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FOR THE PERIOD

JANUARY 6 - 21, 2020

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[G.R. No. 210238. January 6, 2020]

IMELDA SZE, SZE KOU FOR, & TERESITA NG, *petitioners, vs.* **BUREAU OF INTERNAL REVENUE, represented by the COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

TAXATION; TAX REFORM ACT OF 1997; PRESCRIPTION PERIOD FOR VIOLATION OF THE LAW IS FIVE YEARS; AS THE ORIGINAL INFORMATION WAS FILED AFTER THE FIVE-YEAR PRESCRIPTIVE PERIOD, THE ACTION HAD PRESCRIBED.— Section 281 of the Tax Reform Act of 1997 states that the prescriptive period for violation of the law is five years. x x x The Court of Tax Appeals (CTA) explained that Revenue Memorandum Circular 101-90 provides that an offense under the tax code is considered discovered only after the manner of commission and the nature and extent of fraud has been definitely ascertained. This occurs when the BIR renders its final decision and requires the taxpayer to pay the deficiency tax. The CTA determined that the Formal Letter of Demand (FLD) and the Final Assessment Notice (FAN) for taxable years 1999 and 2000 were served on Chiat Corp. on February 7, 2005. Chiat Corp. did not file a protest, resulting in the finality, demandability, and executory nature of the assessment for deficiency taxes. Counting 30 days from the service of the FLD and the FAN, the violations were considered discovered on March 9, 2005. The BIR's revenue officers filed their joint affidavit in the DOJ for preliminary investigation on May 26, 2005.

However, the original Information was only filed in court on April 23, 2014, which exceeded the five-year prescriptive period. Therefore, the action had prescribed. The Court observed that the Public Prosecutor did not appeal or move for reconsideration of the CTA's decision; thus rendering it final and executory.

APPEARANCES OF COUNSEL

AMC Santiago Law Office for petitioners.

D E C I S I O N

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

The Facts

The respondent Bureau of Internal Revenue (BIR) issued Revenue Regulation 8-2001 or the Voluntary Assessment Program (VAP), granting taxpayers the privilege of last priority in the audit and investigation of all internal revenue taxes for the taxable year December 31, 2000, and all prior years under certain conditions. Chiat Sing Cardboard Corporation (Chiat Corp.) availed of the VAP and was issued a certificate of qualification for 1999 and 2000. The BIR clarified that availment of the VAP should not be construed to cover up any fraud or illegal acts that the taxpayer may commit as it is a mere privilege.[1]

On March 25, 2003, the BIR issued a Letter of Authority (LOA) for the examination of accounting books and records of Chiat Corp. for all internal revenue taxes for 1999 and 2000. Chiat Corp.'s Master Payroll, Beth Tugade (Tugade) received the LOA, but the required documents were not presented. On May 5, 2003, Tugade received the BIR's second notice and final notice, and still the records were not presented.[2]

Due to Chiat Corp.'s refusal to present its accounting records, the BIR conducted an investigation and discovered that Chiat Corp.: (1) underdeclared its sales amounting to ₱160,588,321.63

[1] *Rollo*, pp. 26-27.

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

and ₱113,578,182.69; (2) underdeclared its income amounting to ₱10,663,130.96 and ₱5,678,909.13 for 1999 and 2000, respectively; (3) derived income from undeclared importation of raw materials; (4) the underdeclared sales and income should have been subjected to VAT and income tax; (5) deliberately and wilfully misdeclared its taxable base to evade payment of correct internal revenue liabilities; (6) failed to withhold taxes on labor cost it claimed amounting to ₱427,010,000.00; (7) failed to rectify its income, value-added and withholding tax returns, which should reflect the actual and correct taxable base; and (8) understated the payment of its correct tax liabilities by more than 30%.[3]

Thereafter, the BIR issued a Notice of Informal Conference (NIC), Preliminary Assessment Notice (PAN), Formal Letter of Demand (FLD), and Final Assessment Notice (FAN). Despite these notices, Chiat Corp. failed to interpose any protest; thus, the BIR's assessment for deficiency taxes for 1999 and 2000 amounting to ₱33,847,574.18 became final, executory and demandable.[4]

On May 19, 2005, the BIR charged the officers of Chiat Corp., petitioners Imelda T. Sze (Sze), Sze Kou For (For), and Teresita A. Ng (Ng), with tax evasion and/or tax fraud for violation of Sections 27(A), 31, 32, 56(A)(l), 79(A)(B), 80(A), 81, 106, ll4(A)(B), in relation to Sections 251, 253(d), 254, 255, and 256 of the National Internal Revenue Code of 1997 (NIRC).[5]

Petitioners Sze, For, and Ng denied the accusations against them and claimed, among other allegations, that: (1) there was no factual and legal basis for the charges; (2) the filing was premature and violated their rights to due process; (3) they did not receive the notices; (4) they were not responsible for any underdeclaration, misdeclaration or importation; (5) they were not responsible for the preparation and filing of tax returns; (6) Chiat Corp. has no assets to satisfy the assessed taxes; (7) Chiat

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

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

[5] *Id.* at 26.

Corp. notified the BIR of the termination of business as of December 2004; and (8) the BIR presumed that Chiat Corp. manufactured the raw materials into final products and sold them.[6]

The State Prosecutor dismissed the complaint on July 12, 2006. The BIR moved for reconsideration, which was denied on November 29, 2006. The BIR filed a petition for review before the Department of Justice (DOJ), which denied the same in a resolution dated April 27, 2007. The DOJ also denied the BIR's motion for reconsideration on June 17, 2010. The BIR elevated the case before the Court of Appeals (CA) through a petition for *certiorari*.[7]

The CA Decision

In its May 31, 2012 Decision,[8] the CA gave due course to the petition after finding that the records showed sufficient evidence of probable cause for tax evasion and violation of the NIRC. Chiat Corp. failed to present countervailing evidence to refute the documents and other importation records from different government agencies.[9]

The CA held that the DOJ abused its discretion when it failed to consider various documents from the Department of Trade and Industry's Bureau of Import Services, the BIR's Audit Information Tax Exemption Incentive Division, and the Bureau of Custom's Management Information System Technology Group.[10]

The CA observed that Chiat Corp. filed an application for retirement of business after applying for VAP. The CA found this move as suspicious, if not an indication of bad faith.[11]

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[6] *Id.* at 30-31, 34-35, 38.

[7] *Id.* at 52.

[8] Penned by Associate Justice Angelita A. Gacutan, with Associate Justices Magdangal M. De Leon and Francisco P. Acosta, concurring; *id.* at 25-65.

[9] *Id.* at 60.

[10] *Id.* at 62.

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

The CA resolved that probable cause was sufficiently established, and ordered the DOJ to file the corresponding Information with the proper court.[12]

Chiat Corp. moved for reconsideration, which the CA denied in its November 26, 2013 Resolution.[13] Undeterred, petitioners Sze, For, and Ng filed this petition for review on *certiorari* before the Court.

The Issue Presented

Whether or not the CA erred in finding probable cause for violation of the NIRC.

