his deceased mother, with the other half pertaining to the respondents Heirs of Julita as co-owners.

However, petitioner Uy discovered that the subject lot was allegedly fraudulently sold by Labnao in 1990 in favor of the respondents Heirs of Julita through a Deed of Absolute Sale[9] dated April 11, 1990 (Deed of Absolute Sale) purportedly executed by Labnao. Petitioner Uy asserted that the signature of Labnao in the Deed of Absolute Sale is a patent forgery as shown by the findings of the Philippine National Police (PNP) Crime Laboratory, Region VII.[10]

Upon discovery of the falsification, petitioner Uy confronted his nieces and nephew before the Barangay Chairman of Brgy. IV, Catbalogan, Samar for a possible settlement of the matter, but to no avail. Having been deprived of his hereditary rights and co-ownership over the subject lot and the subject building through the fraudulent sale, he prayed for the nullification of the Deed of Absolute Sale, the reconveyance of one-half portion of the subject lot, partition, and damages.[11]

In his Complaint, petitioner Uy also noted that the subject lot and subject building have been subject of a prior action for Interpleader filed before the RTC by the lessee of the subject building, Josefa I. Uy (Josefa), who filed the said action in order to determine who between petitioner Uy and the

---

[8] Records (Civil Case No. 7400, Vol. II), pp. 1-5.

[9] *Rollo,* pp. 93-94.

[10] Records (Civil Case No. 7400, Vol. II), p. 2.

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

respondents Heirs of Julita should collect the lease rentals. The RTC rendered a Decision dated November 5, 1998 adjudging the respondents Heirs of Julita as the exclusive and absolute owners of the subject lot and subject building. However, on February 7, 2001, in CA-G.R. CV No. 62971, the CA reversed the said Decision and, without ruling definitively on the ownership of the said properties, held that the respondents Heirs of Julita and petitioner Uy are entitled to an equal share of the proceeds of the rent due from Josefa. The CA also ruled that the issue of ownership over the subject lot and subject building should be threshed out in a separate action.[12]

On their part, the respondents Heirs of Julita assert in their Petition[13] for Quieting of Title and Ownership that they have acquired ownership over the subject lot when they purchased the same from their grandmother Labnao on April 11, 1990, as evidenced by the Deed of Absolute Sale.

And prior to the said sale and during the lifetime of their mother Julita, the latter allegedly constructed the subject building on the subject lot. That upon the death of Julita in 1976, as surviving heirs of the latter, they became the rightful and exclusive owners of the subject building by operation of law. Hence, the respondents Heirs of Julita maintain that their claim of ownership over the subject lot and the subject building is now absolute and that petitioner Uy's demand for reconveyance constituted a cloud obscuring their title and thus should be quashed.

The respondents Heirs of Julita also assert that petitioner Uy's allegation that the Deed of Absolute Sale is fictitious is belied by the prior dismissal of a criminal case for Falsification filed by petitioner Uy against the respondents Heirs of Julita.

After the issues were joined and consolidated, trial ensued and the parties were made to present their respective evidence in chief.

---

[12] *Id.* at 14-19; from all indications, the CA's Decision in CA-G.R. CV No. 62971 was not subjected to appeal.

[13] Records (Civil Case No. 7408, Vol. I), pp. 1-7.

For petitioner Uy, the following witnesses were presented: petitioner Uy himself; Romeo M. Varona (Varona), Document Examiner of PNP Regional Crime Laboratory Office No. VII at Camp Sotero Cabahug, Cebu City; Sonia M. Alvarina of the Commission on Audit; Edina S. Abrio, Court Stenographer of the Municipal Trial Court of Catbalogan, Samar (MTC); and Emerita C. Macabare, another personnel of the MTC.

For respondents Heirs of Julita, the following witnesses were presented: respondent Jessica; Dionito J. Aban (Aban), one of the purported witnesses who signed the Deed of Absolute Sale; and Atty. Jose M. Mendiola (Atty. Mendiola), the notary public who supposedly notarized the Deed of Absolute Sale.

The Ruling of the RTC

The RTC rendered its Joint Decision[14] favoring the respondents Heirs of Julita. Believing that there was indeed a contract of sale that was entered into between Labnao and the respondents Heirs of Julita, the RTC held that any and all cloud on the title of the respondents Heirs of Julita over the subject lot should be erased, declaring the latter as the owners of the subject lot. Further, the RTC ordered the respondents Heirs of Julita to give petitioner Uy the present value of one-half of the subject building as the latter's share as co-owner by way of inheritance from Labnao. Lastly, the RTC held that once the aforementioned value is fixed and petitioner Uy's share is given to him, the title to the subject building shall be bestowed upon the respondents Heirs of Julita in exclusive ownership.

The dispositive portion of the Joint Decision reads:

PREMISES CONSIDERED, the Court hereby rules and declares the following:

(1) To erase the cloud on the title to Lot No. 43 of Jessica, Joselito and Janet all surnamed Renales and thus declare them owners thereof and for Pablo L. Uy, his heirs and assigns to respect such ownership;

---

[14] *Supra* note 5.

(2) To be given to Pablo L. Uy by Jessica, Joselito and Janet all surnamed Renales the present value of [one-half] of the building as his share being a co-owner thereof by way of inheritance from Eufronia Labnao, to be determined by an independent commission composed of three appraisers nominated by Uy, the heirs of Julita Uy-Renales and the Court; until then the sharing of rental shall be maintained;

(3) Once the value is fixed and the [one-half] portion paid by the three, jointly, title to the building shall be reposed to them in exclusive ownership; and, (*sic*)

(4) To charge the costs of the suit jointly upon the parties.

SO DECIDED.[15]

The RTC conclusively found, and as admitted by both parties, that the subject lot initially belonged to the registered owner, *i.e.,* Labnao, who is the predecessor-in-interest of both parties. Moving to the core issue of the case, the RTC did not concur with petitioner Uy that there was no contract of sale that occured. According to the RTC's assessment, the single and most essential evidence presented by petitioner Uy with respect to the allegation that the Deed of Absolute Sale was falsified was the document examination undertaken by the PNP Crime Laboratory, Region VII. The RTC held that the courts are not bound by expert testimonies and was not convinced by the testimony of the handwriting expert presented by petitioner Uy, *i.e.,* Varona. The RTC also stressed on the fact that the Deed of Absolute Sale was notarized, explaining that a notarial document must be sustained in full force and effect.

With respect to the subject building, the RTC held that "[Labnao] excluded the building in the conveyance. In effect[,] she wanted that her heirs share it. Since the Court finds that [the] same belonged to [Labnao], [one-half] of it should be given to [petitioner] Uy. As in fact, in the earlier case between the parties respecting the division of rents, the [CA] deemed it wise to effect an equal sharing of [the] same. So should this Court[,] because [petitioner] Uy established that he and [Labnao]

---

[15] *Rollo,* pp. 54-55.

buil[t] the existing building. It belonged to [Labnao] but not included in the sale."[16]

Feeling aggrieved, petitioner Uy appealed before the CA.

The Ruling of the CA

In the assailed Decision,[17] the CA denied the appeal for lack of merit. The dispositive portion of the assailed Decision reads:

> **WHEREFORE,** premises considered, the instant appeal is **DENIED**. The Joint Decision dated August 7, 2009 issued by the RTC, Branch 29, Catbalogan, Samar in Civil Case Nos. 7400 and 7408 is hereby **AFFIRMED IN TOTO**.
>
> **SO ORDERED.**[18]

The CA affirmed the RTC's Joint Decision because "the Deed of Absolute Sale dated April 11, 1990 which conveyed and transferred the ownership of the subject land covered by TCT No. T-1467 to [the respondents Heirs of Julita], being duly acknowledged before a Notary Public, has in its favor the presumption of regularity and x x x is conclusive as to the truthfulness of its contents."[19] Further, the CA explained that "[f]orgery cannot be presumed. It must be proved by clear, positive and convincing evidence. The burden of proof lies in the party alleging forgery."[20]

Hence, the instant appeal before the Court.

The Court issued a Resolution[21] dated November 7, 2018 requiring the respondents to file their Comment on the instant Petition. However, the respondents failed to file any Comment. Hence, the respondents' right to file a Comment on the instant Petition is deemed waived.

---

[16] *Id.* at 54.

[17] *Supra* note 3.

[18] *Rollo,* p. 71.

[19] *Id.* at 63.

[20] *Id.* at 68.

[21] *Id.* at 163-164.

Issue

Stripped to its core, the essential issue to be resolved by the Court is whether there was a contract of sale that was entered into between the parties' predecessor-in-interest, Labnao, and the respondents Heirs of Julita, transferring ownership over the subject lot in the latter's favor.

The Court's Ruling

The instant Petition is *meritorious*.

The Deed of Absolute Sale was not properly notarized

In determining whether Labnao indeed sold the subject lot to the respondents Heirs of Julita, the CA confined its discussion mainly to the evidence concerning the authenticity and due execution of the written document denominated as *Deed of Absolute Sale*, focusing on the dependability of the said document on account of its notarization.[22]

The Court disagrees with the CA's finding that the Deed of Absolute Sale was properly notarized.

According to the notarial law applicable during the time of the notarization of the Deed of Absolute Sale, "[e]very contract, deed, or other document acknowledged before a notary public shall have certified thereon that the parties thereto have presented their proper (cedula) residence certificates or are exempt from the (cedula) residence tax x x x."[23] The presentation of competent evidence of identity is required where a document is acknowledged before a notary public "to ascertain the identity/identities of the person/s appearing before him and to avoid impostors."[24]

In the instant case, as confirmed by the RTC, the notary public, *i.e.,* Atty. Mendiola, admitted that he did not ask from Labnao any competent evidence of her identity and merely

---

[22] *Id.* at 63; italics supplied.

[23] Act No. 2711, Sec. 251.

[24] *Cabanilla v. Cristal-Tenorio*, 461 Phil. 1, 10-11 (2003); citation omitted.

asked if she was the one who signed the document.[25] On cross-examination, Atty. Mendiola unequivocally admitted that he "no longer verified the identity of the old woman[.]"[26]

Because the Deed of Absolute Sale was not properly notarized, it cannot be presumed, contrary to the CA's holding, to have been regularly executed.

The existence of an alleged notarized deed of sale is not decisive as to the existence and validity of a contract of sale

A contract is a *meeting of minds* between two persons whereby one binds himself/herself, with respect to the other, to give something or to render some service.[27] Article 1458 of the Civil Code, in turn, defines a sale as a contract whereby one of the contracting parties, *i.e.,* the seller, obligates himself/herself to transfer the ownership and to deliver a determinate thing, and the other party, *i.e.,* the buyer, obligates himself/herself to pay therefor a price certain in money or its equivalent.

Thus, the elements of a contract of sale are: (1) consent; (2) object; and (3) price in money or its equivalent. The absence of any of these essential elements negates the existence of a perfected contract of sale.[28]

A contract of sale is a consensual contract. Under Article 1475 of the Civil Code, the contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price. Because a contract of sale is a consensual contract, no particular form is required for its validity.[29]

---

[25] *Rollo,* p. 44.

[26] *Id.*

[27] CIVIL CODE, Art. 1305.

[28] *Dizon v. Court of Appeals,* 361 Phil. 963, 977 (1999).

[29] *Sps. Dalion v. Court of Appeals,* 261 Phil. 1033, 1039 (1990); underscoring supplied.

Thus, even if there is a document that purports to be a contract of sale, if there is strong countervailing evidence establishing the want of consent or meeting of the minds, there is no contract of sale.

In *Spouses Salonga v. Spouses Concepcion*,[30] it was held that the notarization of a document does not guarantee its validity because it is not the function of the notary public to validate an instrument that was never intended by the parties to have any binding legal effect. Neither is the notarization of a document conclusive as to the nature of the transaction, nor is it conclusive of the true agreement of the parties thereto.[31] Simply stated, the existence, veracity, and authenticity of a notarized written deed of sale do not conclusively determine whether all the essential requisites of a contract are present.

Applying the foregoing to the instant case, as made clear in the respondents Heirs of Julita's Formal Offer of Exhibits/ Documentary Evidence,[32] there is no other documentary evidence that had been offered to prove that a contract of sale was entered into by the parties aside from the Deed of Absolute Sale. The only other evidence presented to prove the existence of a contract of sale is **the testimony of respondent Jessica**.

A careful review of the sworn testimony of respondent Jessica reveals that the respondents Heirs of Julita never consented to enter into any contract of sale, completely belying the contents of the Deed of Absolute Sale. Otherwise stated, respondent Jessica's testimony establishes that there was, in fact, no meeting of the minds with respect to the alleged sale of the subject lot.

Respondent Jessica never testified that the respondents Heirs of Julita approached Labnao to offer to buy the subject lot. Nor did she testify that the respondents Heirs of Julita consented to purchase the subject lot. As well, she never testified that Labnao had approached them to offer to sell the subject lot. **In**

---

[30] 507 Phil. 287 (2005).

[31] *Id.* at 304.

[32] Folder of Defendants' Documentary Exhibits, pp. 1-4.

short, the testimony of respondent Jessica is devoid of any contention that there was any offer and any acceptance of such offer to buy the subject lot.

Indeed, during cross-examination, respondent Jessica even candidly admitted that the respondents Heirs of Julita did not have any participation in the drafting of the Deed of Absolute Sale and that all the siblings were surprised when this document was given to them by Labnao in May of 1990 (or one month after the purported execution of the Deed of Absolute Sale), which was the first time they ever saw the document:

Q So, when this alleged witness signed this document you were not present?

A Yes sir.

Q And also when Eufronia Labnao allegedly signed this document you were not present also, is it not?

A Yes sir.

Q And on the second page there is here a signature above the rubber stamp, "Jose A. Mendiola, Notary Public." Were you present when this was notarized?

A No sir.

Q How did you come into possession of this document?

A We were having a vacation here in Catbalo[g]an, I, Janet and Joselito and we were summoned by our grandmother to see her. When we met her, she gave this document to us and saying, "keep this because this is yours."(Witness is referring to Exhibit "1" and series.)

Q When was that when you were called up by your grandmother Eufronia Labnao?

A It was in the month of May.

x x x x x x x x x

Q *And you were suprised why your lola gave that document to you?*

A *Yes sir.*

Q ***You were suprised because you did not have any agreement with your lola regarding the share of this particular lot?***

A ***Yes sir.***

Q **And that was the first time you came to know that that land covered by Lot No. 43 of the cadastral survey of Catbalogan and the improvement of the building wat given to you by your lola?**

A **Only the lot not the building.**

x x x x x x x x x

Q ***Now, when this document was handed to you by your lola you just look (sic) at said deed of absolute, is it not?***

A ***Yes sir, this deed of sale.***

Q And Joselito Renales was also present that time?

A Yes sir.

Q And also Janet?

A Yes sir.

Q **And that was the only time that you talked about this land standing on Lot No. 43 with your grandmother, Eufronia Labnao?**

A **Yes sir.**

Q **Before April 11, 1990 you have not talked with your lola regarding the sale of that lot, is it not?**

A **Yes sir.**

Q And even after April 11, 1990 you have not talked with your lola regarding that sale of the land which is covered by Lot No. 43?

A We talked but after that we went back to Bicol.

Q That was all and nothing transpired regarding this particular deed of sale?

A No more.

x x x x x x x x x

Q You said that that deed of sale allegedly executed by your grandmother is dated April 11, 1990. When did you actually come into possession of that certain deed of sale?

A At the time when our grandmother handed to us that document I kept it.

Q That was when you were on your vacation from Bicol it was already May?

A Yes sir.

Q But the deed of sale was dated April 11, 1990 and you came to Catbalogan on vacation in the month of May 1990, did I get your *(sic)* correct?

A Yes sir.

Q At the time when this deed of sale was given to you by your grandmother, do you have already a work that time?

A None sir.

Q Because you were still a student, is it not?

A Yes sir.[33]

In fact, the Court notes that during the cross-examination of respondent Jessica, the RTC itself put on record that respondent Jessica has no personal knowledge as to the execution of the contract of sale and that whatever she would testify on regarding the circumstances of such execution was inadmissible.

COURT
So, you cannot ask the surroundings and circumstances of the sale because she was not there.

ATTY. COBRIROS
Yes, your Honor.

COURT
Whatever she will testify will be hearsay.[34]

---

[33] TSN, July 20, 2007, pp. 4-12; emphasis and underscoring supplied.

[34] *Id.* at 13-14; emphasis supplied.

In other words, the sole witness presented by the respondents Heirs of Julita to prove the existence of the contract of sale actually testified that there was never any agreement on the part of the respondents Heirs of Julita to purchase the subject lot from their grandmother and that they were even surprised that the Deed of Absolute Sale even existed in the first place. To the mind of the Court, therefore, there was no valid contract of sale in the instant case.

Aside from the foregoing, it also does not escape the Court's attention that the purported Deed of Absolute Sale was never registered with the Registry of Deeds. Nor was the Deed of Absolute Sale annotated on the subject TCT. In fact, the subject TCT was never transferred to the names of the supposed buyers, remaining to be registered in the name of Labnao. If there was truly a legitimate and genuine sale transaction that occurred, the supposed buyers, according to ordinary human experience, would have endeavored to secure the registration of the Deed of Absolute Sale and facilitate the transfer of the subject TCT in their name. Hence, the Court is convinced that there was no contract of sale.

Void Donation of an Immovable Property

What the Court deduces from the facts on record is that Labnao's intention was to ensure that her grandchildren — the respondents Heirs of Julita — would exclusively receive the subject lot. Thus, instead of simply donating the property, Labnao opted to simply simulate a contract of sale.

Unfortunately, even as a transfer of the subject lot to the respondents Heirs of Julita, the Deed of Absolute Sale cannot be considered a valid donation.

According to Article 749 of the Civil Code, in order for a donation of an immovable property to be considered valid, **the donation must be made in a public document,** specifying therein the property donated and the value of the charges which the donee must satisfy. In the instant case, as already explained, the Deed of Absolute Sale was not properly notarized, making

it a private document. Hence, there was no donation made in a public document.

Moreover, Article 749 of the Civil Code additionally requires that the donee manifests his/her acceptance of the donation of the immovable property in either the same public instrument or in a separate instrument. If the donee accepts the donation in a separate instrument, the donor should be notified thereof in an authentic form, and this step shall be noted in both instruments. In the instant case, there was no acceptance of any donation manifested by the respondents Heirs of Julita in the unilaterally executed Deed of Absolute Sale. There was also no separate instrument that was executed by the respondents Heirs of Julita for the purpose of accepting any donation fron their grandmother. Simply stated, the formalities of making and accepting a donation of an immovable property required under Article 749 of the Civil Code were not observed. The donation of real property is **void** without the formalities stated in Article 749.[35]

Even if it were a valid donation, it would have been collated back to the estate of Labnao pursuant to Articles 908 and 1064 of the Civil Code,[36] and petitioner Uy and the respondents Heirs of Julita would have divided the estate of Labnao equally, with

---

[35] *Department of Education, Culture and Sports v. Del Rosario,* 490 Phil. 193, 202 (2005); emphasis supplied.

[36] CIVIL CODE, Art. 908. To determine the legitime, the value of the property left at the death of the testator shall be considered, deducting all debts and charges, which shall not include those imposed in the will.

To the net value of the hereditary estate, shall be added the value of all donations by the testator that are subject to collation, at the time he made them. (818a)

Art. 1064. When the grandchildren, who survive with their uncles, aunts, or cousins, inherit from their grandparents in representation of their father or mother, they shall bring to collation all that their parents, if alive, would have been obliged to bring, even though such grandchildren have not inherited the property.

They shall also bring to collation all that they may have received from the decedent during his lifetime, unless the testator has provided otherwise, in which case his wishes must be respected, if the legitime of the co-heirs is not prejudiced. (1038)

petitioner Uy inheriting in his own right and the respondents Heirs of Julita inheriting as a group *per stirpes* or by right of representation.

In Conclusion

Hence, considering that there is no valid contract of sale or donation of immovable property transferring the subject lot from Labnao to the respondents Heirs of Julita, and bearing in mind that the RTC's holding in the Joint Decision that the subject building is under the co-ownership of petitioner Uy and the respondents Heirs of Julita was left undisturbed, the Court holds that **both** the subject lot and building are under the co-ownership of petitioner Uy and the respondents Heirs of Julita as the intestate heirs of Labnao. Thereafter, the parties may choose to either judicially or extrajudicially partition the co-owned properties.

WHEREFORE, the instant Petition is **GRANTED**. The assailed Decision dated November 27, 2013 and assailed Resolution dated August 17, 2016 rendered by the Court of Appeals in CA-G.R. CEB CV No. 03231 are **REVERSED AND SET ASIDE**. Necessarily, the Joint Decision dated August 7, 2009 is **VACATED**. The Deed of Absolute Sale dated April 11, 1990 is **DECLARED NULL AND VOID.**

SO ORDERED.

Peralta, C.J. (Chairperson), Reyes, J. Jr., Lazaro-Javier, and *Inting,*[*] *JJ.,* concur.

---

[*] Designated Additional Member of the First Division per Special Order No. 2726 dated October 25, 2019.

FIRST DIVISION

[G.R. No. 227605. December 5, 2019]

IN RE: PETITION FOR JUDICIAL RECOGNITION OF DIVORCE BETWEEN MINURO[*] TAKAHASHI and JULIET RENDORA MORAÑA,

JULIET RENDORA MORAÑA, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CIVIL LAW; THE FAMILY CODE OF THE PHILIPPINES; MARRIAGE; A FILIPINO WHO IS MARRIED TO A FOREIGN NATIONAL IS ALLOWED TO CONTRACT A SUBSEQUENT MARRIAGE AFTER A DIVORCE DECREE IS VALIDLY OBTAINED ABROAD BY THE ALIEN SPOUSE; PHILIPPINE COURTS HAVE JURISDICTION TO EXTEND THE EFFECT OF A FOREIGN DIVORCE DECREE TO A FILIPINO SPOUSE WITHOUT UNDERGOING TRIAL TO DETERMINE THE VALIDITY OF THE DISSOLUTION OF THE MARRIAGE. — While Philippine law does not allow absolute divorce, Article 26 of the Family Code allows a Filipino married to a foreign national to contract a subsequent marriage if a divorce decree is validly obtained by the alien spouse abroad. x x x. Under the second paragraph of Article 26, the law confers jurisdiction on Philippine courts to extend the effect of a foreign divorce decree to a Filipino spouse without undergoing trial to determine the validity of the dissolution of the marriage. According to Judge Alicia Sempio-Diy, a member of the *Civil Code Revision Committee*, the idea is to avoid the absurd situation of a Filipino as still being married to his or her alien spouse, although the latter is no longer married to the former because he or she had obtained a divorce abroad that is recognized by his or her national law. The aim was to solve the problem of many Filipino women who, under the New Civil Code, are still considered married to their alien husbands even after the latter have already validly

[*] Sometimes referred to as "Minoru" in some parts of the *Rollo*.

divorced them under their (the husbands') national laws and perhaps have already married again.

2. ID.; ID.; ID.; ID.; A FOREIGN DECREE OF DIVORCE MAY BE RECOGNIZED IN THE PHILIPPINES ALTHOUGH IT WAS THE FILIPINO SPOUSE WHO INITIATED AND OBTAINED THE SAME, AS THE LAW DOES NOT DEMAND THAT THE ALIEN SPOUSE SHOULD BE THE ONE WHO INITIATED THE FOREIGN DIVORCE PROCEEDING. — ***Republic v. Manalo*** emphasized that even if it was the Filipino spouse who initiated and obtained the divorce decree, the same may be recognized in the Philippines, *viz*.: Paragraph 2 of Article 26 speaks of "*a divorce x xx validly obtained abroad by the alien spouse capacitating him or her to remarry*." Based on a clear and plain reading of the provision, **it only requires that there be a divorce validly obtained abroad. The letter of the law does not demand that the alien spouse should be the one who initiated the proceeding wherein the divorce decree was granted. It does not distinguish whether the Filipino spouse is the petitioner or the respondent in the foreign divorce proceeding**. x x x x x x. **To reiterate, the purpose of Paragraph 2 of Article 26 is to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after a foreign divorce decree that is effective in the country where it was rendered, is no longer married to the Filipino spouse.** x x x **Whether the Filipino spouse initiated the foreign divorce proceeding or not, a favorable decree dissolving the marriage bond and capacitating his or her alien spouse to remarry will have the same result: the Filipino spouse will effectively be without a husband or wife. A Filipino who initiated a foreign divorce proceeding is in the same place and in like circumstances as a Filipino who is at the receiving end of an alien initiated proceeding. Therefore, the subject provision should not make a distinction.** x x x x x x **There is no real and substantial difference between a Filipino who initiated a foreign divorce proceedings and a Filipino who obtained a divorce decree upon the instance of his or her alien spouse.** In the eyes of the Philippine and foreign laws, both are considered as Filipinos who have the same rights and obligations in (an) alien land. x x x . Hence, **to make a distinction between them based merely on the superficial difference of whether they initiated the divorce proceedings or not is utterly unfair**. x x x.

3. ID.; ID.; ID.; ID.; IN ANY CASE INVOLVING RECOGNITION OF A FOREIGN DIVORCE JUDGMENT, BOTH THE DIVORCE DECREE AND THE APPLICABLE NATIONAL LAW OF THE ALIEN SPOUSE MUST BE PROVEN AS FACTS UNDER OUR RULES ON EVIDENCE; THE DIVORCE REPORT, CERTIFICATE OF ALL MATTERS, AND DIVORCE CERTIFICATE DULY AUTHENTICATED BY THE JAPANESE EMBASSY ARE PROOFS OF OFFICIAL RECORDS, WHICH ARE ADMISSIBLE IN EVIDENCE TO PROVE THE FACT OF DIVORCE OBTAINED BY PETITIONER AND HER FORMER HUSBAND. — In ***Corpuz v. Sto. Tomas*** and ***Garcia v. Recio***, the Court held that in any case involving recognition of a foreign divorce judgment, both the Divorce Decree and the applicable national law of the alien spouse must be proven as facts under our rules on evidence. x x x. Petitioner identified, presented, and formally offered in evidence the Divorce Report issued by the Office of the Mayor of Fukuyama City. It clearly bears the fact of divorce by agreement of the parties x x x. [R]ecords show that the Divorce Report is what the Government of Japan issued to petitioner and her husband when they applied for divorce. There was no "*divorce judgment*" to speak of because the divorce proceeding was not coursed through Japanese courts but through the Office of the Mayor of Fukuyama City in Hiroshima Prefecture, Japan. In any event, since the Divorce Report was issued by the Office of the Mayor of Fukuyama City, the same is deemed an *act of an official body* in Japan. By whatever name it is called, the Divorce Report is clearly the equivalent of the "Divorce Decree" in Japan, hence, the best evidence of the fact of divorce obtained by petitioner and her former husband. Notably, the fact of divorce was also supported by the Certificate of All Matters issued by the Japanese government to petitioner's husband Minoru Takahashi, indicating the date of divorce, petitioner's name from whom he got divorced and petitioner's nationality as well x x x. More, petitioner submitted below a duly authenticated copy of the Divorce Certificate issued by the Japanese government. x x x. [T]he Divorce Report, Certificate of All Matters, and Divorce Certificate were all authenticated by the Japanese Embassy. These are proofs of official records which are admissible in evidence under Sections 19 and 24, Rule 132 of the Rules on Evidence.

4. ID.; ID.; ID.; ID.; MARRIAGE, BEING A MUTUAL AND SHARED COMMITMENT BETWEEN TWO PARTIES, CANNOT POSSIBLY BE PRODUCTIVE OF ANY GOOD TO THE SOCIETY WHERE ONE IS CONSIDERED RELEASED FROM THE MARITAL BOND WHILE THE OTHER REMAINS BOUND TO IT; PROCEDURAL RULES RELAXED BY THE COURT TO ADVANCE SUBSTANTIAL JUSTICE IN CASE AT BAR. — [T]he Court has, time and again, held that the court's primary duty is to dispense justice; and procedural rules are designed to secure and not to override substantial justice. On several occasions, the Court relaxed procedural rules to advance substantial justice. More so here because what is involved is a matter affecting the lives of petitioner and her children; the case is meritorious; the belated issuance of the Divorce Certificate was not due to petitioner's fault; and the relaxation of the rules here will not prejudice the State. True, marriage is an inviolable social institution and must be protected by the State. But in cases like these, there is no more "*institution*" to protect as the supposed institution was already legally broken. *Marriage, being a mutual and shared commitment between two parties, cannot possibly be productive of any good to the society where one is considered released from the marital bond while the other remains bound to it.*

5. ID.; ID.; ID.; ID.; FOREIGN LAWS MUST BE ALLEGED AND PROVED, AS OUR COURTS CANNOT TAKE JUDICIAL NOTICE THEREOF; JAPANESE LAW ON DIVORCE, NOT PROVED; THE RULES REQUIRE MORE THAN A PRINTOUT FROM A WEBSITE TO PROVE A FOREIGN LAW; CASE REMANDED TO THE TRIAL COURT. — This brings us to the next question: was petitioner able to prove the applicable law on divorce in Japan of which her former husband is a national? On this score, ***Republic v. Manalo*** ordained: Nonetheless, the Japanese law on divorce must still be proved. x x x It is well-settled in our jurisdiction that our courts cannot take judicial notice of foreign laws. Like any other facts, they must alleged and proved. x x x The power of judicial notice must be exercised with caution, and every reasonable doubt upon the subject should be resolved in the negative. x x x. Here, what petitioner offered in evidence were mere printouts of pertinent portions of the Japanese law on divorce and its English translation. There was no proof at all that these printouts reflected the existing law on divorce in Japan and its correct

English translation. Indeed, our rules require more than a printout from a website to prove a foreign law. In ***Racho***, the Japanese law on divorce was duly proved through a copy of the English Version of the Civil Code of Japan translated under the authorization of the Ministry of Justice and the Code of Translation Committee. At any rate, considering that the fact of divorce was duly proved in this case, the higher interest of substantial justice compels that petitioner be afforded the chance to properly prove the Japanese law on divorce, with the end view that petitioner may be eventually freed from a marriage in which she is the only remaining party. In ***Manalo***, the Court, too, did not dismiss the case, but simply remanded it to the trial court for reception of evidence pertaining to the existence of the Japanese law on divorce.

CAGUIOA, *J., separate concurring opinion*:

CIVIL LAW; THE FAMILY CODE OF THE PHILIPPINES; MARRIAGE; A DIVORCE DECREE GRANTED UPON A JOINT APPLICATION FILED BY THE PARTIES IN A MIXED MARRIAGE IS STILL ONE "OBTAINED BY THE ALIEN SPOUSE," ALBEIT WITH THE CONFORMITY OF THE LATTER'S FILIPINO SPOUSE; THE EXCEPTION TO THE NATIONALITY PRINCIPLE EMBODIED IN ARTICLE 15 OF THE CIVIL CODE, FOUND IN ARTICLE 26(2) OF THE FAMILY CODE APPLIES WHERE THERE IS A VALID MARRIAGE THAT HAS BEEN CELEBRATED BETWEEN A FILIPINO CITIZEN AND A FOREIGN NATIONAL, AND A VALID DIVORCE IS OBTAINED ABROAD BY THE ALIEN SPOUSE CAPACITATING HIM OR HER TO REMARRY. — x x x [A]s x x x in the case of *Republic v. Manalo* (*Manalo*), Article 26(2) of the Family Code had been crafted to serve as an exception to the nationality principle embodied in Article 15 of the Civil Code. This exception is narrow, and intended *only* to address the unfair situation that results when a foreign national obtains a divorce decree against a Filipino citizen, leaving the latter stuck in a marriage without a spouse. x x x. Petitioner Juliet Rendora Moraña is a Filipino citizen seeking recognition of the divorce decree issued upon a joint application filed with her Japanese husband Minuro Takahashi, before the Office of the Mayor of Fukuyama City, Japan. Unlike the divorce decree in question in *Manalo*,

> the divorce decree in this case had been obtained not by the Filipino citizen alone, but *jointly*, by the Filipino and alien spouse. Verily, a divorce decree granted upon a joint application filed by the parties in a mixed marriage is still one "obtained by the alien spouse", *albeit* with the conformity of the latter's Filipino spouse. Thus, the twin requisites for the application of the exception under Article 26(2) are present — there is a valid marriage that has been celebrated between a Filipino citizen and a foreign national; and **a valid divorce is obtained abroad by the alien spouse capacitating him or her to remarry**.

APPEARANCES OF COUNSEL

YF Lim and Associates Law Offices for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This petition for review on *certiorari*[1] seeks to reverse the following issuances of the Court of Appeals in CA-G.R. CV No. 103196 entitled *In Re: Petition for Judicial Recognition of Divorce Between Minuro Takahashi and Juliet Rendora Moraña*:

1. Decision[2] dated July 5, 2016 which affirmed the dismissal of petitioner Juliet Rendora Moraña's petition for recognition of foreign divorce decree in Japan; and

2. Resolution[3] dated October 13, 2016 which denied petitioner's motion for reconsideration.

---

[1] *Rollo*, pp. 8-25.

[2] Penned by now retired Associate Justice Sesinando E. Villon and concurred in by now Supreme Court Associate Justice Rodil V. Zalameda and Associate Justice Pedro B. Corales, *id.* at 104-112.

[3] *Id.* at 122-123.

Antecedents

On June 24, 2002, petitioner and Minoru Takahashi got married in San Juan, Metro Manila. Thereafter, they moved to live in Japan where they bore two (2) children, namely: Haruna Takahashi (born on January 5, 2003) and Nanami Takahashi (born on May 8, 2006).[4]

Ten (10) years later, the couple got estranged. Petitioner alleged that her husband failed to perform his marital obligations to her. He refused to give support to their two (2) children, and worse, started cohabiting with another woman. Because of her persistent demand for financial support, her husband suggested they secure a divorce so the Japanese government would give financial assistance to their children and send them to school. Believing it was for the good of their children, petitioner agreed to divorce her husband. Consequently, they jointly applied for divorce before the Office of the Mayor of Fukuyama City, Japan.[5]

On May 22, 2012, the Office of the Mayor of Fukuyama City granted their application for divorce and issued the corresponding Divorce Report.[6]

On October 2, 2012, petitioner filed with the Regional Trial Court-Manila an action for recognition of the Divorce Report. The case was docketed as Civil Case No. 12-128788 and raffled to Branch 29.

During the proceedings, petitioner offered the following exhibits:

"A" Petition for Recognition of Foreign Decree of Divorce
"B" Compliance dated January 5, 2013
"C" Letter addressed to the Office of the Solicitor General
"D" Letter to the Public Prosecutor
"E" OSG's Notice of Appearance and deputation letter
"F" Order dated January 24, 2013
"G" Affidavit of Publication

---

[4] *Id.* at 10, 47, and 105.

[5] *Id.* at 10, 43, 47, and 105.

[6] *Id.* at 48, and 105.

"H" April 29, 2013 issue of Hataw newspaper
"I" May 6, 2013 issue of Hataw newspaper
"J" Marriage Contract
"K" Printout of the Divorce Law of Japan and its English translation
"L" Divorce Report dated May 22, 2012 and its English translation
"M" Certificate of All Matters and its English translation
"N" Letter Request dated July 9, 2013 addressed to the Japanese Embassy
"O" Letter Request dated August 4, 2012 addressed to the Japanese Embassy
"P" Petitioner's Judicial Affidavit
"Q" Photocopy of petitioner's passport

The Trial Court's Ruling

By Decision[7] dated December 23, 2013, the trial court dismissed the petition for failure to present in evidence the Divorce Decree itself. The trial court held that the Divorce Report and Certificate of All Matters cannot take the place of the Divorce Decree itself which is the best evidence here. Besides, the authenticated Divorce Certificate issued by the Japanese government was not even included in petitioner's formal offer of evidence aside from the fact that it was a mere photocopy and was not properly identified nay authenticated in open court. Too, on cross, it appeared that petitioner herself was the one who secured the Divorce Decree which fact is not allowed under Philippine laws.

By Order[8] dated June 30, 2014, the trial court denied petitioner's motion for reconsideration.[9]

The Court of Appeals' Ruling

On appeal, the Court of Appeals affirmed through its assailed Decision[10] dated July 5, 2016. It emphasized that before a foreign

[7] Penned by Presiding Judge Roberto P. Quiroz, *id.* at 63-72.

[8] *Id.* at 81-83.

[9] *Id.* at 73-80.

[10] Penned by now retired Associate Justice Sesinando E. Villon and concurred in by now Supreme Court Associate Justice Rodil V. Zalameda and Associate Justice Pedro B. Corales, *id.* at 104-112.

divorce decree can be recognized in the Philippines, the party pleading it must prove the divorce as a fact and demonstrate its conformity with the foreign law allowing it. This was not complied with here. Too, petitioner failed to offer in evidence the foreign Divorce Decree itself which she purportedly obtained in Japan. The Divorce Report and Certificate of All Matters cannot substitute for the Divorce Decree contemplated by the rules. More, petitioner failed to prove the existence of the foreign law allowing the divorce in question.

In any case, a foreign Divorce Decree cannot be recognized under Section 26 of the Family Code when the same was obtained by the Filipino spouse. Records showed that the Divorce Decree was not obtained by Minoru alone, but by petitioner, as well.

Petitioner's motion for reconsideration[11] was denied under its assailed Resolution dated October 13, 2016.[12]

The Present Appeal

Petitioner now seeks affirmative relief from the Court and prays that the dispositions of the Court of Appeals be reversed and set aside.

Petitioner argues that equity and substantial justice merit the grant of the petition. If Article 26 of the Family Code is not applied in this case, an absurd situation would arise wherein she is still considered married to her husband, while her husband is no longer legally married to her.

She asserts it was not she who voluntarily secured the divorce decree. It was her husband who encouraged her to apply for a divorce decree so that the Japanese government would support and send their children to school. When she testified that she secured the divorce papers, she actually meant it was she who requested copies of the Divorce Report and Certificate of All Matters. She and her husband jointly applied for divorce. She

---

[11] *Id.* at 113-120.

[12] *Id.* at 122-123.

could not have applied for divorce on her own since she is not well versed in the Japanese language and characters.

She further avers that only the Divorce Report and Certificate of All Matters were issued to her by the Japanese government. These documents are equivalent to the Divorce Decree itself. In any case, there is no difference between a "Divorce Decree" and the "Divorce Report" she presented in court. The Divorce Report itself bears the fact that she and her husband obtained a divorce in Japan. More, although the Divorce Report and Certificate of All Matters are mere photocopies, the same were duly authenticated by the Japanese Embassy.

As for the Divorce Certificate, the Court of Appeals said that the same was not properly offered as it was submitted to the court merely *via* a Manifestation. The Court of Appeals, however, failed to consider the fact that the Divorce Certificate was given to her counsel by the Japanese Embassy only after she had presented her evidence and after she had gone back to Japan to care for her children. The belated availability of the Divorce Certificate was, therefore, beyond her control. In any event, the trial court all admitted her evidence sans any objection from the State. Also, neither the public prosecutor nor the Office of the Solicitor General (OSG) challenged the divorce she and her husband obtained in Japan.

The OSG, on the other hand, posits that the arguments raised by petitioner are mere rehash of the arguments which both the trial court and the Court of Appeals had already resolved in full.[13]

Issue

Did the Court of Appeals err in affirming the dismissal of the petition for recognition of the foreign divorce decree?

Ruling

While Philippine law does not allow absolute divorce, Article 26 of the Family Code allows a Filipino married to a foreign

---

[13] *Id.* at 139-142.

national to contract a subsequent marriage if a divorce decree is validly obtained by the alien spouse abroad, thus:

> Article 26. x x x
>
> Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law.

Under the second paragraph of Article 26, the law confers jurisdiction on Philippine courts to extend the effect of a foreign divorce decree to a Filipino spouse without undergoing trial to determine the validity of the dissolution of the marriage.[14]

According to Judge Alicia Sempio-Diy, a member of the *Civil Code Revision Committee*, the idea is to avoid the absurd situation of a Filipino as still being married to his or her alien spouse, although the latter is no longer married to the former because he or she had obtained a divorce abroad that is recognized by his or her national law. The aim was to solve the problem of many Filipino women who, under the New Civil Code, are still considered married to their alien husbands even after the latter have already validly divorced them under their (the husbands') national laws and perhaps have already married again.[15]

In ***Corpuz v. Sto. Tomas***[16] and ***Garcia v. Recio***,[17] the Court held that in any case involving recognition of a foreign divorce judgment, both the Divorce Decree and the applicable national law of the alien spouse must be proven as facts under our rules on evidence.

---

[14] *Doreen Grace Parilla Medina v. Michiyuki Koike*, 791 Phil. 645, 651 (2016).

[15] *Republic of the Philippines v. Marelyn Tanedo Manalo*, G.R. No. 221029, April 24, 2018.

[16] G.R. No. 186571, 642 Phil. 420, 432 (2010).

[17] G.R. No. 138322, 418 Phil. 723, 725 (2001).

Here, the Court of Appeals affirmed the trial court's decision denying the petition for recognition of foreign decree of divorce on three (3) grounds, *viz.*:

1. A divorce decree obtained by a Filipino abroad cannot be recognized in the Philippines because Philippine law does not allow divorce;
2. The Divorce Decree was not presented and proved in evidence; and
3. The existence of the Japanese law on divorce was not proved.

The Court does not agree.

A foreign decree of divorce may be recognized in the Philippines although it was the Filipino spouse who obtained the same

Republic v. Manalo[18] emphasized that even if it was the Filipino spouse who initiated and obtained the divorce decree, the same may be recognized in the Philippines, *viz.*:

> Paragraph 2 of Article 26 speaks of "*a divorce x x x validly obtained abroad by the alien spouse capacitating him or her to remarry*." Based on a clear and plain reading of the provision, **it only requires that there be a divorce validly obtained abroad. The letter of the law does not demand that the alien spouse should be the one who initiated the proceeding wherein the divorce decree was granted. It does not distinguish whether the Filipino spouse is the petitioner or the respondent in the foreign divorce proceeding**.
> x x x
>
> Assuming, for the sake of argument, that the word "*obtained*" should be interpreted to mean that the divorce proceeding must be actually initiated by the alien spouse, still, **the Court will not follow the letter of the statute when to do so would depart from the true intent of the legislature or would otherwise yield conclusions inconsistent with the general purpose of the act. Laws have ends to achieve, and statutes should be so construed as not to defeat but**

[18] *Supra* note 15.

to carry out such ends and purposes. As held in *League of Cities of the Phils. et al. v. COMELEC et al.*:

> **The legislative intent is not at all times accurately reflected in the manner in which the resulting law is couched. Thus, applying a *verba legis* or strictly literal interpretation of a statute may render it meaningless and lead to inconvenience, an absurd situation or injustice. To obviate this aberration, and bearing in mind the principle that the intent or the spirit of the law is the law itself, resort should be to the rule that the spirit of the law controls its letter.**

To reiterate, the purpose of Paragraph 2 of Article 26 is to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after a foreign divorce decree that is effective in the country where it was rendered, is no longer married to the Filipino spouse. x x x Whether the Filipino spouse initiated the foreign divorce proceeding or not, a favorable decree dissolving the marriage bond and capacitating his or her alien spouse to remarry will have the same result: the Filipino spouse will effectively be without a husband or wife. A Filipino who initiated a foreign divorce proceeding is in the same place and in like circumstances as a Filipino who is at the receiving end of an alien initiated proceeding. Therefore, the subject provision should not make a distinction. x x x

x x x Moreover, **blind adherence to the nationality principle must be disallowed if it would cause unjust discrimination and oppression to certain classes of individuals whose rights are equally protected by law.** x x x

x x x In this case, We find that Paragraph 2 of Article 26 violates one of the essential requisites of the equal protection clause. Particularly, **the limitation of the provision only to a foreign divorce decree initiated by the alien spouse is unreasonable as it is based on superficial, arbitrary, and whimsical classification**.

x x x **there is no real and substantial difference between a Filipino who initiated a foreign divorce proceedings and a Filipino who obtained a divorce decree upon the instance of his or her alien spouse**. In the eyes of the Philippine and foreign laws, both are considered as Filipinos who have the same rights and obligations in (an) alien land. The circumstances surrounding them are alike. Were it not for Paragraph 2 of Article 26, both are still married to their

foreigner spouses who are no longer their wives/husbands. Hence, **to make a distinction between them based merely on the superficial difference of whether they initiated the divorce proceedings or not is utterly unfair**. Indeed, the treatment gives undue favor to one and unjustly discriminate against the other.

A prohibitive view of Paragraph 2 of Article 26 would do more harm than good. If We disallow a Filipino citizen who initiated and obtained a foreign divorce from the coverage of Paragraph 2 of Article 26 and still require him or her to first avail of the existing "mechanisms" under the Family Code, any subsequent relationship that he or she would enter in the meantime shall be considered as illicit in the eyes of the Philippine law. Worse, any child born out of such "extra-marital" affair has to suffer the stigma of being branded as illegitimate. Surely, these are just but a few of the adverse consequences, not only to the parent but also to the child, if We are to hold a restrictive interpretation of the subject provision. The irony is that the principle of inviolability of marriage under Section 2, Article XV of the Constitution is meant to be tilted in favor of marriage and against unions not formalized by marriage, but without denying State protection and assistance to live-in arrangements or to families formed according to indigenous customs.

This Court should not turn a blind eye to the realities of the present time. x x x **it is recognized that not all marriages are made in heaven and that imperfect humans more often than not create imperfect unions.** x x x it is hypocritical to safeguard the quantity of existing marriages and, at the same time, brush aside the truth that some of them are of rotten quality.

Going back, We hold that marriage, being a mutual and shared commitment between two parties, cannot possibly be productive of any good to the society where one is considered released from the marital bond while the other remains bound to it. x x x

Indeed, **where the interpretation of a statute according to its exact and literal import would lead to mischievous results or contravene the clear purpose of the legislature, it should be construed according to its spirit and reason, disregarding as far as necessary the letter of the law. A statute may, therefore, be extended to cases not within the literal meaning of its terms, so long as they come within its spirit or intent**. (Emphasis supplied)

Racho v. Tanaka[19] further enunciated that the prohibition on Filipinos from participating in divorce proceedings will not be protecting our own nationals. Verily, therefore, even though it was petitioner herself or jointly with her husband who applied for and obtained the divorce decree in this case, the same may be recognized in our jurisdiction. So must it be.

The next question: Were the Divorce Decree itself and the Japanese law on divorce sufficiently proved in this case?

Divorce Decree

Petitioner identified, presented, and formally offered in evidence the Divorce Report[20] issued by the Office of the Mayor of Fukuyama City. It clearly bears the fact of divorce by agreement of the parties, *viz*.:

	Husband	Wife
Name	MINORU TAKAHASHI	JULIET MORAÑA TAKAHASHI
Date of Birth	September 13, 1975	July 26, 1978
Address (Registered Address)	82-2 Oaza Managura, Ekiya-cho, Fukuyama City	1-13-15-403 Minato Machi, Fukuyama City
	Name of Householder: Tadashi Takahashi	Name of Householder: Juliet Moraña Takahashi
Permanent Domicile (For foreigner, write only the Nationality)	82-2 Oaza Managura, Ekiya-cho, Fukuyama City, Hiroshima Prefecture	
	Head of family Minoru Takahashi	Nationality of Wife Republic of the Philippines
Name of Parents and the Relationship	Father of Husband: Tadashi Takahashi Mother: Tomoe Relationship: Second Son	Father of Wife: Cesar Moraña, Jr. Mother: Zosima Moraña Relationship: Daughter
Type of divorce:	✓Divorce by Agreement __Settlement Arranged on __Mediation Date: __Approval of Request Date: __Arbitration Date: __Court Decision Date:	

[19] G.R. No. 199515, June 25, 2018.

[20] *Rollo*, pp. 34-35.

Both the trial court and the Court of Appeals, nonetheless, declined to consider the Divorce Report as the Divorce Decree itself. According to the trial court, the Divorce Report was "*limited to the report of the divorce granted to the parties.*"[21] On the other hand, the Court of Appeals held that the Divorce Report "*cannot be considered as act of an official body or tribunal as would constitute the divorce decree contemplated by the Rules.*"[22]

The Court is not persuaded. Records show that the Divorce Report is what the Government of Japan issued to petitioner and her husband when they applied for divorce. There was no "*divorce judgment*" to speak of because the divorce proceeding was not coursed through Japanese courts but through the Office of the Mayor of Fukuyama City in Hiroshima Prefecture, Japan. In any event, since the Divorce Report was issued by the Office of the Mayor of Fukuyama City, the same is deemed an *act of an official body* in Japan. By whatever name it is called, the Divorce Report is clearly the equivalent of the "Divorce Decree" in Japan, hence, the best evidence of the fact of divorce obtained by petitioner and her former husband.

Notably, the fact of divorce was also supported by the Certificate of All Matters[23] issued by the Japanese government to petitioner's husband Minoru Takahashi, indicating the date of divorce, petitioner's name from whom he got divorced and petitioner's nationality as well, thus:

Divorce	[Date of Divorce] May 22, 2012 [Name of Spouse] Juliet Moraña Takahashi [Nationality of Spouse] Republic of the Philippines

More, petitioner submitted below a duly authenticated copy of the Divorce Certificate[24] issued by the Japanese government.[25]

---

[21] *Id.* at 67

[22] *Id.* at 108.

[23] *Id.* at 39-40.

[24] *Id.* at 51.

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

The fact alone that the document was submitted to the trial court without anyone identifying it on the stand or making a formal offer thereof in evidence does not call for dismissal of the petition.

For one, the State did not question the existence of the Divorce Report, Divorce Certificate, and more importantly the fact of divorce between petitioner and her husband. As ***Republic v. Manalo***[26] pronounced, if the opposing party fails to properly object, as in this case, the existence of the divorce report and divorce certificate decree is rendered admissible as a written act of the foreign official body.

For another, petitioner explained that despite repeated prompt requests from the Japanese Embassy, the latter released the Divorce Certificate quite belatedly after petitioner had already terminated her testimony and returned to Japan to care for her children.[27]

Still another, the Divorce Report, Certificate of All Matters, and Divorce Certificate were all authenticated by the Japanese Embassy. These are proofs of official records which are admissible in evidence under Sections 19 and 24, Rule 132 of the Rules on Evidence, to wit:

Section 19. *Classes of Documents*. — For the purpose of their presentation (in) evidence, documents are either public or private.

Public documents are:

(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;

x x x x x x x x x

Section 24. *Proof of official record*. — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record,

---

[26] *Supra* note 15.

[27] *Rollo*, p. 101.

or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

Finally, the Court has, time and again, held that the court's primary duty is to dispense justice; and procedural rules are designed to secure and not to override substantial justice. On several occasions, the Court relaxed procedural rules to advance substantial justice.[28] More so here because what is involved is a matter affecting the lives of petitioner and her children; the case is meritorious; the belated issuance of the Divorce Certificate was not due to petitioner's fault; and the relaxation of the rules here will not prejudice the State.[29]

True, marriage is an inviolable social institution and must be protected by the State. But in cases like these, there is no more "*institution*" to protect as the supposed institution was already legally broken. *Marriage, being a mutual and shared commitment between two parties, cannot possibly be productive of any good to the society where one is considered released from the marital bond while the other remains bound to it.*[30]

Law on divorce in Japan

This brings us to the next question: was petitioner able to prove the applicable law on divorce in Japan of which her former husband is a national? On this score, ***Republic v. Manalo***[31] ordained:

Nonetheless, the Japanese law on divorce must still be proved.

---

[28] See *Dr. Joseph L. Malixi, et al. v. Dr. Glory V. Baltazar*, G.R. No. 208224, November 22, 2017, 846 SCRA 244, 260.

[29] See *Barnes v. Hon. Quijano Padilla*, 482 Phil. 903, 915 (2004).

[30] *Supra* note 15.

[31] *Id.*

> x x x The burden of proof lies with the "party who alleges the existence of a fact or thing necessary in the prosecution or defense of an action." In civil cases, plaintiffs have the burden of proving the material allegations of the complaint when those are denied by the answer; and defendants have the burden of proving the material allegations in their answer when they introduce new matters. x x x
>
> It is well-settled in our jurisdiction that our courts cannot take judicial notice of foreign laws. Like any other facts, they must alleged and proved. x x x The power of judicial notice must be exercised with caution, and every reasonable doubt upon the subject should be resolved in the negative.

Since the divorce was raised by Manalo, the burden of proving the pertinent Japanese law validating it, as well as her former husband's capacity to remarry, fall squarely upon her. Japanese laws on persons and family relations are not among those matters that Filipino judges are supposed to know by reason of their judicial function.

Here, what petitioner offered in evidence were mere printouts of pertinent portions of the Japanese law on divorce and its English translation.[32] There was no proof at all that these printouts reflected the existing law on divorce in Japan and its correct English translation. Indeed, our rules require more than a printout from a website to prove a foreign law. In ***Racho***,[33] the Japanese law on divorce was duly proved through a copy of the English Version of the Civil Code of Japan translated under the authorization of the Ministry of Justice and the Code of Translation Committee. At any rate, considering that the fact of divorce was duly proved in this case, the higher interest of substantial justice compels that petitioner be afforded the chance to properly prove the Japanese law on divorce, with the end view that petitioner may be eventually freed from a marriage in which she is the only remaining party. In ***Manalo***,[34] the Court, too, did not dismiss the case, but simply remanded it to the

---

[32] *Rollo*, pp. 32-33.

[33] *Supra* note 19.

[34] *Supra* note 15.

trial court for reception of evidence pertaining to the existence of the Japanese law on divorce.

ACCORDINGLY, the petition is **GRANTED**. The Decision dated July 5, 2016 and Resolution dated October 13, 2016 of the Court of Appeals in CA-G.R. CV No. 103196 are **REVERSED** and **SET ASIDE**. The case is **REMANDED** to the Regional Trial Court – Branch 29, Manila for presentation in evidence of the pertinent Japanese law on divorce following the procedure in ***Racho v. Tanaka***.[35] Thereafter, the court shall render a new decision on the merits.

SO ORDERED.

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

Caguioa, J., see separate concurring opinion.

SEPARATE CONCURRING OPINION

CAGUIOA, *J.*:

I concur in the result.

However, I submit, as I did in the case of *Republic v. Manalo*[1] *(Manalo)*, that Article 26(2) of the Family Code had been crafted to serve as an exception to the nationality principle embodied in Article 15 of the Civil Code. This exception is narrow, and intended *only* to address the unfair situation that results when a foreign national obtains a divorce decree against a Filipino citizen, leaving the latter stuck in a marriage without a spouse.[2]

As I stated in my *Dissenting Opinion* in *Manalo*:

x x x [R]ather than serving as bases for the blanket recognition of foreign divorce decrees in the Philippines, I believe that the Court's rulings in [*Van Dorn v. Romillo, Jr.*[3]], [*Republic v. Orbecido*

---

[35] *Supra* note 19.

[1] G.R. No. 221029, April 24, 2018, 862 SCRA 580.

[2] *Id.* at 638.

[3] 223 Phil. 357 (1985).

III[4]] and [*Dacasin v. Dacasin*[5]] merely clarify the parameters for the application of the nationality principle found in Article 15 of the Civil Code, and the exception thereto found in Article 26(2) [of] the Family Code. These parameters may be summarized as follows:

1. Owing to the nationality principle, all Filipino citizens are covered by the prohibition against absolute divorce. As a consequence of such prohibition, a divorce decree obtained abroad by a Filipino citizen cannot be enforced in the Philippines. To allow otherwise would be to permit a Filipino citizen to invoke foreign law to evade an express prohibition under Philippine law.

2. Nevertheless, the effects of a divorce decree obtained by a foreign national may be extended to the Filipino spouse, provided the latter is able to prove (i) the issuance of the divorce decree, and (ii) the personal law of the foreign spouse allowing such divorce. This exception, found under Article 26(2) of the Family Code, respects the binding effect of the divorce decree on the foreign national, and merely recognizes the residual effect of such decree on the Filipino spouse.[6] (Emphasis and underscoring omitted)

Petitioner Juliet Rendora Moraña is a Filipino citizen seeking recognition of the divorce decree issued upon a joint application filed with her Japanese husband Minuro Takahashi, before the Office of the Mayor of Fukuyama City, Japan.

Unlike the divorce decree in question in *Manalo*, the divorce decree in this case had been obtained *not* by the Filipino citizen alone, but *jointly*, by the Filipino and alien spouse. Verily, a divorce decree granted upon a joint application filed by the parties in a mixed marriage is still one "obtained by the alien spouse", *albeit* with the conformity of the latter's Filipino spouse. Thus, the twin requisites for the application of the exception under Article 26(2) are present — there is a valid marriage that

---

[4] 509 Phil. 108 (2005).

[5] 625 Phil. 494 (2010).

[6] *Republic v. Manalo, supra* note 1, at 641.

has been celebrated between a Filipino citizen and a foreign national; and **a valid divorce is obtained abroad by the alien spouse capacitating him or her to remarry.**[7]

Based on these premises, I vote to **GRANT** the Petition.

FIRST DIVISION

[G.R. No. 230901. December 5, 2019]

MAGSAYSAY MARITIME CORPORATION, PRINCESS CRUISE• LINES LTD., and/or GARY M. CASTILLO, *petitioners, vs.* **ALLAN F. BUICO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; REVIEW BY THE SUPREME COURT IN LABOR CASES GENERALLY DOES NOT DELVE INTO FACTUAL QUESTIONS OR TO AN EVALUATION OF THE EVIDENCE SUBMITTED BY THE PARTIES; AN EXCEPTION IS WHEN THE JUDGMENT IS BASED ON MISAPPREHENSION OF FACTS. — [A] Rule 45 review by this Court in labor cases generally does not delve into factual questions or to an evaluation of the evidence submitted by the parties. However, one exception to this rule is when the judgment is based on a misapprehension of facts. Such exception applies in the instant case because, contrary to the findings of the NLRC and the CA, the company-designated physician had issued a final, accurate, and precise disability grading within the prescribed statutory periods. Hence, Buico is no entitled to the award of total and permanent disability benefits.

---

[7] See *Republic v. Orbecido III*, *supra* note 4, at 115.

• Stated as "Cruises" in some parts of the *rollo* and CA *rollo*.

2. LABOR AND SOCIAL LEGISLATION; 2010 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT; (2010 POEA-SEC); COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS; RULES GOVERNING SEAFARERS' CLAIMS FOR TOTAL AND PERMANENT DISABILITY BENEFITS; CASE AT BAR. — It is settled that the seafarer's entitlement to disability benefits is governed by law, the parties' contracts, and by medical findings. Since Buico was employed in 2013, the procedure to be observed in claiming disability benefits is outlined in Section 20(A) of the 2010 POEA-SEC. x x x The case of *Jebsens Maritime, Inc. v. Mirasol* succinctly summarized the rules governing seafarers' claims for total and permanent disability benefits as follows: 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him; 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total; 3. **If the company-designated physician fails to give his assessment within a period of 120 days with a sufficient justification (e.g. seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days.** The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total; regardless of any justification. In the case at bar, while the company-designated physician had issued both the Final Medical Report and Disability Grading on December 1, 2014 - beyond the initial 120-day period from repatriation which ended on November 6, 2014 — there was sufficient justification for such failure to give a timely medical assessment and to extend the period of diagnosis and treatment because Buico had required further medical treatment. As found by the CA, Buico had religiously undergone therapy from August 19, 2014 until November 28, 2014. The Final Medical Report and Disability Grading was thus timely issued by the company-designated physician within the extended 240-day period which ended on March 6, 2015.

3. ID.; ID.; ID.; ID.; EMPLOYER CAN INSIST ON THE COMPANY-DESIGNATED PHYSICIAN'S ASSESSMENT EVEN AGAINST THE CONTRARY OPINION BY ANOTHER DOCTOR, UNLESS THE SEAFARER EXPRESSSES HIS DISAGREEMENT BY ASKING FOR A REFERRAL TO A THIRD DOCTOR WHO SHALL MAKE A DETERMINATION AND WHOSE DECISION SHALL BE FINAL AND BINDING ON THE PARTIES; NON-COMPLIANCE WITH THE REQUIREMENT OF REFERRAL TO A THIRD DOCTOR IS TANTAMOUNT TO A VIOLATION OF TERMS UNDER THE CONTRACT; CASE AT BAR. — In the face of such final disability grading given by the company-designated physician within the prescribed period, the seafarer who intends to contest such assessment has the duty to observe the third doctor provision under the 2010 POEA-SEC. As stated in jurisprudence, in case of non-observance by the seafarer of the third doctor referral provision in the contract, the employer can insist on the company-designated physician's assessment even against the contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for a referral to a third doctor who shall make a determination and whose decision shall be final and binding on the parties. Securing a third doctor's opinion is the duty of the seafarer, who must actively or expressly request for it. Contrary to the pronouncement made by the NLRC, the referral to a third doctor is mandatory. Without referral to a third doctor, there is no valid challenge to the company-designated physician's findings. Ultimately, therefore, the company-designated physician's findings in such a situation must be upheld over the findings of the personal doctor of the seafarer. In the instant case, after the company-designated physician gave a final Grade 10 disability assessment, Buico consulted his own physician who opined that he was unfit to perform sea duty in whatever capacity with a permanent disability status. Thereafter, Buico filed a complaint against his employers without first expressly requesting the company for the referral of the matter to a third doctor. This failure by Buico to comply with the requirement of referral to a third doctor is tantamount to a violation of terms under the POEA-SEC. Consequently, without a binding third-party opinion, the final, accurate and precise findings of the company-designated physician prevail over the conclusion of the seafarer's personal doctor.

APPERANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Vicenzo Nonato M. Taggueg for respondent.

D E C I S I O N

CAGUIOA, *J.*:

This is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] dated October 13, 2016 and Resolution[3] dated March 31, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 144772, which denied petitioners' petition for *certiorari* under Rule 65 of the Rules of Court.

Facts

On November 5, 2013, petitioner Magsaysay Maritime Corporation (Magsaysay), a local manning agency, in behalf of its principal, petitioner Princess Cruise Lines Ltd., entered into a contract of employment with respondent Allan F. Buico (Buico) as Second Pantryman aboard the vessel *Star Princess* (Hotel).[4] Buico's basic wage was US$477.00 per month with guaranteed overtime pay of US$498.00 per month, among other benefits.[5]

While on board, Buico met an accident which caused him an injury on his right leg and ankle.[6] First aid treatment was initially given to Buico and he was thereafter transferred to a

---

[1] *Rollo,* pp. 3-40.

[2] *Id.* at 41-50. Penned by Associate Justice Ma. Luisa C. Quijano-Padilla and concurred in by Associate Justices Normandie B. Pizarro and Ramon Paul L. Hernando (now a Member of the Court).

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

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

[5] *Id.* at 42.

[6] *Id.*

hospital in Canada where he underwent an Open Reduction Internal Fixation (ORIF) surgery procedure.[7] Thereafter, he was repatriated to the Philippines on July 9, 2014 for further treatment.[8]

After examination, the company-designated physician initially diagnosed Buico to have *"s/p ORIF (July 4, 2014-Canada) for Fracture, lateral and posterior malleolus with talar shift, right",* and recommended an orthopedic follow-up checkup and continued wound care.[9] The company- designated physician again examined Buico on August 14, 2014 and, in a medical report, he recommended 12 sessions of physical therapy.[10] All in all, Buico underwent therapy for a total of 36 sessions starting August 19, 2014 until November 28, 2014, as shown by his certificate of attendance.[11]

On October 11, 2014 and November 15, 2014, the company-designated physician issued an Interim Disability Grading, assessing Buico's disability at Grade 10 pursuant to the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC).[12] Subsequently, on December 1, 2014, the company-designated physician gave a Final Medical Report[13] and a Disability Grading[14] of Grade 10 disability in accordance with the POEA-SEC.

Unhappy with this assessment, Buico consulted his own physician who diagnosed Buico unfit to perform sea duty in whatever capacity with a permanent disability status.[15]

---

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] CA *rollo*, pp. 126-127.

[14] *Id.* at 128.

[15] *Rollo,* p. 43.

On March 13, 2015, Buico then filed a Complaint[16] with the Labor Arbiter (LA) against petitioners for permanent and total disability benefits.

In their defense, petitioners essentially made the following arguments: Buico was not entitled to permanent and total disability benefits because the company-designated physician had already assessed his disability at Grade 10 pursuant to the POEA-SEC; Buico failed to follow the third doctor rule; the company-designated physician had knowledge of Buico's actual medical condition, hence, he was more qualified to assess his disability and his assessment should be upheld.[17]

The Ruling of the LA

In a Decision[18] dated June 30, 2015, the LA found that Buico suffered from Grade 10 disability, and ruled that Buico's physician's assessment was not done as thoroughly as that of the company-designated physician who had continuously attended to him for a period of more than four (4) months.[19] The dispositive portion of the LA Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> 1) Declaring [Buico] as suffering from Grade 10 disability[; and]
>
> 2) Ordering [petitioners Magsaysay], Princess Cruise Lines Ltd. and Gary M. Castillo to jointly and severally pay [Buico] disability benefit in the amount of US$10,075 or in its Philippine Peso equivalent at the time of payment.
>
> All other claims are dismissed or lack of merit.
>
> So Ordered.[20]

---

[16] CA *rollo*, pp. 131-132.

[17] *Rollo,* p. 43.

[18] CA *rollo,* pp. 68-75. Penned by Labor Arbiter Remedios L.P. Marcos.

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

[20] *Id.* at 75.

Aggrieved, Buico appealed with the National Labor Relations Commission (NLRC).

The Ruling of the NLRC

In a Resolution[21] dated November 27, 2015, the NLRC reversed the LA's findings, ruling that the referral to a third doctor was not mandatory and that the findings of the company-designated physician and the seafarer's doctor were inconclusive because they still had to be weighed and considered by the labor tribunals.[22] Further, the NLRC ruled that the company-designated physician's assessment was not accurate and precise, pointing out that the company-designated physician even admitted in the Final Medical Report that Buico was not restored to his previous condition, hence, his disability should therefore be considered as total and permanent.[23] The dispositive portion of the Resolution reads:

WHEREFORE, premises considered, the appeal of [Buico] is **GRANTED**. The Decision dated June 30, 2015 is hereby **MODIFIED** in that [petitioners] are hereby **ORDERED** to solidarily pay [Buico] the amount of US$60,000 as permanent and total disability compensation plus 10% thereof as attorney's fees.

SO ORDERED.[24]

In a Resolution[25] dated January 21, 2016, the NLRC denied petitioners' motion for reconsideration. Subsequently, the petitioners filed a Rule 65 petition with the CA.

---

[21] *Id.* at 57-66. Penned by Commissioner Alan A. Ventura and concurred in by Presiding Commissioner Gregorio O. Bilog, III and Commissioner Erlinda T. Agus.

[22] *Rollo,* p. 44; CA *rollo,* pp. 63-64.

[23] *Id.*; *id.* at 60-62.

[24] CA *rollo,* p. 65.

[25] *Id.* at 77-79.

The Ruling of the CA

In a Decision[26] dated October 13, 2016, the CA denied the petition and affirmed the NLRC rulings finding Buico entitled to permanent and total disability benefits. The CA held that the Disability Grading given by the company-designated physician was not accurate and precise as to Buico's actual medical condition.[27] Because the company-designated physician failed to arrive at a definite assessment of Buico's fitness or disability within the statutory periods, the CA ruled that Buico should be deemed totally and permanently disabled and entitled to the corresponding disability benefit.[28]

Petitioners filed a Motion for Reconsideration,[29] but this was denied by the CA in a Resolution[30] dated March 31, 2017. Aggrieved, petitioners filed the instant Petition under Rule 45 of the Rules of Court before the Court.

On July 31, 2017, the Court issued a Resolution[31] requiring Buico to file a Comment on the instant Petition. Subsequently, in a July 9, 2018 Resolution,[32] the Court noted that Buico's counsel, Atty. Vicenzo Nonato M. Taggueg (Atty. Taggueg), failed to file a Comment on the Petition and resolved to require Atty. Taggueg to show cause why he should not be disciplinarily dealt with or held in contempt for such failure and to comply with the July 31, 2017 Resolution. On March 4, 2019, the Court again issued a Resolution[33] which required the filing of a comment and imposed a fine of ₱1,000.00 upon Atty. Taggueg for his failure to comply with the show cause resolution. Since

---

[26] *Rollo,* pp. 41-50.

[27] *Id.* at 48.

[28] *Id.*

[29] *Id.* at 55-75.

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

[31] *Id.* at 76.

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

[33] *Id.* at 84-85.

the Court has not received Buico's Comment despite the issued Resolutions requiring the filing of the same, the Court shall dispense with the filing of the Comment and now resolve the controversy based on the Petition and the existing records.

Issue

The main issue in the case at bar is whether Buico is entitled to the award of total and permanent disability benefits.

The Court's Ruling

The instant Petition is meritorious.

At the outset, it is important to note that a Rule 45 review by this Court in labor cases generally does not delve into factual questions or to an evaluation of the evidence submitted by the parties.[34] However, one exception to this rule is when the judgment is based on a misapprehension of facts.[35] Such exception applies in the instant case because, contrary to the findings of the NLRC and the CA, the company-designated physician had issued a final, accurate, and precise disability grading within the prescribed statutory periods. Hence, Buico is not entitled to the award of total and permanent disability benefits.

It is settled that the seafarer's entitlement to disability benefits is governed by law, the parties' contracts, and by medical findings. Since Buico was employed in 2013, the procedure to be observed in claiming disability benefits is outlined in Section 20(A) of the 2010 POEA-SEC, as follows:

SECTION 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x x x x x x

---

[34] *Magsaysay Mol Marine, Inc. v. Atraje,* G.R. No. 229192, July 23, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocsfriendly/1/64478>.

[35] *Mighty Corp. v. E. & J. Gallo Winery,* 478 Phil. 615, 639-640 (2004).

> 2. x x x However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, **he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.**
>
> 3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed **from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days.** Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.
>
> x x x x x x x x x
>
> **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.** (Emphasis supplied)

Pursuant to the above provisions, when a seafarer suffers a work-related injury, the employer is obligated to refer the seafarer to a company-designated physician who has to arrive at a definite assessment of the seafarer's fitness or degree of disability within a period of 120 days from repatriation.[36] However, if there is no definitive declaration because the seafarer required further medical attention, then the period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists.[37] The case of *Jebsens Maritime, Inc. v. Mirasol*[38] succinctly summarized

---

[36] *Pastor v. Bibby Shipping Philippines, Inc.*, G.R. No. 238842, November 19, 2018, p. 7.

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

[38] G.R. No. 213874, June 19, 2019.

the rules governing seafarers' claims for total and permanent disability benefits as follows:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;

2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;

3. **If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g. seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days.** The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and

4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.[39] (Emphasis and underscoring supplied)

In the case at bar, while the company-designated physician had issued both the Final Medical Report and Disability Grading on December 1, 2014 — beyond the initial 120-day period from repatriation which ended on November 6, 2014 — there was sufficient justification for such failure to give a timely medical assessment and to extend the period of diagnosis and treatment because Buico had required further medical treatment. As found by the CA, Buico had religiously undergone therapy from August 19, 2014 until November 28, 2014.[40] The Final Medical Report and Disability Grading was thus timely issued by the company-designated physician within the extended 240-day period which ended on March 6, 2015.

Despite this, however, both the NLRC and the CA ruled that the disability assessment and medical report made by the

---

[39] *Id.* at 6.

[40] *Rollo,* p. 42.

company-designated physician were not accurate and precise as to Buico's medical condition based on their wording. A closer look at these documents, however, gives a contrary conclusion.

The Final Medical Report[41] issued by the company-designated physician contained the following discussion as to Buico's condition:

> On December 1, 2014, [Buico] was reevaluated by Orthopedic Surgery service. At this time, he has completed a total of 36 sessions of physical therapy. Subjectively, the patent reported intermittent right foot pain of VAS 4/10 felt on prolonged walking and stair climbing. Objectively, [the] latest x-ray dated November 4, 2014 showed healed fracture with implants in place. Patient was able to tolerate full weight bearing, however there was note of a limping gait. Residual limitation in range of motion on the right ankle was noted. **No other treatment intervention was indicated for the patient aside [from] continued self-guided home exercises and as needed intake of pain medication. Mr. Buico was deemed maximally medically improved for the Orthopedic condition referred**.[42] (Emphasis supplied)

The Disability Grading[43] also issued by the company-designated physician on the same date contained the following statement:

> *Should it be needed, [the] disability grading that closely corresponds to the patient's present functional capacity, in accordance [with] the 2010 POEA Standard Employment Contract, Section 32 (Schedule of Disability or Impediment for Injuries Suffered and Diseases Including Occupational Disease or Illness Contracted), Lower Extremities, Malleolar fracture with displacement of the foot inward or outward, is a* ***Grade 10 disability***.[44] (Emphasis supplied; italics in the original)

---

[41] CA *rollo*, pp. 126-127.

[42] *Id.* at 127.

[43] *Id.* at 128.

[44] *Id.*

After perusing the above excepts, the Court disagrees with the findings of the CA and NLRC. The above documents show that the findings of the company-designated physician as to Buico's disability were final, accurate, and precise, especially since there was a specific disability grading and since it stated that there was no other treatment intervention indicated for Buico. It is likewise noteworthy that the disability grading given by the company-designated physician was a result of several months of diagnosis and treatment. In fact, this Grade 10 disability rating was already given to Buico at least twice as an interim disability grading, thereby further lending credence to the assessment given by the company-designated physician.

In the face of such final disability grading given by the company-designated physician within the prescribed period, the seafarer who intends to contest such assessment has the duty to observe the third doctor provision under the 2010 POEA-SEC.[45]

As stated in jurisprudence, in case of non-observance by the seafarer of the third doctor referral provision in the contract, the employer can insist on the company-designated physician's assessment even against the contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for a referral to a third doctor who shall make a determination and whose decision shall be final and binding on the parties.[46] Securing a third doctor's opinion is the duty of the seafarer, who must actively or expressly request for it.[47]

---

[45] 2010 POEA-SEC, Sec. 20 states:

> **SECTION 20. COMPENSATION AND BENEFITS**
> **A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS**
> The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:
>
> 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.** (Emphasis supplied)

[46] *Pastor v. Bibby Shipping Philippines, Inc., supra* note 36, at 11.

[47] *Esteva v. Wilhelmsen Smith Bell Manning, Inc.,* G.R. No. 225899, July 10, 2019, p. 11.

Contrary to the pronouncement made by the NLRC, the referral to a third doctor is mandatory.[48] Without referral to a third doctor, there is no valid challenge to the company-designated physician's findings. Ultimately, therefore, the company-designated physician's findings in such a situation must be upheld over the findings of the personal doctor of the seafarer.[49]

In the instant case, after the company-designated physician gave a final Grade 10 disability assessment, Buico consulted his own physician who opined that he was unfit to perform sea duty in whatever capacity with a permanent disability status. Thereafter, Buico filed a complaint against his employers without first expressly requesting the company for the referral of the matter to a third doctor.

This failure by Buico to comply with the requirement of referral to a third doctor is tantamount to a violation of terms under the POEA-SEC. Consequently, without a binding third-party opinion, the final, accurate and precise findings of the company-designated physician prevail over the conclusion of the seafarer's personal doctor.

In light of the foregoing, the Court finds that the LA had correctly awarded Grade 10 disability benefits to Buico based on the disability grading given by the company-designated physician. Further, in accordance with prevailing jurisprudence, the total monetary award in his favor shall be subject to an interest of 6% per annum from the finality of this Decision until full payment.

WHEREFORE, premises considered, the Petition is **GRANTED.** The Decision dated October 13, 2016 and Resolution dated March 31, 2017 of the Court of Appeals in CA-G.R. SP No. 144772 are **SET ASIDE.** The Labor Arbiter's Decision dated June 30, 2015 is **REINSTATED**. The total

---

[48] *INC Navigation Co. Philippines, Inc. v. Rosales,* 744 Phil. 774, 787 (2014).

[49] *Esteva v. Wilhelmsen Smith Bell Manning, Inc., supra* note 47, at 12.

monetary award shall be subject to the interest rate of 6% per annum from the finality of this Decision until full payment.

SO ORDERED.

Peralta, C.J. (*Chairperson*), *Reyes, J. Jr.*, *Lazaro-Javier, Inting,*[*] *JJ.*, concur.

FIRST DIVISION

[G.R. No. 233321. December 5, 2019]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ROBERTO F. VALDEZ,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); THE STATE BEARS THE BURDEN NOT ONLY OF PROVING THE ELEMENTS OF THE OFFENSE BUT ALSO THE *CORPUS DELICTI* ITSELF. — In drug related cases, the State bears the burden not only of proving the elements of the offense but also the *corpus delicti* itself. x x x It is thus imperative for the prosecution to establish that the identity and integrity of the dangerous drugs were duly preserved in order to sustain a verdict of conviction. It must prove that the dangerous drugs seized from appellant are indeed the substance offered in court with the same unshakeable accuracy as that required to sustain a finding of guilt. Here, petitioner was charged with illegal sale and possession of dangerous drug allegedly committed on July 25, 2009. The governing law, therefore, is RA 9165. Section 21 thereof prescribes the standard in preserving the *corpus delicti* in illegal drug cases[.]

---

[*] Designated additional Member per Special Order No. 2726 dated October 25, 2019.

2. ID.; ID.; CHAIN OF CUSTODY RULE; TO ENSURE THE INTEGRITY OF THE SEIZED DRUG ITEMS, THE PROSECUTION MUST ACCOUNT FOR EACH LINK IN ITS CHAIN OF CUSTODY. — To ensure the integrity of the seized drug items, the prosecution must account for each link in its chain of custody: ***first***, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; ***second***, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; ***third***, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and ***fourth***, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court. This is the chain of custody rule. It came to fore due to the unique characteristics of illegal drugs which render them indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise. This record of movements and custody shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when the transfer of custody was made in the course of the item's safekeeping and use in court as evidence, and its final disposition.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY MINOR INCONSISTENCIES IN TESTIMONIES. — As for the alleged inconsistency of the prosecution witnesses pertaining to whether poseur-buyer PCPAG Abellana opened the pack that was handed to him, this is too minor to deserve any consideration. In ***People v. Uy***, the Court convicted appellant therein despite inconsistencies in the testimonies of prosecution witnesses. It held that discrepancies and inconsistencies in the testimonies of witnesses on minor details do not affect their credibility and do not detract the established fact of sale of illegal drugs. In another vein, both the trial court and the Court of Appeals found the witnesses to be consistent and credible in their testimonies. The trial court's determination of witnesses' credibility, when affirmed by the appellate court, is accorded full weight and credit, as well as respect, if not conclusive effect.

4. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); THE IDENTITY OF THE *CORPUS DELICTI* IS NOT COMPROMISED BY THE

INTERCHANGING USE OF "FRUITING TOPS" AND "DRIED LEAVES" TO DESCRIBE THE SEIZED MARIJUANA. — [T]he identity of the *corpus delicti* is not compromised by the interchanging use of "fruiting tops" and "dried leaves" to describe the marijuana seized from appellant. In ***People v. Cina***, the Court ruled that the disparity between these terms was inconsequential, especially since the identity and integrity of the seized items were proven and preserved.

5. ID.; ID.; THE IDENTITY AND INTEGRITY OF THE SEIZED MARIJUANA WAS NOT AFFECTED BY THE DIFFERENCE BETWEEN THE TOTAL WEIGHT AS REPORTED IN THE INFORMATION AND AS LISTED IN THE CHEMISTRY REPORT. — [T]he difference between the total weight of the seized items as reported in the Information and listed in the chemistry report does not affect their identity and integrity. As noted by the Court in ***People v. Aneslag***, there are a host of possible reasons for the discrepancy, such as the difference in the accuracy of weighing scales used by the police officers and the forensic chemist. Here, the difference was explained by PO3 Estazo's use of cardboard to mark the seized items. In his testimony, PO3 Estenzo narrated that he placed cardboards in the paper bag and the cellophane containing the two (2) packs of marijuana. Surely, the forensic chemist conducted an examination only of the seized drugs, sans any wrapper, cover, or cardboard labels. At any rate, the prosecution witnesses' testimonies are unwavering as they were able to recount who took custody of the dangerous drugs starting from seizure up to the time the same were presented as evidence in court[.]

APPEARANCES OF COUNSEL

Office of the Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This appeal[1] assails the Decision[2] of the Court of Appeals in CA-G.R. CR HC 01277-MIN dated March 13, 2017 affirming petitioner's conviction for violation of Section 5 and Section 11, Article II of Republic Act 9165 (RA 9165).[3]

The Proceedings Before the Trial Court

The Charge

By Informations dated July 25, 2009, appellant Roberto Valdez *y* Ferrer was charged with violation of Section 5 and Section 11 Article II of RA 9165, thus:

Criminal Case No. Crc 261-2009

That on or about 25 July 2009, in the City of Panabo, Davao, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, willfully, unlawfully and knowingly had in his possession, control and custody two (2) bundles of dried marijuana leaves wrapped in newspaper, a dangerous drug, with an estimated total weight of 787.4550 grams.

CONRARY TO LAW.[4]

Criminal Case No. Crc 262-2009

That on or about July 25, 2009, in the City of Panabo, Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, willfully, unlawfully and knowingly traded, sold and delivered two (2) packs of dried marijuana leaves wrapped in newspaper, a dangerous drug,

---

[1] Filed under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Perpetua T. Atal-Paño with Associate Justices Edgardo A. Camello and Edgardo T. Lloren, concurring.

[3] Otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

[4] Information dated July 25, 2009 (Crim. Case No. Crc 261-2009); Original Record, pp. 1-2.

to PCPAG Glen B. Abellana who was acting as a poseur buyer in a legitimate buy bust operation after taking and receiving two (2) marked money of One Hundred peso bills (₱100.00) with Serial Number BA 282683 and Serial Number TC315703 or a total of Two Hundred Pesos (₱200.00).

CONTRARY TO LAW.[5]

The consolidated cases were raffled to the Regional Trial Court (RTC) – Branch 34, Panabo City, Davao del Norte.

On arraignment, petitioner pleaded *not guilty* to both charges.[6]

During the trial, SPO1 Romeo Obero, PCI Lina Ligad Avelino, PO3 Adonis Estenzo, and Panabo City Auxilliary Group member (PCPAG) Glen Abellana testified for the prosecution, while appellant testified as lone witness for the defense.[7]

The Prosecution's Version

PO3 Adonis Estenzo testified that on July 24, 2009, PCPAG Abellana relayed to him a report from an informant that a certain Roberto Valdez from Homeland Subdivision was selling illegal drugs.[8] He instructed PCPAG Abellana to coordinate with his informant and set-up a sale with Valdez. For his part, he coordinated with the Philippine Drug Enforcement Agency (PDEA) to arrange a buy-bust operation. During the briefing, he designated PCPAG Abellana as poseur-buyer and marked two (2) ₱100 bills for that purpose.[9]

On July 25, 2009, around 1 o'clock in the morning, the team proceeded to Purok 10, Homeland Subdivision, Barangay

---

[5] Original Record, p. 10.

[6] *Id.* at 24, 145.

[7] RTC Decision dated November 29, 2013, pp. 2-7; Original Record, pp. 145-150.

[8] TSN (Estenzo) dated May 6, 2011, pp. 3-4.

[9] RTC Decision dated November 29, 2013, p. 3; Original Record, p. 146.

DAPCO, Panabo City. PCPAG Abellana and his informant headed to appellant's house while the rest of the team stayed near the area.[10]

From his position, he saw a man carrying a paper bag, later identified as appellant Roberto F. Valdez. The man met with PCPAG Abellana and the informant and they conversed. PCPAG Abellana later handed money to appellant who, in turn, also handed something to the former. PCPAG Abellana flashed the pre-arranged signal which thus alerted the team to close in and arrest appellant. He frisked appellant and recovered two (2) marked ₱100 bills. Upon checking the contents of the paper bag, he discovered two (2) big bundles of suspected marijuana. PCPAG Abellana handed over the two (2) packs of suspected marijuana he bought from appellant to him which he marked with his initials "AE" at the place of arrest. The team then brought appellant to Panabo Police Station.[11]

He kept the seized items in his possession from the time of the arrest until they arrived at the Panabo Police Station. He presented the seized items to Investigator PO3 Johnny S. Calamba who prepared the evidence tag which he (PO3 Estenzo) signed in the presence of the accused. Thereafter, he took the items back and secured them in the steel cabinet for safekeeping.[12]

Around 9 to 10 o'clock in the morning of the same day, they did the inventory and took photographs of the seized items in the presence of the insulating witnesses from the media, the PDEA and an elected official from the barangay. Thereafter, he filed the case before the Panabo Prosecution's Office and prepared a request for laboratory examination. He then brought appellant and the seized items to the PNP Crime Laboratory in Tagum City.[13]

---

[10] *Id.*

[11] *Id.* at 147.

[12] *Id.*

[13] *Id.*

PCPAG Glen Abellana testified that he was the companion of PO3 Estenzo during the buy-bust operation. He was also a member of the PCPAG, assigned at the Intelligence Operative of PNP Panabo City. He essentially corroborated PO3 Estenza's narration of facts and supplemented details as poseur-buyer.[14]

His informant introduced him to appellant as an interested buyer when they met outside appellant's house. He told appellant he wanted to buy Php200 worth to which appellant agreed. Thereafter, he handed over the two (2) marked ₱100 bills which appellant slid into his pocket before handing over two (2) packs covered with newspaper. He opened one of them and found dried leaves which he believed to be marijuana. After checking the contents, he asked appellant if he had more. Appellant answered in the affirmative and said he had more stocks in the paper bag he was carrying.[15]

Thereafter, he signaled the rest of the team to rush to the place of transaction and arrest appellant. PO3 Estenzo frisked appellant, recovered the marked money from appellant's pocket and seized two (2) bundles of suspected marijuana from the paper bag. He also marked the seized items with his initials in the presence of the accused at the place of arrest.[16]

He further corroborated PO3 Estenzo's testimony on the tagging, inventory and photograph of the seized items done in the presence of insulating witnesses from the media, DOJ, PDEA, and an elected official, and on transporting the accused and the seized items to the PNP Crime Laboratory in Tagum City.[17]

SPO1 Romeo Obero and **PCI Lina Ligad Avelino** testified on the delivery to and examination of the seized items at the crime laboratory. **SPO1 Obero** stated that he weighed the items, affixed his signature thereto, and indicated the

---

[14] *Id.* at 147-149.

[15] *Id.* at 148.

[16] *Id.* at 148-149.

[17] *Id.*

corresponding weight of each item surrendered to him by PO3 Estenzo before turning it over to PCI Avelino for qualitative examination. For her part, **PCI Avelino** acknowledged her receipt of the seized items and the request for examination. Her tests confirmed that the seized items were marijuana.[18]

The prosecution offered the following documentary evidence: Request for Laboratory Examination dated July 25, 2009; Chemistry Report D-051-2009; One (1) big bundle of dried marijuana leaves wrapped in newspaper with marking "AE-1"; One (1) small bundle of dried marijuana leaves wrapped in newspaper with marking "AE-2"; one (1) pack of dried marijuana leaves wrapped in newspaper with marking "AE-3"; one (1) pack of dried marijuana leaves wrapped in newspaper with marking "AE-4"; Two (2) ₱100 bills marked money; Inventory of Property Seized; Eight (8) pictures taken during the inventory of property seized; and Two (2) pages for Blotter Entry No. 889 and 891 entered on July 25, 2009.[19]

The Defense's Evidence

Appellant **Roberto F. Valdez** invoked denial and frame-up. He testified that on July 25, 2009 around 12:30 past midnight, he was sleeping in his parents' house at DAPCO, Panabo City when a loud thud coming from the door woke him up. He stood up to see what was happening and saw two (2) unknown persons inside the house who handcuffed him. One pointed a gun at him, while the other searched his room. Thereafter, they boarded him onto a motorcycle and brought him to the police station for investigation.[20]

At the police station, he learned that police assets Tata Caballero and Jojo Bersabal were the earlier unknown persons who searched his room and handcuffed him. He was certain of their identity, but did not file a complaint against them.

---

[18] *Id.* at 149.

[19] Original Records, Folder 2, pp. 1-2.

[20] RTC Decision dated November 29, 2013, p. 7; Original Record, p. 150.

He, nonetheless, admitted that he held no grudges against the two (2) police assets.[21]

Too, it was his first time to see the bundles and packs of marijuana at the police station. Thus, he surmised that the police officers planted these items when they went inside his house supposedly to search the place.

The Trial Court's Ruling

As borne by its Decision dated November 29, 2013,[22] the trial court rendered a verdict of conviction, *viz*:

> WHEREFORE, judgment is hereby rendered as follows:
>
> a. Finding accused *Roberto F. Valdez* in Criminal Case No. CrC 261-2009 guilty beyond reasonable doubt of illegal possession of marijuana defined and penalized under Section 11 of Republic Act No. 9165. Accordingly, he is meted to suffer an indeterminate penalty of imprisonment of *twelve (12) years and one day* as minimum period to *thirteen (13) years* as maximum period and to pay fine in the amount of ₱300,000.00;
>
> b. Finding accused *Roberto F. Valdez* in Criminal Case No. CrC 262-2009 guilty beyond reasonable doubt of illegally selling marijuana defined and penalized under Section 5 of Republic Act No. 9165. Accordingly, he is sentenced to suffer the penalty of *life imprisonment* and to pay fine in the amount of ₱500,000.00.
>
> In the service of his sentences, accused is entitled to the full credit of his preventive imprisonment pursuant to the provisions of Art. 29 of the Revised Penal code.
>
> Accused shall serve his sentences at the Davao Prison and Penal Farm, B.E. Dujali, Davao del Norte.
>
> The subject two (2) packs and two (2) bundles of marijuana are ordered released to PDEA for its proper disposition in accordance with applicable rules and regulation.
>
> SO ORDERED.[23]

---

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

[22] Penned by Presiding Judge Dax Gonzaga Xenos.

[23] RTC Decision dated November 29, 2013, p. 11; Original Record, p. 154.

It ruled that all the elements of the crime were sufficiently established, the seized items and their evidentiary value were properly preserved, and the *corpus delicti* was positively identified.

The Proceedings Before the Court of Appeals

On appeal, petitioner faulted the trial court for rendering the verdict of conviction despite the prosecution's purported failure to establish the integrity and identity of the seized item beyond reasonable doubt, and to observe the chain of custody rule, *viz.*:

First, PO3 Estenzo testified that he found in appellant's possession the two (2) packs of marijuana subject of the sale after he frisked the latter. Since those items were not delivered to poseur-buyer, as they remained in appellant's possession, the alleged sale of dangerous drugs could not have been consummated.[24]

Second, the Information alleged that appellant possessed 787.4550 grams of marijuana, while SPO1 Obrero testified that the total weight was 680.00 grams only. On the other hand, the marijuana appellant allegedly sold weighed 10.95 grams based on the Informations, while the chemistry report listed the two (2) packs at 5.5 grams.[25]

Third, the Inventory indicated that the seized items were "dried marijuana leaves," while the markings on the specimen during qualitative examination indicated "marijuana fruiting tops." With this inconsistency, the identity and integrity of the seized items cannot be deemed proven with certainty.[26]

Fourth, testimonies of PO3 Estanzo and PCPAG Abellana had material inconsistencies. In particular, PCPAG Abellana said he opened the packs allegedly handed by appellant, but

---

[24] *Rollo*, pp. 38-39.

[25] *Id.* at 40-41.

[26] *Id.* at 41.

PO3 Estenzo did not mention anything about the packs being opened.[27]

Finally, there were no marking, sealing, and inventory of the seized items at the place of arrest immediately after the operation, as they were done at the police station; no photographs were taken at the crime scene; and the required witnesses from the DOJ, media, barangay, and PDEA were only present after the operation, and not as it happened.[28]

The Office of the Solicitor General (OSG), through Assistant Solicitor General Ma. Antonia Edita C. Dizon and State Solicitor Catalina Shineta M. Tare-Palacio defended the verdict of conviction.[29] It argued that all the elements of illegal sale of dangerous drugs were established; the integrity and evidentiary value of the seized items were preserved because of substantial compliance with the procedural requirements of Section 21 of RA 9165; and the *corpus delicti* was identified during the trial.

The Court of Appeals' Ruling

By Decision dated March 13, 2017, the Court of Appeals affirmed.[30] It found that all the elements of the crime were present and the defense of frame- up was weak and unsupported by evidence. As for the inconsistencies, these minor details did not relate to the main facts in question and did not affect the credibility of the witnesses. While the procedural safeguards prescribed under Section 21 RA 9165 and its Implementing Rules and Regulations (IRR) were not strictly complied with, the integrity and evidentiary value of the seized items were duly preserved in consonance with the chain of custody rule. Finally, it noted that the discrepancy in the description of the seized items did not cause a gap in the chain of custody because

---

[27] *Id.* at 12.

[28] *Id.* at 46.

[29] *Id.* at 71-93.

[30] *Id.* at 3-30.

they were positively identified as marijuana by the arresting officers and the forensic chemist.

The Court of Appeals also found it proper to modify the trial court's Decision, thus:

> WHEREFORE, the appeal is denied. The Decision dated November 29, 2013 of the Regional Trial Court, Branch 34, Panabo City finding herein appellant guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act No. 9165 is AFFIRMED with MODIFICATION that the crime of illegal possession of marijuana, docketed as Criminal Case No. 261-2009, appellant is hereby sentenced to suffer the penalty of life imprisonment and a fine of ₱500,000.00.
>
> SO ORDERED.

The Present Appeal

Appellant now asks the Court for a verdict of acquittal.

In compliance with Resolution dated December 13, 2017, both appellant and the OSG manifested that in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.[31]

Issue

Did the Court of Appeals err in affirming the trial court's verdict of conviction?

Ruling

We affirm.

In drug related cases, the State bears the burden not only of proving the elements of the offense but also the *corpus delicti* itself.[32] The dangerous drugs seized from appellant and those which he sold to PCPAG Abellana constitute such *corpus delicti*. It is thus imperative for the prosecution to establish that the identity and integrity of these dangerous drugs were duly

---

[31] *Id.* at 38-44.

[32] *People v. Calates*, G.R. No. 214759, April 4, 2018.

preserved in order to sustain a verdict of conviction.[33] It must prove that the dangerous drugs seized from appellant are indeed the substance offered in court with the same unshakeable accuracy as that required to sustain a finding of guilt.

Here, petitioner was charged with illegal sale and possession of dangerous drug allegedly committed on July 25, 2009. The governing law, therefore, is RA 9165. Section 21 thereof prescribes the standard in preserving the *corpus delicti* in illegal drug cases, *viz*:

> **Section 21.** *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the drugs shall, **immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;** (emphasis added)
>
> x x x x x x x x x

The IRR of RA 9165 further commands:

> **Section 21.** (a) The apprehending officer/team having initial custody and control of the drugs shall, **immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items**

---

[33] *Calahi v. People*, G.R. No. 195043, November 20, 2017, 845 SCRA 12, 20, citing *People v. Casacop*, 778 Phil. 369, 376 (2016) and *Zafra v. People*, 686 Phil. 1095, 1105-1106 (2012).

were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and **any elected public official who shall be required to sign the copies of the inventory** and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. (emphasis added)

To ensure the integrity of the seized drug items, the prosecution must account for each link in its chain of custody:[34] ***first***, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; ***second***, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; ***third***, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and ***fourth***, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.[35]

This is the chain of custody rule. It came to fore due to the unique characteristics of illegal drugs which render them

---

[34] As defined in Section 1 (b) of Dangerous Drugs Board Regulation No. 1, Series of 2002:

x x x x x x x x x

b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.]

x x x x x x x x x

[35] *Jocson v. People*, G.R. No. 199644, June 19, 2019, citing *People v. Dahil*, 750 Phil. 212, 231 (2015).

indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.[36] This record of movements and custody shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when the transfer of custody was made in the course of the item's safekeeping and use in court as evidence, and its final disposition.[37]

Here, appellant asserts that there was no sale of dangerous drugs; the prosecution witnesses were not consistent in their testimonies on the arrest; the physical inventory and photograph were not done at the place of seizure, confiscation or arrest but elsewhere, specifically at Panabo Police Station; and there was a material discrepancy in both the weight and description of the seized items. He, therefore, concludes that the arresting officers repeatedly breached the chain of custody rule.

The Court is not persuaded.

Prosecution witness PO3 Adonis Estenzo testified:[38]

x x x x x x x x x

PROS. BONDAON:

Q What was your function in the said buy-bust operation?
A I will be one of the apprehending officers during the buy-bust, sir, we will hide ourselves so that we will not be seen while they will make the transaction and we will apprehend the suspect after the buy-bust operation.

x x x x x x x x x

Q After the briefing, what happened next?
A At around 1:00 a.m. of July 25, 2009, we proceeded to the area but Glen Abellana and his friend went ahead of us and

---

[36] *Jocson v. People*, G.R. No. 199644, June 19, 2019, citing *People v. Hementiza*, 807 Phil. 1017, 1026 (2017).

[37] *People v. Diputado*, G.R. No. 213922, July 5, 2017, 830 SCRA 172, 184.

[38] TSN Dated May 6, 2011, Testimony of Prosecution's Witness PO3 Adonis Estenzo.

we made an arrangement that Glen Abellana will just make a signal if the operation will be on going already.

x x x x x x x x x

Q You said that Glen Abellana and his confidential agent went to the house of Roberto Valdez, what did you see?
A I saw Glen Abellana and his companion going to the house of Roberto Valdez and I saw someone came (sic) out of the house which I later on knew that he is Roberto Valdez, whom they met.

Q What did you see in the person of Roberto Valdez, if any?
A I saw him bringing a paper bag, sir. (The witness is showing by his action how big is the bag, about two (2) feet).