The Court's Ruling

While this petition is pending, the petitioners manifested to the Court that pursuant to the May 31, 2012 CA Decision, an Amended Information in Criminal Case Nos. 0-385 to 0-392 were filed against them in the Court of Tax Appeals (CTA). They moved to quash the Amended Information due to prescription and double jeopardy. On July 8, 2015, the CTA issued a resolution dismissing all the cases on the ground of prescription. The CTA resolution became final and executory, and an entry of judgment was later issued. The petitioners aver that with this development, the issues in their petition have become moot and academic.[14]

The BIR confirmed in its Manifestation and Comment, that the DOJ complied with the CA's decision and filed criminal Information against Sze, For, and Ng. On July 8, 2015, the CTA promulgated a resolution dismissing Criminal Case Nos. O-385 to O-392 due to prescription.[15]

In its Reply, the petitioners reiterated that the propriety of the CA's decision in finding probable cause was rendered moot

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[12] *Id.* at 64.

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

[14] *Id.* at 92-93.

[15] *Id.* at 119.

and academic by the CTA decision dismissing the Amended Information against them.[16]

Section 281 of the Tax Reform Act of 1997[17] states that the prescriptive period for violation of the law is five years.

> SEC. 281. *Prescription for Violations of any Provision of this Code*. — All violations of any provision of this Code shall prescribe after five (5) years.
>
> Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.
>
> The prescription shall be interrupted when proceedings are instituted against the guilty persons and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.
>
> x x x x x x x x x

The CTA explained that Revenue Memorandum Circular 101-90 provides that an offense under the tax code is considered discovered only after the manner of commission and the nature and extent of fraud has been definitely ascertained. This occurs when the BIR renders its final decision and requires the taxpayer to pay the deficiency tax.[18]

The CTA determined that the FLD and the FAN for taxable years 1999 and 2000 were served on Chiat Corp. on February 7, 2005. Chiat Corp. did not file a protest, resulting in the finality, demandability, and executory nature of the assessment for deficiency taxes. Counting 30 days from the service of the FLD and the FAN, the violations were considered discovered on March 9, 2005. The BIR's revenue officers filed their joint affidavit in the DOJ for preliminary investigation on May 26, 2005. However, the original Information was only filed in court

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[16] *Id.* at 139-141.

[17] Republic Act 8424, AN ACT AMENDING THE NIRC, AS AMENDED, AND FOR OTHER PURPOSES, approved on December 11, 1997.

[18] *Rollo*, p. 97.

on April 23, 2014, which exceeded the five-year prescriptive period. Therefore, the action had prescribed.[19]

The Court observed that the Public Prosecutor did not appeal or move for reconsideration of the CTA's decision; thus rendering it final and executory.

The Court dismisses the petition for being moot and academic.

In *Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration*,[20] the Court defined moot and academic as:

> A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. This is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced. (Citation omitted)

Here, the dismissal of the criminal cases on the ground of prescription rendered the issue on the propriety of the CA's decision in finding probable cause as moot and academic. Thus, the Court finds it appropriate to abstain from passing upon the merits of this petition where legal relief is neither needed nor called for.

WHEREFORE, the petition is **DISMISSED** for being moot and academic.

SO ORDERED.

Peralta, C. J. (Chairperson), Caguioa (Working Chairperson), and *Lazaro-Javier, JJ.*, concur.

Lopez, J., on official leave.

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[19] *Id.* at 97-98.

[20] 728 Phil. 535, 540 (2014).

FIRST DIVISION

[G.R. No. 225961. January 6, 2020]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PAOLO LUIS GRATELA *y* DAVILLO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; ANTI-RAPE LAW, AMENDING THE REVISED PENAL CODE (R.A. NO. 8353); SHOULD BE UNIFORMLY APPLIED IN RAPE CASES AGAINST MINORS.— In *People v. Ejercito*, the Court explained that Republic Act (R.A.) No. 8353 or the Anti-rape Law, amending the Revised Penal Code (RPC), should be uniformly applied in rape cases against minors. The *Ejercito* case was reiterated in the more recent case of *People v. Tulagan*. x x x After much deliberation, **the Court herein observes that [R.A. No.] 8353 amending the RPC should now be uniformly applied in cases involving sexual intercourse committed against minors, and not Section 5 (b) of [R.A. No.] 7610. Indeed, while [R.A. No. 7610] has been considered as a special law that covers the sexual abuse of minors, [R.A. No.] 8353 has expanded the reach of our already existing rape laws. These existing rape laws should not only pertain to the old Article 335 of the RPC but also to the provision on sexual intercourse under Section 5 (b) of [R.A. No.] 7610 which, applying *Quimvel*'s characterization of a child "exploited in prostitution or subjected to other abuse," virtually punishes the rape of a minor.**

2. ID.; REVISED PENAL CODE (RPC); ARTICLE 266-A ON RAPE, WHEN AND HOW COMMITTED.— Article 266-A of the RPC states that rape through sexual intercourse is committed 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. The elements necessary to sustain a conviction for statutory rape are: (1) the offender is a man; (2) he had carnal knowledge of a woman; and (3) the offended party is under 12 years old.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY DELAY CAUSED BY FEAR IN REPORTING THE CRIME.— AAA's *Sinumpaang Salaysay* and her testimony mentioned that she was afraid that her mother, BBB, might scold her for what happened. She also testified that there were instances that her mother spanked her. Her fear of her mother was so strong that she decided to keep the abuse a secret. The immature mental and emotional state of a seven-year old girl could not yet comprehend the inherently wrong act committed against her, which needs immediate attention. It was only after two years, when AAA was in her pre-teens, when she mustered the courage to tell her secret to her mother. The Court accepts AAA's explanation as reasonable justification for the delay in reporting the crime.

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.*:

A conviction for rape may be sustained based on the medical-legal report and testimonial evidence of the victim and the medico-legal officer.

The Case

This is an ordinary appeal from the March 27, 2015 Court of Appeals (CA) Decision[1] in CA-G.R. CR-HC No. 05925,

[1] Penned by Associate Justice Manuel M. Barrios, with Associate Justices Ramon M. Bato, Jr. and Maria Elisa Sempio-Diy, concurring; *rollo*, pp. 2-9.

affirming the October 25, 2012 Regional Trial Court (RTC) Decision[2] in Criminal Case No. 09-1742, finding the accused guilty of statutory rape.

The Facts

In an Information dated July 14, 2009,[3] accused-appellant Paolo Luis Gratela *y* Davillo (Gratela) was charged with statutory rape of a seven-year old girl, AAA.[4] During arraignment, he pleaded not guilty.[5] At the pre-trial, both parties stipulated that: (1) the court has jurisdiction over the case, and (2) the age of the complainant/victim at the time of the alleged crime was seven years old.[6] Thereafter, trial proceeded.

The prosecution presented four witnesses: (1) AAA, the victim; (2) BBB, the victim's mother; (3) Police Officer 2 (PO2) Mary Grace Agustin, the investigator; and (4) Police Chief Inspector Marianne S. Ebdane, M.D., the medico-legal officer.

The prosecution presented the following as documentary evidence: (1) AAA's *Sinumpaang Salaysay;*[7] (2) BBB's *Sinumpaang Salaysay*;[8] (3) Request for physical and genital

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[2] Penned by Judge Rico Sebastian D. Liwanag; CA *rollo*, pp. 19-26.

[3] Sometime during the month of July 2007, in the City of Makati, Philippines, the accused did then and there wilfully, unlawfully, and feloniously have carnal knowledge by means of force and intimidation, of complainant [AAA], who was at the time of commission a seven year old minor, against the will and consent of the latter; *id*. at 10.