Q You said that Roberto Valdez went to Glen Abellana and his confidential agent, what happened next?
A I saw Glen Abellana conversing with the accused, sir, but I cannot hear what they were talking about. Glen gave the money and the accused in turn gave something to Glen Abellana and that was the time Glen removed his towel form his head which is the signal for us to apprehend the accused.

x x x x x x x x x

Q Considering it was already the pre-arranged signal of removing the towel of Glen Abellana, what did you do?
A After Glen made the pre-arranged signal, we went near together with the intel operatives, who were with us that time and Glen told me that he was able to buy two (2) packs of marijuana, when I took and opened the packs I smelled it to be marijuana, so we arrested the suspect and informed him of his constitutional rights, sir.

x x x x x x x x x

Q After you arrested accused Roberto Valdez, what else was discovered from him, if any?
A It is our standard operating procedure, sir, that when we apprehend suspects we have to frisk or bodily search him because he might have dangerous objects in his body. When I frisked the accused, I found two (2) packs of marijuana in the right pocket and when I opened the pack, it smelled marijuana.

Q How about the two (2) marked ₱100.00 bills, where was it?
A The two (2) marked ₱100.00 bills were the items that I recovered from his pocket, sir.

x x x x x x x x x

Q You made mention of a paper bag, where was this paper bag?
A In the possession of Roberto Valdez, sir.

Q What did you discover about the paper bag?
A I saw two (2) big bundles in the possession of the accused, sir, when I opened it, it smells the same smell as that of the pack that was given to me by Glen Abellana.

x x x x x x x x x

Q I have here a transparent cellophane, inside of which is a cardboard paper with description, items: two (2) packs of suspected dried marijuana leaves wrapped in a newspaper marked AE-3 and AE-4, inside of which are two (2) packs containing dried marijuana leaves. Will you please examine, what is the connection of these two (2) packs to the one you mentioned?
A These are the two (2) packs that Glen Abellana bought from the accused and gave it to me, sir.

x x x x x x x x x

Q Can you tell us, why are you sure that these are the two (2) packs that was handed to you by Glen Abellana after Roberto Valdez sold this to him?

INTERPRETER

The witness pointed to the signature saying because I affixed my signature here sir, pointing to his signature.

x x x x x x x x x

Q Where did you affix your signature in this AE-3 and AE-4?
A While we were still in the area, sir.

Q You mean, the area where the accused was arrested?
A Yes, sir.

Q Where was Roberto Valdez and Glen Abellana when you affixed this description AE-3 and AE-4 with your signature?
A They were in front of me, sir.

x x x x x x x x x

COURT:

Q At what place did you affix your signature in these two (2) bundles?
A In the area, Your Honor.

Q You also put your signature and initial in these two (2) packs?
A Yes, Your honor.

Q In what place?
A Still in the area, Your Honor.

x x x x x x x x x

PROS. BONDAON:

Q In this big hard paper bag, there is an attached cardboard paper with description and your name PO3 Adonis Estenzo and signature, whose signature is this?
A My signature, sir.

x x x x x x x x x

Q If you can still remember, where was the inventory conducted?
A At the investigation section, sir.

Q Can you describe to us, what were done during the inventory of the seized items?
A We prepared the documents for the inventory of the property seized, sir, the members of the media, the barangay officials and some PDEA personnel and DOJ personnel affirmed that what was stated in the Inventory are the real properties that were taken from the accused.

x x x x x x x x x

Q When the said inventory was conducted at the police station of Panabo City, were there pictures taken there?
A Yes, sir.

x x x x x x x x x

Prosecution witness PCPAG Glen Abellana further testified:[39]

[39] TSN Dated February 29, 2012, Testimony of PCPAG Glen Abellana.

PROS. BONDAON:

Q After accused Roberto Valdez approached you and your confidential agent, what did you and your confidential agent do?
A He introduced Roberto Valdez to me, sir.

Q Who introduced you to the accused?
A The confidential agent, sir.

Q How did he introduce the accused to you?
A He said, "I am going to buy marijuana, sir."

Q And how much did you intend to buy marijuana?
A For Php 200.00 sir.

Q And what was the reply of the accused Roberto Valdez about your intention?
A He said, "okay".

Q And what did you do when he said "okay"?
A I gave him the Php 200.00 bills, sir.

Q And what did Roberto Valdez do when you handed the two pieces of Php 100.00 bills?
A He gave two (2) packs of something that is wrapped in a newspaper, Sir.

Q When you say, you gave him two (2) pieces of Php 100.00 bills; you are referring to the two pieces of Php 100.00 bills now marked as Exhibit "E" and "E-1"?
A Yes, sir.

Q Now, to whom did Roberto Valdez turn over these two (2) packs of marijuana wrapped in a newspaper?
A To me, sir.

Q After receiving the two (2) packs of marijuana wrapped in a newspaper, what did you do with it?
A I opened one (1) pack of it, sir.

Q And what did you see?
A A suspicious dried leaves, sir, that I believed to be marijuana.

x x x x x x x x x

SPO1 Romeo Obero testified:[40]

COURT:

Q You said you weighed these items; did you weigh them including the newspaper where they are placed?
A No sir, only the specimen.

Q You mean to say, you have to take out the alleged marijuana from the newspaper wrappers and it's only the alleged marijuana that you weigh?
A Yes, Your Honor.

x x x x x x x x x

First, records show that PCPAG Abellana testified to receiving the two (2) packs of marijuana after he handed over the two (2) ₱100 bills boodle money to appellant. Hence, the transaction was consummated and there was, in fact, a sale.

Appellant, nonetheless, points out that PO3 Estenzo testified to allegedly having found the two (2) packs of marijuana on appellant's person, thus negating the fact of delivery. Without the exchange of money and goods, there could be no sale. Hence, the alleged sale of dangerous drugs was not proven.

This, however, was debunked by PCPAG Abellana's testimony where he stated that he handed over the two (2) packs of marijuana he bought from appellant to PO3 Estenzo which the latter marked with his initials. Therefore, the seized items PO3 Estenzo marked were the very same dangerous drugs the poseur-buyer bought from appellant.

As for the alleged inconsistency of the prosecution witnesses pertaining to whether poseur-buyer PCPAG Abellana opened the pack that was handed to him, this is too minor to deserve any consideration. In ***People v. Uy***,[41] the Court convicted appellant therein despite inconsistencies in the testimonies

---

[40] TSN dated May 21, 2010, Testimonies of SPO1 Romeo Obero and PCI Lina Ligad Avelino.

[41] 392 Phil. 773, 796 (2000), citing *People vs. Magno*, 296 SCRA 443, 450 (1998) and *People v. Sy Bing Yok*, 309 SCRA 28 (1999).

of prosecution witnesses. It held that discrepancies and inconsistencies in the testimonies of witnesses on minor details do not affect their credibility and do not detract the established fact of sale of illegal drugs.

In another vein, both the trial court and the Court of Appeals found the witnesses to be consistent and credible in their testimonies. The trial court's determination of witnesses' credibility, when affirmed by the appellate court, is accorded full weight and credit, as well as respect, if not conclusive effect.[42]

Second, PO3 Estenzo testified that he marked the items immediately after arrest and seizure. In ***People v. Sanchez***,[43] the Court emphasized that marking should be done in the presence of the apprehended violator immediately upon confiscation to ensure the identity of the same. Here, PO3 Estenzo established compliance with this requirement when he wrote his initials on the seized items at the place of arrest immediately after they arrested appellant.

Third, the inventory and photograph of the seized items were validly taken at the Panabo Police Station. In ***People v. Beran***,[44] the Court clarified that the physical inventory and photograph shall be conducted at the place where the search warrant is served. On the other hand, in case of warrantless seizures such as a buy-bust operation:

> ...the physical inventory and photograph **shall be conducted at the nearest police station or office of the apprehending officer/team, whichever is practicable**; however, nothing prevents the apprehending officer/team from immediately conducting the physical inventory and photography of the items at the place where they were seized, as it is more in keeping with the law's intent of preserving their integrity and evidentiary value.

---

[42] *People v. Moner*, G.R. No. 202206, March 5, 2018, citing *People v. Castro*, 711 Phil. 662, 673 (2013).

[43] 590 Phil. 214, 241 (2008).

[44] 724 Phil. 788 (2014).

Fourth, the Court has long held that the identity of the *corpus delicti* is not compromised by the interchanging use of "fruiting tops" and "dried leaves" to describe the marijuana seized from appellant.[45] In ***People v. Cina***,[46] the Court ruled that the disparity between these terms was inconsequential, especially since the identity and integrity of the seized items were proven and preserved.

Finally, the difference between the total weight of the seized items as reported in the Information and listed in the chemistry report does not affect their identity and integrity. As noted by the Court in ***People v. Aneslag***,[47] there are a host of possible reasons for the discrepancy, such as the difference in the accuracy of weighing scales used by the police officers and the forensic chemist.

Here, the difference was explained by PO3 Estazo's use of cardboard to mark the seized items. In his testimony, PO3 Estenzo narrated that he placed cardboards in the paper bag and the cellophane containing the two (2) packs of marijuana.[48] Surely, the forensic chemist conducted an examination only of the seized drugs, sans any wrapper, cover, or cardboard labels.

At any rate, the prosecution witnesses' testimonies are unwavering as they were able to recount who took custody of the dangerous drugs starting from seizure up to the time the same were presented as evidence in court, *viz*:

First, PO3 Estenzo seized and marked the illegal drugs at the place of arrest right after the buy-bust operation and kept them in his possession until they got to the Panabo Police Station; ***second***, apprehending officer PO3 Estenzo presented the illegal drugs to investigating officer PO3 Calamba; ***third***, after

---

[45] *People v. Cina*, 268 Phil. 206, 212 (1990).

[46] *Id.*

[47] G.R. No. 185386, November 21, 2012.

[48] TSN dated May 6, 2011, Testimony of Prosecution Witness PO3 Adonis Estenzo, pp. 10-20.

Investigator PO3 Calamba tagged the seized items and prepared the request for laboratory examination, he and PO3 Estenzo turned over the items to SPO1 Obero and PCI Avelino who marked and tested them, respectively; and ***fourth***, PCI Avelino submitted the marked illegal drugs to the court. In sum, the prosecution established all the links in the chain of custody, accounting for its proper handling and preservation in every stage.

There is also no showing of any significant lapse of time between the confiscation and the actual marking, inventory and photograph as all of these were done on the same day. More, the sheer volume of the seized items was unlikely to be a subject of planting or tampering.

All told, the Court of Appeals did not commit reversible error when it affirmed the verdict of conviction for violation of Section 5 and Section 11, RA 9165.

ACCORDINGLY, the appeal is **DENIED**. The Decision of the Court of Appeals in CA-G.R. CR HC 01277-MIN dated March 13, 2017 is **AFFIRMED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Reyes, J. Jr., and *Inting*,[*] *JJ.*, concur.

[*] Additional member per Special Order No. 2726.

FIRST DIVISION

[G.R. No. 234401. December 5, 2019]

CONNIE L. SERVO, *petitioner, vs.* **PHILIPPINE DEPOSIT INSURANCE CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; BATAS PAMBANSA BLG. 129; SECTION 9 THEREOF VESTS CONCURRENT JURISDICTION IN THE REGIONAL TRIAL COURTS, THE COURT OF APPEALS, AND THE SUPREME COURT OVER SPECIAL CIVIL ACTIONS AND AUXILIARY WRITS AND PROCESSES; DIRECT RESORT TO THE SUPREME COURT IS ALLOWED ONLY WHEN THERE ARE SPECIAL OR COMPELLING REASONS THAT JUSTIFY THE SAME. — Verily, the Court of Appeals here erred when it dismissed petitioner's special civil action for *certiorari* on ground that since the case involves a pure question of law, the same falls within this Court's exclusive jurisdiction. For one, Section 9 of BP 129 vests concurrent jurisdiction in the regional trial courts, the Court of Appeals, and the Supreme Court over special civil actions and auxiliary writs and processes. The law does not distinguish whether the issues involved are pure factual or legal issues or mixed issues of fact and law for the purpose of determining which of the courts should take cognizance of the case. For another, the jurisdiction of the Court of Appeals to issue extraordinary writs, such as a petition for *certiorari vis-à-vis* the hierarchy of courts, was eloquently enunciated in ***Gios – Samar, Inc., etc., v. Department of Transportation and Communications, et al.,*** *viz*: In 1981, this Court's original jurisdiction over extraordinary writs became concurrent with the CA, pursuant to *Batas Pambansa Bilang* 129 (BP 129) or the Judiciary Reorganization Act of 1980. **BP 129 repealed RA No. 296 and granted the CA with "[o]riginal jurisdiction to issue writs of *mandamus*, prohibition, *certiorari*,** *habeas corpus***, and** *quo warranto* and auxiliary writs or **processes, whether or not in aid of its appellate jurisdiction**."Too, ***Saint Mary Crusade to Alleviate Poverty of Brethren Foundation, Inc. vs. Judge Riel*** ordained: Fourthly, the filing of the instant special civil action directly

in this Court is in disregard of the doctrine of hierarchy of courts. Although the Court has concurrent jurisdiction with the Court of Appeals in issuing the writ of *certiorari*, direct resort is allowed only when there are special, [extraordinary] or compelling reasons that justify the same. The Court enforces the observance of the hierarchy of courts in order to free itself from unnecessary, frivolous and impertinent cases and thus afford time for it to deal with the more fundamental and more essential tasks that the Constitution has assigned to it. There being no special, important or compelling reason, the petitioner thereby violated the observance of the hierarchy of courts, warranting the dismissal of the petition for *certiorari.* There is no compelling reason for the Court of Appeals here not to adhere to and observe the hierarchy of courts.

2. ID.; ID.; REPUBLIC ACT NO. 3591 (PHILIPPINE DEPOSIT INSURANCE CORPORATION CHARTER), AS AMENDED BY REPUBLIC ACT NO. 10846; ACTIONS OF PHILIPPINE DEPOSIT INSURANCE CORPORATION ON MATTERS RELATING TO INSURED DEPOSITS AND DEPOSIT LIABILITIES MAY ONLY BE ASSAILED BEFORE THE COURT OF APPEALS VIA A PETITION FOR *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT. — Petitioner asserts that the amendatory provisions under RA 10846 should not be applied to her case considering that her claim was denied on July 16,2015 or prior to the effectivity of RA 10846 on June 11, 2016. In truth, however, when petitioner initiated the action for *certiorari* before the trial court on August 19, 2016, RA 10846 was already effective. Verily, petitioner should have complied with the procedures laid down thereunder, among them, the grant of exclusive original jurisdiction to PDIC on matters involving bank deposits and insurance; and the remedy granted to the claimants in case of an adverse PDIC ruling. On this score, Section 5(g) of RA 3591, as amended by RA 10846, provides that the actions of PDIC on matters relating to insured deposits and deposit liabilities may only be assailed before the Court of Appeals via a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court. x x x In ***Peter L. So v. Philippine Deposit Insurance Corp.***, the Court pronounced that the Court of Appeals is vested with jurisdiction over matters relating to the dispositions of PDIC. x x x **Clearly, a petition for *certiorari*, questioning the PDIC's denial of a deposit insurance claim should be filed before the CA, not**

the RTC. This further finds support in Section 22 of the PDIC's Charter, as amended, which states that: Section 22. **No court, except the Court of Appeals,** shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the Corporation for any action under this Act. x x x.

APPEARANCES OF COUNSEL

Sacramento Law Office for petitioner.
PDIC Office of the Government Corporate Counsel for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This Petition for Review on *Certiorari* assails the Resolution dated September 22, 2017 of the Court of Appeals in CA-G.R. SP No. 152398 dismissing petitioner Connie L. Servo's action for *certiorari* on ground of lack of jurisdiction.

Antecedents

By Affidavit dated August 22, 2014, petitioner filed a claim for deposit insurance with respondent Philippine Deposit Insurance Corporation (PDIC). She essentially alleged that sometime in October 2011, she lent Teresita Guiterrez Five Hundred Thousand Pesos (₱500,000.00) for the repair of the latter's bus units. On January 19, 2012, petitioner met with Gutierrez at the Rural Bank of San Jose Del Monte to receive the latter's loan payment. For this purpose, petitioner opened a time deposit account with the bank under Special Savings Deposit (SSD) Account No. 001 03-00904-1. Per her agreement with Gutierrez, the latter's name was used as the account holder since she was a preferred bank client.[1]

A few years later, however, the bank was closed down. Consequently, petitioner filed with PDIC her claim for deposit insurance, together with certain documents.

[1] *Rollo,* p. 40.

She claimed to have verbally informed Eliza Dela Peña, one of the bank tellers, that the Five Hundred Thousand Pesos (₱500,000.00) deposited in SSD Account No. 001 03-00904-1 was held in trust for her by Gutierrez. She also categorically stated that she was the exclusive owner of SSD Account No. 001 03-00904-1.[2]

By letter dated August 27, 2014, PDIC, through its Claims Deposit Department, denied petitioner's claim for deposit insurance, citing as ground the absence of any bank records/documents indicating that petitioner, not Gutierrez, owned the account.

On October 30, 2014, petitioner filed a Request for Reconsideration (RFR). Under letter[3] dated July 16, 2015, PDIC denied petitioner's RFR, this time citing as ground petitioner's alleged failure to submit documents showing that the "break-up and transfer of Legitimate Deposit to the transferee is for a Valid Consideration." PDIC emphasized that petitioner was not even a relative within the second degree of consanguinity or affinity of Gutierrez.

Petitioner consequently filed the action below, imputing grave abuse of discretion on PDIC for denying her claim for deposit insurance, albeit she submitted the necessary documents in support of her claim. Assuming the documents were incomplete, she was not given the chance to submit additional documents nor called to a clarificatory meeting, as provided in Sections 4(b) and 4(c) of Regulatory Issuance No. 2011-03.

On the other hand, PDIC riposted that the Regional Trial Court (RTC) has no jurisdiction over the subject matter of the petition as the same fell exclusively within its quasi-judicial jurisdiction. It emphasized that there was no grave abuse of discretion amounting to lack or excess of jurisdiction when after evaluation and analysis of available bank documents, it

---

[2] *Id.*

[3] *Id.* at 28.

arrived at the conclusion that petitioner was not entitled to deposit insurance.[4]

The Trial Court's Ruling

By Decision[5] dated July 27, 2017, the trial court sustained PDIC's argument and dismissed the case on ground of lack of jurisdiction, *viz:*

> **WHEREFORE,** in view of the foregoing circumstances, judgment is rendered in favor of Philippine Deposit Insurance Corporation. For lack of jurisdiction, the instant case is ordered **DISMISSED without prejudice**. Fittingly, the court holds its hands tightly in not passing upon the other issue.
>
> SO ORDERED.[6] (Emphasis in the original)

The trial court recognized that since PDIC is a quasi-judicial agency which performed the assailed quasi-judicial action, the case should have been brought up to the Court of Appeals.[7]

The trial court cited Section 5(g) of Republic Act (RA) 3591 (PDIC Charter), as amended by RA 10846, providing that actions of PDIC shall be final and executory, and may only be restrained or set aside by the Court of Appeals through a petition for *certiorari*.[8]

Proceedings before the Court of Appeals

In her subsequent special civil action for *certiorari* before the Court of Appeals, petitioner argued that PDIC was not among the quasi-judicial bodies enumerated under Section 1, Rule 43 of the Rules of Court whose decisions and rulings are appealable via a petition for review with the Court of Appeals. Also, the mere fact that PDIC performs quasi-judicial

---

[4] *Id.* at 41.

[5] Penned by Acting Presiding Judge Phoeve C. Meer; *Id.* at 40-44.

[6] *Id.* at 43.

[7] *Id.* at 42.

[8] *Id.* at 43.

functions does not make it co-equal with the RTCs. Too, considering that the rulings of the Department of Finance are appealable to the Court of Tax Appeals, the latter having the same rank as the Court of Appeals, it cannot be said that the rulings of PDIC, an instrumentality operating under the Department of Finance, are appealable to the Court of Appeals alone.[9]

She also implored the Court of Appeals to treat her petition as a petition for *certiorari* against PDIC's denial of her claim in the interest of substantial justice.[10]

The Court of Appeals' Ruling

By Resolution[11] dated September 22, 2017, the Court of Appeals dismissed the petition for lack of jurisdiction. It ruled that the jurisdictional issue involved, being a pure legal question, should have been filed with this Court pursuant to Rule 45 of the Revised Rules of Court.[12]

The Present Petition

Petitioner now prays that the aforesaid resolution be reversed and set aside, and the main case remanded to the proper court for resolution on the merits.

Issue

Did the Court of Appeals err in dismissing the petition for *certiorari* on ground of lack of jurisdiction?

Ruling

Under Section 9 of Batas Pambansa Bilang 129 (BP 129), the Court of Appeals has jurisdiction over petitions for *certiorari, viz :*

---

[9] *Id.* at 50-53.

[10] *Id.* at 54.

[11] Penned by Associate Justice Ma. Luisa C. Quijano-Padilla and concurred in by Now Supreme Court Associate Justice Rodil Zalameda and Associate Justice Carmelita Salandanan Manahan; *Id.* at 22-24.

[12] *Id.* at 23.

Section 9. *Jurisdiction*. – The Court of Appeals shall exercise:

1. **Original jurisdiction to issue writs of *mandamus*, prohibition, *certiorari*,** *habeas corpus,* and *quo warranto,* and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction;

2. Exclusive original jurisdiction over actions for annulment of judgements of Regional Trial Courts; and

3. Exclusive appellate jurisdiction over all final judgements, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commission, including the Securities and Exchange Commission, the Social Security Commission, the Employees Compensation Commission and the Civil Service Commission, Except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the Labor Code of the Philippines under Presidential Decree No. 442, as amended, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph 4 of the fourth paragraph of Section 17 of the Judiciary Act of 1948.

The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or Appeals must be continuous and must be completed within three (3) months, unless extended by the Chief Justice. (*as amended by R.A. No. 7902*) (emphasis supplied)

Verily, the Court of Appeals here erred when it dismissed petitioner's special civil action for *certiorari* on ground that since the case involves a pure question of law, the same falls within this Court's exclusive jurisdiction.

For one, Section 9 of BP 129 vests concurrent jurisdiction in the regional trial courts, the Court of Appeals, and the Supreme Court over special civil actions and auxiliary writs and processes. The law does not distinguish whether the issues involved are pure factual or legal issues or mixed issues of fact and law for the purpose of determining which of the courts should take cognizance of the case.

For another, the jurisdiction of the Court of Appeals to issue extraordinary writs, such as a petition for *certiorari vis-à-vis* the hierarchy of courts, was eloquently enunciated in ***Gios-Samar, Inc., etc. v. Department of Transportation and Communications, et al.***,[13] *viz*:

In 1981, this Court's original jurisdiction over extraordinary writs became concurrent with the CA, pursuant to *Batas Pambansa Bilang* 129 (BP 129) or the Judiciary Reorganization Act of 1980. **BP 129 repealed RA No. 296 and granted the CA with "[o]riginal jurisdiction to issue writs of *mandamus*, prohibition, *certiorari*, *habeas corpus*, and *quo warranto*, and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction**." x x x

x x x x x x x x x

This so-called "policy" was reaffirmed two years later in *People v. Cuaresma*, which involved a petition for *certiorari* challenging the quashal by the City Fiscal of an Information for defamation on the ground of prescription. In dismissing the petition, this Court reminded litigants to refrain from directly filing petitions for extraordinary writs before the Court, unless there were special and important reasons therefor. We then introduced the concept of "hierarchy of courts," to wit:

x x x This Court's original jurisdiction to issue writs of *certiorari* (as well as prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction) is not exclusive. It is shared by this Court with Regional Trial Courts (formerly Courts of First Instance), which may issue the writ, enforceable in any part of their respective regions. It is also shared by this Court, and by the Regional Trial Court, with the Court of Appeals (formerly, Intermediate Appellate Court), although prior to the effectivity of *Batas Pambansa Bilang* 129 on August 14, 1981, the latter's competence to issue the extraordinary writs was restricted to those "in aid of its appellate jurisdiction." This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. <u>There is after all a hierarchy of courts.</u> That hierarchy is determinative of the venue of appeals, and should also serve as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming

---

[13] G.R. No. 217158, March 12, 2019.

regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed **with the Regional Trial Court, and those against the latter, with the Court of Appeals**. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is established policy. x x x (Citations omitted; emphasis supplied)

Too, ***Saint Mary Crusade to Alleviate Poverty of Brethren Foundation, Inc. v. Judge Riel***[14] ordained:

Fourthly, the filing of the instant special civil action directly in this Court is in disregard of the doctrine of hierarchy of courts. Although the Court has concurrent jurisdiction with the Court of Appeals in issuing the writ of *certiorari*, direct resort is allowed only when there are special, [extraordinary] or compelling reasons that justify the same. The Court enforces the observance of the hierarchy of courts in order to free itself from unnecessary, frivolous and impertinent cases and thus afford time for it to deal with the more fundamental and more essential tasks that the Constitution has assigned to it. There being no special, important or compelling reason, the petitioner thereby violated the observance of the hierarchy of courts, warranting the dismissal of the petition for *certiorari*. (Citations omitted)

There is no compelling reason for the Court of Appeals here not to adhere to and observe the hierarchy of courts.

In any event, although the Court of Appeals erred in dismissing the case, we will no longer remand the case to the Court of Appeals to avert any further delay in its resolution. The Court, therefore, deems it prudent to resolve once and for all, here and now, the issue of jurisdiction involving PDIC.

Petitioner asserts that the amendatory provisions under RA 10846 should not be applied to her case considering that her claim was denied on July 16, 2015 or prior to the effectivity of RA 10846 on June 11, 2016.

---

[14] 750 Phil. 57, 68 (2015).

In truth, however, when petitioner initiated the action for *certiorari* before the trial court on August 19, 2016, RA 10846 was already effective. Verily, petitioner should have complied with the procedures laid down thereunder, among them, the grant of exclusive original jurisdiction to PDIC on matters involving bank deposits and insurance; and the remedy granted to the claimants in case of an adverse PDIC ruling.

On this score, Section 5(g) of RA 3591, as amended by RA 10846, provides that the actions of PDIC on matters relating to insured deposits and deposit liabilities may only be assailed before the Court of Appeals via a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court, *viz*:

SECTION 7. Section 4 of the same Act is accordingly renumbered as Section 5, and is hereby amended to read as follows:

DEFINITION OF TERMS

SEC. 5. As used in this Act –

x x x x x x x x x

(g) x x x x x x x x x

The actions of the Corporation taken under Section 5(g) shall be final and executory, and **may only be restrained or set aside by the Court of Appeals, upon appropriate petition for *certiorari*** on the ground that the action was taken in excess of jurisdiction or with such grave abuse of discretion as to amount to a lack or excess of jurisdiction. The petition for *certiorari* may only be filed **within thirty(30) days from notice of denial of claim for deposit insurance**. (Emphasis supplied)

In ***Peter L. So v. Philippine Deposit Insurance Corp.,***[15] the Court pronounced that the Court of Appeals is vested with jurisdiction over matters relating to the dispositions of PDIC, *viz:*

We proceed to determine where such petition for *certiorari* should be filed. In this matter, We cite the very provision invoked by the petitioner, *i.e.*, Section 4, Rule 65 of the Rules, as amended by A.M. No. 07-7-12-SC:

---

[15] G.R. No. 230020, March 19, 2018.

Sec. 4. When and where to file the petition. — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion.

If the petition relates to an act or an omission of a municipal trial court or of a corporation, a board, an officer or a person, it shall be filed with the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed with the Court of Appeals or with the Sandiganbayan, whether or not the same is in aid of the court's appellate jurisdiction. If the petition involves an act or an omission of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed with and be cognizable only by the Court of Appeals. x x x

Clearly, a petition for *certiorari*, questioning the PDIC's denial of a deposit insurance claim should be filed before the CA, not the RTC. This further finds support in Section 22 of the PDIC's Charter, as amended, which states that:

Section 22. **No court, except the Court of Appeals,** shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the Corporation for any action under this Act. x x x.

This prohibition shall apply in all cases, disputes or controversies instituted by a private party, the insured bank, or any shareholder of the insured bank. x x x.

x x x x x x x x x

Finally, the new amendment in PDIC's Charter under RA 10846, specifically Section 5(g) thereof, confirms such conclusion, *viz*:

> The actions of the Corporation taken under Section 5(g) shall be **final and executory, and may only be restrained or set aside by the Court of Appeals**, upon appropriate petition for *certiorari* on the ground that the action was taken in excess of jurisdiction or with such grave abuse of discretion as to amount to a Lack or excess of jurisdiction. The petition for *certiorari* may only be filed within thirty (30) days from notice of denial of claim for deposit insurance. x x x

As it stands, the controversy as to which court has jurisdiction over a petition for *certiorari* filed to question the PDIC's action is already settled. Therefore, We find no reversible error from the findings and conclusion of the court *a quo.* (Emphasis supplied)

Finally, petitioner argues that the Court of Appeals should have treated her petition for *certiorari* as an original action against the assailed PDIC dispositions. She has, in fact, allegedly included in her petition an alternative prayer, thus:

> In the alternative, petitioner respectfully prays that the instant petition be treated as a petition for *certiorari* from the PDIC's denial of petitioner's claim for deposit insurance and that said x x x petition be granted by ordering PDIC to pay petitioner the insured amount of ₱500,000.00 under Special Savings Deposit Account No. 00103-00904-1.[16]

The argument must fail. The Court of Appeals could not have granted petitioner's prayer to consider her petition to have been filed in accordance with the PDIC rules simply because the petition was filed beyond the thirty (30)-day reglementary period prescribed under RA 10846.

Notably, petitioner's RFR was denied on July 16, 2015. She filed her petition for *certiorari* with the Court of Appeals only on September 7, 2017 or more than two (2) years from PDIC's denial of her claim. When the case was brought before the Court of Appeals, there was nothing more for it to act on since the assailed trial court's ruling had already lapsed into finality.

ACCORDINGLY, the petition is **DENIED.**

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Reyes, J. Jr., and *Inting,*[*] *JJ.,* concur.

---

[16] *Rollo,* p. 56.

[*] Additional member per Special Order No. 2726.

FIRST DIVISION

[G.R. No. 234419. December 5, 2019]

HEIRS OF THE LATE SPOUSES VICTOR L. MONTEVILLA and RESTITUTA C. MONTEVILLA, represented by ATTY. ANITA C. MONTEVILLA, *petitioners, vs.* **SPOUSES LEO A. VALLENA and MELBA G. VALLENA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; AS A RULE, ONLY QUESTIONS OF LAW SHOULD BE RAISED; AN EXCEPTION IS WHEN THE FINDINGS OF THE COURT OF APPEALS ARE CONTRARY TO THOSE OF THE TRIAL COURT. — The general rule in a petition for review on *certiorari* under Rule 45 of the Rules of Court is that only questions of law should be raised. In *Republic v. Heirs of Eladio Santiago*, the Court enumerated that one of the exceptions to the general rule is when the CA's findings are contrary to those of the trial court. Considering the different findings of fact and conclusions of law of the MCTC, RTC, and the CA, the Court shall entertain this petition, which involves a re-assessment of the evidence presented. In resolving the issue of possession, the Court will provisionally determine the issue of ownership since both parties claim to be the owners.

2. ID.; EVIDENCE; JUDICIAL ADMISSIONS; AN ADMISSION, VERBAL OR WRITTEN, MADE BY THE PARTY IN THE COURSE OF THE PROCEEDINGS IN THE SAME CASE, DOES NOT REQUIRE PROOF; CASE AT BAR. — Section 4, Rule 129 of the Rules of Court on judicial admission states that an admission, verbal or written, made by the party in the course of the proceedings in the same case, does not require proof. Here, the spouses Vallena admitted in their pleadings that Victor was the original owner and alleged seller of the contested 40-square meter lot. Their admission means that they recognize that Victor had prior possession of the lot before he allegedly sold it to them. A seller must have exercised acts

of ownership, such as physical possession and acts of administration, before entering into a transaction over his property. With spouses Vallena's judicial admission, the Montevillas need not prove prior physical possession, because upon Victor's death, his rights, including the right of possession, over the contested lot were transmitted to his heirs by operation of law.

3. ID.; ID.; CREDIBILITY; FINDINGS OF FACT OF THE TRIAL COURTS ARE ENTITLED TO GREAT WEIGHT AND CREDENCE SINCE THEY ARE IN THE BEST POSITION TO EVALUATE THE EVIDENCE; CASE AT BAR. — The CA did not uphold the MCTC's finding that the alleged contract of sale is imperfect and invalid. To this, the Court differs. It is an established rule that findings of fact of the trial courts are entitled to great weight and credence since they are in the best position to evaluate the evidence. Here, the MCTC had the first opportunity to scrutinize spouses Vallena's documentary exhibits on the alleged sale, namely: (1) Exhibit 4, a photocopy of the May 2, 1961 deed of sale between Victor and Benigno; (2) Exhibit 5, a photocopy of the December 4, 1963 acknowledgement receipt of payment between Victor and Benigno; and (3) Exhibit 6, a photocopy of the January 3, 1982 acknowledgment receipt of payment between Victor and Jose. The MCTC resolved that since the validity of Jose's acquisition is in question, spouses Vallena should have produced the original documents to examine its genuineness and due execution. The Court sustains the MCTC's ruling. Section 3, Rule 130 of the Rules of Court on best evidence rule states that when the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself. Here, spouses Vallena presented photocopies of the alleged deed of sale and alleged acknowledgment receipts. They claim that the original copies were misplaced, missing, lost, or burned, but they were unable to state with certainty the circumstances surrounding its disappearance. Importantly, they failed to prove that the original documents existed in the first place. Without the original documents, spouses Vallena failed to prove that Jose bought the contested lot partly from Victor and partly from Roman.

4. ID.; ID.; PREPONDERANCE OF EVIDENCE; QUANTUM OF EVIDENCE REQUIRED IN CIVIL CASE; MEANS THAT THE EVIDENCE ADDUCED BY ONE SIDE IS, AS

A WHOLE, SUPERIOR TO OR HAS GREATER WEIGHT THAN THAT OF THE OTHER. — In civil case, the quantum of evidence required is preponderance of evidence. In *Aba v. Attys. De Guzman, Jr.*, the Court defined and discussed this concept. Preponderance of evidence means that the evidence adduced by one side is, as a whole, superior to or has greater weight than that of the other. It means evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. Under Section 1 of Rule 133, in determining whether or not there is preponderance of evidence, the court may consider the following: (a) all the facts and circumstances of the case; (b) the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony; (c) the witnesses' interest or want of interest, and also their personal credibility so far as the same may ultimately appear in the trial; and (d) the number of witnesses, although it does not mean that preponderance is necessarily with the greater number.

APPEARANCES OF COUNSEL

V.M. Manlapaz & Associates Law Firm for petitioners.
Ronnie G. Vallena for respondents.

D E C I S I O N

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

This is an unlawful detainer case of an unregistered property.

The Case

The petition assails the March 16, 2017 Decision[1] and September 7, 2017 Resolution[2] of the Court of Appeals (CA)

---

[1] Penned by Associate Justice Ma. Luisa C. Quijano-Padilla, with Associate Justices Sesinando E. Villon and Rodil V. Zalameda (now a member of the Court), concurring; *rollo*, pp. 42-51.

[2] *Id.* at 40-41.

in CA-G.R. SP No. 143742, which reversed the July 7, 2015 Regional Trial Court (RTC) Decision[3] in Civil Case No. 7001. The RTC affirmed the July 8, 2014 Municipal Circuit Trial Court (MCTC) Decision[4] in Civil Case 068.

The Facts

Petitioners (the Montevillas) are the heirs of Victor L. Montevilla (Victor) and Restituta C. Montevilla (spouses Montevilla), who left their children several parcels of land and one of which is Lot No. 1 (Lot 1) in Dimasalang, Masbate, covered by Tax Declaration No. 3007.[5]

In 1961, Victor sold a portion of Lot 1, measuring 58 square meters, to Benigno Zeta (Benigno), who sold it to Roman Manlangit (Roman). The latter sold the lot to Jose Vallena (Jose), father of respondent Leo Vallena (Leo).[6]

At the back of Jose's land was a vacant lot owned by Victor. In 1993,[7] respondent spouses Leo and Melba Vallena (spouses Vallena) sought permission from Jorge Montevilla[8] (Jorge), one of Victor's heirs, to use a portion of the vacant lot, measuring 40 square meters, as storage for their *patis* business. Jorge agreed on condition that the structure would be made of light materials. However, when the business prospered, spouses Vallena built a two-storey concrete building without the Montevilla's knowledge, consent, and in defiance of their agreement.[9]

On May 17, 1994, the administrator of spouses Montevilla's estate, Anita C. Montevilla (Anita), called spouses Vallena's attention on the illegal structure. However, Anita and her sister

---

[3] Penned by Judge Maximino R. Ables; *id.* at 69-72.

[4] Penned by Judge-Designate Igmedio Emilio F. Camposano; *id.* at 60-68.

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

[6] *Id.* at 60.

[7] Records. p. 29.

[8] Also referred as Jeorge in some parts of the records.

[9] *Rollo*, p. 43.

underwent verbal abuse and threat from Leo. The Montevillas demanded payment of ₱1,000.00 as monthly rent beginning May, 1994, and to vacate the lot. The demand was unheeded, prompting the Montevillas to file a civil action for ejectment on April 10, 1995.[10]

For their part, spouses Vallena denied the Montevilla's allegations. They alleged that Victor sold to Benigno a 58-square meter lot and a 36-square meter lot, or a total of 94 square meters. Benigno sold the 94-square meter lot to Roman, who eventually sold it to Jose. They averred that there is a private document wherein Victor sold to Jose a 4-square meter lot, bringing a total of 98 square meters in Jose's name.[11]

They asserted that they have been in possession of the contested lot since 1982 up to the present without interruption. Tax Declaration No. 0020 in Jose's name was issued in 1990 because Jose or his successors-in-interest were in actual physical possession of the land.[12] The tax declaration indicated 98 square meters.[13] However, spouses Vallena were unable to present the documents of sale because they were either burned or misplaced during Jose's lifetime.[14]

The MCTC Decision

On July 8, 2014, the MCTC rendered a decision in Montevilla's favor. The MCTC held that spouses Vallena failed to produce the original documents of sale to prove that Jose acquired the contested lot. They presented photocopies of the acknowledgement receipts pertaining to the sale between Victor and Benigno, and Victor and Jose. The MCTC explained that since the validity of the sale was questioned, it is incumbent upon spouses Vallena to produce the original documents for examination of its genuineness and due execution. The MCTC

---

[10] *Id.* at 43 and 61.

[11] *Id.* at 44.

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

[13] *Id.* at 63.

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

was suspicious of the receipts' integrity, because it observed that Victor's signatures appear to be too similar despite the 20-year gap in their execution. The MCTC expounded that it is natural for a person's handwriting to change or deteriorate over time. The MCTC further observed that only one typewriter was used in the document's preparation.[15]

Moreover, the MCTC elucidated that even if the court accepted the photocopies as evidence in place of the originals, they were not evidence of sale of the contested lot, because they lack one of the elements of a valid contract. The elements of a contract are consent, object, and consideration. The MCTC found the second element to be lacking, because the photocopied acknowledgement receipts did not sufficiently describe the object of the sale: (1) the location of the property was not specified; (2) there is a blot on the figure representing the dimension of the lot, forcing any reader to guess the size of the lot; and (3) the lot was labelled as swamp land at the back of the house of Jose Vallena, without specific area indicated. The receipts did not fulfill the requirement of the law on certainty of the object of a contract. Hence, there was no perfected and valid contract of sale.[16]

The MCTC declared that the Montevillas own the 40-square meter lot, ordered spouses Vallena to vacate and remove all its improvements on the subject lot, and to pay ₱200.00 as monthly rent from April 1995 until the lot is vacated and ₱10,000.00 as cost of litigation.[17] Aggrieved, spouses Vallena appealed to the RTC.

The RTC Decision

On July 7, 2015, the RTC affirmed the MCTC decision.[18] Spouses Vallena raised the issue of lack of certificate to file action from the *barangay* and special power of attorney of

---

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

[16] *Id.* at 65-67.

[17] *Id.* at 67.

[18] *Id.* at 72.

Anita as representative of the Montevillas. The RTC resolved that the reconstituted records showed copies of the said documents.[19]

The RTC discussed that in unlawful detainer, it is must be shown that the possession was initially lawful and later turned unlawful upon the expiration of the right to possess. The Montevillas allowed spouses Vallena to occupy the contested lot and build a structure of light materials. Their occupation was by mere tolerance, which ended when the Montevillas discovered that they violated the condition by building a concrete building.[20] Thus, the RTC sustained the MCTC's ruling.[21]

Spouses Vallena moved for reconsideration, which the RTC denied in its October 28, 2015 Order.[22] Unperturbed, they elevated the matter before the CA.

The CA Decision

On March 16, 2017, the CA reversed the RTC decision, and dismissed the complaint for lack of merit.[23]

On the procedural aspect, the CA did not give credence to spouses Vallena's arguments. The CA clarified that the absence or belated filing of a special power of attorney is not a ground for the dismissal of a complaint. It is not even necessary in this case, because as one of the heirs of spouses Montevilla and a co-owner of the contested lot, Anita may, by herself, bring an action for the recovery of the co-owned property without the necessity of joining all the co-owners. It is presumed that the action was brought for the benefit of all co-owners.[24]

---

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

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

[21] *Id.* at 72.

[22] CA *rollo*, p, 29.

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

[24] *Id.* at 47.

The CA also pointed out that non-referral of a case for *barangay* conciliation, when required by the law, is not jurisdictional and may be waived if not timely raised. Here, spouses Vallena raised the issue only on appeal to the RTC, and failed to include it in their answer and position paper or motion to dismiss. Therefore, they have waived the issue.[25]

On the substantive aspect, the CA elucidated that in ejectment, the plaintiff must prove prior physical possession to recover the property, even against an owner. Otherwise, the plaintiff has no right of action, even if he/she is the owner of the property.[26]

Here, the Montevillas claim ownership of the lot without offering any evidence. On the other hand, spouses Vallena proved that their occupation was the result of Jose's acquisition of the lot. The CA found spouses Vallena's version more credible. The CA reasoned that tax declarations and payment of realty tax are indications of possession in the concept of an owner, although they are not conclusive proof. The CA rationalized that no one in his right mind would be paying realty taxes that is not in his/her actual or constructive possession. Hence, the CA ruled in spouses Vallena's favor and dismissed the complaint.[27]

The Montevillas moved for reconsideration, which the CA denied in its September 7, 2017 Resolution. Unconvinced, the Montevillas filed the present petition under Rule 45. The Montevillas alleged that: (1) the affidavits of Jorge and Anita, the demand letter, and the affidavit of the boundary lot owners are proof that the spouses Vallena are occupying the contested lot out of their tolerance; (2) prior physical possession need not be proved in unlawful detainer; (3) the CA should not have entertained the issue on tax declaration and payment of realty taxes, which were raised for the first time on appeal; and (4)

---

[25] *Id.*

[26] *Id.* at 50.

[27] *Id.*

the findings of fact of the trial courts are given weight on appeal because of their position to examine the evidence.[28]

In their Comment,[29] spouses Vallena essentially argued that the issues raised in the petition are not questions of law and should not be entertained by the Court.

In their Reply,[30] the Montevillas reiterated the contentions raised in their Petition.

The Issue Presented

Whether or not the CA committed an error in reversing the RTC decision, and in ruling that spouses Vallena have the right of possession over the 40-square meter lot.

The Court's Ruling

The petition has merit.

The general rule in a petition for review on *certiorari* under Rule 45 of the Rules of Court is that only questions of law should be raised. In *Republic v. Heirs of Eladio Santiago*,[31] the Court enumerated that one of the exceptions to the general

---

[28] *Id.* at 15-30.

[29] *Id.* at 112-118.

[30] *Id.* at 120-142.

[31] 808 Phil. 19-10 (2017).
Moreover, the factual findings of the CA affirming those of the trial court are final and conclusive. They cannot be reviewed by this Court, save only in the following circumstances: (1) when the factual conclusion is a finding grounded entirely on speculations, surmises and conjectures; (2) when the inference is manifestly mistaken, absurd or impossible; (3) when 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 CA went beyond the issues of the case in making its findings, which are further contrary to the admissions of both the appellant and the appellee; (7) when the CA's findings are contrary to those of the trial court; (8) when the conclusions do not cite the specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) when the CA's findings of fact, supposedly premised on the absence of evidence, are contradicted by the evidence on record. x x x (Citation omitted)

rule is when the CA's findings are contrary to those of the trial court. Considering the different findings of fact and conclusions of law of the MCTC, RTC, and the CA, the Court shall entertain this petition, which involves a re-assessment of the evidence presented. In resolving the issue of possession, the Court will provisionally determine the issue of ownership since both parties claim to be the owners.

In its decision, the CA held that the Montevillas did not offer evidence of prior physical possession.[32]

The Court disagrees. Section 4, Rule 129 of the Rules of Court on judicial admission states that an admission, verbal or written, made by the party in the course of the proceedings in the same case, does not require proof.

Here, the spouses Vallena admitted in their pleadings that Victor was the original owner and alleged seller of the contested 40-square meter lot.[33] Their admission means that they recognize that Victor had prior possession of the lot before he allegedly sold it to them. A seller must have exercised acts of ownership, such as physical possession and acts of administration, before entering into a transaction over his property. With spouses Vallena's judicial admission, the Montevillas need not prove prior physical possession, because upon Victor's death, his rights, including the right of possession, over the contested lot were transmitted to his heirs by operation of law.

The CA did not uphold the MCTC's finding that the alleged contract of sale is imperfect and invalid.[34]

To this, the Court differs. It is an established rule that findings of fact of the trial courts are entitled to great weight and credence since they are in the best position to evaluate the evidence. Here, the MCTC had the first opportunity to scrutinize spouses Vallena's documentary exhibits[35] on the

---

[32] *Rollo*, p. 48.

[33] Records, p. 19.

[34] *Rollo*, pp. 49-50.

[35] CA *rollo*, pp. 63-64.

alleged sale, namely: (1) Exhibit 4, a photocopy of the May 2, 1961 deed of sale between Victor and Benigno; (2) Exhibit 5, a photocopy of the December 4, 1963 acknowledgement receipt of payment between Victor and Benigno; and (3) Exhibit 6, a photocopy of the January 3, 1982 acknowledgment receipt of payment between Victor and Jose. The MCTC resolved that since the validity of Jose's acquisition is in question, spouses Vallena should have produced the original documents to examine its genuineness and due execution.

The Court sustains the MCTC's ruling. Section 3, Rule 130 of the Rules of Court on best evidence rule states that when the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself.

Here, spouses Vallena presented photocopies of the alleged deed of sale and alleged acknowledgment receipts. They claim that the original copies were misplaced, missing, lost, or burned,[36] but they were unable to state with certainty the circumstances surrounding its disappearance. Importantly, they failed to prove that the original documents existed in the first place. Without the original documents, spouses Vallena failed to prove that Jose bought the contested lot partly from Victor and partly from Roman.

The Court also noticed that the deed of sale and one of the acknowledgement receipts pertain to a sale between Victor and Benigno. The deed of sale specified that Victor sold a lot, measuring 58 square meters, to Benigno for ₱210.00. The two documents show that a transaction took place between them, and nowhere does Jose's name appear in these documents. These documents do not prove that Victor and Jose or Benigno and Jose entered into a contract of sale.

As for the other acknowledgement receipt allegedly between Victor and Jose, the Court also upholds the MCTC ruling that even if the court accepts the photocopies as evidence, they are not sufficient evidence of a contract of sale for lack of one of

[36] Records, pp. 19, 87.

the elements — certainty of object under Article 1318[37] of the New Civil Code of the Philippines. Since spouses Vallena were unable to prove that Jose bought the contested lot from Victor, their main defense crumbles.

The Court reviewed Exhibit 7 (spouses Vallena's Joint Affidavit[38]) and found that they failed to indicate with certainty the size of the land that Victor and Roman allegedly sold to Jose. Spouses Vallenas' Answer[39] and Position Paper[40] also contain ambiguous allegations on the exact measurement of the lot allegedly sold. The Position Paper states the following:

> The area which was sold to Benigno Zita was only 58 [s]quare [m]eters with an additional area having 2 meters in length and a **blurred or not readable width which could either be 8, 5 or 3 meters and assuming that it was only 3 meters** by, 12 meters or 36 [s]quare [m]eters to be added to 58 square meters, the total area of which will be 94 [s]quare [m]eters.
>
> In a private instrument, the late Victor L. Montevilla also sold a portion of land **with no specific area** and tax declaration for ₱2,000.00, Exhibit "6" for the defendants and **granting without admitting that the area was only 4 square meters**, then the total area will be 98 square meters x x x.[41] (Emphases supplied)

If spouses Vallena do not know the exact size of the land which Jose allegedly bought from Victor and Roman, how can they convince the Court to grant them possession of the contested lot? It is precisely for this reason that the original copies of the documents of sale must be presented in the trial court.

---

[37] Art. 1318. There is no contract unless the following requisites concur:
(1) Consent of the contracting parties;
(2) Object certain which is the subject matter of the contract;
(3) Cause of the obligation which is established.

[38] Records, p. 95.

[39] *Id.* at 9-12.

[40] *Id.* at 87-90.

[41] *Id.* at 89.

On the other hand, the Court evaluated the Montevilla's documentary exhibits and found that they support their claim of ownership, prior possession, and tolerance as to spouses Vallena's occupation of the contested lot.

First, Exhibit "E" (Jorge's Affidavit[42]) narrated that in 1993, spouses Vallena approached him and sought permission from him to occupy the contested lot to be used as storage for their *patis* business. Considering that they were all government employees and Jose was the godfather of Jorge's nephew, the latter granted permission on condition that spouses Vallena would build a temporary structure with nipa thatches as roofing. Spouses Vallena also assured him that they would demolish the structure upon demand.

The Court observed that spouses Vallena did not deny that there was indeed a *patis* business operating on the contested lot. They claimed that they were only the caretakers of Ambrocio Gaviola (Gaviola), Jr.'s business.[43] However, spouses Vallena did not present proof that Gaviola owns the business. Thus, the Court does not give credence to their unsubstantiated and self-serving claim.

Second, Exhibits "I" (June 19, 1995 Certification[44] of Alejandro A. Tamayo [Tamayo] as the Municipal Assessor of Dimasalang, Masbate) and "J" (Sketch Plan[45] issued by Tamayo) reveal that Tamayo conducted an ocular inspection on May 20, 1995 on Victor's property in Poblacion, Dimasalang, Masbate, covered by Tax Declaration 3007. The exhibits contained Tamayo's certification that Victor's property consisted of 2,134 square meters, and he sold a total of 957 square meters to different buyers. Jose's name was not among the buyers listed. The remaining area left is 1,177 square meters, which was identified as Lot 10.

---

[42] *Id.* at 55.

[43] *Id.* at 9.

[44] *Id.* at 63.

[45] *Id.* at 64.

Tamayo also certified that Lot 7, (measuring 98 square meters) and covered by Tax Declaration 0020, was declared in Jose's name upon Leo's request during the tax mapping operation in 1990, but he did not present any document of conveyance from the actual owner, Victor, to support his claim of ownership to the lot. Tamayo also categorically stated that the June 19, 1995 Certification superseded the April 24, 1995 Certification that he issued.

Third, Exhibit "K" (Tamayo's affidavit dated November 3, 1997)[46] reiterated the contents of Exhibits "I" and "J", which were issued after he conducted an ocular inspection on Victor's property. He clarified that his June 19, 1995 Certification nullified the April 24, 1995 Certification, which stated that Victor's property consisted of 100 square meters. He also stated that Tax Declaration 4983 was issued anew in Victor's name on June 25, 1997, showing that his property measured 1,177 square meters.

Fourth, Exhibit "O" (Anita's Affidavit)[47] corroborated Jorge's narration on when and how he permitted spouses Vallena to occupy the contested lot for their *patis* business. She discovered the illegal structure on May 17, 1994 when she went home to pay the realty tax of their parents' property. She had been diligently paying the realty taxes in advance for the succeeding years.

Anita's affidavit disclosed that during the ocular inspection, Tamayo was accompanied by *Barangay* Chairman Bibiano Inocencio, Arlin Mitra, Nardito Tinay, Carlos Legazpi, Jorge Montevilla, and other lot buyers. Tamayo borrowed the deeds of sale between Victor and the buyers, which became the basis of his inspection.[48]

The Court thinks that the presence of the owners and occupants of the land surrounding the contested lot makes

---

[46] *Id.* at 65-66.

[47] *Id.* at 82-86.

[48] *Id.* at 84-85.

Tamayo's sketch plan, certification, and affidavit credible. Any undue influence, intimidation, or threat during the conduct of the inspection would be blocked by these witnesses. Further, the Court observed that spouses Vallena did not present any deed of sale to prove to Tamayo that Jose owned the contested lot and they inherited it from him. The ocular inspection was a good opportunity for spouses Vallena to prove to the Montevillas and to their neighbors that they are the rightful owners and possessors of the contested lot, however, they failed to grab that opportunity because they had no evidence to support their claim.

Fifth, Exhibits "H" to "H-3" (Deeds of Sale between Victor and Manuel Tigpos, Carlos Legazpi, Arlin Mitra and Lucio Abad),[49] substantiate Anita's affidavit, Tamayo's sketch plan, certification, and affidavit as to the portions that were sold by Victor. The buyers in the deeds are Jose's neighbors and lot owners surrounding the contested lot.

The Court emphasizes that spouses Vallena did not present any deed of sale; thus, the Court is unconvinced with their allegation that Jose acquired the contested lot from Victor or from Roman.

Sixth, Exhibit "N" (Joint Affidavit of Arlin Mitra, Nardito Tinay, Lucio Abad and Carlos Legazpi),[50] executed by the boundary lot owners and neighbors of spouses Vallena, affirmed that they bought their respective lots from Victor. They verified that after the sale, Victor's remaining area was 1,177 square meters, covered by Tax Declaration 4983. They confirmed that Tamayo indeed conducted an ocular inspection on May 20, 1995, and he measured all the lots bought from Victor.

Seventh, Exhibits "M"-"M3" (real estate tax receipts)[51] paid by Anita prove that the Montevillas had been paying the real property taxes on the 1,177 square-meter lot. While payment

---

[49] *Id.* at 59-62.

[50] *Id.* at 72-74.

[51] *Id.* at 68-71.

of realty tax is not conclusive proof of ownership or possession, it is a good indication of ownership or possession because no one would be willing to spend for something that he/she does not own or possess.

Lastly, Exhibits "A", "D" and "D-2" (Declarations of Real Property)[52] further support the Montevillas claim that their father owned the 1,177 square-meter lot, of which the contested lot is part of.

In civil case, the quantum of evidence required is preponderance of evidence. In *Aba v. Attys. De Guzman, Jr., et al.*[53] the Court defined and discussed this concept.

> Preponderance of evidence means that the evidence adduced by one side is, as a whole, superior to or has greater weight than that of the other. It means evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. Under Section 1 of Rule 133, in determining whether or not there is preponderance of evidence, the court may consider the following: (a) all the facts and circumstances of the case; (b) the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony; (c) the witnesses' interest or want of interest, and also their personal credibility so far as the same may ultimately appear in the trial; and (d) the number of witnesses, although it does not mean that preponderance is necessarily with the greater number. (Citation omitted)

Here, the Montevillas presented 15 exhibits,[54] while the Vallenas submitted nine exhibits.[55] More than just having a greater number of exhibits, the Montevillas sufficiently prove their claim that they are in prior possession of the contested lot because their parents owned it and possessed it. The affidavits of two of the Montevilla heirs, the affidavits of the boundary

---

[52] *Id.* at 49, 53-54.

[53] 678 Phil. 588, 601 (2011).

[54] Records, pp. 36-42, 49-74, 82-86.

[55] *Id.* at 13-17, 90-96.

lot owners, Tamayo's sketch plan, certification, and affidavit all prove that Victor did not sell the contested lot to Jose and remained with the Montevillas. These pieces of evidence also support the allegation that spouses Vallena's occupation was by mere tolerance of the Montevillas. It is not just the quantity, but foremost the quality of evidence that determines who has preponderance of evidence. Thus, the Montevillas have satisfactorily substantiated their version in this long-time unresolved land dispute.

On the other hand, spouses Vallena's main defense that Jose bought the contested lot partly from Victor and partly from Roman was unproven due to non-presentation of the original documents of sale. Since their most important piece of evidence was struck down, there is nothing left for their defense. Therefore, they have no right of possession over the 40-square meter contested lot.

WHEREFORE, premises considered, the petition is **GRANTED**. The Court of Appeals Decision dated March 16, 2017 and the Resolution dated September 7, 2017 in CA-G.R. SP No. 143742 are **REVERSED**. The Regional Trial Court Decision dated July 7, 2015 in Civil Case No. 7001 is **REINSTATED**.

SO ORDERED.

Peralta, C.J. (*Chairperson*), *Caguioa* (*Working Chairperson*), *Lazaro-Javier*, and *Inting,*[*] *JJ.*, concur.

[*] Additional Member per Special Order No. 2726.

FIRST DIVISION

[G.R. No. 246497. December 5, 2019]

RAMON R. MAGADIA, *petitioner, vs.* **ELBURG SHIPMANAGEMENT PHILIPPINES, INC. and ENTERPRISES SHIPPING AGENCY SRL,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; 2010 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (2010 POEA-SEC); GUIDELINES TO DETERMINE A SEAFARER'S DISABILITY. — ***Orient Hope Agencies, Inc. v. Jara*** set out the following guidelines to determine a seafarer's disability, *viz*.: The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him; 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total; 3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g. seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.

2. ID.; ID.; ID.; TWO REQUISITES THAT MUST CONCUR TO DETERMINE A SEAFARER'S MEDICAL CONDITION; CASE AT BAR. — [T]wo (2) requisites must concur for a determination of a seafarer's medical condition: 1) an assessment must be issued within the 120/240 window, and 2) the assessmen must be final and definitive. Thus, ***Orient Hope*** aptly held: While the assessment of a company-designated physician *vis-a-vis* the schedule of disabilities under the POEA-

SEC is the basis for compensability of a seafarer's disability, it is still subject to the periods prescribed in the law. x x x Clearly, this is hardly the "definite and conclusive assessment of the seafarer's disability or fitness to return to work" required by law from the company-designated physician because petitioner, in fact, returned to the company-designated physician and underwent further therapy which lasted for almost more than three (3) months or until January 6, 2015.

3. ID.; ID.; ID.; ID.; ABSENT A FINAL AND DEFINITIVE ASSESSMENT FROM THE COMPANY-DESIGNATED PHYSICIAN, THE SEAFARER'S LIABILITY IS DEEMED PERMANENT AND TOTAL BY OPERATION OF LAW. —There was nothing on record showing that the company-designated physician explained in detail the progress of petitioner's treatment and the approximate period needed for him to fully recover. Instead, the medical report merely stated that petitioner suffered a disability grading of 11 and that he had reached maximum medical care. Clearly, this is hardly the "definite and conclusive assessment of the seafarer's disability or fitness to return to work" required by law from the company-designated physician because petitioner, in fact, returned to the company-designated physician and underwent further therapy which lasted for almost more than three (3) months or until January 6, 2015. x x x In ***Tamin v. Magsaysay Maritime Corporation,*** the Court held that the company-designated physician likewise failed to give a definitive rating on petitioner's disability because the seafarer still experienced recurring pain in his left hand and was required to undergo further therapy sessions which extended beyond the 240 day window. On the strength of these judicial dicta, petitioner's disability is deemed permanent and total by operation of law in the absence of a final and definitive assessment from the company-designated physician.

4. ID.; ID.; ID.; IN DISABILITY COMPENSATION, IT IS NOT THE INJURY WHICH IS COMPENSATED BUT RATHER IT IS THE INCAPACITY TO WORK RESULTING IN THE IMPAIRMENT OF ONE'S EARNING CAPACITY; CASE AT BAR. — We emphasize anew that in disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of ones earning capacity. Considering petitioner's persistent back pain, it is highly improbable for him to perform his usual tasks as messman in any vessel which effectively disabled him from earning wages

in the same kind of work or similar nature for which he was trained. Petitioner's disability resulted in his loss of earning capacity and, therefore, entitles him to permanent and total disability benefits.

APPEARANCES OF COUNSEL

Panambo & Baldivino Law Offices for petitioner.
Luzvie T. Gonzaga for respondents.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This petition for review on *certiorari*[1] seeks to set aside the following dispositions of the Court of Appeals in CA-G.R. SP No. 146244,[2] *viz.*:

1. Decision[3] dated May 23, 2018, finding petitioner entitled to partial disability benefits; and
2. Resolution[4] dated March 6, 2019, denying petitioner's motion for reconsideration.

The Antecedents

Petitioner Ramon Magadia filed a complaint against respondents Elburg Shipmanagement Philippines, Inc. and Enterprises Shipping Agency SRL for permanent and total disability benefits and other monetary claims.

Petitioner's Version

On September 20, 2013, respondents hired him as messman to work on board MV FD Honorable for a period of nine (9)

---

[1] Under Rule 45 of the 1997 Rules of Court.

[2] Penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Ricardo R. Rosario and Ronaldo Roberto B. Martin.

[3] *Rollo,* pp. 41-52.

[4] *Id.* at 36-40.

months. On May 19, 2014, he was carrying a garbage bag to the ship's upper deck when he fell from the stairway. His shoulder hit the steel railings and his body rammed against the floor. He was immediately administered first aid and brought to a hospital in Rio de Janeiro. He had an x-ray on his spine and pelvis and got diagnosed with "Herniated Nucleus Pulposus, Lumbosacral Vertebrae."[5]

On May 23, 2014, he got repatriated to Manila and reported to the company-designated physician for examination and treatment. After undergoing a magnetic resonance imaging (MRI) test, company-designated physician Dr. William Chuasuan, Jr. diagnosed him with "L4-L5 and L5-S1 Disc Dessication; Left Forearm Contusion." He was recommended for physical therapy.[6]

On September 24, 2014, the company-designated physician issued petitioner an initial disability grading of 11 after he found that petitioner's trunk was "within [functional range]."[7]

After further medical treatment, the company-designated physician issued Medical Report dated October 3, 2014, *viz.*:

> The specialist opines that patient has already reached maximum medical treatment.
>
> If (the) patient is entitled to disability, his final disability grading is Grade 11 - loss of 1/3 lifting power of the trunk.[8]

Petitioner, thereafter, continued with his treatment and therapy. On January 6, 2015, the company-designated physician assessed his condition as resolved and stopped his treatment. His back pain, however, persisted. Thus, the next day, he sought the opinion of another physician, Dr. Misael Jonathan A. Ticman.[9]

---

[5] *Id.* p. 42.

[6] *Id.* at 43.

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

[8] *Id.* at 15.

[9] *Id.* at 43.

In his Disability Report dated February 4, 2015, Dr. Ticman found:

> x x x [I]n spite of the physical therapy done and medications given(,) the symptoms [persisted and] prognosis is not good. I am therefore recommending Permanent Disability and that he is unfit to work as a seaman in any capacity."[10]

Consequently, he demanded from respondents payment of full disability benefits, but to no avail.[11]

Respondent's Version

After a series of examination and rehabilitation, the company-designated physician assessed petitioner's disability as Grade 11 due to "loss of 1/3 lifting power of the trunk." Petitioner was, therefore, only entitled to partial permanent disability benefits equivalent to the company-designated physician's assessment. Too, the company-designated physician's assessment should be given more weight over petitioner's personal doctor since the latter failed to observe the proper procedure by referring the matter to a third doctor.[12]

The Labor Arbiter's Ruling

In his Decision, Labor Arbiter Eduardo DJ. Carpio granted petitioner's claim for permanent and total disability benefits, *viz.*:

> WHEREFORE, premises considered, judgment is hereby rendered ORDERING the respondents to pay, jointly and severally, herein complainant the amount of US$60,000.00 representing his permanent total disability compensation and attorney's fees equivalent to ten percent (10%) of the total monetary award or their peso equivalent at the prevailing exchange rate on the actual date of payment.
>
> All other claims are dismissed for lack of factual or legal basis.[13]

---

[10] *Id.*

[11] *Id.*

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

[13] *Id.* at 44, Court of Appeals' Decision.

The NLRC Ruling

On appeal, the NLRC modified. It declared that petitioner was only entitled to partial disability benefits, *viz.*:

> WHEREFORE, premises considered, the Appeal is GRANTED and the July 17, 2015 Decision is MODIFIED in that complainant is declared to be partially disabled only with a disability rating of Grade 11.
>
> Respondents are ordered to solidarily pay complainant the compensation corresponding to Grade 11 disability, to be paid in Philippine peso at the exchange rate prevailing at the time of payment and 10% thereof as attorney's fees.[14]
>
> x x x x x x x x x

Petitioner sought a reconsideration but the same was denied.[15]

The Court of Appeals' Ruling

On petitioner's appeal by *certiorari*, the Court of Appeals affirmed. In addition, it imposed a legal interest of six (6%) per annum on the amount awarded from the date of finality of the decision until it was fully paid. The Court of Appeals ruled that the company-designated physician issued a final assessment of petitioner's condition on October 3, 2014 or 133 days since he got repatriated and found his illness equivalent to a disability grading of 11. Since there was a final assessment of petitioner's condition within the 120/240-day period, the company-designated physician's finding was controlling.[16]

By Resolution dated March 6, 2019, petitioner's motion for reconsideration was denied.[17]

---

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

[15] *Id.* at 45.

[16] *Id.* at 41-52.

[17] *Id.* at 36-40.

The Present Petition

Petitioner now asks the Court to reverse the Court of Appeals' assailed dispositions. He maintains that the company-designated physician failed to make a final assessment of his illness within the 120/240 window. The law, thus, presumes that his disability had become permanent and total. But even arguing that a final and definite assessment was made within the prescribed period, he was still unable to return for sea duty after his illness. Thus, he should be deemed permanently and totally disabled.

For their part, respondents counter that the company-designated physician issued Medical Report dated October 3, 2014, finding petitioner's illness equivalent to Grade 11. The assessment was issued within 240 days from the time he got repatriated, thus, the same negates petitioner's claim for permanent total disability compensation. Besides, disability benefits are not dependent on the loss of a seafarer's earning capacity but on the degree of illness suffered.

Core Issue

Is petitioner entitled to permanent total disability benefits?

Ruling

Orient Hope Agencies, Inc. v. Jara[18] set out the following guidelines to determine a seafarer's disability, *viz.*:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;

2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;

---

[18] G.R. No. 204307, June 6, 2018, citing *Elburg Shipmanagement Phils., Inc. v. Quiogue,* 765 Phil. 341, 362-363 (2015).

3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g. seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and

4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.[19]

Based thereon, two (2) requisites must concur for a determination of a seafarer's medical condition: 1) an asaessment must be issued within the 120/240 window, and 2) the assessment must be final and definitive. Thus, ***Orient Hope*** aptly held:

> While the assessment of a company-designated physician *vis-a-vis* the schedule of disabilities under the POEA-SEC is the basis for compensability of a seafarer's disability, it is still subject to the periods prescribed in the law. x x x[20]

Here, petitioner was repatriated on May 23, 2014. After undergoing medical treatment, the company-designated physician issued an interim Grade 11 disability on September 24, 2014. Petitioner's back pain persisted which required him to continue with his medical treatment. Per Medical Report dated October 3, 2014, the company-designated physician issued petitioner a final disability grading of 11, 133 days since he got evaluated. Indeed, the diagnosis was laid down within the extended period of 240 days. But the case does not stop here. The rules also require that the company-designated physician's assessment on a seafarer's illness be final and definitive.

---

[19] G.R. No. 204307, June 6, 2018.

[20] *Id.*

Section 20(B) of POEA-SEC[21] provides that it is the primary responsibility of a company-designated physician to determine the disability grading or fitness to work of seafarers. To be conclusive, however, company-designated physicians' medical assessments or reports must be complete and definite. A final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered.[22]

Here, the Medical Report dated October 3, 2014 contained the following observations: "The specialist opines that [the] patient [had] already reached maximum medical treatment. If

---

[21] Section 20. COMPENSATION AND BENEFITS.

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

2 ... However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree ofhis disability has been established by the company-designated physician. 3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days. For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits. If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

[22] *Sunit v. OSM Maritime Services, Inc.,* 806 Phil. 505, 519 (2017).

[the] patient is entitled to disability, his final disability grading is Grade 11 -loss of 1/3 lifting power of the trunk."[23]

There was nothing on record showing that the company-designated physician explained in detail the progress of petitioner's treatment and the approximate period needed for him to fully recover.[24] Instead, the medical report merely stated that petitioner suffered a disability grading of 11 and that he had reached maximum medical care. Clearly, this is hardly the "definite and conclusive assessment of the seafarer's disability or fitness to return to work" required by law from the company-designated physician because petitioner, in fact, returned to the company-designated physician and underwent further therapy which lasted for almost more than three (3) months or until January 6, 2015.

In ***Island Overseas Transport Corp. v. Beja,*** a month after his knee operation, seafarer Beja was given Grades 10 and 13 partial disability grading by the company-designated physician. The Court considered this assessment tentative because the seafarer continued his physical therapy sessions, which even went beyond 240 days. More, the company-designated physician did not explain how he arrived at the partial permanent disability assessment nor provided any justification for his conclusion.[25]

In ***Tamin v. Magsaysay Maritime Corporation,*** the Court held that the company-designated physician likewise failed to give a definitive rating on petitioner's disability because the seafarer still experienced recurring pain in his left hand and was required to undergo further therapy sessions which extended beyond the 240 day window.[26]

On the strength of these judicial dicta, petitioner's disability is deemed permanent and total by operation of law in the absence

---

[23] *Rollo,* p. 15.

[24] See *supra* note 18.

[25] 774 Phil. 332, 347 (2015).

[26] 794 Phil. 286, 301 (2016).

of a final and definitive assessment from the company-designated physician.

Another point. We emphasize anew that in disability compensation, it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity.[27] Considering petitioner's persistent back pain, it is highly improbable for him to perform his usual tasks as messman in any vessel which effectively disabled him from earning wages in the same kind of work or similar nature for which he was trained. Petitioner's disability resulted in his loss of earning capacity and, therefore, entitles him to permanent and total disability benefits.

Finally, since petitioner was compelled to litigate due to respondents' unjustified denial of his claims, the award of attorney's fees was proper.[28]

ACCORDINGLY, the petitions **GRANTED.** The Decision dated May 23, 2018 and Resolution dated March 6, 2019 of the Court of Appeals in CA G.R. SP No. 146244 are **REVERSED AND SET ASIDE.** Respondents Elburg Shipmanagement Philippines, Inc. and Enterprises Shipping Agency SRL are ordered to pay petitioner Ramon Magadia US$60,000.00 as permanent and total disability benefits and attorney's fees equivalent to ten percent (10%) of this amount. Legal interest of 6% per annum is imposed on the total judgment award from the finality of this Decision until fully paid.

SO ORDERED.

Peralta, C.J. (*Chairperson*), *Caguioa, Reyes, J. Jr.,* and *Inting,*[*] *JJ.,* concur.

---

[27] *Supra* note 21, at 522.

[28] *Supra* note 18.

[*] Additional member per Special Order No. 2726.

FIRST DIVISION

[A.C. No. 3989. December 10, 2019]

EDUARDO L. ALCANTARA, *complainant, vs.* **ATTY. SAMUEL M. SALAS,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; RULE 12.03 OF CANON 12, CANON 17, AND RULE 18.03 OF CANON 18 THEREOF, VIOLATED IN CASE AT BAR. — In addition to the IBP's finding of violation of Rule 12.03 of the CPR, the Court finds other violations, such as Canons 17 and 18, and Rule 18.03 on a lawyer's duty to his/her client. x x x Here, the transcript of stenographic notes dated July 28, 1994 reveals that Atty. Salas admitted to not filing the appellant's brief in the CA and not updating the appellate court of his then current mailing address. x x x It is crystal clear that the root cause of non-filing of appellant's brief was Atty. Salas' failure to inform the CA of the change in his mailing address. Had he done so, he would have received the CA's notices requiring him to file the appellant's brief. Had he been diligent in his duty, Alcantara's appeal would not have been dismissed. There is no one to blame but Atty. Salas, because as a handling lawyer and officer of the court, he must be mindful of the trust and confidence reposed in him by his client.

APPEARANCES OF COUNSEL

Jose R. Imbang for complainant.

D E C I S I O N

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

The Case

This is an administrative case against a lawyer for gross negligence in failing to file an appellant's brief and to update the Court of Appeals (CA) on his current mailing address.

The Facts

On March 16, 1993, complainant Eduardo L. Alcantara (Alcantara) filed an amended sworn letter-complaint for unethical, unprofessional, and corrupt practices against his counsel, respondent Atty. Samuel M. Salas (Atty. Salas). Alcantara alleged that he hired the services of Atty. Salas in filing a civil action for specific performance with damages on May 19, 1980. Having lost in the trial court, Atty. Salas appealed to the CA on April 26, 1990. Allegedly, that was the last time Alcantara heard from Atty. Salas.[1]

In July 1992, Alcantara received news that his appeal was dismissed. He went to the CA and discovered that the CA issued a Resolution dated March 11, 1991, dismissing his appeal due to non-filing of appellant's brief despite notice. The CA sent a notice to file brief twice and, in both instances, the notices were returned unclaimed because the addressee has moved.[2]

Alcantara informed Atty. Salas of the dismissal. However, Atty. Salas blamed Alcantara for not checking the status of the case and having lost communication with him. Alcantara denied Atty. Salas' allegation because on November 5, 1991, the latter sent a messenger to claim a check worth ₱5,000.00. Alcantara hired a new lawyer to continue his case to the Supreme Court, which rendered a final decision unfavourable to him. Alcantara attributed the loss to Atty. Salas. Disappointed with his previous counsel's actuations, Alcantara filed this complaint before the Court.[3]

For his defense, Atty. Salas averred that it should have been the duty of the CA to send the notices at his then current residential address as recorded in the two other cases that were

---

[1] *Rollo,* Vol. I, pp. 8-9.

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

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

consolidated with a third case. Admittedly, he did not notify the CA of the change of address in the third case.[4]

On August 25, 1993, the Court referred the matter to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.[5]

The IBP's Investigation, Report and Recommendation

On July 28, 1994, the IBP conducted a hearing wherein the parties presented their respective cause of actions and defenses. The parties agreed that the issue to be resolved is **whether or not Atty. Salas committed gross negligence in failing to file the appellant's brief in the CA.**[6]

On October 18, 2011, the IBP Investigating Commissioner, Oliver A. Cachapero, issued a Report and Recommendation[7] finding Atty. Salas to have violated Rule 12.03[8] of the Code of Professional Responsibility (CPR). The CPR mandates a lawyer to submit a brief or memoranda when required by the court. A lawyer must also inform the court, where he had appeared, of the change in his address in order to maintain the line of communication with the court.[9]

In this case, Atty. Salas had his first office address at 7th Floor, BF Topman Building, Ayala Avenue, Makati City. He transferred to 10th Floor, PBCom Building, Ayala Avenue, Makati City. Then, he moved to Eleuterio de Leon Street, BF Executive Village, Parañaque City. The records do not show that Atty. Salas informed the CA of the change in his address.[10]

---

[4] Records, Vol. 1, p. 257.

[5] *Rollo,* Vol. 1, p. 193.

[6] Records, Vol. 1, p. 21.

[7] Records, Vol. II, pp. 447-449.

[8] A lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapse without submitting the same or offering an explanation for his failure to do so. Approved June 21, 1988.

[9] Records, Vol. II, p. 449.

[10] *Id.* at 448-449.

Therefore, Atty. Salas failed in his duty under the CPR, and it was crucial to his client's cause. The Investigating Commissioner recommended a penalty of suspension from the practice of law for four months.[11]

On February 13, 2013, the IBP Board of Governors issued Resolution No. XX-2013-175 adopting and approving with modification the Investigating Commissioner's Report and Recommendation. The IBP Board of Governors suspended Atty. Salas from the practice of law for two months, with a stern warning that a repetition of the same or similar act shall be dealt with more severely.[12]

Atty. Salas moved for reconsideration, which the IBP Board of Governors denied on March 22, 2014 in its Resolution No. XXI-2014-160. In the same resolution, the IBP Board of Governors affirmed with modification its previous resolution, and suspended Atty. Salas for two years.[13]

The Sole Issue Presented

Whether or not Atty. Salas committed gross negligence in failing to file the appellant's brief in the CA.

The Court's Ruling

The Court affirms the IBP's ruling with modification as to penalty to conform with the jurisprudence.

In addition to the IBP's finding of violation of Rule 12.03 of the CPR, the Court finds other violations, such as Canons 17 and 18, and Rule 18.03 on a lawyer's duty to his/her client.

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.

---

[11] *Id.* at 449.

[12] *Id.* at 446.

[13] *Id.* at 468.

RULE 18.03 — A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Here, the transcript of stenographic notes dated July 28, 1994[14] reveals that Atty. Salas admitted to not filing the appellant's brief in the CA and not updating the appellate court of his then current mailing address, thus:

COMR. BRIONES: What is your defense, Atty. Salas?

ATTY. SALAS: While the records will show that in one case no brief was filed because the notices were not received due to the transfer of address, the main cases were handled through the home address of the respondent and all the way up to the Supreme Court.

x x x x x x x x x

COMR. BRIONES: x x x What is the case where you failed to file the appellant's brief?

ATTY. SALAS: I will refer to the reply. It is CA-G.R. CV 26538.

x x x x x x x x x

COMR. BRIONES: Since you had admitted, Atty. Salas, that you failed to file the appellant's brief in that particular case before the Court of Appeals despite receipt of notice ...

ATTY. SALAS: No notice was received.

COMR . BRIONES: ... In your previous address.

ATTY. SALAS: Despite notice to the previous address but not received.

COMR. BRIONES: My question is did you file a notice of change of address before the Court of Appeals in that case?

ATTY. SALAS: We felt it unnecessary because this case was supposed to be officially consolidated with two other cases.

x x x x x x x x x

COMR. BRIONES: Which is the case where you failed to file your appellant's brief, the third case?

ATTY. SALAS: It is the 21047.[15]

---

[14] *Id.* at 301-304, 307.

[15] *Id.* at 5-11.

Atty. Salas made a similar admission in his Respondent's Manifestation and Memorandum in Aid of Resolution.

> iii. – While admittedly, Atty. Salas did not file a notice of change of address to the Court of Appeals in CA-GR SP No. 21047, CA-G.R. No. 26538, and CA-[G.R.] No. 21054, considering the status of the cases as of November, 1991 as matters before the Supreme Court already and not with the Court of Appeals anymore, the pleadings filed by Atty. Salas specifying his new address at No. 109 E. de Leon St., BF Executive Village, Parañaque, Metro Manila, is sufficient compliance. This and the fact that notices of resolutions were sent by the Court of Appeals also to Eduardo Alcantara at his address at No. 16 Bonifacio Street, Binan, Laguna but not received by Alcantara as the latter has moved without any forwarding address, must lodge upon Alcantara some blame on the failure to receive copy of the resolution in question.[16]

It is crystal clear that the root cause of non-filing of appellant's brief was Atty. Salas' failure to inform the CA of the change in his mailing address. Had he done so, he would have received the CA's notices requiring him to file the appellant's brief. Had he been diligent in his duty, Alcantara's appeal would not have been dismissed. There is no one to blame but Atty. Salas, because as a handling lawyer and officer of the court, he must be mindful of the trust and confidence reposed in him by his client.

In a similar case, *De Borja v. Atty. Mendez, Jr.*,[17] the Court discussed lengthily the significance of a lawyer's duty to his/her client to file a pleading promptly. In the cited case, the Court suspended the lawyer from the practice of law for failing to fulfill the mandate of the canons.

> Canon 18 of the Code of Professional Responsibility for Lawyers states that *"A lawyer shall serve his client with competence and diligence."* Rule 18.03 thereof stresses:
>
> A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

---

[16] Records, Vol. I, p. 257.

[17] A.C. No. 11185, July 4, 2018.

In the instant case, Atty. Mendez' guilt as to his failure to do his duty to his client is undisputed. His conduct relative to the non - filing of the appellant's brief falls below the standards exacted upon lawyers on dedication and commitment to their client's cause. An attorney is bound to protect his clients' interest to the best of his ability and with utmost diligence. Failure to file the brief within the reglementary period despite notice certainly constitutes inexcusable negligence, more so if the failure resulted in the dismissal of the appeal, as in this case.

x x x x x x x x x

Other than Atty. Mendez' allegation of non-receipt of the notice, he has failed to duly present any reasonable excuse for the non-filing of the appellant's brief despite notice, thus, the allegation of negligence on his part in filing the appellant's brief remains uncontroverted. As a lawyer, it is expected of him to make certain that the appeal brief was filed on time. Clearly, his failure to do so is tantamount to negligence which is contrary to the mandate prescribed in Rule 18.03, Canon 18 of the Code of Professional Responsibility enjoining lawyers not to neglect a legal matter entrusted to him.

We cannot overstress the duty of a lawyer to uphold the integrity and dignity of the legal profession by faithfully performing his duties to society, to the bar, to the courts and to his clients.

Every member of the Bar should always bear in mind that every case that a lawyer accepts deserves his full attention, diligence, skill and competence, regardless of its importance and whether he accepts it for a fee or for free. A lawyer's fidelity to the cause of his client requires him to be ever mindful of the responsibilities that should be expected of him. The legal profession dictates that it is not a mere duty, but an obligation, of a lawyer to accord the highest degree of fidelity, zeal and fervor in the protection of the client's interest. The most thorough groundwork and study must be undertaken in order to safeguard the interest of the client. The honor bestowed on his person to carry the title of a lawyer does not end upon taking the Lawyer's Oath and signing the Roll of Attorneys. Rather, such honor attaches to him for the entire duration of his practice of law and carries with it the consequent responsibility of not only satisfying the basic requirements but also going the extra mile in the protection of the interests of the client and the pursuit of justice.

x x x x x x x x x

Time and again, We have reminded lawyers that the practice of law is a privilege bestowed only to those who possess and continue to possess the legal qualifications for the profession. As such, lawyers are duty-bound to maintain at all times a high standard of legal proficiency, morality, honesty, integrity, and fair dealing. If the lawyer falls short of this standard, the Court will not hesitate to discipline the lawyer by imposing an appropriate penalty based on the exercise of sound judicial discretion.

The Code of Professional Responsibility demands the utmost degree of fidelity and good faith in dealing with the moneys entrusted to lawyers because of their fiduciary relationship. Any lawyer who does not live up to this duty must be prepared to take the consequences of his waywardness.

A member of the Bar may be penalized, even disbarred or suspended from his office as an attorney, for violation of the lawyer's oath and/or for breach of the ethics of the legal profession as embodied in the CPR. For the practice of law is "a profession, a form of public trust, the performance of which is entrusted to those who are qualified and who possess good moral character." The appropriate penalty on an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.

In another case, *Abiero v. Juanino,*[18] the Court imposed the penalty of six month suspension after finding the respondent lawyer guilty of negligence and for violating Canons 17 and 18 of the CPR.

Failure to appeal to the Court of Appeals despite instructions by the client to do so constitutes inexcusable negligence on the part of counsel. Once a lawyer consents to defend the cause of his client, he owes fidelity to such cause and must at all times be mindful of the trust and confidence reposed in him. He is bound to protect his client's interest to the best of his ability and perform his duties to his client with utmost diligence. Nothing less can be expected from a member of the Philippine Bar. For having neglected a legal matter entrusted to him by his client, respondent did not serve his client with diligence and competence. His inexcusable negligence on such matter renders him liable for violation of Canons 17 and 18 of the Code of Professional Responsibility. (Citation omitted)

---

[18] 492 Phil. 149-159, 157 (2005).

WHEREFORE, respondent Atty. Samuel M. Salas is found **GUILTY** of violating Rule 12.03 of Canon 12, Canon 17, and Rule 18.03 of Canon 18 of the Code of Professional Responsibility. He is **SUSPENDED** from the practice of law for six (6) months, effective upon the receipt of this decision. He is **STERNLY WARNED** that a repetition of the same or similar act will be dealt with more severely.

Let copies of this Decision be furnished the Office of the Bar Confidant to be entered in respondent's personal records as member of the Philippine Bar, the Integrated Bar of the Philippines for distribution to all its chapters, and the Office of the Court Administrator for circulation to all courts.

SO ORDERED.

Peralta, C.J. (*Chairperson*), *Caguioa* (*Working Chairperson*), *Lazaro-Javier,* and *Lopez, JJ.,* concur.

FIRST DIVISION

[A.C. No. 12485. December 10, 2019]

NARCISO L. HIPOLITO, *complainant, vs.* **ATTY. MA. CARMINA M. ALEJANDRO-ABBAS and ATTY. JOSEPH ANTHONY M. ALEJANDRO,** *respondents.*

SYLLABUS

1.LEGAL ETHICS; ATTORNEYS; COMPLAINTS FOR DISBARMENT OR SUSPENSION ARE INTENDED TO CLEANSE THE RANKS OF THE LEGAL PROFESSION OF ITS UNDESIRABLE MEMBERS FOR THE PROTECTION OF THE PUBLIC AND THE COURTS AND ARE NOT MEANT TO GRANT RELIEF TO A COMPLAINANT AS IN A CIVIL CASE. — It is x x x plain error to argue that the administrative complaint constitutes the civil aspect of the DARAB complaint. Complaints for disbarment

or suspension are intended to cleanse the ranks of the legal profession of its undesirable members for the protection of the public and the courts. It is not meant to grant relief to a complainant as in a civil case . Proceedings to discipline erring members of the bar are instituted not only for the protection and promotion of the public good, but also to maintain the dignity of the profession by weeding out those who have proven themselves unworthy. The Court, therefore, has full authority to discipline respondents, when circumstances and evidence warrant, despite the alleged dismissal of the DARAB complaint.

2. ID.; ID.; REQUIRED TO OBSERVE THE LAW AND BE MINDFUL OF HIS OR HER ACTIONS WHETHER ACTING IN A PUBLIC OR PRIVATE CAPACITY; MAY BE DISCIPLINED NOT ONLY FOR MALPRACTICE IN CONNECTION WITH HIS OR HER PROFESSION, BUT ALSO FOR GROSS MISCONDUCT OUTSIDE OF HIS PROFESSIONAL CAPACITY; CANON 1, RULE 1.01 OF THE CODE OF PROFESSIONAL RESPONSIBILITY, VIOLATED IN CASE AT BAR. — [T]he practice of law is a privilege bestowed by the State only on those who possess and continue to possess the legal qualifications of the profession. Thus, lawyers are expected to maintain, at all times, a high standard of legal proficiency, morality, honesty, integrity and fair dealing, and must perform their four-fold duty to society, the legal profession, the courts and their clients . These standards hold true whether a lawyer acts in his or her professional or private capacity. As such, a lawyer is required to observe the law and be mindful of his or her actions whether acting in a public or private capacity. Consequently, a lawyer may be disciplined not only for malpractice in connection with his or her profession, but also for gross misconduct outside of his professional capacity. In this case, the allegations that respondents forcibly entered the property and demolished the structures thereon, shouted invectives and used abusive language against complainant remain undisputed. In fact, respondents did not deny that these incidents actually occurred on February 8 and 14, 2015, nor did they offer any justification for said acts. Although respondents claim to be the rightful owners of the property, they are without authority to use force and violence to eject complainant who was in prior physical possession of it. The rule of law does not allow the mighty and the privileged to take the law into their own hands to enforce their alleged

rights. As lawyers, respondents are deemed to know the law, but their actions demonstrate a deliberate disobedience to the rule of law, in violation of Canon 1, Rule 1.01 of the CPR. We remind respondents that as lawyers, they ought to be keepers of public faith, and, are thus, burdened with a high degree of social responsibility and must handle their personal affairs with greater caution.

3. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; CANON 7, RULE 7.03 THEREOF; REQUIRES LAWYERS TO MAINTAIN THE INTEGRITY AND DIGNITY OWING TO THE LEGAL PROFESSION; VIOLATED WHEN LAWYERS MISUSED THEIR PROFESSION TO INTIMIDATE OTHERS; CASE AT BAR. — [W]e also find respondents to be guilty of violating Canon 7, Rule 7.03 which provides: CANON 7 -A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION x x x. x x x Rule 7.03 - A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession. For the Court, respondents erred in their conduct, especially in taunting complainant to file a case against them and threatening the latter that they can defend themselves as they are lawyers. Part of respondents' duties as lawyers is to maintain the dignity owing to the profession. When respondents misused their profession to intimidate complainant, they transgressed the mandates of Canon 7, Rule 7.03.

4. ID.; ID.; PENALTY OF DISBARMENT; METED OUT ONLY IN CLEAR CASES OF MISCONDUCT THAT SERIOUSLY AFFECT THE STANDING AND CHARACTER OF THE LAWYER AS AN OFFICER OF THE COURT; CASE AT BAR. — While complainant seeks that respondent be disbarred, we find that suspension from the practice of law is sufficient to discipline respondents. The supreme penalty of disbarment is meted out only in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court. Where a lesser penalty will suffice to accomplish the desired end, the court will not disbar an erring lawyer. Here, we find the suspension for six months as a sufficient sanction against respondents to protect the public and the legal profession.

APPEARANCES OF COUNSEL

CG & G Law Firm for complainant.

R E S O L U T I O N

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

This is an administrative complaint for grave abuse of authority and for conduct unbecoming of a lawyer in relation to Canon 1,[1] Rule 1.01[2] of the Code of Professional Responsibility (CPR) against siblings Attys. Ma. Carmina M. Alejandro-Abbas (Atty. Alejandro-Abbas) and Joseph Anthony M. Alejandro (Atty. Alejandro) (collectively, respondents).

Facts

Narciso L. Hipolito (complainant) and his family were in actual and physical possession of the disputed property located at Brgy. San Pedro, Bustos, Bulacan, which was planted with mango and other fruit-bearing trees. Complainant also constructed his family home on the property.[3]

In the morning of February 8, 2015, respondents, together with some 30 to 40 unidentified men, entered complainant's property and began demolishing his house, structures, and other farming implements using a hammer, mallet, crowbar, and other tools.[4] When complainant and his family attempted to stop said activity, Atty. Alejandro-Abbas uttered the words: "*Huwag kayong makialam. Huwag magsasalita. Lupa namin ito. Ang gumalaw mapahamak. Mabuti pang tumahimik na lamang kayo at lumayas na dito sa aming lupain!*" While Atty. Alejandro

---

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

[2] Rule 1 . 01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

[3] *Rollo,* p. 31.

[4] *Id.* at 68.

said: "*Putangna ninyo, huwag kayong aasta kung ayaw ninyong madisgrasya. Abogado kami. Magdemanda kayo kung saan ninyo gusto mga putangna ninyo at haharapin namin kayo!"*[5]

The above incident was repeated on February 14, 2015. After which, Atty. Alejandro-Abbas left with a warning: "*Bantayan ninyo iyan. Pag gumalaw at nanlaban, barilin at patayin ninyo at kami ang bahalang magkapatid, mga putangnang iyan ayaw pang umalis sa lupain namin!"*[6]

These incidents were reported to the barangay hall and the police,[7] but they, too, were allegedly threatened by the respondents.

Because of these events, complainant lodged the instant administrative complaint before the Integrated Bar of the Philippines (IBP) Commission on Bar Discipline (CBD) for grave abuse of authority and conduct unbecoming of a lawyer, in violation of Canon 1, Rule 1.01 of the CPR against respondents docketed as CBD Case No. 15-4527.

Respondents moved for the consolidation of CBD Case No. 15-4527 with an earlier case docketed as CBD Case No. 15-4526 on the ground that both cases were related to the case filed by complainant before the Department of Agrarian Reform Adjudicatory Board (DARAB).[8] The motion for consolidation was apparently not favorably acted upon by the CBD as the latter went on to resolve CBD Case No. 15-4527 alone.[9]

In their Consolidated Verified Position Paper,[10] respondents averred that the administrative complaint was indisputably related to the DARAB complaint where the complainant alleged similar facts. According to respondents, the DARAB complaint constitutes the civil aspect of the administrative complaint, and,

---

[5] *Id.*

[6] *Id.*

[7] *Id.* at 14 and 16.

[8] Docketed as Case No. R-03-02-0141'15 to 0142'15.

[9] *Rollo,* p. 69.

[10] *Id.* at 52-57.

as such, the outcome of the former should be considered in resolving the latter.[11]

Respondents further argued that said DARAB complaint was dismissed without prejudice for lack of cause of action. According to respondents, complainant was required to present his Certification of Land Ownership Award (CLOA) which was allegedly awarded to him by the Department of Agrarian Reform (DAR), but he failed to do so.[12]

Respondents contended that the instant administrative complaint, which was filed immediately after the DARAB complaint was filed, was a harassment case meant to scare respondents because complainant knew that his DARAB complaint had no leg to stand on.[13]

Report and Recommendation of the IBP Commission on Bar Discipline

On January 26, 2016, the Investigating Commissioner found that respondents violated Canon 1, Rule 1.01 of the CPR and recommended a penalty of three months suspension from the practice of law.[14] The Investigating Commissioner observed that respondents relied on the dismissal of the DARAB cases as their defense and did not categorically deny the acts of violence, threat, intimidation, and defamation which occurred on February 8 and 14, 2015, and, consequently, were deemed to have admitted the same.[15] Such high-handed and abusive conduct, according to the Investigating Commissioner, amounts to grave abuse of authority and conduct unbecoming of a lawyer, in violation of its duty to uphold the Constitution, obey the laws of the land, and promote respect for law and of legal processes.[16]

---

[11] *Id.* at 53.

[12] *Id.*

[13] *Id.* at 54.

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

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

[16] *Id.* at 70.

The Investigating Commissioner also observed that, even assuming respondents have superior right over the property, they should have employed legal means to effect their rights.[17]

Respondents' contention that the DARAB complaint was related to the administrative case was disregarded by the Investigating Commissioner who noted that the two cases involved different causes of action.[18]

Ultimately, the Investigating Commissioner concluded:

WHEREFORE, PREMISES CONSIDERED, the undersigned recommends that a penalty of THREE (3) MONTHS SUSPENSION from the practice of law be imposed against the respondents for violation of Rule 1.01, Canon 1 of the Code of Professional Responsibility for Lawyers.

Respectfully submitted.[19]

Resolution of the IBP Board of Governors

On August 31, 2017, the Board of Governors of the IBP (IBP Board of Governors) passed Resolution No. XXIII-2017-019[20] increasing the recommended penalty of suspension from the practice of law from three months to six (6) months, thus:

RESOLVED to ADOPT the findings of fact and recommendation of the Investigating Commissioner ***with modification*** *by increasing the recommended penalty of Suspension from the practice of law three (3) months to six (6) months.*

RESOLVED FURTHER to direct the Director, Commission on Bar Discipline to prepare an extended resolution explaining the Board of Governors' action.[21] (Emphasis and italics in the original)

---

[17] *Id.*

[18] *Id.* at 69.

[19] *Id.* at 70.

[20] *Id.* at 66.

[21] *Id.*

In an Extended Resolution[22] dated July 12, 2018, the IBP Board of Governors explained that respondents' highhanded and abusive conduct amounted to grave abuse of their authority as officers of the court and constitutes unlawful conduct proscribed under Canon 1, Rule 1.01 of the CPR.[23]

The records of the case were then transmitted to the Court for final action.[24] No motion for reconsideration or petition for review was filed by either party. At any rate, the Court proceeds with the final determination of respondents' administrative culpability, if any, pursuant to the Court's authority to discipline members of the bar.[25]

Issue

The sole issue for resolution is whether respondents are guilty of grave abuse of authority and conduct unbecoming of a lawyer, in violation of Canon 1, Rule 1.01 of the CPR.

Ruling of the Court

The Court affirms Resolution No. XXIII-2017-019 dated August 31, 2017 of the IBP Board of Governors, increasing the recommended penalty to six months.

At the outset, we reject respondents' contention that the resolution of the administrative complaint is related to or dependent upon the resolution of the DARAB complaint. The issue before us is whether respondents committed a violation of the CPR, while that of the DARAB complaint deals with the

---

[22] *Id.* at 71-74.

[23] *Id.* at 74.

[24] Pursuant to Rule 139-B. Section 12(b) which provides:

> If the Board, by the vote of a majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which, together with the whole record of the case, shall forthwith be transmitted to the Supreme Court for final action.

[25] *The Flight Shop, Inc. v. Barican,* G.R No. 9959 (Notice), February 10, 2014.

contested ownership over the property. The outcome of one case has no bearing on the resolution of the other, as there is neither identity of issues nor causes of action between the two.

It is, likewise, plain error to argue that the administrative complaint constitutes the civil aspect of the DARAB complaint. Complaints for disbarment or suspension are intended to cleanse the ranks of the legal profession of its undesirable members for the protection of the public and the courts. It is not meant to grant relief to a complainant as in a civil case.[26] Proceedings to discipline erring members of the bar are instituted not only for the protection and promotion of the public good, but also to maintain the dignity of the profession by weeding out those who have proven themselves unworthy.[27] The Court, therefore, has full authority to discipline respondents, when circumstances and evidence warrant, despite the alleged dismissal of the DARAB complaint.

Going to the pivotal issue of whether respondents should indeed be disciplined by the Court, we begin by emphasizing the time-honored principle that the practice of law is a privilege bestowed by the State only on those who possess and continue to possess the legal qualifications of the profession. Thus, lawyers are expected to maintain, at all times, a high standard of legal proficiency, morality, honesty, integrity and fair dealing, and must perform their four-fold duty to society, the legal profession, the courts and their clients.[28]

These standards hold true whether a lawyer acts in his or her professional or private capacity.[29] As such, a lawyer is required to observe the law and be mindful of his or her actions whether acting in a public or private capacity.[30] Consequently, a lawyer may be disciplined not only for malpractice in

---

[26] *Atty. Yumul-Espina v. Atty. Tabaquero,* 795 Phil. 653, 659 (2016).

[27] *Alpajora v. Atty. Calayan,* 850 Phil. 99, 113 (2018).

[28] *Molina v. Atty. Magat,* 687 Phil. 1, 5 (2012).

[29] *Tumbokon v. Pefianco,* 692 Phil. 202, 207 (2012).