[4] Pursuant to the Supreme Court Resolution in AM 04-11-09-SC, dated September 19, 2006 and *People v. Cabalquinto*, 533 Phil. 703-719 (2006), the Court shall withhold the real name of the victim-survivor and shall use fictitious initials instead to represent her. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well those of their immediate family or household members, shall not be disclosed.

[5] Records, pp. 25-27.

[6] *Id*. at 27.

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

[8] *Id*. at 12.

examination;[9] (4) Initial Medico-Legal Report;[10] (5) August 12, 2009 RTC Order for the issuance of warrant of arrest against the accused;[11] (6) Manifestation of Consent;[12] (7) Sexual Crime Protocol;[13] and (8) Medico-Legal Report R09-874.[14]

During trial, AAA testified that she was born on October 27, 1999 and reiterated the contents of her *Sinumpaang Salaysay*. She narrated that sometime in the afternoon of July 2007 she went to the accused's house to look for his sister, who is her friend. Unable to find her because she was sleeping, AAA went inside the accused's room and sat on the sofa. The accused approached AAA and pulled down her shorts and underwear. He also pulled down his clothes, and then he rubbed his penis into her vagina. AAA did not look at what was happening because of fear. Afterwards, she pulled up her garments and went home. She kept the incident to herself because she feared her mother might scold her.[15]

On April 15, 2009, AAA and BBB were watching a television show, which involved a rape scene. Triggered by what she saw, AAA told BBB about what the accused did to her.[16]

BBB confirmed AAA's narration during trial[17] and in her own *Sinumpaang Salaysay*.[18] She asked AAA if the accused penetrated her and the latter said that she was not looking but she felt pain on her vagina. AAA also told her that the accused asked her to moan while doing the act.[19]

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[9] *Id*. at 14.

[10] *Id*. at 13.

[11] *Id*. at 15; the page was incorrectly numbered as 14.

[12] *Id*. at 55.

[13] *Id*. at 54.

[14] *Id*. at 56.

[15] Records, pp. 10-11; TSN, September 1, 2010, pp. 6-15.

[16] *Id*. at 15.

[17] TSN, January 11, 2010, pp. 3-34.

[18] Records, p. 12.

[19] *Id*. at 25.

PO2 Mary Grace Agustin testified that in April 2009 she was assigned at the Women's and Children Protection Desk of the Makati Police Station. She received a complaint from AAA and BBB about an alleged rape incident that took place in July 2007. She interviewed them, and reduced her questions and their answers in their respective sworn statements. She also prepared a request for physical and genital examination of AAA.[20]

Police Chief Inspector Marianne S. Ebdane testified that she was assigned as a medico-legal officer at the Philippine National Police Crime Laboratory since September 2004. On April 16, 2009, she encountered AAA and BBB, who presented to her a request for physical and genital examination of AAA. She gave BBB a Manifestation and Consent form before conducting the examination. Afterwards, she filled up a Sexual Crime Protocol form showing the information about the alleged crime. Thereafter, she proceeded with AAA's physical and genital examination, and found healed laceration and red clots. She concluded that there is clear evidence of blunt force or penetrating trauma. She indicated her findings and conclusion in Medico-Legal Report R09-784.[21]

For his defense, the accused denied the accusations against him, and alleged that he was frequently out of their house and stayed in his friends' house at the time of the incident. He averred that he had so much respect for AAA's family since they were neighbors, and that his conscience would not allow him to commit such act. He testified that money could be a reason why a complaint was filed against him, because his father worked abroad. He also opined that AAA made up a story about the incident.[22] He confirmed that he executed a counter-affidavit to AAA's complaint,[23] and claimed that the examination on

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[20] TSN, April 7, 2010, pp. 3-6.

[21] TSN, June 23, 2010, pp. 3-12.

[22] TSN, March 16, 2011, pp. 3-16; TSN, June 22, 2011, pp. 2-6.

[23] TSN, March 16, 2011, pp. 7-8; TSN, November 24, 2011, pp. 13-14.

AAA had no probative value because it was conducted two years after the incident.[24]

The RTC Decision

On October 25, 2012, the RTC rendered a decision finding Gratela guilty beyond reasonable doubt of statutory rape through sexual intercourse. The RTC imposed the penalty of *reclusion perpetua*, and ordered him to pay ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.[25]

The RTC ruled the presence of all the elements of statutory rape: (1) the accused had carnal knowledge of the offended party, and (2) the offended party was below 12 years at the time of the commission of the crime. Jurisprudence dictates that the slightest touch of the vagina consummates rape, and vaginal pain indicates penile penetration. Here, the medico-legal officer found clear evidence of blunt force or penetrating trauma to the vagina. Further, it was uncontested that the victim was seven years old at the time of the commission of the crime. Hence, the RTC convicted Gratela of statutory rape through sexual intercourse.[26] Gratela appealed his conviction to the CA.[27]

The CA Decision

On March 27, 2015, the CA rendered a decision denying the appeal and affirming the RTC decision.[28]

The CA rejected Gratela's argument that it was impossible to commit the sexual act inside his house where other people reside. Jurisprudence pronounced that lust is no respecter of time and place, so that rape can occur even when people are around. Here, Gratela committed the sexual act inside his room

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[24] Records, p. 8.

[25] CA *rollo*, p. 26.

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

[27] Records, p. 98.

[28] *Rollo*, p. 9.

while his sister was sleeping in the other room. Thus, his claim fails.[29]

The CA also turned down Gratela's contention that AAA's accusation is questionable because of the length of time it took to report the crime. The CA stated that there was sufficient explanation for the delay in reporting the crime. AAA was only seven years at the time of the incident and was easily threatened of the shame it would bring if she told anyone about it. When AAA was a teenager, she found courage to share her secret to her mother.[30]

The CA held that AAA's narration is consistent with the medico-legal officer's report showing healed laceration caused by a blunt force or penetrating trauma due to sexual intercourse. The defense of denial and alibi were unsupported and did not overcome AAA's positive identification. Hence, the CA affirmed Gratela's conviction. The accused appealed to the Court.[31]

The Issue Presented

The parties manifested that they will no longer file a supplemental brief as the issues and arguments had been discussed in their respective briefs filed before the CA. In essence, they are adopting the briefs as their supplemental briefs.[32]

Accused-appellant Gratela contends that: (1) it was improbable for him to commit the sexual act considering that he had companions in the house; (2) the veracity and accuracy of AAA's account is questionable because of the lapse of time before she revealed the incident; (3) BBB's testimony was inconsistent with AAA's testimony; and (4) the medico-legal officer who examined AAA did not testify in court as to her findings.[33]

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[29] *Id*. at 6.

[30] *Id*. at 6-7.

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

[32] *Id*. at 17-18; 22.

[33] CA *rollo*, pp. 45-49.

On the other hand, the complainant-appellee People of the Philippines, through the Office of the Solicitor General (OSG), maintains that: (1) the prosecution had proven Gratela's guilt beyond reasonable doubt as all the elements of the crime had been established; and (2) the medico-legal officer appeared in court on June 23, 2010.[34]

In sum, the issue to be resolved is whether or not CA erred in affirming Gratela's conviction.

The Court's Ruling

The appeal is denied.

In *People v. Ejercito*,[35] the Court explained that Republic Act (R.A.) No. 8353 or the Anti-rape Law, amending the Revised Penal Code (RPC), should be uniformly applied in rape cases against minors. The *Ejercito* case was reiterated in the more recent case of *People v. Tulagan*.[36]

> Between Article 266-A of the RPC, as amended by [R.A. No.] 8353, x x x and Section 5 (b) of [R.A. No.] 7610, the Court deems it apt to clarify that Ejercito should be convicted under the former. Verily, penal laws are crafted by legislature to punish certain acts, and when two (2) penal laws may both theoretically apply to the same case, then the law which is more special in nature, regardless of the time of enactment, should prevail. In *Teves v. Sandiganbayan*:
>
> > It is a rule of statutory construction that where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but **if there is any conflict, the latter shall prevail regardless of whether it was passed prior to the general statute**. Or where two statutes are of contrary tenor or of different dates but are of equal theoretical application to a particular case, **the one designed therefor specially should prevail over the other**. (Emphases in the original)

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[34] *Id.* at 71-73.

[35] *People v. Ejercito*, G.R. No. 229861, July 2, 2018.

[36] *People v. Tulagan*, G.R. No. 227363, March 12, 2019.

After much deliberation, **the Court herein observes that [R.A. No.] 8353 amending the RPC should now be uniformly applied in cases involving sexual intercourse committed against minors, and not Section 5 (b) of [R.A. No.] 7610. Indeed, while [R.A. No. 7610] has been considered as a special law that covers the sexual abuse of minors, [R.A. No.] 8353 has expanded the reach of our already existing rape laws. These existing rape laws should not only pertain to the old Article 335 of the RPC but also to the provision on sexual intercourse under Section 5 (b) of [R.A. No.] 7610 which, applying *Quimvel*'s characterization of a child "exploited in prostitution or subjected to other abuse," virtually punishes the rape of a minor.** (Emphasis supplied)

Article 266-A of the RPC states that rape through sexual intercourse is committed 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. (Emphasis supplied)

The elements necessary to sustain a conviction for statutory rape are: (1) the offender is a man; (2) he had carnal knowledge of a woman; and (3) the offended party is under 12 years old.

First, it is undeniable that the accused is a man. Second, the records do not show that the accused questioned the victim's age. In fact, the parties stipulated during pre-trial that the victim was seven years old at the time of the commission of the crime. Third, the fact of carnal knowledge was proven through the

AAA's *Sinumpaang Salaysay* and testimony in court. BBB's *Sinumpaang Salaysay* and testimony, the Initial Medico-Legal Report, Medico-Legal Report R09-874, and the medico-legal officer's testimony all corroborate that Gratela had carnal knowledge of AAA.

AAA positively identified Gratela as her abuser. She testified that they were both not wearing any lower garments as he rubbed his private organ against her private organ. She also felt pain on her vagina. Medico-Legal Report R09-874 reveals that: *Left perihymenal region: presence of healed laceration. Right perihymenal region: presence of petechiae.*[37] The medico-legal officer explained that *petechiae is due to a blunt force causing the blood vessel to erupt and it appears as red clots*.[38] She concluded that there is *clear evidence of blunt force or penetrating trauma* and was caused by a penis of a man.[39]

In *People v. XXX*,[40] a rape case where the complainant did not see the penetration, the Court held that the complainant's testimony as corroborated by the medical findings prove penetration.

Appellant, nonetheless, harps on the prosecution's alleged failure to prove penile penetration as an element of carnal knowledge. He zeroes in on complainant's testimony that she did not actually see him insert his penis in her vagina.

On this score, We reckon with complainant's graphic account "*Inilalagay po niya iyong ari niya sa ari ko, ma'am." x x x " It was his penis, ma'am." x x x "It was very painful.*" If this is not penile penetration, what is?

While appellant's conviction was primarily based on complainant's testimony, the same solidly conforms with the physical evidence through the medical findings of Dr. Dean Cabrera that complainant sustained hymenal lacerations at 3 and 9 o'clock positions showing blunt

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[37] Records, p. 56.

[38] TSN, June 23, 2010, p. 10.

[39] Records, p. 56; TSN, June 23, 2010, pp. 10-11.

[40] G.R. No. 222492, June 3, 2019.

penetrating trauma. The Court has consistently ruled that when a rape victim's straightforward and truthful testimony conforms with the medical findings of the examining doctor, the same is sufficient to support a conviction for rape. So must it be.

Here, AAA's allegation of rape is consistent with the medico-legal report, which indicates healed hymenal lacerations and red clots. The pain that AAA felt during the sexual act and the presence of healed laceration prove that there was penile penetration. Following the above jurisprudence, we sustain Gratela's conviction.

Gratela alleged that it was improbable for him to commit the sexual act considering that he had companions in the house. The Court disagrees. In *People v. Adajar*,[41] the Court rejected the accused's similar defense.

> Adajar persistently insists that he could not possibly have done those acts accused of him since the house where he allegedly committed them was always filled with people. Unfortunately for him, however, this contention had already been refuted many times before. Settled is the rule that the presence of people in a certain place is no guarantee that rape will not and cannot be committed. Time and again, the Court has held that for rape to be committed, it is unnecessary for the place to be ideal, or the weather to be fine, for rapists bear no respect for place and time when they execute their evil deed. Rape may be committed inside a room in a crowded squatters' colony and even during a wake.

The Court has no reason to overturn the settled rule in *Adajar* case. It was established that the crime was committed in a room separate from the others in the house. The privacy provided an opportunity in the commission of the crime.

Gratela also averred that the veracity and accuracy of AAA's account is questionable because of the lapse of time before she revealed the incident. The Court differs. In *People v. Bejim*,[42] the Court ruled that:

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[41] G.R. No. 231306, June 17, 2019.

[42] *People v. Bejim y Romero*, G.R. No. 208835, January 19, 2018.

Neither the delay in reporting the incidents to the proper authorities tainted the victims' credibility. For sure, there was no prompt revelation of what befell the victims. But "long silence and delay in reporting the crime of rape have not always been construed as indications of a false accusation." "A rape charge becomes doubtful only when the delay in revealing its commission is unreasonable and unexplained." In the present case, appellant threatened the victims that he would kill them and their families if they would tell anyone of what he did to them. To our mind, this is a reasonable explanation for the delay.

Here, AAA's *Sinumpaang Salaysay*[43] and her testimony[44] mentioned that she was afraid that her mother, BBB, might scold her for what happened. She also testified that there were instances that her mother spanked her.[45] Her fear of her mother was so strong that she decided to keep the abuse a secret. The immature mental and emotional state of a seven-year old girl could not yet comprehend the inherently wrong act committed against her, which needs immediate attention. It was only after two years, when AAA was in her pre-teens, when she mustered the courage to tell her secret to her mother. The Court accepts AAA's explanation as reasonable justification for the delay in reporting the crime.

Gratela further asserted that BBB's testimony was inconsistent with AAA's testimony. BBB testified that Gratela inserted his penis into AAA's vagina, which the latter did not affirm in her testimony.

The Court emphasizes that Gratela was convicted mainly due to AAA's testimony, the medico-legal officer's testimony, and the medico-legal report. Nowhere did the RTC and the CA mention that BBB's testimony was considered in their rulings. The combination of AAA and the medico-legal officer's testimonies and the medico-legal report are sufficient to support a conviction for rape as they prove the elements of the crime.

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[43] Records, p. 10.