[30] *Enriquez v. Atty. De Vera,* 756 Phil. 1, 11-12 (2015).

connection with his or her profession, but also for gross misconduct outside of his professional capacity.[31]

In this case, the allegations that respondents forcibly entered the property and demolished the structures thereon, shouted invectives and used abusive language against complainant remain undisputed. In fact, respondents did not deny that these incidents actually occurred on February 8 and 14, 2015, nor did they offer any justification for said acts. Although respondents claim to be the rightful owners of the property, they are without authority to use force and violence to eject complainant who was in prior physical possession of it. The rule of law does not allow the mighty and the privileged to take the law into their own hands to enforce their alleged rights.[32] As lawyers, respondents are deemed to know the law,[33] but their actions demonstrate a deliberate disobedience to the rule of law, in violation of Canon 1, Rule 1.01 of the CPR. We remind respondents that as lawyers, they ought to be keepers of public faith, and, are thus, burdened with a high degree of social responsibility and must handle their personal affairs with greater caution.[34]

Aside from the IBP Board of Governors' finding that respondents violated Canon 1, Rule 1.01, we also find respondents to be guilty of violating Canon 7, Rule 7.03 which provides:

CANON 7 – A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION x x x.

x x x x x x x x x

Rule 7.03 – A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public

---

[31] *Philippine Amusement and Gaming Corp. v. Atty. Carandang,* 516 Phil. 299, 306 (2006).

[32] *Heirs of Laurora v. Sterling Technopark III,* 449 Phil. 181, 188 (2003).

[33] *Philippine Amusement and Gaming Corp. v. Atty. Carandang, supra* note 31.

[34] *Valdez v. Dabon, Jr.,* 773 Phil. 109, 126 (2015).

or private life, behave in a scandalous manner to the discredit of the legal profession.

For the Court, respondents erred in their conduct, especially in taunting complainant to file a case against them and threatening the latter that they can defend themselves as they are lawyers. Part of respondents' duties as lawyers is to maintain the dignity owing to the profession. When respondents misused their profession to intimidate complainant, they transgressed the mandates of Canon 7, Rule 7.03.

While complainant seeks that respondent be disbarred, we find that suspension from the practice of law is sufficient to discipline respondents. The supreme penalty of disbarment is meted out only in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court. Where a lesser penalty will suffice to accomplish the desired end, the court will not disbar an erring lawyer.[35] Here, we find the suspension for six months as a sufficient sanction against respondents to protect the public and the legal profession.[36]

WHEREFORE, we find Atty. Ma. Carmina M. Alejandro-Abbas and Atty. Joseph Anthony M. Alejandro **LIABLE** for violation of Canon 1, Rule 1.01 and Canon 7, Rule 7.03 of the Code of Professional Responsibility and are hereby **SUSPENDED** from the practice of law for six (6) months effective from the date of their receipt of this Resolution.

Let copies of this Resolution be furnished the Office of the Bar Confidant to be entered in respondents' personal records as members of the Philippine Bar, the Integrated Bar of the Philippines for distribution to all its chapters, and the Office of the Court Administrator for circulation to all courts.

SO ORDERED.

Peralta, C.J. (*Chairperson*), *Caguioa* (*Working Chairperson*), *Lazaro-Javier,* and *Lopez, JJ.,* concur.

---

[35] *Spouses Saburnido v. Madroño*, 418 Phil. 241, 248 (2001).

[36] See *Dr. Sanchez v. Atty. Somoso*, 459 Phil. 209 (2003) and *Samaniego v. Atty. Ferrer*, 578 Phil. 1 (2008).

EN BANC

[G.R. No. 191946. December 10, 2019]

CIVIL SERVICE COMMISSION represented by ANICIA MARASIGAN-DE LIMA and CESAR D. BUENAFLOR, *petitioners, vs.* **ROGELIO L. BERAY, MELISSA T. ESPINA and VIOLETA R. TADEO,** *respondents.*

[G.R. No. 191974. December 10, 2019]

MELISSA T. ESPINA and VIOLETA R. TADEO, *petitioners, vs.* **CIVIL SERVICE COMMISSION, represented by ANICIA MARASIGAN-DE LIMA and CESAR D. BUENAFLOR,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; GROSS NEGLECT OF DUTY OR GROSS NEGLIGENCE, DISTINGUISHED FROM SIMPLE NEGLECT OF DUTY; PENALTY OF DISMISSAL, PROPER IN CASE AT BAR. — Gross neglect of duty or gross negligence pertains to "negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care [which] even inattentive and thoughtless men never fail to give to their own property."In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable. On the other hand, simple neglect of duty is "the failure of an employee or official to give proper attention to a task expected of him or her, signifying a 'disregard of a duty resulting from carelessness or indifference.'"The Court agrees with the findings of the CSC that Beray should be meted the severe penalty of dismissal from service. He is guilty of gross neglect of duty as he miserably failed to efficiently and effectively discharge his functions and obligations. His acts of heavily depending on his subordinates

without carefully examining the documents presented to him for disbursement of funds clearly exhibit his flagrant and culpable unwillingness to perform his official duties with the exactitude required of him.

2. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW SHOULD BE RAISED; QUESTIONS OF LAW, EXPLAINED. — [I]t is settled that only questions of law should be raised in a petition for review filed under Rule 45 of the Rules of Court. This Court is not a trier of facts. As such, it will not entertain questions of fact as the factual findings of the appellate court are final, binding, or conclusive on the parties and upon the High Court when supported by substantial evidence. In *Lorzano v. Tabayag, Jr.*, the Supreme Court explained a question of law in this wise: A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. x x x To repeat, this Court is not a trier of facts and a review is not a matter of right but of sound judicial discretion. It will be granted only under exceptional circumstances which are not present in the instant petition.

3. ID.; EVIDENCE; CREDIBILITY; FACTUAL FINDINGS OF QUASI-JUDICIAL AND ADMINISTRATIVE AGENCIES, WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE, ARE ACCORDED GREAT RESPECT AND EVEN FINALITY BY THE APPELLATE COURTS; CASE AT BAR. — [F]actual findings of quasi-judicial bodies and administrative agencies, when supported by substantial evidence, are accorded great respect and even finality by the appellate courts. Administrative agencies have specialized knowledge and expertise in their respective fields. Thus, their findings of fact are binding upon this Court except if there is grave abuse of discretion, or where it is clearly shown that they were arrived at arbitrarily or in disregard of the evidence on record. In any case, the Court finds

no reason to depart from the findings of the DPWH, as affirmed by the CSC and the CA, with respect to Espina and Tadeo.

4. POLITICAL LAW; PRESIDENTIAL DECREE NO. 1445 (GOVERNMENT AUDITING CODE OF THE PHILIPPINES); SECTION 111 THEREOF ON KEEPING OF ACCOUNTS; IN KEEPING THE ACCOUNTS OF ANY AGENCY OF THE GOVERNMENT, THE CONCERNED PUBLIC OFFICIAL MUST ENSURE THAT THE ACCOUNTING THEREOF MUST BE IN SUCH DETAIL AS TO FURNISH AN ACCURATE AND NOT MISLEADING INFORMATION; VIOLATED IN CASE AT BAR. — Section 111 of PD No. 1445 x x x reads: Section 111. *Keeping of Accounts*. (1) The accounts of an agency shall be kept **in such detail as is necessary to meet the needs of the agency and at the same time be adequate to furnish the information needed by fiscal or control agencies of the government**. x x x [I]n keeping the accounts of any agency of the government, the concerned public official must ensure that the accounting thereof must be in such detail as to furnish an accurate and not misleading information. Here, Espina and Tadeo averred that to make their task simpler, the various DVs were summarized into one ROA to be charged against a particular fund. They claimed that this has been a long practice in the office.The foregoing excuses are flimsy and unacceptable. Summarizing in a single ROA the various DVs as what Espina and Tadeo did is not condoned by government accounting protocols. x x x Espina and Tadeo failed to make a detailed accounting of the expenses incurred for emergency repairs of the various service vehicles. On the contrary, the summary seemed to mask the absence of supporting documents, like the corresponding required ROA, for other requests of disbursement of funds. The CA is correct that every requisition must be accompanied by such request. It thus follows that a ROA must be made for each DV with respect to a specific request for disbursement of funds. In fact, although National Budget Circular No. 440 dated January 30, 1995 was issued to adopt a simplified fund release system in the government, it did not encourage the lumping up of DVs which was allegedly a practice in the DPWH. Expediency in the performance of duty should not be resorted to in exchange for transparency and accuracy of accounting of public funds.

5. ID.; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; REVISED UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (RRACCS); INEFFICIENCY AND INCOMPETENCE; COMMITTED IN CASE AT BAR; PENALTY. — [T]he Court finds that the Court of Appeals did not err when it affirmed the findings of the DPWH and the CSC with respect to the guilt of Espina and Tadeo for inefficiency in the performance of their official duties. However, in order to reflect the proper nomenclature for the offense under the Revised Uniform Rules on Administrative Cases in the Civil Service (RACCS), the Court holds Espina and Tadeo liable for inefficiency and incompetence. Their acts of summarizing various DVs into a single ROA coupled with the absence of supporting documents, and the failure to secure the approval of the higher authority in charging the reimbursement of the emergency repairs against the Engineering and Administrative Overhead Allocation show that they were inefficient and incompetent in the performance of their functions as Accountant III. They failed to exercise the required extraordinary care in handling the accounting of public funds. Hence, we hold that Espina and Tadeo were properly meted the penalty of suspension of eight (8) months and one (1) day without pay in accordance with the RACCS. Moreover, Espina and Tadeo should likewise suffer the penalty of demotion or diminution in salary corresponding to the next lower salary grade in case no next lower positions are available. This is in accordance with Section 46(C), Rule 10 of the RACCS.

APPEARANCES OF COUNSEL

The Solicitor General for Civil Service Commission, *et al*.

Edmund T. Espina for Rogelio L. Beray, Melissa T. Espina and Violeta R. Tadeo.

D E C I S I O N

HERNANDO, *J.*:

It is inscribed in the Constitution that a public office is a public trust.[1] Public officers and employees have the mandate to serve the people with utmost responsibility, integrity, loyalty, and efficiency at all times. They must act with patriotism and justice, and lead modest lives.

These consolidated Petitions for Review on *Certiorari* under Rule 45 of the Rules of Court assail the August 28, 2009 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 104796 which found Rogelio L. Beray **(Beray)** guilty of simple neglect of duty, and Melissa T. Espina **(Espina)** and Violeta Tadeo **(Tadeo)** guilty of inefficiency in the performance of their official duties, and its March 30, 2010 Resolution[3] which denied the motions for partial reconsideration respectively filed by the Civil Service Commission (CSC), and Espina and Tadeo.

The Factual Antecedents

Respondent Beray was the Chief of the Subsidiary and Revenue Section of the Department of Public Works and Highways (**DPWH**) whose duty, among others, was to supervise the recording and control of the Notice of Cash Allocation issued by the Department of Budget and Management for the cash requirements of the Office. He was also vested with authority to sign for the chief accountant's Requests for Obligation and Allotment **(ROAs)**, and Disbursement Vouchers **(DVs)** for payment of supplies, materials, furniture and equipment in amounts not exceeding ₱200,000.00.

On the other hand, Espina and Tadeo were both Accountant III assigned at the Bookkeeping Section. Their duties included

---

[1] 1987 Philippine Constitution, Article XI, Section 1.

[2] *Rollo* (G.R. No. 191946), pp. 10-26; penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Mario V. Lopez (now a member of this Court).

[3] *Id.* at 27-28.

controlling the allotment releases, recording of accounting entries in Box B of the DV, maintaining Project Cost Sheets of project assignments, and preparing the Journal and Analysis of Obligation.

Sometime in January 2002, the DPWH issued Department Order No. 15 **(DO 15)**, series of 2002, creating a committee to investigate newspaper reports on alleged illegal disbursements of funds and non-observance of procedures on emergency purchases/repairs of the DPWH-owned motor vehicles in 2001. The anomalies involved more than 7,000 transactions in the total amount of ₱139,000,000.00 paid by the concerned Office.

Pursuant to DO 15, the Investigating Committee designated the Internal Audit Service Department of the DPWH as the Technical Working Group tasked to investigate the alleged irregularities in the repair of motor vehicles of the DPWH Central Office for Calendar Year 2001.

As a result, a Complaint-Affidavit[4] was filed on July 12, 2002 against several employees of the DPWH Central Office including Beray, Espina, and Tadeo. The complaint arose from anomalous transactions involving the alleged emergency repair of a Nissan Pick-up with plate number TAG 211.

Beray approved the reimbursement of the emergency repair and purchases of spare parts of vehicle TAG 211 even when the spare parts enumerated on the four Requisition for Supplies and Equipment forms (RSEs) cannot be considered as emergency in nature. He certified the propriety of the expenditures and completeness of supporting documents. He also signed the portion for the Department Chief Accountant and Recommending Approval of the voucher even if the funds used for the four vouchers were charged against the Capital Outlay Fund (300-34) which cannot be used for emergency repairs and purchases of spare parts.[5] It was also discovered that Beray signed ROAs for amounts exceeding ₱200,000.00 and the Vouchers of the

---

[4] CA *rollo*, pp. 52-56.

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

Certificate of Availability of Funds for payment of emergency purchases/repairs without the prior approval of higher authorities.[6]

Tadeo, on the other hand, charged the amount of ₱24,550.00 for the repair of service vehicle TAG 211 (one DV) against Capital Outlay for Roads, Bridges and Highways for ADB-PMO Projects in violation of Section 20 of the General Appropriations Act (GAA). Similarly, Espina improperly charged the expenses for the emergency repair of service vehicle TAG 211 (three DVs) against Capital Outlay for Roads, Bridges and Highways for Rural Road Projects in violation of Section 20 of the General Provisions of the GAA.[7]

Thus, Beray, Espina, and Tadeo, together with other employees, were formally charged with dishonesty, grave misconduct, gross neglect of duty, and conduct prejudicial to the interest of the service, and violations of the following: (a) Civil Service Law; (b) Section 3(e)(g) of Republic Act (RA) No. 3019, as amended; (c) Section 20 of the General Provisions of the GAA; (d) Section 9 of the Special Provision of the GAA; (e) Memorandum of the Secretary on the Guidelines on Purchases of Spare Parts and repair vehicles dated July 19, 1997; (f) DO No. 33, Series of 1988 of RA No. 6770, as amended by RA No. 3018; (g) Commission on Audit (COA) Circular 85-55 A, Series of 1985, and; (h) COA Circular 76-41, Series of 1976, on splitting of RSE, Purchase Orders (POs), vouchers and payrolls. They were likewise preventively suspended from work for a period of 90 days and were required to submit their respective answers to the charges against them.

The DPWH Secretary then created a Hearing Committee to determine the liability of the erring employees and for the imposition of proper penalty, if any.

---

[6] *Id.* at 217.

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

Ruling of the DPWH Hearing Committee

On January 7, 2003, the Hearing Committee issued a Resolution[8] finding Beray guilty of gross neglect of duty and was meted the penalty of dismissal from the service. On the other hand, Espina and Tadeo were found liable for inefficiency in the performance of their official duties, and were suspended for six (6) months and one (1) day. The pertinent portions of the Resolution are stated in this wise:

18.2 Melissa Espina, Violeta Tadeo, bookkeepers and Rogelio Beray, Chief, Subsidiary and Revenue section to whom the approval of ROA and Disbursement Vouchers were delegated by Teresita De Vera, Chief Accountant for transactions below ₱200,000.00 are charged with Dishonesty and Grave Misconduct. The documents and oral testimonies during the hearing x x x established that they participated in the accomplishment of the ROA for said repairs by obligating the allotments for Engineering and Administrative overhead under capital outlay without seeking first the approval of higher authorities.

18.3. Further, instead of going slow with care and caution on charging claims for emergency repairs to capital outlay funds as same are under close scrutiny by Management to prevent abuse, a number of ROAs were even changed to include the Obligation of Allotment for other emergency repairs not included in the original ROA entries.

18.4. [Bookkeepers] Espina and Tadeo, though no evidence was adduced to establish dishonesty and misconduct or knowledge of the irregularity of the emergency purchase/repairs, allotments of which they obligated, they are however guilty of inefficiency in the performance of official duties and shall suffer the penalty of Suspension of Six months and One day from work.

18.5 Rogelio Beray, who approved some ROAs funding amounts of claim for reimbursements beyond ₱200,000.00 in violation of his delegated authority, constitute misconduct. Further, he approved certificates of availability of funds for said payment of said repairs without seeking approval of higher authorities thus is guilty of gross neglect of duty thus, shall suffer the penalty of Dismissal from the service.[9]

---

[8] *Id.* at 204-214.

[9] *Id.* at 212-213.

Beray, Espina and Tadeo did not file a motion for reconsideration before the DPWH. Instead, they appealed[10] their case to the CSC.

In their Appeal Memorandum,[11] Beray belied signing DVs in amounts exceeding ₱200,000.00. He also averred that in performing his functions he merely relied on the review made by the employees under his supervision particularly the Chief of the Claims Processing and Documentation Section (CPDS), Chief of Bookkeeping Section; and his staff in the Subsidiary and Revenue Section, on the presumption that they regularly performed their official functions. Thus, he relied on the following acts of the said employees in signing Box B of the DVs:

1. On the initials made by the Chief of the Bookkeeping Section and its Accountants when he certified that adequate funds/ budgetary allotment is available, and that the account codes and accounting entries are proper because it is the Bookkeeping Section who controls the allotments, made the entries and keep the book of accounts.

2. On the initials made by the chief of the Claims, Processing and Documentation Section and its Accountants when he certified that the disbursement voucher is supported by adequate documents reasonable enough to establish the facts of the transaction and certified to by the responsible officer under Box A as it is the CPDS who thoroughly reviews the adequacy and validity of the supporting documents.

3. On the certification made by the responsible officer under Box A of the disbursement voucher that the expense covered by the disbursement voucher is legal, valid, and under his knowledge and direct supervision.[12]

Espina and Tadeo, on the other hand, stressed that their participation in the processing of the reimbursement for repairs

---

[10] *Id.* at 57-60.

[11] *Id.* at 61-94.

[12] *Id.* at 90.

of vehicle had been limited to providing funds for DVs chargeable against the allotment they control. Also, it has been a long practice in the DPWH that repairs of service vehicles, whether regular or emergency, may be charge against the 3.5% engineering and overhead projects of the DPWH. In fact, charging of emergency repairs expenses against capital outlay is authorized under Section 9[13] of the Special Provisions of the 2000 GAA which was re-enacted for the year 2001.

Ruling of the Civil Service Commission

In its Resolution No. 061465[14] dated August 15, 2006, the CSC affirmed the findings of the DPWH Hearing Committee. However, it held that Beray was not only liable for gross neglect of duty but also for grave misconduct, as follows:

> WHEREFORE, the appeal of Rogelio L. Beray, Chief, Subsidiary and Revenue Section, and Bookkeepers Melissa T. Espina, and Violeta Tadeo, Department of Public Works and Highways (DPWH), is hereby DISMISSED. The Decision of the DPWH dated January 7, 2003 finding Espina and Tadeo guilty of Inefficiency in the Performance of Official Duties and imposing upon them the penalty of six (6) months' suspension, and finding Beray guilty of Gross Neglect of Duty and imposing upon him the penalty of dismissal, is MODIFIED as to appellant Rogelio L. Beray. Accordingly, it is clarified that Beray is likewise found guilty of Grave Misconduct, in addition to Gross Neglect of Duty. Further, let it be stated that the penalty of dismissal carries with it the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from holding public office. The same Decision is,

---

[13] Section 9. *Engineering and Administrative Overhead.* — In order to ensure that at least ninety six and one-half percent (96.5%) of the infrastructure fund released by the Department of Budget and Management is made available for the direct implementation of the project, any authorized deduction from project funds for administrative overhead, pre-construction activities and detailed engineering, construction project management, testing and quality control, acquisition, rehabilitation and repair of heavy equipment and other related equipment and parts used in the implementation of infrastructure projects and contingencies, shall not exceed the three and one-half percent (3.5%) of the project cost x x x. (*Rollo* [191946], pp. 21- 22)

[14] CA *rollo*, pp. 160-179.

however AFFIRMED with respect to the finding of guilt and the penalty imposed on the other appellants Espina and Tadeo.[15]

Beray, Espina and Tadeo subsequently filed a motion for reconsideration. However, in its Resolution No. 081258[16] dated July 7, 2008, the CSC denied their motion for lack of merit. This prompted them to file a Petition for Review under Rule 43 of the Rules of Court before the Court of Appeals.

Ruling of the Court of Appeals

In its Decision[17] dated August 28, 2009, the CA affirmed the ruling of the CSC that Espina and Tadeo were liable for inefficiency and incompetence in the performance of their functions as Accountant III. It however increased the period of suspension imposed upon them from six (6) months and one (1) day to eight (8) months and one (1) day without pay.

As regards Beray, the appellate court held that he was only liable for simple neglect of duty. What Beray actually approved was a single ROA containing a summary of several DVs each with amounts not exceeding ₱200,000.00. It therefore cannot be said that he exceeded his delegated authority. Nonetheless, Beray was remiss in his duty when he affixed his signature in the subject ROA despite the absence of counter-signature of the requesting authority in the alterations thereon. Thus, the CA reduced his penalty from dismissal from service to suspension of three (3) months and one (1) day without pay.

The *fallo* of the Decision of the CA reads:

> WHEREFORE, premises considered, public respondent's assailed Resolution Nos. 061456 and 081258 are MODIFIED to impose against petitioners Espina and Tadeo the penalty of suspension for eight (8) months and one (1) day without pay. Petitioner Beray is, likewise, meted the penalty of suspension of three (3) months and one (1) day without pay.

---

[15] *Id.* at 179.

[16] *Id.* at 218-226.

[17] *Rollo* (G.R. No. 191946), pp. 10-26.

SO ORDERED.[18]

The CSC filed a Motion for Partial Reconsideration[19] assailing the findings of the appellate court with respect to Beray's liability. It maintained that Beray's failure to examine the ROA and the accompanying documents despite clear irregularity constituted misconduct amounting to willful, intentional neglect, and failure to discharge his duties.

Espina and Tadeo likewise filed their Motion for Partial Reconsideration.

In its Resolution[20] dated March 30, 2010, the CA denied both motions for lack of merit.

Hence, the CSC, and Espina and Tadeo, respectively filed the instant Petitions for Review on *Certiorari*.

The Issues

The main issues for resolution are:

(a) Whether Beray's acts constituted simple neglect of duty, and;

(b) Whether Espina and Tadeo committed inefficiency in the performance of their official duties.

The Court's Ruling

Beray is guilty of gross negligence

Gross neglect of duty or gross negligence pertains to "negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care [which] even inattentive and thoughtless men never fail to give to their

---

[18] *Id.* at 25.

[19] CA *rollo*, pp. 313-318.

[20] *Rollo* (G.R. No. 191946), pp. 27-28.

own property."[21] In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable.[22]

On the other hand, simple neglect of duty is "the failure of an employee or official to give proper attention to a task expected of him or her, signifying a 'disregard of a duty resulting from carelessness or indifference.'"[23]

In finding Beray merely liable for simple neglect of duty, the CA held that he did not exceed his authority when he signed the ROA containing a summary of various DVs which, if assessed individually, did not exceed ₱200,000.00. The CA found Beray liable only for approving the ROA containing alterations without any counter-signature of the requesting authority.

This Court disagrees. A thorough review of the records shows that Beray is guilty not of simple neglect of duty but of gross neglect of duty, a grave offense punishable by dismissal even for the first offense.[24]

It is the responsibility of Beray to supervise his subordinates and to make sure that they perform their respective functions in accordance with the law. As Chief of the Subsidiary and Revenue Section of the DPWH, his function, among others, is **to supervise** the recording and control of the Notice of Cash Allocation issued by the DBM for the cash requirements of the Office. Further, he exercised a delegated authority to sign, on behalf of the Chief Accountant, payment of supplies, materials, furniture and equipment not exceeding ₱200,000.00.

In the case at bench, the amount stated in the ROA was altered from ₱24,980.00 to ₱269,350.00. Interestingly, there were no counter-signatures affixed to the ROA. The apparent absence

---

[21] *Office of the Ombudsman v. De Leon*, 705 Phil. 26, 37 (2013), citing *Fernandez v. Office of the Ombudsman*, 684 Phil. 377, 389 (2012).

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

[23] *Id.* at 38.

[24] Rule IV, Section 52 (A) of the Uniform Rules of Administrative Cases in the Civil Service.

of the counter-signature in the ROA should have caught the attention of Beray and led him to be more cautious to its approval. Beray should have made the necessary inquiry to determine the grounds for the alteration and the author thereof instead of merely relying on his subordinates. To stress, he should have personally examined the truth and authenticity of the amount indicated therein, who made the alteration, and the reason for the alteration. He should have affixed his signature only after checking the completeness and propriety of the same.

We are not convinced of Beray's defense that the ROA had been duly approved by his subordinates in the regular performance of their functions. The absence of the counter-signature is an indicium that the employees who were responsible for its assessment were remiss in their duty. Besides, as a public official holding a supervisory position, Beray should not heavily depend on the acts committed by his subordinates. His position vested upon him a discretionary power to examine the documents being brought to his desk for approval and ensure that these were duly accomplished in accordance with law and office policies.

More importantly, the nature of Beray's position requires that he should be meticulous in the approval of disbursement of public funds and to be more circumspect in examining the documents for his approval.[25] He should have exercised utmost care before affixing his signature for approval of the ROA which contained alterations. While the amount involved is not humungous compared to other government transactions, the fact still remains that taxpayers' money was spent and at the expense of the government.[26] Indeed, a "public office is a public trust and public officers and employees must at all times be accountable to the people."[27]

---

[25] *Lihaylihay v. People*, 715 Phil. 722, 732 (2013).

[26] *Office of the Ombudsman and the Fact Finding Investigation Bureau v. Espina*, 807 Phil. 529, 546 (2017).

[27] *Id.* at 547.

On the issue of whether Beray exceeded his delegated authority when he signed the ROA amounting to ₱269,350.00, the Court answers in the affirmative. As held by the CSC, the DPWH DO 42 series of 1988 and other amendatory DOs were clear that his authority to sign or certify section B of the ROA in behalf of the Chief Accountant is limited only to amounts involving payment of and for expenses ₱200,000.00 and below.

Beray's contention that the amount in the questioned ROA was a lump sum of various DVs is of no moment. As aptly observed by the DPWH and the CSC, his authority is limited to signing ROAs not exceeding ₱200,000.00.

Moreover, Beray's act of approving the reimbursement to be charged against the Engineering and Administrative Overhead under Fund 102 which resulted in the subsequent issuance of Certification of Availability of Funds is violative of the directive of then DPWH Secretary Gregorio Vigilar. Under the DPWH Office Memorandum dated July 31, 1997, reimbursements to be charged against 0.5% or 0.25% Engineering Overhead Allocation of the Central Offices need to be approved by the higher authorities. Here, Beray failed to secure the approval of the higher authorities when he assented that the reimbursement be charge against the Engineering and Administrative Overhead.

In maintaining his innocence, Beray argued that the DPWH Memorandum did not specifically identify the higher authorities whose prior approval were needed to be secured. It is noteworthy that the Memorandum was in effect since 1997. As such, if there was any ambiguity to the same, it was his duty as well as the other officers to seek clarification as to who are these higher authorities being referred to in the Memorandum. Regrettably, Beray failed to prove that he exerted any diligent effort to determine the appropriate higher authority.

What Beray simply posited was that he believed that it was enough to get the approval of the Assistant Director of the Bureau of Equipment (BOE) whom he contemplated as the higher authority referred to in the Memorandum. However, there is dearth of evidence that the said position can be considered as the higher authority and that his/her approval was sufficient to

allow the reimbursements in the ROA be charged against the Engineering Overhead Allocation. Hence, Beray's bare assertion and unsubstantiated allegations have no probative value.[28]

The Court agrees with the findings of the CSC that Beray should be meted the severe penalty of dismissal from service. He is guilty of gross neglect of duty as he miserably failed to efficiently and effectively discharge his functions and obligations. His acts of heavily depending on his subordinates without carefully examining the documents presented to him for disbursement of funds clearly exhibit his flagrant and culpable unwillingness to perform his official duties with the exactitude required of him.[29]

Petition of Espina and Tadeo under Rule 45 of the Rules of Court denied for raising questions of fact.

Anent **G.R. No. 191974**, the Court denies the Petition.

To begin with, it is settled that only questions of law should be raised in a petition for review filed under Rule 45 of the Rules of Court.[30] This Court is not a trier of facts. As such, it will not entertain questions of fact as the factual findings of the appellate court are final, binding, or conclusive on the parties and upon the High Court when supported by substantial evidence.[31]

In *Lorzano v. Tabayag, Jr.*,[32] the Supreme Court explained a question of law in this wise:

---

[28] *LNS International Manpower Services v. Padua*, 628 Phil. 223, 230 (2010).

[29] *Office of the Ombudsman v. De Leon*, *supra* note 21 at 38-39.

[30] Rules of Court, Rule 45, Sec. 1.

[31] *Pascual v. Burgos*, 776 Phil. 167, 182 (2016), citing *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil.), Inc.*, 364 Phil. 541, 546 (1999); *Siasat v. Court of Appeals*, 425 Phil. 139, 145 (2002); *Tabaco v. Court of Appeals*, 309 Phil. 442, 445-446 (1994); and *Padilla v. Court of Appeals*, 241 Phil. 776, 781 (1988).

[32] 681 Phil. 39, 48-49 (2012).

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.

The arguments raised by Espina and Tadeo in their Petition for Review under Rule 45 are factual in nature. To note, Espina and Tadeo insist that the evidence against them was insufficient so as to make them administratively liable for inefficiency in the performance of official duties. Their assertion clearly entails the review or reevaluation of the probative value of the evidence presented by the parties. To repeat, this Court is not a trier of facts and a review is not a matter of right but of sound judicial discretion.[33] It will be granted only under exceptional circumstances which are not present in the instant petition.[34]

---

[33] *Central Bank of the Philippines v. Castro*, 514 Phil. 425, 436 (2005).

[34] *Pascual v. Burgos*, *supra* note 31 at 182-183.

The ten (10) recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr. (269 Phil. 225 [1990])* are as follows:

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

Besides, factual findings of quasi-judicial bodies and administrative agencies, when supported by substantial evidence, are accorded great respect and even finality by the appellate courts. Administrative agencies have specialized knowledge and expertise in their respective fields. Thus, their findings of fact are binding upon this Court except if there is grave abuse of discretion, or where it is clearly shown that they were arrived at arbitrarily or in disregard of the evidence on record.[35]

In any case, the Court finds no reason to depart from the findings of the DPWH, as affirmed by the CSC and the CA, with respect to Espina and Tadeo.

Section 109 of Presidential Decree (PD) No. 1445, otherwise known as Government Auditing Code of the Philippines,[36] states that government accounting encompasses the processes of analyzing recording, classifying, summarizing and communicating all transactions involving the receipt and disposition of government funds and property, and interpreting the results thereof.

In addition, Section 111 of PD No. 1445 also reads:

> Section 111. *Keeping of Accounts.*
>
> (1) The accounts of an agency shall be kept **in such detail as is necessary to meet the needs of the agency and at the same time be adequate to furnish the information needed by fiscal or control agencies of the government**.
>
> (2) The highest standards of honesty, objectivity and consistency shall be observed in the keeping of accounts to safeguard against inaccurate or misleading information. (Emphasis ours)

Simply put, in keeping the accounts of any agency of the government, the concerned public official must ensure that the accounting thereof must be in such detail as to furnish an accurate and not misleading information.

---

[35] *Japson v. Civil Service Commission*, 663 Phil. 665, 675 (2011), citing *Cosmos Bottling Corporation v. Nagrama, Jr.*, 571 Phil. 281, 300 (2008).

[36] Approved on June 11, 1978.

Here, Espina and Tadeo averred that to make their task simpler, the various DVs were summarized into one ROA to be charged against a particular fund. They claimed that this has been a long practice in the office.

The foregoing excuses are flimsy and unacceptable. Summarizing in a single ROA the various DVs as what Espina and Tadeo did is not condoned by government accounting protocols. As aptly observed by the CSC:

> The defense posited by appellants Espina and Tadeo in their Appeal Memorandum was that they were only summarizing in one ROA the Disbursement Vouchers which were charged against a particular fund. This, the Commission finds equally untenable because that would mean that the Disbursement Vouchers were being processed/approved ahead of the processing of the ROA, which is not allowed under existing government accounting and auditing rules. Even granting, as correctly pointed out by Espina and Tadeo, that in cases of reimbursement, the ROA is usually being processed simultaneously with that of the Disbursement Vouchers because expenses have already been approved by authorized or the requesting official appearing in the ROA, the correct situation should still be, that there would still be a corresponding ROA for every Disbursement Vouchers for reimbursement. When Espina and Tadeo did say "summarization", the other Disbursement Vouchers that were included in the Section C of a particular ROA turned out to have no corresponding "Duly Requested" ROA, which was improper and irregular.[37]

Espina and Tadeo failed to make a detailed accounting of the expenses incurred for emergency repairs of the various service vehicles. On the contrary, the summary seemed to mask the absence of supporting documents, like the corresponding required ROA, for other requests of disbursement of funds. The CA is correct that every requisition must be accompanied by such request. It thus follows that a ROA must be made for each DV with respect to a specific request for disbursement of funds. In fact, although National Budget Circular No. 440 dated January 30, 1995 was issued to adopt a simplified fund release system in the government, it did not encourage the lumping up of DVs

---

[37] CA *rollo*, p. 176.

which was allegedly practice in the DPWH.[38] Expediency in the performance of duty should not be resorted to in exchange for transparency and accuracy of accounting of public funds.

It is even more interesting that the alterations made in the ROA to include additional claims for emergency repairs were not originally requested by the requesting authority, BOE Assistant Director Florendo Arias. In fact, during the investigation, he testified that there were no alterations in the ROA at the time he affixed his signature thereto.[39]

Further, Espina and Tadeo were remiss in their duties when they failed to observe the Memorandum dated July 31, 1997 issue by then DWPH Secretary Vigilar. To reiterate, Beray, Espina and Tadeo should have clarified the higher authorities being referred to in the Memorandum whose approval is required for the reimbursement. Further, they likewise failed to show sufficient proof that the Assistant Director of the BOE is a higher authority contemplated in the Memorandum.

Espina and Tadeo nevertheless aver that the acts imputed against them have already been resolved in the two Resolutions of the Secretary of the DPWH with respect to the administrative cases against their co-employees, Norma Villarmino, Violeta Anar and Teresita de Vera. Notably, however, the findings of the DPWH Secretary in the said resolutions did not affect in any manner the case against Espina and Tadeo as these involved different parties. Also, the respondents in the said resolutions held public positions different from Espina and Tadeo. It thus necessarily follows that their functions and duties also varied from the respondents therein. More importantly, as correctly reasoned by the CSC, the findings of the DPWH Secretary who performs quasi-judicial functions although given weight are not binding before this Court.[40]

---

[38] *Rollo* (G.R. No. 191946), pp. 17-18.

[39] *Id.*

[40] *Id.* at 271.

All told, the Court finds that the Court of Appeals did not err when it affirmed the findings of the DPWH and the CSC with respect to the guilt of Espina and Tadeo for inefficiency in the performance of their official duties. However, in order to reflect the proper nomenclature for the offense under the Revised Uniform Rules on Administrative Cases in the Civil Service (RACCS), the Court holds Espina and Tadeo liable for inefficiency and incompetence. Their acts of summarizing various DVs into a single ROA coupled with the absence of supporting documents, and the failure to secure the approval of the higher authority in charging the reimbursement of the emergency repairs against the Engineering and Administrative Overhead Allocation show that they were inefficient and incompetent in the performance of their functions as Accountant III. They failed to exercise the required extraordinary care in handling the accounting of public funds.

Hence, we hold that Espina and Tadeo were properly meted the penalty of suspension of eight (8) months and one (1) day without pay in accordance with the RACCS.[41] Moreover, Espina and Tadeo should likewise suffer the penalty of demotion or diminution in salary corresponding to the next lower salary grade in case no next lower positions are available. This is in accordance with Section 46(C), Rule 10 of the RACCS which states:

> **Section 46.** ***Classification of Offenses.*** — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.
>
> x x x x x x x x x
>
> C. The grave offense of Inefficiency and Incompetence in the performance of official duties is punishable by Demotion. In this case, the guilty person shall be appointed to the next lower position to which he/she is qualified in the plantilla of the agency. In case there is no such next lower position available, he/she shall suffer diminution in salary corresponding to the next lower salary grade.

[41] CSC Memorandum Circular No. 19-99, Section 52, A(16).

WHEREFORE, the Petition for Review in G.R. No. 191946 is **GRANTED**. The August 28, 2009 Decision of the Court of Appeals in CA-G.R. SP No. 104796 insofar as Rogelio L. Beray is concerned is **REVERSED and SET ASIDE**. Rogelio L. Beray is found **GUILTY** of gross neglect and is meted the penalty of **DISMISSAL** from service with forfeiture of retirement benefits, excluding leave credits, if any, and with prejudice to reemployment in any branch or agency of the government, including government-owned or controlled corporations. The Petition in G.R. No. 191974 is **DENIED**. The August 28, 2009 Decision of the Court of Appeals in CA-G.R. SP No. 104796 is **AFFIRMED with MODIFICATION** in that Melissa T. Espina and Violeta R. Tadeo are found guilty of inefficiency and incompetence and, in addition to the penalty of suspension for a period of eight (8) months and one (1) day without pay, are also meted the penalty of demotion or diminution in salary corresponding to the next lower salary grade in case no next lower positions are available.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Reyes, A. Jr., Reyes, J. Jr., Lazaro-Javier, Inting, and *Delos Santos, JJ.*, concur.

Gesmundo, J., on official business.

Carandang, J., on leave.

Zalameda, J., on official leave.

Lopez, J., no part.

FIRST DIVISION

[G.R. No. 205473. December 10, 2019]

REPUBLIC OF THE PHILIPPINES, represented by the DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, *petitioner, vs.* **SPOUSES MARCELINO BUNSAY and NENITA BUNSAY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; CONSEQUENTIAL DAMAGES; MAY BE AWARDED TO THE OWNER IF, AS A RESULT OF THE EXPROPRIATION, THE REMAINING PORTION NOT SO EXPROPRIATED SUFFERS FROM AN IMPAIRMENT OR DECREASE IN VALUE; CASE AT BAR. — In *Republic v. Court of Appeals,* the Court explained that consequential damages may be awarded to the owner if, as a result of the expropriation, the **remaining portion not so expropriated** suffers from an impairment or decrease in value. From the foregoing, it becomes clear that the award of consequential damages representing the value of CGT and other transfer taxes in favor of Spouses Bunsay was improper. To recall, the expropriation covered the entire Disputed Property, that is, the entire 100-square meter lot covered by Spouses Bunsay's TCT No. V- 16548. Hence, there is no basis for an award of consequential damages where there is no "remaining portion" to speak of, as in this case. In any event, even if there was a "property not taken" or "remaining portion" to speak of, the award of consequential damages constituting the value of CGT and transfer taxes would still be improper, in the absence of evidence showing that said remaining portion had been impaired or had suffered a decrease in value as a result of the expropriation.

2. POLITICAL LAW; REPUBLIC ACT NO. 8974 (AN ACT TO FACILITATE THE ACQUISITION OF RIGHT-OF-WAY, SITE OR LOCATION FOR NATIONAL INFRASTRUCTURE GOVERNMENT PROJECTS AND FOR OTHER PURPOSES); TRANSFER OR REAL PROPERTY BY WAY OF EXPROPRIATION IS NOT AN

ORDINARY SALE CONTEMPLATED UNDER ARTICLE 1458 OF THE CIVIL CODE BUT IS AKIN TO A "FORCED SALE" OR ONE WHICH ARISES NOT FROM THE CONSENSUAL AGREEMENT OF THE VENDOR AND VENDEE, BUT BY COMPULSION OF LAW. — CGT, being a tax on passive income, is imposed by the National Internal Revenue Code on the seller as a consequence of the latter's presumed income from the sale or exchange of real property. Notably, however, the transfer of real property by way of expropriation is *not* an ordinary sale contemplated under Article 1458 of the Civil Code. Rather, it is akin to a "forced sale" or one which arises *not* from the consensual agreement of the vendor and vendee, but by compulsion of law. Unlike in an ordinary sale wherein the vendor sets and agrees on the selling price, the compensation paid to the affected owner in an expropriation proceeding comes in the form of just compensation determined by the court.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; JUST COMPENSATION; REQUIRES THAT REAL, SUBSTANTIAL, FULL AND AMPLE EQUIVALENT BE GIVEN FOR THE PROPERTY TAKEN; LOSS INCURRED BY THE AFFECTED OWNER NECESSARILY INCLUDES ALL INCIDENTAL COSTS TO FACILITATE THE TRANSFER OF THE EXPROPRIATED PROPERTY TO THE EXPROPRIATING AUTHORITY, INCLUDING THE CAPITAL GAINS TAX, OTHER TAXES AND FEES DUE ON THE FORCED SALE; CASE AT BAR. — [J]ust compensation is defined as the fair and full equivalent of the loss incurred by the affected owner More specifically: x x x [J]ust compensation in expropriation cases is defined "as the full and fair equivalent of the property taken from its owner by the expropriator. The Court repeatedly stressed that the true measure is not the taker's gain but the owner's loss. **The word 'just' is used to modify the meaning of the word 'compensation' to convey the idea that the equivalent to be given for the property to be taken shall be real, substantial, full and ample."** To recall, Section 6, Rule 67 of the Rules of Court mandates that "in no case shall x x x the owner be deprived of the actual value of his property so taken." Since just compensation requires that real, substantial, full and ample equivalent be given for the property taken, the loss incurred

by the affected owner necessarily includes all incidental costs to facilitate the transfer of the expropriated property to the expropriating authority, *including* the CGT, other taxes and fees due on the forced sale. These costs must be taken into consideration in determining just compensation in the same way these costs are factored into the selling price of real property in an arm's length transaction. Notably, the value of the expropriated property, as declared by the affected owner, and the current selling price of similar lands are factors listed under Section 5 of RA 8974. Here, Spouses Bunsay received, as just compensation, an amount equal to the sum of the zonal value of the Disputed Property and the replacement cost of the improvements built thereon. Evidently, the value of CGT and transfer taxes due on the transfer of the Disputed Property was *not* factored into the amount paid to Spouses Bunsay, but instead, separately awarded as consequential damages.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

The Facts

This is a petition for review on *certiorari*[1] (Petition) filed under Rule 45 of the Rules of Court against the Order/ Resolution[2] dated August 23, 2012 (assailed Resolution) and Order[3] dated January 10, 2013 (assailed Order) of the Regional Trial Court of Valenzuela City, Branch 270 (RTC) in Civil Case No. 188-V-11.

---

[1] *Rollo,* pp. 9-19.

[2] *Id.* at 20-23. Penned by Presiding Judge Evangeline M. Francisco.

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

The assailed Resolution and Order: (i) directed the expropriation of a 100-square meter lot in Valenzuela City covered by Transfer Certificate of Title (TCT) No. V-16548 (Disputed Property) issued in the name of respondents Spouses Marcelino and Nenita Bunsay (Spouses Bunsay); and (ii) ordered petitioner Republic of the Philippines (Republic), through the Department of Public Works and Highways (DPWH), to pay Spouses Bunsay consequential damages equivalent to the value of the capital gains tax (CGT) and other taxes necessary to transfer the Disputed Property in its name.

The facts are undisputed.

DPWH is the Republic's engineering and construction arm tasked to undertake the "planning, design, construction and maintenance of infrastructure facilities, especially national highways, flood control and water resource development system, and other public works in accordance with national development objectives."[4]

Among DPWH's projects is the C-5 Northern Link Road Project Phase 2 (Segment 9) connecting the North Luzon Expressway (NLEX) to McArthur Highway, Valenzuela City (the Project).[5]

In connection with the implementation of the Project, DPWH filed with the RTC a Complaint for Expropriation with Urgent Prayer for the Issuance of a Writ of Possession[6] (Expropriation Complaint) against Spouses Bunsay, concerning the Disputed Property.[7]

Records show that while notices were sent to Spouses Bunsay, they were returned with the notation "party moved". As expected, Spouses Bunsay did not file an Answer.[8]

---

[4] Executive Order No. 292, ADMINISTRATIVE CODE OF 1987, Book IV, Title V, Chapter I, Sec. 1.

[5] *Rollo,* p. 10.

[6] *Id.* at 34-49.

[7] *Id.* at 11.

[8] *Id.* at 20.

The RTC later scheduled a hearing on the issuance of the writ of possession prayed for. During the hearing, DPWH deposited checks in the total amount of Two Hundred Thousand Pesos (Php200,000.00), representing the sum of the Disputed Property's zonal value and replacement cost of the improvements built thereon.[9] Thereafter, the RTC issued a Writ of Possession in favor of DPWH in its Order dated February 20, 2012.[10]

Later still, the RTC directed the parties to submit their respective nominees to the Board of Commissioners for determination of just compensation. However, during the subsequent hearing held on August 23, 2012, DPWH manifested in open court that while all notices sent to Spouses Bunsay were returned unserved, they already claimed the checks that DPWH deposited with the RTC. Thus, DPWH moved that the amount received by Spouses Bunsay be deemed as just compensation for the Disputed Property.[11]

The RTC granted DPWH's oral motion through the assailed. Resolution, the dispositive portion of which reads:

> **WHEREFORE,** foregoing considered, judgment is hereby rendered in favor of [DPWH] condemning the [Disputed Property], free from all liens and encumbrances for the purpose of implementing the construction [of the Project] from NLEX to McArthur Highway, Valenzuela City, and vesting unto [DPWH] the title to the property so described for such public use or purpose.
>
> **[DPWH) is directed to issue [a] manager's check in the amount of Five Hundred Five Thousand Three Hundred Seventy-Four Pesos and Seventy-One Centavos (Php 505,374.71),** representing the total valuation of the improvements located on the [Disputed Property], in the name of [Spouses Bunsay] and to deposit the same [with] the Office of the Clerk of Court, Regional Trial Court, Valenzuela City within fifteen (15) days from receipt of this Resolution.

---

[9] *Id.* 11, 20.

[10] *Id.* at 11.

[11] *Id.*

As consequential damages, [DPWH] is further directed to pay the value of the [CGT] and other taxes necessary for the transfer of the [Disputed Property] in [DPWH's) name.

[Spouses Bunsay are] hereby directed to turn-over the owner's duplicate certificate of title to [DPWH].

After [the] parties have complied x x x, the Register of Deeds of Valenzuela City is directed to effect the transfer of ownership of the [Disputed Property] to [DPWH] and to issue the corresponding certificate of title x x x.

SO ORDERED.[12] (Emphasis supplied)

The RTC's award of just compensation represented the sum of the replacement cost of the following improvements built on the Disputed Property, as alleged by DPWH in the Expropriation Complaint:

[1. A] one-storey residential house (semi-concrete) with x x x [f]ence and [s]teel [g]ate, the replacement cost of which is valued at Three Hundred Thirty Thousand Six Hundred Four Pesos and Thirty-Five Centavos (Php 330,604.35); and

[2. A] one[-]storey residential house (concrete) with upper concrete slab, the replacement cost of which is valued at One Hundred Seventy-Four Thousand Seven Hundred Seventy Pesos and Thirty-Six Centavos (Php 174,770.36).[13]

DPWH filed a Motion for Partial Reconsideration (MPR), praying that the award corresponding to the replacement cost of improvements, and equivalent value of CGT and other transfer taxes be deleted.[14]

After due proceedings, the RTC issued the assailed Order granting DPWH's MPR in part. Therein, the RTC resolved to *exclude* the replacement cost of improvements from the total award since Spouses Bunsay acknowledged, in their Comment

---

[12] *Id.* at 22.

[13] See Expropriation Complaint, *id.* at 36.

[14] See Motion for Partial Reconsideration (Re: Order/Resolution dated August 23, 2012), *id.* at 26-33.

to the MPR, that they had already received payment for these improvements.[15]

However, with respect to the value of CGT and other transfer taxes, the RTC held:

> [With respect to] the aspect of payment of [CGT] and other transfer tax, the [RTC] finds the argument of [DPWH] that it has been ordered to pay [CGT] and other transfer taxes to be misplaced and misleading.
>
> The [RTC] did not order [DPWH] to pay the [CGT] and other transfer taxes. **What was ordered of [DPWH] is to pay the consequential damages constituting the value [of CGT] and other transfer taxes**.[16] (Emphasis and underscoring supplied)

Aggrieved, DPWH filed the present Petition *via* Rule 45 of the Rules of Court on March 4, 2013.

In compliance with the Court's directive, Spouses Bunsay filed their Comment[17] to the Petition, to which DPWH filed its Reply.[18] Thereafter, the Petition was submitted for resolution.

Here, DPWH insists that by directing it to pay consequential damages equivalent to the value of CGT and other transfer taxes, the RTC indirectly held DPWH liable for payment of taxes for which it cannot be charged.

For its part, Spouses Bunsay argue that the consequential damages should be understood in its general sense so as to permit recovery of damages arising from "some involuntary act which is prejudicial to the person entitled [to] the same."[19]

The Issue

The sole issue for the Court's resolution is whether the RTC erred in awarding consequential damages equivalent to the value of CGT and transfer taxes in favor of Spouses Bunsay.

---

[15] *Id.* at 24.

[16] *Id.*

[17] *Id.* at 120-130.

[18] *Id.* at 144-153.

[19] See Comment, *id.* at 124.

The Court's Ruling

The Petition is granted.

The crux of the controversy is hinged on the definition of "consequential damages" in the context of an expropriation proceeding.

Rule 67 of the Rules of Court governs expropriation proceedings. With respect to consequential damages, Section 6 of Rule 67 states:

> SEC. 6. *Proceedings by commissioners.*— Before entering upon the performance of their duties, the commissioners shall take and subscribe an oath that they will faithfully perform their duties as commissioners, which oath shall be filed in court with the other proceedings in the case. Evidence may be introduced by either party before the commissioners who are authorized to administer oaths on hearings before them, and the commissioners shall, unless the parties consent to the contrary, after due notice to the parties to attend, view and examine the property sought to be expropriated and its surroundings, and may measure the same, after which either party may, by himself or counsel, argue the case. **The commissioners shall assess the consequential damages to the property not taken and deduct from such consequential damages the consequential benefits to be derived by the owner from the public use or purpose of the property taken, the operation of its franchise by the corporation or the carrying on of the business of the corporation or person taking the property.** But in no case shall the consequential benefits assessed exceed the consequential damages assessed, or the owner be deprived of the actual value of his property so taken. (Emphasis and underscoring supplied)

In *Republic v. Court of Appeals*,[20] the Court explained that consequential damages may be awarded to the owner if, as a result of the expropriation, the **remaining portion not so expropriated** suffers from an impairment or decrease in value.[21]

---

[20] 612 Phil. 965 (2009).

[21] *Id.* at 980, 982.

From the foregoing, it becomes clear that the award of consequential damages tepresenting the value of CGT and other transfer taxes in favor of Spouses Bunsay was improper.

To recall, the expropriation covered the entire Disputed Property, that is, the entire 100-square meter lot covered by Spouses Bunsay's TCT No. V- 16548. Hence, there is no basis for an award of consequential damages where there is no "remaining portion" to speak of, as in this case.

In any event, even if there was a "property not taken" or "remaining portion" to speak of, the award of consequential damages constituting the value of CGT and transfer taxes would still be improper, in the absence of evidence showing that said remaining portion had been impaired or had suffered a decrease in value as a result of the expropriation. The Court's ruling in *Republic v. Spouses Salvador*[22] (*Spouses Salvador*) involving the *same* expropriating authority, project and handling court, is on all fours.

In *Spouses Salvador,* DPWH filed a complaint for expropriation concerning an 83-square meter portion of a 229-square meter property registered in the name of the respondents therein, Spouses Senando and Josefina Salvador (Spouses Salvador). Like Spouses Bunsay, Spouses Salvador also received checks from DPWH representing the zonal value of the expropriated portion and the cost of the improvements built thereon. However, in addition to the sum received by Spouses Salvador, the RTC also directed DPWH to pay consequential damages "equivalent to the value of the [CGT] and other taxes necessary for the transfer of the subject property in the Republic's name."[23]

Hence, DPWH assailed the propriety of the award of consequential damages therein, as it does here. Resolving the issue, the Court held, as follows:

---

[22] 810 Phil. 742 (2017).

[23] *Id.* at 745.

We likewise rule that the RTC committed a serious error when it directed the Republic to pay respondents consequential damages equivalent to the value of the capital gains tax and other taxes necessary for the transfer of the subject property.

"Just compensation [is defined as] the full and fair equivalent of the property sought to be expropriated. x x x **The measure is not the taker's gain but the owner's loss.** [The compensation, to be just,] must be fair not only to the owner but also to the taker."

In order to determine just compensation, the trial court should first ascertain the market value of the property by considering the cost of acquisition, the current value of like properties, its actual or potential uses, and in the particular case of lands, their size, shape, location, and the tax declarations thereon. **If as a result of the expropriation, the remaining lot suffers from an impairment or decrease in value, consequential damages may be awarded by the trial court, provided that the consequential benefits which may arise from the expropriation do not exceed said damages suffered by the owner of the property.**

While it is true that "the determination of the amount of just compensation is within the court's discretion, it should not be done arbitrarily or capriciously. [Rather,] it must [always] be based on all established rules, upon correct legal principles and competent evidence." The court cannot base its judgment on mere speculations and surmises.

In the present case, the RTC deemed it "fair and just that x x x whatever is the value of the [CGT] and all other taxes necessary for the transfer of the subject property to the [Republic] are but consequential damages that should be paid by the latter." x x x

x x x x x x x x x

This is clearly an error. **It is settled that the transfer of property through expropriation proceedings is a sale or exchange within the meaning of Sections 24(D) and 56(A)(3) of the National Internal Revenue Code, and profit from the transaction constitutes capital gain. Since [CGT] is a tax on passive income, it is the seller, or respondents in this case, who are liable to shoulder the tax.**

In fact, the Bureau of Internal Revenue (BIR), in BIR Ruling No. 476-2013 dated December 18, 2013, has constituted the DPWH as a withholding agent tasked to withhold the 6% final withholding tax in the expropriation of real property for infrastructure projects. Thus,

as far as the government is concerned, the [CGT] in expropriation proceedings remains a liability of the seller, as it is a tax on the seller's gain from the sale of real property.

Besides, as previously explained, consequential damages are only awarded if as a result of the expropriation, the remaining property of the owner suffers from an impairment or decrease in value. In this case, no evidence was submitted to prove any impairment or decrease in value of the subject property as a result of the expropriation. More significantly, given that the payment of [CGT] on the transfer of the subject property has no effect on the increase or decrease in value of the remaining property, it can hardly be considered as consequential damages that may be awarded to respondents.[24] (Emphasis and underscoring supplied while those in the original omitted)

The Court's ruling in *Spouses Salvador* is clear — CGT may not be awarded in the form of consequential damages since the term assumes a fixed definition in the context of expropriation proceedings; it is limited to the impairment or decrease in value of the portion which remains with the affected owner *after* expropriation.

It must be clarified, however, that the ruling in *Spouses Salvador* should not be interpreted to preclude the courts from considering the value of CGT and other transfer taxes in determining the amount of just compensation to be awarded to the affected owner.

To recall, Section 5 of Republic Act No. (RA) 8974[25] sets forth the standards in the determination of just compensation. It states:

SEC. 5. *Standards for the Assessment of the Value of the Land Subject of Expropriation Proceedings or Negotiated Sale.* — In order to facilitate the determination of just compensation, the court may

---

[24] *Id.* at 746-749.

[25] AN ACT TO FACILITATE THE ACQUISITION OF RIGHT-OF-WAY, SITE OR LOCATION FOR NATIONAL GOVERNMENT INFRASTRUCTURE PROJECTS AND FOR OTHER PURPOSES, November 7, 2000.

consider, among other well-established factors, the following relevant standards:

(a) The classification and use for which the property is suited;

(b) The developmental costs for improving the land;

(c) **The value declared by the owners**;

(d) **The current selling price of similar lands in the vicinity**;

(e) The reasonable disturbance compensation for the removal and/or demolition of certain improvements on the land and for the value of improvements thereon;

(f) The size, shape or location, tax declaration and zonal valuation of the land;

(g) The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and

(h) **Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible.** (Emphasis supplied)

CGT, being a tax on passive income, is imposed by the National Internal Revenue Code on the seller as a consequence of the latter's presumed income from the sale or exchange of real property. Notably however, the transfer of real property by way of expropriation is *not* an ordinary sale contemplated under Article 1458[26] of the Civil Code. Rather, it is akin to a "forced sale" or one which arises *not* from the consensual agreement of the vendor and vendee, but by compulsion of law.[27] Unlike in an ordinary sale wherein the vendor sets and

---

[26] Article 1458 states:

ART. 1458. By the contract of sale one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

x x x x x x x x x

[27] See *Hospicio de San Jose De Barili, Cebu City v. Department of Agrarian Reform,* 507 Phil. 585, 597-598 (2005) in reference to expropriation of lands under agrarian reform.

agrees on the selling price, the compensation paid to the affected owner in an expropriation proceeding comes in the form of just compensation determined by the court.

In turn, just compensation is defined as the fair and full equivalent of the loss incurred by the affected owner.[28] More specifically:

> x x x [J]ust compensation in expropriation cases is defined "as the full and fair equivalent of the property taken from its owner by the expropriator. The Court repeatedly stressed that the true measure is not the taker's gain but the owner's loss. **The word 'just' is used to modify the meaning of the word 'compensation' to convey the idea that the equivalent to be given for the property to be taken shall be real, substantial, full and ample."**[29] (Emphasis supplied)

To recall, Section 6, Rule 67 of the Rules of Court mandates that "in no case shall x x x the owner be deprived of the actual value of his property so taken."[30] Since just compensation requires that real, substantial, full and ample equivalent be given for the property taken, the loss incurred by the affected owner necessarily includes all incidental costs to facilitate the transfer of the expropriated property to the expropriating authority, *including* the CGT, other taxes and fees due on the forced sale. These costs must be taken into consideration in determining just compensation in the same way these costs are factored into the selling price of real property in an arm's length transaction. Notably, the value of the expropriated property, as declared by the affected owner, and the current selling price of similar lands are factors listed under Section 5 of RA 8974.

Here, Spouses Bunsay received, as just compensation, an amount equal to the sum of the zonal value of the Disputed Property and the replacement cost of the improvements built

---

[28] See *Evergreen Manufacturing Corp. v. Republic,* 817 Phil. 1048, 1058 (2017).

[29] *Id.* at 1058-1059.

[30] Underscoring supplied.

thereon. Evidently, the value of CGT and transfer taxes due on the transfer of the Disputed Property was *not* factored into the amount paid to Spouses Bunsay, but instead, separately awarded as consequential damages.

While the award of consequential damages equivalent to the value of CGT and transfer taxes must be struck down for being erroneous, the Court deems it just and equitable to direct the Republic to shoulder such taxes to preserve the compensation awarded to Spouses Bunsay as a consequence of the expropriation. To stress, compensation, to be just, must be of such value as to fully rehabilitate the affected owner; it must be sufficient to make the affected owner *whole*.

WHEREFORE, premises considered, the Petition is **GRANTED**. The Order/Resolution and Order respectively dated August 23, 2012 and January 10, 2013 rendered by the Regional Trial Court of Valenzuela City, Branch 270, in Civil Case No. 188-V-11 are **MODIFIED**, in that the award of consequential damages, equivalent to the value of capital gains tax and other transfer taxes, is **DELETED**.

Nevertheless, the petitioner is **DIRECTED** to shoulder such capital gains tax and other transfer taxes as part of the just compensation due the respondents.

SO ORDERED.

Peralta, C.J. (Chairperson), Reyes, J. Jr., Lazaro-Javier, and *Lopez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 206249. December 10, 2019]

ROMMEL V. DEL ROSARIO, *petitioner, vs.* **EVA T. SHAIKH,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *MANDAMUS;* WHEN ISSUED; THE EXTRAORDINARY REMEDY OF *MANDAMUS* LIES TO COMPEL THE PERFORMANCE OF DUTIES THAT ARE PURELY MINISTERIAL IN NATURE. — *Mandamus* has been defined as a writ commanding a tribunal, corporation, board or person to do the act required to be done when it or he unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station, or unlawfully excludes another from the use and enjoyment of a right or office or which such other is entitled, there being no other plain, speedy, and adequate remedy in the ordinary course of law. Under Section 3, Rule 65 of the Rules of Court, a person aggrieved by the unlawful neglect or refusal of tribunal, corporation, board, officer or person to perform their legal duty may ask the court to compel the required performance. From this Rule, there are two situations when a writ of *mandamus* may issue: (1) when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station; or (2) when any tribunal, corporation, board, officer or person unlawfully excludes another from the use and enjoyment of a right or office to which the other is entitled. It must be stressed, however, that the extraordinary remedy of *mandamus* lies to compel the performance of duties that are purely ministerial in nature only. The peremptory writ of *mandamus* would not be available if, in the first place, there is no clear legal imposition of a duty upon the office or officer sought to be compelled to act, or if it is sought to control the performance of a discretionary duty.

2. ID.; ID.; ID.; ID.; REQUISITES. — For *mandamus* to lie, the following requisites must be present: (a) the plaintiff has a clear

legal right to the act demanded; (b) it must be the duty of the defendant to perform the act, because it is mandated by law; (c) the defendant unlawfully neglects the performance of the duty enjoined by law; (d) the act to be performed is ministerial, not discretionary; and (e) there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law.

3. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 7160 (THE LOCAL GOVERNMENT CODE OF 1991); MUNICIPAL MAYORS; HAVE NO AUTHORITY TO INTERVENE IN THE ADMINISTRATION OF FUNDS OF THE SANGGUNIANG BAYAN AND CANNOT BE COMPELLED BY *MANDAMUS* TO ORDER THE RELEASE OF SALARIES AND EMOLUMENTS CLAIMED BY A MEMBER THEREOF. — The Court agrees that ordering the release of the salaries and emoluments of a member of the Sangguniang Bayan is not among the duties imposed upon the Municipal Mayor x x x [, pursuant to] Section 344 of the Local Government Code x x x. The intent of the Local Government Code to give to the Vice-Mayor, as the presiding officer of the Sangguniang Bayan — and not to the Municipal Mayor — the administrative control over the funds of the said local legislative body, is clear in the provisions of Section 445(a)(1) x x x. [A]s the presiding officer of the Sangguniang Bayan of Bagac, it is the Vice-Mayor of Bagac who has administrative control over its funds. This means that it is also the Vice-Mayor of Bagac who has the duty and authority to approve the vouchers and payrolls of the officers and employees of the Sangguniang Bayan of Bagac. Naturally, the payrolls which approval belongs to the Vice-Mayor include the payrolls of the members of the Sangguniang Bayan of Bagac, whether sitting as a regular member or in an *ex-officio* capacity. This is only proper considering that the continued performance by the members of the Sangguniang Bayan of their duties is necessary for the continued operation of the Sangguniang Bayan. Thus, it is clear that Mayor Del Rosario, or any sitting mayor of Bagac for that matter, could not be compelled by *mandamus* to order the release of the salaries and emoluments claimed by Shaikh. There is no law specifically enjoining the Municipal Mayor for the performance of such act. In fact, the Municipal Mayor has no authority to intervene in the administration of the funds of the Sangguniang Bayan, as the control over it pertains to the Municipal Vice-Mayor. Since there is no such specific legal

duty upon the Municipal Mayor, it could not be said that Mayor Del Rosario unlawfully neglected the performance of his duty. From the foregoing, since it is clear that it is the Municipal Vice-Mayor who has the duty and authority to approve the payrolls of the members of the Sangguniang Bayan, then it only follows that the Vice-Mayor may be compelled by *mandamus* to order the release of the salaries and emoluments pertaining to a member of the Sangguniang Bayan.

4. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; SUBSTITUTION PROCEDURE; NON-COMPLIANCE THEREWITH IS A GROUND FOR THE DISMISSAL OF A *MANDAMUS* PETITION. — In the present petition, Mayor Del Rosario explains that he was the only one who elevated the case to this Court because Vice-Mayor Teopengco was not re-elected as the Vice-Mayor of Bagac in the May 2010 elections, while Bontuyan retired as Municipal Budget Officer of Bagac on April 2, 2011. Shaikh did not refute this in her Comment. At this juncture, Section 17, Rule 3 of the 1997 Revised Rules of Court is instructive x x x. It must be noted that the aforesaid rule has been substantially lifted from Section 18, Rule 3 of the 1964 Rules of Court x x x. In *Heirs of Mayor Nemencio Galvez v. Court of Appeals* (*Heirs of Galvez*), a case that was decided during the effectivity of the 1964 Rules of Court, the Court ruled that non-compliance with the substitution procedure pursuant to Section 18, Rule 3 of the 1964 Rules of Court is a ground for the dismissal of a *mandamus* petition. x x x In this case, a perusal of the records would reveal that Shaikh did not file any motion for the substitution of Vice-Mayor Teopengco and Bontuyan by the respective successors in office. In fact, in her Memorandum which she filed before the CA on August 12, 2010, Vice-Mayor Teopengco was still included as a respondent. No mention was made to the effect that another person already succeeded Vice-Mayor Teopengco as the Vice-Mayor of Bagac. Needless to state, Shaikh did not file any supplemental pleading which would show that Vice-Mayor Teopengco and Bontuyan's successors had continued their refusal to release her salaries and emoluments. Evidently, Shaikh failed to comply with the procedure for substitution under Section 17, Rule 3 of the 1997 Revised Rules of Civil Procedure. Considering that, x x x Section 17, Rule 3 of the 1997 Revised Rules of Civil Procedure substantially lifted the provisions of Section 18, Rule 3 of the 1964 Rules of Court,

such that there had been no change in its underlying principle, the Court holds that the pronouncements in the *Heirs of Galvez* find application to the present case. Thus, the CA acted in excess of its jurisdiction when it rendered the September 7, 2012 Decision and the March 6, 2013 Resolution against Vice-Mayor Teopengco and Bontuyan, despite the fact that they ceased to be the proper parties to the *mandamus* case even prior to said dates — Vice-Mayor Teopengco was no longer the Vice-Mayor of Bagac as of noon of June 30, 2010, following his loss in the 2010 May elections, while Bontuyan ceased to be the Municipal Budget Officer of Bagac after her retirement on April 2, 2011. Likewise, the September 7, 2012 Decision could not be enforced against Vice-Mayor Teopengco and Bontuyan's successors in office as doing so would be in violation of their constitutional rights to due process. The invalidity of the CA's September 7, 2012 Decision and March 6, 2013 Resolution subsists even if it appears that it rendered the said decision and resolution without knowledge or information of Vice-Mayor Teopengco's loss and Bontuyan's retirement. Lack of notice would not cure the defect in the said decision and resolution. After all, the duty and burden to notify the CA of these developments and to show that the unlawful refusal is continuing, fall to Shaikh as the petitioner in the *mandamus* petition. Unfortunately, she failed in this regard.

APPEARANCES OF COUNSEL

Aurelio C. Angeles, Jr. for petitioner.
Flaviano T. Aguanta for respondent.

D E C I S I O N

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

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court which seeks to reverse and set aside the Decision[1] dated September 7, 2012 and the Resolution[2] dated

[1] Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Priscilla J. Baltazar Padilla and Agnes Reyes-Carpio, concurring; *rollo*, pp. 30-39.

[2] *Id.* at 50-52.

March 6, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 114405, which reversed and set aside the Decision[3] dated November 4, 2009, of the Regional Trial Court (RTC) of Balanga City, Bataan, Branch 1 in Civil Case No. 9172, a case for *mandamus*.

The Facts

On December 11, 2007, the synchronized elections for the officers and members of the Liga ng mga Barangay ng Pilipinas (Liga) Chapters in Municipalities and Component Cities were held. On the same day, and prior to the actual elections, the Punong Barangays of Bagac conducted an election meeting for the election of officers and members of the Board of Directors of the Liga Municipal Chapter of Bagac, Bataan (Liga—Bagac Chapter). The meeting was attended by the Punong Barangays from the 14 Barangays of Bagac, including Ernesto N. Labog (Labog) and herein respondent Eva T. Shaikh (Shaikh). However, during the election meeting, Labog, together with 5 other Punong Barangays and Oscar M. Ragindin (Ragindin), Municipal Local Government Operations Officer (MLGOO) of Bagac and Chairperson of the Board of Election Supervisors (BES), walked out. Despite this, the remaining eight Punong Barangays proceeded with the election and elected Shaikh as the President of the Liga—Bagac Chapter.[4] Consequently, James Marty L. Lim (Lim), National President of the Liga, issued a Certificate of Confirmation[5] dated December 27, 2007 in favor of Shaikh.

Meanwhile, in a letter-memorandum[6] dated December 11, 2007, Ragindin informed the Provincial Director of the Department of Interior and Local Government (DILG)—Bataan that the election for the Liga—Bagac Chapter did not materialize as scheduled and that there had been a failure of elections. Further, on December 18, 2007, Ragindin issued a Certification[7]

---

[3] Penned by Judge Angelito I. Balderama; CA *rollo*, pp. 4-10.

[4] Records, p. 116.

[5] *Id.* at 6.

[6] *Id.* at 37.

[7] *Id.* at 39.

stating that Labog is the Acting President of the Liga—Bagac Chapter, as per appointment issued by Lim on December 6, 2007.

On January 9, 2008, the Office of the Sangguniang Bayan of Bagac, through a letter-inquiry, requested the Liga to issue an official endorsement as to who shall seat, presumably between Labog and Shaikh, as the *ex-officio* member of the Sanggunian.[8] On the same day, the Liga, through its Director of Legal Affairs, replied that Shaikh, as the newly elected President of the Liga—Bagac Chapter, shall seat as the *ex-officio* member.[9]

On January 28, 2008, Vice-Mayor Romeo T. Teopengco (Vice-Mayor Teopengco) issued OSB Memo No. 08-02 addressed to Shaikh, advising her to submit her Certificate of Canvass and Proclamation as certified and attested to by the BES for her full recognition as *ex-officio* member of the Sangguniang Bayan of Bagac, pursuant to DILG Memorandum Circular No. 2008-07.[10] Vice-Mayor Teopengco reiterated his instruction on February 26, 2008,[11] but it would appear that Shaikh failed to submit the required certificate.

On February 26, 2008, Hon. Rommel V. Del Rosario (Mayor Del Rosario), Mayor of Bagac, wrote the DILG-Bataan, through Ragindin, requesting confirmation as to who is the legitimate and duly elected representative of the Liga—Bagac Chapter to the Sangguniang Bayan.[12] Ragindin replied that, as of February 28, 2008, no newly-elected representative of the Liga can be *ex-officio* member of the Sangguniang Bayan of Bagac.[13]

Thereafter, considering that she attended the sessions of the Sangguniang Bayan of Bagac, Shaikh requested for the payment

---

[8] *Id.* at 8.

[9] *Id.* at 7.

[10] *Id.* at 52.

[11] *Id.* at 51.

[12] *Id.* at 43.

[13] *Id.* at 44.

of the salaries and allowances due her as President of the Liga—Bagac Chapter and *ex-officio* representative in the Sanggunian for the period from January 15, 2008 to March 31, 2008. On April 8, 2008, Vice-Mayor Teopengco sent a letter to Mrs. Angelina M. Bontuyan (Bontuyan), Municipal Budget Officer of Bagac, forwarding the documents relative to Shaikh's request for payment of salaries and allowances.[14]

In a letter[15] dated April 14, 2008, Mayor Del Rosario declined the request relative to Shaikh's claimed salaries and allowances. In denying the release of Shaikh's salaries and allowances, Mayor Del Rosario noted Labog's adverse claim to the office being occupied by Shaikh. Mayor Del Rosario was of the opinion that Shaikh's request could not be favorably acted upon until the determination of the issue as to who between Shaikh and Labog is the rightful President of the Liga—Bagac and consequently the *ex-officio* member of the Sangguniang Bayan of Bagac.

In a letter[16] dated April 17, 2008, Vice-Mayor Teopengco informed Shaikh about the denial of her request furnishing her a copy of Mayor Del Rosario's April 14, 2008 letter. Vice-Mayor Teopengco further stated that he could not act on Shaikh's request in view of the said denial since matters pertaining to the administration of the Local Government of Bagac are within the discretion of its Mayor.

Even after the denial of her request for the release of her salaries and other emoluments, Shaikh continued attending the sessions of the Sangguniang Bayan of Bagac.

On March 4, 2009, Shaikh filed a Petition for *mandamus*[17] seeking, among others, to compel Mayor Del Rosario and Vice-Mayor Teopengco to sign the documents necessary for the release of her salaries and other emoluments in connection with her

---

[14] *Id.* at 18.

[15] *Id.* at 19.

[16] *Id.* at 20.

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

ex-officio membership in the Sangguniang Bayan of Bagac for the period she had actually rendered her services. She further prayed that Bontuyan be ordered to receive, in her capacity as the Municipal Budget Officer of Bagac, all the documents she tendered pertaining to her official functions.

Ruling of the RTC

In its Decision dated November 4, 2009, the RTC dismissed Shaikh's Petition for *mandamus*. The trial court ratiocinated that since there had been a failure of elections during the December 11, 2007 Liga ng mga Barangay Bagac Municipal Chapter, Shaikh had not been elected at all. Consequently, she did not acquire a right or title to the position that will make her a *de jure* or a *de facto* officer. The dispositive portion of the RTC Decision reads:

> WHEREFORE, premises considered, the instant petition for mandamus is hereby DENIED for lack of merit.[18]

Aggrieved, Shaikh elevated an appeal before the CA.

Ruling of the CA

In its Decision dated September 7, 2012, the CA reversed and set aside the RTC's November 4, 2009 Decision and ruled that Shaikh is entitled to the salaries and emoluments of the office she held as a *de facto* officer. The appellate court held that there was no *de jure* officer occupying the *de jure* office during Shaikh's term as a *de facto* officer. Further, considering that Shaikh actually attended the sessions of the Sangguniang Bayan of Bagac, it becomes ministerial for the concerned municipal officers of Bagac to give her the salaries, emoluments, and other benefits due her. Thus, the CA opined that Mayor Del Rosario, Vice-Mayor Teopengco, and Bontuyan unlawfully neglected the performance of their respective duties by refusing to pay Shaikh the salaries, emoluments, and other benefits which she is entitled to. The dispositive portion of the CA Decision provides:

---

[18] CA *Rollo*, p. 10.

WHEREFORE, in view of the foregoing, mandamus on Appeal is hereby **GRANTED**. The November 4, 2009 Decision of the RTC of Balanga City, Bataan, Branch 1, is REVERSED and SET ASIDE. Accordingly, respondents are hereby ordered to release the salaries, emoluments and benefits due to Eva T. Shaikh for the period she actually rendered her services as ex-officio member of the Sangguniang Bayan of Bagac, Bataan.

SO ORDERED.[19]

Mayor Del Rosario, Vice-Mayor Teopengco, and Bontuyan moved for reconsideration, but the same was denied by the CA in its Resolution dated March 6, 2013.

Unconvinced, Mayor Del Rosario filed the present petition.

The Issue

WHETHER THE COURT OF APPEALS ERRED WHEN IT RULED THAT MAYOR DEL ROSARIO, VICE-MAYOR TEOPENGCO, AND BONTUYAN MAY BE COMPELLED BY *MANDAMUS* TO ORDER THE RELEASE OF THE SALARIES AND EMOLUMENTS CLAIMED BY SHAIKH.

The Court's Ruling

The petition is meritorious.

Mandamus has been defined as a writ commanding a tribunal, corporation, board or person to do the act required to be done when it or he unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station, or unlawfully excludes another from the use and enjoyment of a right or office or which such other is entitled, there being no other plain, speedy, and adequate remedy in the ordinary course of law.[20] Under Section 3, Rule 65 of the Rules of Court, a person aggrieved by the unlawful neglect or refusal of tribunal, corporation, board, officer or

---

[19] *Rollo*, p. 39.

[20] *City of Davao v. Oianolan*, 808 Phil. 561, 569 (2017); *Baguilat, Jr. v. Alvarez*, 814 Phil. 183, 244 (2017).

person to perform their legal duty may ask the court to compel the required performance.

From this Rule, there are two situations when a writ of *mandamus* may issue: (1) when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station; or (2) when any tribunal, corporation, board, officer or person unlawfully excludes another from the use and enjoyment of a right or office to which the other is entitled.[21]

It must be stressed, however, that the extraordinary remedy of *mandamus* lies to compel the performance of duties that are purely ministerial in nature only. The peremptory writ of *mandamus* would not be available if, in the first place, there is no clear legal imposition of a duty upon the office or officer sought to be compelled to act,[22] or if it is sought to control the performance of a discretionary duty.[23]

For *mandamus* to lie, the following requisites must be present: (a) the plaintiff has a clear legal right to the act demanded; (b) it must be the duty of the defendant to perform the act, because it is mandated by law; (c) the defendant unlawfully neglects the performance of the duty enjoined by law; (d) the act to be performed is ministerial, not discretionary; and (e) there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law.[24]

In this case, Mayor Del Rosario contends that *mandamus* will not lie to compel him to order the release of Shaikh's salaries and emoluments. He argues that he is not mandated by law nor

---

[21] *Spouses Abaga v. Spouses Panes*, 557 Phil. 606, 612 (2007).

[22] *Fernandez-Subido v. Lacson*, 112 Phil. 950, 956 (1961); *Segovia v. The Climate Change Commission*, 806 Phil. 1019, 1037 (2017); *Knights of Rizal v. DMCI Homes, Inc.*, 809 Phil. 453, 533 (2017).

[23] *Roque v. Office of the Ombudsman*, 366 Phil. 568, 578 (1999); *Knights of Rizal v. DMCI Homes, Inc.*, *id.*

[24] *De Castro v. Judicial and Bar Council*, 629 Phil. 629, 705 (2010).

is it his duty to give the salaries and emoluments claimed by Shaikh. He points out that the subject act being attributed to him by Shaikh is not among the duties of a municipal mayor as enumerated under Section 344 of the Local Government Code.

The Court agrees that ordering the release of the salaries and emoluments of a member of the Sangguniang Bayan is not among the duties imposed upon the Municipal Mayor.

Section 344 of the Local Government Code provides:

SEC. 344. *Certification, and Approval of Vouchers*. – No money shall be disbursed unless the local budget officer certifies to the existence of appropriation that has been legally made for the purpose, the local accountant has obligated said appropriation, and the local treasurer certifies to the availability of funds for the purpose. **Vouchers and payrolls shall be certified to and approved by the head of the department or office who has administrative control of the fund concerned, as to validity, propriety, and legality of the claim involved.** Except in cases of disbursements involving regularly recurring administrative expenses such as payrolls for regular or permanent employees, expenses for light, water, telephone and telegraph services, remittances to govermnent creditor agencies such as the GSIS, SSS, LBP, DBP, National Printing Office, Procurement Service of the DBM and others, approval of the disbursement voucher by the local chief executive himself shall be required whenever local funds are disbursed. x x x (Emphasis supplied).

The intent of the Local Government Code to give to the Vice-Mayor, as the presiding officer of the Sangguniang Bayan – and not to the Municipal Mayor – the administrative control over the funds of the said local legislative body, is clear in the provisions of Section 445(a)(l) which states:

SEC. 445. Powers, Duties, and Compensation. – (a) The vice-mayor shall:

(1) Be the presiding officer of the sangguniang bayan and sign all warrants drawn on the municipal treasury for all expenditures appropriated for the operation of the sangguniang bayan; x x x

In *Atienza v. Villarosa*[25] (*Atienza*), the Court ruled that the specific clause in Section 344 which provides that "[v]ouchers and payrolls shall be certified to and approved by the head of the department or office who has administrative control of the fund concerned," prevails over the clause in the same section which states that "approval of the disbursement voucher by the local chief executive himself shall be required whenever local funds are disbursed."

In the said case, the Court also noted under Section 39 of the Manual on the New Government Accounting System for Local Government Units, the authority and duty to approve vouchers for expenditures for the operation of the Sanggunian pertain to the Vice-Governor or the Vice-Mayor, as the case may be.

Following these, the Court held that the Vice-Governor, as the presiding officer of the Sangguniang Panlalawigan, has the administrative control over the funds of the said local legislative body. As such, it is also the Vice-Governor which has the authority to sign all warrants drawn on the provincial treasury for the expenditures appropriated for the operation of the Sangguniang Panlalawigan. Thus:

> Reliance by the CA on the clause "approval of the disbursement voucher by the local chief executive himself shall be required whenever local funds are disbursed" of the above section (Section 344) to rule that it is the Governor who has the authority to approve purchase orders for the supplies, materials or equipment for the operation of the *Sangguniang Panlalawigan* is misplaced. This clause cannot prevail over the more specific clause of the same provision which provides that "vouchers and payrolls shall be certified to and approved by the head of the department or office who has administrative control of the fund concerned." The Vice- Governor, as the presiding officer of the *Sangguniang Panlalawigan*, has administrative control of the funds of the said body. Accordingly, it is the Vice-Governor who has the authority to approve disbursement vouchers for expenditures appropriated for the operation of the *Sangguniang Panlalawigan*.

---

[25] 497 Phil. 689, 701 (2005).

On this point, Section 39 of the Manual on the New Government Accounting System for Local Government Units, prepared by the Commission on Audit (COA), is instructive:

> Sec. 39. *Approval of Disbursements*. – Approval of disbursements by the Local Chief Executive (LCE) himself shall be required whenever local funds are disbursed, except for regularly recurring administrative expenses such as: payrolls for regular or permanent employees, expenses for light, water, telephone and telegraph services, remittances to government creditor agencies such as GSIS, BIR, PHILHEALTH, LBP, DBP, NPO, PS of the DBM and others, where the authority to approve may be delegated. *Disbursement vouchers for expenditures appropriated for the operation of the Sanggunian shall be approved by the provincial Vice Governor, the city Vice-Mayor or the municipal Vice-Mayor, as the case may be.*
>
> x x x x x x x x x

Since it is the Vice-Governor who approves disbursement vouchers and approves the payment for the procurement of the supplies, materials and equipment needed for the operation of the *Sangguniang Panlalawigan*, then he also has the authority to approve the purchase orders to cause the delivery of the said supplies, materials or equipment.

Indeed, the authority granted to the Vice-Governor to sign all warrants drawn on the provincial treasury for all expenditures appropriated for the operation of the *Sangguniang Panlalawigan* as well as to approve disbursement vouchers relating thereto is greater and includes the authority to approve purchase orders for the procurement of the supplies, materials and equipment necessary for the operation of the *Sangguniang Panlalawigan*.[26] (Italics in the original)

The pronouncements in *Atienza* also find application to this case. As already stated, as the presiding officer of the Sangguniang Bayan of Bagac, it is the Vice-Mayor of Bagac who has administrative control over its funds. This means that it is also the Vice-Mayor of Bagac who has the duty and authority to approve the vouchers and payrolls of the officers and employees of the Sangguniang Bayan of Bagac. Naturally, the

---

[26] *Id.* at 701-702, 704.

payrolls which approval belongs to the Vice-Mayor include the payrolls of the members of the Sangguniang Bayan of Bagac, whether sitting as a regular member or in an *ex-officio* capacity. This is only proper considering that the continued performance by the members of the Sangguniang Bayan of their duties is necessary for the continued operation of the Sangguniang Bayan.

Thus, it is clear that Mayor Del Rosario, or any sitting mayor of Bagac for that matter, could not be compelled by *mandamus* to order the release of the salaries and emoluments claimed by Shaikh. There is no law specifically enjoining the Municipal Mayor for the performance of such act. In fact, the Municipal Mayor has no authority to intervene in the administration of the funds of the Sangguniang Bayan, as the control over it pertains to the Municipal Vice-Mayor. Since there is no such specific legal duty upon the Municipal Mayor, it could not be said that Mayor Del Rosario unlawfully neglected the performance of his duty.

From the foregoing, since it is clear that it is the Municipal Vice-Mayor who has the duty and authority to approve the payrolls of the members of the Sangguniang Bayan, then it only follows that the Vice-Mayor may be compelled by *mandamus* to order the release of the salaries and emoluments pertaining to a member of the Sangguniang Bayan. Be that as it may, the Court opines that the present *mandamus* will not prosper against Vice-Mayor Teopengco or whoever is presently sitting as the Vice-Mayor of Bagac.

It must be recalled that in its September 7, 2012 Decision, the CA directed Mayor Del Rosario, Vice-Mayor Teopengco, and Bontuyan to release the salaries and other emoluments due to Shaikh for the period she rendered her services as *ex-officio* member of the Sangguniang Bayan of Bagac. However, only Mayor Del Rosario appealed the said CA decision. Neither Vice-Mayor Teopengco nor Bontuyan joined Mayor Del Rosario in the present petition.

In the present petition, Mayor Del Rosario explains that he was the only one who elevated the case to this Court because Vice-Mayor Teopengco was not re-elected as the Vice-Mayor

of Bagac in the May 2010 elections, while Bontuyan retired as Municipal Budget Officer of Bagac on April 2, 2011. Shaikh did not refute this in her Comment.[27]

At this juncture, Section 17, Rule 3 of the 1997 Revised Rules of Court is instructive, thus:

RULE 3
Parties to Civil Actions

SEC. 17. *Death or separation of a party who is a public officer*.— When a public officer is a party in an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action may be continued and maintained by or against his successor if, within thirty (30) days after the successor takes office or such time as may be granted by the court, it is satisfactorily shown to the court by any party that there is a substantial need for continuing or maintaining it and that the successor adopts or continues or threatens to adopt or continue to adopt or continue the action of his predecessor. Before a substitution is made, the party or officer to be affected, unless expressly assenting thereto, shall be given reasonable notice of the application therefor and accorded an opportunity to be heard.

It must be noted that the aforesaid rule has been substantially lifted from Section 18, Rule 3 of the 1964 Rules of Court, which states:

SEC. 18. *Death or separation of a party who is a government officer*. — When an officer of the Philippines is a party in an action and during its pendency dies, resigns, or otherwise ceases to hold office, the action may be continued and maintained by or against his successor, if within thirty (30) days after the successor takes office it is satisfactorily shown to the court that there is a substantial need for so continuing and maintaining it. Substitution pursuant to this rule may be made when it is shown by supplemental pleading that the successor of an officer adopts or continues or threatens to adopt or continue the action of his predecessor in enforcing a law averred to be in violation of the Constitution of the Philippines. Before a substitution is made, the party or officer to be affected, unless expressly assenting thereto, shall be given reasonable notice of the application therefor and accorded an opportunity to object.

---

[27] *Rollo*, pp. 61-68.

In *Heirs of Mayor Nemencio Galvez v. Court of Appeals*[28] (*Heirs of Galvez*), a case that was decided during the effectivity of the 1964 Rules of Court, the Court ruled that non-compliance with the substitution procedure pursuant to Section 18, Rule 3 of the 1964 Rules of Court is a ground for the dismissal of a *mandamus* petition.

In the said case, Amparo San Gabriel-Mendoza (Amparo) was the registered owner and operator of a cockpit in Balagtas, Bulacan, known as the "Balagtas Sports Arena." She filed a petition for *mandamus* and prohibition to compel Mayor Nemencio Galvez (Mayor Galvez) of Balagtas, Bulacan, to issue the municipal license and permit to resume operations of the Balagtas Sports Arena and to enjoin the Sangguniang Bayan of Balagtas from implementing a resolution which ordered the closure of the said cockpit. However, during the pendency of the case, Mayor Galvez and the members of the Sangguniang Bayan of Balagtas were replaced by officers-in-charge as an aftermath of the 1986 EDSA Revolution. However, Amparo did not file a motion to have Mayor Galvez and the members of the Sanggunian substituted by the officers-in-charge. The Court opined that the trial and appellate courts should have dismissed the petition in view of the non-compliance with the provisions of Section 18, Rule 3 of the 1964 Rules of Court.

The Court continued that the trial court acted in excess of its jurisdiction when it ordered Mayor Galvez or his successor-in-office to issue the mayor's permit to Amparo's cockpit despite the absence of proper substitution of parties. Thus:

> Considering the attendant circumstances in the case at bench, the failure to make the substitution pursuant to the aforequoted provision is a procedural defect. We bear in mind that the case out of which this petition arose is in the nature of a petition for [*mandamus*] and prohibition which sought to compel the then mayor, Dr. Nemencio Galvez, to issue the municipal license and permit to resume operations of the Balagtas Sports Arena at Balagtas, Bulacan, and to enjoin the said mayor and the Sangguniang Bayan of Balagtas, Bulacan, from implementing its Resolution No. 08-85 which ordered the closure of

[28] 325 Phil. 1028, 1048 (1996).

the cockpit arena. When the said public officials were replaced by OICs as an aftermath of the 1986 Edsa Revolution, it was incumbent upon private respondent Mendoza, through her counsel, to file for a substitution of parties within thirty (30) days after the named successors-in-office of Mayor Galvez and the members of the Sangguniang Bayan of Balagtas, Bulacan, assumed office. Inasmuch as no such substitution was effected, the [*mandamus*] petition cannot prosper in the absence of a supplemental pleading showing that the successors of Mayor Galvez and the members of the Sangguniang Bayan of Balagtas, Bulacan had adopted or had continued or threatened to adopt or continue the action of their predecessors in enforcing the assailed resolution which ordered the closure of the subject cockpit arena. In fact [,] there is reason to believe petitioners' claim that the appointed OIC no longer pursued the "closure policy" of Mayor Galvez so that the corresponding license and permit to operate the Balagtas Sports Arena were subsequently granted. Thus, the *mandamus* petition should have been dismissed for non-compliance with the substitution procedure pursuant to Rule 3, Section 18 of the Rules of Court.

The assailed decision dated May 6, 1988 was rendered a couple of years after the Mayor and members of the Municipal Council of Balagtas, Bulacan, originally sued by private respondent Mendoza had ceased to hold public office. As initiator of the *mandamus* petition, counsel for private respondent Mendoza had ample time to make a proper substitution of parties had there still been compelling reasons to obtain the writs of *mandamus* and prohibition prayed for at the earliest possible time. As it was, there were none. The records fail to show that both private respondents had refuted the petitioners' claim that, with the replacement of the late Mayor Galvez, the *mandamus* petition had become moot and academic after private respondent Mendoza obtained the municipal license and permit from the said mayor's successor-in-office. Thus, when no proper substitution of parties was seasonably effected under Rule 3, Section 18 of the Rules of Court, the court *a quo* acted in excess of jurisdiction for having rendered the assailed decision against the petitioners in utter violation of their constitutional right to due process of law.[29] x x x (Underscoring supplied; citations omitted)

In this case, a perusal of the records would reveal that Shaikh did not file any motion for the substitution of Vice-Mayor

---

[29] *Id.* at 1047-1049.

Teopengco and Bontuyan by the respective successors in office. In fact, in her Memorandum[30] which she filed before the CA on August 12, 2010, Vice-Mayor Teopengco was still included as a respondent. No mention was made to the effect that another person already succeeded Vice-Mayor Teopengco as the Vice-Mayor of Bagac. Needless to state, Shaikh did not file any supplemental pleading which would show that Vice-Mayor Teopengco and Bontuyan's successors had continued their refusal to release her salaries and emoluments. Evidently, Shaikh failed to comply with the procedure for substitution under Section 17, Rule 3 of the 1997 Revised Rules of Civil Procedure.

Considering that, as already stated, Section 17, Rule 3 of the 1997 Revised Rules of Civil Procedure substantially lifted the provisions of Section 18, Rule 3 of the 1964 Rules of Court, such that there had been no change in its underlying principle, the Court holds that the pronouncements in the *Heirs of Galvez* find application to the present case. Thus, the CA acted in excess of its jurisdiction when it rendered the September 7, 2012 Decision and the March 6, 2013 Resolution against Vice-Mayor Teopengco and Bontuyan, despite the fact that they ceased to be the proper parties to the *mandamus* case even prior to said dates – Vice-Mayor Teopengco was no longer the Vice-Mayor of Bagac as of noon of June 30, 2010, following his loss in the 2010 May elections, while Bontuyan ceased to be the Municipal Budget Officer of Bagac after her retirement on April 2, 2011. Likewise, the September 7, 2012 Decision could not be enforced against Vice-Mayor Teopengco and Bontuyan's successors in office as doing so would be in violation of their constitutional rights to due process.

The invalidity of the CA's September 7, 2012 Decision and March 6, 2013 Resolution subsists even if it appears that it rendered the said decision and resolution without knowledge or information of Vice-Mayor Teopengco's loss and Bontuyan's retirement. Lack of notice would not cure the defect in the said decision and resolution. After all, the duty and burden to notify

[30] CA *rollo*, pp. 31-40.

the CA of these developments and to show that the unlawful refusal is continuing, fall to Shaikh as the petitioner in the *mandamus* petition. Unfortunately, she failed in this regard.

WHEREFORE, the present Petition for Review on *Certiorari* is **GRANTED**. The Decision dated September 7, 2012, and the Resolution dated March 6, 2013 of the Court of Appeals in CA-G.R. SP No. 114405 are **SET ASIDE**.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa (Working Chairperson), Lazaro-Javier, and *Lopez, JJ.*, concur.

FIRST DIVISION

[G.R. No. 211537. December 10, 2019]

LAND BANK OF THE PHILIPPINES, *petitioner*, *vs.* **POLILLO PARADISE ISLAND CORPORATION**, *respondent*.

SYLLABUS

1. MERCANTILE LAW; FINANCIAL REHABILITATION AND INSOLVENCY ACT (FRIA OR RA 10142); REHABILITATION, DEFINED. — RA No. 10142 or the FRIA defines rehabilitation as the restoration of the debtor to a condition of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan, more if the debtor continues as a going concern than if it is immediately liquidated.

2. ID.; ID.; CORPORATE REHABILITATION; THE REHABILITATION COURT MAY ISSUE A COMMENCEMENT ORDER WHICH MARKS THE START OF THE REHABILITATION PROCEEDINGS; THE EFFECTS OF THE COMMENCEMENT ORDER

UNDER SECTION 17 OF THE FRIA SHALL BE RECKONED FROM THE DATE OF THE FILING OF THE PETITION FOR CORPORATE REHABILITATION. — [C]orporate rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency, the purpose being to enable the company to gain a new lease on life and allow its creditors to be paid their claims out of its earnings. To achieve this end, the rehabilitation court may issue a Commencement Order, which marks the start of the rehabilitation proceedings. The effects of which is stated under Section 17, x x x The FRIA provides that the effects of the Commencement Order shall be reckoned from the date of the filing of the petition for corporate rehabilitation, be it voluntary or involuntary. Emphatically, the determination of the *date of the filing of the petition for rehabilitation* is relevant in ascertaining the extent of the legal effects of a Commencement Order. Thus, it becomes imperative to identify the pertinent crucial dates surrounding the petition.

3. ID.; ID.; ID.; ID.; ID.; NOT APPLICABLE TO AN EXTRAJUDICIAL FORECLOSURE SALE WHERE THE ACQUISITION OF ABSOLUTE OWNERSHIP WAS ACQUIRED PRIOR TO THE FILING OF THE PETITION FOR CORPORATE REHABILITATION. — As the commencement date is ascertained, it is indispensable to discern the period when the extrajudicial foreclosure sale and its effects took place as Section 17 of the FRIA extends only to processes which occurred *after* the commencement date. It is undisputed that Certificate of Sale was issued and registered on August 22, 2011. As such, the last day of the redemption period is on August 22, 2012. The determination of such expiration date is relevant insofar as the ownership of the subject properties is concerned. Case law dictates that the purchaser in an extrajudicial foreclosure of real property becomes the absolute owner of the property if no redemption is made within one year from the registration of the Certificate of Sale by those entitled to redeem. The consolidation of ownership in the name of the buyer and the issuance of the new certificate of title merely entitles him to possession thereof as a matter of right. Nevertheless, upon the purchase of the property and before the lapse of the redemption period, the buyer is already considered as the owner. In fact, he can demand possession of the land

even during the redemption period except that he has to post a bond in accordance with Section 7 of Act No. 3135, as amended. Hence, in this case, the ownership of the subject properties was vested upon the petitioner on August 22, 2012 as its registered owners failed to redeem the same. Notably, such period *precedes* the filing of the petition for corporate rehabilitation on October 18, 2012. The effect of such sale is to release the debtor from its outstanding obligation. In fact, petitioner issued a Certification stating that respondent fully paid the same by virtue of the foreclosure sale. As it is settled that the acquisition of absolute ownership by respondent over the subject properties on August 22, 2012 is *antecedent* to the commencement date or the filing of the petition for corporate rehabilitation on October 18, 2012, the sale of the subject properties is valid. Corollary, petitioner is no longer considered as respondent's creditor.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
Rio T. Espiritu for respondent.

D E C I S I O N

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

Before this Court is a petition for review on *certiorari*,[1] assailing the Order[2] dated May 24, 2013 and Order[3] dated January 20, 2014 of the Regional Trial Court of Infanta, Quezon, Branch 65 (RTC), denying Land Bank of the Philippines's (petitioner) Comment/Opposition to Polillo Paradise Island Corporation's (respondent) Amended Petition for Corporate Rehabilitation.

The Antecedents

The records reveal that respondent obtained a ₱5 Million Short Term Loan Line (STLL) with petitioner in 2000. As a

---

[1] *Rollo*, pp. 9-21.

[2] Penned by Presiding Judge Arnelo C. Mesa; *id.* at 27-28.

[3] *Id.* at 108-110.

security thereof, two parcels of land covered by Transfer Certificate of Title (TCT) No. T-18198 and Original Certificate of Title (OCT) No. P-12935. TCT No. T-18198 was registered in the name of Aimee and Chris Almeda while OCT No. P-12935 was registered in the name of Aimee Almeda.[4] Said loan was used as additional working capital of its hotel business.[5]

On February 13, 2001, petitioner approved the request of respondent for the conversion of its STLL into a 5-year term loan. Not only was such request but also an additional ₱1.2 Million STLL was granted.[6]

Several restructurings were had anent the account of respondent with petitioner. Despite such, however, respondent failed to pay its loan obligation. Thus, on June 24, 2011, petitioner was constrained to file a petition for extrajudicial foreclosure of the mortgaged properties.[7] Subsequently, the mortgaged properties (subject properties) were sold in the amount of ₱11,161,047.12, wherein petitioner emerged as the highest bidder.[8] A Certificate of Sale[9] was issued and registered before the Registry of Deeds on August 22, 2011.