[44] TSN, September 1, 2010, p. 9.

[45] *Id*. at 15.

Lastly, the Court disputes Gratela's claim that the medico-legal officer did not testify in court as to her medical findings. The records show that Police Chief Inspector Marianne S. Ebdane appeared in court on June 23, 2010 and explained her findings and conclusions.

The Court is not swayed by accused-appellant Gratela's denial and alibi. He maintains that he frequently stayed at his friend's house at the time of the commission of the crime. However, he admitted during trial that his friend's house is only four blocks away from his house.[46] It was not physically impossible for him to be at the crime scene at the time of its commission. Moreover, he did not present his friends to corroborate his claim.

Gratela's weak defenses cannot prevail over AAA's positive identification of him as her abuser. Based from the testimonial evidence coupled with the result of the genital examination on AAA, the Court is convinced that the prosecution proved beyond reasonable doubt that accused-appellant Gratela succeeded in having sexual intercourse with AAA.

As to the penalties, the Court affirms with modification the CA's ruling to include 6% interest on all monetary awards from the finality of the decision until fully paid.

WHEREFORE, premises considered, the March 27, 2015 Court of Appeals Decision in CA-G.R. CR-HC No. 05925 is **AFFIRMED** with **MODIFICATION**.

The Court finds accused-appellant Paolo Luis Gratela *y* Davillo **GUILTY** beyond reasonable doubt of statutory rape and imposes the penalty of *reclusion perpetua* and **ORDERS** him to **PAY** AAA ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, all subject to 6% interest from the finality of the Decision until fully paid.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa (Working Chairperson), and *Lazaro-Javier, JJ.*, concur.

Lopez, J., on official leave.

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[46] TSN, June 22, 2011, p. 4.

FIRST DIVISION

[G.R. No. 237412. January 6, 2020]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **REMAR A. QUIÑONEZ,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; AS A RULE, A MOTION FOR RECONSIDERATION MUST FIRST BE FILED WITH THE LOWER COURT BEFORE RESORT THERETO; ONE EXCEPTION IS WHEN THE ISSUE RAISED IS A PURE QUESTION OF LAW.—** A petition for *certiorari* under Rule 65 "is a special civil action that may be resorted to only in the absence of appeal or any plain, speedy, and adequate remedy in the ordinary course of law." As a general rule, a motion for reconsideration must first be filed with the lower court before the extraordinary remedy of *certiorari* is resorted to, since a motion for reconsideration is considered a plain, speedy and adequate remedy in the ordinary course of law. Nevertheless, this general rule admits of well-established exceptions, one of which is when the issue raised is a pure question of law. There is a question of law in a given case when the doubt or difference arises as to what the law is on a certain state of facts, and there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts.

2. **CIVIL LAW; FAMILY CODE; MARRIAGE; DECLARATION OF PRESUMPTIVE DEATH FOR THE PURPOSE OF REMARRIAGE; REQUISITES.—** Article 41 of the Family Code provides the requirements for a declaration of presumptive death x x x Culled from [the] provision, the essential requisites for a declaration of presumptive death for the purpose of remarriage are: 1. That the absent spouse has been missing for four consecutive years, or two consecutive years if the disappearance occurred where there is danger of death under the circumstances laid down in Article 391, Civil Code; 2. That the present spouse wishes to remarry; **3. That the present spouse has a well-founded belief that the absentee is dead;** and 4.

That the present spouse files a summary proceeding for the declaration of presumptive death of the absentee.

3. ID.; ID.; ID.; THE REQUIREMENT OF WELL-FOUNDED BELIEF THAT THE ABSENT SPOUSE IS DEAD; CLARIFIED.— In [*Republic v.*] *Cantor,* the Court *en banc* clarified the meaning of well-founded belief by comparing the language of Article 41 to its Civil Code counterpart. The Court held: Notably, Article 41 of the Family Code, compared to the old provision of the Civil Code which it superseded, imposes a stricter standard. It requires a "well-founded belief" that the absentee is already dead before a petition for declaration of presumptive death can be granted. x x x **Thus, mere absence of the spouse (even for such period required by the law), lack of any news that such absentee is still alive, failure to communicate or general presumption of absence under the Civil Code would not suffice. This conclusion proceeds from the premise that Article 41 of the Family Code places upon the present spouse the burden of proving the additional and more stringent requirement of "well-founded belief" which can only be discharged upon a showing of proper and honest-to-goodness inquiries and efforts to ascertain not only the absent spouse's whereabouts but, more importantly, that the absent spouse is still alive or is already dead.** x x x The law did not define what is meant by "well-founded belief." It depends upon the circumstances of each particular case. Its determination, so to speak, remains on a case-to-case basis. **To be able to comply with this requirement, the present spouse must prove that his/her belief was the result of diligent and reasonable efforts and inquiries to locate the absent spouse and that based on these efforts and inquiries, he/she believes that under the circumstances, the absent spouse is already dead.** It requires exertion of active effort (not a mere passive one).

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

The Case

This is a Petition for Review on *Certiorari*[1] (Petition) filed under Rule 45 of the Rules of Court against the Decision[2] dated June 29, 2017 (assailed Decision) and Resolution[3] dated January 31, 2018 (assailed Resolution) in CA-G.R. SP No. 07581-MIN rendered by the Court of Appeals[4] (CA).

The assailed Decision and Resolution upheld the Judgment[5] dated April 11, 2016 issued by the Regional Trial Court of Surigao City, Branch 32 (RTC) in Special Proceedings No. 7669, which, in turn, declared Lovelyn Uriarte Quiñonez (Lovelyn) presumptively dead under Article 41 of the Family Code.

The Facts

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

> [Petitioner Remar A. Quiñonez (Remar)] and his wife Lovelyn met in [Gamaon[6], Mangagoy, Bislig City when Remar was in college [and] staying at his aunt's house. After eight months [of being] in a relationship, they got married on August 16, 1997 at the Saint Vincent de Paul Parish in Mangagoy, Bislig City[. The wedding was] officiated by Rev. Fr. Ivan Novo, as shown in their Marriage Certificate.
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> After their wedding, the couple stayed at the house of Lovelyn's parents and they begot two (2) children [namely], Emar A. Quiñonez

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[1] *Rollo*, pp. 51-70.

[2] *Id.* at 71-78. Penned by Associate Justice Oscar V. Badelles, with the concurrence of Associate Justices Romulo V. Borja and Perpetua T. Atal-Paño.

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

[4] Twenty-First Division and Former Twenty-First Division, respectively.

[5] CA *rollo*, pp. 14-17. Penned by Acting Presiding Judge Dan R. Calderon.

[6] Also appears as "Garmaon" and "Ganaon" in some parts of the records.

born on January 20, 1998 and Diana Love Quiñonez born on December 15, 1999.

To support his family, Remar started working as a security guard at the National Food Authority Warehouse in October 1997, although later on, he transferred to Cebu City for an opportunity to earn a bigger salary.

Sometime in 2001, when Lovelyn's father received his retirement pay, Lovelyn asked her husband's permission to go on a three-month vacation in Manila to visit some relatives. Despite Remar's reluctance, he agreed to his wife's request.

During the first three months[,] Lovelyn constantly communicated with Remar through cellphone. It was also at this time that Remar resigned from his work in Cebu City and transferred to Surigao City, where he worked as a security guard at the Surigao City Hall of Justice.

Remar informed Lovelyn that as soon as she arrive[d] from Manila, they would x x x be living together in Surigao City [with] their two children. Thereafter, the calls and text messages tapered off until the communication between the spouses ceased altogether.

At first, Remar thought that his wife just lost her cellphone, so he inquired about her from their relatives in Bislig City. **Someone informed him that his wife was then already cohabiting with another man and would no longer be coming back out of shame.**

On November 2003, Remar's uncle informed him that Lovelyn was in Bislig City to visit their children. Remar filed for an emergency leave of absence from his work and left for Bislig City only to be told that his wife had already left for Lingig, Surigao del Sur. He went after her in Lingig, yet upon arrival, he was told that Lovelyn stayed only for a day and returned to Bislig. He was then constrained to go back to Surigao City, without seeing his wife.

In the summer of 2004, Remar filed for a leave from work to look for his wife in Manila. [Remar also] went to Batangas along with his aunt, Evelyn Pachico[,] as well as to Cavite with Lovelyn's aunt, Leonora Aguilar, yet they were not able to find her.

On February 27, 2013, after almost ten (10) years of trying to know about the whereabouts of his wife from their relatives proved futile, x x x [Remar filed a] Petition for Declaration of Presumptive Death before the RTC. x x x[7] (Emphasis supplied)

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[7] *Rollo*, pp. 72-73.

RTC Proceedings

After compliance with the jurisdictional requirements of publication and posting, and with no objection having been filed, the RTC issued a Judgment (RTC Judgment) in Remar's favor. The dispositive portion of said Judgment reads:

> **WHEREFORE**, judgment is hereby rendered declaring that **absentee spouse[, Lovelyn,] is presumptively dead pursuant to Article 41 of the Family Code of the Philippines without prejudice** to the effect of the reappearance of the said absentee spouse.
>
> SO ORDERED.[8]

According to the RTC, Remar was able to show that he had exerted diligent efforts to locate his wife, considering that he spent his meager resources to look for her in Surigao del Sur, Metro Manila, Batangas and Cavite — places where he was told his wife had been seen.[9] In addition, Remar consistently communicated with Lovelyn's relatives in Bislig City to ascertain whether they had any information regarding the latter's whereabouts. In sum, the RTC found Remar's efforts sufficient for purposes of declaring Lovelyn presumptively dead.[10]

The RTC Judgment, being rendered in summary proceedings, became immediately final and executory in accordance with Article 247, in relation to Article 238 of the Family Code.[11]

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[8] CA *rollo*, p. 17.

[9] *Id.* at 16.

[10] See *id.* at 16-17.

[11] In reference to summary judicial proceedings under the Family Code, Articles 238 and 247 state:

> ART. 238. Until modified by the Supreme Court, the procedural rules in this Title shall apply in all cases provided for in this Code requiring summary court proceedings. Such cases shall be decided in an expeditious manner without regard to technical rules.
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> x x x x x x x x x
>
> ART. 247. The judgment of the court shall be immediately final and executory.

CA Proceedings

Subsequently, the Republic of the Philippines[12] (Republic) filed a Petition for *Certiorari*[13] before the CA seeking to annul the RTC Judgment for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. Therein, the Republic argued that Remar failed to establish that he "exerted proper and honest to goodness inquiries and efforts to ascertain Lovelyn's whereabouts and whether or not she is still alive."[14]

Citing *Republic v. Cantor*[15] (*Cantor*), the Republic characterized Remar's search as passive in nature.[16] In particular, the Republic averred that while Remar claimed to have looked for Lovelyn in several places, he failed to explain the nature and extent of his efforts and inquiries. As well, the Republic claimed that Remar failed to present proof that Lovelyn's relatives and friends had no information regarding her whereabouts. Too, the Republic questioned Remar's failure to report Lovelyn's disappearance to the authorities.[17]

The Republic also prayed for the issuance of a Temporary Restraining Order and Writ of Preliminary Injunction to restrain the execution of the RTC Judgment.[18]

The CA resolved to deny the Petition for *Certiorari* through the assailed Decision, the dispositive portion of which reads:

ALL TOLD, the [P]etition for *Certiorari* is DENIED. The [RTC Judgment] in Special Proceedings No. 7669 for Declaration of

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[12] Through the Office of the Solicitor General.

[13] *Rollo*, pp. 93-103.

[14] *Id.* at 96.

[15] 723 Phil. 114 (2013).

[16] *Rollo*, p. 98.

[17] *Id.* at 97.

[18] See *id.* at 100-101.

Presumptive Death under Article 41 of the Family Code of Lovelyn Uriarte Quiñonez is hereby AFFIRMED.

SO ORDERED.[19]

Foremost, the CA held that while the Republic resorted to the correct remedy of *certiorari* under Rule 65, its Petition for *Certiorari* warranted outright dismissal for failure to file a prior motion for reconsideration before the RTC — a prerequisite to the filing of a petition for *certiorari* with the CA.[20]

In any case, the CA ruled that the Petition for *Certiorari* fails even on the merits, since the RTC Judgment is sufficiently supported by the evidence on record.[21] The CA observed that what the Republic puts in issue is the RTC's appreciation of the facts and evidence which are not the proper subjects of *certiorari* under Rule 65.[22]

The Republic filed a motion for reconsideration which the CA also denied through the assailed Resolution.[23]

The Republic received a copy of the assailed Resolution on February 20, 2018.[24]

On March 2, 2018, the Republic filed a Motion for Extension,[25] praying for an additional period of thirty (30) days from March 7, 2018, or until April 6, 2018, to file a petition for review on *certiorari*.

This Petition was filed on April 5, 2018.

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[19] *Id.* at 77.

[20] *Id.* at 74.

[21] *Id.* at 75.

[22] *Id.* at 76.

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

[24] *Id.* at 52.

[25] *Id.* at 3-8.

In compliance with the Court's June 27, 2018 Resolution,[26] Remar filed his Comment[27] to the Petition on September 14, 2018.

The Republic filed its Reply[28] on April 5, 2019. Thereafter, the case was deemed submitted for resolution.

Here, the Republic insists that Remar's efforts in locating his wife Lovelyn were insufficient to give rise to a "well-founded belief" that she is dead. On this basis, the Republic maintains that Remar's petition to declare Lovelyn presumptively dead should have been dismissed.

The Issue

The sole issue for the Court's resolution is whether the CA erred when it found sufficient legal basis to uphold the declaration of Lovelyn's presumptive death.

The Court's Ruling

The Petition is granted.

The Petition raises a pure question of law

Before delving into the singular substantive issue, the Court first resolves the procedural issues.

The CA held that the Republic's Petition for *Certiorari* was procedurally infirm for two reasons — *first*, the Petition for *Certiorari* was filed with the CA without a prior motion for reconsideration; and *second*, said petition raised questions of fact and evidence which are not cognizable under a Rule 65 petition.

The Court disagrees.

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[26] *Id.* at 150-151.

[27] *Id.* at 165-172.

[28] *Id.* at 181-189.