As the respondent failed to redeem said properties within the redemption period, petitioner consolidated its title over the subject properties. Thus, on November 19, 2012, the Register of Deeds of Infanta, Quezon cancelled TCT No. T-18198 and OCT No. P-12935, and in lieu thereof, issued TCT Nos. 067-2012000395 and 067-20122000396, respectively, in the name of petitioner.[10]

---

[4] *Id.* at 11.

[5] *Id.* at 31.

[6] *Id.*

[7] *Id.* at 11.

[8] *Id.*

[9] *Id.* at 116-119.

[10] *Id.* at 12.

Allegedly, respondent filed a petition for corporate rehabilitation[11] on August 17, 2012. It asserted that its financial viability was greatly affected as the Province of Quezon was devastated by the typhoon and flood, resulting in the cancellation of functions and decline in room occupancy; and by the global crisis in 2008. As the decrease in financial revenues deprived it of enough cash flow to service payment of its debts, respondent insisted that rehabilitation is the only viable option for it to continue its operations and settle its liabilities.

In an Order[12] dated August 25, 2012, the RTC dismissed the petition for lack of merit. It took note that there is nothing left to be rehabilitated considering that the subject properties subject of the foreclosure sale comprise the bulk of respondent's assets.

On October 12, 2012, respondent filed an amended petition[13] for corporate rehabilitation, invoking the application of Republic Act No. 10142 or the Financial Rehabilitation and Insolvency Act of 2010 (FRIA).

After finding the petition sufficient in form and in substance, the RTC granted the same in an Order[14] dated January 8, 2013 and accordingly issued a Commencement/Suspension Order[15] dated January 11, 2013. Said Order directed the following measures:

> Furthermore, a Stay or Suspension Order is likewise issued ordering the following, to wit[:]
>
> 1. [S]uspending all actions or proceedings, in court or otherwise, for the enforcement of claims against the debtor;
>
> 2. [S]uspending all actions to enforce any judgment, attachment or other provisional remedies against the debtor;

---

[11] *Id.* at 206-218.

[12] *Id.* at 224-227.

[13] *Id.* at 29-42.

[14] Penned by Presiding Judge Arnelo C. Mesa; *id.* at 126.

[15] *Id.* at 127-129.

> 3. [P]rohibiting the debtor from selling, encumbering, transferring or disposing in any manner any of its properties except in the ordinary course of business; and
>
> 4. [P]rohibiting the debtor from making any payment of its liabilities outstanding as of the commencement date except as may be provided herein.
>
> SO ORDERED.[16]

Alleging that it was not notified of the petition and surprised to receive the January 11, 2013 Order only on January 18, 2013, petitioner filed its Opposition to or Comment on the Amended Petition.[17] Essentially, petitioner alleged that it is no longer a creditor of respondent in view of the consolidation of the ownership of the subject properties in its name following the extrajudicial foreclosure sale; therefore, relieving respondent of any liability arising from the loan it previously obtained from it. As such, the proceedings concerning the sale of the subject properties is no longer covered by the FRIA.

In an Order[18] dated May 24, 2013, the RTC fortified its earlier order and denied petitioner's opposition.

A Motion for Reconsideration was filed by petitioner, which was denied in an Order[19] dated January 20, 2014. Reckoning the *date of the consolidation of ownership in petitioner's name* as the period as to when the ownership vested, the RTC explained that when such consolidation took place *after* the date of the filing of the amended petition, the same and the proceedings before it are void for being violative of Section 17[20] of the

---

[16] *Id.* at 129.

[17] *Id.* at 130-135.

[18] *Supra* note 2.

[19] *Supra* note 3.

[20] (b) prohibit or otherwise serve as the legal basis rendering null and void the results of any extrajudicial activity or process to seize property, sell encumbered property, or otherwise attempt to collection or enforce a claim against the debtor after commencement date unless otherwise allowed in this Act, subject to the provisions of Section 50 hereof.

FRIA since the ownership of the subject properties still lies with the respondent at the time that said petition was filed. At this point, the RTC emphasized that the effects of the Commencement Order, which prohibits or renders null and void the results of any extrajudicial activity or process to seize property after the commencement date, can be reckoned from the date of the filing of the amended petition. Verily, the RTC maintained that the petitioner is still considered as respondent's creditor within the purview of the law.

Aggrieved, petitioner filed this instant petition, impugning the Orders of the RTC. It asserted that the effects of the Commencement Order should not extend to the foreclosed properties already consolidated in its name, considering that the same took place *prior* to the commencement date.

In its comment,[21] respondent insisted that the consolidation of ownership in the name of petitioner violated the FRIA because the date of the filing of the petition for corporate rehabilitation on August 17, 2012, the reckoning point of the effects of the Commencement Order, precedes such consolidation.

In its reply,[22] petitioner disputed that the date of filing of the petition for corporate rehabilitation is not on August 17, 2012, but on August 22, 2012 as the petition itself bore such mark. Moreover, it alleged that even assuming that the same was filed on August 22, 2012, the reckoning period is on October 18, 2012, which is the date of the filing of the *amended* petition for corporate rehabilitation. Hence, the commencement date took place *prior* to the filing of the petition.

The Issue

Summarily, the issue in this case is whether or not the Commencement Order issued by the RTC has the effect of rendering void the foreclosure sale of the subject properties and the effects thereof.

---

[21] *Rollo*, pp. 176-191.

[22] *Id.* at 197-205.

The Court's Ruling

RA No. 10142 or the FRIA defines rehabilitation as the restoration of the debtor to a condition of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan, more if the debtor continues as a going concern than if it is immediately liquidated.[23]

Thus, corporate rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency, the purpose being to enable the company to gain a new lease on life and allow its creditors to be paid their claims out of its earnings.[24]

To achieve this end, the rehabilitation court may issue a Commencement Order, which marks the start of the rehabilitation proceedings. The effects of which is stated under Section 17, to wit:

Section 17. *Effects of the Commencement Order*. – Unless otherwise provided for in this Act, the court's issuance of a Commencement Order shall, in addition to the effects of a Stay or Suspension Order described in Section 16 hereof:

(a) vest the rehabilitation with all the powers and functions provided for this Act, such as the right to review and obtain records to which the debtor's management and directors have access, including bank accounts or whatever nature of the debtor subject to the approval by the court of the performance bond filed by the rehabilitation receiver;

(b) prohibit or otherwise serve as the legal basis rendering null and void the results of any extrajudicial activity or process to seize property, sell encumbered property, or otherwise attempt to collect on or enforce a claim against the debtor after

---

[23] Section 4 (gg), Republic Act No. 10142.

[24] *Philippine Asset Growth Two, Inc. v. Fastech Synergy Philippines, Inc.*, 788 Phil. 355, 374 (2016), citing *BPI Family Savings Bank, Inc. v. St. Michael Medical Center, Inc.*, 757 Phil. 251, 264 (2015).

commencement date unless otherwise allowed in this Act, subject to the provisions of Section 50 hereof;

(c) serve as the legal basis for rendering null and void any set-off after the commencement date of any debt owed to the debtor by any of the debtor's creditors;

(d) serve as the legal basis for rendering null and void the perfection of any lien against the debtor's property after the commencement date; and

(e) consolidate the resolution of all legal proceedings by and against the debtor to the court: Provided, however, That the court may allow the continuation of cases on other courts where the debtor had initiated the suit.

Attempts to seek legal on other resource against the debtor outside these proceedings shall be sufficient to support a finding of indirect contempt of court.

The FRIA provides that the effects of the Commencement Order shall be reckoned from the date of the filing of the petition for corporate rehabilitation, be it voluntary or involuntary.[25]

Emphatically, the determination of the *date of the filing of the petition for rehabilitation* is relevant in ascertaining the extent of the legal effects of a Commencement Order. Thus, it becomes imperative to identify the pertinent crucial dates surrounding the petition.

It is undisputed that the Commencement Order was issued on January 11, 2013. As to the date of the filing of the petition, petitioner claimed that the same was filed on August 17, 2012. However, the records reveal otherwise. It is apparent that it was on August 17, 2012 that the petition was prepared by petitioner's counsel, Atty. Rio T. Espiritu; but it was *actually* filed on August 22, 2012, as evidenced by the rubber stamp of the RTC. Moreover, the Notice of *Lis Pendens* annotated in

---

[25] *Commencement date* shall refer to the date on which the court issues the Commencement Order, which shall be retroactive to the date of filing of the petition for voluntary or involuntary proceedings; Section 4 (d), Republic Act No. 10142.

the titles of the subject properties reads that the petition for corporate rehabilitation was filed before the RTC on August 22, 2012. In deliberately stating an erroneous fact, petitioner's counsel attempted to mislead this Court to advocate the case of its client. Such act is, in absolute terms, a downright violation of a lawyer's duty to act at all times in a manner consistent with the truth.[26]

Be that as it may, petitioner still erred in considering August 2012 as the reckoning point. Significantly, the RTC already dismissed said petition on August 25, 2012 for being bereft of substance. The October 18, 2012 *Amended Petition* is in reality not an amendment to the earlier petition as it was filed only after the RTC dismissed the August 22, 2012 petition. Verily, there was nothing more to amend when the petition had already been dismissed. Likewise, it must be emphasized that it was the October 18, 2012 petition which was granted by the RTC and initiated the rehabilitation proceedings. Thus, the commencement date is reckoned on October 18, 2012.

As the commencement date is ascertained, it is indispensable to discern the period when the extrajudicial foreclosure sale and its effects took place as Section 17 of the FRIA extends only to processes which occurred *after* the commencement date.

It is undisputed that Certificate of Sale was issued and registered on August 22, 2011. As such, the last day of the redemption period is on August 22, 2012. The determination of such expiration date is relevant insofar as the ownership of the subject properties is concerned. Case law dictates that the purchaser in an extrajudicial foreclosure of real property becomes the absolute owner of the property if no redemption is made within one year from the registration of the Certificate of Sale by those entitled to redeem.[27] The consolidation of ownership in the name of the buyer and the issuance of the new certificate

---

[26] *Adez Realty, Incorporated v. Court of Appeals*, 289 Phil. 766, 773 (1992).

[27] *Spouses Gallent, Jr. v. Velasquez*, 784 Phil. 44, 58 (2016).

of title merely entitles him to possession thereof as a matter of right. Nevertheless, upon the purchase of the property and before the lapse of the redemption period, the buyer is already considered as the owner. In fact, he can demand possession of the land even during the redemption period except that he has to post a bond in accordance with Section 7 of Act No. 3135, as amended.[28]

Hence, in this case, the ownership of the subject properties was vested upon the petitioner on August 22, 2012 as its registered owners failed to redeem the same. Notably, such period *precedes* the filing of the petition for corporate rehabilitation on October 18, 2012.

The effect of such sale is to release the debtor from its outstanding obligation. In fact, petitioner issued a Certification[29] stating that respondent fully paid the same by virtue of the foreclosure sale.

As it is settled that the acquisition of absolute ownership by respondent over the subject properties on August 22, 2012 is *antecedent* to the commencement date or the filing of the petition for corporate rehabilitation on October 18, 2012, the sale of the subject properties is valid. Corollary, petitioner is no longer considered as respondent's creditor.

WHEREFORE, premises considered, the instant petition is **GRANTED**. Accordingly, the Orders dated May 24, 2013 and January 20, 2014 of the Regional Trial Court of Infanta, Quezon, Branch 65 are **REVERSED and SET ASIDE.**

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa (Working Chairperson), Lazaro-Javier, and *Lopez, JJ.*, concur.

---

[28] *Okabe v. Saturnino*, 742 Phil. 1, 12 (2014).

[29] *Rollo*, p. 150.

FIRST DIVISION

[G.R. No. 220647. December 10, 2019]

NOLI D. APARICIO and RENAN CLARITO, *petitioners, vs.* **MANILA BROADCASTING COMPANY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; RULE ON SERVICE OF REGISTERED MAIL; FOR CONSTRUCTIVE SERVICE, BEST EVIDENCE TO PROVE THAT NOTICE WAS SENT WOULD BE A CERTIFICATION FROM THE POSTMASTER, WHO SHOULD CERTIFY NOT ONLY THAT THE NOTICE WAS ISSUED OR SENT BUT ALSO AS TO HOW, WHEN AND TO WHOM, THE DELIVERY AND RECEIPT WAS MADE; CASE AT BAR. — ***Bernarte v. PBA*** teaches: The rule on service by registered mail contemplates two situations: (1) actual service the completeness of which is determined upon receipt by the addressee of the registered mail; and (2) constructive service the completeness of which is determined upon expiration of five days from the date the addressee received the first notice of the postmaster. **Insofar as constructive service is concerned, there must be conclusive proof that a first notice was duly sent by the postmaster to the addressee. Not only is it required that notice of the registered mail be issued but that it should also be delivered to and received by the addressee. Notably, the presumption that official duty has been regularly performed is not applicable in this situation. It is incumbent upon a party who relies on constructive service to prove that the notice was sent to, and received by, the addressee. The best evidence to prove that notice was sent would be a certification from the postmaster, who should certify not only that the notice was issued or sent but also as to how, when and to whom the delivery and receipt was made. The mailman may also testify that the notice was actually delivered.**

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; AUTHORIZED CAUSES; REDUNDANCY; EXISTS WHEN AN EMPLOYEE'S

SERVICES ARE IN EXCESS OF WHAT IS REASONABLY DEMANDED BY THE ACTUAL REQUIREMENTS OF THE ENTERPRISE; REQUISITES; CASE AT BAR. — Petitioners' employment was validly terminated on ground of redundancy, one of the authorized causes for termination of employment under Article 298 of the Labor Code, as amended. x x x Redundancy exists when an employee's services are in excess of what is reasonably demanded by the actual requirements of the enterprise. While a declaration of redundancy is ultimately a management decision, and the employer is not obligated to keep in its payroll more employees than are needed for its day-to-day operations, management must not violate the law nor declare redundancy without sufficient basis. A valid redundancy program requires the following: (1) written notice served on both the employees and the Department of Labor and Employment (DOLE) at least one [1] month prior to the intended date of termination of employment; (2) payment of separation pay equivalent to at least one [1] month pay for every year of service; (3) good faith in abolishing the redundant positions; and (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished, taking into consideration such factors as (a) preferred status; (b) efficiency; and (c) seniority, among others. Here petitioners were duly served notices of retrenchment which took effect thirty (30) days later. MBC also submitted its Establishment Termination Report to the DOLE containing the reasons for its adoption and implementation of the redundancy program. Petitioners were likewise promptly given their separation pay. x x x Based [MBC's redundancy program], FFES Bacolod was shut down as relay station of DZRH. Its continued operation was deemed unnecessary because DZRH anyway could be heard in Bacolod through FFES Iloilo. Consequently, petitioners who were both assigned at FFES Bacolod had to go, as well. Courts will not interfere unless management is shown to have acted arbitrarily or maliciously. For it is the management which is clothed with exclusive prerogative to determine the qualification and fitness of an employee for hiring or firing, promotion or reassignment. Indeed, an employer has no legal obligation to keep more employees than are necessary for its business operation.

3. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; IN LABOR CASES, ONLY SUBSTANTIAL EVIDENCE OR SUCH RELEVANT EVIDENCE AS A REASONABLE MIND MIGHT ACCEPT AS SUFFICIENT

TO SUPPORT A CONCLUSION IS REQUIRED; CASE AT BAR. — In labor cases, as in other administrative proceedings, only substantial evidence or such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion is required. Here, the Court of Appeals relied on substantial evidence in finding that the MBC's memorandum of appeal was timely filed and its redundancy program including the consequent retrenchment of petitioners was valid. The Court will not disturb these factual findings in the absence of any special or compelling reasons.

APPEARANCES OF COUNSEL

Rogelio M. Necesario for petitioners.
Rodinil D. Bugay and *Geoffrey D. Andawi* for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This Petition for Review on *Certiorari* assails the following issuances of the Court of Appeals in CA-G.R. SP No. 04514 entitled *"Noli D. Aparicio, Renan N. Clarito, Noel Solutan, Delmer Dilig and Abelardo Brillantes v. National Labor Relations Commission (NLRC), Fourth Division, Cebu City and Manila Broadcasting Company:"*

1) Decision[1] dated August 20, 2013, finding petitioners to have been validly dismissed on ground of redundancy; and

2) Resolution[2] dated August 25, 2015, denying petitioners' partial motion for reconsideration.

---

[1] Penned by Executive Justice Pampio A. Abarintos with the concurrence of Associate Justices Gabriel T. Ingles and Marilyn B. Lagura-Yap, all members of the Eighteenth Division, *rollo,* pp. 34-48.

[2] *Id.* at 62-65.

Proceedings before the Labor Arbiter

Petitioners Noli Aparicio and Renan Clarito together with Delmer Dilig, Abelardo Brillantes, and Noel Solutan (petitioners *et al.*) filed separate complaints for illegal dismissal, reinstatement, backwages, moral damages, exemplary damages, and attorney's fees against respondent Manila Broadcasting Company (MBC).

Petitioners *et al.*'s Position Paper

In their Consolidated Position Paper[3] dated July 4, 2003, petitioners *et al.* essentially alleged:

They worked as radio technicians with MBC, a corporation engaged in radio broadcasting.

Noli Aparicio and Renan Clarito were both assigned at the transmitter site of DYEZ (local AM radio) and DZRH (a relaying station and a nationwide AM radio) in Barangay Taloc, Bago City; Noel Solutan, at the studio transmitter of YES FM at Rizal-Locsin Streets, Bacolod City; and Delmer Dilig and Abelardo Brillantes, at the studio of DYEZ and the transmitter site, Barangay Taloc.[4]

On February 28, 2002, they were surprised to receive a Notice dated February 22, 2002 from MBC President Roberto Nicdao, Jr., terminating their employment with separation pay effective thirty (30) days from notice or on March 31, 2002. Noel Aparicio, Delmer Dilig and Abelardo Brillantes signed a quitclaim, believing their dismissal was valid. The rest sued for illegal dismissal.[5]

After preliminary conference before the labor arbiter, their money claims were settled except their claims for moral damages, exemplary damages, and attorney's fees. The validity of their dismissal was also not amicably settled.[6]

---

[3] *Id.* at 85-97.

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

[5] *Id.* at 86-87.

[6] *Id.* at 87.

They were dismissed without just or authorized cause. The notice requirement was likewise not observed. The alleged authorized ground for retrenchment or redundancy was not proven. Their dismissal was tainted with bad faith because the so-called retrenchment was merely a ploy to replace the employees.[7]

MBC's Position Paper

In its Consolidated Position Paper[8] dated July 16, 2002, MBC countered, in the main:

Sometime in the last quarter of 2001, the management was directed to review the operations of all MBC stations. The review revealed several losing stations were subsidized by the more profitable Manila stations. As remedial measure, Chairman Fred Elizalde, through Memorandum dated January 10, 2002, implemented the policy dubbed as "*Hating Kapatid.*" Under it, each station was considered independent of the Head Office and will no longer be subsidized. As a result, each station had to review its own manpower complement.[9]

Being one (1) of the losing MBC stations, FFES Bacolod, a relay station of DZRH, was shut down. The employees assigned there, including Noli Aparicio and Renan Clarito were retrenched. It was ascertained that FFES Bacolod need not continue to operate as a relay station of DZRH since anyway DZRH can be heard in Bacolod City through FFES Iloilo.[10]

On the other hand, although DYEZ-AM was not similarly shut down, its manpower was downsized. Delmer Dilig and Abelardo Brillantes who were assigned there got retrenched because the station needed only the service of two (2) not four (4) radio technicians. As for YES-FM Bacolod, it was not shut

---

[7] *Id.* at 89-93.

[8] *Id.* at 77-82.

[9] *Id.* at 78.

[10] *Id.*

down but only retained one (1) technician.[11] Radio technician Noel Solutan had to go.[12]

Except for Noel Solutan, who received the notice of retrenchment on March 1, 2002, petitioners *et al.* received theirs on February 28, 2002. On the same day, the company submitted its Revised RRS Form and the Establishment Termination Report to the Department of Labor and Employment (DOLE). It informed the DOLE that the retrenchment program was brought about by redundancy and company reorganization and downsizing.[13]

The retrenched employees, thereafter, received their separation pay equivalent to one (1) month salary for every year of service effective thirty (30) days from notice.[14]

The Ruling of the Labor Arbiter

By Decision dated July 27, 2007, Labor Arbiter Elias Salinas held that petitioners *et al.* were illegally dismissed. There was no evidence that MBC suffered from serious business losses and financial reverses. There was no showing either that it used fair and reasonable criteria in choosing the positions to be retrenched. The mechanics of the "*Hating Kapatid*" program was not even explained to the employees. Instead of reinstatement, petitioners *et al.* should be awarded separation pay by reason of their strained relations with MBC. Labor Arbiter Salinas decreed:

WHEREFORE, premises considered, judgment is hereby rendered declaring complainants to have been illegally dismissed from the service. As such, respondent Manila Broadcasting Company is hereby ordered to pay complainants their [backwages] and separation pay, to wit:

---

[11] *Id.*

[12] *Id.*

[13] *Id.* at 79.

[14] *Id.*

NAME	BACKWAGES	SEPARATION PAY
1. Noli [Aparicio]	₱427,209.32	₱1,776.56
2. Renan Clarito	₱357,068.36	₱15,333.79
3. Noel Solutan	₱427,026.44	₱(10,423.09)
4. Delmer Dilig	₱427,238.27	₱49,194.36
5. Abelardo Brillantes	₱357,068.36	₱(25,239.84)

Respondent is further ordered to pay the sum equivalent to ten percent of the judgment award as attorney's fees.

All other claims are ordered dismissed for lack of merit and/or by reason of settlement.

SO ORDERED.[15]

Proceedings before the NLRC

By Memorandum of Appeal[16] dated October 31, 2007, petitioners *et al.* sought a partial appeal on the award of backwages, separation pay, and attorney's fees. They argued that the award of separation pay instead of reinstatement was not in accord with law. It was not shown that their continued employment with MBC would be inconsistent with peace and tranquility in the workplace. Strained relations should be raised as a factual issue.[17]

The labor arbiter also omitted to rule on their claim for 13th month pay, vacation leave pay and damages; and to include in the computation of their backwages their 13th month pay and vacation leave pay.[18]

In its Memorandum of Appeal[19] dated February 15, 2008, MBC asserted that petitioners *et al.* voluntarily received their separation pay as a consequence of their retrenchment. Further,

---

[15] *Id.* at 125-126.

[16] *Id.* at 129-135.

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

[18] *Id.* at 132-133.

[19] *Id.* at 138-147.

they filed their position paper only eight (8) months after it fell due. At any rate, it only became aware of the labor arbiter's decision when it received petitioners *et al.*'s memorandum of appeal. It therefore filed a manifestation for the labor arbiter to furnish it with copy of the decision but petitioners *et al.* opposed it. Petitioners *et al.* argued that the decision had become final and executory as against the company. The NLRC, nonetheless, furnished them, by mail, with copy of the labor arbiter's decision on January 25, 2008. It received the decision on February 7, 2007.[20] The retrenchment program was a valid exercise of its management prerogative to pave the way for adoption of new methods.[21]

By Decision[22] dated November 25, 2008, the NLRC reversed. It found that MBC's appeal was timely filed. On the merits, it ruled that reorganization is a jurisprudentially acknowledged cost-saving measure. An employer is not precluded from adopting a new policy conducive to a more economical and effective management. The law does not require that financial losses be actually suffered by the company before it can terminate the services of an employee on ground of redundancy.

Petitioners *et al.* moved for reconsideration[23] which the NLRC denied through Resolution[24] dated April 24, 2009.

The Proceedings before the Court of Appeals

Aggrieved, petitioners *et al.* went on *certiorari* to the Court of Appeals charging the NLRC with grave abuse of discretion amounting to lack or excess of jurisdiction for resolving the appeal in MBC's favor. They argued it was highly implausible for MBC to have received copy of the labor arbiter's decision only on February 7, 2008. In fact, the labor arbiter's Notice of

---

[20] *Id.* at 138-141.

[21] *Id.* at 144.

[22] *Id.* at 156-164.

[23] *Id.* at 165-169.

[24] *Id.* at 18.

Decision dated August 23, 2007 indicated that all counsels were furnished copies of the labor arbiter's decision at their respective addresses on record. Copy of the labor arbiter's decision was even furnished not only to MBC's counsel but to its president, as well.[25]

The office address of MBC's counsel, Atty. Rodinil Bugay, as indicated on record, is FJE Bldg., Esteban Street, Legaspi Village, Makati City. Atty. Bugay moved his office to the 2nd Floor, MBC Building, V. Sotto, CCP Complex, Roxas Boulevard, Pasay City, without notice to the labor arbiter. On November 5, 2007, the notice of the decision was served on Atty. Bugay's address on record (FJE Bldg) but was returned unserved because he "[m]oved [o]ut." Five (5) days thereafter, on November 10, 2007, the service of notice of the decision on MBC was deemed complete. From November 10, 2007, MBC only had ten (10) days or until November 20, 2007 to appeal to the NLRC. The appeal, nonetheless, was belatedly filed on February 18, 2008.[26]

MBC responded that when the labor arbiter sent copy of one (1) of its Orders to Atty. Bugay's new address on June 7, 2004, the same was already a formal recognition on record of said address. The NLRC is not bound to adopt the labor arbiter's findings. It is in fact authorized to make its own evaluation of the evidence and based thereon make its own factual findings.[27]

Ruling of the Court of Appeals

By its assailed Decision dated August 20, 2013, the Court of Appeals held that MBC's appeal was timely filed. There was no valid service of the labor arbiter's decision on counsel's new address on record. On this score, there was no evidence showing that counsel failed to give notice of his new office address to the labor arbiter.

---

[25] *Id.* at 39.

[26] *Id.* at 40.

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

It further ruled that the termination of Delmer Dilig, Abelardo Brillantes, and Noel Solutan was only deemed illegal because MBC failed to consider the factors of preferred status, efficiency, and seniority, in determining the employees to be retrenched. But the termination of the aforesaid employees was untainted with bad faith.

As for Noli Aparicio and Renan Clarito, the Court of Appeals found that their services were no longer needed because FFES Bacolod, where they were assigned, was already abolished.

The Court of Appeals pronounced:

WHEREFORE, premises considered, the instant petition is **PARTLY GRANTED** in that the assailed Decision and Resolution of the National Labor Relations Commission are **REVERSED** and **SET ASIDE** with respect to petitioners Dilig, Brillantes, and Solutan, but the said Decision is **UPHELD** with respect to petitioners Aparicio and Clarito.

SO ORDERED.[28]

Both MBC and petitioners *et al.* moved for partial reconsideration, which the Court of Appeals denied under Resolution[29] dated August 25, 2015.

The Present Petition

Only petitioners Noli Aparicio and Renan Clarito are now seeking this Court's discretionary appellate jurisdiction to grant them affirmative relief from the Court of Appeals' assailed dispositions.

Petitioners plead anew the circumstances supposedly showing the date when MBC was presumed to have received the decision of the labor arbiter and when it was deemed to have lapsed into finality; and why MBC's "*Hating Kapatid*" redundancy program should be struck down for lack of factual bases.[30]

---

[28] *Id.* at 48.

[29] *Id.* at 71-74.

[30] *Id.* at 15-26.

In its Comment[31] dated April 25, 2016, MBC reiterates its own factual narration pertaining to the actual date when it received the labor arbiter's decision, the timeliness of its appeal before the NLRC, and the economic considerations which compelled it to downsize its operation and adopt its "*Hating Kapatid*" redundancy program.

Petitioners' subsequent reply echoes the arguments in their petition.[32]

Issue

Did the Court of Appeals commit reversible error when it ruled that:

1) MBC's appeal to the NLRC was timely filed?
2) Petitioners were validly dismissed on ground of redundancy?

Ruling

MBC's appeal was timely filed

To resolve the issue whether MBC's appeal to the NLRC was timely filed, we reckon with the date when MBC received notice of the labor arbiter's Decision dated July 27, 2007 *vis-à-vis* the rule on service of registered mail. ***Bernarte v. PBA***[33] teaches:

> The rule on service by registered mail contemplates two situations: (1) actual service the completeness of which is determined upon receipt by the addressee of the registered mail; and (2) constructive service the completeness of which is determined upon expiration of five days from the date the addressee received the first notice of the postmaster.
>
> **Insofar as constructive service is concerned, there must be conclusive proof that a first notice was duly sent by the postmaster**

---

[31] *Id.* at 187-199.

[32] *Id.* at 210-212.

[33] 673 Phil. 384, 392 (2011).

to the addressee. Not only is it required that notice of the registered mail be issued but that it should also be delivered to and received by the addressee. Notably, the presumption that official duty has been regularly performed is not applicable in this situation. It is incumbent upon a party who relies on constructive service to prove that the notice was sent to, and received by, the addressee.

The best evidence to prove that notice was sent would be a certification from the postmaster, who should certify not only that the notice was issued or sent but also as to how, when and to whom the delivery and receipt was made. The mailman may also testify that the notice was actually delivered. (Emphasis supplied)

As proof that MBC, through counsel, was supposedly served with notice of the labor arbiter's decision at counsel's former address, petitioners presented in evidence the mail carrier's notation "'Moved out' 11/05/07."

Bernarte, nonetheless, ruled that "*the best evidence to prove that notice was sent would be a certification from the postmaster, who should certify not only that the notice was issued or sent but also as to how, when and to whom the delivery and receipt was made*." As it was, petitioners here did not present a certification from the postmaster or the testimony of the mailman pertaining to how, when, and to whom the delivery and receipt was made. All they had was the purported mail carrier's notation "'Moved out' 11/05/07," which does not suffice for purposes of proving that MBC moved to a new address without notice to the labor arbiter. More, as aptly found by the Court of Appeals, petitioner could have submitted in evidence the so-called joint declaration indicating counsel's old address and not his new address, but petitioners failed to do so. We quote the relevant disquisition of the Court of Appeals, *viz.*:

To prove that private respondent's counsel really moved to a new address without notifying the Labor Arbiter's Office of said transfer, petitioners could have submitted in evidence a certification from the Labor Arbiter's Office that would show such circumstance or that the address on record of private respondent's counsel is still the old one.

Further; in their Memorandum (on certiorari), petitioners mentioned that in a Joint Declaration allegedly made by private respondent's counsel under oath (dated February 8, 2008), which was a requirement for appeal, he (counsel) indicated his address as FJE Bldg. Esteban Street, Legaspi Village, Makati City," his old address. If indeed private respondent's counsel indicated the said old address in the said Joint Declaration, petitioners could also have submitted in evidence a certified true copy of the same document showing the said circumstance. Petitioners could have secured a certified true copy of the same document as the said is part of the case records.

Said documents (certification from the Labor Arbiter's Office mentioned earlier and certified true copy of the Joint Declaration) could have supported petitioners' allegation that the address on record of private respondent's counsel is still the old address given and that if ever said counsel had, in fact, transferred to the new address in Pasay City, counsel did so without informing the office of the Labor Arbiter. Petitioners did not present these documents in evidence. It should be noted that these matters relate to the issues of whether private respondent's appeal was timely filed, and whether the decision of the Labor Arbiter had become final and executory. Further, they relate to the question of whether the NLRC unduly entertained the appeal of private respondent. As it is, we agree with the NLRC that the petitioners failed to prove that the appeal of the private respondent was filed out of time.[34]

Verily, the NLRC, as affirmed by the Court of Appeals correctly concluded that MBC's receipt of the labor arbiter's decision should be reckoned on February 7, 2008, the date when MBC received a copy of the labor arbiter's decision not from the labor arbiter himself but from the NLRC after MBC manifested that it had not yet received said decision of the labor arbiter. Hence, when MBC eventually filed it memorandum of appeal with the NLRC ten (10) days later on February 18, 2008 (February 17, 2008, being a Sunday),[35] the same was well within the reglementary period.

Petitioners were validly dismissed

---

[34] *Rollo,* pp. 42-43.

[35] *Id.* at 39.

Petitioners' employment was validly terminated on ground of redundancy, one of the authorized causes for termination of employment under Article 298 of the Labor Code, as amended, *viz.*:

> Article 298. Closure of Establishment and Reduction of Personnel. -The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

Redundancy exists when an employee's services are in excess of what is reasonably demanded by the actual requirements of the enterprise. While a declaration of redundancy is ultimately a management decision, and the employer is not obligated to keep in its payroll more employees than are needed for its day-to-day operations, management must not violate the law nor declare redundancy without sufficient basis.[36]

A valid redundancy program requires the following: (1) written notice served on both the employees and the Department of Labor and Employment (DOLE) at least one [1] month prior to the intended date of termination of employment; (2) payment of separation pay equivalent to at least one [1] month pay for every year of service; (3) good faith in abolishing the redundant

---

[36] *Manggagawa ng Komunikasyon sa Pilipinas v. PLDT,* 809 Phil. 106, 123 (2017).

positions; and (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished, taking into consideration such factors as (a) preferred status; (b) efficiency; and (c) seniority, among others.[37]

Here petitioners were duly served notices of retrenchment which took effect thirty (30) days later. MBC also submitted its Establishment Termination Report to the DOLE containing the reasons for its adoption and implementation of the redundancy program. Petitioners were likewise promptly given their separation pay.[38]

MBC's redundancy program dubbed as "*Hating Kapatid*" bore the following policy guidelines:

POLICY GUIDELINES FOR THE "HATING KAPATID" FOR REGULAR STATIONS

[x x x]

STATUS OF EMPLOYMENT/SEPARATION PAY

All employees will be retired/separated. Those retained by the Senior Manager/OIC shall sign a waiver and will receive their retirement/separation pay (computed as of cut-off date) only upon final retirement/separation from from the station. Those retained or rehired in any way shall be the employees of the Station Manager/OIC who will be responsible for their retirement/separation benefit and other employee benefits starting from the cut-off date.

In the even that the Station Manager/OIC is separated from service, MBC shall choose and decide as to who will operate under the new system.

REPAIRS/ENGINEERING SERVICES

All repairs shall be for the account of the Station Manager/OIC. MBC shall also provide Station Manager/OIC with a list of readily available spare parts and its prices.

Engineering services shall be on a per-call basis and costs for such services shall be for the account of the Station Manager/OIC.

---

[37] *PNB v. Dalmacio,* 813 Phil. 127, 134 (2017).

[38] *Rollo,* p. 119.

PROGRAMMING/EX-DEALS/BLOCKTIME

The Station Manager/OIC shall enjoy the benefits of nationwide sales and network promotions. The. Station Manager/OIC shall continue implementing the programming policies/directives of MBC. Block time is allowed provided it does not violate any existing programming policy.

Local sales may be subject of ex-deals and no approval is needed from MBC to implement the same. However, all ex-deals shall be treated and counted as cash for purposes of remittance of MBC's share.

LOCAL/NATIONAL SALES REMITTANCE

The Station Manager/OIC shall remit MBC's share in local sales within the first ten (10) days of the following month. MBC shall remit the Station Manager/OIC share in national sales within the first ten (10) days of the collection month.

All sales to be divided between the MBC and the Station Manager/OIC shall be net of commission.

SCOREKEEPERS

MBC shall maintain scorekeepers to ensure compliance by Station Manager/OIC of programming policies and to monitor the local sales.[39]

Based thereon, FFES Bacolod was shut down as relay station of DZRH. Its continued operation was deemed unnecessary because DZRH anyway could be heard in Bacolod through FFES Iloilo. Consequently, petitioners who were both assigned at FFES Bacolod had to go, as well. Courts will not interfere unless management is shown to have acted arbitrarily or maliciously. For it is the management which is clothed with exclusive prerogative to determine the qualification and fitness of an employee for hiring or firing, promotion or reassignment. Indeed, an employer has no legal obligation to keep more employees than are necessary for its business operation.[40]

---

[39] *Id.* at 113.

[40] *Lowe, Inc., et al. v. Court of Appeals, et al.,* 612 Phil. 1044, 1058 (2009).

In labor cases, as in other administrative proceedings, only substantial evidence or such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion is required.[41] Here, the Court of Appeals relied on substantial evidence in finding that the MBC's memorandum of appeal was timely filed and its redundancy program including the consequent retrenchment of petitioners was valid. The Court will not disturb these factual findings in the absence of any special or compelling reasons.[42]

ACCORDINGLY, the petition is **DISMISSED**. The Decision dated August 20, 2013 and Resolution dated August 25, 2015 of the Court of Appeals in CA-G.R. SP No. 04514 are **AFFIRMED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Reyes, J. Jr., and *Lopez, JJ.,* concur.

---

[41] *Career Philippines Shipmanagement, Inc. v. Silvestre,* G.R. No. 213465, January 08, 2018, 850 SCRA 46, 61.

[42] *Pascual v. Burgos, et al.,* 776 Phil. 167, 182 (2016).

FIRST DIVISION

[G.R. No. 221890. December 10, 2019]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **HEIRS OF SPOUSES EUSTAQUIO and PETRA SAMBAS,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM PROGRAM (REPUBLIC ACT NO. 6657); JUST COMPENSATION; JUST COMPENSATION IN EXPROPRIATION CASES IS DEFINED AS THE FULL AND FAIR EQUIVALENT OF THE PROPERTY TAKEN FROM ITS OWNER BY THE EXPROPRIATOR WHICH SHALL BE REAL, SUBSTANTIAL, FULL AND AMPLE; FACTORS TO CONSIDER. — Just compensation in expropriation cases is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The Court repeatedly stressed that the true measure is not the taker's gain but the owner's loss. The word 'just' is used to modify the meaning of the word "compensation," to convey the idea that the equivalent to be given for the property to be taken shall be real, substantial, full and ample. The determination of just compensation is principally a judicial function. For guidance of the courts, Section 17 of R.A. No. 6657 provides: SECTION 17. *Determination of Just Compensation*.- In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

2. ID.; ID.; ID.; DEPARTMENT OF AGRARIAN REFORM (DAR) ADMINISTRATIVE ORDER (A.O.) NO. 5-98 (DAR FORMULA); ALTHOUGH STEERED TO FOLLOW STANDARDS LAID DOWN BY LAW, THE COURTS ARE

PERMITTED TO DEPART FROM USING AND APPLYING THE DAR FORMULA TO FIT THE FACTUAL CIRCUMSTANCES OF EACH CASE, SUBJECT TO THE CONDITION THAT THEY CLEARLY EXPLAIN IN THEIR DECISION THE REASONS FOR SUCH DEVIATION. — [D]AR A.O. No. 5-98 provides for a formula for the valuation of lands covered by voluntary offer to sell or compulsory acquisition, to wit: LV = (CNI × 0.6) +(CS × 0.3) + (MV × 0.1) where: LV = Land Value CNI = Capitalized Net Income CS =Comparable Sales MV = Market Value per Tax Declaration x x x. [P]etitioner used the **CNI and MV** factors under A.O. No. 5-98 in determining just compensation, as it insisted that the Comparable Sales (CS) factor is not applicable in this case. x x x. [P]etitioner failed to prove that the factors taken into consideration in computing the CNI formula are accurate. To reiterate, one of its factors is the AGP which corresponds to the latest available 12 months' gross production immediately preceding the date of field investigation. However, the Field Investigation Report does not precisely reflect the AGP concerning the subject properties. As found by the RTC-SAC, the investigator did not make an actual headcount of the coconuts standing on the subject properties as he merely relied on the information given by the occupants therein. His failure to fully and adequately supply information to petitioner necessarily affects petitioner's valuation. Conversely, the valuation made by the RTC-SAC cannot be sanctioned as correct by this Court for failure to sufficiently explain why it opted to deviate from the formula prescribed under DAR A.O. No. 5-98. Although steered to follow standards laid down by law, the courts are permitted to depart from using and applying the DAR formula to fit the factual circumstances of each case, subject to the condition that they clearly explain in their decision the reasons for such deviation. Thus, the "justness" of the enumeration of valuation factors in Section 17, the "justness" of using a basic DAR formula, and the "justness" of the components (and their weights) that flow into such formula, are all matters for the courts to decide.

3. ID.; ID.; ID.; THE REGIONAL TRIAL COURT-SPECIAL AGRARIAN COURT'S (RTC-SAC) LAND VALUATION CANNOT BE CONSIDERED AS JUST COMPENSATION WHERE THE SAME FAILED TO PROVIDE A

JUSTIFICATION IN VEERING AWAY FROM THE GUIDELINES; REMAND OF THE CASE TO THE RTC-SAC IS PROPER. — In arriving at the ₱80,000.00 per hectare valuation, the RTC-SAC merely relied on the subject properties' proximity to the provincial capitol, their nature, and the data provided by petitioner. Thus, such valuation cannot be considered by this Court as just compensation for its failure to provide a justification in veering away from the guidelines. As both the RTC-SAC and petitioner failed to comply with the relevant rules in determining just compensation, the remand of the case to the RTC-SAC as ordered by the CA is deemed proper.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
Pejo Aquino & Associates for respondents.

D E C I S I O N

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

Challenged in this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court is the order of the Court of Appeals-Cagayan de Oro (CA) remanding the case for determination of just compensation to the Regional Trial Court of Tagum City, Davao del Norte, Branch 1, acting as a Special Agrarian Court (RTC-SAC) as pronounced in its Decision[2] dated January 23, 2015 and Resolution[3] dated December 3, 2015 in CA-G.R. SP No. 04846-MIN.

Relevant Antecedents

Subject of this petition are parcels of land with an area of 10.3668 and 11.0763 hectares (subject properties), which are covered by Original Certificate of Title (OCT) No. (8532) (P-

---

[1] *Rollo*, pp. 12-33.

[2] Penned by Associate Justice Oscar V. Badelles, with Associate Justices Romulo V. Borja and Rafael Antonio M. Santos, concurring; *id.* at 40-47.

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

859) and No. (T-4425) (T-1256) T-63, respectively and owned by herein respondents, spouses Eustaquio and Petra Sambas.[4]

In accordance with the Comprehensive Agrarian Reform Program (CARP), heirs of respondents offered the properties in the amount of ₱150,000.00 per hectare to the Department of Agrarian Reform (DAR).[5]

Land Bank of the Philippines, herein petitioner, valued the subject properties at ₱508,943.41 and ₱547,156.72, respectively. As the valuation was lower than what respondents asked for, they refused the same.

In view of respondents' refusal, petitioner deposited the equivalent amount on the account of the respondents on November 9, 2001.[6]

The disagreement as to the valuation of the subject properties led to a summary administrative proceeding for the determination of just compensation, and the Office of the Regional Adjudicator rendered a Decision dated March 26, 2002, adopting the valuation of the petitioner.[7]

Unsatisfied, respondents filed a petition for determination of just compensation before the Regional Trial Court-Special Agrarian Court (RTC- SAC.)[8] In said petition, respondents moved that the valuation of the subject properties at ₱80,000.00 to ₱140,000.00 per hectare. In supporting their valuation, respondents presented the valuation made by petitioner, DAR, and court-appointed commissioners on comparable properties which were appraised at a higher rate.[9]

---

[4] *Id.* at 41.

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.* at 97.

Petitioner countered the computation by valuating the subject properties at ₱49,000.00 per hectare. To reinforce its claim, petitioner presented the Field Investigation Report of the subject properties, the annual production per crop, and Claims Valuation and Processing Forms.[10]

In a Decision dated September 29, 2008, the RTC-SAC valued the subject properties at ₱80,000.00 per hectare.[11]

Aggrieved, petitioner filed a Motion for Reconsideration, which was denied in an Order[12] dated February 21, 2002. In arriving at the ₱80,000.00 per hectare rate, the RTC-SAC used the ₱49,000.00 per hectare valuation by petitioner as the reckoning point before it considered other factors, such as the valuations made by the petitioner on similar and comparable properties, the nature of the subject properties, among others. It observed that the investigator of petitioner did not make an actual count of coconut trees standing on the subject properties deemed his report unreliable. On the other hand, the estimated valuation made by respondents cannot likewise be given full credence as they only used the Capitalized Income Approach only and no other. Hence, in the exercise of its judicial discretion, the RTC-SAC stood by its earlier decision that the subject properties are valued at ₱80,000.00 per hectare. The dispositive portion of which reads:

> WHEREFORE, as the Court finds no error in its Decision, which defendants sought to be reconsidered, and finding that the amount fixed at EIGHTY THOUSAND PESOS (₱80,000.[00]) per hectare is JUST, equitable, and reasonable COMPENSATION for those parcels of land, subject of this case, the motion for reconsideration of defendants is hereby DENIED.
>
> SO ORDERED.[13]

---

[10] *Id.*

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

[12] Penned by Presiding Judge Virginia D. Tehano-Ang; *id.* at 96-103.

[13] *Id.* at 103.

Still seeking relief, petitioner elevated the matter before the CA *via* a petition for review under Section 60 of Republic Act (R.A.) No. 6657. Petitioner essentially questioned the valuation made by the RTC-SAC.

In a Decision[14] dated January 23, 2015, the CA remanded the case to the RTC-SAC for the proper determination of just compensation. The CA found inacceptable the valuations made by the petitioner and RTC-SAC. The CA faulted petitioner for using the Capital Net Income (CNI) formula only to the exclusion of others, falling short of the requirements provided under Section 17 of R.A. No. 6657. As to the valuation made by the RTC-SAC, the CA found the same inaccurate for it used a different formula than that prescribed under Administrative Order (A.O.) No. 5.

> WHEREFORE, the petition is GRANTED. The Decision dated 29 September 2008 and the Order dated 21 February 2012 of the Regional Trial Court of Tagum City, Branch 1, Acting as Special Agrarian Court, in *SP Agrarian Case No. 75-2002* are hereby REVERSED and SET ASIDE.
>
> The instant case is REMANDED to the said court which is directed to determine, and with the assistance of at least three commissioners, the just compensation due to the respondent, in accordance with Section 17 of R.A. No. 6657 and DAR Administrative Order No. 05, series of 1998.
>
> SO ORDERED.[15]

A motion for reconsideration filed by petitioner was likewise denied in a Resolution[16] dated December 3, 2015.

Hence, this instant petition, essentially contending that the CA committed reversible error in remanding the case to RTC-SAC as it failed to properly appreciate the evidence on record.

---

[14] *Supra* note 2.

[15] *Rollo*, p. 46.

[16] *Supra* note 3.

In its Comment,[17] respondents supported RTC-SAC's valuation as correct and accurate because of the consideration of factors such as the nature of the land, its comparative sales, current value of like properties, income, location, among others in fixing the value of just compensation.

The Issue

In the main, the issue lies on which valuation shall prevail — that assessed by the RTC-SAC or herein petitioner?

This Court's Ruling

Just compensation in expropriation cases is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The Court repeatedly stressed that the true measure is not the taker's gain but the owner's loss. The word 'just' is used to modify the meaning of the word "compensation," to convey the idea that the equivalent to be given for the property to be taken shall be real, substantial, full and ample.[18]

The determination of just compensation is principally a judicial function. For guidance of the courts, Section 17 of R.A. No. 6657 provides:

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

Relevantly, DAR A.O. No. 5-98 provides for a formula for the valuation of lands covered by voluntary offer to sell or compulsory acquisition, to wit:

---

[17] *Id.* at 84-95.

[18] *Republic of the Philippines v. Sps. Legaspi*, G.R. No. 221995, October 3, 2018.

LV= (CNI X 0.6) + (CS X 0.3) + (MV X 0.1)

Where: LV= Land Value

CNI = Capitalized Net Income
CS = Comparable Sales
MV = Market Value per Tax Declaration

The above formula shall be used if all three factors are present, relevant, and applicable.

A1. When the CS factor is not present and CNI and MV are applicable, the formula shall be:

LV= (CNI X 0.9) + (MV X 0.1)

A2. When the CNI factor is not present, and CS and MV are applicable, the formula shall be:

LV= (CS X 0.9)+ (MV X 0.1)

A3. When both the CS and CNI are not present and only MV is applicable, the formula shall be:

LV=MV x 2

In no case shall the value of idle land using the formula MV x 2 exceed the lowest value of land within the same estate under consideration or within the same barangay or municipality (in that order) approved by LBP within one (1) year from receipt of claim folder.

In this case, petitioner used the **CNI and MV** factors under A.O. No. 5-98 in determining just compensation, as it insisted that the Comparable Sales (CS) factor is not applicable in this case.

CNI is the difference between the gross sales and total cost of operations capitalized at 12%.[19] In the case of *Land Bank v. Omengan*,[20] this Court summarized the equation for the determination of the CNI based on DAR A.O. No. 5-98, to wit:

The CNI is expressed in equation form as **CNI = (AGP x SP) - CO/capitalization rate**. Where:

---

[19] Item 11-B of DAR A.O. No. 5-98.

[20] 813 Phil. 901, 917-918 (2017).

AGP = Average Gross Production corresponding to the latest available 12 months' gross production immediately preceding the date of FI (field investigation)

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

CO = Cost of Operations

Whenever the cost of operations could not be obtained or verified, an assumed net income rate (NIR) of 20% shall be used. Landholdings planted to coconut which are productive at the time of FI shall continue to use the assumed NIR of 70 %. DAR and LBP shall continue to conduct joint industry studies to establish the applicable NIR for each crop covered under CARP.

0.12 = Capitalization rate

[x x x][21]

To arrive at the value of the CNI, the 20% Net Income Rate (NIR) and the 12% capitalization rate must likewise be considered.

In this case, petitioner failed to prove that the factors taken into consideration in computing the CNI formula are accurate. To reiterate, one of its factors is the AGP which corresponds to the latest available 12 months' gross production immediately preceding the date of field investigation. However, the Field Investigation Report does not precisely reflect the AGP concerning the subject properties. As found by the RTC-SAC, the investigator did not make an actual headcount of the coconuts standing on the subject properties as he merely relied on the information given by the occupants therein.[22] His failure to fully

---

[21] *Id.* at 919.

[22] *Rollo*, p. 101.

and adequately supply information to petitioner necessarily affects petitioner's valuation.

Conversely, the valuation made by the RTC-SAC cannot be sanctioned as correct by this Court for failure to sufficiently explain why it opted to deviate from the formula prescribed under DAR A.O. No. 5-98.

Although steered to follow standards laid down by law, the courts are permitted to depart from using and applying the DAR formula to fit the factual circumstances of each case, subject to the condition that they clearly explain in their decision the reasons for such deviation.[23] Thus, the "justness" of the enumeration of valuation factors in Section 17, the "justness" of using a basic DAR formula, and the "justness" of the components (and their weights) that flow into such formula, are all matters for the courts to decide.[24]

In arriving at the ₱80,000.00 per hectare valuation, the RTC-SAC merely relied on the subject properties' proximity to the provincial capitol, their nature, and the data provided by petitioner.[25] Thus, such valuation cannot be considered by this Court as just compensation for its failure to provide a justification in veering away from the guidelines.

As both the RTC-SAC and petitioner failed to comply with the relevant rules in determining just compensation, the remand of the case to the RTC-SAC as ordered by the CA is deemed proper.

WHEREFORE, premises considered, the instant petition is **DENIED**. Accordingly, the Decision dated January 23, 2015 and the Resolution dated December 3, 2015 of the Court of Appeals-Cagayan de Oro in CA-G.R. SP No. 04846-MIN are **AFFIRMED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa (Working Chairperson), Lazaro-Javier, and *Lopez, JJ.*, concur.

---

[23] *Alfonso v. Land Bank of the Philippines*, 801 Phil. 217, 284 (2016).

[24] *Land Bank of the Philippines v. Rural Bank of Hermosa (Bataan), Inc.*, 814 Phil. 157, 166 (2017).

[25] *Rollo* at 101-102.

FIRST DIVISION

[G.R. No. 229693. December 10, 2019]

ENGR. FELIPE A. VIRTUDAZO and SPOUSE ESTELITA M. VIRTUDAZO, *petitioners, vs.* **ALIPIO LABUGUEN AND HIS SPOUSE DAMIANA MABUTI and GENARA LABUGUEN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; AS A RULE, ONLY QUESTIONS OF LAW SHOULD BE RAISED; AN EXCEPTION IS WHEN THE FINDINGS OF THE COURT OF APPEALS ARE CONTRARY TO THOSE OF THE TRIAL COURT; CASE AT BAR. — Basic is the rule that only questions of law may be raised in a Rule 45 petition. A recognized exception to this rule is when the findings of fact of the appellate court and the trial court are conflicting. In this case, there is a conflicting finding as to whether the sale between Florentino Maurin and spouses Labuguen is absolute or conditional. There is also a conflicting finding as to whether the subject property was redeemed or repurchased by Florentino Maurin from DBP. These issues ultimately determine the pivotal question of who between spouses Virtudazo and spouses Labuguen have a better right to the disputed 270-sq m portion of the subject property.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONDITIONAL OBLIGATIONS; A SALE IS CONDITIONAL WHERE THE EFFICACY OR OBLIGATORY FORCE OF THE VENDOR'S OBLIGATION TO TRANSFER TITLE IS SUBORDINATED TO THE HAPPENING OF A FUTURE AND UNCERTAIN EVENT, SO THAT IF THE SUSPENSIVE CONDITION DOES NOT TAKE PLACE, THE PARTIES WOULD STAND AS IF THE CONDITIONAL OBLIGATION HAD NEVER EXISTED; CASE AT BAR. — Article 1181 of the Civil Code provides that "[i]n conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition." A sale is conditional where the efficacy

or obligatory force of the vendor's obligation to transfer title is subordinated to the happening of a future and uncertain event, so that if the suspensive condition does not take place, the parties would stand as if the conditional obligation had never existed. The RTC is correct only insofar as it held that the MOA required spouses Labuguen's assumption of the mortgage with the DBP. The assumption of mortgage is a condition to the seller's consent. It is not disputed that such assumption of mortgage did not take place because DBP did not give its consent thereto. Because spouses Labuguen did not comply with the condition to assume the mortgage, the sale as embodied under the MOA was not perfected.

3. ID.; ID.; MORTGAGE; DOES NOT PASS TITLE OR ESTATE TO THE MORTGAGEE AS IT IS NOTHING MORE THAN A LIEN, ENCUMBRANCE, OR SECURITY FOR A DEBT; MORTGAGOR REMAINS TO BE THE OWNER OF THE PROPERTY ALTHOUGH THE PROPERTY IS SUBJECTED TO A LIEN; CASE AT BAR. — The fact that the property was mortgaged to DBP at the time the sale was perfected is of no moment. A mortgage does not pass title or estate to the mortgagee as it is nothing more than a lien, encumbrance, or security for a debt. In a contract of mortgage, the mortgagor remains to be the owner of the property although the property is subjected to a lien. As such, the mortgagor retains the right to dispose of the property as an attribute of ownership. Thus, Florentino Maurin had the right to sell the mortgaged property, or a portion thereof, which he, in fact, did through the EJS with Sale. The effect of the sale of the 270-sq m portion of the property while the mortgage in favor of DBP subsists is not to suspend the efficacy of such sale, but that the property right which spouses Labuguen have acquired is made subject to DBP's mortgage right. The sale or transfer of the mortgaged property cannot affect or release the mortgage; thus, the purchaser or transferee is necessarily bound to acknowledge and respect the encumbrance.

4. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION, SATISFACTION AND EFFECT OF JUDGMENTS; RULES OF COURT; EXECUTION OF JUDGMENTS FOR MONEY; JUDGMENTS FOR MONEY ARE ENFORCED EITHER BY IMMEDIATE PAYMENT ON DEMAND, SATISFACTION OF LEVY, OR GARNISHMENT OF DEBTS AND CREDITS IN ACCORDANCE WITH SECTION 9,

RULE 39 OF THE RULES OF COURT; CASE AT BAR. — Judgments for money are enforced either by immediate payment on demand, satisfaction of levy, or garnishment of debts and credits in accordance with Section 9, Rule 39 of the Rules of Court. x x x Since Florentino Maurin failed to pay the ₱625,000.00 to spouses Virtudazo, the property was levied upon for auction. However, at the time of the levy on April 26, 1995, Florentino Maurin was no longer the owner of, nor had any right, title, or interest in, the 270-sq m portion of the property. Moreover, at the time of the levy, Felipe Virtudazo already had knowledge that Alipio Labuguen was a "legal occupant" of the disputed portion. A notice of *lis pendens* was in fact annotated on Florentino Maurin's title prior to the levy. While it is true that at the time of the levy, the 270-sq m portion was not registered in the name of Alipio Labuguen, and that the entire property appears to still be owned by, and registered in the name of Florentino Maurin, Felipe Virtudazo nevertheless had actual notice of the existence of Alipio Labuguen's claim over said 270-sq m portion and of his actual possession thereof. Felipe Virtudazo is necessarily bound by the outcome of the complaint for annulment of deeds, the pendency of which being duly annotated on the title. Thus, the necessity for registration of the sale in favor of Alipio Labuguen in order to bind Felipe Virtudazo as a purchaser at the execution sale does not exist.

5. ID.; ID.; ID.; ID.; A PURCHASER IN AN EXECUTION SALE ONLY ACQUIRES SUCH INTEREST THAT WHICH IS POSSESSED BY THE DEBTOR; CASE AT BAR. — [A] purchaser in an execution sale only acquires such interest that which is possessed by the debtor. As held in *Leyson v. Tañada*: Further, this Court had held in *Pabico vs. Ong Pauco* that purchasers at execution sales should bear in mind that the rule of *caveat emptor* applies to such sales, that the sheriff does not warrant the title to real property sold by him as sheriff, and that it is not incumbent on him to place the purchaser in possession of such property. The rationale for this rule is: At a sheriffs sale they do not sell the land advertised to sell, although that is a common acceptation, but they simply sell what interest in that land the judgment debtor has; and if you buy his interest, and it afterwards develops that he has none, you are still liable on your bid, because you have offered so much for his interest in open market, and it is for you to determine before you bid what his interest is worth. x x x Spouses Virtudazo did not

acquire the property itself by virtue of the levy on execution but only such interest as judgment debtor Florentino Maurino had therein. As such, all that spouses Virtudazo is entitled to, is the 330-sq m portion of the property.

APPEARANCES OF COUNSEL

Raymond M. Samarita for petitioners.
Jose Carlo C. Pancho for respondents.

D E C I S I O N

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

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the Decision[2] dated February 4, 2016 and Resolution[3] dated January 19, 2017 of the Court of Appeals-Mindanao (CA) in CA-G.R. CV No. 03324-MIN. The CA reversed the RTC ruling, and instead affirmed herein respondents' ownership over a 270-square meter portion of the subject property.

Facts

The present controversy involves a parcel of land owned by Spouses Gavina Sadili-Maurin and Florentino Maurin (spouses Maurin) under Original Certificate Title (OCT) No. P-10087[4] with an area of 600 square meters (sq m) and located at Poblacion, Digos City, Davao del Sur. Spouses Maurin mortgaged this land, together with its improvements, to the Development Bank of the Philippines (DBP)[5] as security for their loan.

---

[1] *Rollo*, pp. 28-60.

[2] Penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justices Maria Filomena D. Singh and Perpetua T. Atal-Paño; *id.* at 62-77.

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

[4] *Id.* at 85-90.

[5] *Id.* at 63.

On March 20, 1984, and after Gavina Sadili-Maurin's death, Florentino Maurin agreed to convey a 270-sq m portion of the land and its improvements to respondent Alipio S. Labuguen under an instrument denominated as a Memorandum of Agreement (MOA).[6] Alipio S. Labuguen agreed to pay and, in fact, paid ₱120,000.00, and undertook to assume the obligations of spouses Maurin to DBP. Thereupon, the Labuguens occupied said portion.[7] DBP, however, refused Alipio S. Labuguen's offer to assume the loan obligation.[8]

Nevertheless, on August 31, 1984, and while the mortgage loan with the DBP was still outstanding,[9] the heirs of Gavina Sadili-Maurin executed an Extrajudicial Settlement of the Estate of Gavina Sadili-Maurin with Sale (EJS with Sale)[10] wherein they conveyed the 270-sq m portion of the land, with the building erected on it, to Alipio S. Labuguen. Unlike the previous MOA, the EJS with Sale did not contain any obligation for Alipio S. Labuguen to assume spouses Maurins' loan with the DBP. Neither the MOA nor the EJS with Sale were registered.[11]

Upon failure of spouses Maurin to pay their loan obligations, DBP extrajudicially foreclosed the entire property and was declared the highest bidder at the auction sale on May 9, 1986.[12] The records do not disclose when the sheriff's certificate of sale was registered. The records also do not show whether a certificate of final sale had been issued in favor of DBP.

Later, Florentino Maurin offered the entire property for sale to petitioner Engr. Felipe A. Virtudazo (Felipe Vertudazo). Felipe Virtudazo agreed to purchase the lot from DBP. Thus, on May

---

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

[7] *Id.* at 94.

[8] *Id.* at 64.

[9] *Id.*

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

[11] *Id.* at 94.

[12] *Id.* at 64.

18, 1987, Felipe Virtudazo issued a check in the amount of ₱625,000.00 to purchase the property in his name. It turned out, however, that Florentino Maurin used Felipe Virtudazo's check to redeem the foreclosed lot in his name.[13]

This led Felipe Virtudazo to file a complaint for Specific Performance or Recovery of Sum of Money, Damages and Attorney's Fees with Preliminary Injunction against DBP, with spouses Maurin later on included as intervenors.[14] Felipe Virtudazo initially prayed that DBP be ordered to execute a document of sale in his favor.[15] In the course of trial, it was shown that Florentino Maurin refused to convey the property to Felipe Virtudazo.[16] Felipe Virtudazo also testified that he was no longer interested in purchasing the property as it was "problematic," being that Alipio S. Labuguen was occupying a portion thereof.[17] He thus, instead, prayed for the return of his ₱625,000.00.[18]

Meanwhile, on September 21, 1987, Alipio Labuguen filed a complaint for Annulment of Deeds and Damages with Request for Issuance of Writ of Preliminary Attachment against the heirs of Gavina Sadili-Maurin. He prayed that the EJS with Sale be annulled as it allegedly contravenes the 10-year prohibition against conveyances of land covered by a free patent. Allegedly, this was the reason why Alipio S. Labuguen did not register either the MOA or the EJS with Sale. Spouses Alipio S. Labuguen and Damiana Mabuti (spouses Labuguen) instead, demanded for the return of their ₱120,000.00 which Florentino Maurin refused.[19] They also caused the annotation of a Notice of *Lis Pendens* on the lot's title.[20]

---

[13] *Id.*

[14] *Id.*

[15] *Id.* at 65.

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.* at 64-65.

[20] *Id.* at 65.

Felipe Virtudazo's complaint for Specific Performance or Recovery of Sum of Money was resolved in his favor with the RTC finding that Florentino Maurin benefited from Felipe Virtudazo's money which the former used in settling his loan obligations with the DBP.[21] Thus, the trial court ordered Florentino Maurin to return to Felipe Virtudazo the amount of ₱625,000.00. The trial court also ordered DBP to deliver the Deed of Reconveyance and the OCT over the subject property to Florentino Maurin.[22] The trial court's decision read in part:

> The [spouses Maurin] benefited from the money of the [spouses Virtudazo] because the property which was already foreclosed by the DBP was finally returned to them after they paid for their obligation to the DBP using the money of the [spouses Virtudazo]. There are strong evidences [sic] showing that [Florentino Maurin] refused to go on with the agreement to sell the property to the [spouses Virtudazo] before this case was filed. In fact, the original action was that the [spouses Virtudazo] were compelling the DBP to execute a document of sale which the DBP cannot lawfully do because the DBP has no more right over the property. There is of course a final decision on the part of [Felipe Virtudazo] not to go on with the acquisition of the property but to recover the money used by (Florentino Maurin] to buy back the property. His testimony is quoted below:
>
> Q. Mr. Virtudazo, what do you want now with the [DBP] do [sic] in connection with this case, now?
>
> A. What I wanted of the [DBP] is in order that they will return to me my money in the amount of [₱]625,000.00 [sic].
>
> Q. Why, are you not interested anymore in acquiring that property?
>
> A. I am not interested anymore because there is a legal occupant or problems regarding Mr. Labuguen.
>
> x x x x x x x x x
>
> This testimony of Felipe Virtudazo shows his decision to forego with his prayer for specific performance and go on with his prayer for

---

[21] *Id.*

[22] *Id.* at 66.

recovery of sum of money. This was emphasized by his counsel Atty. Dominador N. Calamba II, which among others prayed for the return of the [₱]625,000.00.

With these evidences [sic], the court is convinced that the payment made to the [DBP] was clearly receipted in the name of intervenor Florentino Maurin because the property which was previously mortgaged to the [DBP] and subject of this case is owned by him. The DBP is not clearly shown to be a party to the agreement between [Felipe Virtudazo], the plaintiff and [Florentino Maurin], the intervenor.

WHEREFORE, premises considered, the Court finds the [intervenor] Florentino Maurin liable to return to [spouses Virtudazo] the sum of SIX HUNDRED TWENTY-FIVE THOUSAND ([₱]625,000.00) PESOS.

Further, the [DBP] is directed to deliver the Deed of Reconveyance and the Original Certificate of Title No. P-10087 to [Florentino Maurin].

SO ORDERED.[23]

Pursuant to this decision, DBP executed a *Deed of Redemption* dated April 28, 1995 in favor of Florentino Maurin. Florentino Maurin, however, failed to pay the amount of ₱625,000.00 to Felipe Virtudazo. Consequently, on April 26, 1995, the subject property was levied upon for auction.[24] At the auction, the entire property was sold in favor of spouses Felipe A. Virtudazo and Estelita[25] Virtudazo (spouses Virtudazo) in the amount of ₱625,000.00, they being the highest bidder.[26] After the expiration of the one-year redemption period, a new title covering the entire property was issued in the name of spouses Virtudazo.[27]

Meantime, on March 13, 2003, spouses Labuguen complaint for Annulment of Deeds was dismissed by the RTC. The RTC

---

[23] *Id.* at 65-66.

[24] *Id.* at 97-98.

[25] "Esterlita" in some parts of the *rollo*.

[26] *Id.* at 99-102.

[27] *Id.* at 103-104.

held that the prohibition on the transfer or alienation of a homestead patent within 10 years no longer applied.[28]

Because spouses Labuguen refused to vacate the 270-sq m portion of the property and to pay the accumulated rents, spouses Virtudazo filed the complaint *a quo* for Quieting of Title, Recovery of Possession, Attorney's Fees and Damages against them.

Ruling of the RTC

In ruling that spouses Virtudazo had a better right over the 270-sq m portion of the property, the court *a quo* reasoned that the MOA and the EJS with Sale were a conditional sale that was not perfected because spouses Labuguen failed to comply with the assumption of mortgage therein contained. It held that spouses Labuguen only had the right to possess the property which they lost when DBP foreclosed the mortgage. It also adjudged spouses Labuguen to be builders in bad faith since they knew that the property was mortgaged, that it was foreclosed, and that another title has been issued in the name of spouses Virtudazo. The lower court also held that when Florentino Maurin purchased the property after the foreclosure, he purchased it anew and such did not operate to restore spouses Labuguen's rights which were "cut off" at the expiration of the redemption period.

On January 7, 2013, the court *a quo* rendered judgment with the following disposition:

> WHEREFORE, IN VIEW OF THE ABOVE, judgment is hereby rendered in general for the [spouses Virtudazo] and partly for the (spouses Labuguen] insofar as the improvements, viz.:
>
> a) Declaring [spouses Virtudazo] and [their] successors-in-interest to be the true and lawful owners of the entire 600 square meters parcel of land covered by TCT No. T-34310;
>
> b) Ordering [spouses Labuguen], their families, agents, assigns, sub- lessees, and successors-in-interest, to immediately vacate and surrender to [spouses Virtudazo] the possession of the Two Hundred

[28] *Id.* at 96.

Seventy (270) Square Meters portion [of the] property covered by TCT [No.] T-34310;

c) Ordering [spouses Virtudazo] to pay [spouses Labuguen] in the amount of ₱60,000.00 plus six percent (6%) per annum reckoned from May 15, 1987 as reimbursement of the improvements introduced; or at its option, the [spouses Labuguen] may remove it without destroying the property;

d) Dismissing [spouses Labuguen's] counterclaim;

e) No pronouncement as to costs.

SO ORDERED.[29]

Spouses Labuguen appealed to the CA arguing in the main that the EJS with Sale was an absolute sale making them lawful owners of the 270- sq m portion of the property. As such, they argued that the levy in favor of spouses Virtudazo was invalid insofar as it included the 270-sq m portion owned by them.

Ruling of the CA

The CA resolved three issues on appeal: *first*, whether the EJS with Sale was an absolute sale or a conditional sale; *second*, whether the foreclosure of the mortgage by the DBP "cut off" the rights of spouses Labuguen over the 270-sq.m. portion; and *third*, whether the levy upon the entire property, including the 270-sq.m. portion, was valid.

In granting spouses Labuguen's appeal, the CA ruled that the EJS with Sale was an absolute sale by virtue of which they became owners of the 270-sq m portion of the lot together with the building. Spouses Labuguen in fact attempted to register the EJS with Sale only to be advised by their counsel that it could not be registered as the conveyance was allegedly contrary to law, thus they instituted an action against spouses Maurin to recover their ₱120,000.00.

The CA further held that the foreclosure of the entire property and the subsequent redemption thereof by Florentino Maurin did not extinguish spouses Labuguen's ownership over the 270-

[29] *Id.* at 34.

sq m portion. It held that Florentino Maurin's act of redeeming the entire property served to discharge the mortgage, and, thus restored spouses Labuguen's right of ownership sans any lien.[30]

Finally, the CA held that the levy and execution sale of the property, insofar as it included the 270-sq m portion, was invalid. It held that the levy and auction should not have included the 270-sq m portion since this no longer belonged to Florentino Maurin. Finally, the CA held that spouses Virtudazo were not buyers in good faith, having known that the property had an adverse claimant.[31]

The CA accordingly disposed:

> FOR THESE REASONS, the appeal of [spouses Labuguen] is GRANTED. The assailed Decision of the RTC Branch 19 of Digos City, Davao del Sur, in Civil Case No. 4877 is REVERSED. [Spouses Labuguen] are declared the rightful owners of the 270-[sq m] portion of the lot covered by what is now presently TCT No. T-34310 and the building erected on this portion of the lot. [Spouses Virtudazo] are ordered to RECONVEY to [spouses Labuguen] the 270-square meter portion of the lot covered by TCT No. T-34310.
>
> SO ORDERED.[32]

The denial of spouses Virtudazo's motion for reconsideration led to the filing of the instant petition raising the following:

Issues

I.

The Honorable Court of Appeals gravely erred when it ruled that the EJS with Sale over the 270 [sq m] portion of lot was an absolute sale.

II.

The Honorable Court of Appeals gravely erred when it ruled that DBP's foreclosure of the property including that of the 270 [sq m]

---

[30] *Id.* at 73.

[31] *Id.* at 75-76.

[32] *Id.* at 76-77.

portion parcel of lot and [Florentino] Maurin's subsequent redemption did not cut off the rights of the [spouses Labuguen].

III.

The Honorable Court of Appeals gravely erred when it ruled that the levy and execution sale over the entire 600 [sq m] insofar as it included the 270 [sq m] portion was invalid.[33]

Spouses Virtudazo argue that the EJS with Sale is a conditional contract of sale since the payment of the mortgage debt is a condition precedent to the transfer of ownership over the 270-sq m portion to spouses Labuguen.

Even assuming spouses Labuguen became the owner of said portion through the EJS with Sale, they argued that the eventual foreclosure by the DBP of the entire property and the expiration of the redemption period had extinguished spouses Labuguen's rights thereon. Since the redemption period already expired, when Florentino Maurin fraudulently used spouses Virtudazo's money, what was effected was a repurchase of the property. They argued that had spouses Virtudazo repurchased the property themselves, the right of spouses Labuguen over the 270-sq m portion would not have been restored.[34]

Spouses Virtudazo further contend that the levy on execution in their favor enjoys preference over the EJS with Sale, the former being a proceeding *in rem* which attaches against the property.[35]

Ruling of the Court

We deny the petition.

Basic is the rule that only questions of law may be raised in a Rule 45 petition.[36] A recognized exception to this rule is when

---

[33] *Id.* at 37.

[34] *Id.* at 49.

[35] *Id.* at 53.

[36] Rules of Court, Rule 45, Section 1 expressly provides that the petition filed shall raise only questions of law, which must be distinctly set forth.

the findings of fact of the appellate court and the trial court are conflicting.[37] In this case, there is a conflicting finding as to whether the sale between Florentino Maurin and spouses Labuguen is absolute or conditional. There is also a conflicting finding as to whether the subject property was redeemed or repurchased by Florentino Maurin from DBP. These issues ultimately determine the pivotal question of who between spouses Virtudazo and spouses Labuguen have a better right to the disputed 270-sq m portion of the subject property.

The EJS with Sale is a perfected contract of sale

Spouses Virtudazo theorize that since the property was mortgaged to DBP, the sale between Florentino Maurin and spouses Labuguen was conditioned upon the payment of Florentino Maurin's debt to DBP. They argue that spouses Labuguen's ownership was not perfected since the mortgage was eventually foreclosed by DBP. On the other hand, the RTC found that under the terms of both the MOA and the EJS with

---

[37] In *The Insular Life Assurance Company, Ltd v. Court of Appeals*, 472 Phil. 11, 22-23 (2004), the following were cited as exceptions to this rule:

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 Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
7. when the findings are contrary to the trial court;
8. when the findings are conclusions without citation of specific evidence on which they are based;
9. when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent;
10. when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and
11. when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

Sale, the transfer of the 270-sq m portion was conditioned upon spouses Labuguen's assumption of mortgage.

Article 1181 of the Civil Code provides that "[i]n conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition." A sale is conditional where the efficacy or obligatory force of the vendor's obligation to transfer title is subordinated to the happening of a future and uncertain event, so that if the suspensive condition does not take place, the parties would stand as if the conditional obligation had never existed.[38]

The RTC is correct only insofar as it held that the MOA required spouses Labuguen's assumption of the mortgage with the DBP. The assumption of mortgage is a condition to the seller's consent.[39] It is not disputed that such assumption of mortgage did not take place because DBP did not give its consent thereto. Because spouses Labuguen did not comply with the condition to assume the mortgage, the sale as embodied under the MOA was not perfected.

Nevertheless, it appears that the Maurins and Labuguens intended to push thru with the sale of the 270-sq m portion of the property, thus, they entered into the EJS with Sale. As the CA correctly observed, while the MOA required that spouses Labuguen assume Florentino Maurin's obligation with the DBP, the EJS with Sale no longer required such assumption of obligation.

It is likewise clear from the terms of the EJS with Sale that the payment of the mortgage obligation was not a condition that suspended the transfer of title over the 270-sq m portion of the property. Far from being a conditional sale, the EJS with Sale has all the elements of a contract of sale. There is consent to transfer ownership over the 270-sq m portion of the property in exchange for the price of ₱120,000.00. The EJS with Sale

---

[38] *Spouses Serrano and Herrera v. Caguiat*, 545 Phil. 660, 667 (2007).

[39] *Spouses Chua v. Gutierrez*, 652 Phil. 84, 95 (2010).

between Florentino Maurin and spouses Labuguen is therefore valid and binding as between them.

The fact that the property was mortgaged to DBP at the time the sale was perfected is of no moment. A mortgage does not pass title or estate to the mortgagee as it is nothing more than a lien, encumbrance, or security for a debt.[40] In a contract of mortgage, the mortgagor remains to be the owner of the property although the property is subjected to a lien.[41] As such, the mortgagor retains the right to dispose of the property as an attribute of ownership.[42] Thus, Florentino Maurin had the right to sell the mortgaged property, or a portion thereof, which he, in fact, did through the EJS with Sale.

The effect of the sale of the 270-sq m portion of the property while the mortgage in favor of DBP subsists is not to suspend the efficacy of such sale, but that the property right which spouses Labuguen have acquired is made subject to DBP's mortgage right.[43] The sale or transfer of the mortgaged property cannot affect or release the mortgage; thus, the purchaser or transferee is necessarily bound to acknowledge and respect the encumbrance.[44]

Redemption of the entire property by Florentino Maurin benefited spouses Labuguen

Spouses Virtudazo insist that DBP's foreclosure of the property effectively "cut-off" the rights of spouses Labuguen over the 270-sq m portion. According to spouses Virtudazo, since the redemption period already expired, ownership over the property was consolidated in favor of DBP, and, when Florentino Maurin used spouses Virtudazo's money what was effected was a repurchase of the property, not redemption.

---

[40] *Id.*

[41] *Heirs of Manlapat v. Court of Appeals*, 498 Phil. 453 (2005).

[42] *Philippine National Bank v. Mallorca*, 128 Phil. 747 (1967).

[43] *Santos v. Macapinlac,* 51 Phil. 224 (1927).

[44] *Garcia v. Villar*, 689 Phil. 363 (2012).

Spouses Virtudazo's argument is premised on its erroneous assumption that ownership over the property was consolidated in favor of DBP. Conspicuously missing in this case is the allegation as to when the sheriff's certificate of sale was registered by DBP so as to determine when the period to redeem should be reckoned. Thus, it was not factually settled that the period to redeem already expired. There was likewise no allegation that a certificate of final sale was issued to DBP. On the contrary, that the property was successfully redeemed by Florentino Maurin is shown by the fact that DBP itself issued a Deed of Redemption in Florentino Maurin's favor which was annotated on the property's OCT. As such, when Florentino Maurin paid the ₱625,000.00 it was clearly for purposes of redemption, not repurchase.

In fact, spouses Labuguen could not have effectively redeemed the property in their name considering that the EJS with Sale was not registered. DBP was charged with the obligation to recognize the right of redemption only of Florentino Maurin as original mortgagor.[45] Likewise, since DBP's consent to the EJS with Sale was not secured, it was not even necessary for DBP to foreclose the 270-sq m portion separately, nor, to include spouses Labuguen in the foreclosure proceedings.[46] In buying the 270-sq m portion with knowledge that it was mortgaged, Alipio Labuguen undertook to allow such property to be foreclosed and sold upon failure of Florentino Maurin to pay the debt upon maturity. Alipio Labuguen, however, did not replace Florentino Maurin in the original obligation and could not do so without DBP's consent.[47]

There is also no merit to the contention that DBP's foreclosure of the mortgage "cut-off" the rights of spouses Labuguen over the 270-sq m portion.

During the redemption period, Florentino Maurin and spouses Labuguen remained to be the respective owners of the 330-sq

---

[45] See *Bonnevie v. Court of Appeals*, 210 Phil. 100 (1983).

[46] See *Dela Paz v. Macondray & Co., Inc.*, 66 Phil. 402 (1938).

[47] See *Garcia v. Villar*, *supra* note 43.

m and 270-sq m portions of the property. DBP, meantime, merely acquires an inchoate right over the property until after the period of redemption has expired without the right having been exercised.[48] The effect of the seasonable exercise of redemption was to clear the lien over the title.[49] Thus, it is inaccurate to say that the foreclosure sale severed the ownership of Florentino Maurin and spouses Labuguen over the property as they never lost ownership thereof. Redemption merely restored the title over the property freed of the encumbrance.[50] Since Florentino Maurin redeemed the entire property, such redemption benefited spouses Labuguen insofar as their 270-sq m portion is concerned.

At the time of levy, spouses Labuguen already owned the 270 sq m-portion which ownership was known to spouses Virtudazo

Spouses Virtudazo's claim over the entire property is anchored upon the result of the levy on execution. To recall, spouses Virtudazo originally claimed that DBP should execute a deed of sale covering the entire property in their favor. Clearly, this cannot be done as spouses Virtudazo have no legal personality to redeem the property, much less compel DBP to execute such deed of sale.[51] Spouses Virtudazo's recourse is obviously against Florentino Maurin to recover the amount of ₱625,000.00. Spouses Virtudazo, in fact, obtained a favorable money judgment against Florentino Maurin.

---

[48] *Medida v. Court of Appeals*, 284-A Phil. 404, 414 (1992).

[49] *Id.* at 415.

[50] *Id.*

[51] Articles 1236 and 1237 of the New Civil Code provide:

ART. 1236. The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary. Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.

ART. 1237. Whoever pays on behalf of the debtor without the knowledge or against the will of the latter, cannot compel the creditor to subrogate him in his rights, such as those arising from a mortgage, guaranty, or penalty.

Judgments for money are enforced either by immediate payment on demand, satisfaction of levy, or garnishment of debts and credits in accordance with Section 9, Rule 39 of the Rules of Court. Satisfaction by levy is carried on as follows:

SEC. 9. *Execution of Judgments for money, how enforced.* –

(a) x x x x x x x x x

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

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

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

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

Since Florentino Maurin failed to pay the ₱625,000.00 to spouses Virtudazo, the property was levied upon for auction. However, at the time of the levy on April 26, 1995, Florentino Maurin was no longer the owner of, nor had any right, title, or interest in, the 270-sq m portion of the property. Moreover, at the time of the levy, Felipe Virtudazo already had knowledge that Alipio Labuguen was a "legal occupant" of the disputed portion. A notice of *lis pendens* was in fact annotated on Florentino Maurin's title prior to the levy.

While it is true that at the time of the levy, the 270-sq m portion was not registered in the name of Alipio Labuguen, and that the entire property appears to still be owned by, and registered in the name of Florentino Maurin, Felipe Virtudazo nevertheless had actual notice of the existence of Alipio Labuguen's claim over said 270-sq m portion and of his actual possession thereof. Felipe Virtudazo is necessarily bound by the outcome of the complaint for annulment of deeds, the pendency of which being duly annotated on the title. Thus, the necessity for registration of the sale in favor of Alipio Labuguen in order to bind Felipe Virtudazo as a purchaser at the execution sale does not exist.[52]

Finally, a purchaser in an execution sale only acquires such interest that which is possessed by the debtor.[53] As held in *Leyson v. Tañada*:[54]

> Further, this Court had held in *Pabico vs. Ong Pauco* that purchasers at execution sales should bear in mind that the rule of *caveat emptor* applies to such sales, that the sheriff does not warrant the title to real property sold by him as sheriff, and that it is not incumbent on him to place the purchaser in possession of such property. The rationale for this rule is:
>
> > At a sheriffs sale they do not sell the land advertised to sell, although that is a common acceptation, but they simply sell what interest in that land the judgment debtor has; and if you buy his interest, and it afterwards develops that he has none, you are still liable on your bid, because you have offered so much for his interest in open market, and it is for you to determine before you bid what his interest is worth. Now, even if it should appear that at a sheriffs sale one has bought the interest of the judgment debtor in a certain tract of land, and paid his money for it, and then suit is brought to recover the land, and he is defeated in the suit, he has no right to recover his money back, because he has paid that much for the interest that his particular judgment debtor had in that tract of land.[55] (Internal citations omitted)

---

[52] *Vda. de Carvajal v. Coronado*, 124 Phil. 1246, 1253 (1966).

[53] *Leyson v. Tañada*, 195 Phil. 634, 640 (1981).

[54] *Id.* at 640-641.

[55] *Id.*

Spouses Virtudazo did not acquire the property itself by virtue of the levy on execution but only such interest as judgment debtor Florentino Maurino had therein. As such, all that spouses Virtudazo is entitled to, is the 330-sq m portion of the property.

WHEREFORE, the petition is **DENIED**. The Decision dated February 4, 2016 and the Resolution dated January 19, 2017 of the Court of Appeals-Mindanao are **AFFIRMED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa (Working Chairperson), Lazaro-Javier, and *Lopez, JJ.*, concur.

FIRST DIVISION

[G.R. No. 233659. December 10, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOHN SANOTA *y* SARMIENTO, DEO DAYTO *y* GENORGA @ "RUBROB" and ROLANDO ESPINELI *y* ACEBO @ "LANDOY,"** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS AND EVALUATION OF THE TRIAL COURT, ACCORDED RESPECT. — [T]his Court finds no error in the RTC's finding that the testimony of Abion is credible. Again, [T]he assessment of the credibility of the witnesses and their testimonies is best undertaken by the trial court because of its unique opportunity to observe the witnesses first hand and to note their demeanor, conduct, and attitude under grueling examination. These factors are the most significant in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. The factual findings of the RTC, therefore, are accorded the highest degree of respect especially if the CA adopted and confirmed these,

unless some facts or circumstances of weight were overlooked, misapprehended or misinterpreted as to materially affect the disposition of the case. In the absence of substantial reason to justify the reversal of the trial court's assessment and conclusion, as when no significant facts and circumstances are shown to have been overlooked or disregarded, the reviewing court is generally bound by the former's findings.

2. CRIMINAL LAW; ROBBERY WITH HOMICIDE; ELEMENTS; PROVEN BEYOND REASONABLE DOUBT. — What is important is that the prosecution was able to prove the existence of all the elements of the crime. The crime of robbery with homicide has been thoroughly discussed in *People v. Ebet*, thus: In *People v. De Jesus,* this Court had the occasion to meticulously expound on the nature of the crime of Robbery with Homicide, thus: Article 294, paragraph 1 of the Revised Penal Code provides: Art. 294. *Robbery with violence against or intimidation of persons - Penalties.* - Any person guilty of robbery with the use of violence against or any person shall suffer: x x x For the accused to be convicted of the said crime, the prosecution is burdened to prove the confluence of the following elements: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is *animo lucrandi;* and (4) by reason of the robbery or on the occasion thereof, homicide is committed. x x x In this case, all the elements were proven by the prosecution beyond reasonable doubt.

3. ID.; ID.; ROBBERY WITH HOMICIDE ESTABLISHED BY CIRCUMSTANTIAL EVIDENCE IN CASE AT BAR. — The RTC, x x x, committed no error in convicting the appellants based on the circumstantial evidence presented in court, thus: The prosecution's witnesses established the existence of circumstances that support a clear conclusion that the 3 accused conspired to commit robbery, that they carried out the plan and, as a result of such concerted resolve, complainant's only son was shot and killed. x x x It must be remembered that, "[n]o general rule can be laid down as to the quantity of circumstantial evidence which in any case will suffice. All the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that

of guilt." In this case, the totality of the circumstantial evidence presented by the prosecution prove beyond reasonable doubt that appellants conspired to rob the residence of Quiros and on that occasion, the latter's son was shot dead.

4. ID.; ID.; PENALTY OF *RECLUSION PERPETUA* IMPOSED BY THE TRIAL COURT WAS CORRECT; AWARD OF DAMAGES, MODIFIED. — As to the penalty imposed, the RTC was correct in imposing the penalty of *reclusion perpetua* instead of Death despite the presence of aggravating circumstances, considering that the latter penalty has been suspended by Republic Act No. 9346. As to the award of damages, this Court deems it proper to modify the ruling of the RTC. In *People v. Jugueta,* the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages are provided for in cases when the penalty imposed is *reclusion perpetua* instead of death due to the suspension of the latter. The RTC's award of ₱100,000.00 as attorney's fees, however, must also be modified. Nothing on the record shows the actual expenses incurred by the heirs of the victim for attorney's fees and lawyer's appearance fees. Attorney's fees are in the concept of actual or compensatory damages and allowed under the circumstances provided for in Article 2208 of the Civil Code, one of which is when the court deems it just and equitable that attorney's fees should be recovered. In this case, this Court finds an award of ₱50,000.00 in attorney's fees and litigation expenses more reasonable and equitable than the one ordered by the RTC.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *C.J.*:

For consideration of this Court is the appeal of the Decision[1] dated February 15, 2017 of the Court of Appeals *(CA)* affirming the Judgment[2] dated August 20, 2014 of the Regional Trial Court (*RTC*), Branch 25, Biñan, Laguna in Criminal Case No. 21888-B, finding appellants John Sanota *y* Sarmiento (*Sanota*), Deo Dayto *y* Genorga@ "Rubrob" (*Dayto*) and Rolando Espineli *y* Acebo @ "Landoy" *(Espineli)* guilty beyond reasonable doubt of the crime of Robbery with Homicide as defined and penalized under Article 294 of the Revised Penal Code (*RPC*).

The facts follow.

According to Santiago Abion, Jr. *(Abion)*, on March 31, 2011, around 4:00 p.m., he was feeding his ducks at the back of his house when he saw appellants having a drinking spree at a hut located five (5) meters away from his house. From a distance of three (3) meters, he overheard the three (3) appellants planning to raid a house in Hacienda 8. Abion also heard the same appellants saying that anyone who blocks their path will be killed. Thereafter, Abion entered his house and cooked food for dinner. Later, in the evening of the same day, appellant Espineli arrived at Abion's house and invited the latter to a birthday party in Don Jose, Santa Rosa, Laguna. After Abion asked permission from his wife, he and appellant Espineli boarded a motorcycle owned and driven by the same appellant. Instead of going to Don Jose, Santa Rosa, Laguna, the motorcycle headed towards Hacienda 8, and after five (5) minutes of travelling, appellant Espineli parked the motorcycle beside the road and in front of the house of Don Alfonso Quiros (*Quiros*). Appellant Espineli told Abion to stay put as he had to talk to

---

[1] Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Edwin D. Sorongon and Marie Christine Azcarraga-Jacob, concurring; *rollo,* pp. 2-10.

[2] Penned by Presiding Judge Teodoro N. Solis; CA *rollo*, pp. 61-75.

his fellow security guard inside the house of Quiros. After a few seconds, appellants Sanota and Dayto arrived and the two asked Abion where appellant Espineli was. Abion told them that appellant Espineli went inside the house of Quiros and, thereafter, appellants Sanota and Dayto went inside the same house. Abion followed appellants Sanota and Dayto, and when he was twenty (20) meters away from the house of Quiros, he saw appellant Espineli handing a gun to appellant Dayto, and the latter, with a gun in his possession, climbed the window of the same house. After five (5) minutes, Abion heard a gunshot and saw appellant Dayto come out of the window of the house of Quiros with a gun on his right hand and a "black thing" on his left. Appellants Sanota and Dayto then fled to the forest, while appellant Espineli proceeded to where the motorcycle was parked. Abion also went back to the motorcycle and pretended that he didn't witness the incident. Appellant Espineli drove the motorcycle and Abion alighted in Barangay Hernandez where the latter was told by the former to keep quiet. The following day, Abion heard from his neighbors that Quiros' house has been robbed and that the latter's son, Jose Miguel Quiros (*Jose Miguel*) was killed. Abion pretended not to know about the incident, but through the prodding of his wife who works as a gardener of Quiros, he was able to execute a *Sinumpaang Salaysay*[3] dated April 5, 2011.

Thus, an Information was filed against the three (3) appellants charging them with the crime of Robbery with Homicide, which reads as follows:

> That on or about March 31, 2011, in the City of Santa Rosa, Laguna, Philippines and within the jurisdiction of this Honorable Court, the above- named accused, armed with a gun, conspiring, confederating, and helping one another, through the employment of violence and intimidation against Jose Miguel Quiros y Lopez, who is the son of complainant Miguel Alfonso Quiros y Yulo, with intent to gain, and without the consent of the owner thereof, did then and there willfully, unlawfully and feloniously take, steal and rob one (1) Asus Laptop worth Twenty[-]Seven Thousand Pesos (₱27,000.00) owned by and

[3] Exhibit "A".

belonging to complainant Miguel Alfonso Quiros y Yulo, to the damage and prejudice of the latter of the value of the said laptop in the amount of ₱27,000.00 Philippine Currency and that by reason of or on the occasion of the Robbery accused DEO DAYTO Y GENORGA@ Rubrob, who as (sic) armed with a gun, shot Jose Miguel Quiros y Lopez hitting the latter at his trunk as a result thereof he sustained a fatal wound which resulted to his death, to the damage and prejudice of the heirs of Jose Miguel Quiros y Lopez.

With the presence of the aggravating circumstances that the Robbery with Homicide is committed in a dwelling and during night time.

CONTRARY TO LAW.[4]

During their arraignment on July 8, 2011, appellants entered a plea of "not guilty."

The prosecution presented the testimonies of Abion, Lee Won Young (*Lee*), POl Adrian Alcon *(PO1 Alcon)*, Florencio[5] Mendoza (*Mendoza*), Nestor Laplap (*Laplap*), Maynard Malabanan (*Malabanan*), Miguel Alfonso Quiros *y* Yulo, and POl Mary Jennifer Encabo (*PO1 Encabo*).

Lee testified that on March 31, 2011, he visited his friend Jose Miguel, the son of Quiros, in the latter's house to attend a birthday party the following day and to play a video game with him. After twenty (20) minutes of playing a video game with Jose Miguel, Lee asked permission to go to the toilet. Thereafter, Lee heard a gunshot prompting him to shout, *"Miguel, are you okay?,"* with no response from the latter. Miguel, looking shocked and soaked in blood that profusely oozing from his chest, ran towards Lee and saying, "*Lee, there is a gun. A guy with a gun. I'd been shot. I'd been shot.*" Lee, then instinctively opened the door of the living room going to the main gate and called the guard on duty. Lee also called the attention of Miguel's father, who immediately went out of his room. They then brought Jose Miguel to the hospital, but was declared dead on arrival.

---

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

[5] Also "Florendo" in some parts of the records.

The police officers testified on their respective investigations on the case. Mendoza and Laplap, both employees of Visman Security Agency with which appellant Espineli was employed as a security guard when the incident occurred, testified that the same appellant arrived at the agency around 10:30 in the evening of March 31, 2011 and deposited his motorcycle outside the area of their jurisdiction and left.

Appellants Espineli, Dayto and Sanota interposed the defense of denial and alibi.

In his testimony, appellant Espineli claimed that he was on duty as a security guard at Avida Nuvali Settings, specifically at East II Roving in Barangay Mangumit, Canlubang, Calamba City on March 31, 2011, from 7:00 a.m. to 7:00 p.m. After his duty, the same appellant was transferred to SIO Bravo and started his duty from 7:00 p.m. to 7:00 a.m. of the following day.

Appellant Dayto, on the other hand, testified that he attended his brother's birthday celebration at General Trias, Cavite on March 31, 2011 and around 8:00 p.m. of that day, he watched a television program while conversing with his common-law-wife until 10:00 p.m. before they fell asleep. He claimed to have stayed in General Trias until the arrival of his mother, brother and child from Bicol on April 3, 2011.

On his part, appellant John Sonata stated that on March 31, 2011, from 9:00 a.m. to 5:00 p.m., he was gathering wood in Sitio Hemedez, Barangay Malitit, Sta. Rosa, Laguna. Therefater, he went to the house of his friend where he took a rest and watched television. After having dinner with his friend's family around 8:00 p.m., he proceeded to the house of his father-in-law's "*kumpare*." Thereafter, he went back to the house of his friend around 9:00 p.m. and slept.

The RTC, on August 20, 2014, promulgated its Decision convicting the appellants of the crime of Robbery with Homicide. The dispositive portion of the decision reads as follows:

WHEREFORE, premises considered, the Court finds the accused John Sanota, Rolando "Landoy" Espineli, and Deo "Rubrob" Dayto GUILTY beyond reasonable doubt of the crime of Robbery with

Homicide punished under Article 294 of the Revised Penal Code. All three accused are hereby sentenced to suffer imprisonment of *Reclusion Perpetua*. The accused are further ordered to pay, jointly, the amount of ₱383,764.65, as actual damages, ₱75,000[.00], as death indemnity, ₱l,000,000.00 as moral damages, ₱200,00[.00] as exemplary damages, attorney's fees of ₱100,000[.00] and costs of suit

SO ORDERED.[6]

According to the RTC, all the elements of the crime of Robbery with Homicide are present.

Appellants sought further recourse to the CA.

The CA, in its Decision dated February 15, 2017, affirmed the decision of the RTC, thus:

WHEREFORE, the appealed Judgment rendered by Regional Trial Court of Biñan, Laguna, Branch 25 in Criminal Case No. 21888-B is AFFIRMED.

SO ORDERED.[7]

The CA ruled that the prosecution was able to establish the guilt of all the accused beyond reasonable doubt. According to the CA, although there was no direct evidence to establish appellants' commission of the crime charged, circumstantial evidence suffices to convict them.

Hence, the present appeal. Appellants and the Office of the Solicitor General manifested to this Court that they are adopting their respective Briefs instead of filing Supplemental Briefs.

Appellants assigned the following errors:

I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF ROBBERY WITH HOMICIDE

---

[6] CA *rollo,* pp. 74-75.

[7] *Rollo,* pp. 9-10.

BASED ON CIRCUMSTANTIAL EVIDENCE DEDUCED FROM THE INCREDIBLE TESTIMONY OF PROSECUTION WITNESS, SANTIAGO ABION[,] JR.

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF ROBBERY WITH HOMICIDE DESPITE THE PROSECUTION'S FAILURE TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.

III.

THE TRIAL COURT GRAVELY ERRED IN AWARDING ONE HUNDRED THOUSAND PESOS (PHPl00,000.00) AS ATTORNEY'S FEES SANS SUPPORTING DOCUMENT/RECEIPT.[8]

The appeal must fail.

The appellants argue that there was no direct proof presented by the prosecution on the events that led to the death of the victim, as well as the identity of the person or persons who shot the victim, nor was there any eyewitness to the actual taking of the missing laptop. They further insist that the testimony of Abion is incredible and does not warrant any consideration. Thus, absent any proof, appellants contend that the prosecution failed to prove their guilt beyond reasonable doubt.

Time and again, this Court has deferred to the trial court's factual findings and evaluation of the credibility of witnesses, especially when affirmed by the CA, in the absence of any clear showing that the trial court overlooked or misconstrued cogent facts and circumstances that would justify altering or revising such findings and evaluation.[9] This is because the trial court's determination proceeds from its first-hand opportunity to observe the demeanor of the witnesses, their conduct and attitude under grilling examination, thereby placing the trial court in the unique position to assess the witnesses' credibility

---

[8] CA *Rollo,* p. 46.