A petition for *certiorari* under Rule 65 "is a special civil action that may be resorted to only in the absence of appeal or any plain, speedy, and adequate remedy in the ordinary course of law."[29]

As a general rule, a motion for reconsideration must first be filed with the lower court before the extraordinary remedy of *certiorari* is resorted to, since a motion for reconsideration is considered a plain, speedy and adequate remedy in the ordinary course of law. Nevertheless, this general rule admits of well-established exceptions, one of which is when the issue raised is a pure question of law.[30]

There is a question of law in a given case when the doubt or difference arises as to what the law is on a certain state of facts, and there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts.[31]

Here, the Republic does not dispute the truthfulness of Remar's allegations, particularly, the specific acts he claims to have done to locate Lovelyn. What the Republic does question is the sufficiency of these acts, that is, whether they are sufficient to merit a legal declaration of Lovelyn's presumptive death.

Clearly, the Republic's Petition for *Certiorari* raised a pure legal question. Hence, direct resort to the CA *via* Rule 65, without filing with the RTC a prior motion for reconsideration, was proper.

The requisites for declaration of presumptive death under the Family Code

Article 41 of the Family Code provides the requirements for a declaration of presumptive death, thus:

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[29] *Genpact Services, Inc. v. Santos-Falceso*, 814 Phil. 1091, 1099 (2017).

[30] *Id.* at 1099-1100.

[31] See generally *Parañaque Kings Enterprises, Inc. v. Court of Appeals*, 335 Phil. 1184, 1195 (1997).

ART. 41. A marriage contracted by any person during the subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, **the prior spouse had been absent for four consecutive years and the spouse present had a well-founded belief that the absent spouse was already dead**. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only two years shall be sufficient.

For the purpose of contracting the subsequent marriage under the preceding paragraph, the spouse present must institute a summary proceeding as provided in this Code for the declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse. (Emphasis supplied)

Culled from this provision, the essential requisites for a declaration of presumptive death for the purpose of remarriage are:

1. That the absent spouse has been missing for four consecutive years, or two consecutive years if the disappearance occurred where there is danger of death under the circumstances laid down in Article 391, Civil Code;

2 That the present spouse wishes to remarry;

3. That the present spouse has a well-founded belief that the absentee is dead; and

4. That the present spouse files a summary proceeding for the declaration of presumptive death of the absentee.[32] (Emphasis in the original)

The Petition is anchored on Remar's alleged failure to prove compliance with the third requisite. Thus, a closer examination of this requirement is necessary.

In *Cantor*, the Court *en banc* clarified the meaning of well-founded belief by comparing the language of Article 41 to its Civil Code counterpart. The Court held:

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[32] *Republic v. Cantor*, *supra* note 15, at 127-128.

Notably, Article 41 of the Family Code, compared to the old provision of the Civil Code which it superseded, imposes a stricter standard. It requires a "well-founded belief" that the absentee is already dead before a petition for declaration of presumptive death can be granted. We have had occasion to make the same observation in *Republic v. Nolasco*, where we noted the crucial differences between Article 41 of the Family Code and Article 83 of the Civil Code, to wit:

> Under Article 41, the time required for the presumption to arise has been shortened to four (4) years; however, there is need for a judicial declaration of presumptive death to enable the spouse present to remarry. Also, Article 41 of the Family Code imposes a stricter standard than the Civil Code: Article 83 of the Civil Code merely requires either that there be no news that such absentee is still alive; or the absentee is generally considered to be dead and believed to be so by the spouse present, or is presumed dead under Articles 390 and 391 of the Civil Code. The Family Code, upon the other hand, prescribes as "well-founded belief" that the absentee is already dead before a petition for declaration of presumptive death can be granted.

Thus, mere absence of the spouse (even for such period required by the law), lack of any news that such absentee is still alive, failure to communicate or general presumption of absence under the Civil Code would not suffice. This conclusion proceeds from the premise that Article 41 of the Family Code places upon the present spouse the burden of proving the additional and more stringent requirement of "well-founded belief" which can only be discharged upon a showing of proper and honest-to-goodness inquiries and efforts to ascertain not only the absent spouse's whereabouts but, more importantly, that the absent spouse is still alive or is already dead.

The Requirement of Well-Founded Belief

The law did not define what is meant by "well-founded belief." It depends upon the circumstances of each particular case. Its determination, so to speak, remains on a case-to-case basis. **To be able to comply with this requirement, the present spouse must prove that his/her belief was the result of diligent and reasonable**

efforts and inquiries to locate the absent spouse and that based on these efforts and inquiries, he/she believes that under the circumstances, the absent spouse is already dead. It requires exertion of active effort (not a mere passive one).[33] (Emphasis and underscoring supplied; emphasis and italics in the original omitted)

Based on these parameters, the Court held that the efforts exerted by respondent therein fell short of the degree of diligence required by law and jurisprudence:

In the case at bar, the respondent's "well-founded belief" was anchored on her alleged "earnest efforts" to locate [her husband,] Jerry, which consisted of the following:

(1) She made inquiries about Jerry's whereabouts from her in-laws, neighbors and friends; and

(2) Whenever she went to a hospital, she saw to it that she looked through the patients' directory, hoping to find Jerry.

These efforts, however, fell short of the "stringent standard" and degree of diligence required by jurisprudence for the following reasons:

First, the respondent did not actively look for her missing husband. It can be inferred from the records that her hospital visits and her consequent checking of the patients' directory therein were unintentional. She did not purposely undertake a diligent search for her husband as her hospital visits were not planned nor primarily directed to look for him. This Court thus considers these attempts insufficient to engender a belief that her husband is dead.

***Second*, she did not report Jerry's absence to the police nor did she seek the aid of the authorities to look for him. While a finding of well-founded belief varies with the nature of the situation in which the present spouse is placed, under present conditions, we find it proper and prudent for a present spouse, whose spouse had been missing, to seek the aid of the authorities or, at the very least, report his/her absence to the police.**

Third, she did not present as witnesses Jerry's relatives or their neighbors and friends, who can corroborate her efforts to locate Jerry. **Worse, these persons, from whom she allegedly made inquiries,**

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[33] *Id.* at 128-129.

were not even named. As held in *Nolasco*, the present spouse's bare assertion that he inquired from his friends about his absent spouse's whereabouts is insufficient as the names of the friends from whom he made inquiries were not identified in the testimony nor presented as witnesses.

Lastly, **there was no other corroborative evidence to support the respondent's claim that she conducted a diligent search. Neither was there supporting evidence proving that she had a well-founded belief other than her bare claims that she inquired from her friends and in-laws about her husband's whereabouts.**

In sum, the Court is of the view that the respondent merely engaged in a "passive search" where she relied on uncorroborated inquiries from her in-laws, neighbors and friends. She failed to conduct a diligent search because her alleged efforts are insufficient to form a well-founded belief that her husband was already dead. As held in *Republic of the Philippines v. Court of Appeals* (*Tenth Div.*), "[w]hether or not the spouse present acted on a well-founded belief of death of the absent spouse depends upon the inquiries to be drawn from a great many circumstances occurring before and after the disappearance of the absent spouse and the nature and extent of the inquiries made by [the] present spouse."[34] (Emphasis and underscoring supplied; emphasis in the original omitted)

Citing *Cantor*, the Republic asserts that the standard of "well-founded belief" is exacting; it presupposes that the present spouse had exerted diligent and reasonable efforts to locate the absent spouse.[35] According to the Republic, Remar's efforts fall short of this requirement.[36]

The Court agrees.

To recall, Remar's efforts to locate Lovelyn are marked by the following acts:

1. Remar travelled to several places where his wife had been reportedly seen particularly, Bislig City and the

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[34] *Id.* at 132-133.