[9] *Medina, Jr. v. People,* 724 Phil. 226, 234 (2014), citing *People v. Malicdem*, 698 Phil. 408, 416 (2012); *People v. Dumadag*, 667 Phil. 664, 674 (2011).

and to appreciate their truthfulness, honesty and candor.[10] As aptly ruled by the CA:

> The above contentions of appellants are inadequate to overturn the established fact that Abion, Jr. saw the appellants in Hacienda Otso, in front of Don Miguel Alfonso Quiros' residence in the evening of 31 March 2016, when they robbed and killed Migs Quiros inside his house. While Abion, Jr. remained outside the house as ordered by Espineli, his distance or position was merely twenty meters away from the scene of the crime. Thus, We uphold the ruling of the trial court.
>
> The trial court correctly rejected the defense of alibi of the appellants for the reason that they were positively identified by prosecution eyewitness Santiago Abion, Jr. ("Abion, Jr.") who does not appear to have any motive against them to fabricate evidence. Also, the distance of eyewitness Abion, Jr. in relation to the scene of the crime does not preclude any doubt on the physical impossibility of his presence at the *locus criminis* or its immediate vicinity at the time of its commission. Abion, Jr. alleged that at a distance of twenty (20) meters, he saw Landoy handed a gun to Rurob. Rubrob then climbed the window of the house of Boss Coy. After five (5) minutes, a gunshot rang out, and Rubrob came out of the window with a gun on his right hand and a black thing on his left.
>
> Hence, it has been established beyond reasonable doubt by the evidence on record that on 31 March 2011, prior to the incident or at around 4:00 o'clock in the afternoon, prosecution witness Abion, Jr. saw herein appellants, John Sanota y Sarmiento, Deo Dayto y Genorga @ "Rubrob" and Rolando Espineli y Acebo @ "Landoy", having a drinking spree at the house of Dayto. While feeding his ducks, he overheard appellants discussing their plan to rob a house located at Hacienda Otso.[11]

As such, this Court finds no error in the RTC's finding that the testimony of Abion is credible. Again, [T]he assessment of the credibility of the witnesses and their testimonies is best undertaken by the trial court because of its unique opportunity to observe the witnesses first hand and to note their demeanor,

---

[10] *People v. Villacorta,* 672 Phil. 712,719-720 (2011).

[11] *Rollo,* p. 7. (Citations omitted)

conduct, and attitude under grueling examination.[12] These factors are the most significant in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies.[13] The factual findings of the RTC, therefore, are accorded the highest degree of respect especially if the CA adopted and confirmed these,[14] unless some facts or circumstances of weight were overlooked, misapprehended or misinterpreted as to materially affect the disposition of the case.[15] In the absence of substantial reason to justify the reversal of the trial court's assessment and conclusion, as when no significant facts and circumstances are shown to have been overlooked or disregarded, the reviewing court is generally bound by the former's findings.[16]

What is important is that the prosecution was able to prove the existence of all the elements of the crime. The crime of robbery with homicide has been thoroughly discussed in *People v. Ebet*,[17] thus:

In *People v. De Jesus,*[18] this Court had the occasion to meticulously expound on the nature of the crime of Robbery with Homicide, thus:

Article 294, paragraph 1 of the Revised Penal Code provides:

> Art. 294. *Robbery with violence against or intimidation of persons - Penalties.* - Any person guilty of robbery with the use of violence against or any person shall suffer:
>
> The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

---

[12] *Antonio Planteras, Jr. v. People,* G.R. No. 238889, October 3, 2018.

[13] *Id.,* citing *People v. Macaspac,* 806 Phil. 285, 290 (2017).

[14] *Id.*, citing *People v. Delector,* G.R. No. 200026, October 4, 2017, 841 SCRA 647, 656.

[15] *Id.,* citing *People v. Macaspac, supra* note 13.

[16] *Id.,* citing *People v. Labraque,* G.R. No. 225065, September 13, 2017, 839 SCRA 591, 598, citing *People v. Alberca,* 810 Phil. 896, 906 (2017).

[17] 649 Phil. 181 (2010).

[18] 473 Phil. 405 (2004).

For the accused to be convicted of the said crime, the prosecution is burdened to prove the confluence of the following elements:

(1) the taking of personal property is committed with violence or intimidation against persons;

(2) the property taken belongs to another;

(3) the taking is *animo lucrandi;* and

(4) by reason of the robbery or on the occasion thereof, homicide is committed.

In robbery with homicide, the original criminal design of the malefactor is to commit robbery, with homicide perpetrated on the occasion or by reason of the robbery. The intent to commit robbery must precede the taking of human life. The homicide may take place before, during or after the robbery. It is only the result obtained, without reference or distinction as to the circumstances, causes or modes or persons intervening in the commission of the crime that has to be taken into consideration. There is no such felony of robbery with homicide through reckless imprudence or simple negligence. The constitutive elements of the crime, namely, robbery and homicide, must be consummated.

It is immaterial that the death would supervene by mere accident; or that the victim of homicide is other than the victim of robbery, or that two or more persons are killed or that aside from the homicide, rape, intentional mutilation, or usurpation of authority, is committed by reason or on the occasion of the crime. Likewise immaterial is the fact that the victim of homicide is one of the robbers; the felony would still be robbery with homicide. Once a homicide is committed by or on the occasion of the robbery, the felony committed is robbery with homicide. All the felonies committed by reason of or on the occasion of the robbery are integrated into one and indivisible felony of robbery with homicide. The word "homicide" is used in its generic sense. Homicide, thus, includes murder, parricide, and infanticide.

Intent to rob is an internal act but may be inferred from proof of violent unlawful taking of personal property. When the fact of asportation has been established beyond reasonable doubt, conviction of the accused is justified even if the property subject of the robbery is not presented in court. After all, the property stolen may have been abandoned or thrown away and destroyed by the robber or recovered by the owner. The prosecution is not burdened to prove

the actual value of the property stolen or amount stolen from the victim. Whether the robber knew the actual amount in the possession of the victim is of no moment because the motive for robbery can exist regardless of the exact amount or value involved.

When homicide is committed by reason or on the occasion of robbery, all those who took part as principals in the robbery would also be held liable as principals of the single and indivisible felony of robbery with homicide although they did not actually take part in the killing, unless it clearly appears that they endeavored to prevent the same.

If a robber tries to prevent the commission of homicide after the commission of the robbery, he is guilty only of robbery and not of robbery with homicide. All those who conspire to commit robbery with homicide are guilty as principals of such crime, although not all profited and gained from the robbery. One who joins a criminal conspiracy adopts the criminal designs of his co-conspirators and can no longer repudiate the conspiracy once it has materialized.

Homicide is said to have been committed by reason or on the occasion of robbery if, for instance, it was committed to (a) facilitate the robbery or the escape of the culprit; (b) to preserve the possession by the culprit of the loot; (c) to prevent discovery of the commission of the robbery; or, (d) to eliminate witnesses in the commission of the crime. As long as there is a nexus between the robbery and the homicide, the latter crime may be committed in a place other than the situs of the robbery.[19]

In this case, all the elements were proven by the prosecution beyond reasonable doubt.

As to the contention of appellants that the prosecution failed to present any direct evidence that proves their participation in the commission of the crime, such does not deserve merit. Direct evidence of the commission of a crime is not the only basis on

---

[19] *People v. Ebet, supra* note 17, at 188-190, citing *People v. Pedroso*, 336 SCRA 163 (2000), *People v. Salazar*, 277 SCRA 67 (1997), *People v. Abuyan,* 213 SCRA 569 (1991), *People v. Ponciano*, 204 SCRA 627 (1991), *People v. Mangulabnan,* 99 Phil. 992 (1956), *People v. Puloc,* 202 SCRA 179 (1991), *People v. Corre, Jr.*, 363 SCRA 165 (2001), *People v. Carrozo*, 342 SCRA 600 (2000), *People v. Verzosa,* 294 SCRA 466 (1998), and *People v. Palijon,* 343 SCRA 486 (2000).

which a court draws its finding of guilt.[20] The commission of a crime, the identity of the perpetrator,[21] and the finding of guilt may all be established by circumstantial evidence.[22] In *Antonio Planteras, Jr. v. People*,[23] this Court expounded on the distinction between direct and circumstantial evidence, thus:

> The difference between direct evidence and circumstantial evidence involves the relationship of the fact inferred to the facts that constitute the offense.[24] Their difference does not relate to the probative value of the evidence.[25]
>
> Direct evidence proves a challenged fact without drawing any inference.[26] Circumstantial evidence, on the other hand, "indirectly proves a fact in issue, such that the fact-finder must draw an inference or reason from circumstantial evidence.[27]
>
> The probative value of direct evidence is generally neither greater than nor superior to circumstantial evidence.[28] The Rules of Court do not distinguish between "direct evidence of fact and evidence of circumstances from which the existence of a fact may be inferred."[29] The same quantum of evidence is still required. Courts must be convinced that the accused is guilty beyond reasonable doubt.[30]

---

[20] *People v. Casitas, Jr.,* 445 Phil. 407, 417 (2003).

[21] *Cirera v. People,* 739 Phil. 25, 41 (2014) [Per *J.* Leonen, Third Division].

[22] *People v. Villaflores,* 685 Phil. 595, 615-617 (2012) [Per *J.* Bersamin, First Division].

[23] *Supra* note 12.

[24] *Bacerra v. People,* 812 Phil. 25 (2017).

[25] *Id.*

[26] *People v. Ramos,* 310 Phil. 186, 195 (1995) [Per *J.* Puno, Second Division].

[27] *People v. Villaflores, supra* note 22, at 614.

[28] *People v. Fronda*, 384 Phil. 732, 744 (2000) [Per *C.J.* Davide, First Division].

[29] *Id.*

[30] *Id.*

A number of circumstantial evidence may be so credible to establish a fact from which it may be inferred, beyond reasonable doubt, that the elements of a crime exist and that the accused is its perpetrator.[31] There is no requirement in our jurisdiction that only direct evidence may convict.[32] After all, evidence is always a matter of reasonable inference from any fact that may be proven by the prosecution provided the inference is logical and beyond reasonable doubt.

Rule 113, Section 4 of the Rules on Evidence provides three (3) requisites that should be established to sustain a conviction based on circumstantial evidence:

> Section 4. Circumstantial evidence, when sufficient. - Circumstantial evidence is sufficient for conviction if:
>
> (a)There is more than one circumstance;
> (b) The facts from which the inferences are derived are proven; and
> (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[33]

The commission of a crime, the identity of the perpetrator[34] and the finding of guilt may all be established by circumstantial evidence.[35] The circumstances must be considered as a whole and should create an unbroken chain leading to the conclusion that the accused authored the crime.[36]

The determination of whether circumstantial evidence is sufficient to support a finding of guilt is a qualitative test not a quantitative one.[37] The proven circumstances must be "consistent with each other, consistent with the hypothesis that the accused is guilty, and at the

---

[31] See *People v. Villaflores*, *supra* note 22, at 613-618; *People v. Whisenhunt*, 420 Phil. 677, 696-699 (2001) [Per J. Ynares-Santiago, First Division].

[32] *Id.* at 614; *Id.* at 696.

[33] RULES OF COURT, Rule 133, Sec. 4.

[34] *Cirera v. People*, *supra* note 21, at 41.

[35] *People v. Villaflores, supra* note 22, at 615-617.

[36] *People v. Whisenhunt, supra* note 31, at 696.

[37] See *People v. Ludday,* 61 Phil. 216, 221 (1935) [Per J. Vickers, *En Banc*].

same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt."[38]

The RTC, therefore, committed no error in convicting the appellants based on the circumstantial evidence presented in court, thus:

> The prosecution's witnesses established the existence of circumstances that support a clear conclusion that the 3 accused conspired to commit robbery, that they carried out the plan and, as a result of such concerted resolve, complainant's only son was shot and killed.
>
> Abion positively identified the three (3) accused present at the scene of the crime in the evening of March 31, 2011; Dayto's clambering up the open window with a gun, the sound emanating from inside the house of a single gunshot, after which Dayto exited the open window with a gun and a laptop in tow, which he then handed to Espineli and Sanota.
>
> Abion overheard the accused's drunken conversation earlier that day regarding their plan to rob a residence in Hacienda 8 (where the Quiros residence was located) and that they would shoot anyone who blocks their path. He described how the 3 arrived almost at the same time in the wooded area behind the Quiros residence, their acting together to implement entry onto the open window that Dayto scaled, and their fleeing into several directions after Dayto had exited the window with a gun and laptop in his hands.
>
> Abion's testimony was sufficient to establish the guilt of all 3 accused, as it was not shown that he had ill-motive which impelled him to testify against them.
>
> His credence was fortified by other prosecution witnesses, who corroborated his testimony with object evidence on its material points.
>
> Moreover, the prosecution presented documentary evidence and testimonies connecting the accused to the commission of other crimes of Robbery with Homicide perpetrated with the same *modus operandi*.[39]

---

[38] *Id.* at 221-222.

[39] CA *rollo,* p. 72. (Citations omitted)

It must be remembered that, "[n]o general rule can be laid down as to the quantity of circumstantial evidence which in any case will suffice. All the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt."[40] In this case, the totality of the circumstantial evidence presented by the prosecution prove beyond reasonable doubt that appellants conspired to rob the residence of Quiros and on that occasion, the latter's son was shot dead.

Appellants' defense of denial and alibi are, likewise, of no merit. The defense of denial and alibi is weak compared to the positive identification of the appellants as the perpetrators.[41] Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law.[42]

As to the penalty imposed, the RTC was correct in imposing the penalty of *reclusion perpetua* instead of Death despite the presence of aggravating circumstances, considering that the latter penalty has been suspended by Republic Act No. 9346.

As to the award of damages, this Court deems it proper to modify the ruling of the RTC. In *People v. Jugueta,*[43] the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages are provided for in cases when the penalty imposed is *reclusion perpetua* instead of death due to the suspension of the latter. The RTC's award of ₱100,000.00 as attorney's fees, however, must also be modified. Nothing on the record shows the actual expenses incurred by the heirs of the victim for attorney's fees and

---

[40] *Antonio Planteras, Jr. v. People, supra* note 12, citing *People v. Ludday, supra* note 37, at 221.

[41] *People v. Bagsit,* 456 Phil. 623, 632 (2003).

[42] *Esqueda v. People,* 607 Phil. 480, 497 (2009).

[43] 783 Phil. 806 (2016).

lawyer's appearance fees. Attorney's fees are in the concept of actual or compensatory damages and allowed under the circumstances provided for in Article 2208 of the Civil Code,[44] one of which is when the court deems it just and equitable that attorney's fees should be recovered.[45] In this case, this Court finds an award of ₱50,000.00 in attorney's fees and litigation expenses more reasonable and equitable than the one ordered by the RTC.

WHEREFORE, the Decision dated February 15, 2017 of the Court of Appeals affirming the Judgment dated August 20, 2014 of the Regional Trial Court, Branch 25, Biñan, Laguna in Criminal Case No. 21888-B, finding appellants John Sanota *y* Sarmiento, Deo Dayto *y* Genorga @ "Rubrob" and Rolando Espineli *y* Acebo @ "Landoy" guilty beyond reasonable doubt of the crime of Robbery with Homicide, as defined and penalized under Article 294 of the Revised Penal Code is **AFFIRMED** with **MODIFICATION** that the same appellants are also **ORDERED** to **PAY**, jointly and severally, the heirs of the victim,

---

[44] Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;
(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
(3) In criminal cases of malicious prosecution against the plaintiff;
(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
(6) In actions for legal support;
(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
(8) In actions for indemnity under workmen's compensation and employer's liability laws;
(9) In a separate civil action to recover civil liability arising from a crime;
(10) When at least double judicial costs are awarded;
(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

[45] *People v. Bergante,* 350 Phil. 275, 292 (1998).

aside from the actual damages of ₱383,764.65, the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages per *People v. Jugueta*,[46] as well as ₱50,000.00 as attorney's fees, with legal interest on all the said amounts awarded at the rate of six percent (6%) *per annum* from the date of the finality of this Decision until fully paid.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 235020. December 10, 2019]

ATTY. LEONARD FLORENT O. BULATAO, *petitioner, vs.* **ZENAIDA C. ESTONACTOC,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; INTEREST; FIVE (5%) PERCENT MONTHLY INTEREST RATE DECLARED INVALID BUT RESPONDENT'S OBLIGATION TO REPAY HER LOAN TO PETITIONER STANDS. — The invalidity of the 5% per month interest rate does not affect the obligation of Zenaida to repay her loan of ₱200,000.00 from Atty. Bulatao. Based on the recent *en banc* case of *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*, the applicable interest is the BSP-prescribed rate of 12% *per annum* from the execution of the DMRP on June 3, 2008, wherein the parties agreed to the payment of interest, to June 30, 2013 and at the rate of 6% *per annum* from July 1, 2013 until full payment. Also, taking into account Article 2212 of the Civil Code, which

[46] *Supra* note 43.

provides that "[i]nterest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point," the interest due on the principal amount (computed as mentioned above) accruing as of judicial demand (the filing of the counterclaim, in this case) shall separately earn interest at the rate prescribed by the BSP from time of judicial demand up to full payment.

2. ID.; ID.; PAYMENT; THREE CHARACTERISTICS THAT MUST BE PRESENT FOR PAYMENT TO BE VALID, EXPLAINED. — For there to be a valid payment, the three characteristics of payment must be present. These are: (1) **integrity** of payment, which is provided for in Article 1233 of the Civil Code: "A debt shall not be understood to have been paid unless the thing or service in which the obligation consists has been completely delivered or rendered, as the case maybe;" (2) **identity** of payment, which is provided for in Article 1244: "The debtor of a thing cannot compel the creditor to receive a different one, although the latter may be of the same value as, or more valuable than that which is due. In obligations to do or not to do, an act or forbearance cannot be substituted by another act or forbearance against the obligee's will;" and (3) **indivisibility** of payment, which is provided for in Article 1248: "Unless there is an express stipulation to that effect, the creditor cannot be compelled partially to receive the prestations in which the obligation consists. Neither may the debtor be required to make partial payments. However, when the debt is in part liquidated and in part unliquidated, the creditor may demand and the debtor may effect the payment of the former without waiting for the liquidation of the latter." Since integrity of payment requires that the thing or service in which the obligation consists has been *completely* delivered or rendered as the case may be, the debtor must comply in its entirety with the prestation and that the creditor is satisfied with the same. These characteristics of payment should mirror the demand made by the creditor in order for the debtor to incur in delay under Article 1169 of the Civil Code. The demand must comply with the integrity, identity and indivisibility characteristics as well. Since the debtor cannot compel the creditor to accept an incomplete delivery or an amount less than what is due, it follows that the creditor cannot compel the debtor to pay more than what is due.

3. ID.; PROPERTY; CO-OWNERSHIP; ARTICLE 493 OF THE CIVIL CODE *VIS-À-VIS* THE *EN BANC* RULING OF THE COURT IN THE CASE OF *ESTOQUE V. PAJIMULA*, RECONCILED AND ELABORATED; THE SALE OF THE PROPERTY IS VALID ONLY WITH RESPECT TO THE SHARE OF HEREIN RESPONDENT; THE DISPOSING CO-OWNER IS BARRED FROM DISAVOWING THE CONTRACT SHE ENTERED INTO TO THE FULL EXTENT OF HER UNDIVIDED SHARE. — The Court's reliance on Article 493 of the Civil Code to justify the validity of the sale of the property owned in common by a co-owner without the consent of the other co-owners insofar as the undivided share of the co-owner seller is concerned has to be reconciled with the ruling of the Court *en banc* through Justice J.B.L. Reyes in the case of *Estoque v. Pajimula* (*Estoque*) which has not been overturned. x x x While in *Estoque* a specific portion of a co-owned property was sold, that situation is no different from a situation wherein a co-owner has sold the entire co-owned property, *i.e.*, a specific parcel of land of which the seller has only an undivided interest therein, because the rationale for not recognizing the effectivity of the disposition by a co-owner without the consent of the other co-owners over a specific portion equally applies to the disposition of the entire co-owned property, which is more than the undivided interest or share rightfully pertaining to the disposing co-owner. *Estoque* characterizes the contract entered into by the disposing co-owner as "ineffective, for lack of power in the vendor to sell the specific portion described in the deed" and makes room for a subsequent ratification of the contract by the other co-owners or validation in case the disposing co-owner subsequently acquires the undivided or *pro-indiviso* interests of the other co-owners. Thus, the subsequent ratification or acquisition will validate and make the contract fully effective as of the date the contract was entered into pursuant to Article 1396 of the Civil Code, which provides that "[r]atification cleanses the contract from all its defects from the moment it was constituted" and Article 1434 of the Civil Code, which provides: "[w]hen a person who is not the owner of a thing sells or alienates and delivers it, and later the seller or grantor acquires title thereto, such title passes by operation of law to the buyer or grantee." While Article 493 of the Civil Code may not squarely cover the situations wherein a co-owner, without the consent of the other co-owners, alienate, assign or

mortgage: (1) the entire co-owned property; (2) a specific portion of the co-owned property; (3) an undivided portion less than the part pertaining to the disposing co-owner; and (4) an undivided portion more than the part pertaining to the disposing co-owner, the principle of estoppel bars the disposing co-owner from disavowing the sale to the full extent of his undivided or *pro-indiviso* share or part in the co-ownership, subject to the outcome of the partition, which, using the terminology of Article 493, limits the effect of the alienation or mortgage to the portion that may be allotted to him in the division upon termination of the co-ownership. Under Article 1431 of the Civil Code, "[t]hrough estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon." Given the foregoing, the CA was correct when it limited the validity of the DMRP only to the portion belonging to Zenaida. Unfortunately, the dispositive portion reflected differently: "The Deed of Mortgage of Real Property dated June 4, 2008 is DECLARED as VOID only with respect to the share of deceased Adolfo T. Estonactoc." Accordingly, a modification thereof is warranted to reflect that it is valid only to the share pertaining to Zenaida.

APPEARANCES OF COUNSEL

Janice Rhea B. Orencia-Songcuan for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is the Appeal[1] under Rule 45 of the Rules of Court filed by petitioner Atty. Leonard Florent O. Bulatao (Atty. Bulatao) assailing the Decision[2] dated October 19, 2017 (Decision) of the Court of Appeals[3] (CA) in CA-G.R. CV No. 105581. CA Decision partly granted the appeal of respondent

[1] *Rollo*, pp. 3-13, excluding Annexes.

[2] *Id.* at 15-32. Penned by Associate Justice Henri Jean Paul B. Inting (now a Member of the Court) with Associate Justices Apolinario D. Bruselas, Jr., Leoncia R. Dimagiba concurring.

[3] Twelfth Division.

Zenaida Estonactoc (Zenaida) resulting in the reversal and setting aside of the Decision[4] dated May 4, 2015 rendered by the Regional Trial Court, Branch 31, Agoo, La Union (RTC) in Civil Case No. A-2715.

The Facts and Antecedent Proceedings

The CA Decision narrates the factual antecedents as follows:

> On June 3, 2008, [Zenaida] executed a Deed of Mortgage of Real Property [(DMRP)] in favor of [Atty. Bulatao] covering a parcel of land located in Pongpong, Sto. Tomas, La Union, with an area of 42,727 square meters (subject property), as security for a loan in the amount of ₱200,000.00.
>
> The [DMRP] contained the following stipulation:
>
> > PROVIDED HOWEVER, that if I, shall pay or cause to be paid to the said MORTGAGEE the afore-mentioned amount of TWO HUNDRED THOUSAND PESOS (Php200,000.00), Philippine currency together with the interest at the rate of five percent (5%) per month, within a period of twelve (12) months or one (1) year or before June 4, 2009, then this MORTGAGE shall thereby be discharged and of no effect. OTHERWISE, it shall remain in full force and effect and shall be enforceable in the manner provided for by law.
>
> When [Zenaida] defaulted in her obligation, [Atty. Bulatao] foreclosed the mortgage and petitioned the court for the sale of the subject property in a public auction. The Notice of Sale on Extra Judicial Foreclosure of Property/ies was issued by the Office of the Clerk of Court of the trial court in Agoo, La Union on July 15, 2011.
>
> By reason of the impending sale of the subject property, [Zenaida] filed [a Complaint for Injunction, Annulment of Deed of Real Estate Mortgage and Damages against Atty. Bulatao, Atty. Diosdado L. Doctolero as Clerk of Court and Ex-Officio Sheriff of the RTC of Agoo, La Union, and Melchor A. Mabutas, as Sheriff of the Office of the Clerk of Court of the same court][5] seeking to declare the [DMRP] as illegal, inexistent and null and void, and to make the contract unenforceable. She asserted that [Atty. Bulatao], in grave abuse of

---

[4] *Rollo*, pp. 33-50. Penned by Executive Judge Romeo M. Atillo, Jr.

[5] See *id.* at 33.

her rights, took advantage of her financial distress and urgent financial needs by imposing in the [DMRP] an interest of five percent (5%) per month which is excessive, iniquitous, unconscionable, exorbitant and contrary to public policy, rendering the contract null and void. She also alleged that she only received ₱80,000.00 from [Atty.] Bulatao, contrary to the ₱200,000.00 contracted loan amount. In addition, she sought the award of moral and exemplary damages, attorney's fees, and litigation expenses.

[Zenaida] likewise raised in the complaint that the agreement is invalid because of the following: (a) it failed to mention that the subject property is registered under Transfer Certificate of Title No. T-6288-part as indicated in the Real Property Field Appraisal and Assessment Sheet and Tax Declaration No. 020-00304; (b) the mortgage is not registered and therefore not annotated in the title of the subject property; (c) it falsely indicated that [Zenaida] is the registered owner of the subject property despite the fact that it is co-owned by [Zenaida] with her late husband, Adolfo T. Estonactoc; and that it has not yet been settled and transferred in favor of their son, Jose Rafael C. Estonactoc; and (d) [Zenaida] did not appear before the notary public who notarized the [DMRP].

x x x x x x x x x

In response thereto, [Atty. Bulatao] filed an Answer wherein he denied all the allegations made against him by [Zenaida] and contended the following:

[Zenaida was] guilty of misrepresentation, misdeclaration, false pretenses, and bad faith. The ₱200,000.00 loan which he extended to [Zenaida] was from the proceeds of the loan which he contracted with FRB Credit and Financial Services. [Zenaida] represented to be the sole owner of the subject property and that the title thereof was lost, destroyed and/or cannot be recovered although he transfer of the title in her name is already being processed. It was [Zenaida] who encouraged him to secure a loan with the FRB Credit and Financial Services in the amount of ₱200,000.00 and that she even told him that she [was] willing to pay a monthly interest of 20%-30%. [Zenaida] agreed to a 5% monthly interest, with the 2.5% to be paid directly to FRB Credit and Financial Services and the other half as his own profit. [Zenaida] even represented that she could pay the loan in a month or two.

[Atty. Bulatao] denied that the interest is usurious on account of Central Bank Circular No. 905-82, which expressly removed the interest ceilings prescribed under the Usury Law, leaving [the] parties with the liberty to mutually agree on an interest rate. Moreover, he denied that [Zenaida] only received ₱80,000.00 considering that it was [Zenaida] herself who encashed Allied Bank Check No. 0024551400 in the amount of ₱200,000.00, which represent[ed] the proceeds of the loan incurred by [Atty. Bulatao] from FRB Credit and Financial Services.

As counterclaim, [Atty. Bulatao] sought the recovery of actual, moral and exemplary damages as well as attorney's fees, and costs of suit.

x x x x x x x x x

On March 19, 2012, the complaint was amended to include the declaration of nullity of the foreclosure sale of the subject property as a cause of action by reason of the subsequent sale thereof in a public auction and the consequent issuance of a certificate of sale of real property in favor of [Atty. Bulatao] on October 10, 2011.

Trial on the merits of the case ensued whereby both parties presented their respective documentary and testimonial pieces of evidence in support of their claims.

On May 4, 2015, the trial court rendered [its] Decision[, the] dispositive portion of which is cited herein, to wit:

> WHEREFORE, premises considered, this Court finds in favor of the defendants and accordingly, DISMISSES the instant complaint against them for utter lack of merit. Moreover, the plaintiff is hereby order[ed] to pay the defendants, to wit:
>
> (i) Moral damages in the amount of Thirty Thousand Pesos (₱30,000.00);
>
> (ii) Exemplary damages in the amount of Fifteen Thousand Pesos (₱15,000.00);
>
> (iii) Nominal damages in the amount of Five Thousand Pesos (₱5,000.00);
>
> (iv) Attorney's fees in the amount of Thirty Thousand Pesos (₱30,000.00), plus Two Thousand Five Hundred Pesos (₱2,500.00) per court appearance of Attys. Gines and Ulpindo; and

(v) Costs of suit.

SO ORDERED.

The trial court ruled that [Zenaida] is bound by the terms and stipulations in the contract of loan and real estate mortgage which she executed in favor of [Atty. Bulatao]; that the evidence on hand shows that the interest of 5% per month on the loan is not exorbitant considering that the borrower, [Zenaida], appears to be an educated businesswoman, from a well-to-do family as demonstrated by her having a son who studies in a prestigious school (Ateneo), and her late husband being the former town mayor of Sto. Tomas, La Union; that [Zenaida] is in a position to pay not only the principal loan amount but also the stipulated interest; and that [Zenaida] even expressed her capacity to pay interest of even up to 20%, to entice [Atty. Bulatao] to extend the loan to her. Hence, the trial court declared that she is now estopped from claiming otherwise.

Moreover, the trial court declared that [Atty. Bulatao] is an innocent mortgagee for value, who merely relied on the alleged sole ownership of [Zenaida] over the subject property as demonstrated in the tax declaration; and that in fine, the mortgage of the co-owned property by one of the co-owners, [Zenaida] in this case, sans any participation on the part of her son, as co-owner, did not invalidate the mortgage.

The trial court concluded that considering the validity of the loan and real estate mortgage, the subsequent foreclosure of the mortgage on the subject property and the issuance of certificate of sale as a consequence thereof are likewise valid considering that the foreclosure was made by proper authorities, who enjoy the presumption of regularity of performance of their official duties.

Lastly, the trial court granted moral, exemplary and nominal damages, and attorney's fees in favor of defendants.

[Zenaida] moved to reconsider the [trial court's] Decision but the trial court denied it in an Order dated July 13, 2015. On July 30, 2015, [Zenaida] filed a Notice of Appeal which was given due course by the trial court on August 13, 2015.[6]

---

[6] *Id.* at 16-22.

Ruling of the CA

The CA in its Decision[7] dated October 19, 2017 found Zenaida's appeal partly meritorious.[8]

Regarding the real estate mortgage, the CA ruled that Zenaida, being a co-owner of the subject property, could validly convey through sale or mortgage the portion belonging to her and, thus, the real estate mortgage in favor of Atty. Bulatao is not entirely void.[9]

On the interest rate, the CA ruled that the 5% monthly interest imposed upon by Atty. Bulatao in the Deed of Mortgage of Real Property (DMRP) is excessive, unconscionable and exorbitant, which renders the stipulation on interest void for being contrary to morals, if not against the law.[10] After the CA observed, on on hand, that the stipulation on interest being void, it is as if there was no express contract on said interest rate, thus, the interest rate may be reduced as reason and equity demand, and on the other hand, that a legal interest of 12% *per annum* will be added in place of the excessive interest formerly imposed, the CA, then, equitably reduced the stipulated 5% monthly interest to 1% per month or 12% *per annum* reckoned from the execution of the DMRP on June 3, 2008.[11]

The CA further observed that while the nullity of the stipulation on the usurious interest did not affect the lender's right to recover the principal obligation or the terms of the real estate mortgage, the foreclosure proceedings held on September 8 and 15, 2011 in this case could not be given effect.[12] The CA reasoned that

---

[7] *Id.* at 15-32.

[8] *Id.* at 23.

[9] *Id.* at 25.

[10] *Id.* at 26, 27.

[11] *Id.* at 27-28. The date of execution of the DMRP is reflected as June 4, 2008 on pages 27, 29 and 30 of the *rollo*, but on page 16, the date is June 3, 2008. Based on the RTC Decision, Exh. "D", which is the Deed of Mortgage of Real Property, is dated June 3, 2008; *rollo*, p. 36.

[12] *Id.* at 28.

since the debt due is limited to the principal of ₱200,000.00 with 12% *per annum* as legal interest, the previous demand for payment of the amount of ₱540,000.00 reflected on the demand letter dated April 15, 2011 could not be considered as a valid demand for payment, and without a valid demand the obligations is not due.[13] The foreclosure could not be considered valid because it would result in an inequitable situation wherein Zenaida would have her land foreclosed for failure to pay an over-inflated loan only a small part of which she was obligated to pay, and she was not given an opportunity to settle her debt at the correct amount without the iniquitous interest imposed.[14]

As to the award of damages against Zenaida, the CA found no justification for their imposition.[15]

The dispositive portion of the CA Decision states:

WHEREFORE, the appeal is PARTLY GRANTED.

The Decision dated May 4, 2015 rendered by Branch 31 of the Regional Trial Court (RTC), Agoo, La Union in Civil Case No. A-2715 is hereby REVERSED and SET ASIDE. Accordingly, a new judgment is RENDERED as follows:

1. The Deed of Mortgage of Real Property dated June 4, 2008 is DECLARED as VOID only with respect to the share of deceased Adolfo T. Estonactoc;

2. The monthly interest as stipulated in the Deed of Mortgage of Real Property is REDUCED to 1% per month or 12% *per annum*; and

3. The Foreclosure Sale and the Certificate of Sale issued in favor of defendant-appellee Leonard Florent O. Bulatao are DECLARED null and void.

SO ORDERED.[16]

---

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

[14] *Id.* at 29.

[15] *Id.* at 30.

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

Dissatisfied, Atty. Bulatao filed the instant Appeal. Zenaida filed her Comment[17] dated May 15, 2018. Atty. Bulatao filed a Reply[18] on March 18, 2019.

The Issue

Whether the CA erred when it set aside and reversed the RTC Decision.

The Court's Ruling

In his appeal, Atty. Bulatao argues that the payment of the 5% monthly interest was voluntarily agreed upon by him and Zenaida and absent fraud committed upon Zenaida, the stipulated interest rate should stand.[19] On the assumption that the 5% monthly interest is invalid, the ruling of the CA reducing it to 1% per month or 12% *per annum* is not just and right.[20] Atty. Bulatao takes the position that the 5% per month should be applied to the borrowed amount of ₱200,000.00 for one year (the term of the loan) and thereafter, the 12% yearly interest should apply.[21] Atty. Bulatao cites *Prisma Construction & Development Corp. v. Menchavez*[22] (*Prisma v. Menchavez*) in support of his position because said case is a contract for a specific period.[23]

Regarding the DMRP, Atty. Bulatao argues that since Zenaida is a co-owner to the extent of ¾ (½ portion representing her share in the conjugal property and ¼ portion as her legitime in the estate of her husband Adolfo Estonactoc) of the subject property and the remaining ¼ portion being co-owned by her son Jose Rafael Estonactoc, Atty. Bulatao has the right to foreclose Zenaida's ¾ share.[24]

---

[17] *Id.* at 112-114.

[18] *Id.* at 133-148.

[19] See *id.* at 8.

[20] *Id.*

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

[22] 628 Phil. 495 (2010).

[23] *Rollo*, p. 9.

[24] *Id.* at 10.

For her part, Zenaida seeks the dismissal of Atty. Bulatao's appeal for his failure to comply with formal and procedural requirements of a Rule 45 petition for *certiorari*.[25] Assuming that the Court takes cognizance of the appeal, Zenaida argues that the CA did not err in reversing the RTC Decision.[26]

Despite the formal objections interposed by Zenaida, the Court will proceed to rule on the merits of the Petition. Except as regards the applicable rate of interest and the effect of the DMRP are concerned, the appeal is bereft of merit.

Atty. Bulatao's argument of voluntariness in his and Zenaida's agreement on the 5% monthly interest cannot be sustained. The Court has repudiated this argument in *Sps. Abella v. Sps. Abella*,[27] *viz.*:

> Even if it can be shown that the parties have agreed to monthly interest at the rate of 2.5%, this is unconscionable. As emphasized in *Castro v. Tan*,[28] the willingness of the parties to enter into a relation involving an unconscionable interest rate is inconsequential to the validity of the stipulated rate:
>
> > The imposition of an unconscionable rate of interest on a money debt, even if knowingly and voluntarily assumed, is immoral and unjust. It is tantamount to a repugnant spoliation and an iniquitous deprivation of property, repulsive to the common sense of man. It has no support in law, in principles of justice, or in the human conscience nor is there any reason whatsoever which may justify such imposition as righteous and as one that may be sustained within the sphere of public or private morals.
>
> The imposition of an unconscionable interest rate is void ab initio for being "contrary to morals, and the law."
>
> In determining whether the rate of interest is unconscionable, the mechanical application of pre-established floors would be wanting.

---

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

[26] *Id.* at 113.

[27] 763 Phil. 372 (2015).

[28] 620 Phil. 239 (2009).

The lowest rates that have previously been considered unconscionable need not be an impenetrable minimum. What is more crucial is a consideration of the parties' contexts. Moreover, interest rates must be appreciated in light of the fundamental nature of interest as compensation to the creditor for money lent to another, which he or she could otherwise have used for his or her own purposes at the time it was lent. It is not the default vehicle for predatory gain. As such, interest need only be reasonable. It ought not be a supine mechanism for the creditor's unjust enrichment at the expense of another.

Petitioners here insist upon the imposition of 2.5% monthly or 30% annual interest. Compounded at this rate, respondents' obligation would have more than doubled—increased to 219.7% of the principal—by the end of the third year after which the loan was contracted if the entire principal remained unpaid. By the end of the ninth year, it would have multiplied more than tenfold (or increased to 1,060.45%). In 2015, this would have multiplied by more than 66 times (or increased by 6,654.17%). Thus, from an initial loan of ₱500,000.00, respondents would be obliged to pay more than ₱33 million. This is grossly unfair, especially since up to the fourth year from when the loan was obtained, respondents had been assiduously delivering payment. This reduces their best efforts to satisfy their obligation into a protracted servicing of a rapacious loan.[29] (Underscoring supplied)

In the consolidated cases of *Rivera v. Sps. Chua*[30] and *Sps. Chua v. Rivera*,[31] the Court affirmed the finding of the CA that 5% per month or 60% *per annum* interest rate is highly iniquitous and unreasonable; and since the interest rate agreed upon is void, the rate of interest should be 12% *per annum* (the then prevailing interest rate prescribed by the Central Bank of the Philippines for loans or forbearances of money) from the date of judicial or extrajudicial demand.

Given that the agreement on the 5% monthly interest is void for being unconscionable, the interest rate prescribed by the Bangko Sentral ng Pilipinas (BSP) for loans or forbearances of money, credits or goods will be the surrogate or substitute

---

[29] *Sps. Abella v. Sps. Abella*, *supra* note 27, at 387-389.

[30] G.R. No. 184458, 750 Phil. 663 (2015).

[31] G.R. No. 184472, *id.*

rate not only for the one-year interest period agreed upon but for the entire period that the loan of Zenaida remains unpaid.

The distinction that Atty. Bulatao makes between "open-ended contracts" or contracts with indefinite period and "term contracts" or contracts for a specific period[32] is misguided as the distinction has no legal basis as far as a loan, whether *commodatum* or *mutuum*, is concerned. As provided in Article 1933 of the Civil Code, "[b]y the contract of loan, one of the parties delivers to another, either something not consumable so that the latter may use the same for a certain time and return it, in which case the contract is called a commodatum; or money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid, in which case the contract is simply called a loan or mutuum."[33] Thus, a period is contemplated in a contract of loan and it cannot be an "open-ended contract" or a contract with an indefinite period.

Atty. Bulatao misreads *Prisma v. Menchavez*. The facts show therein that the parties agreed to the payment of a **specific sum of money** of ₱40,000.00 per month for six months, not a 4% rate of interest, payable within a six-month period;[34] and no issue on the excessiveness of the stipulated amount of ₱40,000.00 per month was ever put in issue by the petitioners therein since they only assailed the application of a 4% interest rate to the unpaid amount, since it was not agreed upon.[35] As aptly observed by the CA:

> We also could not fathom how the case of [*Prisma v. Menchavez*] could apply in this case, as defendant-appellee would want to convince Us, because the afore-mentioned case involves an agreed sum as monthly interest and no rate of interest was stipulated in the promissory note, contrary to the factual antecedents in his case.[36]

---

[32] *Rollo*, pp. 141-142.

[33] Underscoring supplied.

[34] *Prisma v. Menchavez*, *supra* note 22, at 506.

[35] *Id.* at 505.

[36] *Rollo*, p. 28.

As to the validity of the foreclosure, jurisprudence on the effect of the nullity of the loan's interest rate on the foreclosure of the mortgage securing the loan abounds. In the consolidated cases of *Vasquez v. Philippine National Bank*[37] and *Philippine National Bank v. Vasquez*,[38] the Court has reiterated that:

> In a situation wherein null and void interest rates are imposed under a contract of loan, the non-payment of the principal loan obligation does not place the debtor in a state of default, considering that under Article 1252 of the Civil Code, if a debt produces interest, payment of the principal shall not be deemed to have been made until the interests have been covered. Necessarily, since the obligation of making interest payments in the instant case is illegal and thus non-demandable, the payment of the principal loan obligation was likewise not yet demandable on the part of PNB. With Vasquez not being in a state of default, the foreclosure of the subject properties should not have proceeded.

In *Heirs of Zoilo Espiritu v. Sps. Landrito*,[39] the loan obligation involved, which was secured by a mortgage, was marred by an iniquitous imposition of monetary interest because the creditors omitted to specifically identify the imposable interest rate, just as in the instant case. Because of the failure of the debtors to pay back the loan, the mortgaged property was foreclosed. The debtors failed to redeem the foreclosed property. The Court in that case held that the foreclosure proceedings should not be given effect, *viz*.:

> x x x If the foreclosure proceedings were considered valid, this would result in an inequitable situation wherein the Spouses Landrito will have their land foreclosed for failure to pay an over-inflated loan only a small part of which they were obligated to pay.
>
> x x x x x x x x x
>
> Since the Spouses Landrito, the debtors in this case, were not given an opportunity to settle their debt, at the correct amount and without the iniquitous interest imposed, no foreclosure

---

[37] G.R. No. 228355, August 28, 2019.

[38] G.R. No. 228397, August 28, 2019.

[39] 549 Phil. 180, 193-195 (2007).

> proceedings may be instituted. A judgment ordering a foreclosure sale is conditioned upon a finding on the correct amount of the unpaid obligation and the failure of the debtor to pay the said amount. In this case, it has not yet been shown that the Spouses Landrito had already failed to pay the correct amount of the debt and, therefore, a foreclosure sale cannot be conducted in order to answer for the unpaid debt. x x x
>
> x x x x x x x x x

Similarly, in *Sps. Albos v. Sps. Embisan*,[40] the extra-judicial foreclosure sale of a mortgaged property, which was foreclosed due to the non-payment of a loan, was invalidated because the interest rates imposed on the loan were found to be null and void due to their unconscionability.

In *Sps. Castro v. Tan*,[41] on the basis of the nullity of the imposed interest rates due to their iniquity, the Court nullified the foreclosure proceedings "since the amount demanded as the outstanding loan was overstated. Consequently, it has not been shown that the respondents have failed to pay the correct amount of their outstanding obligation. x x x"

Also, in *Sps. Andal v. PNB*,[42] the Court upheld the nullification of the foreclosure sale, affirming the appellate court's holding that "since the interest rates are null and void, [respondent] bank has no right to foreclose [petitioners-spouses'] properties and any foreclosure thereof is illegal. x x x. Since there was no default yet, it is premature for [respondent] bank to foreclose the properties subject of the real estate mortgage contract."[43]

In *Menchavez v. Bermudez*,[44] Arthur Menchavez and Marlyn Bermudez entered on November 17, 1993 into a loan agreement, covering the amount of ₱500,000.00, and the Promissory Note provided that the loan was to be paid "on or before Dec[ember]

---

[40] 748 Phil. 907, 919 (2014).

[41] *Supra* note 28, at 253.

[42] 722 Phil. 273, 284 (2013).

[43] *Vasquez v. Philippine National Bank* and *Philippine National Bank v. Vasquez*, *supra* notes 37 and 38, at 17-19.

[44] 697 Phil. 447 (2012).

17, 1993 with interest at 5% per month."[45] The Court, reiterating *Castro v. Tan*,[46] tagged the 5% monthly interest rate as "excessive, iniquitous, unconscionable and exorbitant, contrary to morals, and the law."[47]

The invalidity of the 5% per month interest rate does not affect the obligation of Zenaida to repay her loan of ₱200,000.00 from Atty. Bulatao. Based on the recent *en banc* case of *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*,[48] the applicable interest is the BSP-prescribed rate of 12% *per annum* from the execution of the DMRP on June 3, 2008, wherein the parties agreed to the payment of interest, to June 30, 2013 and at the rate of 6% *per annum* from July 1, 2013 until full payment. Also, taking into account Article 2212 of the Civil Code, which provides that "[i]nterest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point," the interest due on the principal amount (computed as mentioned above) accruing as of judicial demand (the filing of the counterclaim, in this case) shall separately earn interest at the rate prescribed by the BSP from time of judicial demand up to full payment. Thus, the CA Decision has to be modified in this respect.

For there to be a valid payment, the three characteristics of payment must be present. These are: (1) **integrity** of payment, which is provided for in Article 1233 of the Civil Code: "A debt shall not be understood to have been paid unless the thing or service in which the obligation consists has been completely delivered or rendered, as the case maybe;" (2) **identity** of payment, which is provided for in Article 1244: "The debtor of a thing cannot compel the creditor to receive a different one, although the latter may be of the same value as, or more valuable than that which is due. In obligations to do or not to do, an act or forbearance cannot be substituted by another act or forbearance

---

[45] *Id.* at 449.

[46] *Supra* note 28.

[47] *Menchavez v. Bermudez*, *supra* note 44, at 456.

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

against the obligee's will;" and (3) **indivisibility** of payment, which is provided for in Article 1248: "Unless there is an express stipulation to that effect, the creditor cannot be compelled partially to receive the prestations in which the obligation consists. Neither may the debtor be required to make partial payments. However, when the debt is in part liquidated and in part unliquidated, the creditor may demand and the debtor may effect the payment of the former without waiting for the liquidation of the latter."[49] Since integrity of payment requires that the thing or service in which the obligation consists has been *completely* delivered or rendered as the case may be, the debtor must comply in its entirety with the prestation and that the creditor is satisfied with the same.[50]

These characteristics of payment should mirror the demand made by the creditor in order for the debtor to incur in delay under Article 1169[51] of the Civil Code. The demand must comply with the integrity, identity and indivisibility characteristics as well. Since the debtor cannot compel the creditor to accept an incomplete delivery or an amount less than what is due, it follows that the creditor cannot compel the debtor to pay more than what is due. Thus, the characteristics of integrity and identity will be violated if the creditor demands more than what is due.

As correctly observed by the CA:

> However, while the terms of the Real Estate Mortgage remain effective, the foreclosure proceedings held on September 8 and 15, 2011, cannot be given effect. In the Notice of Extra-Judicial Sale dated July 15, 2011, and in the Certificate of Sale dated October 10, 2011, the amount designated as mortgage indebtedness amounted to ₱560,000.00. Likewise, in the demand letter dated April 15, 2011, defendant-appellee demanded from plaintiff-appellant the amount

---

[49] See Eduardo P. Caguioa, *COMMENTS AND CASES ON CIVIL LAW, CIVIL CODE OF THE PHILIPPINES*, Vol. IV, 1983 Rev. Second Ed., p. 303.

[50] *Id.* at 304.

[51] CIVIL CODE, Art. 1169 partly provides: "Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation."

of ₱540,000.00 for the unpaid loan. Since the debt due is limited to the principal of ₱200,000.00 with 12% *per annum* as legal interest, the previous demand for payment of the amount of ₱540,000.00 cannot be considered as a valid demand for payment. For an obligation to become due, there must be a valid demand. Nor can the foreclosure proceedings be considered valid since the total amount of the indebtedness during the foreclosure proceedings was pegged at ₱560,000.00 which included interest and which this Court now nullifies for being excessive, iniquitous, and exorbitant. If the foreclosure proceedings were considered valid, it would result in an inequitable situation wherein plaintiff-appellant will have her land foreclosed for failure to pay an over-inflated loan only a small part of which she was obligated to pay.[52]

As to the DMRP, the CA recognized Zenaida as a co-owner of the mortgaged property and as such, she could validly convey through sale or mortgage the portion belonging to her.[53] Thus, the CA ruled that "the Real Estate Mortgage in favor of [Atty. Bulatao] is not entirely rendered void as its validity is limited only to the portion belonging to [Zenaida]."[54]

In *Bailon-Casilao v. Court of Appeals*,[55] the Court observed:

> The rights of a co-owner of a certain property are clearly specified in Article 493 of the Civil Code. Thus:
>
> > Art. 493. Each co-owner shall have *the full ownership of his part* and of the fruits and benefits pertaining thereto, and he may therefore *alienate, assign or mortgage it* and even substitute another person in its enjoyment, except when personal rights are involved. ***But the effect of the alienation or mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.*** x x x
>
> As early as 1923, this Court has ruled that even if a co-owner sells the whole property as his, the sale will affect only his own

---

[52] *Rollo*, pp. 28-29.

[53] *Id.* at 25.

[54] *Id.*

[55] 243 Phil. 888 (1988).

share but not those of the other co-owners who did not consent to the sale [*Punsalan v. Boon Liat*, 44 Phil. 320 (1923)]. This is because under the aforementioned codal provision, the sale or other disposition affects only his undivided share and the transferee gets only what would correspond to his grantor in the partition of the thing owned in common. [*Ramirez v. Bautista*, 14 Phil. 528 (1909)]. Consequently, by virtue of the sales made by Rosalia and Gaudencio Bailon which are valid with respect to their proportionate shares, and the subsequent transfers which culminated in the sale to private respondent Celestino Afable, the said Afable thereby became a co-owner of the disputed parcel of land as correctly held by the lower court since the sales produced the effect of *substituting* the buyers in the enjoyment thereof [*Mainit v. Bandoy,* 14 Phil. 730 (1910)].

From the foregoing, it may be deduced that since a co-owner is entitled to sell his undivided share, a sale of the entire property by one co-owner without the consent of the other co-owners is not null and void. However, only the rights of the co-owner-seller are transferred, thereby making the buyer a co-owner of the property.[56] (Emphasis supplied; italics in the original)

This ruling was reiterated in *Paulmitan v. Court of Appeals*,[57] where the Court therein ruled that the sale of the property owned in common by one co-owner without the consent of the others did not give to the buyer ownership over the entire land but merely transferred to the buyer the undivided share of the seller, making the buyer the co-owner of the land in question.[58]

The Court's reliance on Article 493 of the Civil Code to justify the validity of the sale of the property owned in common by a co-owner without the consent of the other co-owners insofar as the undivided share of the co-owner seller is concerned has to be reconciled with the ruling of the Court *en banc* through Justice J.B.L. Reyes the case of *Estoque v. Pajimula*[59] (*Estoque*) which has not been overturned. In *Estoque*, the Court pronounced:

---

[56] *Id.* at 892-893.

[57] 290 Phil. 376 (1992).

[58] *Id.* at 385-386.

[59] 133 Phil. 55 (1968).

x x x The deed of sale to Estoque x x x clearly specifies the object sold as the southeastern third portion of Lot 802 of the Rosario Cadastre, with an area of 840 square meters, more or less. Granting that the seller, Crispina Perez Vda. de Aquitania could not have sold this particular portion of the lot owned in common by her and her two brothers, Lorenzo and Ricardo Perez, by no means does it follow that she intended to sell to x x x Estoque her 1/3 undivided interest in the lot aforementioned. There is nothing in the deed of sale to justify such inference. That the seller could have validly sold her one-third undivided interest to [Estoque] is no proof that she did choose to sell the same. *Ab posse ad actu non valet illatio.*[60]

While in *Estoque* a specific portion of a co-owned property was sold, that situation is no different from a situation wherein a co-owner has sold the entire co-owned property, *i.e.*, a specific parcel of land of which the seller has only an undivided interest therein, because the rationale for not recognizing the effectivity of the disposition by a co-owner without the consent of the other co-owners over a specific portion equally applies to the disposition of the entire co-owned property, which is more than the undivided interest or share rightfully pertaining to the disposing co-owner.[61]

Estoque characterizes the contract entered into by the disposing co-owner as "ineffective, for lack of power in the vendor to sell the specific portion described in the deed" and makes room for a subsequent ratification of the contract by the other co-owners or validation in case the disposing co-owner subsequently acquires the undivided or *pro-indiviso* interests of the other co-owners.[62] Thus, the subsequent ratification or acquisition will validate and make the contract fully effective[63] as of the date the contract was entered into pursuant to Article 1396 of the Civil Code, which provides that "[r]atification cleanses the contract from all its defects from the moment it was constituted"

---

[60] *Id.* at 58.

[61] Concurring Opinion of *J.* Caguioa in *Magsano v. Pangasinan Savings and Loan Bank, Inc.*, 797 Phil. 392, 409 (2016).

[62] *Id.* at 410.

[63] *Id.*

and Article 1434 of the Civil Code, which provides: "[w]hen a person who is not the owner of a thing sells or alienates and delivers it, and later the seller or grantor acquires title thereto, such title passes by operation of law to the buyer or grantee."

While Article 493 of the Civil Code may not squarely cover the situations wherein a co-owner, without the consent of the other co-owners, alienate, assign or mortgage: (1) the entire co-owned property; (2) a specific portion of the co-owned property; (3) an undivided portion less than the part pertaining to the disposing co-owner; and (4) an undivided portion more than the part pertaining to the disposing co-owner, the principle of estoppel bars the disposing co-owner from disavowing the sale to the full extent of his undivided or *pro-indiviso* share or part in the co-ownership, subject to the outcome of the partition, which, using the terminology of Article 493, limits the effect of the alienation or mortgage to the portion that may be allotted to him in the division upon termination of the co-ownership. Under Article 1431 of the Civil Code, "[t]hrough estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon."[64]

Given the foregoing, the CA was correct when it limited the validity of the DMRP only to the portion belonging to Zenaida. Unfortunately, the dispositive portion reflected differently: "The Deed of Mortgage of Real Property dated June 4, 2008 is DECLARED as VOID only with respect to the share of deceased Adolfo T. Estonactoc."[65] Accordingly, a modification thereof is warranted to reflect that it is valid only to the share pertaining to Zenaida.

As to the share of Zenaida, Atty. Bulatao is correct that Zenaida is a co-owner to the extent of ¾ undivided portion (½ portion representing her share in the conjugal property and ¼ portion as her legitime in the estate of her husband Adolfo Estonactoc) of the subject property, with the remaining ¼ undivided portion

---

[64] *Id.*

[65] *Rollo*, pp. 30-31.

being co-owned by her son Jose Rafael Estonactoc. However, Atty. Bulatao has yet no right to foreclose Zenaida's ¾ undivided share inasmuch as the foreclosure proceedings that he initiated have been declared void in the present proceedings.

WHEREFORE, the Petition is hereby **PARTLY GRANTED**. Accordingly, the Decision dated October 19, 2017 of the Court of Appeals in CA-G.R. CV No. 105581 is **AFFIRMED** with **MODIFICATION**:

1. The Deed of Mortgage of Real Property dated June 3, 2008 is **DECLARED VALID** only with respect to the share of Zenaida C. Estonactoc;
2. The monthly interest rate stipulated in the Deed of Mortgage of Real Property is **DECLARED VOID**;
3. The Foreclosure Sale and the Certificate of Sale issued in favor of Atty. Leonard Florent O. Bulatao are **DECLARED VOID**;
4. Zenaida C. Estonactoc is **ORDERED** to pay Atty. Leonard Florent O. Bulatao the amount of ₱200,000.00 that the former borrowed from the latter with interest at the rate of 12% *per annum* from June 3, 2008 to June 30, 2013 and at the rate of 6% *per annum* from July 1, 2013 until full payment; and,
5. Interest due on the principal amount of ₱200,000.00 accruing as of judicial demand (*i.e.*, filing of the counterclaim of Atty. Leonard Florent O. Bulatao) shall separately earn legal interest at the rate of 12% *per annum* until June 30, 2013 and at the rate of 6% *per annum* from July 1, 2013 until full payment.

SO ORDERED.

Peralta, C.J. (Chairperson), Reyes, J. Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

FIRST DIVISION

[G.R. No. 236293. December 10, 2019]

PROCESO L. MALIGALIG, *petitioner, vs.* **SANDIGANBAYAN (SIXTH DIVISION), PEOPLE OF THE PHILIPPINES, represented by the OFFICE OF THE SPECIAL PROSECUTOR OF THE OFFICE OF THE OMBUDSMAN, PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT and BATAAN SHIPYARD AND ENGINEERING CORPORATION, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; JURISDICTION; DEFINED AS THE POWER AND AUTHORITY OF A COURT TO HEAR, TRY AND DECIDE A CASE. — In law, nothing is as elementary as the concept of jurisdiction, for the same is the foundation upon which the courts exercise their power of adjudication, and without which, no rights or obligation could emanate from any decision or resolution. Jurisdiction is defined as the power and authority of a court to hear, try and decide a case. The jurisdiction of the Sandiganbayan is provided in P.D. No. 1606, as amended by R.A. No. 10660, which, insofar as relevant in this case.

2. ID.; ID.; ID.; JURISDICTION OF A COURT OVER A CRIMINAL CASE IS DETERMINED BY THE ALLEGATIONS IN THE COMPLAINT; CASE AT BAR. — In this case, the two (2) Informations filed against the petitioner before the Sandiganbayan showed that he was charged with Violation of Section 3(e) of R.A. No. 3019, and Malversation of Public Funds through Falsification of Public Document. The Information for violation of the anti-graft law asserts that petitioner, "*in the discharge of his administrative and/or official functions and taking advantage of his official position, did then and there, willfully, unlawfully and criminally, with evident bad faith or gross inexcusable negligence*" performed the acts constitutive of the offense charged. On the other hand, the charge for the complex crime of Malversation of Public Funds through

Falsification of Public Document was allegedly committed by the petitioner "while in the performance of or in relation to his office and taking advantage of his official position." Both Informations also alleged that petitioner is a public officer "*being then the President and a member of the Board of Directors of the Bataan Shipyard and Engineering Co., Inc. (BASECO), a government-owned or controlled corporation.*" Thus, on the basis of the allegations in the accusatory Informations alone, there is sufficient basis for the Sandiganbayan to take cognizance of the two (2) cases against the petitioner. The jurisdiction of a court over a criminal case is determined by the allegations in the complaint or information. And once if it shown, the court may validly take cognizance of the case.

3. CRIMINAL LAW; PUBLIC OFFICER; DEFINED; CASE AT BAR. — Petitioner's defense that he was not a public officer at the time of the alleged commission of the offense does not hold water. It is well-settled that, "jurisdiction is not affected by the pleas or the theories set up by defendant or respondent in an answer, a motion to dismiss, or a motion to quash. Otherwise, jurisdiction would become dependent almost entirely upon the whims of defendant or respondent." Besides, his admission in his Counter-Affidavit filed before the Office of the Ombudsman that he was appointed as member of the Board of Directors, and eventually as President of BASECO by former President Gloria Macapagal-Arroyo, militates against his claim that he was not a public officer. A public officer is defined in the Revised Penal Code as "any person who, by direct provision of the law, popular election, or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government, or in any of its branches, public duties as an employee, agent or subordinate official, of any rank or class." The concept of a public officer was expounded further in the *Serana* case, where it was held that, "An investment in an individual of some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public makes one a public officer." As President of a sequestered company like BASECO, petitioner is expected to perform functions that would benefit the public in general.

4. POLITICAL LAW; PRESIDENTIAL DECREE NO. 1606 (AS AMENDED BY REPUBLIC ACT NO. 10660); SANDIGANBAYAN; HAS JURISDICTION OVER OFFENSES FOR VIOLATION OF REPUBLIC ACT NO. 3019 AND THE COMPLEX CRIME OF MALVERSATION OF PUBLIC FUNDS THROUGH FALSIFICATION OF PUBLIC DOCUMENT; CASE AT BAR. — [T]he Sandiganbayan did not commit grave abuse of discretion in denying petitioner's Motion to Quash and Motion for Reconsideration. It definitely has jurisdiction over the case and over the person of the petitioner since offenses for violation of R.A. No. 3019 and the complex crime of Malversation of Public Funds through Falsification of Public Document and petitioner's position, as alleged in the two (2) Informations, are clearly among those offenses and felonies and public officers enumerated in P.D. No. 1606, as amended by R.A. No. 10660.

APPEARANCES OF COUNSEL

Rebekah Eunice O. Supapo for respondents PCGG and BASECO.

D E C I S I O N

PERALTA, *C.J.*:

This Petition for *Certiorari* under Rule 65 of the Rules of Court seeks to set aside the Sandiganbayan Sixth Division's (*Sandiganbayan*) Resolutions dated October 10, 2017[1] and November 17, 2017[2] in SB-CRM- 17-0736 and SB-CRM-17-0737, which respectively denied petitioner's Alternative Motion to Quash or To Suspend Proceedings and Motion for Reconsideration.

Petitioner was charged before the Sandiganbayan with violation of Section 3(e) of Republic Act (*R.A.*) No. 3019 and Article 217, in relation to paragraph 4 of Article 48 of the Revised Penal Code, under two (2) Informations, which read as follows:

---

[1] Penned by Associate Justice Karl B. Miranda, with Associate Justices Sarah Jane T. Fernandez and Michael Frederick L. Musngi concurring; *rollo,* pp. 35-41.

[2] *Id.* at 42-44.

SB-CRM-17-0736

That on March 29, 2010, or sometime prior or subsequent thereto, in the City of Manila, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused PROCESO LAWAS MALIGALIG, a public officer, being then the President and a member of the Board of Directors of the Bataan Shipyard and Engineering Co., Inc. (BASECO), a government-owned or controlled corporation, in the discharge of his administrative and/or official functions and taking advantage of his official position, did then and there, willfully, unlawfully and criminally, with evident bad faith or gross inexcusable negligence, execute a Release, Waiver and Quitclaim in favor of Northstar Transport Facilities, Inc. (Northstar) without authority from the BASECO Board of Directors, and receive from Northstar the amount of PhP3,554,000.00 as full settlement of its total arrearages of PhP4,819,198.13 to BASECO for the period May 2009 to February 2010 covered by the Contract of Lease dated September 15, 2006 between BASECO, as lessor, and Northstar, as lessee, over BASECO properties including the eastern portion of the land area known as Engineer Island and accretions in Port Area, Manila totaling 17,896.10 square meters more or less, and not remit the amount of PhP3,554,000.00 to BASECO, causing undue injury to BASECO and the Government in the total amount of PhP4,819,198.13 that was due from Northstar, and giving Northstar unwarranted benefits and advantage.

CONTRARY TO LAW."

SB-CRM-17-0737

That on March 29, 2010, or sometime prior or subsequent thereto, in the City of Manila, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused PROCESO LAWAS MALIGALIG, a public officer, being then the President and a member of the Board of Directors of the Bataan Shipyard and Engineering Co., Inc. (BASECO), a government-owned or controlled corporation, and as such by reason of his office and duties is responsible and accountable for public funds entrusted to and received by him, committing the complex crime charged herein while in the performance of or in relation to office and taking advantage of his official position, did then and there, willfully, unlawfully and feloniously, appropriate, take or misappropriate the amount of PhP3,554,000.00 under his charge and custody and which he received from Northstar Transport Facilities, Inc. (Northstar) as full settlement

of its total arrearages of PhP4,819,198.13 to BASECO for the period May 2009 to February 2010 under the Contract of Lease dated September 15, 2006 between BASECO, as lessor, and Northstar, as lessee, over BASECO properties including the eastern portion of the land area known as Engineer Island and accretions in Port Area, Manila totaling 17,896.10 square meters more or less, by means of falsifying the Release, Waiver and Quitclaim dated March 29, 2010 that he executed in favor of Northstar by making an untruthful statement therein that he executed a Release, Waiver and Quitclaim to implement the Resolutions approved on March 24, 2010 by the BASECO Board of Directors in its special board meeting when, in truth and in fact, said statement is absolutely false because the BASECO Board of Directors neither approved nor issued such Resolutions, and for which the accused has a legal obligation to disclose the truth about the absence of such Resolutions, to the damage and prejudice of BASECO, the Government and the public interest in the aforestated amount.

CONTRARY TO LAW."[3]

On May 26, 2017, petitioner filed before the Sandiganbayan an Alternative Motion to Quash or To Suspend Proceedings[4] (motion to quash or to suspend proceedings) on the ground that the Sandiganbayan has no jurisdiction over his person and that the Office of Ombudsman had no authority to file the above-quoted Informations against him. Petitioner, in the alternative, also moved for the suspension of his arraignment on the ground of a prejudicial question. The People, through the Office of the Special Prosecutor (*OSP*), opposed petitioner's motion to quash or to suspend proceedings, insisting on its authority to file the Informations and on the jurisdiction of the Sandiganbayan to hear the case against the petitioner. The OSP argued that there was no prejudicial question involved, since the issue on the ownership of shares of BASECO will not affect any of the elements of the crimes charged in the Informations.

On October 10, 2017, the Sandiganbayan denied petitioner's Motion to Quash or to Suspend Proceedings. His motion for reconsideration having been denied in the Sandiganbayan's

---

[3] *Id.* at 36-38.

[4] *Id.* at 47-58.

Resolution dated November 17, 2017, petitioner interposes the present petition raising the following issues:

I

WHETHER OR NOT THE RESPONDENT COURT ACTED WITHOUT JURISDICTION IN ISSUING THE RESOLUTION DATED OCTOBER 10, 2017 INSOFAR AS IT HELD THAT IT HAS JURISDICTION OVER THE CASE AND THE PERSON OF THE ACCUSED.

II

WHETHER OR NOT THE RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN DENYING PETITIONER'S ALTERNATIVE MOTION TO QUASH OR TO SUSPEND PROCEEDINGS DATED MAY 12, 2017 AND MOTION FOR RECONSIDERATION DATED OCTOBER 17,2017 (SIC).[5]

Petitioner contends that the Bataan Shipyard and Engineering Co., Inc. (*BASECO*) is not a government-owned or controlled corporation. Invoking the ruling in *BASECO v. PCGG, et al.*,[6] he argued that, while BASECO was under sequestration by the Presidential Commission on Good Government (*PCGG*), there was no divestment of title over the seized property since the PCGG has only powers of administration and that it may not exercise acts of ownership over the property sequestered, frozen or provisionally taken over. Petitioner alleged that he bought one (1) share of stock of the company in 2001 and, thus, he was entitled to be voted upon as member of the Board of Directors (*BOD*) of BASECO. He theorizes that while the former President intimated her desire to the PCGG that he be made a member of the BOD, the same would not nevertheless have materialized had he not acquired a share of stock in the company. He was elected as member of the BOD and, eventually, as President of BASECO every year until he was unceremoniously replaced in 2011.

---

[5] *Id.* at 12.

[6] 234 Phil. 180 (1987).

Petitioner posits that since BASECO is a private corporation under the tutelage of PCGG as conservator and that he was elected to the BOD by reason of his being a stockholder of the company, he cannot be considered as a public official or employee within the definition of Section 2(b) of R.A. No. 3019, otherwise known as the *Anti-Graft and Corrupt Practices Act*. Not being a public official or employee, he asserts that the Sandiganbayan has no jurisdiction over his person and that, consequently, the Office of the Ombudsman also has no jurisdiction to conduct preliminary investigation against him. Petitioner, thus, concludes that the Sandiganbayan gravely abused its discretion in denying his Motion to Quash or To Suspend Proceedings dated May 12, 2017 and Motion for Reconsideration dated October 17, 2017.

Sought for comment to the present petition, the OSP contend that the Sandiganbayan has jurisdiction over the case and person of petitioner. It argued that the jurisdiction of a court in criminal cases is determined by the allegations in the complaint or information. Once it is shown that it has jurisdiction, the court may validly take cognizance of the case and the court's jurisdiction to try a criminal case is determined at the time of the institution of the action, not at the time of the commission of the offense. The OSP insists that the two (2) Informations against the petitioner sufficiently state the elements of the crime charged. It points out petitioner's own admission in his Counter-Affidavit dated June 30, 2014 that he was appointed as member of the BOD of BASECO, and later as its President by former President Gloria Macapagal-Arroyo.

It stressed that Section 4 of P.D. No. 1606, as amended by R.A. No. 10660, enumerates the officials and offenses or felonies cognizable by the Sandiganbayan. The crimes charged against the petitioner, who is a public officer as defined by Section 2 of P.D. No. 1602, are expressly stated in the Section 4(a) and (b), hence, within the original jurisdiction of the Sandiganbayan. Pursuant to R.A. No. 6770, or *The Ombudsman Law*, it is the Office of the Ombudsman that has the authority to file the cases against the petitioner with the Sandiganbayan.

The OSP insists that BASECO is a government-owned or controlled corporation (*GOCC*), as classified by the Governance Commission for GOCCs under the category *GOCC's Supervised by the PCGG*. It argues that the jurisdiction of the Sandiganbayan is not undermined by the fact that BASECO is under sequestration by the PCGG, but instead reinforces the proposition that BASECO is a government entity utilizing public funds. It alleged that the issue of BASECO's ownership has long been settled as pointed out by the Sandiganbayan in its assailed Resolution dated October 10, 2017. Citing Section 7, Rule 111 of the Revised Rules of Criminal Procedure, it asseverates that there was no prejudicial question involved which would justify the suspension of the criminal proceedings against the petitioner. The OSP contends that by filing a motion to quash, petitioner hypothetically admits the facts alleged in the Informations and that the Sandiganbayan did not gravely abused its discretion in denying petitioner's motion to quash. It additionally alleged that the denial of a motion to quash is not correctible by *certiorari*.

In their separate Comments, the PCGG and BASECO alleged essentially the same arguments in asserting that petitioner is a public officer. It was asserted in their respective Comments that BASECO's income, as a sequestered corporation, are remitted to the PCGG and then turned-over to the Bureau of Treasury. The members of the board of directors of BASECO were elected by virtue of "Desire Letters" issued by the President of the Republic of the Philippines and that petitioner sat as President and Director of BASECO by virtue of the appointing power of the President. As such, he handled the affairs of BASECO in representation and protection of the interests of the government. Thus, petitioner is a public officer exercising functions for public benefit, namely, management of sequestered corporation and earning income for the government.

The Petition is not impressed with merit.

In law, nothing is as elementary as the concept of jurisdiction, for the same is the foundation upon which the courts exercise their power of adjudication, and without which, no rights or

obligation could emanate from any decision or resolution.[7] Jurisdiction is defined as the power and authority of a court to hear, try and decide a case.[8] The jurisdiction of the Sandiganbayan is provided in P.D. No. 1606, as amended by R.A. No. 10660, which, insofar as relevant in this case, reads as follows:

"Sec. 4. *Jurisdiction.* The Sandiganbayan shall exercise original jurisdiction in all cases involving:

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

(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as grade 27 and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

x x x x x x x x x

(g) Presidents, directors or trustees, or managers of government-owned or controlled corporations, state universities or educational institutions or foundations;

b. Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection (a) of this section in relation to their office."

In this case, the two (2) Informations filed against the petitioner before the Sandiganbayan showed that he was charged with Violation of Section 3(e) of R.A. No. 3019, and Malversation of Public Funds through Falsification of Public Document. The Information for violation of the anti-graft law asserts that

---

[7] *Glynna Foronda-Crystal v. Aniana Lawas Son,* G.R. No. 221815, November 29, 2017.

[8] *Id.*

petitioner, "*in the discharge of his administrative and/or official functions and taking advantage of his official position, did then and there, willfully, unlawfully and criminally, with evident bad faith or gross inexcusable negligence"* performed the acts constitutive of the offense charged. On the other hand, the charge for the complex crime of Malversation of Public Funds through Falsification of Public Document was allegedly committed by the petitioner "*while in the performance of or in relation to his office and taking advantage of his official position.*" Both Informations also alleged that petitioner is a public officer "*being then the President and a member of the Board of Directors of the Bataan Shipyard and Engineering Co., Inc. (BASECO), a government-owned or -controlled corporation.*" Thus, on the basis of the allegations in the accusatory Informations alone, there is sufficient basis for the Sandiganbayan to take cognizance of the two (2) cases against the petitioner. The jurisdiction of a court over a criminal case is determined by the allegations in the complaint or information. And once if it shown, the court may validly take cognizance of the case.[9]

Petitioner's defense that he was not a public officer at the time of the alleged commission of the offense does not hold water. It is well-settled that, "jurisdiction is not affected by the pleas or the theories set up by defendant or respondent in an answer, a motion to dismiss, or a motion to quash. Otherwise, jurisdiction would become dependent almost entirely upon the whims of defendant or respondent."[10] Besides, his admission in his Counter-Affidavit filed before the Office of the Ombudsman that he was appointed as member of the Board of Directors, and eventually as President of BASECO by former President Gloria Macapagal-Arroyo, militates against his claim that he was not a public officer. A public officer is defined in the Revised Penal Code as "any person who, by direct provision of the law, popular election, or appointment by competent authority, shall take part in the performance of public functions

---

[9] *Navaja v. Hon. De Castro, et al.,* 761 Phil. 142, 151 (2015), citing *Foz, Jr., et al. v. People,* 618 Phil. 120, 130 (2009).

[10] *Serana v. Sandiganbayan, et al.,* 566 Phil. 224, 251 (2008).

in the Government of the Philippine Islands, or shall perform in said Government, or in any of its branches, public duties as an employee, agent or subordinate official, of any rank or class."[11] The concept of a public officer was expounded further in the *Serana* case,[12] where it was held that, "An investment in an individual of some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public makes one a public officer." As President of a sequestered company like BASECO, petitioner is expected to perform functions that would benefit the public in general.

Thus, the Sandiganbayan did not commit grave abuse of discretion in denying petitioner's Motion to Quash and Motion for Reconsideration. It definitely has jurisdiction over the case and over the person of the petitioner since offenses for violation of R.A. No. 3019 and the complex crime of Malversation of Public Funds through Falsification of Public Document and petitioner's position, as alleged in the two (2) Informations, are clearly among those offenses and felonies and public officers enumerated in P.D. No. 1606, as amended by R.A. No. 10660.

WHEREFORE, premises considered, the Petition for *Certiorari* is **DENIED** for utter lack of merit. Costs against the petitioner.

SO ORDERED.

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

---

[11] *Zoleta v. The Honorable Sandiganbayan (Fourth Division), et al.,* 765 Phil. 39, 53 (2015).

[12] *Supra* note 6, at 249-250.

FIRST DIVISION

[G.R. No. 238258. December 10, 2019]

DUTY PAID IMPORT CO. INC., RAMON P. JACINTO, RAJAH BROADCASTING NETWORK, INC., and RJ MUSIC CITY, *petitioners, vs.* **LANDBANK OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; LIMITED TO QUESTIONS OF LAW; ISSUES RAISED BY PETITIONERS ARE ALL QUESTIONS OF FACTS. — Only questions of law should be raised in Rule 45 petitions as this Court is not a trier of facts and will not entertain questions of fact as factual findings of the CA and trial courts are final, binding, or conclusive on the parties, and on this Court when supported by substantial evidence. The issues raised by petitioners in this petition are a virtual rehash, if not a verbatim reproduction, of the issues raised before the CA. Whether the parties agreed on the restructuring of the loan, whether the amounts sought to be collected by LBP are much higher than DPICI's loan obligations, and whether petitioners bound themselves as sureties under the Comprehensive Surety Agreement, are questions of fact which have all been settled by the courts below.

2. ID.; EVIDENCE; BURDEN OF PROOF; HE WHO ALLEGES A FACT BEARS THE BURDEN OF PROVING IT; PETITIONERS FAILED TO ESTABLISH THAT THERE WAS RESTRUCTURING OF THE SUBJECT AGREEMENT. — Basic is the evidentiary rule that he who allege a fact bears the burden of proof. Petitioners merely allege that LBP had agreed to restructure the DPICI's loan obligations in the same manner that the obligations of DPICI's affiliate company, First Women's Credit Corporation, was allegedly restructured, and, that pending such restructuring, LBP had agreed to give DPICI a grace period within which to pay its obligations. As unanimously found by the CA and the RTC, these allegations were never substantiated by evidence. Petitioner's lone witness, Colayco, merely confirmed the existence of the Omnibus Credit

Line Agreement in favor of DPICI. There was no evidence, documentary or testimonial, to prove the existence of the alleged agreement by the parties to restructure. Allegations are not evidence and without evidence, bare allegations do not prove facts. At most, the letter presented by LBP proves that there was a proposal on the part of the petitioners to restructure the loan, but that said proposal was nevertheless denied by LBP. Hence, what this settles is that LBP did not give its consent to the proposed restructuring; as such, there was no restructuring to speak of.

3. CIVIL LAW; SURETY; PETITIONERS ARE LIABLE AS SURETIES UNDER THE SUBJECT AGREEMENT. — [W]e sustain the finding that Jacinto, *et al.,* are liable as sureties. In fact, petitioners do not deny their liability as sureties under the Comprehensive Surety Agreement, but nevertheless argue that their liability arises only when the collaterals used to secure the obligation proved to be insufficient. The terms of the Comprehensive Surety Agreement itself, which petitioners knowingly and intelligently entered into, belie such contention[.] x x x Thus, under the terms of the Comprehensive Surety Agreement, Jacinto, *et al.,* become immediately liable upon DPICI's default without the need for LBP to first proceed against, and, exhaust the collaterals offered by DPICI.

4. ID.; ID.; ID.; 1997 FINANCIAL CRISIS IN ASIA DID NOT CONSTITUTE A VALID JUSTIFICATION TO RENEGE ONE'S OBLIGATION AND IS NOT AMONG THE FORTUITOUS EVENTS CONTEMPLATED UNDER THE NEW CIVIL CODE. — [P]etitioners' plea to be absolved of liability on account of the Asian financial crisis in 1997, deserves scant consideration. Upon the petitioners rest the burden of proving that its financial distress which it claim to have suffered was the proximate cause of its inability to comply with its obligations. The loan agreement was entered into on November 19, 1997, or well after the start of the Asian economic crisis. Petitioners ought to be aware of the economic environment at that time, yet it chose to contract said obligations from LBP. It was a business judgment that entailed certain risks. In any case, the 1997 financial crisis that ensued in Asia did not constitute a valid justification to renege on one's obligations and it is not among the fortuitous events contemplated under Article 1174 of the New Civil Code.

APPEARANCES OF COUNSEL

Evangeline M. Isidro for petitioners.
LBP Legal Services Group for respondent.

R E S O L U T I O N

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

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court challenges the Court of Appeals' (CA) Decision[2] dated June 29, 2017, and Resolution[3] dated March 20, 2018 which dismissed petitioners' appeal, and, thus, affirmed the Regional Trial Court's (RTC) Decision dated June 25, 2015, and Order dated January 20, 2016, finding petitioners solidarily liable to pay respondent its loan obligations.

Facts

On November 19, 1997, respondent Landbank of the Philippines (LBP) extended to petitioner Duty Paid Import Co. Inc., (DPICI) an Omnibus Credit Line Agreement for the amount of Two Hundred Fifty Million Pesos (₱250,000,000.00). A Comprehensive Surety Agreement was executed by petitioners Ramon P. Jacinto, Rajah Broadcasting Network, Inc., and RJ Music City, represented by Jaime J. Colayco (Colayco) and Ma. Belen B. Quejano (Quejano) (collectively, Jacinto, *et al.*).[4] Under the Comprehensive Surety Agreement, Jacinto, *et al.*, unconditionally, irrevocably, jointly and severally bound themselves to pay LBP the principal sum of ₱250,000,000.00 in the event DPICI fails to pay its loans, credits, advances, and other credit facilities and accommodation on maturity.[5]

---

[1] *Rollo,* pp. 9-29.

[2] Penned by Associate Justice Ma. Luisa C. Quijano-Padilla and concurred in by Associate Justices Sesinando E. Villon and Rodil V. Zalameda (now a Member of the Court); *id.* at 31-39.

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

[4] *Id.* at 11.

[5] *Id.*

From July 24, 1997 to August 4, 1998, Colayco and Quejano executed the following promissory notes in favor of LBP:[6]

Promissory Note	Date	Amount
B-2083 (15)	July 24, 1997	₱50,000,000.00
B-2083 (17)	July 24, 1997	₱40,000,000.00
B-2083 (18)	November 21, 1997	₱25,000,000.00
B-2083 (19)	November 26, 1997	₱15,000,000.00
B-2083 (20)	December 4, 1997	₱10,000,000.00
B-2083 (21)	May 22, 1998	₱50,000,000.00
B-2083 (22)	June 26, 1998	₱25,000,000.00
B-2083 (23)	August 4, 1998	₱35,000,000.00

As security for DPICI's loan in the amount of Ten Million Pesos (₱10,000,000,00), Colayco, in his capacity as Vice President of RJ Holdings, Inc., executed a real estate mortgage over a condominium unit covered by CCT No. 33328.

When DPICI failed to pay its obligations, LBP extrajudicially foreclosed the real estate mortgage over the condominium unit on December 17, 1998. LBP emerged as the highest bidder at the auction sale held on February 5, 1999, for the amount of Two Million Nine Hundred Seventy Thousand Pesos (₱2,970,000.00).

Despite applying the proceeds of the foreclosure sale to the outstanding loan obligations, there remained a deficiency in the amount of Three Hundred Four Million Five Hundred Twenty-four Thousand Four Hundred Thirty-eight Pesos and 98/100 cents (₱304,524,438.98). LBP then sent demand letters dated September 22, 1998 and October 7, 1998 to DPICI, to no avail.[7]

This led LBP to file the complaint *a quo* for collection of sum of money against herein petitioners.

---

[6] *Id.* at 32.

[7] *Id.*

By way of answer, petitioners contended that the complaint was prematurely filed as LBP allegedly agreed to a restructuring of the loan agreement. They also argued that the actual amount of the obligations was less than that prayed for in LBP's complaint. Petitioners also raised the defense that their failure to pay was due to the Asian economic crisis in 1997, which was a *force majeure*.

On June 25, 2015, the RTC promulgated its Decision with the following conclusion:

> **WHEREFORE,** premises considered, judgment is hereby RENDERED in favor of [LBP] and against [petitioners] ordering the latter to jointly and severally pay the former the following:
>
> (a) The principal obligation in the amount of [₱]166,853,078.57 plus interest thereon at the rate of 6% per annum from 7 October 1998 until the same are fully paid;
>
> (b) The amount of [₱]l00,000.00 as and by way of attorney's fees; and
>
> (c) Cost of suit.
>
> The compulsory counterclaims of [petitioners] are DENIED for lack of merit.
>
> Furnish copies of this Decision to the parties and their respective [counsel].
>
> **SO ORDERED.**[8]

Petitioners' motion for reconsideration was likewise denied by the RTC, prompting them to bring their appeal to the CA.

In denying petitioners' appeal, the CA took note of the RTC's finding that the alleged restructuring of the loan obligations was not substantiated by evidence. The CA observed that petitioners' lone witness, Colayco, merely confirmed the existence of the Omnibus Credit Line Agreement and nothing more.[9] Contrariwise, that the proposed restructuring of the loan

---

[8] *Id.* at 33.

[9] *Id.* at 35.

agreement never came to pass was proven by a letter sent by petitioners' Vice President for Finance to LBP which acknowledged that such proposal was denied by LBP.[10] Because of these, the CA disregarded petitioners' defense that LBP's complaint was prematurely filed.

The CA also agreed with the RTC when the latter rejected petitioners' contention that their failure to pay was due to the economic crisis in 1997, which should be treated as *force majeure*.[11] The CA was in further agreement with the RTC that petitioners were liable as sureties, and, as such, solidarily liable with DPICI as principal obligor.[12]

Finally, the CA refused petitioners' invocation of Republic Act No. 3765 or the Truth in Lending Act for having been raised for the first time on appeal.[13]

The CA disposed thus:

WHEREFORE, premises considered, the present appeal is **DISMISSED** for lack of merit.

The Decision dated June 25, 2015 and Order dated January 20, 2016 issued by the Regional Trial Court, Branch 139, Makati City in Civil Case No. 99-1929 are **AFFIRMED in toto.**

SO ORDERED.[14]

Dissatisfied with the denial of their appeal and subsequent motion for reconsideration, petitioners filed the instant petition raising the following:

Issues

A. RESPONDENT HAS NO CAUSE OF ACTION OR RIGHT OF ACTION AGAINST THE PETITIONERS.

---

[10] *Id.* at 36.

[11] *Id.* at 34.

[12] *Id.* at 38.

[13] *Id.* at 36.

[14] *Id.* at 39.

B. THE PRESENT ACTION WAS PREMATURELY FILED.

C. THE OBLIGATION OF DPICI WAS MUCH LESS THAN THE AMOUNTS CLAIMED BY THE RESPONDENT.

D. PETITIONERS COULD NOT BE HELD LIABLE TO RESPONDENT FOR THE AMOUNTS CLAIMED WERE EXCESSIVE AND EXORBITANT ON ACCOUNT OF THE UNCONSCIONABLY HIGH INTEREST RATES AND PENALTIES IMPOSED BY THE RESPONDENT.

E. PETITIONERS RAMON P. JACINTO, RAJAH BROADCASTING CORP. AND RJ MUSIC SHOULD NOT BE HELD SOLIDARILY LIABLE WITH [DPICI].

F. PETITIONERS RAMON P. JACINTO, RAJAH BROADCASTING CORP. AND RJ MUSIC SHOULD NOT BE MADE TO PAY THE LIABILITIES OF [DPICI] CONSIDERING THAT IT[S] FAILURE TO PAY ITS DEBT WAS BASED ON JUSTIFIABLE REASONS.[15]

In its Comment,[16] LBP seeks the outright denial of the petition for having raised issues not constituting questions of law. At any rate, LBP contends that petitioners failed to prove that the loan agreement was restructured and that petitioners knowingly executed the loan documents. LBP stresses that petitioners are liable not as guarantors but as sureties of DPICI's debts, and, consequently, are directly and absolutely bound with DPICI as principal debtor.[17] LBP also finds no error committed by the CA when it refused to treat the Asian economic crisis in 1997 as *force majeure*.[18]

In Reply,[19] petitioners assert that there was an agreement to restructure the loan albeit LBP abruptly declared that their loan already became due without consulting the account

---

[15] *Id.* at 20.

[16] *Id.* at 73-91.

[17] *Id.* at 84.

[18] *Id.* at 85.

[19] *Id.* at 98-103.

officer handling petitioners' loan.[20] Because of the agreement to restructure, petitioners contend that DPICI's loan was not yet due; thus, Jacinto *et al.*'s liability as sureties has yet to arise.[21] Again, petitioners allege that they do not seek to evade liability, they only seek that the restructuring of the loan agreement be implemented as their failure to pay was brought about by the economic crisis over which petitioners had no control.[22]

Ruling of the Court

For lack of merit, we deny the petition.

Only questions of law should be raised in Rule 45 petitions as this Court is not a trier of facts and will not entertain questions of fact as factual findings of the CA and trial courts are final, binding, or conclusive on the parties, and on this Court when supported by substantial evidence.[23]

The issues raised by petitioners in this petition are a virtual rehash, if not a verbatim reproduction, of the issues raised before the CA.[24] Whether the parties agreed on the restructuring of the loan, whether the amounts sought to be collected by LBP are much higher than DPICI's loan obligations, and whether petitioners bound themselves as sureties under the Comprehensive Surety Agreement, are questions of fact which have all been settled by the courts below.

As in all general rules, the rule that only questions of law may be entertained in a petition for review also permits exceptions. As enumerated in *Pascual v. Burgos:*[25]

---

[20] *Id.* at 98-99.

[21] *Id.* at 100.

[22] *Id.* at 101.

[23] *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil.), Inc.,* 364 Phil. 541, 546 (1999).

[24] *Rollo,* p. 79.

[25] 776 Phil. 167, 182-183 (2016).

However, these rules do admit exceptions. Over time, the exceptions to these rules have expanded. At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*:

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[26] (Internal citations omitted)

None of the above exceptions exists in the instant case; thus, we find no reason to depart from the similar findings of the appellate and trial courts.

Even when the Court considers the facts as alleged by petitioners, it will still arrive at the conclusion that they failed to establish by preponderance of evidence that the loan agreement was restructured as to give merit to the argument that LBP's complaint was prematurely filed.

Basic is the evidentiary rule that he who allege a fact bears the burden of proof.[27] Petitioners merely allege that LBP had agreed to restructure the DPICI's loan obligations in the same manner that the obligations of DPICI's affiliate company, First Women's Credit Corporation, was allegedly restructured, and, that pending such restructuring, LBP had agreed to give DPICI a grace period within which to pay its obligations.[28] As

---

[26] *Id.* at 182.

[27] *Lim v. Equitable PCI Bank,* 724 Phil. 453, 454 (2014).

[28] *Rollo*, p. 13.

unanimously found by the CA and the RTC, these allegations were never substantiated by evidence.[29] Petitioner's lone witness, Colayco, merely confirmed the existence of the Omnibus Credit Line Agreement in favor of DPICI. There was no evidence, documentary or testimonial, to prove the existence of the alleged agreement by the parties to restructure. Allegations are not evidence and without evidence, bare allegations do not prove facts.[30] At most, the letter[31] presented by LBP proves that there was a proposal on the part of the petitioners to restructure the loan, but that said proposal was nevertheless denied by LBP. Hence, what this settles is that LBP did not give its consent to the proposed restructuring; as such, there was no restructuring to speak of.

Petitioners' argument that LBP was at fault for not having consulted its account officer before collecting the loan is, at best, specious. The account officer merely keeps track of records pertinent to the account. By no measure is the account officer a party to the loan agreement which is strictly between LBP and petitioners.

Anent petitioners' argument that the amount sought to be collected by LBP was much higher than its total obligations, suffice to say that the lower courts uniformly determined that even after the application of the proceeds of the foreclosure sale, there remained a balance on the loan obligation in the amount of ₱166,853,078.57.[32] Quite glaringly, petitioners did not bother to disprove this finding by offering contrary proof.

In the same manner, we sustain the finding that Jacinto, *et al.*, are liable as sureties. In fact, petitioners do not deny their liability as sureties under the Comprehensive Surety Agreement, but nevertheless argue that their liability arises only when the collaterals used to secure the obligation proved

---

[29] *Id.* at 82.

[30] *Sabellina v. Buray*, 768 Phil. 224, 238 (2015).

[31] *Supra* note 10.

[32] *Rollo,* p. 35.

to be insufficient.[33] The terms of the Comprehensive Surety Agreement itself, which petitioners knowingly and intelligently entered into, belie such contention:

> WHEREAS, the BANK has granted to **DUTY-PAID IMPORT CO., INC. (Save-a-Lot)** (hereinafter referred to as the BORROWER) certain loans, credits, advances, and other credit facilities or accommodations up to a principal amount of **PESOS: TWO HUNDRED FIFTY MILLION PESOS, (₱250,000,000.00)**, Phllippine Currency, (the OBLIGATIONS) with a condition, among others, that a joint and several liability undertaking be executed by the SURETY for the due and punctual payment of all loans, credits, advances, and other credit facilities or accommodations of the BORROWER due and payable to the BANK and for the faithful and prompt performance of any or all the terms and conditions thereof.
>
> WHEREAS, the SURETY has, for a valuable consideration received from the BORROWER agreed to irrevocably, unconditionally and jointly and severally undertake/guarantee the OBLIGATIONS.
>
> x x x x x x x x x
>
> 14. Upon any default, the BANK may proceed directly against the SURETY without first proceeding against and without exhausting the property of the BORROWER;[34] (Emphasis and underscoring in the original)

Thus, under the terms of the Comprehensive Surety Agreement, Jacinto, *et al.*, become immediately liable upon DPICI's default without the need for LBP to first proceed against, and, exhaust the collaterals offered by DPICI.

Finally, petitioners' plea to be absolved of liability on account of the Asian financial crisis in 1997, deserves scant consideration. Upon the petitioners rest the burden of proving that its financial distress which it claim to have suffered was the proximate cause of its inability to comply with its obligations.[35] The loan

---

[33] *Id.* at 25.

[34] *Id.* at 37.

[35] See *Asian Construction and Development Corp. v. PCI Bank*, 522 Phil. 168, 180 (2006).

agreement was entered into on November 19, 1997, or well after the start of the Asian economic crisis. Petitioners ought to be aware of the economic environment at that time, yet it chose to contract said obligations from LBP. It was a business judgment that entailed certain risks. In any case, the 1997 financial crisis that ensued in Asia did not constitute a valid justification to renege on one's obligations[36] and it is not among the fortuitous events contemplated under Article 1174 of the New Civil Code.[37]

In all, we find no error on the part of the appellate court necessitating the Court's exercise of its discretionary review power under Rule 45.

WHEREFORE, the petition is **DENIED.** The Decision dated June 29, 2017 and Resolution dated March 20, 2018 of the Court of Appeals are **AFFIRMED *in toto.***

SO ORDERED.

Peralta, C.J. (*Chairperson*), *Caguioa* (*Working Chairperson*), *Lazaro-Javier,* and *Lopez, JJ.* concur.

---

[36] *Id.*

[37] *Mondragon Leisure and Resorts Corp. v. Court of Appeals,* 499 Phil. 268, 279 (2005).

FIRST DIVISION

[G.R. No. 241251. December 10, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SAMMY GLOBA *y* COTURA, *a.k.a.* "JR" and LOUIE ANADIA *y* LUGARPO,** *accused-appellants.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; PRESUMPTION OF INNOCENCE; IN EVERY CRIMINAL CASE WHERE THE ACCUSED ENJOYS THE PRESUMPTION OF INNOCENCE, HE IS ENTITLED TO ACQUITTAL UNLESS HIS GUILT IS SHOWN BEYOND REASONABLE DOUBT. — This Court is guided by the important legal precept that in every criminal case where the accused enjoys the presumption of innocence, he is entitled to acquittal unless his guilt is shown beyond reasonable doubt. Although this Court has repeatedly expressed through its decisions its consistent support in the State's campaign against illegal drugs, it does so with prudent regard to the most basic fundamental rights of every individual in our democratic society. Thus, the burden of the reviewing court is really to see to it that no man is punished unless the proof of his guilt be beyond reasonable doubt.

2. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; THE IDENTITY OF THE PROHIBITED DRUG MUST BE ESTABLISHED WITH MORAL CERTAINTY, CONSIDERING THAT THE DANGEROUS DRUG ITSELF FORMS AN INTEGRAL PART OF THE *CORPUS DELICTI* OF THE CRIME. — Accused-appellants, in this case, were charged, tried, and convicted of illegal sale of *shabu*. In prosecutions involving the illegal sale of dangerous drugs, the following elements must be established: (1) the identities of the buyer, seller, object, and consideration; and (2) the delivery of the thing sold and payment for it. As in any case involving dangerous drugs, it is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself

forms an integral part of the *corpus delicti* of the crime. For this purpose, the law provides for mandatory requirements for the police officers to comply with to preserve the identity and evidentiary value of the illegal drugs and/or paraphernalia from their seizure, initial custody, to their handling and presentation in court.

3. ID.; ID.; PROCEDURAL REQUIREMENTS UNDER SECTION 21 OF R.A. NO. 9165; MUST BE STRICTLY COMPLIED WITH; NON-COMPLIANCE WITH THE PROCEDURAL REQUIREMENTS UNDER JUSTIFIABLE GROUNDS WILL NOT RENDER VOID AND INVALID THE SEIZURE AND CUSTODY OVER THE SEIZED ITEMS AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF SAID ITEMS ARE PROPERLY PRESERVED BY THE APPREHENDING OFFICERS, PROVIDED THE PROSECUTION RECOGNIZES THE POLICE OFFICERS' LAPSES, PRESENT A JUSTIFICATION FOR SUCH LAPSES AND AN EXPLANATION THAT REASONABLE EFFORTS WERE EXERTED TO COMPLY WITH THE PROCEDURE TO NO AVAIL. — As the crime in this case was allegedly committed on July 31, 2012, the original text of Section 21(1), Article II of R.A. No. 9165 is applicable x x x. Supplementing this provision is Section 21(a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 x x x. The Court has consistently ruled and stressed that strict adherence to the above-stated procedure is mandatory as this was set forth as a reasonable safeguard to the possibility of contamination, alteration, or substitution, - whether intentional or unintentional - and even planting of evidence, in drug-related cases considering the unique characteristics of narcotic substances. This, of course, is not to say that the Court expects perfect adherence to the procedure at all times. To be sure, we are not unaware of the fact that strict compliance with said mandatory requirements is not always possible under varied field conditions. Hence, the above-quoted provisions, as well as our case laws, provide for a saving clause in case of unavoidable deviation from the mandatory procedure. Non-compliance with said requirements under justifiable grounds will not render void and invalid the seizure and custody over the seized items as long as the integrity and evidentiary value of said items are properly preserved by the apprehending officers. For purposes of applying the saving clause, the prosecution must recognize the police officers' lapse/s, present a justification

for such lapse/s and an explanation that reasonable efforts were exerted to comply with the procedure to no avail.

4. ID.; ID.; ID.; THE APPREHENDING TEAM IS REQUIRED, AT THE TIME OF APPREHENSION AND SEIZURE, TO CONDUCT THE MARKING, INVENTORY, AND TAKING OF PHOTOGRAPHS OF THE SEIZED ITEMS, IN THE PRESENCE OF ANY ELECTED PUBLIC OFFICIAL AND A REPRESENTATIVE FROM THE MEDIA AND THE DEPARTMENT OF JUSTICE (DOJ), AS THEIR PRESENCE AT SUCH STAGE WOULD FORECLOSE THE PERNICIOUS PRACTICE OF PLANTING OF EVIDENCE OR COMPROMISING THE INTEGRITY OF THE SAME; NOT COMPLIED WITH. — [T]he police officers unjustifiably failed to comply with the mandatory requirements of Section 21 of R.A. No. 9165 and its IRR. The above-cited provisions clearly require the apprehending team to "immediately after seizure and confiscation" conduct the marking, inventory, and taking of photographs of the seized items. Further, it is required that said steps be undertaken in the presence of any elected public official and a representative from the media and the Department of Justice (DOJ) who are required to sign the inventory and given copies thereof. This Court has, in no ambiguous language, explained the necessity of having these witnesses, not only during the inventory, but more importantly, at the time of apprehension and seizure. In fact, it is at the time of arrest and confiscation when the insulating presence of the witnesses is needed, as it is their presence at such stage that would foreclose the pernicious practice of planting of evidence or compromising the integrity of the same. To be sure, this is a requirement that the buy-bust team could easily comply with given the nature of a buy-bust operation as supposedly a well-planned activity. x x x. This is especially true in cases where there is a question as to whether or not a buy-bust operation actually took place as when the accused vehemently denies the same. The persisting doubts in our mind due to the fact that only the police officers were present during the apprehension and confiscation are not without basis as police impunity in such situation becomes inherent. Consider this: assuming the evidence was indeed planted, substituted, or altered, it would be difficult, if not impossible, for any accused to overcome by mere denial the oft-favored testimony of police officers. Thus, in this case, while the apprehending officers conducted an

inventory of the alleged seized items at the place of arrest, doubts as to whether a buy-bust operation was actually conducted still linger to our mind due to the admitted fact that the barangay captain and the media representative, who were supposed to attest to the trustworthiness of the source of the allegedly seized dangerous drugs, came only after thirty minutes from the arrest and alleged confiscation. No explanation was given by the prosecution as to such deviation.

5. ID.; ID.; ID.; DUE TO THE VITAL ROLE PLAYED BY THE THREE-MANDATORY WITNESSES IN THE PRESERVATION OF THE INTEGRITY AND EVIDENTIARY VALUE OF THE *CORPUS DELICTI* IN DRUGS CASES, POLICE OFFICERS ARE COMPELLED NOT ONLY TO STATE REASONS FOR THE 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. — [O]nly two of the three mandatory witnesses under the original text of Section 21 x x x were present. It is well to emphasize that the law requires the presence of any elected public official **and** a representative from the media **and** the DOJ. The presence of these three witnesses was intended as a guarantee against planting of evidence and frame up, as they were "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity." As we have held previously, a sheer statement that "their Chief tried to call a representative from the DOJ but no one arrived," cannot be considered as sufficient and acceptable justification for non-compliance with the strict requirements of the law. Due to the vital role played by said witnesses in the preservation of the integrity and evidentiary value of the *corpus delicti* in drugs cases, police officers are compelled not only to state reasons for the 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. To be certain, these requirements are not unreasonably difficult to comply with considering, especially in this case, that the buy-bust team had until the next day, from the receipt of the confidential information, to plan the operation and make the necessary arrangements, knowing fully well that they would have to strictly

comply with the set of procedure prescribed in Section 21, Article II of R.A. No. 9165 and its IRR.

6. ID.; ID.; ID.; UNJUSTIFIED LAPSES IN THE LINK IN THE CHAIN OF CUSTODY CREATE DOUBTS NOT ONLY AS TO THE IDENTITY AND INTEGRITY OF THE SUBJECT *SHABU*, BUT MORE SO AS TO THE SOURCE THEREOF, WARRANTING THE ACQUITTAL OF THE ACCUSED-APPELLANT. — With these unjustified lapses in the very first and most crucial link in the chain of custody, *i.e.*, the confiscation of illegal drugs from the accused, as well as in the inventory, this Court cannot merely ignore the lingering doubts, not only as to the identity and integrity of the subject *shabu* in this case, but more so as to the source thereof. It is well to state at this point another basic legal precept in criminal prosecutions, which is *dubiis reus est absolvendus* - all doubts should be resolved in favor of the accused. Perforce, accused-appellants' acquittal is warranted.

CAGUIOA, *J.*, *concurring opinion:*

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); PROCEDURAL REQUIREMENTS UNDER SECTION 21 OF RA 9165 AND THE IMPLEMENTING RULES AND REGULATIONS; IN PROSECUTING VIOLATIONS OF RA 9165, IT IS IMPERATIVE THAT THE IDENTITY AND SOURCE OF THE SEIZED SUBSTANCES AS PROOF OF THE *CORPUS DELICTI* BE SUFFICIENTLY ESTABLISHED. — Principally, in prosecuting violations of Republic Act No. (RA) 9165, it is imperative that the identity and source of the seized substances as proof of the *corpus delicti* be sufficiently established. The law and the unambiguous guidelines laid down by the Court have provided exacting safeguards on the preservation of the chain of custody of seized drugs, owing in large part to the ease with which such specimens may be switched, planted, or otherwise contaminated. The establishment of the integrity of the *corpus delicti* is ensured by following the procedure provided in Section 21 of RA 9165 x x x. Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165 (IRR) further specifies where the physical inventory and photographing of the seized items should be done x x x. Given the nature of a buy-bust operation, the possibility of abuse during its conduct is great, and law enforcers have been reminded time and again

to precisely observe and comply with the above requirements, lest their efforts in the State's campaign against illegal drugs be rendered inconsequential due to no other fault than their own. Several cases decided by the Court have so far shown that this failure often occurs during the seizing of the illegal drugs and the inventory thereof, particularly with respect to the site of the physical inventory and photographing of the same.

2. ID.; ID.; ID.; THE PHYSICAL INVENTORY AND PHOTOGRAPHING OF THE SEIZED DRUGS MUST BE CONDUCTED IMMEDIATELY AFTER, OR AT THE PLACE OF APPREHENSION AND/OR SEIZURE; IN THE EVENT OF SITUATIONAL CHALLENGES THAT PREVENT THE PHOTOGRAPHING AND INVENTORY AT THE PLACE OF ARREST, AND WITH A SATISFACTORY JUSTIFICATION THEREFOR, THE SAME MAY BE DONE AT THE NEAREST POLICE STATION OR AT THE NEAREST OFFICE OF THE APPREHENDING OFFICER OR TEAM. — Facially, the language of Section 21(a), Article II of the IRR allows for physical inventory and photographing of the seized items to be conducted at the nearest police station or at the nearest office of the apprehending officer or team. However, such procedural concession must not be taken as an unbridled license to not undertake the inventory at the place of arrest, under the guise of practicability. Existing jurisprudence clarifies the phrase "immediately after seizure and confiscation" to contemplate the ideal compliance of conducting the physical inventory and photographing of the drugs immediately after, or at the place of apprehension. In *People v. Adobar*, this Court took the opportunity to elucidate the legally contemplated application of the phrase "immediately after seizure and confiscation," to wit: The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs must be **at the place of apprehension and/or seizure**. If this is not practicable, it may be done as soon as the apprehending team reaches the nearest police station or nearest office. x x x In other words, while the physical inventory and photographing is allowed to be done "at the nearest police station or at the nearest office of the apprehending officer/ team, whichever is practicable, in case of warrantless seizure," this does not dispense with the requirement of having the DOJ and media representative and the elected public official to be **physically present at the time of and at or near the place of**

apprehension and seizure so that they can be ready to witness the inventory and photographing of the seized drugs "immediately after seizure and confiscation." The reason is simple, it is at the time of arrest or at the time of the drugs' "seizure and confiscation" that the presence of the three (3) witnesses is most needed. **It is their presence at that point that would insulate against the police practices of planting evidence.** x x x. [S]ection 21(a), as a general rule and as fleshed out by jurisprudence, primarily requires that the inventory be done at the place of seizure. As an exemption to that general rule, in the event of situational challenges that prevent the photographing and inventory at the place of arrest, and with a satisfactory justification therefor, only then may the same be done at the nearest police station or office of the apprehending officers.

3. ID.; ID.; ID.; MERE INVOCATION OF AN INCONVENIENCE THAT RENDERED THE INVENTORY IMPRACTICABLE AT THE SITE OF SEIZURE DOES NOT TRANSLATE TO SUBSTANTIAL COMPLIANCE WITH THE PROCEDURAL REQUIREMENTS, ESPECIALLY IF SUCH INVOCATION IS NOT SUFFICIENTLY EXPLAINED IN THE RECORDS OF THE CASE AND SUPPORTED BY EVIDENCE. — [P]ragmatic convenience does not discharge the apprehending officers from the primary duty to exert every effort to inventory and photograph the confiscated items at the very site where they were seized. x x x. [S]ection 21(a), as a general rule and as fleshed out by jurisprudence, primarily requires that the inventory be done at the place of seizure. As an exemption to that general rule, in the event of situational challenges that prevent the photographing and inventory at the place of arrest, and with a satisfactory justification therefor, only then may the same be done at the nearest police station or office of the apprehending officers. Further, during prosecution, mere invocation of an inconvenience that rendered the inventory impracticable at the site of seizure does not translate to substantial compliance with Section 21(a), especially if such invocation is not sufficiently explained in the records of the case and supported by evidence. If the rule were otherwise, the very purpose for which such requirement was provided may very well be met only in theory, but defeated in practice. The danger of slackened compliance with this requirement is illustrated in the scenarios on the ground that

demonstrate how a perfunctory observance of this requirement opens up the buy-bust operation to the dangerous proclivities including planted evidence to incarceration of an innocent for life. For instance, this practicability clause pertaining to site of inventory has given rise to the propensity of some apprehending officers to choose to conduct photographing and inventory of the seized items at the nearest police station, on the basis of inconveniences, including the seemingly ubiquitous "existence of a commotion." This has also often made way for the practice of "calling in" the insulating witnesses after the fact of seizure, which has likewise exposed the validity of the seizure and confiscation to question.

4. ID.; ID.; ID.; WHEN THERE IS FAILURE TO COMPLY WITH THE REQUIREMENTS FOR PROVING THE CHAIN OF CUSTODY IN THE CONFISCATION OF CONTRABAND IN A DRUG BUY-BUST OPERATION, THE STATE HAS THE OBLIGATION TO CREDIBLY EXPLAIN SUCH NON-COMPLIANCE; OTHERWISE, THE PROOF OF THE *CORPUS DELICTI* IS DOUBTFUL, AND THE ACCUSED SHOULD BE ACQUITTED FOR FAILURE TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT; NON-COMPLIANCE WITH THE PROCEDURAL REQUIREMENT CASTS DISTRUST ON THE IDENTITY AND INTEGRITY OF THE *CORPUS DELICTI*, LEADING TO THE ABSENCE OF AN ESSENTIAL ELEMENT IN THE CRIME CHARGED, WHICH RESULTS IN REASONABLE DOUBT AS TO THE GUILT OF THE ACCUSED. — The law is likewise categorical that in case of non-compliance, only upon recognition of a lapse in this respect, and a concomitant acceptable justification therefor, may the validity of the subject seizure be maintained. In the case of *People v. Barte*, the Court had expounded on this duty to explain non-compliance: When there is failure to comply with the requirements for proving the chain of custody in the confiscation of contraband in a drug buy-bust operation, the State has the obligation to credibly explain such non-compliance; otherwise, the proof of the *corpus delicti* is doubtful, and the accused should be acquitted for failure to establish his guilt beyond reasonable doubt. The belated arrival of the insulating witnesses was not justified in this case, let alone recognized, by the apprehending officers, and even on this count alone, without going into the lack of a Department of Justice

representative as a witness, the accused already merited acquittal. For failure to discharge this duty to justify, the saving clause of the Chain of Custody is decidedly out of the question. With this non-compliance, distrust has been cast on the identity and integrity of the *corpus delicti*, leading to the absence of an essential element in the crime charged, which, in turn, must inevitably result in reasonable doubt as to the guilt of herein accused.

APPEARANCES OF COUNSEL

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

D E C I S I O N

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

This is an appeal from the Decision[1] dated March 15, 2018 of the Court of Appeals in CA-G.R. CR-H.C. No. 09201, which affirmed the Decision[2] dated January 10, 2017 of the Regional Trial Court (RTC) of Quezon City, Branch 82, in Criminal Case No. GL-Q-12-177922, convicting accused-appellants Sammy Globa *y* Cotura (Sammy) and Louie Anadia *y* Lugarpo (Louie) for violation of Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case is rooted from an Information, charging accused-appellants of illegal sale of dangerous drugs as follows:

That on or about the 31st day of July 2012, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with and mutually helping with one another, not being

---

[1] Penned by CA Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Socorro B. Inting and Rafael Antonio M. Santos concurring; *rollo*, pp. 2-24.

[2] Penned by Presiding Judge Lyn Ebora-Cacha; CA *rollo*, pp. 58-74.

authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did then and there wilfully, unlawfully and knowingly sell, dispense, deliver, transport, distribute or act as broker in the said transaction, three (3) heat-sealed transparent sachets, each containing the following[,] to wit:

(51.10) grams marking "JAM-SCG-0731-12"
(22.86) grams marking "JAM-SCG-1-07-31-12"
(23.95) gram[s] marking "JAM-SCG-2-07-31-12"
(97.91) grams total weight

of white crystalline substance containing Methylamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.[3]

The prosecution evidence tends to establish that on July 30, 2012, at around 5:00 p.m., the District Anti-Illegal Drugs – Special Operation Task Group received a report from a confidential informant about the illegal drug activities of an *alias* "JR," later on identified as accused-appellant Sammy, along Cotabato St., Barangay Ramon Magsaysay, Quezon City. Acting upon said information, a buy-bust team was formed, wherein PO2 Jomar Manaol (PO2 Manaol) was tasked to act as poseur-buyer, while PO2 Jeffrey Dela Puerta, together with police officers Hernandez, Itom, Collado, and Ang, was assigned as a blocking and arresting officer.[4]

The confidential informant called up Sammy and ordered 100 grams of *shabu*. Sammy set the deal on the following day, July 31, 2012, at around 1:00 p.m., along Cotabato St., Barangay Ramon Magsaysay, Quezon City.[5]

Around 11:00 a.m. of July 31, 2012, the buy-bust team, together with the informant, proceeded to the target area. Thereat, PO2 Manaol was met by Sammy, who asked if he has the money with him. Sammy then invited PO2 Manaol to his house to show the latter the items. Upon arrival at his house, Sammy

---

[3] *Id.* at 58.

[4] *Id.* at 60.

[5] *Id.* at 61.

showed the items to PO2 Manaol and introduced him to accused-appellant Louie. As instructed by Sammy, PO2 Manaol handed the money to Louie and, thereafter, Sammy handed the illegal drugs to PO2 Manaol. At that instance, PO2 Manaol made a covert call to the team and opened the house door so the team could easily enter the premises.[6]

Upon the rest of the team's arrival, they introduced themselves as police officers. PO2 Manaol arrested Louie and recovered from the latter the buy-bust money, while PO2 Dela Puerta arrested Sammy.[7]

Thirty minutes thereafter, Barangay Captain Eduardo Firmalino and Dennis Datu of DZMM arrived at the place of arrest. The inventory, marking, and taking of photographs were then conducted thereat in the presence of the accused-appellants and said witnesses.[8]

Thereafter, the team, together with the accused-appellants, proceeded to the station. Thereat, SPO1 Corina Angeles prepared the Request for Laboratory Examination, Coordination Form, Inventory of Seized Items, Chain of Custody Form, Arrest and Booking Sheet, and the Letter-Referral to the Office of the City Prosecutor of Quezon City. Then, accused- appellants and the seized items were brought to Camp Crame for examination. The examination conducted by PCI Alejandro De Guzman yielded a positive result for the presence of methamphetamine hydrochloride or *shabu*, dangerous drugs.[9]

The defense presented a different version of the facts. Louie testified that on the day of his arrest, he was at Sammy's house for a drinking session. They fell asleep waiting for someone when suddenly, they heard somebody knock on the door and, simultaneously, about eight to nine armed persons entered and ordered them to lie on the floor face down. These men started

---

[6] *Id.*

[7] *Id.*

[8] *Id.* at 62.

[9] *Id.* at 64.

looking for something around the house. Then, they were brought to a car and then back to the house where they were again told to lie on the floor face down. *Shabu* was then placed in front of them and, suddenly, people from the media arrived. Thereafter, they were brought to Camp Crame.[10]

The RTC found accused-appellants guilty as charged. The trial court ruled that between the positive identification by the poseur-buyer and the denial of the accused-appellants, the former prevails. The RTC also found that the prosecution was able to establish an unbroken chain of custody, upholding, thus, the identity and integrity of the seized items. It disposed:

> **WHEREFORE**, premises considered, judgment is hereby rendered finding accused **Sammy Globa y Cotura** and **Louie Anadia y Lugarpo "Guilty"** beyond reasonable doubt of violation of Section 5, Article II of R.A. 9165.
>
> Accordingly, this Court sentences both accused **Sammy Globa y Cotura** and **Louie Anadia y Lugarpo** to suffer the penalty of ***Life Imprisonment*** and to each pay a Fine in the amount of Five hundred Thousand (₱500,000.00) Pesos without eligibility for parole in accordance with R.A. 9346.
>
> The Branch Clerk of Court is hereby directed to transmit to the Philippine Drug Enforcement Agency (PDEA) the dangerous drugs subject of this case for proper disposition and final disposal.
>
> **SO ORDERED.**[11] (Emphasis in the original)

On appeal, the CA affirmed the RTC Decision in its entirety:

> **WHEREFORE**, in the light of the foregoing, the instant appeal is DENIED. Consequently, the decision appealed from is AFFIRMED.
>
> **IT IS SO ORDERED.**[12] (Emphasis in the original)

Hence, this appeal seeking the reversal of the conviction.

---

[10] *Id.* at 66.

[11] *Id.* at 74.

[12] *Rollo*, p. 24.

The Court's Ruling

This Court is guided by the important legal precept that in every criminal case where the accused enjoys the presumption of innocence, he is entitled to acquittal unless his guilt is shown beyond reasonable doubt.[13] Although this Court has repeatedly expressed through its decisions its consistent support in the State's campaign against illegal drugs, it does so with prudent regard to the most basic fundamental rights of every individual in our democratic society. Thus, the burden of the reviewing court is really to see to it that no man is punished unless the proof of his guilt be beyond reasonable doubt.[14]

Accused-appellants, in this case, were charged, tried, and convicted of illegal sale of *shabu*. In prosecutions involving the illegal sale of dangerous drugs, the following elements must be established: (1) the identities of the buyer, seller, object, and consideration; and (2) the delivery of the thing sold and payment for it.[15] As in any case involving dangerous drugs, it is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.[16] For this purpose, the law provides for mandatory requirements for the police officers to comply with to preserve the identity and evidentiary value of the illegal drugs and/or paraphernalia from their seizure, initial custody, to their handling and presentation in court.

As the crime in this case was allegedly committed on July 31, 2012, the original text of Section 21(1), Article II of R.A. No. 9165 is applicable, which states:

---

[13] *People v. Claro*, 808 Phil. 455, 464 (2017).

[14] *People of the Philippines v. Rogelio Yagao*, G.R. No. 216725, February 18, 2019.

[15] *People v. Tomawis*, G.R. No. 228890, April 18, 2018, 862 SCRA 131, 142.

[16] *People v. Crispo and Herrera*, G.R. No. 230065, March 14, 2018, 859 SCRA 356, 369.

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[.]

Supplementing this provision is Section 21(a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165, which states:

> (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 Court has consistently ruled and stressed that strict adherence to the above-stated procedure is mandatory as this was set forth as a reasonable safeguard to the possibility of

contamination, alteration, or substitution, – whether intentional or unintentional – and even planting of evidence, in drug-related cases considering the unique characteristics of narcotic substances.

This, of course, is not to say that the Court expects perfect adherence to the procedure at all times. To be sure, we are not unaware of the fact that strict compliance with said mandatory requirements is not always possible under varied field conditions.[17] Hence, the above-quoted provisions, as well as our case laws, provide for a saving clause in case of unavoidable deviation from the mandatory procedure. Non-compliance with said requirements under justifiable grounds will not render void and invalid the seizure and custody over the seized items as long as the integrity and evidentiary value of said items are properly preserved by the apprehending officers. For purposes of applying the saving clause, the prosecution must recognize the police officers' lapse/s, present a justification for such lapse/s and an explanation that reasonable efforts were exerted to comply with the procedure to no avai1.[18]

In this case, the police officers unjustifiably failed to comply with the mandatory requirements of Section 21 of R.A. No. 9165 and its IRR.

The above-cited provisions clearly require the apprehending team to "immediately after seizure and confiscation" conduct the marking, inventory, and taking of photographs of the seized items. Further, it is required that said steps be undertaken in the presence of any elected public official and a representative from the media and the Department of Justice (DOJ) who are required to sign the inventory and given copies thereof. This Court has, in no ambiguous language, explained the necessity of having these witnesses, not only during the inventory, but more importantly, at the time of apprehension and seizure. In fact, it is at the time of arrest and confiscation when the insulating

---

[17] *Id.* at 370-371, citing *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[18] See *People v. Reyes*, G.R. No. 199271 , October 19, 2016, 806 SCRA 513, 536.

presence of the witnesses is needed, as it is their presence at such stage that would foreclose the pernicious practice of planting of evidence or compromising the integrity of the same. To be sure, this is a requirement that the buy-bust team could easily comply with given the nature of a buy-bust operation as supposedly a well-planned activity.[19]

In *People v. Tomawis*,[20] the Court expounded on the importance of this requirement:

> It is [during this initial stage of apprehension and confiscation wherein] 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 frameup as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.
>
> The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so - and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished - does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.
>
> To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation."[21]

This is especially true in cases where there is a question as to whether or not a buy-bust operation actually took place as

---

[19] See *People v. Sood*, G.R. No. 227394, June 6, 2018, 865 SCRA 368, 389.

[20] *Supra* note 15.

[21] *Id.* at 150.

when the accused vehemently denies the same. The persisting doubts in our mind due to the fact that only the police officers were present during the apprehension and confiscation are not without basis as police impunity in such situation becomes inherent.[22] Consider this: assuming the evidence was indeed planted, substituted, or altered, it would be difficult, if not impossible, for any accused to overcome by mere denial the oft-favored testimony of police officers.[23]

Thus, in this case, while the apprehending officers conducted an inventory of the alleged seized items at the place of arrest, doubts as to whether a buy-bust operation was actually conducted still linger to our mind due to the admitted fact that the barangay captain and the media representative, who were supposed to attest to the trustworthiness of the source of the allegedly seized dangerous drugs, came only after thirty minutes from the arrest and alleged confiscation. No explanation was given by the prosecution as to such deviation.

Further, only two of the three mandatory witnesses under the original text of Section 21 above-quoted were present. It is well to emphasize that the law requires the presence of any elected public official **and** a representative from the media **and** the DOJ. The presence of these three witnesses was intended as a guarantee against planting of evidence and frame up, as they were "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."[24]

As we have held previously, a sheer statement that "their Chief tried to call a representative from the DOJ but no one arrived," cannot be considered as sufficient and acceptable justification for non-compliance with the strict requirements of the law. Due to the vital role played by said witnesses in the

---

[22] See *People v. Luna*, G.R. No. 219164, March 21, 2018, 860 SCRA 1, 26-27.

[23] *Id.*

[24] *People v. Cabrellos*, G.R. No. 229826, July 30, 2018, citing *People v. Sagana*, 815 Phil. 356, 373 (2017).

preservation of the integrity and evidentiary value of the *corpus delicti* in drugs cases, police officers are compelled not only to state reasons for the 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.[25]

To be certain, these requirements are not unreasonably difficult to comply with considering, especially in this case, that the buy-bust team had until the next day, from the receipt of the confidential information, to plan the operation and make the necessary arrangements, knowing fully well that they would have to strictly comply with the set of procedure prescribed in Section 21, Article II of R.A. No. 9165 and its IRR.[26]

With these unjustified lapses in the very first and most crucial link in the chain of custody, *i.e.*, the confiscation of illegal drugs from the accused, as well as in the inventory, this Court cannot merely ignore the lingering doubts, not only as to the identity and integrity of the subject *shabu* in this case, but more so as to the source thereof.

It is well to state at this point another basic legal precept in criminal prosecutions, which is *dubiis reus est absolvendus* – all doubts should be resolved in favor of the accused. Perforce, accused-appellants' acquittal is warranted.

We note that this Court will relentlessly remind every police officer and prosecutor of their positive duty to comply with the mandatory requirements of Section 21 of R.A. No. 9165 and its IRR, and R.A. No. 10640 in applicable cases, so we could all effectively perform our part in the State's campaign against illegal drugs; otherwise, every entrapment operation or prosecution of drugs cases will just be futile, if not arbitrary, actions against any individual. We quote herein the Court's reminder in *People v. Luna*:[27]

---

[25] *People v. Crispo and Herrera*, *supra* note 16, at 377, citing *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[26] *Id.* at 376-377.

[27] *Supra* note 22.

The law, being a creature of justice, is blind towards both the guilty and the innocent. The Court, as justice incarnate, must then be relentless in exacting the standards laid down by our laws - in fact, the Court can do no less. For when the fundamental rights of life and liberty are already hanging in the balance, it is the Court that must, at the risk of letting the guilty go unpunished, remain unforgiving in its calling. And if the guilty does go unpunished, then that is on the police and the prosecution - that is for them to explain to the People.[28]

WHEREFORE, premises considered, the Decision dated March 15, 2018 of the Court of Appeals in CA-G.R. CR-H.C. No. 09201 is hereby **REVERSED and SET ASIDE**. Accordingly, accused-appellants Sammy Globa *y* Cotura, *a.k.a.* "JR," and Louie Anadia *y* Lugarpo are **ACQUITTED** of the offense charged on the ground of reasonable doubt. They are ordered immediately **RELEASED** from detention, unless they are confined for any other lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court, within five (5) days from receipt of this Decision, the action he has taken. Copies shall also be furnished to the Director General of the Philippine Drug Enforcement Agency for his information.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa (Working Chairperson), Lazaro-Javier, and *Lopez, JJ.*, concur.

CONCURRING OPINION

CAGUIOA, *J.*:

I agree with the *ponencia* that accused-appellants Sammy Globa *y* Cotura and Louie Anadia *y* Lugarpo should be acquitted for the prosecution's failure to prove an unbroken chain of custody of the subject *shabu*, which placed its integrity in doubt.

---

[28] *Id.* at 36.

Principally, in prosecuting violations of Republic Act No. (RA) 9165,[1] it is imperative that the identity and source of the seized substances as proof of the *corpus delicti* be sufficiently established.[2] The law and the unambiguous guidelines laid down by the Court have provided exacting safeguards on the preservation of the chain of custody of seized drugs, owing in large part to the ease with which such specimens may be switched, planted, or otherwise contaminated.

The establishment of the integrity of the *corpus delicti* is ensured by following the procedure provided in Section 21 of RA 9165, 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;
>
> (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;
>
> (3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner,

---

[1] Comprehensive Dangerous Drugs Act of 2002.

[2] *People v. Rojas*, G.R. No. 222563, July 23, 2018.

shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours[.][3]

Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165 (IRR) further specifies where the physical inventory and photographing of the seized items should be done, thus:

SEC. 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(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-

[3] Underscoring supplied.

> 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[.][4]

Given the nature of a buy-bust operation, the possibility of abuse during its conduct is great,[5] and law enforcers have been reminded time and again to precisely observe and comply with the above requirements,[6] lest their efforts in the State's campaign against illegal drugs be rendered inconsequential due to no other fault than their own. Several cases decided by the Court have so far shown that this failure often occurs during the seizing of the illegal drugs and the inventory thereof, particularly with respect to the site of the physical inventory and photographing of the same.

Facially, the language of Section 21(a), Article II of the IRR allows for physical inventory and photographing of the seized items to be conducted at the nearest police station or at the nearest office of the apprehending officer or team. However, such procedural concession must not be taken as an unbridled license to not undertake the inventory at the place of arrest, under the guise of practicability. Existing jurisprudence clarifies the phrase "immediately after seizure and confiscation" to contemplate the ideal compliance of conducting the physical inventory and photographing of the drugs immediately after, or at the place of apprehension.[7]

In *People v. Adobar*,[8] this Court took the opportunity to elucidate the legally contemplated application of the phrase "immediately after seizure and confiscation," to wit:

---

[4] Emphasis and underscoring supplied.

[5] *People v. Santos, Jr.*, 562 Phil. 458, 471 (2007).

[6] *People v. Luna*, G.R. No. 219164, March 21, 2018, 860 SCRA 1, 36.

[7] *People v. Sampa*, G.R. No. 242160, July 8, 2019; citation omitted.

[8] G.R. No. 222559, June 6, 2018, 865 SCRA 220.

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs must be **at the place of apprehension and/or seizure**. If this is not practicable, it may be done as soon as the apprehending team reaches the nearest police station or nearest office.

In all of these cases, the photographing and inventory are required to be done in the presence of any elected public official and a representative from the media and the DOJ who shall be required to sign an inventory and given copies thereof. By the same intent of the law behind the mandate that the initial custody requirements be done "immediately after seizure and confiscation," the aforesaid witnesses must already be physically present at the time of apprehension and seizure - a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its very nature, a planned activity. Simply put, the buy-bust team had enough time and opportunity to bring with them these witnesses.

In other words, while the physical inventory and photographing is allowed to be done "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizure," this does not dispense with the requirement of having the DOJ and media representative and the elected public official to be **physically present at the time of and at or near the place of apprehension and seizure so that they can be ready to witness the inventory and photographing of the seized drugs "immediately after seizure and confiscation."**

The reason is simple, it is at the time of arrest or at the time of the drugs' "seizure and confiscation" that the presence of the three (3) witnesses is most needed. **It is their presence at that point that would insulate against the police practices of planting evidence.** x x x[9]

In other words, pragmatic convenience does not discharge the apprehending officers from the primary duty to exert every effort to inventory and photograph the confiscated items at the very site where they were seized. In no uncertain terms, this objective is further concretized by the governing internal rules and guidelines of the Philippine National Police (PNP). Under

---

[9] *Id.* at 251-252; emphasis and underscoring in the original, citations omitted.

the 1999 Philippine National Police Drug Enforcement Manual (PNPDEM),[10] or the precursor of the Anti-Illegal Drugs Operation and Investigation (AIDSOTF-Manual) of 2010 and 2014, the strict procedure in the photographing and inventory of the seized items has been detailed, to wit:

> Anti-Drug Operational Procedures
> Chapter V. Specific Rules
>
> x x x x x x x x x
>
> B. Conduct of Operation: (As far as practicable, all operations must be officer led)
>
> 1. Buy-Bust Operation - in the conduct of buy-bust operation, the following are the procedures to be observed:
>
> x x x x x x x x x
>
> k. Take actual inventory of the seized evidence by means of weighing and /or physical counting, as the case may be;
>
> l. Prepare a detailed receipt of the confiscated evidence for issuance to the possessor (suspect) thereof;
>
> m. The seizing officer (normally the poseur-buyer) and the evidence custodian must mark the evidence with their initials and also indicate the date, time and place the evidence was confiscated /seized;
>
> n. Take photographs of the evidence while in the process of taking the inventory, especially during weighing, and if possible under existing conditions, the registered weight of the evidence on the scale must be focused by the camera; and
>
> o. Only the evidence custodian shall secure and preserve the evidence in an evidence bag or in appropriate container and thereafter deliver the same to the PNP CLG for laboratory examination.

Furthermore, in the Revised PNP Manual on AIDSOTF-Manual the handling, custody and disposition of the seized illegal drugs are also prescribed:

---

[10] PNPM-D-O-3-1-99[NG].

Section 2-6 Handling, Custody and Disposition of Drug and Non-Drug Evidence

2.33. During handling, custody and disposition of evidence, provisions of Section 21 , RA 9165 and its IRR as amended by RA 10640 shall be strictly observed.

2.34. **Photographs of pieces of evidence must be taken immediately upon discovery of such, without moving or altering its original position, including the process of recording the inventory and the weighing of illegal drugs in the presence of required witnesses, as stipulated in Section 21, Article II, RA 9165, as amended by RA 10640.**

x x x x x x x x x

a. Drug Evidence

(1) Upon seizure or confiscation of illegal drugs or CPECs, laboratory equipment, apparatus and paraphernalia, the operating Unit's Seizing Officer/Inventory Officer must conduct the physical inventory, markings and photograph the same in the place of operation in the presence of:

   (a) The suspect/s or the person/s from whom such items were confiscated and /or seized or his/her representative or counsel;

   (b) With an elected Public Official; and

   (c) Any representatives from the Department of Justice or Media who shall affix their signatures and who shall be given copies of the inventory.

(2) For seized or recovered drugs covered by Search Warrants, the inventory must be conducted in the place where the Search Warrant was served.

(3) For warrantless seizures like buy-bust operations, inventory and taking of photographs should be done at the nearest Police Station or Office of the apprehending Officer or Team.[11]

These stipulated protocols in the PNPDEM and the AIDSOTF-Manual indicate that when the law provided that the physical inventory and photographing be "immediately after seizure and

[11] Emphasis supplied.

confiscation," it meant for the inventory and photographing to be done at the very site of seizure, and not elsewhere once removed from the place of arrest.

The seeming contradiction of the third sub-paragraph of 2.34, *i.e.*, that inventory and photographing after warrantless seizures are to be done at the nearest police station, with the general rule on "on-site" inventory and photographing, *i.e.*, "immediately after seizure and confiscation," must be reconciled because it so far departs from the letter and spirit of Section 21 of RA 9165 and Section 21(a), Article II of its IRR in that it prescribes as mandatory a crucial stage in the buy-bust operation. Particularly, it provides that inventory and photographing after warrantless seizures "should" be done at the police station nearest the site of the buy-bust operation, when the aforecited Sections of RA 9165 and its IRR require that the inventory and photographing be done "immediately" after seizure and confiscation (or the buy-bust transaction), subject to the different situational challenges existing during the buy-bust operation which warrant whenever "practicable," conducting the inventory and taking of photographs at the nearest police station or office of the apprehending team. In addition, this provision is also inconsistent with the requirements included in the same enumeration that refers to the handling of "Drug Evidence," specifically the main subhead of 2.34 which requires that evidence must be photographed and inventoried without being moved or altered from their original position, and 2.34(1) which provides that physical inventory, markings and photographing of seized items must be done at the same place of operation.

In other words, Section 21(a), as a general rule and as fleshed out by jurisprudence, primarily requires that the inventory be done at the place of seizure. As an exemption to that general rule, in the event of situational challenges that prevent the photographing and inventory at the place of arrest, and with a satisfactory justification therefor, only then may the same be done at the nearest police station or office of the apprehending officers.

Further, during prosecution, mere invocation of an inconvenience that rendered the inventory impracticable at the site of seizure does not translate to substantial compliance with Section 21(a), especially if such invocation is not sufficiently explained in the records of the case and supported by evidence.

If the rule were otherwise, the very purpose for which such requirement was provided may very well be met only in theory, but defeated in practice.

The danger of slackened compliance with this requirement is illustrated in the scenarios on the ground that demonstrate how a perfunctory observance of this requirement opens up the buy-bust operation to the dangerous proclivities[12] including planted evidence to incarceration of an innocent for life.

For instance, this practicability clause pertaining to site of inventory has given rise to the propensity of some apprehending officers to choose to conduct photographing and inventory of the seized items at the nearest police station, on the basis of inconveniences, including the seemingly ubiquitous "existence of a commotion."[13] This has also often made way for the practice of "calling in"[14] the insulating witnesses after the fact of seizure, which has likewise exposed the validity of the seizure and confiscation to question.

The law is likewise categorical that in case of non-compliance, only upon recognition of a lapse in this respect, and a concomitant acceptable justification therefor, may the validity of the subject

---

[12] See *People v. Dela Cruz*, 666 Phil. 593 (2011); *Valdez v. People*, 563 Phil. 934 (2007); *Arcilla v. Court of Appeals*, 463 Phil. 914 (2003); and *People v. Pagaura*, 334 Phil. 683 (1997).

[13] *People v. Sampa*, *supra* note 7.

[14] See *People v. Ordiz*, G.R. No. 206767, September 11, 2019; *People v. Narvas*, G.R. No. 241254, July 8, 2019; *People v. Dagdag*, G.R. No. 225503, June 26, 2019; *People v. Nieves*, G.R. No. 239787, June 19, 2019; *People v. Malana*, G.R. No. 233747, December 5, 2018; *People v. Rivera*, G.R. No. 225786, November 14, 2018; *People v. Musor*, G.R. No. 231843, November 7, 2018; and *People v. Tomawis*, G.R. No. 228890, April 18, 2018, 862 SCRA 131.

seizure be maintained. In the case of *People v. Barte*,[15] the Court had expounded on this duty to explain non-compliance:

> When there is failure to comply with the requirements for proving the chain of custody in the confiscation of contraband in a drug buy-bust operation, the State has the obligation to credibly explain such non-compliance; otherwise, the proof of the *corpus delicti* is doubtful, and the accused should be acquitted for failure to establish his guilt beyond reasonable doubt.[16]

The belated arrival of the insulating witnesses was not justified in this case, let alone recognized, by the apprehending officers, and even on this count alone, without going into the lack of a Department of Justice representative as a witness, the accused already merited acquittal.

For failure to discharge this duty to justify, the saving clause of the Chain of Custody is decidedly out of the question.

With this non-compliance, distrust has been cast on the identity and integrity of the *corpus delicti*, leading to the absence of an essential element in the crime charged, which, in turn, must inevitably result in reasonable doubt as to the guilt of herein accused.

Based on these premises, I vote to **GRANT** the instant appeal and **REVERSE** and **SET ASIDE** the Decision of the Court of Appeals dated March 15, 2018 finding accused-appellants Sammy Globa *y* Cotura and Louie Anadia *y* Lugarpo guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165.

---

[15] 806 Phil. 533 (2017).

[16] *Id.* at 536.

FIRST DIVISION

[G.R. No. 244047. December 10, 2019]

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

SYLLABUS

1. CRIMINAL LAW; QUALIFIED STATUTORY RAPE; ALL THE ELEMENTS AND CIRCUMSTANCES FOR RAPE TO BE QUALIFIED WERE PROPERLY ALLEGED AND PROVEN BEYOND REASONABLE DOUBT. — In every prosecution for the crime of statutory rape, the following elements must be proven beyond reasonable doubt, to wit: (1) the offended party is under 12 years of age; and (2) the accused had carnal knowledge of the victim, regardless of whether there was force, threat, or intimidation or grave abuse of authority. In fine, it is enough that the age of the victim is proven and that there was sexual intercourse. Further, rape shall be qualified when the victim is below 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; and/or when the victim is a child below seven years old. The RTC, as affirmed by the CA, correctly found that the aforecited elements and circumstances were properly alleged in the Information and proven beyond reasonable doubt during the trial in the present case. That the victim was only five years old at the time of the commission of the crime was not disputed. Likewise, there was no question regarding accused-appellant's relationship to the mother of the victim, *i.e.,* that they had been common-law spouses at the time of the rape incident. The only element in question, thus, is whether or not accused-appellant had carnal knowledge of the victim. Contrary to accused-appellant's position, carnal knowledge in this case was proven through AAA's categorical testimony, found credible by the RTC and the CA and corroborated by the medical findings.

2. ID.; ID.; PENALTY AND CIVIL LIABILITY. — [H]aving established beyond reasonable doubt the elements of qualified statutory rape in this case, the CA correctly imposed the penalty

of *reclusion perpetua*, without eligibility for parole, pursuant to Article 266-B of the RPC; in relation to Republic Act No. 9346. As to the awards of damages, the CA correctly increased the civil indemnity, moral damages, and exemplary damages to ₱100,000.00 each and also correctly imposed a 6% per annum interest thereon from the finality of the decision until full satisfaction pursuant to *People v. Jugueta*.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT AS AFFIRMED BY THE APPELLATE COURT AS TO THE CREDIBILITY OF THE MINOR VICTIM ACCORDED GREAT WEIGHT AND RESPECT. — [T]his Court has, time and again, ruled that "questions on the credibility of witnesses should best be addressed to the trial court because of its unique position to observe that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying which is denied to the appellate courts. The rule is even more stringently applied if the appellate court has concurred with the trial court" as in this case. Furthermore, jurisprudence is to the effect that testimonies of rape victims who are young and of tender age are credible. An innocent child, especially one who is as young as a five-year-old girl, who reveals that her chastity was abused deserves full credit. A rape victim, especially one of tender age, would not normally concoct a story of defloration, allow an examination of her private parts and thereafter permit herself to be subjected to a public trial, if she is not motivated solely by the desire to have the culprit apprehended and punished. Hence, when a woman - more so if she is a minor - says that she has been raped, she says in effect all that is necessary to show that rape was committed; and as long as the testimony meets the test of credibility, the accused may be convicted on that basis alone.

4. ID.; ID.; TESTIMONIES OF WITNESSES; POSITIVE TESTIMONY OF THE CHILD VICTIM COUPLED WITH THE TESTIMONIES OF OTHER WITNESSES AND THE MEDICAL REPORT OUTWEIGH ACCUSED-APPELLANT'S DENIAL. — [T]he positive testimony of the child victim in this case, corroborated by the testimonies of her mother and the police officer on-duty when they reported the incident of rape, coupled with the medico-legal findings, sufficiently established beyond reasonable doubt the elements of the crime

charged, and clearly outweighs the denial proffered by the accused-appellant. Mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the child-victim of the identity of the accused and his involvement in the crime attributed to him.

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.*:

For our resolution is an appeal from the Decision[1] dated January 30, 2018 of the Court of Appeals in CA G.R. CR-HC No. 06453, which affirmed the Decision[2] dated September 30, 2013 of the Regional Trial Court (RTC) of Dagupan City in Criminal Case No. 2013-107-D, convicting XXX (accused-appellant) of qualified rape.

In an Information dated January 30, 2013, accused-appellant was charged with the crime of qualified statutory rape under paragraph 1 (d), Article 266-A, in relation to Article 266-B of the Revised Penal Code (RPC), the accusatory portion of which reads:

That on or about the evening of January 2, 2013 and early in the morning of January 3, 2013 in Brgy. Cayanga, San Fabian, Pangasinan and within the [jurisdiction of this Honorable] Court, the above[-]named accused, being the live-in partner [of the] mother of [AAA], a minor 5 years old of age (DOB-June 6, 2007) did then and there, willfully, unlawfully and feloniously have sexual intercourse with said minor against her will and consent and to her damage and prejudice.

---

[1] Penned by Associate Justice Maria Elisa Sempio Diy, with Associate Justices Fernanda Lampas Peralta and Franchito N. Diamante, concurring; *rollo*, pp. 2-22.

[2] Penned by Judge Caridad V. Galvez; CA *rollo*, pp. 29-41.

Contrary to Art. 266-A part 1, sub-par. d, of the Revised Penal Code in relation to paragraphs a and 5 Art. 266-B thereof, as amended by RA 8353.[3]

When arraigned, accused-appellant pleaded not guilty to the charge. During pre-trial, the parties stipulated on the following: (1) identity of the parties; (2) minority of the [victim] having been born on June 6, 2007; (3) fact of reporting of the incident at the Philippine National Police (PNP), San Fabian, Pangasinan; and physical existence of Medico Legal Report or Certification issued by Dr. Brenda Tumacder of Region I Medical Center.[4]

During trial, the prosecution presented the victim (AAA),[5] the victim's mother, and Police Officer 2 Irene Robosa (PO2 Robosa) as witnesses. The defense, on the other hand, presented the sole testimony of accused-appellant.

Despite the tender age of the victim, she took the witness stand. Under oath, AAA stated that "telling a lie is bad, and she promised to tell the truth." She also said she believes in God, but when asked what God would do to children who are bad, she blurted out that accused-appellant inserted his penis inside her vagina. When asked if she knows if God loves children who do not lie, she answered in the affirmative. She was then asked what she felt when accused-appellant inserted his penis in her vagina, and she answered, "none, Sir." However, when she relieved herself in the comfort room the next day, she felt pain in her vagina that made her cry. On cross-examination, she stated that she considers her "uncle," accused-appellant, "bad" because he placed his penis inside her vagina. AAA identified accused-appellant in open court.[6]

---

[3] *Id.* at 29.

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

[5] The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family or household members shall not be disclosed to protect her privacy and fictitious initials shall instead be used in accordance with *People v. Cabalquinto*, 533 Phil. 703 (2006) and A.M. No. 04-11-09 SC dated September 19, 2006.

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

AAA's mother testified that accused-appellant was her live-in partner for almost three years until his arrest for the crime charged. She narrated that on January 2, 2013, she left their home to borrow money from her siblings. When she came back after about an hour, she found her daughter asleep. In the morning of the following day, when she was about to clean up her daughter in the comfort room after the latter relieved herself, she found her crying and complaining on how painful her vagina was. When she asked AAA what happened, the latter told her that accused-appellant inserted his penis inside her vagina. Alarmed, she inspected her 5-year-old daughter's vagina and saw that it was "very red." Raged with what she just learned, she confronted accused-appellant, who she claimed to have admitted "play[ing] with the vagina" of the victim. AAA's mother then sought the help of two men to accompany them to the police station. Accused-appellant came with them to the police station and thereat, admitted to "fingering the vagina" of the victim. AAA, thereafter, went to undergo physical examination.[7]

PO2 Robosa testified that she was the officer-on-duty on the day AAA and her mother reported the incident. She also testified that the incident was also reported to another police officer, SPO2 Bernadette Lopez. She claimed that during the second blotter, accused-appellant admitted to the commission of the crime.[8]

For his part, accused-appellant admitted to being the live-in partner of AAA's mother. He narrated that on January 2, 2013, AAA's mother left her children in his care. The victim and her two siblings slept beside each other. The next day, he was awakened by AAA's mother, who confronted him about the rape incident. He denied the charge against him and claimed that AAA's mother merely wanted to extort money from him as he allegedly will be receiving a large sum of money from a certain labor case he was involved in.[9]

---

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

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

[9] *Rollo*, p. 7.

On September 30, 2013, the RTC rendered a Decision, the dispositive thereof reads:

WHEREFORE, premises considered, the Court finds the accused [XXX] **GUILTY** beyond reasonable doubt of the crime of **Qualified Rape** and is hereby sentenced to suffer the penalty of **reclusion perpetua**. Furthermore, accused is hereby ordered to indemnify the offended party AAA civil indemnity of ₱75,000.00, moral damages of ₱75,000.00[,] and exemplary damages of ₱25,000.00.

SO ORDERED.[10]

On appeal, the CA affirmed the RTC ruling of conviction, with modification only as to the monetary awards as follows:

WHEREFORE, premises considered, the instant Appeal filed by accused-appellant [XXX] is hereby **DENIED**. The assailed Decision dated September 30, 2013 of Branch 43, Regional Trial Court of Dagupan City in Criminal Case No. 2013-107-D is **AFFIRMED with MODIFICATION**.

Accused-appellant [XXX] is found **GUILTY** beyond reasonable doubt of the crime of qualified statutory rape as defined under par. 1(d), Article 266-A and penalized under Article 266-B of the Revised Penal Code (RPC) and is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. Furthermore, accused-appellant is hereby ordered to pay the victim, AAA, the following amounts: (1) one hundred thousand pesos (PhP100,000.00) as civil indemnity; (2) one hundred thousand pesos (PhP100,000.00) as moral damages; and (3) one hundred thousand pesos (PhP100,000.00) as exemplary damages. Interest at the rate of 6% *per annum* is imposed on all damages awarded to be computed from the finality of this Decision until such amounts are fully paid. Costs against accused-appellant.

SO ORDERED.[11]

Accused-appellant, through counsel, then filed a Notice of Appeal[12] dated February 29, 2018, questioning the above-cited CA Decision.

---

[10] CA *rollo*, p. 41.

[11] *Rollo*, p. 21.

[12] Records, pp. 116-117.

Both the Office of the Solicitor General (OSG), for the People, and the accused-appellant filed their respective Manifestation In Lieu of Supplemental Brief, averring that they have already sufficiently discussed their arguments in their respective Briefs filed before the CA.[13]

The appeal before this Court is centered on the issue on the credibility of the victim's testimony. Accused-appellant maintains his theory that the child victim's testimony was coached as she simply blurted out that accused-appellant inserted his penis inside her vagina even when a different question was asked. Accused-appellant also pointed out AAA's altercation that she did not see accused-appellant's penis as she was asleep, to be inconsistent with her allegation that she knows that accused-appellant inserted his penis inside her vagina. Accused-appellant also argues that the fact that the victim testified that she did not feel anything when accused-appellant supposedly inserted his penis inside the victim's vagina belies the allegation of carnal knowledge as it is contrary to human nature and experience.

The only issue for our resolution is whether or not accused-appellant's conviction was proper.

We find no merit in this appeal.

In every prosecution for the crime of statutory rape, the following elements must be proven beyond reasonable doubt, to wit: (1) the offended party is under 12 years of age; and (2) the accused had carnal knowledge of the victim, regardless of whether there was force, threat, or intimidation or grave abuse of authority. In fine, it is enough that the age of the victim is proven and that there was sexual intercourse.[14]

Further, rape shall be qualified when the victim is below 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

---

[13] *Id.* at 30-32; 34-35.

[14] REVISED PENAL CODE, Article 266-A, as amended by Republic Act No. 8353; *People v. Francia*, G.R. No. 208625, September 6, 2017.

victim;[15] and/or when the victim is a child below seven years old.[16]

The RTC, as affirmed by the CA, correctly found that the aforecited elements and circumstances were properly alleged in the Information and proven beyond reasonable doubt during the trial in the present case.

That the victim was only five years old at the time of the commission of the crime was not disputed. Likewise, there was no question regarding accused-appellant's relationship to the mother of the victim, *i.e.*, that they had been common-law spouses at the time of the rape incident. The only element in question, thus, is whether or not accused-appellant had carnal knowledge of the victim.

Contrary to accused-appellant's position, carnal knowledge in this case was proven through AAA's categorical testimony, found credible by the RTC and the CA, and corroborated by the medical findings. Despite her tender age, the five-year-old victim was able to clearly and plainly, recount her harrowing experience with accused-appellant, whom she calls "uncle," *viz.*:

Q: Do you [know] [XXX] whom you called uncle?
A: Yes, Sir.

Q: I[s] Uncle inside the courtroom?
A: Yes, sir.

Q: Where is he, can you point to him?
Court interpreter: Witness is pointing to a man seated in the front row wearing a yellow BJMP T-shirt and when asked his name, he identified himself as [XXX].

Q: What did uncle do to you?
A: He placed his penis inside my vagina, sir.

Q: Where is your vagina?
Court Interpreter: Witness is pointing at her vagina.

---

[15] *Id.*, Article 266-B (1).

[16] *Id.*, Article 266-B (5).

Q: And where is the penis?
Court Interpreter: Witness is pointing to where the penis of the Public Prosecutor is to be.

x x x x x x x x x

Q: Are you sure it was his penis which he placed inside your vagina?
A: Yes, sir.

Q: It is not his finger?
A: No, sir.

Q: Did he touch your vagina?
A: No, sir.

Q: When you said he placed his penis inside your vagina, it is not in the outside of your vagina?
A: No, sir.

Q: It is inside?
A: Yes, sir.

Q: And did you tell what happened to you to any person?
A: Yes, sir.

Q: Whom did you made (sic) the report?
A: To my mother, sir.

Q: Why did you make a report to your mother?
A: Because it was painful sir.

Q: And what did you tell your Mama?
A: I told my mother that my vagina is painful, sir.

Court Interpreter: Witness is pointing to her vagina.[17]

This Court cannot give credence to the inconsistencies and/or incredibility alleged by accused-appellant for us to be swayed from upholding the findings of the courts *a quo*.

Foremost, this Court has, time and again, ruled that "questions on the credibility of witnesses should best be addressed to the trial court because of its unique position to observe that elusive and incommunicable evidence of the witnesses' deportment on

[17] TSN, Direct Examination, pp. 5-10.

the stand while testifying which is denied to the appellate courts. The rule is even more stringently applied if the appellate court has concurred with the trial court"[18] as in this case.

Furthermore, jurisprudence is to the effect that testimonies of rape victims who are young and of tender age are credible. An innocent child, especially one who is as young as a five-year-old girl, who reveals that her chastity was abused deserves full credit.[19] A rape victim, especially one of tender age, would not normally concoct a story of defloration, allow an examination of her private parts and thereafter permit herself to be subjected to a public trial, if she is not motivated solely by the desire to have the culprit apprehended and punished. Hence, when a woman — more so if she is a minor — says that she has been raped, she says in effect all that is necessary to show that rape was committed; and as long as the testimony meets the test of credibility, the accused may be convicted on that basis alone.[20]

Besides, the fact that AAA gave a response that she did not see accused-appellant's penis when asked during cross-examination if she did, was unduly stretched by accused-appellant's interpretation to mean that there was no penetration that happened. Whether or not AAA saw accused-appellant's penis is of no moment. What is decisive in a charge of rape is the positive identification of the victim that accused-appellant inserted his penis inside the victim's vagina. To reiterate with emphasis, AAA testified, in a plain and straightforward manner, that accused-appellant did not touch her vagina but inserted his penis inside it. AAA was also able to identify the male and female private organ in open court despite her tender age.

Likewise, it is of no moment that AAA responded that she did not feel pain when accused-appellant inserted his penis into her vagina; and that it was only later the next morning when

---

[18] *Supra* note 14.

[19] *People v. Udtohan*, 815 Phil. 449, 463 (2017).

[20] *People v. YYY*, G.R. No. 234825, September 5, 2018.

she felt pain while relieving herself. Contrary to accused-appellant's argument, pain in female genitalia is not a standard consequence after a first ever sexual intercourse.[21] It is possible for physiological manifestations of rape, such as pain, to appear only after the incident. At any rate, it bears stressing that it is carnal knowledge, not pain nor bleeding, which is essential to consummate rape.[22]

Moreover, the medico-legal report corroborated AAA's testimony. It showed the presence of "[s]uperficial, fresh lacerations at 3 and 6 o'clock positions" of AAA's hymen and that the "[m]edical evaluation showed evidence of sexual abuse."[23] Jurisprudence states that when the testimony of a rape victim is consistent with the medical findings, sufficient basis exists to warrant a conclusion that the essential requisite of carnal knowledge has been established.[24]

Neither will accused-appellant's imputation of ill-motive against the victim's mother sway this Court. Motives such as extortion, resentment, or revenge never have swayed this Court from giving full credence to the testimony of a minor rape victim.[25] Besides, such imputation deserves scant consideration as it was utterly unsubstantiated.

In all, the positive testimony of the child victim in this case, corroborated by the testimonies of her mother and the police officer on-duty when they reported the incident of rape, coupled with the medico-legal findings, sufficiently established beyond reasonable doubt the elements of the crime charged, and clearly outweighs the denial proffered by the accused-appellant. Mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the child-victim of the

---

[21] *People v. Loriega and Arevalo*, 383 Phil. 572, 582 (2000).

[22] *People v. Barrido*, 794 Phil. 194, 206 (2016).

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

[24] *People v. Barcela*, 652 Phil. 134, 146 (2010).

[25] *Supra* note 19, at 465.

identity of the accused and his involvement in the crime attributed to him.[26]

Thus, having established beyond reasonable doubt the elements of qualified statutory rape in this case, the CA correctly imposed the penalty of *reclusion perpetua*, without eligibility for parole, pursuant to Article 266-B of the RPC, in relation to Republic Act No. 9346.[27]

As to the awards of damages, the CA correctly increased the civil indemnity, moral damages, and exemplary damages to ₱100,000.00 each and also correctly imposed a 6% per annum interest thereon from the finality of the decision until full satisfaction pursuant to *People v. Jugueta*.[28]

WHEREFORE, premises considered, the instant appeal is **DISMISSED**. The assailed Decision dated January 30, 2018 of the Court of Appeals in CA G.R. CR-HC No. 06453 is hereby **AFFIRMED *in toto***.

SO ORDERED.

Caguioa (Working Chairperson), Hernando,[*] *Lazaro-Javier,* and *Lopez, JJ.*, concur.

---

[26] *Id.*

[27] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES, Approved: June 24, 2006.

[28] 783 Phil. 806, 848 (2016).

[*] Additional member per Raffle dated February 9, 2019 in lieu of Chief Justice Diosdado M. Peralta.

SECOND DIVISION

[A.C. No. 10252. December 11, 2019]

IAN B. CARONONGAN, *complainant, vs.* **ATTY. JAIRO M. LADERA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; NOTARIES PUBLIC; 2004 NOTARIAL PRACTICE LAW; CONCEPT OF NOTARIZATION, EXPLAINED. — [T]he Court once again stresses that notarization is *not* a meaningless, empty or a mere routine act. It is so imbued with public interest as it transforms a private document into a public one making the document admissible in evidence without need of proof of its authenticity. As such, to preserve the integrity of any document subject of notarization, a notary public is expected to observe with due care the basic requirements in performing his or her duties.

2. ID.; ID.; ID.; REQUIREMENT OF PERSONAL APPEARANCE OF THE PERSON WHO SIGNED THE DOCUMENT, NOT COMPLIED WITH; RESPONDENT ALSO VIOLATED THE DISQUALIFICATION RULE HAVING NOTARIZED A DOCUMENT SIGNED BY HIS MOTHER. — [A] notary public is authorized to notarize a document provided that the person or persons who signed it are the same ones who executed and personally appeared before him or her to attest to the contents and the truth of the matters therein stated. This requirement is for the purpose of ensuring that the notarized document is the free act of the party or parties to it. Added to this, Section 3(c), Rule IV of the Rules disqualifies a notary public from notarizing documents where the principal thereof is a relative within the fourth civil degree of affinity or consanguinity of the notary public. In this case, respondent notarized the subject lease contract signed by his mother. By this fact alone, he violated the disqualification rule under the aforesaid provision of the Rules. However, the Court notes that other than respondent's mother, no other party signed the contract. In fact, as embodied in the Acknowledgment itself, respondent did not declare that any other person appeared before him, aside from his mother[.]

3. ID.; ID.; ID.; ABSENCE OF BAD FAITH, ADMISSION OF MISTAKE, NO PREJUDICE CAUSED TO ANY PERSON, AND BEING A NEW LAWYER AND FIRST TIME OFFENDER, ALL CONSIDERED IN MITIGATING THE PENALTY; RESPONDENT IS ADMONISHED. — [C]omplainant himself admitted that the Bank and Teresita did not pursue the agreement surrounding the lease agreement. This only shows that despite its notarization, no apparent injury was caused to any party by respondent's act of notarizing a document signed by his mother. Moreover, respondent readily admitted his mistake contending that he was a new lawyer at the time he notarized the subject instrument. He asserted, too, that he was so eager to be of help but due to modest unfamiliarity, without any intention to cause damage, he acknowledged the instrument executed by his mother. By virtue of the foregoing attendant circumstances, the Court deems it proper to instead admonish respondent considering that: (1) no evidence of bad faith can be imputed against him; (2) he readily admitted his mistake; (3) no prejudice to any person was caused by his complained act; and (4) he was a new lawyer and a first time offender when he committed it. We believe that because of this case, respondent learned his lesson already as regards notarizing a seemingly harmless instrument. Certainly, this experience will teach him to be more circumspect in exercising his duties as a notary public.

R E S O L U T I O N

INTING, *J.*:

This resolves the administrative complaint filed by Ian B. Caronongan (complainant) against Atty. Jairo M. Ladera (respondent) for violation of Section 3(c)[1] and Section 6(a),[2] Rule IV of the 2004 Rules on Notarial Practice (Rules).

---

[1] Sec. 3. *Disqualifications*. – A notary public is disqualified from performing a notarial act if he:

x x x x x x x x x

(c) is a spouse, common-law partner, ancestor, descendant, or relative by affinity or consanguinity of the principal within the fourth civil degree.

[2] Sec. 6. *Improper instruments or Documents*. – A notary public shall not notarize:

(a) a blank or incomplete instrument or document; or x x x.

The Antecedents

In his verified Complaint Affidavit,[3] complainant averred that he was a bank officer at Peoples Bank of Caraga, Inc. (Bank) located in San Francisco, Agusan del Sur. According to him, on September 27, 2011, respondent notarized an incomplete document, wherein a Contract of Lease[4] was purportedly executed between the Bank, represented by its Cabadbaran City Branch Manager, Wilma A. Tepan (Wilma), as lessee, and Teresita M. Ladera (Teresita), the mother of respondent, as lessor. He added that the contract was denominated in respondent's notarial register as Doc. No. 77; Page No. 16; Book 1 and Series of 2011.

Complainant contended that respondent notarized the above-cited contract despite the prohibition under the Rules considering that the one who signed it was the respondent's mother. He added that the notarized document was also incomplete because it did not bear the signature of Wilma, the Bank's representative.

In support of his case, complainant attached an Affidavit of Witness[5] executed by Wilma.

Wilma confirmed that she was the Manager of the Bank's Cabadbaran Branch, and was designated to sign the agreement when the Bank rented Teresita's lot in 2010 for its satellite office in Brgy. Bad-as, Placer, Surigao del Norte. She alleged that after the lease expired, Teresita submitted to the Cabadbaran Branch a new contract. To her surprise, Wilma noticed that this new contract was already signed by Teresita and was notarized by respondent, who she later discovered to be the son of Teresita.

Wilma added that Teresita demanded for the Bank to accept the terms of the new contract despite the unreasonable increase of 100% in rent. She, nonetheless, asserted that the Bank did not anymore pursue the lease, vacated the property and transferred

---

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

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

[5] *Id.* at 7-8.

its office to another locality. She also claimed that the proposed lease contract was without her, or the Bank's consent or conformity.

For his part, respondent countered in his Comment[6] that although complainant claimed to be an officer of the Bank, he was not an aggrieved party and was not authorized by the Bank to institute this case. He also posited that the Bank was not injured by the existence of the subject lease contract as the parties did not accept its terms; thus, it had no value and did not confer any rights.[7]

In addition, the Bank was purportedly not forced to accept the new lease contract. Instead, respondent asserted that the parties entered into a lease agreement on a month to month basis as they were then settling the issue relative to reimbursement of improvements introduced in the property.[8] He denied that Wilma was unaware of the increase in rent because such change was communicated to her.[9]

Moreover, respondent asserted that he was admitted as member of the Philippine Bar on April 15, 2011 and was commissioned as a notary public in May 2011. Being a new lawyer, he was so eager to solve everyone's legal problems and due to modest unfamiliarity, without any intention to cause damage, he acknowledged the instrument executed by his mother on September 27, 2011. Respondent added that such document was not incomplete because it was only his mother who signed it. He stressed that he did not mention at all in the same document that Wilma appeared and signed the contract before him.[10]

Meanwhile, in his Complainant's Reply with Motion for Leave for Admission of Belated Pleading,[11] complainant stressed that

---

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

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

[8] *Id.* at 14.

[9] *Id.* at 15.

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

[11] *Rollo*, pp. 39-44.

he filed the case by himself, not in representation of the Bank. He explained that being the Bank's paralegal, he was tasked to review its legal transactions, including the one it had with Teresita. He further stated that he filed this suit because he saw the blatant violation by respondent of his obligation as notary public.

Complainant also averred that as a law degree holder, although not a bar passer, he was familiar with the obligations of a notary public. He asserted that it was a basic principle of law that the notary public was prohibited from subscribing documents involving one's relatives within the fourth degree of affinity and consanguinity. For having done so, respondent violated his obligation as a notary public. He, likewise, alleged that by notarizing a deed despite the non-appearance of one of its signatories, respondent also violated Rule 1.01,[12] Canon 1 of the Code of Professional Responsibility.

Proceedings before the Integrated Bar of the Philippines (IBP)

In his Report and Recommendation,[13] the Investigating Commissioner Ramsey M. Quijano (Investigating Commissioner Quijano) opined that respondent violated Section 3(c), Rule IV of the Rules, and recommended that he be reprimanded and disqualified from being commissioned as notary public for a period of three months.

On February 22, 2018, the IBP-Board of Governors (BOG) adopted with modification the Report and Recommendation of Investigating Commissioner Quijano, to wit:

> RESOLVED to ADOPT the findings of fact and recommendation of the Investigating Commissioner, with modification, by imposing instead the penalty of REPRIMAND, and SUSPENSION of the Respondent from being appointed as Notary Public for three (3) months.[14]

---

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

[13] *Rollo*, pp. 132-133.

[14] *Id.* at 130.

Issue

Whether respondent should be held administratively liable for the acts complained of.

Our Ruling

We agree with the findings of the IBP, but not to the recommended penalty.

To begin with, the Court once again stresses that notarization is *not* a meaningless, empty or a mere routine act. It is so imbued with public interest as it transforms a private document into a public one making the document admissible in evidence without need of proof of its authenticity. As such, to preserve the integrity of any document subject of notarization, a notary public is expected to observe with due care the basic requirements in performing his or her duties.[15]

Moreover, a notary public is authorized to notarize a document provided that the person or persons who signed it are the same ones who executed and personally appeared before him or her to attest to the contents and the truth of the matters therein stated. This requirement is for the purpose of ensuring that the notarized document is the free act of the party or parties to it.[16] Added to this, Section 3(c), Rule IV of the Rules disqualifies a notary public from notarizing documents where the principal thereof is a relative within the fourth civil degree of affinity or consanguinity of the notary public.

In this case, respondent notarized the subject lease contract signed by his mother. By this fact alone, he violated the disqualification rule under the aforesaid provision of the Rules.[17] However, the Court notes that other than respondent's mother, no other party signed the contract. In fact, as embodied in the Acknowledgment itself, respondent did not declare that any

---

[15] See *Spouses Balbin v. Atty. Baranda, Jr.,* A.C. No. 12041, November 5, 2018.

[16] See *Tabao v. Atty. Lacaba*, A.C. No. 9269, March 13, 2019.

[17] *Jandoquile v. Revilla, Jr.*, 708 Phil. 337 (2013).

other person appeared before him, aside from his mother, to wit:

> BEFORE ME, a notary for and in the City of Cagayan de Oro, on this 27th day of September, 2011, personally appeared Teresita M. Ladera of Zone 1, Upper Bantiles, Bugo, Cagayan de Oro City with Social Security Systems card no. 09-0462456-6, known to me and known to be to be same person who executed the Contract of Lease, and she acknowledged to me that the same is her free act and voluntary deed.
>
> This contract relates to the lease of a parcel of land and the first floor of its building located at Bad-as, Placer, Surigao del Norte consisting of three (3) pages including on which this acknowledgement is written and was signed by the above stated party and the instrumental witnesses on each and every page thereof.
>
> WITNESS MY HAND AND SEAL.[18]

At the same time, complainant himself admitted that the Bank and Teresita did not pursue the agreement surrounding the lease agreement. This only shows that despite its notarization, no apparent injury was caused to any party by respondent's act of notarizing a document signed by his mother. Moreover, respondent readily admitted his mistake contending that he was a new lawyer at the time he notarized the subject instrument. He asserted, too, that he was so eager to be of help but due to modest unfamiliarity, without any intention to cause damage, he acknowledged the instrument executed by his mother.

By virtue of the foregoing attendant circumstances, the Court deems it proper to instead admonish respondent considering that: (1) no evidence of bad faith can be imputed against him; (2) he readily admitted his mistake; (3) no prejudice to any person was caused by his complained act; and (4) he was a new lawyer and a first time offender when he committed it. We believe that because of this case, respondent learned his lesson already as regards notarizing a seemingly harmless instrument. Certainly, this experience will teach him to be more circumspect in exercising his duties as a notary public.[19]

---

[18] *Rollo*, p. 6.

[19] *Cabrales v. Dadis*, A.C. No. 10966 (Notice), January 11, 2016.

WHEREFORE, respondent Atty. Jairo M. Ladera is **ADMONISHED** with a **WARNING** that a repetition of a similar act shall be dealt with more severely.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Reyes, A. Jr., Hernando*, and *Delos Santos, JJ.*, concur.

SECOND DIVISION

[A.C. No. 12408. December 11, 2019]

VENSON R. ANG, *complainant, vs.* **ATTY. SALVADOR B. BELARO, JR.,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; ADMINISTRATIVE PROCEEDINGS; NO VIOLATION OF THE RIGHT TO DUE PROCESS IN THIS CASE; RESPONDENT WAS ACCORDED AMPLE OPPORTUNITY TO DEFEND HIMSELF AND TO ADDUCE HIS EVIDENCE. — A thorough examination of the records shows that respondent Atty. Belaro was accorded ample opportunity to defend himself and adduce his own evidence. The IBP duly notified him of the proceedings by sending the notices via registered mail to St. Dominic Savio College of Law, where he used to teach and was the College Dean. While respondent Atty. Belaro claimed that the notices were not sent to his registered address of place of business, such bare assertion deserves scant consideration as he failed to sufficiently prove that the service of notices was highly irregular. Notably, upon being informed of the notices, respondent Atty. Belaro filed a Manifestation with Motion for Reinvestigation and a subsequent Answer to Letter-Complaint Requesting for Formal Investigation dated September 22, 2015. He even filed a Motion for Reconsideration before the IBP

assailing the April 29, 2016 Resolution which was in fact given due course by the IBP. Therefore, the minimum requirements of administrative due process have been observed and met by the IBP.

2. ID.; NOTARIES PUBLIC; 2004 NOTARIAL PRACTICE LAW; ACT OF NOTARIZATION IS IMBUED WITH PUBLIC INTEREST. — The act of notarization is not an ordinary routine but is imbued with substantive public interest. It converts a private document into a public document resulting in the document's admissibility in evidence without further proof of its authenticity. A notarial document is therefore entitled to full faith and credit on its face and by law. It is the duty of notaries public to observe utmost care in complying with the formalities intended to protect the integrity of the notarized document and the act or acts it embodies.

3. ID.; ID.; ID.; WHERE THE SIGNATURES OF THE RESPONDENT ON THE QUESTIONED DOCUMENTS WERE FOUND TO BE FORGERIES BUT SAID DOCUMENTS BORE HIS NOTARIAL SEAL, HE IS NOT EXCULPATED FROM ADMINISTRATIVE LIABILITY. — We agree with the IBP that the signatures of respondent Atty. Belaro found in the three versions of the Extrajudicial Settlement were indeed forgeries. The signatures were strikingly dissimilar to his specimen signatures submitted before the RTC-Quezon City when he applied for notarial commission. x x x Nonetheless, respondent Atty. Belaro is not exculpated from administrative liability. As observed by the IBP, the Extrajudicial Settlement bore his notarial seal. The 2004 Rules on Notarial Practice clearly states that, when not in use, the official seal of the notary public must be kept safe and secure and shall be accessible only to him or the person duly authorized by him. Here, respondent Atty. Belaro utterly failed to sufficiently provide any laudable explanation why his notarial seal was found in the documents. He simply asserted in his Answer to the Letter-Complaint that the signatures of the notary public found in the subject instruments were not his, that he did not cause the filing of these documents to any government agencies, and that he never employed Dioneda as his secretary. Indubitably, respondent Atty. Belaro did not properly secure and keep his notarial seal in a safe place inaccessible to other persons so as to ensure that nobody can use the same without his authority. Had he

done so, his notarial seal would not have been affixed to the Extrajudicial Settlement which converted the same from a private document into a public document. Thus, respondent Atty. Belaro has been remiss in his duty to exercise utmost diligence in the performance of his functions as a notary public and to comply with the mandates of law.

4. ID.; ID.; ID.; ID.; FAILURE TO SECURE AND KEEP SAFE THE NOTARIAL SEAL TO AVOID UNAUTHORIZED USE OF THE SAME CONSTITUTES A TRANSGRESSION OF NOTARIAL LAW AND THE CODE OF PROFESSIONAL RESPONSIBILITY; BY ENTERING IN HIS NOTARIAL REGISTRY BOOKS DOCUMENTS THAT HE HAS NOT NOTARIZED MADE RESPONDENT LIABLE FOR NEGLIGENCE AS A NOTARY PUBLIC AND AS A LAWYER. — In being careless in failing to secure and keep his notarial seal in a safe place away from any person not authorized to use the same, respondent Atty. Belaro committed a transgression of the Notarial Law and the Code of Professional Responsibility (CPR). The negligence of respondent Atty. Belaro likewise extended to his reportorial duties as Notary Public. Although he appeared not to have notarized the Deed of Absolute Sale and the Acknowledgement Receipt yet he entered the same in his Notarial Registry Book. Had respondent Atty. Belaro been meticulous and cautious in the performance of his duties as Notary Public, he would have noticed from the start that he did not notarize the subject instruments and excluded the same from his Notarial Registry Book. Undoubtedly, respondent Atty. Belaro failed to discharge with fidelity the sacred duties of his office which are dictated by public policy and impressed with public interest. His negligence therefore not only caused damage to those directly affected by the notarized documents but also undermined the integrity of a notary public and degraded the function of notarization. Hence, it is but proper to hold respondent Atty. Belaro liable for his negligence as a notary public and as a lawyer.

5. ID.; ID.; ID.; ID.; ID.; PENALTY OF REVOCATION OF INCUMBENT NOTARIAL COMMISSION AND DISQUALIFICATION FROM BEING COMMISSIONED AS A NOTARY PUBLIC AS WELL AS SUSPENSION FROM THE PRACTICE OF LAW FOR SIX MONTHS, IMPOSED. — On the aspect of the penalty to be imposed, the

Court holds that respondent Atty. Belaro should be meted the penalty of suspension and revocation of his notarial commission for having violated the 2004 Rules on Notarial Practice. In line with current jurisprudence, and as recommended by the IBP, his disqualification from being commissioned as notary public for two years is in order. The revocation of his incumbent notarial commission, if any, is likewise called for. Furthermore, for his negligence to secure and keep safe his notarial seal which facilitated the cancellation of the title to the subject property and the subsequent transfer thereof, the Court finds that a suspension from the practice of law for six months is warranted.

6. ID.; ATTORNEYS; ADMINISTRATIVE CHARGE; COMPLAINANT'S DESISTANCE AND THE ELECTION OF RESPONDENT AS A MEMBER OF THE HOUSE OF REPRESENTATIVES ARE IRRELEVANT AND DO NOT WARRANT THE DISMISSAL OF THE COMPLAINT; THE COURT IS NOT PRECLUDED FROM CONDUCTING DISCIPLINARY INVESTIGATION OR IMPOSING SANCTIONS AGAINST AN ERRING LAWYER BY REASON OF BEING ELECTED TO PUBLIC OFFICE OR BEING INACTIVE IN THE PRACTICE OF LAW. — An affidavit of desistance executed by the complainant or the withdrawal of the complaint is not sufficient cause to warrant the dismissal of an administrative complaint. It remains true notwithstanding the reasons raised by the complainant as to the execution of the affidavit or withdrawal of the complaint. The main objective of disciplinary proceedings is to determine the fitness of a member to remain in the Bar. It is conducted for the public welfare and the desistance of the complainant is irrelevant. What matters is whether the charge in the complaint has been proven on the basis of the facts borne out by the record. x x x Moreover, the fact that respondent Atty. Belaro is not in the active practice of law by reason of his election in the House of Representatives as a party-list representative of 1-Ang Edukasyon Party-List in the 2016 National Election, is irrelevant. The Court takes judicial notice that the Mid-Year Election has been conducted in May 2019 which has changed the sitting members in the House of Representatives including the party-list representatives. Based on the 2019 election results, the 1-Ang Edukasyon Party-List failed to win any seat in Congress. Hence, respondent Atty. Belaro's argument has been rendered moot and academic. Besides, assuming *arguendo* that respondent Atty.

Belaro remains to be a Representative, he still cannot escape liability on the ground that he is not in the active practice of law. To begin with, no law or statute provides that the penalties against an erring lawyer cannot be imposed if said lawyer is inactive in the practice of law by any reason such as election in public office. Despite his being inactive in the practice of law, the fact remains that he is still a member of the legal profession. Hence, the Court is not precluded from conducting disciplinary investigations against him or imposing disciplinary sanctions if so warranted. It is in accordance with the Court's power to call upon a member of the Bar to account for his actuations as an officer of the Court in order to preserve the purity of the legal profession and the proper and honest administration of justice. The Court may therefore strip off the profession of members or impose other forms of sanctions upon them who by their misconduct have proven themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney.

D E C I S I O N

HERNANDO, *J.*:

Complainant Venson R. Ang (Venson) seeks the disbarment of respondent Atty. Salvador B. Belaro, Jr. (Atty. Belaro) for violation of Administrative Matter No. 02-8-13-SC or the 2004 Rules on Notarial Practice (Notarial Rules) and the Code of Professional Responsibility (CPR).

The Factual Antecedents

The late Peregrina Dela Rosa (Peregrina) owned a parcel of land with a building erected thereon which is covered by Transfer Certificate of Title No. 52899[1] situated in San Francisco del Monte, Quezon City. In 1982, she appointed complainant Venson as administrator of the subject property. Upon Peregrina's demise on November 24, 2002, the property was inherited by complainant Venson and his siblings namely: Virginia Ang Ting, Venhart Dela Rosa Ang, Villy Ang Teng Him Buenaventura (Villy),

[1] *Rollo*, pp. 32-33.

and Vermont Dela Rosa Ang (Vermont). The siblings never partitioned the property or assigned their rights to any of the co-owners.

On March 6, 2015, complainant Venson and his siblings were surprised to learn that Peregrina's title to the subject property was already cancelled by virtue of an Extrajudicial Settlement of Estate Among Heirs with Waiver of Rights[2] (Extrajudicial Settlement) which they allegedly executed on March 26, 2014. The Extrajudicial Settlement was notarized by respondent Atty. Belaro on March 26, 2014 before whom complainant Venson and his siblings purportedly personally appeared and subscribed therein. Complainant Venson and his siblings also discovered two other versions of the same document that were submitted to the Manila Electric Company (MERALCO)[3] and the Office of the Clerk of Court, Regional Trial Court (RTC) of Quezon City[4] that were likewise notarized by respondent Atty. Belaro.

Perusal of the three versions of the Extrajudicial Settlement showed several irregularities therein. These are: (a) the name of Virginia Dela Rosa Ang-Ting was misspelled as Verginia Rosa Ang-Ting; (b) the husband of Villy was not stated therein; (c) the Extrajudicial Settlement instrument was allegedly executed on March 26, 2014, but the subject property remained in the name of Peregrina as of July 2014; (d) only the version of the instrument that was submitted to the Land Registration Authority (LRA) showed the date of death of Peregrina and that it was published under the law; (e) Villy was indicated as a signatory therein despite her demise on April 5, 2012, two years before it was executed; and (f) the Extrajudicial Settlement submitted to MERALCO bore no witnesses while the LRA's copy was signed by two unknown witnesses, and the instrument submitted to the RTC-Quezon City indicated

---

[2] *Id.* at 12-13.

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

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

Ma. Shiela Dioneda (Dioneda[5]), the alleged secretary of respondent Atty. Belaro, as the sole witness therein.[6]

Complainant Venson and his siblings also discovered that respondent Atty. Belaro notarized a Deed of Absolute Sale[7] dated December 16, 2014 which was purportedly executed by and between Vermont and Rowena Ang (Rowena) as sellers, and Lou Aldrin Ridad, Louzelle Ann Ridad, Louisse May Ridad, Louie Aaron Ridad, and Louissa Liendle Ridad as buyers.

An Acknowledgement Receipt[8] dated December 16, 2014 was likewise notarized by respondent Atty. Belaro showing that Vermont and Rowena allegedly received ₱5,000,000.00 from the buyers in consideration of the purported sale of the subject property.

As a result thereof, complainant Venson filed the instant letter-complaint.[9] Attached to the complaint were the reproduction copies of the questioned documents, the specimen signatures[10] of respondent Atty. Belaro that were requested from the office of the Executive Judge of RTC-Quezon City, and a Certification[11] dated March 20, 2015 issued by the Office of the Clerk of Court of the said trial court.

On April 8, 2015, the Commission on Bar Discipline (**CBD**) of the Integrated Bar of the Philippines (**IBP**), through Director Dominic C.M. Solis, issued an Order[12] directing the parties to file their respective verified position papers. The Investigating Commissioner thereafter set the mandatory conference on June

---

[5] Also spelled as Ma. Shiela Dioneda.

[6] *Rollo*, p. 5.

[7] *Id.* at 15-17.

[8] *Id.* at 18.

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

[10] *Id.* at 34.

[11] *Id.* at 35.

[12] *Id.* at 36.

25, 2015.[13] However, only complainant Venson appeared during the mandatory conference.[14]

Respondent Atty. Belaro then filed an undated Manifestation with Motion for Reinvestigation[15] informing the CBD that he belatedly received the copy of its Order as it was sent to the school where he reports only on weekends. Also, the annexes mentioned in the complaint were not attached therein. Thus, respondent Atty. Belaro requested the CBD for 10 days within which to file his answer or position paper and to photocopy the annexes of the complaint.

Pending the resolution of his Manifestation with Motion for Reinvestigation, respondent Atty. Belaro filed his Answer[16] to the letter complaint denying that he notarized the questioned documents involving the subject property. He claimed that his alleged signatures found therein were forgeries as evidenced by his specimen signatures submitted before the RTC-Quezon City when he applied for a notarial commission. Respondent Atty. Belaro also denied having caused the filing of the questioned notarized documents before the government agencies concerned. He further averred that he did not know the differences and alterations made in the different versions of the Extrajudicial Settlement instrument which were submitted to MERALCO, the LRA, and the Clerk of Court of RTC-Quezon City. Lastly, he claimed that he does not personally know Dioneda and that she was never employed as his secretary.

Subsequently, the parties filed Joint Motion to Dismiss[17] before the CBD seeking the dismissal of the complaint claiming that it arose from a misapprehension of facts. Attached to the joint motion is an Affidavit of Desistance[18] executed by complainant

---

[13] *Id.* at 37.

[14] *Id.* at 38.

[15] *Id.* at 40-41.

[16] *Id.* at 97-103.

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

[18] *Id.* at 44.

Venson. Respondent Atty. Belaro also informed the CBD of his intention to withdraw his Motion for Reinvestigation.

Report and Recommendation of the Investigating Commissioner

In a Report and Recommendation[19] dated July 30, 2014, Investigating Commissioner Arsenio P. Adriano noted that the signatures of respondent Atty. Belaro in the Extrajudicial Settlement instrument appear to be falsified as these were different from his genuine signatures submitted to the Executive Judge of RTC-Quezon City when he applied for a notarial commission. Despite the alleged forgery, his notarial seal was used in the documents. Based on this, the Investigating Commissioner concluded that respondent Atty. Belaro failed to properly secure the same since no other person was allowed to use it other than him.[20]

Anent the signatures of respondent Atty. Belaro in the Deed of Absolute Sale and in the Acknowledgement Receipt, the Investigating Commissioner found that these were similar to his admitted genuine signatures. Nonetheless, respondent Atty. Belaro was found negligent since he failed to require Rowena, the alleged vendor in the deed, and Vermont, the recipient of the purchase price in the Acknowledgement Receipt, to produce competent evidence of their identities because he merely relied on their respective community tax certificates. Moreover, while both documents appeared to be executed on December 16, 2014, their entries in the Notarial Registry Book were however strikingly apart from each other. The Deed of Absolute Sale was entered in his Notarial Register as Document No. 226, page no. 42, Book No. VI, series of 2014, while the Acknowledgement Receipt was entered as Document No. 258, page no. 48, Book No. VII, series of 2014.[21]

The Investigating Commissioner therefore found respondent Atty. Belaro negligent in the performance of his duties and

---

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

[20] *Id.* at 50.

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

obligations as a notary public. He thus recommended that respondent Atty. Belaro be suspended from the practice of law for six months and ineligible for being commissioned as notary public for a period of one year.[22]

The IBP Board of Governors' (BOG) Recommendation

On April 29, 2016, the IBP-BOG issued Resolution No. XXII-2016-280[23] which adopted and approved the Report and Recommendation of the Investigating Commissioner, with the modification that respondent Atty. Belaro be instead meted the penalty of revocation of his existing notarial commission, disqualification from appointment as notary public for two years, and suspension from the practice of law for three months. An Extended Resolution[24] was issued by the IBP-BOG with respect to the said modification of the recommended penalties to be imposed against respondent Atty. Belaro.

Aggrieved, respondent Atty. Belaro filed a Motion for Reconsideration[25] before the IBP-BOG. He claimed that the findings of the IBP were not based on substantial evidence; that it merely relied on complainant's evidence; and that his motion for reinvestigation was not even acted upon or considered prior to the disposition of the complaint against him. Hence, he was not given a chance to present his own evidence which would have shown that he was a victim of the conspiracy perpetrated by the sibling of complainant Venson.

Respondent Atty. Belaro also alleged that, at present, he was elected as the representative of 1-Ang Edukasyon Party-List in the House of Representatives. As a result, thereof, the penalties imposed by the IBP may have been mooted because he is not in the active practice of law.

---

[22] *Id.* at 51.

[23] *Id.* at 47-48.

[24] *Id.* at 52-59.

[25] *Id.* at 60-82.

Acting on respondent Atty. Belaro's Motion for Reconsideration, the IBP-BOG issued a Resolution[26] on June 29, 2018 modifying its recommended penalty, *viz*.:

> RESOLVED to PARTIALLY GRANT the Respondent's Motion for Reconsideration by imposing the penalty of DISQUALIFICATION FROM BEING COMMISSIONED AS NOTARY PUBLIC FOR TWO (2) YEARS, in lieu of the penalty of Suspension from the practice of law for three (3) months considering that - (i) the complainant had executed an Affidavit of Desistance and ii) this is Respondent's first offense.[27]

The Issues

In essence, the issues for resolution are:

(a) whether the IBP violated respondent Atty. Belaro's right to due process;

(b) whether the findings an recommendations of the IBP were proper; and

(c) assuming that respondent Atty. Belaro is indeed liable, whether his subsequent election in the House of Representatives as a party-list representative mooted the imposition of penalty.

The Court's Ruling

After a careful deliberation, We modify the findings of the IBP and the sanctions to be imposed against respondent Atty. Belaro.

I.
There was no violation of respondent Atty. Belaro's right to due process

The right to be heard is the most basic principle of due process. It is a settled rule that there is no denial of due process when a party has been given an opportunity to be heard and to present his case. There is only denial of due process when there is total

---

[26] *Id.* at 190.

[27] *Id.*

absence or lack of opportunity to be heard or to have one's day in court.[28]

Respondent Atty. Belaro claims that the IBP violated his right to due process because the case was already submitted for resolution when it came to his knowledge. He also insists that the IBP's resolution was solely based on complainant Venson's evidence as the IBP did not act on his motion for reinvestigation.

We disagree.

Technical rules of procedure are not strictly applied in administrative proceedings and administrative due process cannot be fully equated with due process in its strict judicial sense.[29] In *Ledesma v. Court of Appeals*,[30] the Court defined administrative due process in this wise:

> Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.[31] (Citations omitted)

A thorough examination of the records shows that respondent Atty. Belaro was accorded ample opportunity to defend himself

---

[28] *Ylaya v. Gacott*, 702 Phil. 390, 403 (2013), citing *Alliance of Democratic Free Labor Organization v. Laguesma*, 325 Phil. 13, 26-27 (1996).

[29] *Palao v. Florentino III International, Inc.*, 803 Phil. 393, 399 (2017), citing *Samalio v. Court of Appeals*, 494 Phil. 456, 464 (2005); *Bantolino v. Coca-Cola Bottlers Phils., Inc.*, 451 Phil. 839, 846 (2003); *De los Santos v. National Labor Relations Commission*, 423 Phil. 1020, 1034 (2001); and *Emin v. De Leon*, 428 Phil. 172, 186-187 (2002).

[30] 565 Phil. 731 (2007).

[31] *Id.* at 740.

and adduce his own evidence. The IBP duly notified him of the proceedings by sending the notices via registered mail to St. Dominic Savio College of Law, where he used to teach and was the College Dean. While respondent Atty. Belaro claimed that the notices were not sent to his registered address of place of business, such bare assertion deserves scant consideration as he failed to sufficiently prove that the service of notices was highly irregular.

Notably, upon being informed of the notices, respondent Atty. Belaro filed a Manifestation with Motion for Reinvestigation and a subsequent Answer to Letter-Complaint Requesting for Formal Investigation dated September 22, 2015. He even filed a Motion for Reconsideration before the IBP assailing the April 29, 2016 Resolution which was in fact given due course by the IBP. Therefore, the minimum requirements of administrative due process have been observed and met by the IBP.

II.

Respondent Atty. Belaro is liable for breach of notarial law and for violation of the Code of Professional Responsibility

The act of notarization is not an ordinary routine but is imbued with substantive public interest. It converts a private document into a public document resulting in the document's admissibility in evidence without further proof of its authenticity. A notarial document is therefore entitled to full faith and credit on its face and by law.[32]

It is the duty of notaries public to observe utmost care in complying with the formalities intended to protect the integrity of the notarized document and the act or acts it embodies.[33] The Court, in *Gonzales v. Ramos*,[34] elucidated the importance of notarization, to wit:

By affixing his notarial seal on the instrument, the respondent converted the Deed of Absolute Sale, from a private document into

---

[32] *Fabay v. Resuena*, 779 Phil. 151, 158 (2016).

[33] *Traya, Jr. v. Villamor*, 466 Phil. 919, 923 (2004).

[34] 499 Phil. 345, 350 (2005).

a public document. Such act is no empty gesture. The principal function of a notary public is to authenticate documents. When a notary public certifies to the due execution and delivery of a document under his hand and seal, he gives the document the force of evidence. Indeed, one of the purposes of requiring documents to be acknowledged before a notary public, in addition to the solemnity which should surround the execution and delivery of documents, is to authorize such documents to be given without further proof of their execution and delivery. A notarial document is by law entitled to full faith and credit upon its face. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgement executed before a notary public and appended to a private instrument. Hence, a notary public must discharge his powers and duties, which are impressed with public interest, with accuracy and fidelity.[35] (Citation omitted)

We agree with the IBP that the signatures of respondent Atty. Belaro found in the three versions of the Extrajudicial Settlement were indeed forgeries. The signatures were strikingly dissimilar to his specimen signatures submitted before the RTC-Quezon City when he applied for notarial commission. However, our conclusion differs as regards his alleged signatures appearing in the Deed of Absolute Sale and the Acknowledgement Receipt.

Contrary to the findings of the IBP, the questioned signatures were different from respondent Atty. Belaro's specimen signatures on file with the RTC-Quezon City even to the naked eye. ***First***, the middle initial letter "B" in the specimen signatures was in a downward to upward stroke compared to the questioned signatures which showed that the letter "B" was close to being unrecognizable. ***Second***, the first strokes in the specimen signatures were pointed downwards whereas in the questioned signatures these were cursive. ***Third***, anent the signature stroke of respondent Atty. Belaro's surname, the first downward strokes in the specimen signatures were pointed at the end compared to the questioned signatures which were circular. ***Fourth***, the strokes of the first letter in the surname in the specimen signatures appeared to be more of a letter R or B compared to the questioned

[35] *Id.* at 350.

signatures which significantly looked like letter N. ***Fifth***, the tips of the end strokes in the specimen signatures were cursive or round unlike in the questioned signatures which were both pointed. ***Sixth***, the strokes in the surname in the specimen signatures were not drawn as one straight line as compared to the questioned signatures. ***Lastly***, the specimen signatures appeared to be executed in a free rapid continuous stroke unlike in the questioned signatures which showed a slow upward stroke resembling hesitation on the part of the person signing the documents. Clearly, the signatures in the Deed of Absolute Sale and in the Acknowledgement Receipt were not the genuine signatures of respondent Atty. Belaro.

Nonetheless, respondent Atty. Belaro is not exculpated from administrative liability. As observed by the IBP, the Extrajudicial Settlement bore his notarial seal. The 2004 Rules on Notarial Practice[36] clearly states that, when not in use, the official seal of the notary public must be kept safe and secure and shall be accessible only to him or the person duly authorized by him.[37]

Here, respondent Atty. Belaro utterly failed to sufficiently provide any laudable explanation why his notarial seal was found in the documents. He simply asserted in his Answer to the Letter-Complaint that the signatures of the notary public found in the subject instruments were not his, that he did not cause the filing of these documents to any government agencies, and that he never employed Dioneda as his secretary. Indubitably, respondent Atty. Belaro did not properly secure and keep his notarial seal in a safe place inaccessible to other persons so as to ensure that nobody can use the same without his authority. Had he done so, his notarial seal would not have been affixed to the Extrajudicial Settlement which converted the same from a private document into a public document. Thus, respondent Atty. Belaro has been remiss in his duty to exercise utmost diligence in the performance of his functions as a notary public and to comply with the mandates of law.

---

[36] A.M. No. 02-8-13-SC.

[37] Rule VII, Section 2(c).

In being careless in failing to secure and keep his notarial seal in a safe place away from any person not authorized to use the same, respondent Atty. Belaro committed a transgression of the Notarial Law and the Code of Professional Responsibility (CPR).

The negligence of respondent Atty. Belaro likewise extended to his reportorial duties as Notary Public. Although he appeared not to have notarized the Deed of Absolute Sale and the Acknowledgement Receipt yet he entered the same in his Notarial Registry Book. Had respondent Atty. Belaro been meticulous and cautious in the performance of his duties as Notary Public, he would have noticed from the start that he did not notarize the subject instruments and excluded the same from his Notarial Registry Book.

Undoubtedly, respondent Atty. Belaro failed to discharge with fidelity the sacred duties of his office which are dictated by public policy and impressed with public interest.[38] His negligence therefore not only caused damage to those directly affected by the notarized documents but also undermined the integrity of a notary public and degraded the function of notarization.[39] Hence, it is but proper to hold respondent Atty. Belaro liable for his negligence as a notary public and as a lawyer.

III.
Appropriate penalty to be imposed

On the aspect of the penalty to be imposed, the Court holds that respondent Atty. Belaro should be meted the penalty of suspension and revocation of his notarial commission for having violated the 2004 Rules on Notarial Practice. In line with current jurisprudence, and as recommended by the IBP, his disqualification from being commissioned as notary public for two years is in order. The revocation of his incumbent notarial commission, if any, is likewise called for.[40]

---

[38] *Iringan v. Gumangan*, 816 Phil. 820, 837 (2017).

[39] *Dela Cruz-Sillano v. Pangan*, 592 Phil. 219, 228 (2008).

[40] *Iringan v. Gumangan*, *supra* note 38 at 839.

Furthermore, for his negligence to secure and keep safe his notarial seal which facilitated the cancellation of the title to the subject property and the subsequent transfer thereof, the Court finds that a suspension from the practice of law for six months is warranted.

IV.

The filing of a joint motion to dismiss containing complainant Venson's Affidavit of Desistance and the election of respondent Atty. Belaro as a member of the House of Representatives do not warrant the dismissal of the complaint, much less the imposition of the penalty.

Respondent Atty. Belaro in an attempt to escape liability, argues that the filing of the Joint Motion to Dismiss and the execution of the Affidavit of Desistance by complainant Venson should be treated not as a compromise agreement between them as parties. Instead, these showed that the administrative complaint which complainant filed against him lacked factual basis. Thus, respondent Atty. Belaro asserts that sanctions cannot be imposed in the absence of substantial evidence that he is administratively liable.

We disagree.

An affidavit of desistance executed by the complainant or the withdrawal of the complaint is not sufficient cause to warrant the dismissal of an administrative complaint.[41] It remains true notwithstanding the reasons raised by the complainant as to the execution of the affidavit or withdrawal of the complaint. The main objective of disciplinary proceedings is to determine the fitness of a member to remain in the Bar. It is conducted for the public welfare and the desistance of the complainant is irrelevant. What matters is whether the charge in the complaint has been proven on the basis of the facts borne out by the record.[42] This was exhaustively emphasized by the Court

---

[41] *Loberes-Pintal v. Baylosis*, 804 Phil. 14, 20 (2017).

[42] *Bautista v. Bernabe*, 517 Phil. 236, 241 (2006).

in *Loberes-Pintal v. Baylosis*,[43] citing *Bautista v. Bernabe*,[44] to wit:

> A case of suspension or disbarment may proceed regardless of interest or lack of interest of the complainant. What matters is whether, on the basis of the facts borne out by the record, the charge of deceit and grossly immoral conduct has been proven. This rule is premised on the nature of disciplinary proceedings. A proceeding for suspension or disbarment is not a civil action where the complainant is a plaintiff and the respondent lawyer is a defendant. Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare. They are undertaken for the purpose of preserving courts of justice from the official ministration of persons unfit to practice in them. The attorney is called to answer to the court for his conduct as an officer of the court. The complainant or the person who called the attention of the court to the attorney's alleged misconduct is in no sense a party, and has generally no interest in the outcome except as all good citizens may have in the proper administration of justice.[45] (Citation omitted)

Moreover, the fact that respondent Atty. Belaro is not in the active practice of law by reason of his election in the House of Representatives as a party-list representative of 1-Ang Edukasyon Party-List in the 2016 National Election, is irrelevant.

The Court takes judicial notice that the Mid-Year Election has been conducted in May 2019 which has changed the sitting members in the House of Representatives including the party-list representatives. Based on the 2019 election results, the 1-Ang Edukasyon Party-List failed to win any seat in Congress. Hence, respondent Atty. Belaro's argument has been rendered moot and academic.

Besides, assuming *arguendo* that respondent Atty. Belaro remains to be a Representative, he still cannot escape liability on the ground that he is not in the active practice of law. To begin with, no law or statute provides that the penalties against

---

[43] *Loberes-Pintal v. Baylosis*, *supra* note 41 at 20.

[44] *Bautista v. Bernabe*, *supra* note 42 at 241.

[45] *Loberes-Pintal v. Baylosis*, *supra* note 41 at 20.

an erring lawyer cannot be imposed if said lawyer is inactive in the practice of law by any reason such as election in public office. Despite his being inactive in the practice of law, the fact remains that he is still a member of the legal profession. Hence, the Court is not precluded from conducting disciplinary investigation against him or imposing disciplinary sanctions if so warranted. It is in accordance with the Court's power to call upon a member of the Bar to account for his actuations as an officer of the Court in order to preserve the purity of the legal profession and the proper and honest administration of justice. The Court may therefore strip off the profession of members or impose other forms of sanctions upon them who by their misconduct have proved themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney.[46]

WHEREFORE, respondent Atty. Salvador B. Belaro, Jr. is found **GUILTY** of violating the 2004 Rule on Notarial Practice and the Code of Professional Responsibility. He is hereby **SUSPENDED** from the practice of law for a period of SIX MONTHS, effective upon receipt of copy of this Decision. Moreover, his notarial commission, if any, is hereby **REVOKED**, and he is **DISQUALIFIED** from reappointment as a notary public for a period of two years from finality of this Decision.

Atty. Belaro 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 attached to Atty. Belaro's record in this Court as attorney. Further, let copies of this Decision be furnished to the Integrated Bar of the Philippines and the Office of the Court Administrator which is directed to circulate them to all the courts in the country for their information and guidance.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Reyes, A. Jr.*, *Inting*, and *Delos Santos, JJ.*, concur.

---

[46] *Ylaya v. Gacott*, *supra* note 28 at 407.

SECOND DIVISION

[G.R. No. 200972. December 11, 2019]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **MANUEL C. BULATAO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ILLEGAL TERMINATION OF APPOINTMENT; DOCTRINE OF PROMISSORY ESTOPPEL, APPLIED; ELEMENTS THAT MUST BE ESTABLISHED TO MAKE OUT A CLAIM OF PROMISSORY ESTOPPEL, PRESENT IN CASE AT BAR. — As declared by the appellate court, the situation calls for the application of the doctrine of promissory estoppel, which is "an exception to the general rule that a promise of future conduct does not constitute an estoppel. In some jurisdictions, in order to make out a claim of promissory estoppel, a party bears the burden of establishing the following elements: (1) a promise reasonably expected to induce action or forbearance; (2) such promise did in fact induce such action or forbearance[;] and (3) the party suffered detriment as a result." In the case at bench, Bulatao was constrained to apply for early retirement due to the announcement of its availability and because of the unfavorable future working conditions he would face after the supposed JVA with the "Indian" group and the conduct of the International Competitive Test. Consequently, Bulatao suffered detriment as his application for early retirement was unexpectedly interpreted as a resignation by the Board and he was subsequently advised not to report for work anymore notwithstanding the withdrawal of his application for early retirement.

2. ID.; ID.; ID.; ID.; CIRCUMSTANCES IN THIS CASE NEGATE EMPLOYER'S CLAIM THAT EMPLOYEE ABANDONED HIS EMPLOYMENT; REQUISITES THAT MUST BE PROVED TO ESTABLISH ABANDONMENT; TOTALITY OF EMPLOYEE'S ACTS COUPLED WITH EMPLOYER'S INACTION LED TO THE CONCLUSION THAT THE FORMER DID NOT INTEND TO SEVER HIS EMPLOYMENT WITH THE LATTER. — In view of the

attendant circumstances, Bulatao could not be considered as having abandoned his employment. To establish abandonment, the employer must prove that "*first*,the employee must have failed to report for work or must have been absent without valid or justifiable reason; and *second*, [that] there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act." In this case, it was clear in Bulatao's letter dated November 10, 1999 that he was taking an official leave of absence following his statement that he was taking the bank's offer to retire. Thus, there was reason for Bulatao's absence at the time, which We already noted to be accepted and approved due to PNB's undeniable inaction. Moreover, while Bulatao intended to take up the offer to retire which would have led to the severance of the employer-employee relationship, it should be considered that the circumstances surrounding such decision was influenced by the JVA with the "Indian" group, which Bulatao did not agree with. As held by the CA, such instance did not stem from Bulatao's desire to willingly and unconditionally cut ties with PNB but because of the JVA which he believed to be disadvantageous to the bank. In addition, Bulatao categorically withdrew his application to retire as mentioned in his memorandum which he submitted before the Board "approved" his application to "resign." Indeed, "[t]here must be a positive and overt act signifying an employee's deliberate intent to sever his or her employment," which is wanting in this case. There are doubts surrounding his intent to retire coupled with the fact that he specifically desisted from doing so. Jurisprudence pronounced that "mere absence from work, even after a notice to return, is insufficient to prove abandonment." In Bulatao's case, there was not even any notice to return to work. Simply put, the totality of Bulatao's acts, coupled with PNB's inaction, led to the conclusion that he did not intend to summarily cut his ties with PNB. x x x It is also important to note that filing an illegal dismissal case is inconsistent with abandonment, as in fact, in his complaint with the RTC, Bulatao prayed for reinstatement. Indeed, "[a]n employee who loses no time in protesting his layoff cannot by any reasoning be said to have abandoned his work, for it is already a well-settled doctrine that the filing by an employee of a complaint for illegal dismissal with a prayer for reinstatement is proof enough of his desire to return to work, thus negating the employer's charge of abandonment." PNB failed to show that Bulatao had a clear

and deliberate intent to sever his employment without any intention of returning[.]

3. ID.; ID.; ID.; ID.; EMPLOYEE'S APPLICATION FOR OFFICIAL LEAVE AND EARLY RETIREMENT CANNOT BE TREATED AS A RESIGNATION LETTER; EMPLOYER FAILED TO PROVE BY CONVINCING EVIDENCE THAT THERE WAS A JUST OR AUTHORIZED CAUSE FOR TERMINATING HIS EMPLOYMENT. — Even if Bulatao's application for retirement were to be considered premature, he contended that his employment should not have been terminated and that PNB should have just denied his application and ordered him to report back to work, as Bernardino testified during the trial. Unfortunately, Bulatao was not informed whether he committed lapses with regard to his applications for official leave and early retirement. He was left under the impression that everything was in order when in fact his letter dated November 10, 1999 was already being treated as a resignation letter for consideration of the Board. Also, it was likely that PNB might have interpreted his application for official leave as terminal leave prior to his "resignation." If this was the case, PNB should have required Bulatao to properly fill out a leave form for his terminal leave or official leave of absence. To stress, however, the bank did not send any notice to Bulatao to explain his absence, considering his position as SVP. Bulatao even alleged that he returned to work on January 1, 2000. But then on January 29, 2000, he was suddenly verbally informed not to report for work starting February 2000. Around that time, apparently, the Board released Resolution No. 38 on January 28, 2000 which "approved and confirmed" the acceptance of his "resignation." Yet, it still took more than a month, specifically on March 23, 2000, for Bulatao to be informed in writing about the said decision by the Board. The Court finds without justification PNB's treatment of Bulatao's letter as one for resignation and its subsequent "acceptance" of the same to ultimately terminate his employment. x x x PNB did not convincingly disprove Bulatao's claim that the real reason behind his filing for early retirement was his dissatisfaction with the agreement with the "Indian" group, even if the said agreement did not materialize. In light of these observations and findings, PNB failed to prove by convincing evidence that there was just or authorized cause for terminating Bulatao from employment.

4. ID.; ID.; ID.; ID.; WHILE REINSTATEMENT IS A MATTER OF RIGHT, AWARD OF SEPARATION PAY IS AN EXCEPTION TO THE RULE; TAKING INTO ACCOUNT THE LAPSE OF TIME AS WELL AS THE AGE AND EMPLOYEE'S CAPACITY TO WORK, REINSTATEMENT IS NO LONGER FEASIBLE; THE COURT FINDS THE GRANT OF SEPARATION PAY IN LIEU OF REINSTATEMENT AND THE AWARD OF FULL BACKWAGES AND ATTORNEY'S FEES, PROPER. — We note that the CA ordered the reinstatement of Bulatao. It should be emphasized, however, that although reinstatement is a matter of right, the award of separation pay is an exception to such rule, as it is awarded in lieu of reinstatement in the following circumstances: "(a) when reinstatement can no longer be effected in view of the passage of a long period of time or because of the realities of the situation; (b) reinstatement is inimical to the employer's interest; (c) reinstatement is no longer feasible; (d) reinstatement does not serve the best interests of the parties involved; (e) the employer is prejudiced by the workers' continued employment; (f) facts that make execution unjust or inequitable have supervened; or (g) strained relations between the employer and employee." Taking into account the lapse of time as well as the age and capacity to work of Bulatao, reinstatement is no longer feasible. In fact, Bulatao revealed that he has suffered and is still suffering from various medical ailments such as stroke, arthritis, gout, cervical spondylosis, and even had to undergo cancer treatments and heart surgery during the pendency of this case. Thus, the grant of separation pay in lieu of reinstatement is more appropriate under the circumstances. Likewise, as ruled by the CA, Bulatao is entitled to damages and attorney's fees since "the proper action on [Bulatao's] application for retirement should have been to deny the same instead of immediately terminating [Bulatao] and treating the same as a resignation letter. Worse, the actual notice of Resolution No. [3]8 dated March 3, 2000 was received by [Bulatao] months after he was told not to report for work anymore." It is settled that "moral damages are recoverable where the dismissal of the employee was attended by bad faith or fraud or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs, or public policy, while exemplary damages may be awarded if the dismissal was effected in a wanton, oppressive or malevolent manner."

Moreover, attorney's fees may be awarded since there is a factual, legal, or equitable basis for doing so in light of the circumstances surrounding the case. Bulatao was compelled to engage the services of counsel in order to protect his rights after he was unjustly dismissed. Lastly, the backwages including allowances and benefits or their monetary equivalent which were granted in favor of Bulatao shall, in accordance with Our ruling in *Nacar v. Gallery Frames*, earn legal interest of twelve (12%) percent per *annum* from the time these were withheld until June 30, 2013 and six percent (6%) per *annum* from July 1, 2013 until fully paid.

APPEARANCES OF COUNSEL

Norman R. Bueno for petitioner.
Esguerra & Blanco for respondent.

D E C I S I O N

HERNANDO, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the July 29, 2011 Decision[2] and February 7, 2012 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 94046.

The Antecedents

Respondent Manuel C. Bulatao (Bulatao) was formerly the Senior Vice-President (SVP) of the Information Technology (IT) Group of petitioner Philippine National Bank (PNB). Bulatao's appointment as SVP was evidenced by a letter[4] dated October 3, 1996 which indicated that the Board of Directors

---

[1] *Rollo*, pp. 29-59.

[2] *Id.* at 9-23; penned by Associate Justice Magdangal M. de Leon and concurred in by Associate Justices Mario V. Lopez (now a member of this Court) and Socorro B. Inting.

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

[4] *Id.* at 81.

(Board) of PNB approved his appointment by virtue of Board Resolution No. 27 dated September 4, 1996. The same letter specified that his appointment shall take effect on September 16, 1996. Bulatao averred that he accepted the said appointment as reflected in the *conforme* portion of the letter which he signed on October 7, 1996.[5] Another appointment letter[6] dated February 17, 1999 confirmed Bulatao's appointment as SVP of the IT Group pursuant to Board Resolution No. 04 dated January 18, 1999.

Bulatao alleged that on October 1, 1999, Mr. Benjamin Palma Gil (Mr. Palma Gil), then PNB's President, and a certain Mr. Samit Roy (Mr. Roy), an Indian national, hosted a dinner meeting for PNB's IT staff to announce the conclusion of a Joint Venture Agreement (JVA) between PNB and Mr. Roy. During dinner Mr. Roy announced that not all of the IT staff would be retained since everyone had to undergo an International Competitive Test as a prerequisite for absorption. Those who would not be absorbed would be offered retirement packages instead. Bulatao contended that the conduct of the International Competitive Test was a ploy to force IT personnel not supportive of the project to leave the bank. Notably, Bulatao was one of those who objected to the JVA because of the supposed huge capital exposure on PNB's end.[7]

Eventually, Bulatao manifested his intent to retire in a letter[8] dated November 10, 1999 addressed to Mr. Palma Gil. The pertinent portions of the said letter are as follows:

> This is to inform you that I am taking the Bank's offer to retire on 31 December 1999 as announced during your recent meeting with all the IT staff held at the Skyline Executive Lounge last October 20, 1999.
>
> Kindly appoint my replacement effective today because I am going on an official leave of absence.

---

[5] *Id.*

[6] *Records*, p. 91.

[7] *Rollo*, p. 62.

[8] *Id.* at 97-99.

My continued stay is no longer tenable for the following reasons:

- The working environment brought about by the recent decisions by management makes it difficult for me to be productive.
- I cannot, in conscience, support the decision on the Joint Venture. Consequently, I cannot endorse this project to my staff for support and acceptance.

While I am responsible for introducing Mr. Umen Bewtra of FI of London, I had certain expectations which could have made the venture more acceptable. These are:

- That FI would be our partner in view of their track record of managing the venture at the Bank of Scotland rather than SciCom, which is based in India and is more of an IT consulting company.
- That due process would be followed wherein IT Mancom will collectively evaluate the proposal prior to any decision of higher management, which is what is currently done to procurement of IT resources or decisions requiring IT Steercom deliberation.

Further, on several occasions, I sought an appointment with Mr. Samit Roy to discuss sensitive issues that I verbally brought to his and his partners' attention. These were:

- 10% charge based on annual IT expenditure. This is a clear conflict of interest since there is no motivation for the Joint Venture to reduce PNB's annual costs.
- Elimination of the MIS plan since we already paid Kirchman Corporation for the Strategic Study.

Furthermore, in compliance to your instructions last September 21, 1999, we did seek for an appointment with Mr. Roy. However, VP Claro Fernandez and myself were not able to meet with him although he confirmed a meeting on two occasions.

The aforementioned are the reasons for this decision and I hope they explain clearly why I cannot stay in the employ of the Bank.

x x x x x x x x x

In closing, I would like to express my gratitude for the privilege of having worked with this fine banking institution.[9]

---

[9] *Id.*

Conversely, PNB alleged that Bulatao felt pessimistic about its plan to outsource the services of the IT Group to an "Indian" group. Given that the deal with the "Indian" group did not materialize, Bulatao made a sudden turn-around.[10] Meanwhile, Bulatao alleged that on December 26, 1999, he had a meeting with Mr. Lucio Tan (Mr. Tan), then a member of the Board, who asked him to reconsider his decision to retire and join Mr. Tan's management team. Because of this, Bulatao alleged that he went back to work on January 1, 2000.[11] Around that time, aware that the Board had not yet acted on his application for retirement, Bulatao withdrew the said application in a Memorandum[12] dated January 25, 2000 addressed to Feliciano L. Miranda, Jr., then Officer-in-Charge/Chief Executive Officer of PNB.

On January 29, 2000 or four days from the date of his Memorandum, Bulatao received a call from the SVP of Human Resource Division who informed him not to report for work in February 2000 as the Board already accepted his "resignation." For this reason, Bulatao stopped reporting for work. Subsequently, he filed a Complaint[13] for illegal dismissal on February 27, 2000 with the National Labor Relations Commission (NLRC).

Thereafter, Bulatao received a letter[14] dated March 23, 2000 from Manuel C. Mendoza, the Executive Vice-President of PNB, informing him that the Board, by virtue of Resolution No. 38 of January 28, 2000, approved and confirmed the acceptance of his resignation (given that the Board treated his application for retirement as a resignation).

Meanwhile, the Complaint filed by Bulatao with the NLRC was dismissed for lack of jurisdiction. The NLRC held that

---

[10] *Id.* at 35-36.

[11] *Id.* at 63.

[12] *Id.* at 105.

[13] *Id.* at 101.

[14] *Id.* at 100.

since Bulatao was an appointed officer of a corporation, it is the Regional Trial Court (RTC) which has jurisdiction over the case in accordance with Republic Act (RA) No. 8799 or the Securities Regulation Code. In view of this, Bulatao filed a suit for Illegal Termination of Appointment and Damages[15] before the RTC of Parañaque City.

In his testimony, Bulatao averred that PNB erroneously considered his application for retirement as a resignation. He explained that he applied for retirement because he objected to a deal with the "Indian" group which he claimed will drain the bank in the amount of ₱970 Million.[16] He added that Mr. Samit announced that the entire IT team will undergo a test in order to select the people who will be hired in view of the JVA. Furthermore, he stated that he feared a potential bank run may arise due to the JVA.[17]

Bulatao asserted that after he talked to Mr. Tan, he went back to work so that he would not be declared to be on Absence Without Official Leave (AWOL). Afterwards, he withdrew his application for retirement. However, he received a call from the SVP of Human Resource Division informing him not to report for work starting February 2000 because the Board has already accepted his "resignation."[18]

Claro Bernardino (Bernardino), the previous Records Custodian of the Records Division of the Human Resource Division and who also previously held a position with the Benefits Division of PNB, testified that at the time, he was in-charge of the processing of separation, retirement, and resignation of PNB personnel. He averred that PNB offered a Special Separation Incentive Plan (SSIP) from July 13, 1998 until September 13, 1998 wherein employees have to apply by submitting forms to the Human Resource Division. Thereafter, PNB again offered

---

[15] *Id.* at 84-95.

[16] TSN, April 27, 2006, p. 33.

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

[18] *Id.* at 43-46.

a Special Separation Plan (SSP) from February 15, 2001 to April 10, 2001. Bernardino clarified that there was no other offer for retirement plans in between the periods covered by the SSIP and the SSP.[19]

On cross-examination, Bernardino stated that his office did not receive Bulatao's application for retirement dated November 10, 1999 but posited that it received a resignation letter.[20] He said that the letter was treated as one for resignation even if its introductory sentence indicated that it was an application for retirement. Nonetheless, he admitted that if an employee's application for retirement is denied, he or she would accordingly be informed of the said denial and would not be terminated. However, he clarified that if the retiring/resigning employees held the rank of Vice President or Senior Vice President, the Board was tasked to approve their respective resignations or retirement applications.[21]

The Ruling of the Regional Trial Court

In a May 19, 2009 Decision,[22] Branch 196 of the RTC of Parañaque City found no proof that Bulatao returned to work. Additionally, there was no document showing that his absence was with prior leave, leading the trial court to conclude that Bulatao abandoned his employment when he went on voluntary leave for 81 days from November 11, 1999 to January 31, 2000 upon submission of a request to avail of an early retirement scheme. His intention to sever his employment with PNB was clearly reflected in his letter when he stated that he cannot stay in the employ of the bank and that PNB should find a replacement. It found that when Bulatao immediately went on leave and did not report without justifiable reason, this signified his intention to sever his relations with the bank which constituted as abandonment of work. Accordingly, the trial court held that

---

[19] TSN, August 14, 2008, pp. 5, 9-18.

[20] *Id.* at 24.

[21] TSN, October 21, 2008, pp. 5-13.

[22] CA *rollo*, pp. 11-19; penned by Judge Brigido Artemon M. Luna II.

Bulatao's application to retire was belied by his actions which actually demonstrated an intention to abandon work, much like a resignation letter which is effective immediately.

The RTC further held that Bulatao did not render service until after his request for retirement was properly screened which disrupted the operations of his division. Bulatao did not even inquire about the status of his request, except when he was informed not to report for work as his resignation had already been approved. The RTC opined that his actions in leaving the bank with haste and staying unaccounted for quite some time left much to be desired for a senior bank official like him.

Moreover, the trial court found that PNB cannot be faulted for considering that Bulatao has resigned from employment given that he has already manifested his intention to leave the bank and in fact immediately left without any valid explanation. PNB was not precluded from accepting Bulatao's resignation as it was the only thing left to be done considering that his acts of abandonment were tantamount to a voluntary resignation. It interpreted Bulatao's memorandum withdrawing his application for retirement as an afterthought given his actuations before the filing thereof, especially when he did not return to work after filing a notice of retirement. Hence, the RTC dismissed Bulatao's Complaint for lack of merit.

Bulatao asked for a reconsideration[23] but it was denied by the RTC Order[24] dated August 25, 2009. Dismayed, Bulatao appealed[25] to the CA.

The Ruling of the Court of Appeals

The CA, in its assailed July 29, 2011 Decision,[26] held that PNB failed to present evidence to show that there was no announcement regarding the availability of a retirement scheme

---

[23] Records, pp. 620-633.

[24] CA *rollo*, p. 25.

[25] *Id.* at 22-24.

[26] *Rollo*, pp. 9-23.

which encouraged Bulatao to apply for one. It ruled that the announcement made by the President of PNB is akin to the principle of promissory estoppel. It declared that Bulatao properly relied on the announcement made by Mr. Samit and Mr. Palma Gil. However, since there was no actual retirement plan or scheme which Bulatao could have availed of, he correctly withdrew his application for retirement, although it was done for a different reason (which was the supposed prodding of Mr. Tan for him to continue working for PNB).

In any case, the appellate court held that Bulatao's withdrawal of his application for retirement left PNB without any application to accept or deny. Thus, the issuance of Board Resolution No. 38 was flawed because the matter of Bulatao's application was already out of the Board's purview after Bulatao withdrew the same.

The CA noted that even if Bulatao's application for retirement is treated as a resignation letter, the circumstances under which he manifested his desire to leave work rendered the same involuntary. It ruled that Bulatao was prompted to apply for retirement due to unbearable conditions brought about by the employer and not due to his desire to sever his working relationship with PNB.

The appellate court found that Bulatao went on official leave immediately after filing his application for retirement but returned to work on January 1, 2000 until he was verbally informed on January 29, 2000 not to report for work starting February 2000. Bulatao went back to work even without any notice from PNB for him to return; hence, there was no basis for the charge of abandonment. It further found that: "Resolution No. [3]8 that treated [Bulatao's] application for retirement as a resignation letter is silent on this point nor did it mention anything about the lack of a valid leave form to cover the period that Bulatao was supposed to be on leave. Worse, said resolution came three (3) days after [Bulatao] withdrew his application for retirement. To hold [Bulatao] guilty of abandonment when [PNB] had the opportunity to charge him for the same will be violative of

[Bulatao's] right to due process and an evasion of PNB's duty to observe the two (2) notice rule."[27]

In view of foregoing findings, the CA declared that Bulatao was illegally dismissed and entitled to reinstatement and backwages as well as damages. The dispositive portion of the appellate court's assailed Decision reads:

WHEREFORE, the appeal is **GRANTED** and the Decision dated May 19, 2009 is **REVERSED and SET ASIDE**. Appellant is hereby found to have been illegal dismissed and is hereby ordered **REINSTATED** to his former or equivalent position without loss of seniority rights. Accordingly he is entitled to recover:

1. Backwages, inclusive of allowances, and benefits or their monetary equivalent, computed from the time the same were withheld up to the time of appellant's actual reinstatement;
2. Moral damages in the amount of ONE HUNDRED THOUSAND (PHP100,000.00) PESOS;
3. Exemplary damages in the amount of ONE HUNDRED THOUSAND (PHP100,000.00) PESOS;
4. TEN (10%) PERCENT attorney's fees.

This case is remanded to the court of origin for computation of backwages and other monetary awards due appellant.

SO ORDERED.[28]

PNB filed a motion for reconsideration which was denied by the CA in a Resolution[29] dated February 7, 2012. Discontented, PNB elevated[30] this case before Us and raised the following errors:

A.

THE [CA] GRAVELY ERRED IN GIVING CREDENCE TO RESPONDENT'S UNNATURAL CREDULITY IN OVER-RELYING ON A SUPPOSED ANNOUNCEMENT OF AN EARLY

---

[27] *Id.* at 20.

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

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

[30] *Id.* at 29-59.

RETIREMENT PLAN, WITHOUT EXPECTING FROM HIM, A SENIOR VICE PRESIDENT AT THAT, TO AT LEAST CHECK OR VERIFY, EVEN PERFUNCTORILY, A DEFINITIVE COMPANY POLICY OR BASIS TO CONFIRM SUCH ANNOUNCEMENT.

B.

THE [CA] GRAVELY ERRED WHEN IT MANIFESTLY OVERLOOKED THE EVIDENCE ON RECORD OF RESPONDENT'S CLEAR INTENTION AND DEMAND TO SEVER HIS EMPLOYMENT TIES WITH PNB, COUPLED WITH HIS ACTUAL ACT OF ABANDONMENT.

C.

THE [CA] GRAVELY ERRED WHEN IT GRATUITOUSLY CONCLUDED THAT THE WORKING CONDITIONS RESPONDENT FOUND HIMSELF INTO, AND WHICH HE FOUND DISAGREEABLE, PER SE, MADE HIS DECISION TO SEVER HIS TIES [WITH] PNB INVOLUNTARILY.

D.

THE [CA] GRAVELY ERRED IN AWARDING RESPONDENT MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES.[31]

Thus, the main issue in this Petition is whether or not Bulatao was illegally dismissed.

The Ruling of the Court

The Petition is unmeritorious.

PNB argues that the appellate court erred in giving credence to Bulatao's reliance on a supposed announcement of an early retirement plan and faulted PNB for its failure to show proof that no such announcement was made. It asserts that considering Bulatao's position, he should have not merely relied on a verbal announcement and instead confirmed whether there was indeed such company policy and its basis, including the necessary formality and documentation for the processing of the supposed

---

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

application for retirement. It contends that Bulatao has the burden of proof to show that he applied for inclusion in the alleged early retirement plan.[32]

Furthermore, the bank points out that Bulatao's demand to sever his employment ties was immediate and categorical as indicated in his letter. While he intended to go on terminal leave, he never filed and presented evidence that he actually filed any application to go on such leave. Instead, he went on "voluntary leave" for 81 days without permission or justifiable reason, except for his demand to retire early. It argues that PNB should not be faulted for accepting Bulatao's voluntary act of resignation and should not be expected to accommodate his sudden change of heart, especially since he manifested his intention to leave at once.[33]

Moreover, PNB asserts that "[g]iven the nature and position of [Bulatao's] appointment, **coupled with his expressed sentiments, overt acts, and omissions (*e.g.*, failure to file an application for 81-day leave or inclusion in any form of retirement plan), all of which evinced his desire to leave the Bank, the conclusion is inevitable. His separation from the Bank was voluntary**."[34] Furthermore, it questions why the CA did not consider the trial court's findings on the matter.[35]

Bulatao counters that his testimony and PNB's admissions prove that there was an offer for early retirement to PNB's IT staff. He emphasizes that PNB admitted the existence of the retirement offer during the pre-trial conference before the trial court since it admitted Bulatao's letter dated November 10, 1999 in its entirety. He adds that PNB did not present any evidence to counter his claim that an offer for early retirement was made.[36]

---

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

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

[34] *Id.* at 48.

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

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

He avers that Resolution No. 38 was invalid and insists that his letter dated November 10, 1999 was not a resignation letter but an application for early retirement, as he believed in good faith that PNB's offer was valid. He adds that PNB's witness, Bernardino, admitted during trial that it was not the practice of PNB to automatically terminate the employee in the event that his/her application for retirement is denied. In spite of this, his letter was deemed as a resignation which was wrong and unfair. Moreover, he states that Resolution No. 38 was issued on January 28, 2000, or three days after the withdrawal of his application for retirement through a Memorandum dated January 25, 2000.[37]

Bulatao insists that he did not abandon his work and that PNB failed to show proof that he did so or that he intended to resign, or that his official leave was not granted. This was even demonstrated by his filing of cases for illegal dismissal which were inconsistent with abandonment.[38]

PNB rebuts that Bulatao failed to prove the existence of the offer of an early retirement plan. It argues that Bulatao did nothing more to formalize or follow-up his supposed application for retirement. It maintains that given the position and nature of Bulatao's appointment, coupled with his sentiments, actuations and omissions, he demonstrated his desire to leave PNB. His acts amounted to abandonment since he went on voluntary leave without justifiable explanation and asked that his replacement be appointed effective November 10, 1999, which were indicative of his intention to sever the employer-employee relationship.[39]

At the outset, it should be noted that during the period when Bulatao opted to avail of the supposed offer for an early retirement, there was no existing documented retirement offers from PNB. Apparently, PNB only offered an SSIP[40] from July

---

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

[38] *Id.* at 71-73.

[39] *Id.* at 232-237.

[40] Records, pp. 445-462.

13, 1998 to September 13, 1998 and an SSP[41] from February 15, 2001 to April 10, 2001. These offers were evidenced by circulars and other documentation, which required an employee to fill out an application form and to comply with the conditions for eligibility. Notably, there was no documented offer for a retirement plan from September 14, 1998 to February 14, 2001,[42] the period covering Bulatao's application for early retirement.

However, as the appellate court found, PNB did not present any proof to counter Bulatao's positive assertion that there was a verbal announcement about an option for early retirement for those who attended the meeting. In fact, PNB admitted that there was a meeting at that time.[43] Believing in good faith that there was a valid offer as the same came from a top official of the bank, Bulatao deemed it best to avail of it since he also believed that the future working conditions would not be comfortable for him due to the entry of the "Indian" group. As the CA ruled, the circumstances in which the bank expected Bulatao to work impelled him to apply for retirement, and not because he actually wished to sever his employment ties with PNB.

As declared by the appellate court, the situation calls for the application of the doctrine of promissory estoppel, which is "an exception to the general rule that a promise of future conduct does not constitute an estoppel. In some jurisdictions, in order to make out a claim of promissory estoppel, a party bears the burden of establishing the following elements: (1) a promise reasonably expected to induce action or forbearance; (2) such promise did in fact induce such action or forbearance[;] and (3) the party suffered detriment as a result."[44] In the case at bench, Bulatao was constrained to apply for early retirement due to the announcement of its availability and because of the

---

[41] *Id.* at 463-494.

[42] CA *rollo*, pp. 81-82.

[43] Records, p. 83.

[44] *Mendoza v. Court of Appeals*, 412 Phil. 14, 29 (2001), citing 28 Am Jur 2d 481.

unfavorable future working conditions he would face after the supposed JVA with the "Indian" group and the conduct of the International Competitive Test. Consequently, Bulatao suffered detriment as his application for early retirement was unexpectedly interpreted as a resignation by the Board and he was subsequently advised not to report for work anymore notwithstanding the withdrawal of his application for early retirement.

Bulatao withdrew his application for early retirement since Mr. Tan purportedly asked him to work in a different capacity in the bank. Hence, he manifested such withdrawal through a Memorandum three days before PNB's Board released Resolution No. 38 accepting his supposed resignation. In effect, the Board did not have any basis for its resolution since Bulatao already withdrew his application.

In his letter dated November 10, 1999, Bulatao also mentioned that he was taking an official leave of absence immediately after filing the said letter. Notably, he failed to submit proof that he filled out an official leave form and filed the same with PNB's Human Resource Division. Curiously, though, even with the receipt of Bulatao's letter date November 10, 1999, the bank did not require him to file the corresponding leave form. Additionally, PNB did not order him to return to work lest he be deemed to be on AWOL given that his official leave was supposedly not approved. In fact, PNB did not charge him with abandonment in spite of its allegation that he did not report for work for around 81 days. PNB failed to issue any notice to explain or a notice of hearing, or even to conduct a clarificatory meeting to shed light on Bulatao's supposed case of abandonment. There was a significant **inaction** on the part of PNB which suggested that although not the norm, Bulatao's acts, as a senior official, were not considered as highly irregular especially with regard to his taking an official leave of absence. PNB's inaction could be deemed that it has accepted Bulatao's application for leave, even though it was not in the standard form or strictly in accordance with the bank's practices.

In view of the attendant circumstances, Bulatao could not be considered as having abandoned his employment. To establish

abandonment, the employer must prove that "*first*, the employee must have failed to report for work or must have been absent without valid or justifiable reason; and *second*, [that] there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act."[45]

In this case, it was clear in Bulatao's letter dated November 10, 1999 that he was taking an official leave of absence following his statement that he was taking the bank's offer to retire. Thus, there was reason for Bulatao's absence at the time, which We already noted to be accepted and approved due to PNB's undeniable inaction. Moreover, while Bulatao intended to take up the offer to retire which would have led to the severance of the employer-employee relationship, it should be considered that the circumstances surrounding such decision was influenced by the JVA with the "Indian" group which Bulatao did not agree with. As held by the CA, such instance did not stem from Bulatao's desire to willingly and unconditionally cut ties with PNB but because of the JVA which he believed to be disadvantageous to the bank.

In addition, Bulatao categorically withdrew his application to retire as mentioned in his memorandum which he submitted before the Board "approved" his application to "resign." Indeed, "[t]here must be a positive and overt act signifying an employee's deliberate intent to sever his or her employment,"[46] which is wanting in this case. There are doubts surrounding his intent to retire coupled with the fact that he specifically desisted from doing so. Jurisprudence pronounced that "mere absence from work, even after a notice to return, is insufficient to prove

---

[45] *Hubilla v. HSY Marketing Ltd., Co.*, G.R. No. 207354, January 10, 2018, 850 SCRA 372, 399, citing *MZR Industries v. Colambot*, 716 Phil. 617, 627 (2013); *Samarca v. Arc-Men Industries, Inc.*, 459 Phil. 506, 515 (2003); *MSMG-UWP v. Ramos*, 383 Phil. 329, 371-371 (2000); *Icawat v. National Labor Relations Commission*, 389 Phil. 441, 445 (2000); and *Seven Star Textile Company v. Dy*, 541 Phil. 468, 481 (2007).

[46] *Hubilla v. HSY Marketing Ltd., Co., id.*, citing *Samarca v. Arc-Men Industries, id.*

abandonment."[47] In Bulatao's case, there was not even any notice to return to work. Simply put, the totality of Bulatao's acts, coupled with PNB's inaction, led to the conclusion that he did not intend to summarily cut his ties with PNB.

Even if Bulatao's application for retirement were to be considered premature, he contended that his employment should not have been terminated and that PNB should have just denied his application and ordered him to report back to work,[48] as Bernardino testified during the trial. Unfortunately, Bulatao was not informed whether he committed lapses with regard to his applications for official leave and early retirement. He was left under the impression that everything was in order when in fact his letter dated November 10, 1999 was already being treated as a resignation letter for consideration of the Board.

Also, it was likely that PNB might have interpreted his application for official leave as terminal leave prior to his "resignation." If this was the case, PNB should have required Bulatao to properly fill out a leave form for his terminal leave or official leave of absence. To stress, however, the bank did not send any notice to Bulatao to explain his absence, considering his position as SVP.

Bulatao even alleged that he returned to work on January 1, 2000. But then on January 29, 2000, he was suddenly verbally informed not to report for work starting February 2000. Around that time, apparently, the Board released Resolution No. 38 on January 28, 2000 which "approved and confirmed" the acceptance of his "resignation." Yet, it still took more than a month, specifically on March 23, 2000, for Bulatao to be informed in writing about the said decision by the Board. The Court finds without justification PNB's treatment of Bulatao's letter as one for resignation and its subsequent "acceptance" of the same to ultimately terminate his employment. Neither was there any

---

[47] *Hubilla v. HSY Marketing Ltd., Co., id.*, citing *Insular Life Assurance Co., Ltd. Employees Association- NATU v. Insular Life Assurance Co., Ltd.*, 147 Phil. 194, 217 (1971).

[48] CA *rollo*, p. 85.

basis to charge him with abandonment for his failure to report for work.

It is also important to note that filing an illegal dismissal case is inconsistent with abandonment, as in fact, in his complaint with the RTC, Bulatao prayed for reinstatement.[49] Indeed, "[a]n employee who loses no time in protesting his layoff cannot by any reasoning be said to have abandoned his work, for it is already a well-settled doctrine that the filing by an employee of a complaint for illegal dismissal with a prayer for reinstatement is proof enough of his desire to return to work, thus negating the employer's charge of abandonment."[50] PNB failed to show that Bulatao had a clear and deliberate intent to sever his employment without any intention of returning, as it was not able to rebut with sufficient evidence Bulatao's withdrawal of his application for retirement. Additionally, PNB did not convincingly disprove Bulatao's claim that the real reason behind his filing for early retirement was his dissatisfaction with the agreement with the "Indian" group, even if the said agreement did not materialize.

In light of these observations and findings, PNB failed to prove by convincing evidence that there was just or authorized cause for terminating Bulatao from employment.[51] Moreover, jurisprudence states that "[w]hen the evidence of the employer and the employee are in equipoise, doubts are resolved in favor of labor. This is in line with the policy of the State to afford greater protection to labor."[52]

We note that the CA ordered the reinstatement of Bulatao. It should be emphasized, however, that although reinstatement is a matter of right, the award of separation pay is an exception

---

[49] *Rollo*, p. 94.

[50] *Hantex Trading Co., Inc. v. Court of Appeals*, 438 Phil. 737, 744 (2002).

[51] See LABOR CODE, Articles 296 and 300; *Aldovino v. Gold and Green Manpower Management and Development Services, Inc.*, G.R. No. 200811, June 19, 2019.

[52] *Hubilla v. HSY Marketing, Ltd., Co.*, *supra* note 45 at 397.

to such rule, as it is awarded in lieu of reinstatement in the following circumstances: "(a) when reinstatement can no longer be effected in view of the passage of a long period of time or because of the realities of the situation; (b) reinstatement is inimical to the employer's interest; (c) reinstatement is no longer feasible; (d) reinstatement does not serve the best interests of the parties involved; (e) the employer is prejudiced by the workers' continued employment; (f) facts that make execution unjust or inequitable have supervened; or (g) strained relations between the employer and employee."[53]

Taking into account the lapse of time as well as the age and capacity to work of Bulatao, reinstatement is no longer feasible. In fact, Bulatao revealed that he has suffered and is still suffering from various medical ailments such as stroke, arthritis, gout, cervical spondylosis, and even had to undergo cancer treatments and heart surgery during the pendency of this case.[54] Thus, the grant of separation pay in lieu of reinstatement is more appropriate under the circumstances.

Likewise, as ruled by the CA, Bulatao is entitled to damages and attorney's fees[55] since "the proper action on [Bulatao's] application for retirement should have been to deny the same instead of immediately terminating [Bulatao] and treating the same as a resignation letter. Worse, the actual notice of Resolution No. [3]8 dated March 3, 2000 was received by [Bulatao] months after he was told not to report for work anymore."[56] It is settled that "moral damages are recoverable where the dismissal of the employee was attended by bad faith or fraud or constituted an act oppressive to labor, or was done in a manner contrary

---

[53] *Fernandez, Jr. v. Manila Electric Co.*, G.R. No. 226002, June 25, 2018, citing *Ergonomic Systems Philippines, Inc. v. Enaje*, G.R. No. 195163, December 13, 2017, 848 SCRA 503; *Holcim Phils., Inc. v. Obra*, 792 Phil. 594, 609 (2016); and *Balais, Jr. v. Se'Lon by Aimee*, 787 Phil. 287 (2016).

[54] *Rollo*, pp. 344-345, 352.

[55] CIVIL CODE, Article 2208; *Aldovino v. Gold and Green Manpower Management and Development Services, Inc.*, *supra* note 51.

[56] *Rollo*, p. 21.

to morals, good customs, or public policy, while exemplary damages may be awarded if the dismissal was effected in a wanton, oppressive or malevolent manner."[57] Moreover, attorney's fees may be awarded since there is a factual, legal, or equitable basis for doing so in light of the circumstances surrounding the case.[58] Bulatao was compelled to engage the services of counsel in order to protect his rights after he was unjustly dismissed.

Lastly, the backwages including allowances and benefits or their monetary equivalent which were granted in favor of Bulatao shall, in accordance with Our ruling in *Nacar v. Gallery Frames*,[59] earn legal interest of twelve (12%) percent per *annum* from the time these were withheld until June 30, 2013 and six percent (6%) per *annum* from July 1, 2013 until fully paid.

WHEREFORE, the Petition for Review on *Certiorari* is hereby **DENIED**. The assailed July 29, 2011 Decision and February 7, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 94046 are hereby **AFFIRMED with MODIFICATIONS** in that respondent Manuel C. Bulatao is **AWARDED**:

1. **FULL BACKWAGES**, inclusive of allowances and other benefits or their monetary equivalent from the time these were withheld until finality of this judgment;
2. **SEPARATION PAY IN LIEU OF REINSTATEMENT** computed at one month salary for every year of service, with a fraction of at least six (6) months considered as one whole year computed from the date of his appointment as Senior Vice-President of the Information Technology Group until finality of judgment.

---

[57] *Freyssinet Filipinas Corp. v. Lapuz*, G.R. No. 226722, March 18, 2019, citing *Pasos v. Philippine National Construction Corporation*, 713 Phil. 416, 437 (2013).

[58] See *Pardillo v. Bandojo*, G.R. No. 224854, March 27, 2019.

[59] *Nacar v. Gallery Frames*, 716 Phil. 267, 280-283 (2013); see Bangko Sentral ng Pilipinas Monetary Board Circular No. 799, Series of 2013.

Moreover, the total monetary award shall **EARN** legal interest at twelve percent (12%) per *annum* from the time his salary and other benefits were withheld until June 30, 2013 and at the rate of six percent (6%) per *annum* from July 1, 2013 until full satisfaction of the same.

The case is **REMANDED** to the court of origin for the proper computation of separation pay and backwages, other allowances and benefits or their monetary equivalent, and for the execution of the award.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Reyes, A. Jr., Lazaro-Javier*,* and *Delos Santos, JJ.*, concur.

SECOND DIVISION

[G.R. No. 240749. December 11, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GIOVANNI DE LUMEN *y* LADLAGARAN and MAURA ARANZASO *y* MENDOZA,** *accused,*

GIOVANNI DE LUMEN *y* LADLAGARAN, *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); CHAIN OF CUSTODY RULE, EXPLAINED; WHERE THE ITEMS INVOLVED ARE HIGHLY SUSCEPTIBLE TO SUBSTITUTION AND ALTERATION, STRICTER COMPLIANCE WITH THE

* Designated additional member per Raffle dated November 20, 2019.

RULE IS EXPECTED. — [T]he chain of custody rule is but a variation of the principle that real evidence must be authenticated prior to its admission into evidence. To establish a chain of custody sufficient to make evidence admissible, the proponent needs only to prove a rational basis from which to conclude that the evidence is what it claims it to be. Simply put, the prosecution must offer sufficient evidence from which the trier of fact could reasonably believe that an item still is what the government claims it to be. In the prosecution of illegal drugs, in particular, the well-established federal evidentiary rule in the United States is that when the evidence is not readily identifiable and is susceptible to alteration by tampering or contamination, courts require a more stringent foundation entailing a chain of custody of the item with sufficient completeness to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with. Here, what is involved are disposable and fungible objects such as aluminum foil, lighters, and aluminum tooters which are highly susceptible to substitution and alteration. Given the nature of these items, stricter compliance with the rule on the chain of custody is expected.

2. ID.; ID.; ID.; PROCEDURAL REQUIREMENTS OF SECTION 21 OF RA 9165 AS AMENDED BY RA 10640, ELABORATED; LINKS THAT MUST BE ESTABLISHED TO ENSURE THE INTEGRITY OF THE SEIZED ITEMS. — The elements that must be established to sustain convictions for illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Section 12 are: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting or introducing any dangerous drug into the body; and (2) such possession is not authorized by law. x x x While RA 9165 has been amended by RA 10640 which modified Section 21(1), among others, to require the presence of an elected public official and representative of the Department of Justice (DOJ) or the media during the physical inventory and photographing of the seized drugs, the original text of the law applies in this case since the incident occurred prior to the date of effectivity of RA 10640. Under the original provision of Section 21, the apprehending team shall, after seizure and confiscation, immediately conduct a physical inventory and photograph the seized items in the

presence of the accused or the person from whom the items were seized, or his representative or counsel, (a) a representative from the media and (b) the DOJ, and (c) any elected public official who shall be required to sign the copies of the same, and the seized items must be turned over to the PNP Crime Laboratory within 24 hours from confiscation for examination. To further ensure the integrity of the seized items, the prosecution must account for the following links: *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.

3. ID.; ID.; ID.; ID.; FAILURE TO COMPLY WITH THE CHAIN OF CUSTODY RULE WILL NOT RENDER VOID AND INVALID THE SEIZURE AND CUSTODY OVER THE SEIZED ITEMS AS LONG AS IT IS ESTABLISHED THAT THERE IS JUSTIFIABLE GROUND FOR NONCOMPLIANCE AND THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE ITEMS ARE PROPERLY PRESERVED. — Strict compliance with the requirements set forth under Section 21, Article II of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations of the law provides that noncompliance with the requirements of Section 12, under justifiable grounds, will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending team. Accordingly, the prosecution must satisfactorily prove that: (a) there is justifiable ground for noncompliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. In one case, the Court emphasized that for the saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. Furthermore, 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.

4. ID.; ID.; ID.; ID.; ID.; JUSTIFIABLE REASONS FOR THE ABSENCE OF THE REQUIRED WITNESSES DURING INVENTORY AND PHOTOGRAPHY OF THE ITEMS, ENUMERATED. — While the absence of the required witnesses does not *per se* render the confiscated items inadmissible, their presence and the immediate marking and conduct of the 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. The prosecution must adduce a justifiable reason for the omission or a showing of any genuine and sufficient effort to secure the required witness. It could have alleged and proved any of the following justifiable reasons: "(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photographing 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 [the required witnesses under Section 21(1) of RA 9165] 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."

5. ID.; ID.; ID.; ID.; ID.; WHERE THE PROSECUTION DID NOT EXPLAIN THE ABSENCE OF THE REQUIRED WITNESSES AND THERE WAS NO SHOWING THAT A PROPER INVENTORY AND PHOTOGRAPHY WAS MADE, THE COURT IS CONSTRAINED TO CONCLUDE THAT THE INTEGRITY AND EVIDENTIARY VALUE OF SAID ITEMS HAVE BEEN COMPROMISED. — [T]he prosecution did not bother to explain, much less allege, the absence of representatives from the DOJ and the media during the physical inventory and the taking of photographs of the seized items. For failure of the prosecution to provide justifiable grounds or to show that it exerted genuine efforts in securing the witnesses required under the law, the Court is constrained to rule that the integrity and evidentiary value of the seized items have been compromised. x x x [T]he events of September

11, 2009 should be taken and appreciated as a whole even as they gave rise to two criminal cases against appellant and his co-accused Maura. The reasons for acquitting Maura for selling drugs like the prosecution's complete failure to introduce the drugs she allegedly sold to PO2 Tampis and the police operative's own admission that he failed to ask Maura to sign the inventory, seriously cast doubt not only to her own guilt, but more so on the soundness and reliability of the measures taken or the procedures followed by the buy-bust team. These circumstances cast a heavy shadow on the integrity of the operation and the police operatives themselves. In the appellant's case, there was no showing that a proper inventory and taking of pictures of the drug paraphernalia were undertaken by the police operatives. PO1 Estrada simply testified that they confiscated the drug paraphernalia from him and Arcangel and then brought them to the Scene of the Crime Operatives for laboratory test. Yet, there is no evidence as to how the illegal articles were stored or preserved, how they were delivered to the laboratory, and who actually received them. Worse, the prosecution failed to prove how such items reached the court. The Court is thus left with absolutely no guarantee of the integrity of the sachets containing illegal drugs other than the self-serving assurances of the police operatives. This is precisely the situation that the Comprehensive Dangerous Drugs Act seeks to prevent. The very process that Section 21 requires is plain, standardized, and even run-of-the-mill, guarantee that the integrity of the seized drugs and/or drug paraphernalia is preserved. All that law enforcers have to do is follow the law. x x x Accused-appellant Giovanni de Lumen *y* Ladlagaran is **ACQUITTED** of violation of Section 12, Article II of Republic Act No. 9165[.]

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

INTING, *J.*:

This appeal seeks to set aside the Decision[1] dated September 29, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08754 which affirmed the Decision[2] dated March 23, 2015 of Branch 23, Regional Trial Court (RTC), Trece Martires City, Cavite finding Giovanni de Lumen (appellant) guilty of violating Section 12, Article II of Republic Act No. (RA) 9165.

The Antecedents

In Criminal Case No. TMCR-350-09, appellant and co-accused Arcangel Lapiz (Arcangel) were charged with violation of Section 12, Article II of RA 9165 or Illegal Possession of Drug Paraphernalia in an Information[3] that reads:

> That on or about the 11th day of September 2009 in the Municipality of Gen. Trias, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, conspiring, confederating and mutually aiding each other did then and there, willfully, unlawfully and feloniously have in their possession, control and custody one (1) strip of aluminum foil, two (2) pcs. disposable lighter, four (4) pcs. Aluminum tooter, and three (3) transparent plastic sachets consider under Section 12, R.A. 9165 as an equipment, instrument, apparatus or paraphernalia fit or intended for smoking, consuming or introducing dangerous drugs into the body, in violation of the said provisions of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002.
>
> CONTRARY TO LAW.[4]

---

[1] *Rollo*, pp. 3-13; penned by Associate Justice Manuel M. Barrios with Associate Justices Sesinando E. Villon and Renato C. Francisco, concurring.

[2] CA *rollo*, pp. 58-64; penned by Executive Judge Aurelio G. Icasiano, Jr.

[3] Records, p. 1.

[4] *Id.*

Meanwhile, co-accused Maura Aranzaso (Maura) was charged with violation of Section 5, Article II of RA 9165 or Illegal Sale of Dangerous Drugs in Criminal Case No. TMCR-352-09. The accusatory portion of the Information[5] reads:

> That on or about the 11th day of September 2009 in the Municipality of Gen. Trias, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there, willfully, unlawfully and feloniously sell, deliver and distribute to a poseur- buyer one (1) sealed transparent plastic sachet containing zero point zero three (0.03) grams of Methamphetamine Hydrochloride, commonly known as "shabu," a dangerous drug, in violation of the provisions of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.
>
> CONTRARY TO LAW.[6]

Version of the Prosecution

On September 11, 2009, Police Officer II Victor O. Tampis (PO2 Tampis) conducted a buy-bust operation in the house of Maura in Marycris Complex Brgy. Pasong Camachile 2, General Trias, Cavite following the numerous complaints they received about the illegal activities of Maura. According to PO2 Tampis, a text message from a concerned citizen was reported to the Mayor's office about the illegal trade of Maura. Thereafter, the Municipal Police station of General Trias, Cavite received a document from the Mayor's office indicating therein the persons selling *shabu*, and Maura was listed on top of the watch list.[7]

In preparation, PO2 Tampis, the designated *poseur*-buyer, placed his initials "VOT" on the three pieces of ₱100-bill as buy-bust money. PO2 Lord Allan Poniente (PO2 Poniente), PO1 Amor Estrada (PO1 Estrada), and Senior Police Officer III Jose Mendoza Eusebio (SPO3 Eusebio), among others, served as the back-up officers.

---

[5] *Id.* at 16.

[6] *Id.*

[7] CA *rollo*, p. 105.

At the entrance of Maura's house, the confidential informant introduced PO2 Tampis to Maura as a "scorer" of *shabu*. PO2 Tampis bought one plastic sachet of suspected *shabu* from Maura and handed the marked money to her. The sale having been consummated, PO2 Tampis introduced himself as a police officer, arrested Maura, and retrieved the marked money from the latter. When a commotion ensued, PO2 Poniente and PO1 Estrada immediately rushed to the scene where they saw the appellant and Arcangel sniffing *shabu* inside Maura's residence. They arrested them and recovered the following drug paraphernalia: one strip of aluminum foil with traces of white crystalline substance; two disposable lighters; four pieces aluminum tooter (rolled aluminum foil) with traces of white crystalline substance; and three transparent plastic sachets with traces of white crystalline substance.[8]

After the conduct of the inventory, the seized items were submitted to the crime laboratory for examination. The buy-bust item confiscated from Maura, as well as the drug paraphernalia recovered in the possession of the appellant and Arcangel, tested positive for methamphetamine hydrochloride.[9]

Version of the Defense

In defense, appellant denied the charge. He claimed that on the date and time in question, he was at the house of Maura to get a water container. He was about to leave when several persons entered the house and arrested him along with Arcangel and a certain Elaine. Thereafter, he was brought to the police station of General Trias in Cavite where he was charged with possession of illegal drugs and illegal drug paraphernalia.[10]

Co-accused Maura corroborated the appellant's testimony. She alleged that between 10:00 p.m. and 11:00 p.m., she was in her residence when five persons arrived. Three of them entered her house and made a search. After which, they tied their hands

---

[8] *Id.* at 106-107.

[9] Records, pp. 13 and 14.

[10] CA *rollo*, pp. 36-37.

with wire and forced them to board a vehicle. Later, they were brought to Imus and were subjected to a drug test before going to the Bacao police station. She also denied the charges against her.[11]

In its Decision[12] dated March 23, 2015, the RTC found Maura and appellant guilty as charged. Thus:

> WHEREFORE, finding the guilt of the accused Giovanni de Lumen and Maura Aranzaso beyond reasonable doubt, Giovanni de Lumen is hereby meted the penalty of imprisonment from six (6) months and one (1) day to four (4) years and a fine of ten thousand (₱10,000.00) Pesos for Violation of Sec. 12, Art. II, R.A. 9165. While Maura Aranzaso is meted the penalty of *Reclusion perpetua* from twenty (20) years and one (1) day to forty (40) years of imprisonment and to pay a fine of seven hundred thousand pesos (₱700,000.00) only.
>
> The other accused Arcangel Lapiz died during the trial of this case.
>
> SO ORDERED.[13]

The RTC found that all the elements of illegal sale of drugs has been established in this case, to wit: (1) Maura sold drugs to PO2 Tampis, the *poseur*-buyer; (2) the sachet of drug and the marked money have been positively identified by PO2 Tampis; (3) prior to the buy-bust operation, there was a coordination made by the police with the Philippine Drug Enforcement Agency; and (4) after the arrest of all the accused, an inventory of the seized items was conducted. With respect to appellant, it noted that he was caught red-handed possessing and using illegal drug and paraphernalia. The RTC refused to give credence to his alibi and instead took into consideration of the fact that the appellant was using drugs at the time of his arrest and tested positive for drug use.[14]

---

[11] *Id.* at 62.

[12] *Id.* at 58-64.

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

[14] *Id.* at 63.

Both Maura and appellant filed a notice of appeal[15] from the trial court's Decision.

In a Decision[16] dated September 29, 2017, the CA upheld the conviction of the appellant, but acquitted his co-accused Maura on the ground of reasonable doubt. The dispositive portion of the CA's decision reads:

> WHEREFORE, the foregoing considered, the appeal is PARTLY GRANTED. The consolidated Decision dated 23 March 2015 of the Regional Trial Court (Branch 23, Trece Martires City, Cavite) in Criminal Case Nos. TMCR-350-09 and TMCR-352-09 is: (1) AFFlRMED with respect to accused-appellant Giovanni de Lumen; and, (2) REVERSED and SET ASIDE insofar as accused- appellant Maura Aranzaso y Mendoza is concerned and, who, by virtue of this verdict, is ACQUITTED on reasonable doubt. Accordingly, the Director of the Correctional Institution for Women in Mandaluyong City is directed to cause the immediate release of accused-appellant Aranzaso, unless the latter is being lawfully held for another cause, and to inform this Court of the date of her release or reason for her continued confinement, as the case may be, within five (5) days from notice. The seized drug paraphernalia are confiscated and ordered destroyed in accordance with law.
>
> SO ORDERED.[17]

Appellant moved for a partial reconsideration[18] of the Decision, but the CA denied it in a Resolution[19] dated February 14, 2018. The CA declared:

> Accused-appellant De Lumen, thus, filed the instant Motion for Partial Reconsideration wherein he reiterated his arguments that there exists a serious doubt as to the identity of the *corpus delicti* as the chain of custody was not properly followed and that his arrest was illegal as he was not the subject of the buy-bust operation.

---

[15] Records, pp. 174 and 175.

[16] *Rollo*, pp. 3-13.

[17] *Id.* at 12-13.

[18] CA *rollo*, pp. 175-189.

[19] *Id.* at 209-210.

Notably, these matters have already been adequately considered and discussed in Our [D]ecision. The pieces of evidence consistently show that accused-appellant De Lumen was caught *in flagrante delicto* using prohibited drugs and was in possession of illegal drug paraphernalia. It was also established that PO1 Estrada confiscated the said paraphernalia, placed markings thereon, and made an inventory of the seized items. Thereafter, the paraphernalia were sent to the PNP Crime Laboratory for forensic examination. With these proven facts, accused-appellant De Lumen's guilt has been established beyond reasonable doubt.

WHEREFORE, the foregoing considered, the Motion for Partial Reconsideration is DENIED.

SO ORDERED.[20]

Hence, this appeal.[21]

In a Resolution[22] dated September 17, 2018, this Court required the parties to submit their respective supplemental briefs, if they so desire. The Office of the Solicitor General, in its Manifestation In Lieu of Supplemental Brief[23] dated January 10, 2019, informed the Court that it elects to dispense with the filing of a supplemental brief considering that all relevant issues/arguments in the case have been adequately adduced in its Brief for the Appellee dated July 3, 2017. Similarly, in his Manifestation In Lieu of Supplemental Brief[24] dated January 18, 2019, appellant opted not to file a supplemental brief since he had exhaustively discussed the assigned errors in the Brief for the Accused-Appellant's[25] dated March 3, 2017.

The Court now resolves whether the guilt of appellant was proven beyond reasonable doubt. Central to this issue is the

---

[20] *Id.*

[21] *Id.* at 211-213.

[22] *Rollo*, pp. 20-21.

[23] *Id.* at 22-24.

[24] *Id.* at 26-28.

[25] CA *rollo*, pp. 29-56.

determination of whether the integrity and evidentiary value of the evidence were duly preserved.

Principally, the chain of custody rule is but a variation of the principle that real evidence must be authenticated prior to its admission into evidence. To establish a chain of custody sufficient to make evidence admissible, the proponent needs only to prove a rational basis from which to conclude that the evidence is what it claims it to be. Simply put, the prosecution must offer sufficient evidence from which the trier of fact could reasonably believe that an item still is what the government claims it to be. In the prosecution of illegal drugs, in particular, the well-established federal evidentiary rule in the United States is that when the evidence is not readily identifiable and is susceptible to alteration by tampering or contamination, courts require a more stringent foundation entailing a chain of custody of the item with sufficient completeness to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.[26]

Here, what is involved are disposable and fungible objects such as aluminum foil, lighters, and aluminum tooters which are highly susceptible to substitution and alteration. Given the nature of these items, stricter compliance with the rule on the chain of custody is expected. Unfortunately, the present case failed to pass this scrutiny.

The elements that must be established to sustain convictions for illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Section 12 are: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting or introducing any dangerous drug into the body; and (2) such possession is not authorized by law.[27]

---

[26] *People v. Lim*, G.R. No. 231989, September 4, 2018.

[27] *People v. Obias, Jr.*, G.R. No. 222187, March 25, 2019 citing *Zalameda v. People*, 614 Phil. 710, 727 (2009).

Section 21, Article II of RA 9165, as amended by RA 10640, provides for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia:

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*.

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: *Provided*, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not

allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued immediately upon completion of the said examination and certification; x x x x (Emphasis and italics supplied.)

While RA 9165 has been amended by RA 10640 which modified Section 21(1), among others, to require the presence of an elected public official and representative of the Department of Justice (DOJ) or the media during the physical inventory and photographing of the seized drugs, the original text of the law applies in this case since the incident occurred prior to the date of effectivity[28] of RA 10640. Under the original provision of Section 21, the apprehending team shall, after seizure and confiscation, immediately conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, (a) a representative from the media and (b) the DOJ, and (c) any elected public official who shall be required to sign the copies of the same, and the seized items must be turned over to the PNP Crime Laboratory within 24 hours from confiscation for examination.[29]

To further ensure the integrity of the seized items, the prosecution must account for the following links: *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.[30]

---

[28] Republic Act No. 10640 took effect on August 7, 2014.

[29] *People v. Wisco*, G.R. No. 237977, August 19, 2019.

[30] *People v. Lacdan*, G.R. No. 232161, August 14, 2019, citing *People v. Gayoso*, 808 Phil. 19, 31 (2017).

Strict compliance with the requirements set forth under Section 21, Article II of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations of the law provides that noncompliance with the requirements of Section 12, under justifiable grounds, will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending team. Accordingly, the prosecution must satisfactorily prove that: (a) there is justifiable ground for noncompliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. In one case, the Court emphasized that for the saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. Furthermore, 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.[31]

The extant case is tainted with grave violations of Section 21.

One. The records show that not all of the witnesses required under Section 21(1) were present during the physical inventory and photographing of the seized drug and drug paraphernalia. Noticeably, the only person who arrived and witnessed the "preparation of the inventory" and signed the Receipt of the Property Seized[32] was *Barangay* Captain Lamberto Carampot. Evidently, the DOJ representative and the media representative were not around.

While the absence of the required witnesses does not *per se* render the confiscated items inadmissible, their presence and the immediate marking and conduct of the 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. The prosecution must adduce a justifiable

---

[31] *People v. Gabunada*, G.R. No. 242827, September 9, 2019 citing *People v. De Guzman*, 630 Phil. 637, 649 (2010).

[32] Records, p. 8.

reason for the omission or a showing of any genuine and sufficient effort to secure the required witness. It could have alleged and proved any of the following justifiable reasons: "(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photographing 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 [the required witnesses under Section 21(1) of RA 9165] 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."[33]

Unfortunately, the prosecution did not bother to explain, much less allege, the absence of representatives from the DOJ and the media during the physical inventory and the taking of photographs of the seized items. For failure of the prosecution to provide justifiable grounds or to show that it exerted genuine efforts in securing the witnesses required under the law, the Court is constrained to rule that the integrity and evidentiary value of the seized items have been compromised.[34]

Two. None of the witnesses testified to whom the seized items were turned over at the police station. The prosecution only averred that the police operatives brought all the accused and the confiscated items to the police station in General Trias for inquest and preparation of the necessary documents. It was not clear, however, whether the illicit drugs and paraphernalia were turned over to the investigating officer at all, if there were any.

---

[33] *People v. Wisco, supra* note 29 citing *People v. Sipin*, G.R. No. 224290, June 11, 2018.

[34] *Id.*

Three. The prosecution likewise failed to present PO2 Poniente, the police officer who supposedly delivered the Request for Laboratory Examination[35] and the items to the laboratory. He could have narrated how he handled the items in his custody prior to turning them over to the crime laboratory at around 1:10 p.m. of September 11, 2009. The absence of testimony or stipulation as to how PO2 Poniente handled the illegal drugs and paraphernalia obviously resulted in a gap in the chain of custody.

Four. No testimonial or documentary evidence was given whatsoever as to how the items were kept while in the custody of the forensic chemist until it was transferred to the court. As in the other links, it was not shown how the forensic chemist, Oliver B. Dechitan, handled and stored the seized items before the same were retrieved for presentation in court. Neither was there any stipulation that the evidence custodian preserved the integrity and evidentiary value of such items.

In sum, the events of September 11, 2009 should be taken and appreciated as a whole even as they gave rise to two criminal cases against appellant and his co-accused Maura. The reasons for acquitting Maura for selling drugs like the prosecution's complete failure to introduce the drugs she allegedly sold to PO2 Tampis and the police operative's own admission that he failed to ask Maura to sign the inventory, seriously cast doubt not only to her own guilt, but more so on the soundness and reliability of the measures taken or the procedures followed by the buy-bust team. These circumstances cast a heavy shadow on the integrity of the operation and the police operatives themselves. In the appellant's case, there was no showing that a proper inventory and taking of pictures of the drug paraphernalia were undertaken by the police operatives. PO1 Estrada simply testified that they confiscated the drug paraphernalia from him and Arcangel and then brought them to the Scene of the Crime Operatives for laboratory test. Yet, there is no evidence as to how the illegal articles were stored or preserved, how they were

---

[35] Records, p. 9.

delivered to the laboratory, and who actually received them. Worse, the prosecution failed to prove how such items reached the court. The Court is thus left with absolutely no guarantee of the integrity of the sachets containing illegal drugs other than the self-serving assurances of the police operatives. This is precisely the situation that the Comprehensive Dangerous Drugs Act seeks to prevent. The very process that Section 21 requires is plain, standardized, and even run-of-the-mill, guarantee that the integrity of the seized drugs and/or drug paraphernalia is preserved. All that law enforcers have to do is follow the law.[36]

WHEREFORE, the appeal is **GRANTED**. The Decision dated September 29, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08754 with respect to accused-appellant Giovanni de Lumen *y* Ladlagaran is **REVERSED** and **SET ASIDE**. Accused-appellant Giovanni de Lumen *y* Ladlagaran is **ACQUITTED** of violation of Section 12, Article II of Republic Act No. 9165, and the bail bond posted for his provisional liberty is ordered cancelled.

Let entry of judgment immediately issue.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Reyes, A. Jr., Hernando*, and *Delos Santos, JJ.*, concur.

[36] *People v. Que*, G.R. No. 212994, January 31, 2018.

SECOND DIVISION

[G.R. No. 241557. December 11, 2019]

FERNANDO N. FERNANDEZ, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PROOF BEYOND REASONABLE DOUBT MUST BE ADDUCED OTHERWISE ACCUSED MUST BE ACQUITTED. — It is a basic and immutable principle in criminal law that an accused individual cannot be convicted if there is reasonable doubt in his or her commission of a crime. Proof of guilt beyond reasonable doubt must be adduced by the prosecution otherwise the accused must be acquitted, even if, on face, he or she appears to be most suspicious or even if there is no other possible or identifiable perpetrator in the records despite there having been a crime committed.

2. ID.; ID.; CREDIBILITY OF WITNESSES; EXCEPTION TO THE RULE THAT FACTUAL FINDINGS OF THE TRIAL COURT ARE ACCORDED GREAT WEIGHT AND RESPECT, APPLIED; WHILE THE VICTIM WAS INDEED SHOT, THERE IS REASONABLE DOUBT AS TO WHETHER IT WAS INDEED THE ACCUSED WHO SHOT HIM. — Although it is entrenched in this jurisdiction that findings of the trial court on the credibility of the witnesses are accorded great weight and respect because it had ample opportunity to observe the demeanor of the declarants at the witness stand, this rule admits exceptions. The saving instance is said to be when a fact or circumstance of weight and influence has been overlooked, or its significance misconstrued by the trial court sufficient to harbor serious misgivings on its conclusions. Even a casual observer can see that almost the entire case for the prosecution rests exclusively on Garino, the victim, and his testimony. No other witness was presented to narrate the events of that fateful night, even though Garino had a companion. x x x [T]he Court finds Garino's testimony to be highly suspect, and laden with several inconsistencies which militate against Fernandez's culpability as a suspect. x x x Garino's alluded justification only draws further attention to

yet another questionable facet in Garino's testimony, which was Fernandez's apparent point-blank miss even when he was less than two meters away from Garino when he presumably shot the latter. The Court finds it unlikely that Fernandez, or any other individual, would miss at almost point-blank range. This, especially by Fernandez who is a former police officer and who would have considerable skill in both aiming and shooting a firearm. x x x The foregoing makes it highly doubtful that Garino was able to identify Fernandez as the perpetrator of the crime. While the Court does not question that Garino was indeed shot, the Court has its misgivings that it was indeed Fernandez who shot him, especially if the only proof adduced is Garino's testimony. x x x [I]t becomes a verbal tussle between Garino and Fernandez, and of course both sides would be very much biased towards their version of the story. In a criminal case however, it is the onus of the complainant, through the prosecution, to present a case laden with surety and without the shadow of the doubt, and this is lacking in the case herein.

3. ID.; ID.; ID.; WHERE THE PROSECUTION RELIED SOLELY ON THE VICTIM'S TESTIMONY AS TO ACCUSED'S IDENTITY AND NO OTHER LEGITIMATE AND CONVINCING EVIDENCE WAS OFFERED, THE COURT FINDS THE ACCUSED'S ALIBI STRONGER AND IS THUS OBLIGATED TO ACQUIT HIM ON REASONABLE DOUBT. — [T]he Court finds that the lower courts hastily brushed off Fernandez's defense of alibi, to the latter's detriment. After all, considering the fact that the accused and the victim did not know each other and had not heard about each other prior to the incident, with even Fernandez stating that the first time he saw Garino was during the trial, it makes complete sense that Fernandez's flat denial that he was a participant in the offense, and his whereabouts during that time would be his only defenses. x x x The tale of this case's tape is that the prosecution relied solely on Garino's testimony that Fernandez was the one who shot him. Aside from his positive identification, which the Court finds too unconvincing, no legitimate and convincing evidence was offered to prove the veracity of the events as Garino alleges. With this, Fernandez's justification of alibi finds stronger ground, and the Court is thus obliged to favor it while taking into absolute consideration the promise that reasonable doubt is sufficient to acquit an accused individual of the crime. x x x Our laws proscribe the conviction of the

accused if doubt taints the circumstances of the crime. And, for good reason. A man's life and liberty are not aspects to be trifled with, which is why only the most exacting standard is required in order to find a person criminally liable. In this case, more than just reasonable doubt is attendant to the circumstances of the crime alleged. While the Court does not deny that Garino indeed suffered a grievous injury, the Court does heavily question if Fernandez was the one who inflicted it. This doubt is enough to sway the mind of the Court and acquit Fernandez.

APPEARANCES OF COUNSEL

Bayaua & Associates for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

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

Subject to review under Rule 45 of the Rules of Court at the instance of petitioner Fernando N. Fernandez (Fernandez) are the Decision[1] dated February 15, 2017 and the Resolution[2] dated August 17, 2018 in CA-G.R. CR No. 38074, whereby the Court of Appeals (CA) affirmed his conviction for Frustrated Murder committed against private respondent Noel C. Garino (Garino) under the Decision[3] rendered on April 27, 2015 by the Regional Trial Court (RTC) of Makati City, Branch 143, in Criminal Case No. 11-1667.

The Antecedent Facts

The facts as posited by Fernandez and Garino are summarized in the decision of the CA. In the prosecution's narration of events, on January 21, 2011 at around 1:00 a.m., Garino and

---

[1] Penned by Associate Justice Rodil V. Zalameda (now a Member of this Court), with Associate Justices Sesinando E. Villon and Pedro B. Corales concurring; *rollo*, pp. 31-46.

[2] *Id.* at 48-49.

[3] Rendered by Presiding Judge Maximo M. De Leon; *id.* at 50-55.

an unknown companion were seated inside a jeepney which was parked in front of Fernandez's house, when Garino saw someone go out of the gate.[4] When they heard a gunshot, they immediately alighted from the jeepney, and it was then that Garino saw that the person who fired the shot was Fernandez, though he did not know the latter's name at the time. As the two ran away, Fernandez fired his gun a second time, hitting Garino on his right gluteal area, or "buttocks" in layman's terms. Garino was then brought to the *Ospital ng* Makati and resultantly underwent immediate surgery. He was confined for some two weeks and spent almost ₱200,000.00 for his stay in the hospital.[5]

Garino presented his doctor, Dr. Teresita Sanchez (Dr. Sanchez), as a witness, who testified that Garino was near death when he was taken to the hospital, and had to undergo a second operation because his large vessel, external iliac vein and intestines were injured.[6]

When questioned if he knew who his assailant was, Garino testified that he previously saw him at the salon where he and a certain Me-Ann Barcenas (Barcenas) worked.[7] He found out his assailant's name only when Barcenas visited him at the hospital a few days after his surgery. Of note, however, neither Barcenas nor Garino's companion during the night of the shooting was presented as witness for the prosecution, as only Garino, his brother Albert, who had the incident blottered at the police station, and Dr. Sanchez were presented to testify.[8]

For its version of the facts, the defense presented Fernandez himself, as well as his son Jayvee, to testify as witnesses. Fernandez, a retired police officer, vehemently denied the prosecution's version of the events and claimed that he was sleeping with his wife at the time of the incident and was unaware

---

[4] *Id.* at 33.

[5] *Id.*

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

[7] *Id.* at 37.

[8] *Id.* at 33.

of any unusual incident outside his house at the time.[9] According to Fernandez, he was not investigated by the police or by any barangay official on the alleged shooting, and only learned of the charge for Frustrated Murder upon receipt of a subpoena from the Office of the City Prosecutor of Makati City.[10]

While Fernandez admitted owning the jeepney parked outside his house, he denied any knowledge of Garino and said that he first laid eyes on the latter only during the trial proper. He could likewise not think of any reason why Garino would file a case against him.[11]

After trial, the RTC rendered a Decision[12] on April 27, 2015 convicting Fernandez of the crime charged, the dispositive portion of which reads:

> WHEREFORE, this court finds [FERNANDEZ], guilty beyond reasonable doubt of the crime of FRUSTRATED MURDER defined and penalized under Art. 248 in relation to Art. 6 of the Revised Penal Code as amended and he is hereby sentenced to suffer the penalty of imprisonment of, after applying the Indeterminate Sentence Law, EIGHT (8) YEARS AND ONE (1) DAY of Prision Mayor as the minimum period to SIXTEEN (16) YEARS AND ONE (1) DAY of Reclusion Temporal as the maximum period.
>
> Accused is also ordered to pay the complainant the amount of ₱50,000.00 as temperate damages and the amount of ₱50,000.00 as moral damages. The accused is also ordered to pay the Costs of this Suit.
>
> SO ORDERED.[13]

Fernandez filed a Notice of Appeal on September 17, 2015 which was given due course by the CA in an Order dated October 20, 2015.[14] The CA, however, denied Fernandez's appeal for

---

[9] *Id.* at 35.

[10] *Id.*

[11] *Id.*

[12] *Id.* at 50-55.

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

[14] *Id.* at 35.

lack of merit, and affirmed with modification Fernandez's conviction as meted out by the RTC, to wit:

> **WHEREFORE**, premises considered, the Appeal is hereby **DENIED**. However, the Decision dated 27 April 2015 of the Regional Trial Court, Branch 143, Makati City is **AFFIRMED with MODIFICATION**, in that the dispositive portion of which shall read as follows:
>
> x x x x x x x x x
>
> WHEREFORE, this court finds accused FERNANDO N. FERNANDEZ, guilty beyond reasonable doubt of the crime of FRUSTRATED MURDER defined and penalized under Art. 248 in relation to Art. 6 of the Revised Penal Code as amended and he is hereby sentenced to suffer the penalty of imprisonment of, after applying the Indeterminate Sentence Law, EIGHT (8) YEARS AND ONE (1) DAY of Prision Mayor as the minimum period to SIXTEEN (16) YEARS AND ONE (1) DAY of Reclusion Temporal as the maximum period.
>
> Accused is also ordered to pay the complainant the amount of **₱25,000.00** as temperate damages, the amount of **₱40,000.00** as moral damages, **and the amount of ₱20,000.00 as exemplary damages**. The accused is also ordered to pay the costs of this suit.
>
> **The accused is likewise ORDERED to pay legal interest on all damages awarded in this case at the rate of six percent (6%) per annum from the date of finality of this decision until fully paid.**
>
> x x x x x x x x x
>
> **SO ORDERED.**[15] (Emphasis in the original)

Fernandez's Motion for Reconsideration was denied, prompting recourse to the Supreme Court. Hence, this Petition for Review on *Certiorari*.[16]

---

[15] CA Decision dated February 15, 2017; *id.* at 45.

[16] *Id.* at 3-29.

The Issue of the Case and the Arguments of the Parties

The issue in the case is whether or not Fernandez is indeed guilty of the crime of Frustrated Murder, for shooting Garino and failing to kill the latter despite inflicting a deep wound on the victim.

In his Petition, Fernandez argues that the evidence presented by the prosecution was insufficient to establish that he was the perpetrator of the crime charged in the Information.[17] First, Fernandez questions the veracity of his identification as the one who shot Garino, considering: a) Garino did not know Fernandez prior to the incident; b) Garino only learned of Fernandez when he was merely pointed to by Barcenas, who was not the companion of Garino at the time of the incident; c) Barcenas was not presented to the witness stand to confirm the identity of Fernandez as the person who shot Garino; and d) Garino could not have seen his perpetrator as he was allegedly running when shot on his right gluteal area.[18]

The defense added that, as the incident took place during the wee hours of the morning, the condition of visibility at the time of the alleged shooting would not be favorable to ascertaining the perpetrator's identity, much less determining that Fernandez indeed was the culprit.[19]

Fernandez further contends that Garino merely assumed that the perpetrator was Fernandez because the jeepney, where Garino stayed in with his unknown companion, was parked in front of Fernandez's house. Barcenas only confirmed that Fernandez was the owner of the house, but not that he was the one who shot Garino.[20]

Alleging the defense of alibi, Fernandez states that the lower courts erred in dismissing this as an inherently weak defense.

---

[17] *Id.* at 11.

[18] *Id.*

[19] *Id.* at 12.

[20] *Id.* at 15.

Fernandez cited the case of *People v. Caverte*,[21] where it was held that "[w]hile alibi is a weak defense and the rule is that it must be proved to the satisfaction of the court, the said rule has never been intended to change the burden of proof in criminal cases. Otherwise, an absurd situation will arise wherein the accused is put in a more difficult position where the prosecution evidence is vague and weak as in the present case."[22]

Finally, Fernandez argues that even hypothetically admitting that he was the person seen by Garino, the evidence offered by the latter was insufficient if not altogether absent to show the commission of Frustrated Murder. Fernandez states that the prosecution failed to prove that there was intent to kill on his part, especially since Garino did not even testify that he actually saw Fernandez point a gun towards him and fire the same.[23] Anent the injury itself, Fernandez points out that it was caused by a single gunshot wound in the gluteal area, which is clearly not a vital part of Garino's body and thus cannot be considered as a fatal wound.[24] Fernandez alleges that the prosecution was unable to show intent, nor the presence of treachery in the commission of the offense – vital elements of the crime he is being accused of. Even conceding but definitely not admitting that Fernandez was the one who shot Garino, in the absence of clear proof of the existence of treachery, the crime is only physical injuries, or at the most, frustrated or attempted homicide, warranting a reduction of the penalty.[25]

In its Comment[26] to the Petition, respondent People of the Philippines, through the Office of the Solicitor General (OSG), argues that the prosecution was able to establish all the elements of the crime charged. The facts accordingly show that Fernandez,

---

[21] 385 Phil. 849 (2000).

[22] *Rollo*, p. 17.

[23] *Id.* at 19.

[24] *Id.* at 19-20.

[25] *Id.* at 22.

[26] *Id.* at 66-95.

with intent to kill, inflicted an injury upon Garino that was sufficient to kill the latter, such act of inflicting injury being attended and qualified to become Murder by treachery, however Garino did not die due to the timely medical assistance given to him.[27]

The OSG counters that, while it is true that Garino did not know Fernandez's name at the time of the attack, he was able to recognize him from the salon where he worked. The fact that he was only informed as to Fernandez's name through his co-worker does not negate his positive identification that Fernandez was the perpetrator of the crime.[28] According to the transcript of records, during the trial, Garino repeatedly testified in open court that he saw and identified Fernandez when he alighted from the jeepney after the first shot.[29] Said identification was not only clear from the direct testimony, but also from

---

[27] *Id.* at 76.

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

[29] *Id.* at 77-78.

(Direct examination of private complainant)
Prosecutor Paolo Talban
Q: You said that you were inside the jeep and the jeep was parked in front of the house of the accused?
A: Yes, sir.
Q: What were you doing at that time?
A: We were walking inside the jeep and then, there was a dog barking.
Q: What transpired next after that?
A: After that, sir, someone went out of the gate and we hear gunshot. I and my companion tried to run away. I alighted from the jeep and I was able to see the person.
Q: To your recollection, did you recognize the identity of the person?
A: Fernando Fernandez, sir.
Q: You mentioned the name Fernando Fernandez. If the accused or that person is inside the courtroom, will you be able to identify him?
A: Yes, sir.
Court: Point to him.
Witness: He is there, sir.
Court: Witness pointed to a man who answered to the name of...(to the accused) what is your name?
Accused: Fernando Fernandez, sir. (Emphasis omitted)

Garino's cross-examination, wherein he said on record that he knew who Fernandez was through his friend.[30]

The OSG points out that the physical evidence shows proof of Fernandez's intent to kill, as Garino would have died from his wounds had he failed to timely undergo an operation at the hospital. According to the findings, Fernandez was armed with a gun when he came out of his house, and with this weapon, fired a shot. When the first shot missed, he then shot Garino, who was running from the scene and was only one and a half arm's length away from Fernandez. The act of firing another shot after the initial miss was an indication that Fernandez really intended to kill Garino.[31]

Moreover, the OSG contends that this intent is manifest in how Fernandez deprived Garino of any chance to defend himself due to the suddenness of the attack and as seen in the entry point of the gunshot wound on Garino's right gluteal area.[32]

---

[30] *Id.* at 78.

(Cross examination of private complainant)
Atty. Rufino V. Mijares, counsel for petitioner:
Q: From your testimony, you testified as if you knew the accused very well.
A: Yes, sir. I came to know him in the salon.
Q: And despite of that [sic], you were not able to identify the respondent when you were in the hospital?
A: I knew him through a friend.
Q: So, you really don't know the accused?
A: I know him, sir.
x x x x x x x x x
Q: The police went to you at the hospital and you were interviewed and you were asked about the incident?
A: Yes, sir.
Q: And that interview was put in writing in the blotter of the police, is that correct?
A: Yes, sir.
Q: I am showing to you this police blotter, is this the one you are referring to?
A: Yes, sir. (Emphasis omitted)

[31] *Id.* at 84-85.

[32] *Id.* at 85.

Ruling of the Court

The Court acquits Fernandez on the ground of reasonable doubt. The lower courts committed grave abuse of discretion in hastily convicting Fernandez on the basis of questionable evidence.

It is a basic and immutable principle in criminal law that an accused individual cannot be convicted if there is reasonable doubt in his or her commission of a crime. Proof of guilt beyond reasonable doubt must be adduced by the prosecution otherwise the accused must be acquitted, even if, on face, he or she appears to be most suspicious or even if there is no other possible or identifiable perpetrator in the records despite there having been a crime committed.

As aptly stated in *People v. Claro*:[33]

> Requiring proof of guilt beyond reasonable doubt necessarily means that mere suspicion of the guilt of the accused, *no matter how strong*, should not sway judgment against him. It further means that the courts should duly consider every evidence favoring him, and that in the process the courts should persistently insist that accusation is not synonymous with guilt; hence, every circumstance favoring his innocence should be fully taken into account. That is what we must be [sic] do herein, for he is entitled to nothing less.

Without the proof of his guilt being beyond reasonable doubt, therefore, the presumption of innocence in favor of the accused herein was not overcome. His acquittal should follow, for, as we have emphatically reminded in *Patula v. People*:

> [I]n all criminal prosecutions, the Prosecution bears the burden to establish the guilt of the accused beyond reasonable doubt. In discharging this burden, the Prosecution's duty is to prove each and every element of the crime charged in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein. The Prosecution must further prove the participation of the accused in the commission of the offense. In doing all these, the Prosecution must rely on the strength of its own evidence, and not anchor its success

---

[33] 808 Phil. 455 (2017).

> upon the weakness of the evidence of the accused. The burden of proof placed on the Prosecution arises from the presumption of innocence in favor of the accused that no less than the Constitution has guaranteed. Conversely, as to his innocence, the accused has no burden of proof, that he must then be acquitted and set free should the Prosecution not overcome the presumption of innocence in his favor. In other words, the weakness of the defense put up by the accused is inconsequential in the proceedings for as long as the Prosecution has not discharged its burden of proof in establishing the commission of the crime charged and in identifying the accused as the malefactor responsible for it.[34] (Citations omitted)

The RTC and the CA are one in their findings that Fernandez is the actual perpetrator of the crime against Garino, based in major part on the latter's testimony, which was found as clear, straightforward, and believable. As a general rule, the Court is obliged to rely on the observations of the trial court, as the latter had the unique opportunity to observe the witnesses firsthand and note their demeanor, conduct and attitude. It has since become imperative that the evaluation of testimonial evidence by the trial court be accorded great respect by the Court; for it can be expected that said determination is based on reasonable discretion as to which testimony is acceptable and which witness is worthy of belief.[35]

Although it is entrenched in this jurisdiction that findings of the trial court on the credibility of the witnesses are accorded great weight and respect because it had ample opportunity to observe the demeanor of the declarants at the witness stand, this rule admits exceptions. The saving instance is said to be when a fact or circumstance of weight and influence has been overlooked, or its significance misconstrued by the trial court sufficient to harbor serious misgivings on its conclusions.[36]

---

[34] *Id.* at 468-469.

[35] *People v. Amarela*, G.R. Nos. 225642-43, January 17, 2018, 852 SCRA 54, 68-69.

[36] *People v. De Guzman*, 690 Phil. 701, 709 (2012).

Even a casual observer can see that almost the entire case for the prosecution rests exclusively on Garino, the victim, and his testimony. No other witness was presented to narrate the events of that fateful night, even though Garino had a companion. A more nuanced glance at the antecedent facts will unearth several glaring inconsistencies in Garino's testimony as well as the evidence on record. While these inconsistencies on their own may not be enough to completely decimate his testimony, taken together with the fact that the prosecution relied solely on the alleged victim's narration of events, these more than show the presence of reasonable doubt substantial enough to acquit the accused.

On the witness stand, Garino testified that he and his companion were sitting inside a jeepney outside Fernandez's house a little after midnight. Garino then saw someone come out of the gate, presumably Fernandez as he alleged he discovered later on. Garino and his companion then heard a gunshot, which prompted them to flee the jeepney, and it was only then that Garino saw that it was Fernandez with the gun. As the two ran away, Fernandez fired another shot which hit Garino in the latter's right gluteal area, which caused his hospitalization and near-death.

Notably, the testimony is anchored on Garino's positive identification of Fernandez as the culprit who shot him, even though he did not know his name at the time, and only zeroed in on Fernandez after the incident as a result of Barcenas' own identification. In this regard, the Court finds Garino's testimony to be highly suspect, and laden with several inconsistencies which militate against Fernandez's culpability as a suspect.

First, the condition of visibility at the time was not specified to by Garino. The incident happened after midnight, and there was no mention that the area was illuminated sufficiently in that Garino would be able to take a good look at his assailant. The need to take a good look at his assailant's features is indispensable and crucial, as Garino did not know who Fernandez was, and only identified the latter based on how Garino's description of Fernandez was apparently in sync with Barcenas' own identification. In this case, apart from Garino's own

testimony, no other competent nor corroborative proof was adduced by the prosecution that would answer the question of visibility.

Despite this testimonial omission, Garino indirectly attempts to justify his positive identification of Fernandez during the incident by pointing to the happenstance that he saw Fernandez clearly due to the latter's closeness to him at the time of the first shot. This close distance was testified to by Garino during his direct examination, to wit:

> Prosecutor Paolo Talban:
>
> Q: Could you enlighten us, Mr. Witness, could you tell us your exact position at the time you were fired upon by the accused?
> A: My back was turned to the accused.
>
> Q: Assume, Mr. Witness, the place where you are now seating as a point of reference, could you tell us from what direction did the accused come from?
> A: If this is the jeep, he came from the back portion of the jeep.
>
> Q: And approximately, how far away were you from the accused when he emerged from his house and fired at you?
> A: One and a half arms[-]length, sir.[37] (Emphasis omitted)

However, Garino's alluded justification only draws further attention to yet another questionable facet in Garino's testimony, which was Fernandez's apparent point-blank miss even when he was less than two meters away from Garino when he presumably shot the latter. The Court finds it unlikely that Fernandez, or any other individual, would miss at almost point-blank range. This, especially by Fernandez who is a former police officer and who would have considerable skill in both aiming and shooting a firearm. The rapidity of the events unfolding would even go against Garino's attestation that he was able to identify his assailant. Logically, Garino would not stick around to take a closer look at his assailant with his life in danger, especially at that close a distance. In fact, it is a

[37] *Rollo*, pp. 82-83.

strange assumption that Garino would even be able to run away at all, considering the depth of the wound inflicted on him, by his own account. It is incredulous that, if Fernandez intended to kill Garino, the former would allow Garino to stagger away instead of finishing the job or even attempting to flee from the scene of the crime.

The foregoing makes it highly doubtful that Garino was able to identify Fernandez as the perpetrator of the crime, While the Court does not question that Garino was indeed shot, the Court has its misgivings that it was indeed Fernandez who shot him, especially if the only proof adduced is Garino's testimony.

Second, the Court finds as a misstep on the part of the lower courts that they did not question the circumstances or even the identity of Garino's alleged companion during the night of the shooting. Even putting aside his non-presentation during trial as a witness, the Court finds it baffling that Garino did not even know his name, or at least could not identify him. A survey of the transcript of records will show this strange unfamiliarity, *viz.*:

> TSN
> 04 July 2012
> Witness: Noel Garino
>
> Page 8
>
> x x x x x x x x x
>
> PROS. TALBAN:
> On that given time and date, what were you doing?
>
> WITNESS:
> I met a friend during that time and we were inside the jeep.
>
> PROS. TALBAN:
> And could you give is [sic] the name of that friend of yours?
>
> Page 9
>
> WITNESS:
> I don't know the name sir.[38]

---

[38] *Id.* at 99-100.

There was no explanation as to why Garino could not identify his companion. The Court finds that this omission without explanation casts doubt on the narration of events from the part of Garino. To note, Garino also failed to explain why he and his "companion" were there in the middle of the night, inside a jeepney, property of someone else, and, by Garino's own admission, right outside another's property. The logical explanation then is that either Garino was doing something worthy of suspicion to which he was trying to cover up the same, or his companion did not exist, which would create doubt as to the veracity of his testimony.

Thus, the Court finds that Garino's testimony is tainted with inconsistencies and lack of substantiation. Ultimately, it becomes a verbal tussle between Garino and Fernandez, and of course both sides would be very much biased towards their version of the story. In a criminal case however, it is the onus of the complainant, through the prosecution, to present a case laden with surety and without the shadow of the doubt, and this is lacking in the case herein.

Third, the Court finds it puzzling that the prosecution only presented three witnesses: Garino himself, his brother who was not present and who only assisted in filing the complaint, and Dr. Sanchez, who testified as to Garino's severity of wounds. The latter two were not even directly involved in the incident. While the Court is aware as to the jurisprudential pronouncement that it is not in the realm of courts to decide the order or even the presentation of witnesses, with Garino's testimony suffering from infirmities, the Court finds that circumstantial evidence is necessary in order to bolster his narration, corroborative testimony from either his unnamed companion during the shooting, or even from Barcenas herself. The lack of this the Court finds troubling especially as a second voice could and should have shed more light on the truth.

Fourth, it was not shown that Fernandez had any motive for shooting Garino. While motive is generally immaterial when it comes to considering intent in a criminal case, it can help facilitate the intrusion into the accused's mind especially when

there is an issue as to the identity of the latter. In *People v. De Guzman*,[39] the Court explained, thus:

> Generally, the motive of the accused in a criminal case is immaterial and does not have to be proven. Proof of the same, however, becomes relevant and essential when, as in this case, the identity of the assailant is in question. In *People v. Vidad*, the Court said:
>
> > It is true that it is not indispensable to conviction for murder that the particular motive for taking the life of a human being shall be established at the trial, and that in general when the commission of a crime is clearly proven, conviction may and should follow even where the reason for its commission is unknown; but in many criminal cases, one of the most important aids in completing the proof of the commission of the crime by the accused is the introduction of evidence disclosing the motive which tempted the mind to indulge in the criminal act.[40] (Citations omitted)

In the case at bar, there is no indication that Fernandez and Garino knew each other beforehand, and as mentioned, it seems to be a matter of mere convenience that Garino zeroed in on Fernandez as the culprit only after a conversation with Barcenas. There was also no plausible reason for Fernandez to risk his safety and life in shooting Garino, especially with a possible witness in tow. If Fernandez wanted to end Garino's life, it would also be strange that he would not run after Garino and finish the job, as Garino would certainly have been hobbled as a result of the wound.

Fifth, the Court finds that the lower courts hastily brushed off Fernandez's defense of alibi, to the latter's detriment. After all, considering the fact that the accused and the victim did not know each other and had not heard about each other prior to the incident, with even Fernandez stating that the first time he saw Garino was during the trial, it makes complete sense that Fernandez's flat denial that he was a participant in the offense, and his whereabouts during that time would be his only defenses.

---

[39] 690 Phil. 701 (2012).

[40] *Id.* at 716-717.

In the case of *Lejano v. People*,[41] the Court expanded on the alibi *versus* positive identification conundrum, to wit:

> The trial court and the [CA] are one in rejecting as weak Webb's alibi. Their reason is uniform: Webb's alibi cannot stand against Alfaro's positive identification of him as the rapist and killer of Carmela and, apparently, the killer as well of her mother and younger sister. Because of this, to the lower courts, Webb's denial and alibi were fabricated.
>
> But not all denials and alibis should be regarded as fabricated. Indeed, if the accused is truly innocent, he can have no other defense but denial and alibi. So how can such accused penetrate a mind that has been made cynical by the rule drilled into his head that a defense of alibi is a hangman's noose in the face of a witness positively swearing, "I saw him do it."? Most judges believe that such assertion automatically dooms an alibi which is so easy to fabricate. This quick stereotype thinking, however, is distressing. For how else can the truth that the accused is really innocent have any chance of prevailing over such a stone-cast tenet?
>
> There is only one way. A judge must keep an open mind. He must guard against slipping into hasty conclusion, often arising from a desire to quickly finish the job of deciding a case. A positive declaration from a witness that he saw the accused commit the crime should not automatically cancel out the accused's claim that he did not do it.[42]

The tale of this case's tape is that the prosecution relied solely on Garino's testimony that Fernandez was the one who shot him. Aside from his positive identification, which the Court finds too unconvincing, no legitimate and convincing evidence was offered to prove the veracity of the events as Garino alleges. With this, Fernandez's justification of alibi finds stronger ground, and the Court is thus obliged to favor it while taking into absolute consideration the promise that reasonable doubt is sufficient to acquit an accused individual of the crime.

In *People v. Nuñez*,[43] the Court held, thus:

---

[41] 652 Phil. 512 (2010).

[42] *Id.* at 581.

[43] G.R. No. 209342, October 4, 2017, 842 SCRA 97.

Conviction in criminal cases demands proof beyond reasonable doubt. While this does not require absolute certainty, it calls for moral certainty. It is the degree of proof that appeals to a magistrate's conscience:

> An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience *must* be satisfied that the accused is responsible for the offense charged.[44] (Emphasis supplied)

Our laws proscribe the conviction of the accused if doubt taints the circumstances of the crime. And, for good reason. A man's life and liberty are not aspects to be trifled with, which is why only the most exacting standard is required in order to find a person criminally liable. In this case, more than just reasonable doubt is attendant to the circumstances of the crime alleged. While the Court does not deny that Garino indeed suffered a grievous injury, the Court does heavily question if Fernandez was the one who inflicted it. This doubt is enough to sway the mind of the Court and acquit Fernandez.

Henceforth, the Court is constrained to reverse the RTC and the CA rulings due to the presence of lingering doubts which are inconsistent with the requirement of guilt beyond reasonable doubt as quantum of evidence to convict an accused in a criminal case. Fernandez is entitled to an acquittal, as a matter of right, because the prosecution has failed to prove his guilt beyond reasonable doubt.

---

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

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision dated February 15, 2017 and the Resolution dated August 17, 2018 of the Court of Appeals in CA-G.R. CR No. 38074 are hereby **REVERSED** and **SET ASIDE**.

Petitioner Fernando N. Fernandez is **ACQUITTED** of the charge of Frustrated Murder on the ground of reasonable doubt.

Let entry of judgment be issued immediately.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Hernando, Inting*, and *Delos Santos, JJ.*, concur.

SECOND DIVISION

[G.R. No. 244835. December 11, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ABC,**[1] *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE (RPC) AS AMENDED BY R.A. 8353; QUALIFIED RAPE; CIRCUMSTANCES UNDER WHICH THE CRIME OF RAPE MAY BE COMMITTED; ELEMENTS OF QUALIFIED RAPE. —

---

[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.

Under [Article 266-A of the RPC], the crime of Rape is committed when a man shall have carnal knowledge of a woman under any of the following circumstances: (a) through force, threat, or intimidation; (b) when the offended party is deprived of reason or otherwise unconscious; (c) by means of fraudulent machination or grave abuse of authority; and (d) when the offended party is under 12 years of age or is demented, even though none of the circumstances previously mentioned are present. It is penalized with *reclusion perpetua* as provided under Article 266-B of the RPC, as amended by R.A. No. 8353. The crime of Rape is qualified if the following elements concur: (1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under 18 years of age at the time of the Rape; and (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim.

2. ID.; ANTI-CHILD ABUSE LAW (R.A. 7610); SECTION 5 ON CHILD PROSTITUTION AND OTHER SEXUAL ABUSE; ESSENTIAL ELEMENTS FOR VIOLATION OF SECTION 5 (b); PENALTY. — The essential elements of Section 5, (b) [R.A. No. 7610] are: (a) the accused commits the act of sexual intercourse or lascivious conduct; (b) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and, (c) the child whether male or female, is below 18 years of age. The imposable penalty is *reclusion temporal in its medium period to reclusion perpetua*, except that the penalty for lascivious conduct when the victim is under 12 years of age shall be *reclusion temporal in its medium period.*

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONIES OF CHILD VICTIMS ARE GENERALLY GIVEN FULL WEIGHT AND CREDIT; NO REASON TO DISTURB THE TRIAL COURT'S APPRECIATION OF THE CREDIBILITY OF PROSECUTION'S WITNESSES ESPECIALLY SO SINCE THE COURT OF APPEALS (CA) AFFIRMED THE SAME. — Based on jurisprudence, the testimonies of child victims are given full weight and credit, for when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that Rape was indeed committed. Youth and immaturity are generally badges of truth and sincerity. Moreover, no woman, least of all a child, would concoct a story of defloration, allow examination of her private parts and subject herself to public trial or ridicule if

she has not, in truth, been a victim of Rape and impelled to seek justice for the wrong done to her being. "When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true." The appreciation of the trial court on the credibility of AAA as a direct witness given her straightforward, candid and categorical narration of the identity of ABC as the perpetrator of the crimes charged as well as the acts constituting the said crimes, must be sustained especially since the CA affirmed the same. x x x The Court finds no reason to disturb the lower court's appreciation of the prosecution's witnesses' testimonies. The assessment of "the credibility of witnesses is a domain best left to the trial court judge because of his unique opportunity to observe their deportment and demeanor on the witness stand, a vantage point denied appellate courts x x x."

4. CRIMINAL LAW; RPC AS AMENDED BY R.A. 8353; QUALIFIED RAPE; HAVING BEEN FOUND GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF QUALIFIED RAPE, THE COURT SUSTAINS THE PENALTY OF *RECLUSION PERPETUA*. — The lower court correctly found ABC guilty beyond reasonable doubt for the crime of Qualified Rape, defined and penalized under Article 266-A, par. 1 and Article 266-B of the RPC. The Court, therefore, sustains the penalty of *reclusion perpetua* imposed on ABC in Criminal Case No. R-QZN-14-07929-CR.

5. ID.; ID.; RPC IN RELATION TO R.A. 7610; ACTS OF LASCIVIOUSNESS; GIVEN THE PRESENCE OF AGGRAVATING CIRCUMSTANCE OF RELATIONSHIP AND WITHOUT MITIGATING CIRCUMSTANCES, THE CA CORRECTLY IMPOSED THE TERM OF THE SENTENCE IN ITS MAXIMUM PERIOD. — The CA correctly found ABC guilty of Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 (b), Article III of R.A. No. 7610 and sentenced him to suffer the indeterminate penalty of fourteen (14) years, eight (8) months of *reclusion temporal* minimum, as minimum to seventeen (17) years and four (4) months of *reclusion temporal* medium, as maximum. x x x Given the presence of the alternative aggravating circumstance of relationship in the instant case the perpetrator being the father

of AAA and without any mitigating circumstances to offset the same, the term of the sentence was properly imposed by the appellate court in its maximum period pursuant to Section 31 (c), Article XII of R. A. No. 7610[.]

6. ID.; ID.; ID.; CIVIL LIABILITY; AWARD OF CIVIL INDEMNITY, MORAL AND EXEMPLARY DAMAGES, INCREASED. — As regards the award of damages, a modification must be made in view of the Court's ruling in *People v. Tulagan*. The awards of civil indemnity, moral and exemplary damages in favor of the offended party are accordingly increased to fifty thousand pesos (₱50,000.00) each. The fine of fifteen thousand (₱15,000.00) previously awarded by the CA is sustained. All monetary awards shall earn a six percent (6%) legal interest from the date of the finality of this Decision until full payment.

APPEARANCES OF COUNSEL

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

D E C I S I O N

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

It is said that the safest place in the world for a daughter is in her father's arms. Not in this case.

This is an appeal[2] filed by accused-appellant ABC from the Decision[3] dated September 27, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09378, which affirmed the Judgment[4] dated March 28, 2017 of the Regional Trial Court (RTC) of Quezon City, Branch 106 in Criminal Case Nos. R-QZN-14-07928-CR and R-QZN-14-07929-CR, convicting ABC

---

[2] CA *rollo*, pp. 121 -122. See Notice of Appeal dated October 15, 2018.

[3] Penned by Associate Justice Pedro B. Corales with Associate Justices Jane Aurora C. Lantion and Ronaldo Roberto B. Martin, concurring; *rollo*, pp. 3-18.

[4] Records, pp. 173-193.

guilty of the crimes of Acts of Lasciviousness under Article 336 and Rape under Article 266-A of the Revised Penal Code (RPC), as amended by Republic Act (R.A.) No. 8353.

The Facts

In two separate Informations, ABC was charged with two counts of Rape allegedly committed against his minor daughter, the accusatory portions of which provides:

Criminal Case No. R-QZN-14-07928-CR

That on or between April and May, 2011, in Quezon City, Philippines, the above-named accused, by means of force, threat and intimidation and exercising moral ascendancy over one[AAA],[5] since he is her father, did then and there, willfully, unlawfully and feloniously commit an act of sexual abuse upon the said [AAA], his very own daughter and a minor 9 years of age, by then and there willfully, unlawfully and feloniously having carnal knowledge with the offended party, against her will and without her consent, to the damage and prejudice of the said offended party.

The crime described above is committed with the qualifying circumstances of relationship and minority for the accused is the father of the offend ed party who was minor, nine (9) years of age at the time.

CONTRARY TO LAW.[6]

Criminal Case No. R-QZN-14-07929-CR

That on or between January 13 and January 21, 2011, in Quezon City, Philippines, the above-named accused, by means of force, threat and intimidation and exercising moral ascendancy over one [AAA], since he is her father, did then and there, willfully, unlawfully and feloniously commit an act of sexual abuse upon the said [AAA], his

---

[5] The real name of the victim and of the members of her immediate family are withheld pursuant to Republic Act No. 7610 otherwise known as the "*Special Protection of Children against Abuse, Exploitation and Discrimination Act*" and A.M. No. 12-7-15-SC entitled "*Protocols and Procedure: in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions and Final Orders Using Fictitious Names*."

[6] Records, p. 2.

very own daughter and a minor 9 years of age, by then and there willfully, unlawfully and feloniously having carnal knowledge with the offended party, against her will and without her consent, to the damage and prejudice of the said offended party.

The crime described above is committed with the qualifying circumstances of relationship and minority for the accused is the father of the offended party who was minor, nine (9) years of age at the time.

CONTRARY TO LAW.[7]

When arraigned on October 9, 2014, assisted by a public attorney, ABC entered separate pleas of "not guilty" to the crimes charged.[8] Pre-trial was held on May 4, 2015[9] where the prosecution identified AAA, BBB,[10] CCC,[11] DDD,[12] and Police Chief Inspector Charyl Escaro, MD (Dr. Escaro), the medico legal officer as its witnesses while the defense identified the accused-appellant as its witness. Joint trial on the merits thereafter ensued.

Evidence for the prosecution shows that on the evening January 13 and 21, 2011 which was a few days after her 9th birthday, AAA was sleeping in their house situated at [redacted] Quezon City. On that evening, she was with her father, ABC, and her three brothers, and they were all sleeping on a cushion on the floor. AAA was suddenly awakened when she felt that something round was pressed on the side of her head. When she opened her eyes, she was not able to see anything because it was dark. AAA wondered as the lights were usually turned on when they sleep. Thinking that it was one of her brother's foot that was on her face, AAA tried to remove it but she heard the voice of

---

[7] *Id.* at 4.

[8] *Id.* at 52-54.

[9] *Id.* at 77-78.

[10] The mother of AAA; *id.* at 6.

[11] The aunt of AAA; *id.*

[12] The brother of AAA; records, p. 7.

ABC saying, "*Baril ito. Huwag kang maingay*." AAA kept silent because of fear. ABC started stripping AAA by removing her t-shirt, shorts, and panty. AAA tried to put her panty back on but ABC prevailed in undressing her despite her struggle. ABC then inserted his penis into AAA's vagina until she felt that he urinated inside her vagina. After, ABC threatened to kill her brothers if AAA should tell about the incident to the police and to her *lola* EEE who reside nearby. The following morning, AAA woke up feeling a sharp pain in her vagina. When she washed, she felt that there was a wound at the tip of the center of her vagina.[13]

AAA testified that ABC raped her many times and sometimes twice a week especially on Saturdays and Sundays when ABC was drunk. These unfortunate events became more frequent when ABC lost his job February 2011 which lasted for a year.[14]

Evidence for the prosecution likewise shows that on the evening between April and May, 2011, AAA's brother, DDD, was at home with his siblings, AAA, FFF and GGG. They were in bed when their father, ABC, arrived. ABC told DDD to turn off the 1ight, which he did and then to go to sleep. They all laid down facing the wall with DDD near the door, next to him was ABC, GGG, AAA, and FFF. Later, ABC moved to AAA's side. DDD was still awake at that time and he saw ABC stand up and went on top of AAA, ABC took out something which went in and out of AAA's vagina. But because the room was dimly lit, DDD testified that he only saw shadows, with the illumination coming from the moonlight outside. Thereafter, DDD saw ABC lay beside AAA, and then he eventually fell asleep. DDD did not reveal to anyone about what he saw for fear that he might not be allowed to go out of the house and that he will get spanked.[15]

One year later, or on January 29, 2012, AAA revealed her ordeal to her aunt CCC who did not believe her initially until

---

[13] *Id.* at 175.

[14] *Id.*

[15] Records, pp. 175-176.

she showed a "kiss mark" on her breast. Immediately, CCC took AAA to the authorities where they filed a complaint against ABC. Acting on the complaint, police officers arrested ABC for investigation.

AAA was subjected to a physical and medical examination by Dr. Escaro. The Medico-Legal Report No. R12-127[16] dated February 3, 2012 revealed:

FINDINGS:
GENERAL AND EXTRAGENITAL:

PHYSICAL BUILT:	-medium
MENTAL STATUS:	-coherent
BREAST:	-conial [sic] in shape/light brown
ABDOMENT:	-soft/flat
PHYSICAL INJURIES:	**1. Healing ecchymosis, right chest region, measuring 3.0 x 4.0 cm, 10 cm from the anterior midline.** **2. Healing ecchymosis, left chest region, measuring 5.0 x 3.0cm, 8cm**

GENITAL

PUBIC HAIR:	-absent
LABIA MAJORA:	-coaptated
LABIA MINORA:	-light brown/non-hypertrophied
HYMEN:	**-presence of deep healed lacerations at 3 and 9 o'clock positions.**
POSTERIOR FOURCHETTE:	-sharp
EXTERNAL VAGINAL ORIFICE:	-not assessed
VAGINAL CANAL:	-not assessed
CERVIX:	-not assessed
PERIURETHRAL AND VAGINAL SMEARS:	-not assessed
ANUS:	-unremarkable

CONCLUSION: **Medical evaluation shows clear evidence of blunt penetrating trauma to the hymen.**[17]

The prosecution rested its case after a formal offer of its documentary evidence.[18]

---

[16] *Id.* at 157.

[17] *Id.*

[18] Records, pp. 138-139.

For its part, the defense presented ABC as its only witness. ABC denied the charges and claimed that the crimes were merely fabricated by his mother-in-law who is extremely angry with him for his supposed "*pambababae*." He claimed that his mother-in-law would get jealous every time he and his female co-worker walk the dogs of his boss every morning. His mother-in-law was with the police officers when he was arrested in their house.[19]

The RTC Ruling

After due proceedings, the RTC rejected ABC's defense of denial in Criminal Case No. R-QZN-14-07929-CR and ruled that the prosecution was able to fully discharge its burden to prove his guilt beyond reasonable doubt for the crime of Rape defined under Article 266-A of the RPC, as amended.

The trial court, however, found insufficient evidence to establish ABC's guilt in the second count of Rape as charged in Criminal Case No. R-QZN-14-07928-CR. The trial court ruled that the prosecution was not able to establish what ABC took out that went in and out of AAA's vagina.[20] It ratiocinated that in Rape cases, it is essential for the prosecution to establish that the penis of the accused reaches the pudendum or at least the labia of the victim.[21] Absent any showing of the slightest penetration of the female organ, there can be no consummated Rape. The trial court, however, found ABC guilty of the crime of Acts of Lasciviousness, the elements of which are included in Rape.[22]

The RTC decreed:

IN VIEW WHEREOF, judgment is hereby rendered finding accused [ABC] as follows:

---

[19] *Id.* at 177, CA *rollo*; p. 109.

[20] Records, p. 189.

[21] *Id.*

[22] *Id.*

1. In Criminal Case No. R-QZN-14-07928, accused is GUILTY of the crime of Acts of Lasciviousness under Article 336 of the Revised Penal Code and is sentenced to suffer the indeterminate penalty of 6 months of *arresto mayor* as minimum to 6 years of *prision correccional* as maximum and to pay private complainant the amount of PhP 20,000.00 as civil indemnity, PhP 30,000.00 as moral damages and PhP 10,000.00 as exemplary damages, with interest at the rate of 6% *per annum* from the date of finality of this Judgment until fully paid.

2. In Criminal Case No. R-QZN-14-07929, accused is GUILTY of the crime of Rape and is hereby sentenced to *reclusion perpetua*, without eligibility for parole and is likewise ordered to pay private complainant the amount of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages, with interest at the rate of 6% *per annum* from the date of finality of this Judgment until fully paid.

The period of the accused's preventive detention shall be credited in the service of his sentence.

SO ORDERED.[23] (Emphasis in the original)

ABC elevated the case to the CA via a Notice of Appeal that was filed on April 4, 2017.[24]

Ruling of the CA

On September 27, 2018, the CA ruled that the prosecution was able to establish the concurrence of all the elements for the crime of Rape in Criminal Case No. R-QZN-14-07929-CR.[25] AAA's minority and her relationship with ABC were not in dispute.[26] The clear and categorical testimony of AAA as corroborated by pieces of evidence that were submitted in court proved the guilt of ABC for the crime of Qualified Rape.[27]

---

[23] Records, p. 193.

[24] *Id.* at 199.

[25] CA *rollo*, p. 113.

[26] *Id.*

[27] CA *rollo*, pp. 113-114.

The CA however modified the nomenclature of the offense committed, the penalty imposed and the damages awarded in Criminal Case No. R-QZN-14-07928-CR.[28] The appellate court, citing jurisprudence, ruled that when the victim is under 12 years old and all the elements of Acts of Lasciviousness are present, as in the instant case, the nomenclature of the crime should be Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610, which was also included in the offense of Rape charged in Criminal Case No. R-QZN-14-07928-CR.[29]

The CA then disposed:

> **WHEREFORE,** the instant appeal is hereby **DENIED.** The March 28, 2017 Judgment of the Regional Trial Court, Branch 106, Quezon City in Criminal Case No. R-QZN-14-07928-CR and R-QZN-14-07929-CR **AFFIRMED** with **MODIFICATIONS.** As modified in Criminal Case R- QZN-14-07928-CR accused-appellant ABC is found guilty of Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5 (b) of Republic Act No. 7610 and sentenced to suffer the indeterminate penalty of fourteen (14) years and eight (8) months of reclusion temporal minimum, as minimum to seventeen (17) years and four (4) months of *reclusion temporal* medium, as maximum. He is further ordered to pay private complainant ₱20,000.00 civil indemnity, moral damages, exemplary damages, and fine, in the amount of ₱15,000.00 each, which shall earn 6% interest *per annum* from the date of finality of this Decision until fully paid. All other aspects of the assailed Judgment stand.
>
> **SO ORDERED.**[30] (Emphasis in the original)

Insisting on his innocence, ABC filed the instant appeal anchored on the following assigned errors:

I

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF ACTS OF LASCIVIOUSNESS

---

[28] *Id.* at 117.

[29] *Id.* at 117-118.

[30] *Id.* at 119.

AND RAPE DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THAT THE SAME TRANSPIRED.

II

THE COURT *A QUO* GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE PROSECUTION WITNESSES' HIGHLY INCONSISTENT, DUBIOUS AND INSUFFICIENT TESTIMONIES.[31]

The Ruling of the Court

The appeal lacks merit.

The instant case pertains to the crime of Qualified Rape committed by a father having carnal knowledge of his 9 year old daughter. It is also about the commission of lascivious conduct by a father to his minor daughter denominated as other form of sexual abuse under R.A. No. 7610.

Article 266-A of the RPC provides:

ART. 266-A. Rape; When and How Committed. – Rape is committed. –

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x x x x x x

Under the foregoing provision, the crime of Rape is committed when a man shall have carnal knowledge of a woman under any of the following circumstances: (a) through force, threat,

[31] *Id.* at 34.

or intimidation; (b) when the offended party is deprived of reason or otherwise unconscious; (c) by means of fraudulent machination or grave abuse of authority; and (d) when the offended party is under 12 years of age or is demented, even though none of the circumstances previously mentioned are present. It is penalized with *reclusion perpetua* as provided under Article 266-B of the RPC, as amended by R.A. No. 8353.

The crime of Rape is qualified if the following elements concur: (1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under 18 years of age at the time of the Rape; and (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim.[32]

On the other hand, Section 5 (b), Article III of R.A. No. 7610 provides:

> Section 5. *Child Prostitution and Other Sexual Abuse.* — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.
>
> x x x x x x x x x
>
> (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; and
>
> x x x x x x x x x

The essential elements of Section 5 (b) are: (a) the accused commits the act of sexual intercourse or lascivious conduct; (b) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and, (c) the child whether

---

[32] *People v. Divinagracia*, 814 Phil. 730, 748 (2017).

male or female, is below 18 years of age.[33] The imposable penalty is *reclusion temporal in its medium period to reclusion perpetua*, except that the penalty for lascivious conduct when the victim is under 12 years of age shall be *reclusion temporal in its medium period*.

After a judicious review of the records of the case, the Court finds no convincing reason to depart from the findings of the RTC, as modified by the CA, that the prosecution was able to sufficiently prove beyond a reasonable doubt all the elements of the crimes of Qualified Rape and Acts of Lasciviousness.

In assailing his conviction, ABC mainly harps on the fact that AAA's testimony is uncorroborated as to the alleged acts of Rape.[34] He averred that the prosecution witness merely offered contradictory and irreconcilable statements.[35] He argues that the contradictory and irreconcilable statements of AAA must not be disregarded when the issue is one's Liberty.[36]

ABC alleged that witness CCC did not see who the actual perpetrator of Criminal Case No. R-QZN-14-07928 was. As such, the identity of who committed the said crime was not established by the prosecution beyond reasonable doubt.[37] ABC lamented that the trial court primarily relied on the uncorroborated, inconsistent, deficient and contrived testimonies of the prosecution witnesses.[38]

We are not convinced.

Based on jurisprudence, the testimonies of child victims are given full weight and credit, for when a woman or a girl-child says that she has been raped, she says in effect all that is necessary

---

[33] *People v. Dagsa*, G.R. No. 219889, January 29, 2018, 853 SCRA 276, 294.

[34] CA *rollo*, p. 40.

[35] *Id.* at 43.

[36] *Id.*

[37] CA *rollo*, p. 45.

[38] *Id.*

to show that Rape was indeed committed.[39] Youth and immaturity are generally badges of truth and sincerity.[40]

Moreover, no woman, least of all a child, would concoct a story of defloration, allow examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of Rape and impelled to seek justice for the wrong done to her being.[41] "When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true."[42]

The appreciation of the trial court on the credibility of AAA as a direct witness given her straightforward, candid and categorical narration of the identity of ABC as the perpetrator of the crimes charged as well as the acts constituting the said crimes, must be sustained especially since the CA affirmed the same. In *People v. Moya*,[43] this Court reiterated:

> The credibility given by the trial court to AAA is an important aspect of evidence which the appellate court can rely on because of its unique opportunity to observe the witnesses, particularly their demeanor, conduct and attitude during the direct and cross-examination by counsel. There is no showing that the trial court judge overlooked, misunderstood, or misapplied some facts or circumstances of weight which would affect the result of the case, his assessment of credibility deserves this Court's highest respect.

Moreover, in *People v. Bandoquillo*,[44]

> It is settled that "when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's

---

[39] *People v. Alberca*, 810 Phil. 896, 906 (2017).

[40] *People v. Descartin, Jr.*, 810 Phil. 881, 892 (2017).

[41] *People v. Tubillo*, 811 Phil. 525 (2017).

[42] *People v. Ganaba*, G.R. No. 219240, April 4, 2018, 860 SCRA 578, 526.

[43] G.R. No. 228260, June 10, 2019.

[44] G.R. No. 218913, February 7, 2018, 855 SCRA 189.

observations and conclusions deserve great respect and are often accorded finality" unless it is shown that the lower court had overlooked, misunderstood or misappreciated some fact or circumstance of weight which, if properly considered, would have altered the result of the case. "[This]rule finds an even more stringent application where said findings are sustained by the Court of Appeals."[45] (Citations and emphasis omitted)

The Court finds no reason to disturb the lower court's appreciation of the prosecution's witnesses' testimonies. The assessment of "the credibility of witnesses is a domain best left to the trial court judge because of his unique opportunity to observe their deportment and demeanor on the witness stand, a vantage point denied appellate courts x x x."[46]

The Court further agrees with the rejection of denial as defense for ABC. It is well-settled that denial is essentially the weakest form of defense and it can never overcome an affirmative testimony particularly when it comes from the mouth of a credible witness.[47] This is in consonance with this Court's consistent pronouncement that "no decent and sensible woman will publicly admit being a Rape victim and thus run the risk of public contempt – the dire consequence of a Rape charge – unless she is, in fact, a Rape victim."[48]

The Penalty

The lower court correctly found ABC guilty beyond reasonable doubt for the crime of Qualified Rape, defined and penalized under Article 266-A, par. 1 and Article 266-B of the RPC. The Court, therefore, sustains the penalty of *reclusion perpetua* imposed on ABC in Criminal Case No. R-QZN-14-07929-CR.

In Criminal Case No. R-QZN-14-07928-CR, the appellate court modified the nomenclature of the offense committed, the

---

[45] *Id.* at 196-197.

[46] *People v. Deliola*, 794 Phil. 194, 208 (2016).

[47] *People v. Dulay*, 695 Phil. 742, 759 (2012).

[48] *People v. Fontillas*, 653 Phil. 406, 418 (2010), citing *People v. Mendoza*, 490 Phil. 737, 746-747 (2005).

penalty imposed and the damages awarded. The CA correctly found ABC guilty of Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 (b), Article III of R.A. No. 7610 and sentenced him to suffer the indeterminate penalty of fourteen (14) years, eight (8) months of *reclusion temporal* minimum, as minimum to seventeen (17) years and four (4) months of *reclusion temporal* medium, as maximum.

As mandated by Section 5 (b), Article III, R. A. No. 7610, the imposable penalty therefore is *reclusion temporal* in its medium period or a duration of fourteen (14) years, eight (8) months, and one (1) day to seventeen (17) years and four (4) months, since the victim was under twelve (12) years of age at the time of the crime.

In *People v. Padlan*,[49] the Court pronounced:

> The Indeterminate Sentence Law (ISL) provides that if the offense is punished under a special law, as in this case, the maximum term shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. Nonetheless, the Court had already held in *People v. Simon* that when an offense is defined in a special law but the penalty therefor is taken from the technical nomenclature in the RPC, the legal effects under the system of penalties native to the Code would necessarily apply to the special law. Thus, in *People v. Santos*, which also involved a case of acts of lasciviousness under Sec. 5 (b), Art. III of RA 7610, the Court held that in the absence of mitigating or aggravating circumstances, the minimum term shall be taken from the penalty one degree lower to the prescribed penalty of *reclusion temporal* medium, that is *reclusion temporal* minimum, which ranges from twelve (12) years, ten (10) months and twenty-one (21) days to fourteen (14) years and eight (8) months, while the maximum shall be taken from the medium period of the imposable penalty, that is *reclusion temporal* medium, which ranges from fifteen (15) years, six (6) months and twenty (20) days to sixteen (16) years, five (5) months and nine (9) days.[50] (Citations omitted)

---

[49] 817 Phil. 1008 (2017).

[50] *Id.* at 1027-1028.

[50] *Id.* at 196-197.

Given the presence of the alternative aggravating circumstance of relationship in the instant case the perpetrator being the father of AAA and without any mitigating circumstances to offset the same, the term of the sentence was properly imposed by the appellate court in its maximum period pursuant to Section 31 (c), Article XII of R. A. No. 7610 which provides:

> Sec. 31. *Common Penal Provisions.* —
>
> x x x x x x x x x
>
> (c) **The penalty provided herein shall be imposed in its maximum period when the perpetrator is an ascendant, parent**, guardian, step-parent or collateral relative within the second degree of consanguinity or affinity or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked;
>
> x x x (Emphasis supplied)

As regards the award of damages, a modification must be made in view of the Court's ruling in *People v. Tulagan*.[51] The awards of civil indemnity, moral and exemplary damages in favor of the offended party are accordingly increased to fifty thousand pesos (₱50,000.00) each. The fine of fifteen thousand (₱15,000.00) previously awarded by the CA is sustained. All monetary awards shall earn a six percent (6%) legal interest from the date of the finality of this Decision until full payment.

WHEREFORE, premises considered, the appeal is hereby **DISMISSED**. The Decision dated September 27, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09378 is **AFFIRMED with MODIFICATION** in that the accused-appellant ABC is **ORDERED** to pay the offended party AAA the following amounts: (i) ₱50,000.00 as civil indemnity; (ii) ₱50,000.00 as moral damages; (ii) ₱50,000.00 as exemplary damages; and (iv) ₱15,000.00 as fine.

---

[50] *People v. Dulay*, 695 Phil. 742, 759 (2012).

[50] *People v. Fontillas*, 653 Phil. 406, 418 (2010).

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

All monetary awards shall earn a six percent (6%) legal interest from the date of the finality of this Decision until fully paid.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Hernando, Inting*, and *Delos Santos, JJ.*, concur.

INDEX

INDEX

without the victim's consent or knowledge, within or across national borders"; (2) The means used include "by means of threat, or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person"; (3) The purpose of trafficking includes "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"; here, the offense was committed prior to the amendment. (People *vs.* Maycabalong, G.R. No. 215324, Dec. 5, 2019) p. 486

Trafficking in Persons as a Prostitute — The Court affirms the trial court's and the Court of Appeals' conviction of accused-appellants in violation of R.A. No. 9208, Section 4(a) and (e), as qualified by Section 6(c) and punished under Section 10(c); in *Casio*, this Court held that moral damages and exemplary damages must also be imposed; in *People v. Aguirre*: The criminal case of Trafficking in Persons as a Prostitute is an analogous case to the crimes of seduction, abduction, rape, or other lascivious acts; it is worse, thus, justifying the award of moral damages; exemplary damages are imposed when the crime is aggravated, as in this case; moral damages of ₱500,000.00 and exemplary damages of ₱100,000.00, imposed. (People *vs*. Maycabalong, G.R. No. 215324, Dec. 5, 2019) p. 486

APPEALS

Appeal in labor cases — A Rule 45 review by this Court in labor cases generally does not delve into factual questions or to an evaluation of the evidence submitted by the parties; however, one exception to this rule is when the judgment is based on a misapprehension of facts; such exception applies in the instant case because, contrary to the findings of the NLRC and the CA, the company-designated physician had issued a final, accurate, and

the issue on petitioner's entitlement to the unpaid PLDT leasing commission, where they differ in findings; then, the CA affirmed the NLRC's findings; these findings are accorded great respect, and are deemed binding on Us as long as they are supported by substantial evidence. (Agayan *vs*. Kital Phils. Corp., G.R. No. 229703, Dec. 4, 2019) p. 348

Factual findings of trial courts — Findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors, gross misapprehension of facts, or speculative, arbitrary, and unsupported conclusions can be gathered from such findings; the reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. (People *vs*. Macaspac *y* Llanete, G.R. No. 246165, Nov. 28, 2019) p. 164

Findings and conclusions of the Ombudsman — As a general rule, only questions of law may be raised in a petition for review on *certiorari* because the Court is not a trier of facts; when supported by substantial evidence, the findings of fact of the Court of Appeals are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the recognized exceptions; in this case, since the findings and conclusions of the Ombudsman are contrary to the Court of Appeals, the Court is constrained to review the factual issues raised. (Office of the Ombudsman *vs.* Santidad, G.R. No. 207154, Dec. 5, 2019) p. 440

Petition for review on certiorari to the Supreme Court under Rule 45 — Basic is the rule that only questions of law may be raised in a Rule 45 petition; a recognized exception to this rule is when the findings of fact of the appellate court and the trial court are conflicting; in this case, there is a conflicting finding as to whether the sale between Maurin and spouses Labuguen is absolute or conditional; there is also a conflicting finding as to whether the subject

fees in favor of the respondent as it is a question of fact. (Arcinue *vs.* Baun, G.R. No. 211149, Nov. 28, 2019) p. 69

— The general rule in a petition for review on *certiorari* under Rule 45 of the Rules of Court is that only questions of law should be raised; in *Republic v. Heirs of Eladio Santiago*, the Court enumerated that one of the exceptions to the general rule is when the CA's findings are contrary to those of the trial court; considering the different findings of fact and conclusions of law of the MCTC, RTC, and the CA, the Court shall entertain this petition, which involves a re-assessment of the evidence presented. (Heirs of the Late Sps. Victor L. Montevilla and Restituta C. Montevilla *vs.* Sps. Vallena, G.R. No. 234419, Dec. 5, 2019) p. 648

Points of law, issues, theories, and arguments — Only questions of law should be raised in Rule 45 petitions as this Court is not a trier of facts and will not entertain questions of fact as factual findings of the CA and trial courts are final, binding, or conclusive on the parties, and on this Court when supported by substantial evidence; the issues raised by petitioners in this petition are a virtual rehash, if not a verbatim reproduction, of the issues raised before the CA; whether the parties agreed on the restructuring of the loan, whether the amounts sought to be collected by LBP are much higher than DPICI's loan obligations, and whether petitioners bound themselves as sureties under the Comprehensive Surety Agreement, are questions of fact which have all been settled by the courts below. (Duty Paid Import Co. Inc. *vs.* Landbank of the Phils., G.R. No. 238258, Dec. 10, 2019) p. 858

— Questions of fact are generally beyond the domain of a Petition for Review under Rule 45 of the Rules of Court as it is limited to reviewing only questions of law; the rule, however, admits of exceptions wherein this Court expands the coverage of a Petition for Review to include a resolution of questions of fact; one of those exceptions is when the lower court committed misapprehension of facts or when relevant facts not disputed by the parties

ATTACHMENT

Writ of — In order to place a share of stock of a certain corporation under levy on attachment, the notice indicating the attachment of such stock, as well as a copy of the writ of attachment, must have been first delivered to the appropriate officer of that very corporation. (Ang, Jr. *vs*. Sps. Bitanga, G.R. No. 223046, Nov. 28, 2019) p. 82

ATTORNEYS

Administrative proceedings against lawyers — In administrative proceedings against lawyers, the burden of proof rests on the complainant, and he/she must establish the case against the respondent by clear, convincing and satisfactory proof, disclosing a case that is free from doubt as to compel the exercise by the Court of its disciplinary power; "mere allegation is not evidence and is not equivalent to proof; charges based on mere suspicion and speculation likewise cannot be given credence." (Aboy, Sr. *vs.* Diocos, A.C. No. 9176, Dec. 5, 2019) p. 388

Code of Professional Responsibility — Respondent evaded payment of a just debt, for which she even issued a worthless check; violation of Rule 1.01, Canon 1 of the CPR, *viz*.: "a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct"; such conduct is unbecoming and does not speak well of a member of the bar, for a lawyer's professional and personal conduct must at all times be kept beyond reproach and above suspicion"; respondent's act equates to such willful dishonesty and immoral conduct as to undermine the public confidence in the legal profession which cannot be justified by her so-called dire financial condition; penalty. (Villa *vs.* Atty. Defensor-Velez, A.C. No. 12202 [Formerly CBD Case No. 15-4535], Dec. 5, 2019) p. 398

Conduct of — Respondent had shown a brazen disregard for the lawful orders and processes of the IBP-CBD; in *Tomlin II v. Moya II*, we held that failure to comply with the orders of the IBP without justifiable reason manifested respondent's disrespect of judicial authorities for which

and character of the lawyer as an officer of the court; where a lesser penalty will suffice to accomplish the desired end, the court will not disbar an erring lawyer; suspension for six months, sufficient sanction against respondents to protect the public and the legal profession. (Hipolito *vs.* Atty. Alejandro-Abbas, A.C. No. 12485, Dec. 10, 2019) p. 684

Disciplinary proceedings against — A lawyer is expected to live by the lawyer's oath, the rules of the profession and the Code of Professional Responsibility; the duties of a lawyer may be classified into four general categories, namely, duties he owes to the court, to the public, to the bar and to his client; a lawyer who transgresses any of his duties is administratively liable and subject to the Court's disciplinary authority; the determination of whether an attorney should be disbarred or merely suspended for a period involves the exercise of sound judicial discretion. (Aboy, Sr. *vs.* Diocos, A.C. No. 9176, Dec. 5, 2019) p. 388

— An affidavit of desistance executed by the complainant or the withdrawal of the complaint is not sufficient cause to warrant the dismissal of an administrative complaint; the main objective of disciplinary proceedings is to determine the fitness of a member to remain in the Bar; what matters is whether the charge in the complaint has been proven on the basis of the facts borne out by the record; the fact that respondent is not in the active practice of law by reason of his election in the House of Representatives as a party-list representative of 1-Ang Edukasyon Party-List in the 2016 National Election, is irrelevant; the Court takes judicial notice that the Mid-Year Election conducted in May 2019 has changed the sitting members in the House of Representatives, including the party-list representatives; the 1-Ang Edukasyon Party-List failed to win any seat in Congress; hence, respondent's argument has been rendered moot and academic; assuming *arguendo* that he remains to be a Representative, he still cannot escape liability on the ground that he is not in the active practice of law; despite being inactive in

the performance of his functions as a notary public and to comply with the mandates of law. (*Id*.)

Discipline of — Complaints for disbarment or suspension are intended to cleanse the ranks of the legal profession of its undesirable members for the protection of the public and the courts; it is not meant to grant relief to a complainant as in a civil case; proceedings to discipline erring members of the bar are instituted not only for the protection and promotion of the public good, but also to maintain the dignity of the profession by weeding out those who have proven themselves unworthy; the Court has full authority to discipline respondents, when circumstances and evidence warrant, despite the alleged dismissal of the DARAB complaint. (Hipolito *vs.* Atty. Alejandro-Abbas, A.C. No. 12485, Dec. 10, 2019) p. 684

—— The practice of law is a privilege bestowed by the State only on those who possess and continue to possess the legal qualifications of the profession; thus, lawyers are expected to maintain, at all times, a high standard of legal proficiency, morality, honesty, integrity and fair dealing, and must perform their four-fold duty to society, the legal profession, the courts and their clients; a lawyer may be disciplined not only for malpractice in connection with his or her profession, but also for gross misconduct outside of his professional capacity; the allegations that respondents forcibly entered the property and demolished the structures thereon, shouted invectives and used abusive language against complainant remain undisputed; although respondents claim to be the rightful owners of the property, they are without authority to use force and violence to eject complainant who was in prior physical possession of it; the rule of law does not allow the mighty and the privileged to take the law into their own hands to enforce their alleged rights; their actions demonstrate a deliberate disobedience to the rule of law, in violation of Canon 1, Rule 1.01 of the CPR; respondents ought to be keepers of public faith, and, are thus, burdened with a high degree of social responsibility and must handle their personal affairs with greater caution. (*Id*.)

it would have become aware of the previous resolutions issued by the CTA First Division ordering ACP Mendoza to submit the required documents; petitioner failed in its duty to keep himself updated as to the status of its case and should suffer the consequences of the adverse judgment rendered against it. (People *vs*. Mallari, G.R. No. 197164, Dec. 4, 2019) p. 254

–– It is not enough that lawyers inform their clients of the dismissal of the case; it is also his or her duty to give information as to why the case was dismissed; a lawyer need not wait for their clients to ask for information but must advise them without delay about matters essential for them to avail of legal remedies; the lawyer bears the duty to serve his client with competence and diligence, and to exert his best efforts to protect, within the bounds of the law, the interest of his or her client; competence, not only in the knowledge of law, but also in the management of the cases by giving these cases appropriate attention and due preparation, is expected from a lawyer. (Aboy, Sr. *vs.* Diocos, A.C. No. 9176, Dec. 5, 2019) p. 388

Duty to the legal profession –– Respondents found guilty of violating Canon 7, Rule 7.03 which provides: CANON 7 – A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION; Rule 7.03 – A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession; respondents erred in their conduct, especially in taunting complainant to file a case against them and threatening the latter that they can defend themselves as they are lawyers; part of respondents' duties as lawyers is to maintain the dignity owing to the profession. (Hipolito *vs.* Atty. Alejandro-Abbas, A.C. No. 12485, Dec. 10, 2019) p. 684

Negligence –– In being careless in failing to secure and keep his notarial seal in a safe place away from any person not authorized to use the same, respondent committed a

practice law despite their suspension; however, considering that the Court had already imposed upon respondent the ultimate penalty of disbarment for his gross misconduct and willful disobedience of the lawful orders of the court in an earlier complaint for disbarment filed against him in *Zarcilla v. Quesada, Jr.*, the penalty of additional six months suspension from the practice of law can no longer be imposed upon him; the Court can still give the corresponding penalty only for the sole purpose of recording it in his personal file with the Office of the Bar Confidant, which should be taken into consideration in the event that the disbarred lawyer subsequently files a petition to lift his disbarment. (*Id*.)

CERTIORARI

Grave abuse of discretion — Grave abuse of discretion must be alleged and proved to exist for a petition for *certiorari* to prosper; defined as a capricious or whimsical exercise of judgment that is patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law; it also includes a virtual refusal to act in contemplation of law or an exercise of power in an arbitrary and despotic manner by reason of passion or personal hostility; mere abuse of discretion is not enough in order to oust the court of its jurisdiction – it must be grave. (Nat'l. Telecommunications Commission *vs*. Brancomm Cable and Television Network Co., G.R. No. 204487, Dec. 5, 2019) p. 407

Petition for — It is an elementary tenet in remedial law that the remedy of *certiorari* under Rule 65 of the Rules of Court is an original and independent action whose purpose and scope of review are completely different from an appeal. (Ang, Jr. *vs*. Sps. Bitanga, G.R. No. 223046, Nov. 28, 2019) p. 82

CIVIL INDEMNITY, MORAL AND EXEMPLARY DAMAGES

Award of — *People v. Tulagan*, cited; the awards of civil indemnity, moral and exemplary damages in favor of the offended party are previously awarded by the CA is

logic, in the remand order for the limited purpose of accounting for the existing coconut trees on the 17-hectare coconut portion is consistent with this rule; from the taking of the property in 1995 and all the time during which this case was first elevated to the CA, then referred back to the agrarian court, and appealed anew to the CA, the subject property has likely undergone physical changes which might explain the differences in the numbers propounded by the agrarian court at the first instance, the court-appointed commissioners after the remand of the case, and the same agrarian court in its second ruling; valuation of the CA, conclusively erroneous insofar as its determination exceeded the 17-hectare coconut land found to be the only point of contention between the parties. (Land Bank of the Phils *vs.* Uy, G.R. No. 221313, Dec. 5, 2019) p. 498

— The concept of just compensation embraces not only the correct determination of the amount to be paid to the owners of the land, but also payment within a reasonable time from its taking; without prompt payment, compensation cannot be considered "just" inasmuch as the property owner is made to suffer the consequences of being immediately deprived of his land while being made to wait before actually receiving the amount necessary to cope with loss; thus, in *Apo Fruits Corporation v. Land Bank of the Philippines*, we held that the payment of interest on unpaid just compensation is a basic requirement of fairness – The owner's loss, of course, is not only his property but also its income-generating potential; petitioner is liable to pay interest on the just compensation still due the respondent property owners in this case; the just compensation due shall be based on the per-hectare value of the 17-hectare coconut land – herein determined to be ₱65,063.88 per hectare – compounded with the original valuation of the remaining cornland earlier determined without contest by the agrarian court, and finally deducting the amount of ₱516,484.84 originally tendered in 1999; petitioner's liability to pay interest shall be at 12% per annum, reckoned from the

the said land shall be considered as additional factors to determine its valuation. (*Id*.)

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody — As long as the chain of custody of the seized drug was clearly established not to have been broken and that the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand. (People *vs*. Macaspac *y* Llanete, G.R. No. 246165, Nov. 28, 2019) p. 164

— As the crime in this case was allegedly committed on July 31, 2012, the original text of Section 21(1), Article II of R.A. No. 9165 is applicable; supplementing this provision is Section 21(a) of the Implementing Rules and Regulations of R.A. No. 9165; the Court has consistently ruled and stressed that strict adherence to the above-stated procedure is mandatory as this was set forth as a reasonable safeguard to the possibility of contamination, alteration, or substitution, - whether intentional or unintentional - and even planting of evidence, in drug-related cases considering the unique characteristics of narcotic substances; strict compliance with said mandatory requirements is not always possible under varied field conditions; non-compliance with said requirements under justifiable grounds will not render void and invalid the seizure and custody over the seized items as long as the integrity and evidentiary value of said items are properly preserved by the apprehending officers; for purposes of applying the saving clause, the prosecution must recognize the police officers' lapse/s, present a justification for such lapse/s and an explanation that reasonable efforts were exerted to comply with the procedure to no avail. (People *vs*. Globa *y* Cotura, G.R. No. 241251, Dec. 10, 2019) p. 870

— Non-compliance with the mandatory procedure under Section 21, Article II of R.A. No. 9165 and its IRR does not *per se* render the confiscated drugs inadmissble, as

—— The actions are replete with fatal violations of chain of custody requirements; *People v. Sanchez* emphasized that marking is a separate and distinct step from inventory and photographing; marking must be done "immediately upon confiscation"; *People v. Coreche* explained that failure to immediately mark seized drugs engenders an initial, fatal gap in chain of custody; even granting that there was a valid need to transfer, their failure to mark before departure, along with unclear precautionary measures taken while en route to the barangay hall, means that there was an intervening period during which the sachets remained unaccounted; other than the stand alone assurances of police officers who laid them out for inventory, there is no guarantee that the items perused at the barangay hall were actually obtained from accused-appellants. (People *vs*. Asaytuno, Jr., G.R. No. 245972, Dec. 2, 2019) p. 184

—— The chain of custody rule is but a variation of the principle that real evidence must be authenticated prior to its admission into evidence; the prosecution must offer sufficient evidence from which the trier of fact could reasonably believe that an item still is what the government claims it to be; in the prosecution of illegal drugs, the well-established federal evidentiary rule in the United States is that when the evidence is not readily identifiable and is susceptible to alteration by tampering or contamination, courts require a more stringent foundation entailing a chain of custody of the item with sufficient completeness to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with; what is involved are disposable and fungible objects such as aluminum foil, lighters, and aluminum tooters which are highly susceptible to substitution and alteration; given the nature of these items, stricter compliance with the rule on the chain of custody is expected. (People *vs*. De Lumen *y* Ladlagaran, G.R. No. 240749, Dec. 11, 2019) p. 959

—— The legality of entrapment operations involving illegal drugs begins and ends with Section 21, Article II of

they did; thus, no conviction can ensue. (People *vs*. Asaytuno, Jr., G.R. No. 245972, Dec. 2, 2019) p. 184

— In drug related cases, the State bears the burden not only of proving the elements of the offense but also the *corpus delicti* itself; it is thus imperative for the prosecution to establish that the identity and integrity of the dangerous drugs were duly preserved in order to sustain a verdict of conviction; it must prove that the dangerous drugs seized from appellant are indeed the substance offered in court with the same unshakeable accuracy as that required to sustain a finding of guilt; petitioner was charged with illegal sale and possession of dangerous drug allegedly committed on July 25, 2009; the governing law is R.A. No. 9165. **(**People *vs*. Valdez, G.R. No. 233321, Dec. 5, 2019) p. 613

— The difference between the total weight of the seized items as reported in the Information and listed in the chemistry report does not affect their identity and integrity; as noted in *People v. Aneslag*, there are a host of possible reasons for the discrepancy, such as the difference in the accuracy of weighing scales used by the police officers and the forensic chemist; here, the forensic chemist conducted an examination only of the seized drugs, sans any wrapper, cover, or cardboard labels; the prosecution witnesses' testimonies are unwavering as they were able to recount who took custody of the dangerous drugs starting from seizure up to the time the same were presented as evidence in court. (*Id*.)

— The identity of the *corpus delicti* is not compromised by the interchanging use of "fruiting tops" and "dried leaves" to describe the marijuana seized from appellant; in *People v. Cina*, the Court ruled that the disparity between these terms was inconsequential, especially since the identity and integrity of the seized items were proven and preserved. (*Id*.)

Illegal sale and illegal possession of dangerous drugs — To convict accused-appellants, the prosecution must establish beyond reasonable doubt the following elements of the

acquittal is warranted. (People *vs*. Globa *y* Cotura, G.R. No. 241251, Dec. 10, 2019) p. 870

Links to ensure the integrity of seized items — The elements that must be established to sustain convictions for illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Section 12 are: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting or introducing any dangerous drug into the body; and (2) such possession is not authorized by law; while R.A. No. 9165 has been amended by R.A. No. 10640 which modified Section 21(1), among others, to require the presence of an elected public official and representative of the Department of Justice or the media during the physical inventory and photographing of the seized drugs, the original text of the law applies in this case since the incident occurred prior to the date of effectivity of R.A. No. 10640; the prosecution must account for the following links: *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. (People *vs*. De Lumen *y* Ladlagaran, G.R. No. 240749, Dec. 11, 2019) p. 959

Mandatory witnesses — Only two of the three mandatory witnesses under the original text of Section 21 were present; the law requires the presence of any elected public official and a representative from the media and the DOJ; the presence of these three witnesses was intended as a guarantee against planting of evidence and frame up, as they were "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity"; as held previously, a sheer statement that "their Chief tried to call a representative

arrest was a remote area; (2) their safety during the inventory and photographing of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected officials themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of the required witnesses under Section 21(1) of R.A. No. 9165 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." (*Id*.)

Third-party witnesses –– Considering that the incidents transpired in 2015, after R.A. No. 10640's amendments took effect in 2014, the presence of two (2) third-party witnesses was imperative: first, that of an elective official; and second, that of a media *or* National Prosecution Service representative; *People v. Tomawis* explained that the third-party witnesses required by Section 21 must be present even at the time of apprehension; the total absence of mandatory witnesses during apprehension, and those same witnesses' inadequacy during inventory and photographing, reveal a sorely lacking attempt at complying with statutory requirements. (People *vs*. Asaytuno, Jr., G.R. No. 245972, Dec. 2, 2019) p. 184

–– Non-compliance with Section 21(1)'s requirements may be excused, provided that there are: (1) justifiable reasons; and (2) proof that the integrity and evidentiary value of the evidence were maintained; the prosecution failed to satisfy these requirements; the mere assembling of people does not equate to danger that compromises the activities of law enforcers; on cross-examination, PO2 Limbauan admitted to not even being aware of the rule that the conduct of inventory and photographing must either be at the operatives' office or the nearest police station;

to exercise its option to convert. (East West Banking Corp. *vs.* Victorias Milling Co., Inc., G.R. No. 225181, Dec. 5, 2019) p. 516

Freedom of contract principle — The CA committed no reversible error in sustaining the SEC's denial of the Motion to Compel VMC to allow East West Bank to convert the CN into VMC's common shares; this is a classic case of interpretation of contracts; both parties took a course of action, both invoking certain provisions of their agreement under the ARP, DRA, and the CN; what is incumbent upon this Court is to determine which party exercised its right or option in accordance with the terms of their agreement under the ARP, DRA, and CN to give effect to the basic rule that a contract is the law between the parties, and courts have no choice but to enforce such contract so long as it is not contrary to law, morals, good customs, or public policy; VMC was mandated by their agreement to pre-pay its restructured loans when its net cash flow exceeds the projected cash flow in a particular crop year; upon full payment of said loans, VMC was further obligated to use its excess cash flow to pay or redeem the CNs it issued to its creditors.; this is precisely what VMC undertook to accomplish when it sent written notices to its creditors to pay/redeem the CNs after it was able to settle all its restructured loans. (East West Banking Corp. *vs.* Victorias Milling Co., Inc., G.R. No. 225181, Dec. 5, 2019) p. 516

Interpretation of — As correctly ruled by the CA, the Panel erred in ruling that while it is mandatory for VMC to pay/redeem the CNs under Section 13.2 of the DRA and paragraph 5 of the ARP, East West Bank has no parallel mandatory obligation to accept the same under their agreement; a contract must be interpreted from the language of the contract itself according to its plain meaning; the court's or tribunal's purpose in examining a contract is to interpret the intent of the contracting parties, as objectively manifested by them; it is not the province of the court or tribunal to alter a contract by construction or to make a new contract for the parties.

share of the co-owner seller is concerned has to be reconciled with the ruling of the Court *en banc* through Justice J.B.L. Reyes in the case of *Estoque v. Pajimula* (*Estoque*) which has not been overturned; *Estoque* characterizes the contract entered into by the disposing co-owner as "ineffective, for lack of power in the vendor to sell the specific portion described in the deed" and makes room for a subsequent ratification of the contract by the other co-owners or validation in case the disposing co-owner subsequently acquires the undivided or *pro-indiviso* interests of the other co-owners; the subsequent ratification or acquisition will validate and make the contract fully effective as of the date the contract was entered into pursuant to Article 1396 of the Civil Code, which provides that "ratification cleanses the contract from all its defects from the moment it was constituted" and Article 1434 of the Civil Code, which provides: "when a person who is not the owner of a thing sells or alienates and delivers it, and later the seller or grantor acquires title thereto, such title passes by operation of law to the buyer or grantee"; while Article 493 of the Civil Code may not squarely cover the situations wherein a co-owner, without the consent of the other co-owners, alienate, assign or mortgage: (1) the entire co-owned property; (2) a specific portion of the co-owned property; (3) an undivided portion less than the part pertaining to the disposing co-owner; and (4) an undivided portion more than the part pertaining to the disposing co-owner, the principle of estoppel bars the disposing co-owner from disavowing the sale to the full extent of his undivided or *pro-indiviso* share or part in the co-ownership, subject to the outcome of the partition, which, using the terminology of Article 493, limits the effect of the alienation or mortgage to the portion that may be allotted to him in the division upon termination of the co-ownership; under Article 1431 of the Civil Code, "through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon"; the CA correctly limited the validity of the DMRP only

—— The required quantum of proof to sustain a finding of guilt in administrative disciplinary proceedings is substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. (*Id*.)

COURTS

Concurrent jurisdiction in the Regional Trial Courts, the Court of Appeals, and the Supreme Court —— The Court of Appeals here erred when it dismissed petitioner's special civil action for *certiorari* on ground that since the case involves a pure question of law, the same falls within this Court's exclusive jurisdiction; Section 9 of BP 129 vests concurrent jurisdiction in the Regional Trial Courts, the Court of Appeals, and the Supreme Court over special civil actions and auxiliary writs and processes; the law does not distinguish whether the issues involved are pure factual or legal issues or mixed issues of fact and law for the purpose of determining which of the courts should take cognizance of the case; the jurisdiction of the Court of Appeals to issue extraordinary writs, such as a petition for *certiorari vis-à-vis* the hierarchy of courts, was eloquently enunciated in *Gios – Samar, Inc., etc, v. Department of Transportation and Communications, et al., viz*: In 1981, this Court's original jurisdiction over extraordinary writs became concurrent with the CA, pursuant to *Batas Pambansa Bilang* 129 (BP 129) or the Judiciary Reorganization Act of 1980; BP 129 repealed RA No. 296 and granted the CA with "original jurisdiction to issue writs of *mandamus*, prohibition, *certiorari, habeas corpus*, and *quo warranto* and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction"; *Saint Mary Crusade to Alleviate Poverty of Brethren Foundation, Inc. vs. Judge Riel* ordained: Fourthly, the filing of the instant special civil action directly in this Court is in disregard of the doctrine of hierarchy of courts; although the Court has concurrent jurisdiction with the Court of Appeals in issuing the writ of *certiorari*, direct resort is allowed only when there are special, extraordinary or compelling reasons

DUE PROCESS

License — Brancomm's right to due process was never violated by the NTC as the former had not established or demonstrated any vested right worthy of legal protection; a license does not vest absolute rights to the holder; it is not a contract, property or a property right protected by the due process clause of the Constitution; there certainly is no such thing as a vested right to expectation of future profits which can be gained from possession of a franchise. (Nat'l. Telecommunications Commission *vs*. Brancomm Cable and Television Network Co., G.R. No. 204487, Dec. 5, 2019) p. 407

Procedural due process — An important concept to remember in procedural due process is that the Due Process Clause is set in motion only when there is actual or a risk of an impending *deprivation* of life, liberty or property; "life," "liberty," and "property" are broad terms and are purposely left to gather meaning from experience; in the case of "property" to which this case involves, it has been commonly understood to include *interests* therein which pertain to some form of benefit enjoyed by owners; to have a "property interest" in a benefit, a person or entity must clearly have a *legitimate claim of entitlement* to it which is more than an abstract need, desire or unilateral expectation. (Nat'l. Telecommunications Commission *vs*. Brancomm Cable and Television Network Co., G.R. No. 204487, Dec. 5, 2019) p. 407

— As applied to administrative proceedings to which this case pertains, procedural due process has been recognized to include the following: (a) the right to actual or constructive notice of the institution of proceedings which may affect a respondent's legal rights; (b) a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights; (c) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as impartiality; and (d) a finding by

where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season; an employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered at least one year service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists. (Pacific Metals Co., Ltd. *vs.* Tamayo, G.R. No. 226920, Dec. 5, 2019) p. 541

Project employee distinguished from regular employee — Tamayo is a licensed and registered geologist; PAMCO is engaged in the business of nickel ore importation; since the mineral comes from natural resources, PAMCO must rely on the expertise of a geologist with knowledge of Philippine soil and its rich sources of minerals; the tasks ordinarily performed by a geologist, therefore, are necessary to the business which PAMCO was engaged in; it is undeniable that Tamayo is a regular employee of PAMCO, for he performs work that is usually necessary and desirable to PAMCO's business; the mere fact that respondents worked on projects that were time-bound did not automatically characterize them as project employees; the nature of their work was determinative, as the Court considers its ruling in *DM Consunji, Inc., et al. v. Jamin* that "once a project or work pool employee has been: (1) continuously, as opposed to intermittently, rehired by the same employer for the same tasks or nature of tasks; and (2) these tasks are vital, necessary and indispensable to the usual business or trade of the employer, then the employee must be deemed a regular employee"; records bear that Tamayo rendered service much longer than two (2) months; he was made to stay on for a year for the work he rendered was in fact necessary and indispensable to PAMCO's usual trade or business.

— Jurisprudence holds that the management's decision to transfer an employee shall not be assailed as a form of constructive dismissal in the absence of proof that the re-assignment involves a demotion in rank, diminution in pay, or was an act of discrimination or disdain; here, the intended transfer did not involve a demotion in rank or diminution in pay, salaries and benefits. (*Id*.)

— The discretion to impose work assignments, or corollarily, transfer the employees shall be based on the employer's assessment of the "qualifications, aptitudes and competence of its employees"; it is imperative to strike a balance between the employees' tenurial security and the employer's management prerogative; guidelines laid down in *Rural Bank of Cantilan, Inc. v. Julve,* and *Peckson v. Robinsons Supermarket Corporation, et al.*: (a) a transfer is a movement from one position to another of equivalent rank, level or salary without break in the service or a lateral movement from one position to another of equivalent rank or salary; (b) the employer has the inherent right to transfer or reassign an employee for legitimate business purposes; (c) a transfer becomes unlawful where it is motivated by discrimination or bad faith or is effected as a form of punishment or is a demotion without sufficient cause; (d) the employer must be able to show that the transfer is not unreasonable, inconvenient, or prejudicial to the employee. (*Id*.)

EMPLOYMENT

Nature of — Tamayo's first engagement was covered by a duly executed Service Contract, specifying the project for which he was hired and its two-month duration, but this is not the contested engagement in this case; the controversy hinges on Tamayo's subsequent employment or his re-hiring and assignment as exploration manager for the ERAMEN/PAMCO Exploration Project; the lack of an employment contract would not hinder the determination of the status of Tamayo's employment; for while the appropriate evidence showing that a person is a project employee pertains to the employment contract

is wanting in this case; "mere absence from work, even after a notice to return, is insufficient to prove abandonment"; in his case, there was not even any notice to return to work. (Phil. Nat'l. Bank *vs*. Bulatao, G.R. No. 200972, Dec. 11, 2019) p. 936

— The totality of Bulatao's acts, coupled with PNB's inaction, led to the conclusion that he did not intend to summarily cut his ties with PNB; filing an illegal dismissal case is inconsistent with abandonment, as in fact, in his complaint with the RTC, he prayed for reinstatement; "an employee who loses no time in protesting his layoff cannot by any reasoning be said to have abandoned his work, for it is already a well-settled doctrine that the filing by an employee of a complaint for illegal dismissal with a prayer for reinstatement is proof enough of his desire to return to work, thus negating the employer's charge of abandonment"; PNB failed to show that he had a clear and deliberate intent to sever his employment without any intention of returning. (*Id*.)

Constructive dismissal — In case of constructive dismissal, the employee is entitled to full back wages, inclusive of allowances, and other benefits or their monetary equivalent, as well as separation pay in lieu of reinstatement if the same is no longer feasible; interest at the rate of twelve percent (12%) *per annum* must be imposed from the time his salary and other benefits were withheld until June 30, 2013, and at the rate of six percent (6%) *per annum* from July 1, 2013 until the date of finality of this judgment; all these monetary awards shall earn interest at six percent (6%) *per annum* from the date of finality of this judgment until full payment. (Telus Int'l. Phils., Inc. *vs*. De Guzman, G.R. No. 202676, Dec. 4, 2019) p. 270

— The series of actions done by Telus manifests that De Guzman was terminated in disguise and such actions amount to constructive dismissal; Telus fostered a working environment that was hostile, discriminatory, unreasonable, and inequitable, which naturally compelled

due process; under the internal rules of DMFPPI, the administrative committee will first come up with a recommendatory report on the case of Betonio; that if the top management disagrees with the committee's recommendation, they will reconvene to discuss the decision to be adopted; the administrative committee opined that his lapses were not enough for his dismissal; however, instead of reconvening with the administrative committee to discuss the final decision to be adopted, DMFPPI unilaterally proceeded to terminate Betonio's employment; the law and jurisprudence allow the award of nominal damages in favor of an employee in a case where a valid cause for dismissal exists but the employer fails to observe due process in dismissing the employee. (Del Monte Fresh Produce (Phil.), Inc. *vs.* Betonio, G.R. No. 223485, Dec. 4, 2019) p. 298

Redundancy — Petitioners' employment was validly terminated on ground of redundancy, one of the authorized causes for termination of employment under Article 298 of the Labor Code, as amended; redundancy exists when an employee's services are in excess of what is reasonably demanded by the actual requirements of the enterprise; while a declaration of redundancy is ultimately a management decision, management must not violate the law nor declare redundancy without sufficient basis; a valid redundancy program requires the following: (1) written notice served on both the employees and the Department of Labor and Employment (DOLE) at least one [1] month prior to the intended date of termination of employment; (2) payment of separation pay equivalent to at least one [1] month pay for every year of service; (3) good faith in abolishing the redundant positions; and (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished, taking into consideration such factors as (a) preferred status; (b) efficiency; and (c) seniority, among others; application. (Aparicio *vs.* Manila Broadcasting Co., G.R. No. 220647, Dec. 10, 2019) p. 760

except if there is grave abuse of discretion, or where it is clearly shown that they were arrived at arbitrarily or in disregard of the evidence on record; no reason to depart from the findings of the DPWH, as affirmed by the CSC and the CA, with respect to Espina and Tadeo. (Civil Service Commission *vs*. Beray, G.R. No. 191946, Dec. 10, 2019) p. 695

Judicial admissions — Section 4, Rule 129 of the Rules of Court on judicial admission states that an admission, verbal or written, made by the party in the course of the proceedings in the same case, does not require proof; the spouses Vallena admitted in their pleadings that Victor was the original owner and alleged seller of the contested 40-square meter lot; their admission means that they recognize that Victor had prior possession of the lot before he allegedly sold it to them; a seller must have exercised acts of ownership, such as physical possession and acts of administration, before entering into a transaction over his property; with spouses Vallena's judicial admission, the Montevillas need not prove prior physical possession, because upon Victor's death, his rights, including the right of possession, over the contested lot were transmitted to his heirs by operation of law. (Heirs of the Late Sps. Victor L. Montevilla and Restituta C. Montevilla *vs*. Sps. Vallena, G.R. No. 234419, Dec. 5, 2019) p. 648

Preponderance of evidence — In civil cases, the quantum of evidence required is preponderance of evidence; discussed in *Aba v. Attys. De Guzman, Jr.:* Preponderance of evidence means that the evidence adduced by one side is, as a whole, superior to or has greater weight than that of the other; it means evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto; under Section 1 of Rule 133, in determining whether or not there is preponderance of evidence, the court may consider the following: (a) all the facts and circumstances of the case; (b) the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing

Substantial evidence — In labor cases, as in other administrative proceedings, only substantial evidence or such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion is required; here, the Court of Appeals relied on substantial evidence in finding that the MBC's memorandum of appeal was timely filed and its redundancy program including the consequent retrenchment of petitioners was valid; the Court will not disturb these factual findings in the absence of any special or compelling reasons. (Aparicio *vs.* Manila Broadcasting Co., G.R. No. 220647, Dec. 10, 2019) p. 760

EXPROPRIATION

Consequential damages — In *Republic v. Court of Appeals,* the Court explained that consequential damages may be awarded to the owner if, as a result of the expropriation, the remaining portion not so expropriated suffers from an impairment or decrease in value; the award of consequential damages representing the value of CGT and other transfer taxes in favor of Spouses Bunsay was improper; the expropriation covered the entire Disputed Property, the entire 100-square meter lot covered by Spouses Bunsay's TCT No. V- 16548; no basis for an award of consequential damages where there is no "remaining portion" to speak of, as in this case; even if there was a "property not taken" or "remaining portion" to speak of, the award of consequential damages constituting the value of CGT and transfer taxes would still be improper, in the absence of evidence showing that said remaining portion had been impaired or had suffered a decrease in value as a result of the expropriation. (Rep. of the Phils. *vs.* Sps. Bunsay, G.R. No. 205473, Dec. 10, 2019) p. 717

Just compensation — Just compensation is defined as the fair and full equivalent of the loss incurred by the affected owner; just compensation in expropriation cases is defined "as the full and fair equivalent of the property taken from its owner by the expropriator; the true measure is not the taker's gain but the owner's loss; the word 'just'

the truth as therein solemnly proclaimed; this crime, by its structure, could not be committed by means of *culpa;* this felony falls under the category of *mala in se* offenses that requires the attendance of criminal intent. (Office of the Ombudsman *vs.* Santidad, G.R. No. 207154, Dec. 5, 2019) p. 440

Elements — Article 171 of the Revised Penal Code defines and penalizes falsification of public documents; the perpetrator must perform the prohibited act with deliberate intent in order to incur criminal liability thereunder; it has the following elements: 1) the offender is a public officer, employee, or notary public; 2) he takes advantage of his official position; and 3) he falsifies a document by committing any of the acts enumerated in Article 171 of the Revised Penal Code; to warrant conviction for Falsification of Public Documents by making untruthful statements in a narration of facts under Article 171, paragraph 4 of the Revised Penal Code, the prosecution must establish beyond reasonable doubt the following elements: 1) the offender makes in a public document untruthful statements in a narration of facts; 2) he has a legal obligation to disclose the truth of the facts narrated by him; and 3) the facts narrated by him are absolutely false. (Office of the Ombudsman *vs.* Santidad, G.R. No. 207154, Dec. 5, 2019) p. 440

Nature — Falsification of Public Documents is an intentional felony committed by means of "*dolo*" or "malice" and could not result from imprudence, negligence, lack of foresight or lack of skill; felonies are committed not only by means of deceit *(dolo)*, but likewise by means of fault *(culpa)*; there is deceit when the wrongful act is performed with deliberate intent; and there is fault when the wrongful act results from imprudence, negligence, lack of foresight or lack of skill; "in intentional crimes, the act itself is punished; in negligence or imprudence [quasi offenses], what is principally penalized is the mental attitude or condition behind the act, the dangerous recklessness, lack of care or foresight, the *imprudencia*

3135, as amended; hence, the ownership of the subject properties was vested upon the petitioner on August 22, 2012 as its registered owners failed to redeem the same; such period *precedes* the filing of the petition for corporate rehabilitation on October 18, 2012; petitioner issued a Certification stating that respondent fully paid the same by virtue of the foreclosure sale; as it is settled that the acquisition of absolute ownership by respondent over the subject properties on August 22, 2012 is *antecedent* to the commencement date or the filing of the petition for corporate rehabilitation on October 18, 2012, the sale of the subject properties is valid. (Land Bank of the Phils. *vs.* Polillo Paradise Island Corp., G.R. No. 211537, Dec. 10, 2019) p. 749

—— Corporate rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency, the purpose being to enable the company to gain a new lease on life and allow its creditors to be paid their claims out of its earnings; to achieve this end, the rehabilitation court may issue a Commencement Order, which marks the start of the rehabilitation proceedings, the effects of which is stated under Section 17; The FRIA provides that the effects of the Commencement Order shall be reckoned from the date of the filing of the petition for corporate rehabilitation, be it voluntary or involuntary; the determination of the *date of the filing of the petition for rehabilitation* is relevant in ascertaining the extent of the legal effects of a Commencement Order; thus, it becomes imperative to identify the pertinent crucial dates surrounding the petition. (*Id.*)

Rehabilitation —— R.A. No. 10142 or the FRIA defines rehabilitation as the restoration of the debtor to a condition of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan, more if the debtor continues as a going concern than if it is immediately

however, at the time of the levy on April 26, 1995, Maurin was no longer the owner of, nor had any right, title, or interest in, the 270-sq m portion of the property; at the time of the levy, Virtudazo already had knowledge that Labuguen was a "legal occupant" of the disputed portion; a notice of *lis pendens* was in fact annotated on Maurin's title prior to the levy; while it is true that at the time of the levy, the 270-sq m portion was not registered in the name of Labuguen, and that the entire property appears to still be owned by, and registered in the name of Maurin, Virtudazo nevertheless had actual notice of the existence of Labuguen's claim over said 270-sq. m. portion and of his actual possession thereof; Virtudazo is necessarily bound by the outcome of the complaint for annulment of deeds, the pendency of which being duly annotated on the title; thus, the necessity for registration of the sale in favor of Labuguen in order to bind Virtudazo as a purchaser at the execution sale does not exist. (Engr. Virtudazo *vs.* Labuguen, G.R. No. 229693, Dec. 10, 2019) p. 787

JURISDICTION

Concept — In law, nothing is as elementary as the concept of jurisdiction, for the same is the foundation upon which the courts exercise their power of adjudication, and without which, no rights or obligation could emanate from any decision or resolution; jurisdiction is defined as the power and authority of a court to hear, try and decide a case; the jurisdiction of the Sandiganbayan is provided in P.D. No. 1606, as amended by R.A. No. 10660, which, insofar as relevant in this case. (Maligalig *vs.* Sandiganbayan [6th Div.], G.R. No. 236293, Dec. 10, 2019) p. 847

Jurisdiction over a criminal case — The two (2) Informations before the Sandiganbayan charged the petitioner with Violation of Section 3(e) of R.A. No. 3019, and Malversation of Public Funds through Falsification of Public Document; the Information for violation of the anti-graft law asserts that petitioner, "*in the discharge*

compliance to the need to revert the employee to his/her former post without diminution in rank or in pay would defeat the very essence of the constitutional guarantee of security of tenure; employees who had undergone preventive suspension and were found innocent of the offense charged would be at the mercy of the employer to be brought back to his/her former working post and status when in the first place, he/she had a vested right to the position from which he/she was ousted. (Telus Int'l. Phils., Inc. *vs*. De Guzman, G.R. No. 202676, Dec. 4, 2019) p. 270

Security of tenure — Our labor laws and the Constitution afford security of tenure to employees so that one may have a reasonable expectation that they are secured in their work and that management prerogative, although unilaterally wielded, will not harm them; employees are guaranteed that they can only be terminated from service for a just and valid cause and when supported by substantial evidence after due process. (Telus Int'l. Phils., Inc. *vs*. De Guzman, G.R. No. 202676, Dec. 4, 2019) p. 270

MANDAMUS

Issuance of — *Mandamus* has been defined as a writ commanding a tribunal, corporation, board or person to do the act required to be done when it or he unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station, or unlawfully excludes another from the use and enjoyment of a right or office or which such other is entitled, there being no other plain, speedy, and adequate remedy in the ordinary course of law; under Section 3, Rule 65 of the Rules of Court, a person aggrieved by the unlawful neglect or refusal of tribunal, corporation, board, officer or person to perform their legal duty may ask the court to compel the required performance; there are two situations when a writ of *mandamus* may issue: (1) when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting

that is effective in the country where it was rendered, is no longer married to the Filipino spouse; no real and substantial difference between a Filipino who initiated a foreign divorce proceedings and a Filipino who obtained a divorce decree upon the instance of his or her alien spouse. (In Re: Petition for Judicial Recognition of Divorce Between Minuro Takahashi and Juliet Rendora Moraña *vs.* Rep. of the Phils., G.R. No. 227605, Dec. 5, 2019) p. 578

— While Philippine law does not allow absolute divorce, Article 26 of the Family Code allows a Filipino married to a foreign national to contract a subsequent marriage if a divorce decree is validly obtained by the alien spouse abroad; under the second paragraph of Article 26, the law confers jurisdiction on Philippine courts to extend the effect of a foreign divorce decree to a Filipino spouse without undergoing trial to determine the validity of the dissolution of the marriage; rationale; the aim was to solve the problem of many Filipino women who, under the New Civil Code, are still considered married to their alien husbands even after the latter have already validly divorced them under their (the husbands') national laws and perhaps have already married again. (*Id*.)

Procedural rules — The Court has, time and again, held that the court's primary duty is to dispense justice; and procedural rules are designed to secure and not to override substantial justice; more so here because what is involved is a matter affecting the lives of petitioner and her children; the belated issuance of the Divorce Certificate was not due to petitioner's fault; and the relaxation of the rules here will not prejudice the State; marriage is an inviolable social institution and must be protected by the State; but in cases like these, there is no more "*institution*" to protect as the supposed institution was already legally broken; *marriage, being a mutual and shared commitment between two parties, cannot possibly be productive of any good to the society where one is considered released from the marital bond while the other remains bound to it.* (In Re: Petition for Judicial Recognition of Divorce

Committee; considering that the fact of divorce was duly proved in this case, the higher interest of substantial justice compels that petitioner be afforded the chance to properly prove the Japanese law on divorce, with the end view that petitioner may be eventually freed from a marriage in which she is the only remaining party; in *Manalo*, the Court, too, did not dismiss the case, but simply remanded it to the trial court for reception of evidence pertaining to the existence of the Japanese law on divorce. (*Id*.)

MORTGAGES

Nature of — The fact that the property was mortgaged to DBP at the time the sale was perfected is of no moment; a mortgage does not pass title or estate to the mortgagee as it is nothing more than a lien, encumbrance, or security for a debt; in a contract of mortgage, the mortgagor remains to be the owner of the property although the property is subjected to a lien; as such, the mortgagor retains the right to dispose of the property as an attribute of ownership; thus, Maurin had the right to sell the mortgaged property, or a portion thereof, which he did through the EJS with Sale; the effect of the sale of the 270-sq. m. portion of the property while the mortgage in favor of DBP subsists is not to suspend the efficacy of such sale, but that the property right which spouses Labuguen have acquired is made subject to DBP's mortgage right; the sale or transfer of the mortgaged property cannot affect or release the mortgage; thus, the purchaser or transferee is necessarily bound to acknowledge and respect the encumbrance. (Engr. Virtudazo *vs.* Labuguen, G.R. No. 229693, Dec. 10, 2019) p. 787

MUNICIPAL MAYORS

Functions — The Court agrees that ordering the release of the salaries and emoluments of a member of the Sangguniang Bayan is not among the duties imposed upon the Municipal Mayor, pursuant to Section 344 of the Local Government Code (LGC); the intent of the

accordance with the standards laid down by the law itself in enforcing and administering the same law; it involves: (a) taking and evaluating evidence; (b) determining facts based upon the evidence presented; and (c) rendering an order or decision supported by the facts proved; in the case of the NTC, the foregoing discussion inevitably leads to the legal conclusion that *application proceedings* pertain to its *purely administrative function* while *complaint proceedings* pertain to its *quasi-judicial function.* (Nat'l. Telecommunications Commission *vs.* Brancomm Cable and Television Network Co., G.R. No. 204487, Dec. 5, 2019) p. 407

–– The NTC is mandated, under Executive Order (E.O.) No. 546, among others, to establish and prescribe rules, regulations, standards and specifications in all cases related to the issued Certificate of Public Convenience, promulgate rules and regulations as public safety and interest may require, and supervise and inspect the operation of radio stations and telecommunications facilities; under Section 16 of E.O. No. 546, the NTC exercises quasi-judicial powers; the scope of such function to implement the necessary rules and regulations was later on expanded in E.O. No. 205 to include the operation of CATV services; R.A. No. 7925 or the Public Telecommunications Policy Act of the Philippines was enacted which provided for the power and functions of the NTC and which governed the issuance or granting of franchises to qualified entities. (*Id*.)

–– Under Section 16 of the PTPA, the NTC has the power to impose conditions on the issuance of a franchise such as the Certificate of Public Convenience and Necessity (CPCN) and a certificate of authority, so that qualified entities may lawfully engage in the operation of public telecommunications services such as providing CATV; power to promulgate rules as well as its power to adopt "an administrative process which would facilitate the entry of qualified service providers". (*Id*.)

have been regularly executed. (Uy *vs*. Heirs of Julita Uy-Renales, G.R. No. 227460, Dec. 5, 2019) p. 559

Notarization of a document — Notarization of a document is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public; notarization converts a private document into a public document thus making that document admissible in evidence without further proof of its authenticity; a notarial document is by law entitled to full faith and credit upon its face. (Prospero *vs*. Atty. Delos Santos, A.C. No. 11583 [Formerly CBD Case No. 11-2878], Dec. 3, 2019) p. 215

2004 NOTARIAL PRACTICE LAW

Notarization — A notary public is authorized to notarize a document provided that the person or persons who signed it are the same ones who executed and personally appeared before him or her to attest to the contents and the truth of the matters therein stated; purpose of ensuring that the notarized document is the free act of the party or parties to it; Section 3(c), Rule IV of the Rules disqualifies a notary public from notarizing documents where the principal thereof is a relative within the fourth civil degree of affinity or consanguinity of the notary public; respondent notarized the subject lease contract signed by his mother; by this fact alone, he violated the disqualification rule under the aforesaid provision of the Rules. (Caronongan *vs.* Atty. Ladera, A.C. No. 10252, Dec. 11, 2019) p. 910

— Notarization is *not* a meaningless, empty or a mere routine act; It is so imbued with public interest as it transforms a private document into a public one making the document admissible in evidence without need of proof of its authenticity; to preserve the integrity of any document subject of notarization, a notary public is expected to observe with due care the basic requirements in performing his or her duties. (*Id*.)

document would be undermined. (Sps. Soriano *vs*. Atty. Ortiz, Jr., A.C. No. 10540, Nov. 28, 2019) p. 12

— Time and again, the Court has stressed that a notary public should not notarize a document unless the person who signed the same is the very same person who executed and personally appeared before him to attest to the contents and the truth of what are stated therein; without the appearance of the person who actually executed the document in question, the notary public would be unable to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act or deed. (Prospero *vs*. Atty. Delos Santos, A.C. No. 11583 [Formerly CBD Case No. 11-2878], Dec. 3, 2019) p. 215

(Sps. Soriano *vs*. Atty. Ortiz, Jr., A.C. No. 10540, Nov. 28, 2019) p. 12

PARTIES TO CIVIL ACTIONS

Substitution procedure — Section 17, Rule 3 of the 1997 Revised Rules of Court has been substantially lifted from Section 18, Rule 3 of the 1964 Rules of Court; in *Heirs of Mayor Nemencio Galvez v. Court of Appeals* (*Heirs of Galvez*), decided during the effectivity of the 1964 Rules of Court, the Court ruled that non-compliance with the substitution procedure pursuant to Section 18, Rule 3 of the 1964 Rules of Court is a ground for the dismissal of a *mandamus* petition; in this case, Shaikh did not file any motion for the substitution of Vice-Mayor Teopengco and Bontuyan by the respective successors in office; in her Memorandum before the CA, Vice-Mayor Teopengco was still included as a respondent; Shaikh did not file any supplemental pleading which would show that Vice-Mayor Teopengco and Bontuyan's successors had continued their refusal to release her salaries and emoluments; Shaikh failed to comply with the procedure for substitution under Section 17, Rule 3 of the 1997 Revised Rules of Civil Procedure; the pronouncements in the *Heirs of Galvez* find application to the present case; thus, the CA acted in excess of its

waiting for the liquidation of the latter"; these characteristics of payment should mirror the demand made by the creditor in order for the debtor to incur in delay under Article 1169 of the Civil Code; the demand must comply with the integrity, identity and indivisibility characteristics as well; the characteristics of integrity and identity will be violated if the creditor demands more than what is due. (Atty. Bulatao *vs.* Estonactoc, G.R. No. 235020, Dec. 10, 2019) p. 824

PHILIPPINE DEPOSIT INSURANCE CORPORATION CHARTER (R.A. NO. 3591), AS AMENDED BY R.A. NO. 10846

Jurisdiction — Petitioner asserts that the amendatory provisions under R.A. No. 10846 should not be applied to her case considering that her claim was denied on July 16, 2015 or prior to the effectivity of R.A. No. 10846 on June 11, 2016; however, when petitioner initiated the action for certiorari before the trial court on August 19, 2016, R.A. No. 10846 was already effective; petitioner should have complied with the procedures laid down thereunder, among them, the grant of exclusive original jurisdiction to PDIC on matters involving bank deposits and insurance; and the remedy granted to the claimants in case of an adverse PDIC ruling; Section 5(g) of R.A. 3591, as amended by R.A. 10846, provides that the actions of PDIC on matters relating to insured deposits and deposit liabilities may only be assailed before the Court of Appeals via a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court; *Peter L. So v. Philippine Deposit Insurance Corp.*, cited; a petition for *certiorari*, questioning the PDIC's denial of a deposit insurance claim should be filed before the CA, not the RTC; this further finds support in Section 22 of the PDIC's Charter, as amended. (Servo *vs.* Phil. Deposit Insurance Corp., G.R. No. 234401, Dec. 5, 2019) p. 636

a seafarer's disability, *viz*.: 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him; 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total; 3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g. seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days; the employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification. (Magadia *vs.* Elburg Shipmanagement Phils., Inc., G.R. No. 246497, Dec. 5, 2019) p. 665

— The medical report merely stated that petitioner suffered a disability grading of 11 and that he had reached maximum medical care; this is hardly the "definite and conclusive assessment of the seafarer's disability or fitness to return to work" required by law from the company-designated physician because petitioner, in fact, returned to the company-designated physician and underwent further therapy which lasted for almost more than three (3) months; *Tamin v. Magsaysay Maritime Corporation*, cited; petitioner's disability is deemed permanent and total by operation of law in the absence of a final and definitive assessment from the company-designated physician. (*Id*.)

— Two (2) requisites must concur for a determination of a seafarer's medical condition: 1) an assessment must be issued within the 120/240 window, and 2) the assessmen must be final and definitive; thus, *Orient Hope* aptly held: While the assessment of a company-designated physician *vis-a-vis* the schedule of disabilities under the

benefits. (Magadia *vs.* Elburg Shipmanagement Phils., Inc., G.R. No. 246497, Dec. 5, 2019) p. 665

Permanent and total disability benefits — It is settled that the seafarer's entitlement to disability benefits is governed by law, the parties' contracts, and by medical findings; since Buico was employed in 2013, the procedure to be observed in claiming disability benefits is outlined in Section 20(A) of the 2010 POEA-SEC; the case of *Jebsens Maritime, Inc. v. Mirasol* succinctly summarized the rules governing seafarers' claims for total and permanent disability benefits as follows: 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him; 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total; 3. If the company-designated physician fails to give his assessment with a period of 120 days with a sufficient justification (e.g. seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days; the employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification; here, while the company-designated physician had issued both the Final Medical Report and Disability Grading on December 1, 2014 – beyond the initial 120-day period from repatriation which ended on November 6, 2014 – there was sufficient justification for such failure to give a timely medical assessment and to extend the period of diagnosis and treatment because Buico had required further medical treatment; the Final Medical Report and Disability Grading was thus timely issued by the company-designated physician within the extended 240-day period which ended on March 6, 2015.

is concerned, there must be conclusive proof that a first notice was duly sent by the postmaster to the addressee; not only is it required that notice of the registered mail be issued but that it should also be delivered to and received by the addressee; the presumption that official duty has been regularly performed is not applicable in this situation; it is incumbent upon a party who relies on constructive service to prove that the notice was sent to, and received by, the addressee; the best evidence to prove that notice was sent would be a certification from the postmaster, who should certify not only that the notice was issued or sent but also as to how, when and to whom the delivery and receipt was made; the mailman may also testify that the notice was actually delivered. (Aparicio *vs.* Manila Broadcasting Co., G.R. No. 220647, Dec. 10, 2019) p. 760

PRESUMPTIONS

Presumption of regular performance of official duties — For miniscule amounts of drugs seized, on the basis of testimonies of law enforcers who are potentially illicit themselves, and without the assuring presence and testimonies of third-party witnesses, the Regional Trial Court (RTC) and the Court of Appeals were quick to convict accused-appellants; the RTC even referenced the supposed presumption of regularity in the performance of official duties; this is a betrayal of the standard of proof beyond reasonable doubt; it failed to consider that it was the prosecution's duty to prove its own case on its own merits, and not merely on the basis of imputed weaknesses of the defense. (People *vs*. Asaytuno, Jr., G.R. No. 245972, Dec. 2, 2019) p. 184

—— It should be noted that unless there is clear and convincing evidence that the police officers were inspired by any improper motive or did not properly perform their duty, their testimonies on the operation deserve full faith and credit; thus, unless the presumption is rebutted, it becomes conclusive. (People *vs*. Macaspac *y* Llanete, G.R. No. 246165, Nov. 28, 2019) p. 164

PUBLIC OFFICERS AND EMPLOYEES

voucher must be examined in detail; where there are circumstances that should have alerted heads of offices to exercise more diligence in the performance of their duties, they cannot escape liability by claiming that they relied in good faith on the submissions of their subordinates, and in such cases, our ruling in *Arias* does not apply. (*Id*.)

Dishonesty and falsification of an official document — In a case with similar facts, *De Guzman v. Delos Santos*, the Court held that: ELIGIBILITY TO PUBLIC OFFICE must exist at the commencement and for the duration of the occupancy of such office; making a false statement in a Personal Data Sheet required under Civil Service Rules and Regulations for employment in the government amounts to dishonesty and falsification of an official document which warrant dismissal from the service upon commission of the first offense; following the ruling in *Boston Finance and Investment Corp. v. Gonzalez*, we apply the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS) on the imposition of penalty; Section 50, paragraph A, Rule 10 thereof classifies serious dishonesty as a grave offense and is punishable by dismissal from the service. (Fontilla *vs.* Alcantara, A.M. No. P-19-4024 [Formerly OCA I.P.I. No. 09-3282-P], Dec. 3, 2019) p. 226

Duties — Public officers, as recipients of public trust, are under obligation to perform the duties of their offices honestly, faithfully and to the best of their ability; as trustees for the public, they should demonstrate courtesy and civility in their official actuations with the public; every public officer is bound to use reasonable skill and diligence in the performance of his official duties, particularly where rights of individuals may be jeopardized by his neglect. (Son *vs*. Leyva, A.M. No. P-11-2968, Nov. 28, 2019) p. 23

Gross neglect of duty — The Court finds Santidad administratively liable for Gross Neglect of Duty or Gross Negligence, instead of Serious Dishonesty, warranting

Mitsubishi Delica vans for Cong. Abaya's project, he should have closely examined and validated the veracity of his subordinates' reports; a public officer's high position imposes upon him greater responsibility and obliges him to be more circumspect in his actions and in the discharge of his official duties. (Office of the Ombudsman *vs*. Santidad, G.R. No. 207154, Dec. 5, 2019) p. 440

— Santidad failed to observe a higher degree of diligence prior to affixing his signature on the IRPs; his certification authorized the full payment of the contract price for the twenty-one (21) units of Mitsubishi Delica vans despite the non-delivery of said vehicles; the discrepancies and irregularities were sufficient to alert Santidad, and should have prodded him to exercise a higher degree of circumspection and go beyond what his subordinates had prepared; *SPO1 Lihaylihay, et al. v. People*, cited. (*Id*.)

QUALIFIED RAPE

Penalty — The lower court correctly found ABC guilty beyond reasonable doubt for the crime of Qualified Rape, defined and penalized under Article 266-A, par. 1 and Article 266-B of the RPC; the Court sustains the penalty of *reclusion perpetua*. (People *vs*. ABC, G.R. No. 244835, Dec. 11, 2019) p. 996

Special qualifying circumstances of minority and relationship — The terms "stepfather" and "common-law spouse" are two distinct terms that may not be used interchangeably; in *People v. Hermocilla*, the Court explained that "a stepdaughter is a daughter of one's spouse by previous marriage, while a stepfather is the husband of one's mother by virtue of a marriage subsequent to that of which the person spoken is the offspring"; the allegation that the victim is the stepdaughter of the accused requires competent proof and should not be easily accepted as factually true; the bare contention that the accused was married to the victim's mother is not enough, in the same manner that the victim's reference to the accused as her stepfather will not suffice; in *People v. Abello*,

February 26, 2006 Order; in particular, it did not state the reason in applying the rules on ratio and proportion between the numbers found by the commissioners and the data contained in the PCA certification which has already been found to be unreliable for purposes of the instant case; the said certification could hardly be the basis – not even derivatively – of a just valuation because it pertains only to the average of the per-hectare number of coconut trees in the 22 municipalities within the locality, hence, is far from a reasonable estimate of the coconut population on the subject property; the said data must be taken proper judicial notice of, yet it does not appear that the parties have been heard thereon. (Land Bank of the Phils *vs.* Uy, G.R. No. 221313, Dec. 5, 2019) p. 498

— Land valuation is not an exact science, but an exercise fraught with inexact estimates requiring integrity, conscientiousness and prudence on the part of those responsible for it; what is important ultimately is that the land value approximates, as closely as possible, what is broadly considered to be just; given the shortcomings in the independent finding of the agrarian court on the specific issue of land valuation with respect to the coconut land, we take with approval the computation made by the CA based on raw data obtained by the commissioners during their inspection, and applying the guidelines under DAR A.O. No. 5-1998; inasmuch as there is no evidence or data on record on Comparative Sales pertaining to similar properties in the locality of the subject landholding, and whereas the Capitalized Net Income and Market Value are variables contained in the Commissioners' Report which appears to have been properly heard, the formula under Section 17.A.1 of DAR A.O. No. 5-1998 should be applied. (*Id*.)

— Settled is the rule that in eminent domain, the determination of just compensation is principally a judicial function of the RTC acting as a special agrarian court; however, the RTC must consider both the guidelines set forth in R.A. No. 6657 and the valuation formula under the applicable Administrative Order of the DAR; these

guidelines ensure that the landowner is given full and fair equivalent of the property expropriated, in an amount that is real, substantial, full and ample; *Land Bank of the Philippines v. Yatco Agricultural Enterprises, Land Bank of the Philippines v. Peralta,* and *Department of Agrarian Reform v. Spouses Sta. Romana,* cited; Yatco reiterated that the determination of just compensation is a judicial function and the RTC, acting as a special agrarian court, has the original and exclusive power to determine the same; *Peralta* confirmed the mandatory character of the said guidelines under Section 17 of R.A. No. 6657 and restated that the valuation factors under R.A. No. 6657 had been translated by the DAR into a basic formula as outlined in the same DAR A.O. No. 5-1998. (*Id*.)

RES JUDICATA

Bar by prior judgment — In *Gomeco Metal Corp. v. Court of Appeals, et al.,* we identified the circumstances that must obtain in order for the bar by former judgment rule to apply: 1. There is a judgment in a case that: a. disposed of such case on the merits, b.was issued by a court of competent jurisdiction, c. has attained final and executory status; 2. There is another case subsequently filed in court; 3. Between the previous case and the subsequent case, there is an identity of parties; and 4. The previous case and the subsequent case are based on the same claim, demand or cause of action. (Ang, Jr. *vs*. Sps. Bitanga, G.R. No. 223046, Nov. 28, 2019) p. 82

Conclusiveness of judgment — The circumstances that must concur in order for the conclusiveness of judgment rule to apply are the same as those needed for the bar by judgment rule to set in, except for the last circumstance; in the application of the conclusiveness of judgment rule, the previous case and the subsequent case must *not* be based on the same claim, demand or cause of action, but only pass upon the same matters or issues. (Ang, Jr. *vs*. Sps. Bitanga, G.R. No. 223046, Nov. 28, 2019) p. 82

— The "*conclusiveness of judgment rule*" considers the final judgment in a previous case not as an absolute bar to a subsequent case between the same parties, but merely as having a preclusive effect on the latter case insofar as the matters already settled in that final judgment are concerned; this variant of *res judicata* applies when there is an identity of parties, but not of claim, demand or cause of action, between the subsequent case and the previously decided case. (*Id*.)

— Under the rule of *conclusiveness of judgment*, a variant of *res judicata*, matters settled in that final order already assumed binding and conclusive effect on the petitioner, as well as on the other parties in the same case, and can no longer be disturbed or relitigated in *any* future lawsuit between them. (*Id*.)

Principle of — *Res judicata* is a legal principle that regards a final judgment on the merits of a case as conclusive between the parties to such case and their privies; the principle, in our jurisdiction, may be applied in two (2) ways; the first way, which is known as the "*bar by former judgment rule*," considers the final judgment in a previous case as an absolute bar to a subsequent case between the same parties; for this variant of *res judicata* to apply, however, it is essential that the subsequent case was prosecuted between the same parties and on the same claim, demand or cause of action as the previously decided case. (Ang, Jr. *vs*. Sps. Bitanga, G.R. No. 223046, Nov. 28, 2019) p. 82

REVISED RULES OF THE COURT OF TAX APPEALS (CTA)

Motion for reconsideration — Section 1, Rule 15 of A.M. No. 5-11-07-CTA, otherwise known as the Revised Rules of the CTA, states that an aggrieved party shall file a motion for reconsideration within 15 days from the date he/she received notice of the assailed decision, resolution or order of the court in question; petitioner's failure to duly file on time a Motion for Reconsideration of the CTA First Division's Resolution resulted in losing its right to assail the CTA First Division's judgment before

beyond reasonable doubt. (People *vs*. Globa *y* Cotura, G.R. No. 241251, Dec. 10, 2019) p. 870

ROBBERY WITH HOMICIDE

Elements — The crime of robbery with homicide has been thoroughly discussed in *People v. Ebet*, thus: In *People v. De Jesus*, this Court had the occasion to meticulously expound on the nature of the crime of Robbery with Homicide, thus: Article 294, paragraph 1 of the Revised Penal Code provides: Art. 294. *Robbery with violence against or intimidation of persons - Penalties.* - Any person guilty of robbery with the use of violence against or any person shall suffer: For the accused to be convicted of the said crime, the prosecution is burdened to prove the confluence of the following elements: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is *animo lucrandi;* and (4) by reason of the robbery or on the occasion thereof, homicide is committed; here, all the elements were proven by the prosecution beyond reasonable doubt. (People *vs*. Sanota *y* Sarmiento, G.R. No. 233659, Dec. 10, 2019) p. 806

Penalty — The RTC was correct in imposing the penalty of *reclusion perpetua* instead of Death despite the presence of aggravating circumstances, considering that the latter penalty has been suspended by R.A. No. 9346; as to the award of damages, this Court deems it proper to modify the ruling of the RTC; in *People v. Jugueta*, the amounts of 100,000.00 as civil indemnity, 100,000.00 as moral damages and 100,000.00 as exemplary damages are provided for in cases when the penalty imposed is *reclusion perpetua* instead of death due to the suspension of the latter; the RTC's award of 100,000.00 as attorney's fees must also be modified; nothing on the record shows the actual expenses incurred by the heirs of the victim for attorney's fees and lawyer's appearance fees; attorney's fees are in the concept of actual or compensatory damages and allowed under the circumstances provided for in

SALES

Consent — Article 1181 of the Civil Code provides that "in conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition"; a sale is conditional where the efficacy or obligatory force of the vendor's obligation to transfer title is subordinated to the happening of a future and uncertain event, so that if the suspensive condition does not take place, the parties would stand as if the conditional obligation had never existed; the RTC is correct only insofar as it held that the MOA required spouses Labuguen's assumption of the mortgage with the DBP; the assumption of mortgage is a condition to the seller's consent; such assumption of mortgage did not take place because DBP did not give its consent thereto. (Engr. Virtudazo *vs.* Labuguen, G.R. No. 229693, Dec. 10, 2019) p. 787

Elements — A contract is a *meeting of minds* between two persons whereby one binds himself/herself, with respect to the other, to give something or to render some service; Article 1458 of the Civil Code defines a sale as a contract whereby one of the contracting parties, *i.e.*, the seller, obligates himself/herself to transfer the ownership and to deliver a determinate thing, and the other party, *i.e.*, the buyer, obligates himself/herself to pay therefor a price certain in money or its equivalent; thus, the elements of a contract of sale are: (1) consent; (2) object; and (3) price in money or its equivalent; the absence of any of these essential elements negates the existence of a perfected contract of sale; a contract of sale is a consensual contract; under Article 1475 of the Civil Code, the contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price; no particular form is required for its validity. (Uy *vs.* Heirs of Julita Uy-Renales, G.R. No. 227460, Dec. 5, 2019) p. 559

—— Section 1, Rule 87 of the Rules of Court enumerates the following actions which survive the death of a party, thus: (1) recovery of real or personal property, or an interest from the estate; (2) enforcement of liens on the estate; and (3) recovery of damages for an injury to person or property. (*Id*.)

SHERIFFS

Duties — Must discharge their duties with due care and utmost diligence because in serving the court's writs and processes and in implementing the orders of the court, they cannot afford to err without affecting the efficiency of the enforcement process of the administration of justice. (Son *vs*. Leyva, A.M. No. P-11-2968, Nov. 28, 2019) p. 23

—— The rule commands that the executing officer shall enforce the judgments for money in this order: first, the officer must demand from the judgment obligor to pay in cash the judgment obligation; second, if the judgment obligor fails to pay in cash, the officer shall proceed to levy on the personal properties of the judgment obligor; and Third, if there are no personal properties, the officer shall then levy on the real properties of the judgment obligor. (*Id*.)

—— Well-settled is the rule that when writs are placed in the hands of sheriffs, it is their ministerial duty to proceed to execute them in accordance with the rules; a purely ministerial act or duty is one which an officer or tribunal performs in the context of a given set of facts, in a prescribed manner and without regard to the exercise of his own judgment upon the propriety or impropriety of the act done. (*Id*.)

Gross neglect of duty —— A sheriff cannot just unilaterally and whimsically choose how to enforce the writ without observing the proper procedural steps laid down by the rules, otherwise, it would amount to gross neglect of duty; gross neglect of duty or gross negligence "refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there

v. Ursua; payment of interest at the rate of six percent (6%) *per annum*, which shall run from the date of finality of this Decision until full satisfaction. (People *vs*. XXX, G.R. No. 240441, Dec. 4, 2019) p. 362

–– To sustain a conviction under Section 5(b) (Child Prostitution and Other Sexual Abuse) of R.A. No. 7610, the prosecution must establish that: (i) the accused commits an act of sexual intercourse or lascivious conduct; (ii) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (iii) the child is below 18 years old; "'lascivious conduct' means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person"; a child is deemed subjected to other sexual abuse when he or she indulges in lascivious conduct under the coercion or influence of any adult; XXX's acts undoubtedly fall under the definition of lascivious conduct under Section 2(h) of the rules and regulations of R.A. No. 7610. (*Id*.)

STATUTORY RAPE

Commission of — It cannot be gainsaid that "sexual congress with a girl under 12 years old is always rape"; in statutory rape, force and intimidation are immaterial, and the only subject of inquiry is the age of the child and whether carnal knowledge in fact took place; the law presumes that the victim does not and cannot have a will of her own on account of her tender years; the child's consent is immaterial because of her presumed incapacity to discern evil from good. (People *vs*. XXX, G.R. No. 240441, Dec. 4, 2019) p. 362

and who would have considerable skill in both aiming and shooting a firearm; the Court has its misgivings that it was indeed Fernandez who shot him, especially if the only proof adduced is Garino's testimony; in a criminal case, it is the onus of the complainant, through the prosecution, to present a case laden with surety and without the shadow of the doubt, and this is lacking in the case herein. (Fernandez *vs*. People, G.R. No. 241557, Dec. 11, 2019) p. 977

— As for the alleged inconsistency of the prosecution witnesses pertaining to whether poseur-buyer PCPAG Abellana opened the pack that was handed to him, this is too minor to deserve any consideration; *People v. Uy* held that discrepancies and inconsistencies in the testimonies of witnesses on minor details do not affect their credibility and do not detract the established fact of sale of illegal drugs; the trial court's determination of witnesses' credibility, when affirmed by the appellate court, is accorded full weight and credit, as well as respect, if not conclusive effect. (People *vs*. Valdez, G.R. No. 233321, Dec. 5, 2019) p. 613

— In *People v. Flor*, the Court gave full faith and credence to police officer's testimony in the absence of imputed malice on his part to testify against the accused for violation of Section 5, Article II of R.A. No. 9165. (People *vs*. Macaspac *y* Llanete, G.R. No. 246165, Nov. 28, 2019) p. 164

— There is no error in the RTC's finding that the testimony of Abion is credible; the assessment of the credibility of the witnesses and their testimonies is best undertaken by the trial court because of its unique opportunity to observe the witnesses first hand and to note their demeanor, conduct, and attitude under grueling examination; these factors are the most significant in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies; the factual findings of the RTC are accorded the highest degree of respect especially if the CA adopted and confirmed these, unless

People v. Gersamio and *People v. Velasco*, cited; delay in prosecuting the offense is not an indication of a fabricated charge, and does not necessarily cast doubt on the credibility of the victim; this especially holds true if the victim faces the threat of physical violence; "it is not uncommon for a young girl to be intimidated and cowed into silence and conceal for some time the violation of her honor, even by the mildest threat against her life". (*Id*.)

Testimony of — The prosecution established that accused-appellants approached SPO3 Sabaldan and offered him the sexual services of four girls in exchange for money; the police operation had been the result of previous surveillance conducted within the area by the Task Force; in *People v. Rodriguez*, the Court held that the trafficked victim's testimony that she had been sexually exploited was "material to the cause of the prosecution"; AAA's testimony was corroborated by the testimonies of the police officers who conducted the entrapment operation. (People *vs*. Maycabalong, G.R. No. 215324, Dec. 5, 2019) p. 486

Testimony of the child victim — The positive testimony of the child victim in this case, corroborated by the testimonies of her mother and the police officer on-duty when they reported the incident of rape, coupled with the medico-legal findings, sufficiently established beyond reasonable doubt the elements of the crime charged, and clearly outweighs the denial proffered by the accused-appellant; mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the child-victim of the identity of the accused and his involvement in the crime attributed to him. (People *vs*. XXX, G.R. No. 244047, Dec. 10, 2019) p. 898

Testimonies of child victims — The testimonies of child victims are given full weight and credit, for when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that Rape was indeed committed; youth and immaturity are generally badges

CITATIONS

Page

I. LOCAL CASES

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

II. FOREIGN CASES

Page

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

B. STATUTES

Page

Page

Page

Page

C. OTHERS

Page

D. BOOKS

(Local)

II. FOREIGN AUTHORITIES

BOOKS