[35] See *rollo*, p. 56.

[36] *Id.* at 60.

Municipality of Lingig in the province of Surigao del Sur, Metro Manila, Batangas and Cavite; and

2. Remar constantly communicated with Lovelyn's relatives for a period of ten (10) years in order to ascertain Lovelyn's whereabouts.

Unfortunately, Remar failed to allege, much less prove, the extent of the search he had conducted in the places where he claims to have gone. This leaves the Court with no way to ascertain the extent of Remar's search.

Remar also failed to identify which of Lovelyn's relatives he had communicated with, and disclose what he learned from these communications. Again, this leaves the Court with no basis to determine whether the information Remar learned is sufficient to engender a well-founded belief that Lovelyn is dead.

Moreover, much like the respondent in *Cantor*, Remar never sought the help of the authorities to locate Lovelyn in the course of her ten (10)-year disappearance. Remar was given ample opportunity to explain his failure to report Lovelyn's disappearance, considering that the Republic first noted such failure when it filed its Petition for *Certiorari* with the CA. Curiously, however, Remar chose not to address the matter.

Finally, the allegations in Remar's Petition for Declaration of Presumptive Death[37] suggest that he is aware of the true cause of Lovelyn's disappearance, thus:

In the first three (3) months that his wife was in Manila[,] [there] was x x x constant communication through cellphone calls and [texts]. [Remar] relayed to [Lovelyn] that he is x x x working in Surigao City as a security guard in the Hall of Justice. x x x

Then the calls and [texts] got fewer and fewer until [they] stopped. He thought that the cell phone of his wife was just lost so he started

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[37] Denominated as "In the Matter for the Declaration of Presumptive Death of Lovelyn Uriarte Quiñonez for Purposes of Remarriage Under Article 41 of the Family Code of the Philippines," *rollo*, pp. 82-85.

inquiries from his and her relatives in [Bislig] City. One confess[ed] that his wife is now [cohabiting] with another man and will not be going home because of shame. He could not believe and refuse[d] to believe the devastating news.[38]

The Court commiserates with Remar's plight. Nevertheless, the Court cannot uphold the issuance of a declaration of presumptive death for the purpose of remarriage where there appears to be no well-founded belief of the absentee spouse's death, but only the likelihood that the absentee spouse does not want to be found.

WHEREFORE, premises considered, the Petition is **GRANTED**. The Decision and Resolution respectively dated June 29, 2017 and January 31, 2018 rendered by the Court of Appeals in CA-G.R. SP No. 07581-MIN are **REVERSED and SET ASIDE**.

Necessarily, the Judgment dated April 11, 2016 issued by the Regional Trial Court of Surigao City, Branch 32, in Special Proceedings No. 7669 is also **REVERSED and SET ASIDE**. Consequently, the petition of respondent Remar A. Quiñonez to have his wife, Lovelyn Uriarte Quiñonez declared presumptively dead for the purpose of remarriage is **DENIED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Reyes, J. Jr., and *Lazaro-Javier, JJ.,* concur.

Lopez, J., on official leave.

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[38] *Rollo,* p. 109.

FIRST DIVISION

[G.R. Nos. 238103 & 238223. January 6, 2020]

FLORENCIO TUMBOCON MIRAFLORES and MA. LOURDES MARTIN MIRAFLORES, *petitioners, vs.* **OFFICE OF THE OMBUDSMAN and FIELD INVESTIGATION OFFICE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; FOR PURPOSES OF FILING A CRIMINAL INFORMATION, PROBABLE CAUSE PERTAINS TO FACTS AND CIRCUMSTANCES SUFFICIENT TO CREATE A WELL-FOUNDED BELIEF THAT A CRIME HAS BEEN COMMITTED AND THE ACCUSED IS PROBABLY GUILTY THEREOF.— For purposes of filing a criminal information, probable cause pertains to facts and circumstances sufficient to create a well-founded belief that a crime has been committed and the accused is probably guilty thereof. As such, a finding of probable cause does not require an inquiry on whether there is sufficient evidence to secure a conviction. The presence or absence of the elements of the crime is evidentiary in nature and a matter of defense which may be passed upon only after a full-blown trial on the merits. In sum, whether a party's defense or accusation is valid and meritorious and whether the evidence presented are admissible fall beyond the process of determining probable cause. They are for the trial court to completely determine through a full-blown trial on the merits.

2. ID.; ID.; ID.; FOR THE SAME ACTS OR OMISSIONS COMPLAINED OF, CLEARANCE FROM ADMINISTRATIVE LIABILITY DOES NOT AFFECT FINDING OF PROBABLE CAUSE IN A CRIMINAL CASE. — [W]hile indeed the CA had cleared petitioners of any administrative liability for serious dishonesty and grave misconduct based on the same acts for which they are criminally charged, the same does not affect the finding of probable cause against them here. For one, there is no showing that the decision of the CA is final and executory. For another, although the criminal

cases involve the same acts or omissions complained of in the administrative cases, petitioners' absolution in the latter does not bar their prosecution in the former, and vice versa. The quantum of evidence required in one is different from the quantum of evidence required in the other.

APPEARANCES OF COUNSEL

Rigoroso Galindez and Rabino Law Offices for petitioners.
The Solicitor General for respondents.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This petition for *certiorari*[1] assails, on ground of grave abuse of discretion, the following dispositions of respondent Office of the Ombudsman (OMB) in OMB-V-C-15-0115, for violation of Section 7[2] of Republic Act 3019 [3] (RA 3019), in relation to

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[1] Filed under Rule 65, Rules of Court; Petition, *rollo* (Vol. I), pp. 7-104.

[2] Section 7. *Statement of assets and liabilities*— Every public officer, within thirty days after the approval of this Act or after assuming office, and within the month of January of every other year thereafter, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of the corresponding Department Head, or in the case of a Head of Department or chief of an independent office, with the Office of the President, or in the case of members of the Congress and the officials and employees thereof, with the Office of the Secretary of the corresponding House, a true detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year: *Provided,* That public officers assuming office less than two months before the end of the calendar year, may file their statements in the following months of January.

[3] Anti-Graft and Corrupt Practices Act.

Section 8[4] of Republic Act 6713[5] (RA 6713); and OMB-V-F-15-0001, for forfeiture of unlawfully acquired properties under Republic Act 1379 (RA 1379), *viz*:

a) *Joint Resolution*[6] dated August 12, 2016 finding probable cause against Spouses Florencio Tumbocon Miraflores (Florencio) and Maria Lourdes Martin Miraflores (Lourdes; collectively, petitioners) for nine (9) counts and three (3) counts, respectively, of violation of Section 7 of RA 3019 in relation to Section 8 of RA 6713 and for forfeiture of unlawfully acquired properties under RA 1379;[7] and

[4] Section 8. *Statements and Disclosure.* — Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

(A) Statements of Assets and Liabilities and Financial Disclosure. — All public officials and employees, except those who serve in an honorary capacity, laborers and casual or temporary workers, shall file under oath their Statement of Assets, Liabilities and Net Worth and a Disclosure of Business Interests and Financial Connections and those of their spouses and unmarried children under eighteen (18) years of age living in their households.

The two documents shall contain information on the following:

(a) real property, its improvements, acquisition costs, assessed value and current fair market value;
(b) personal property and acquisition cost;
(c) all other assets such as investments, cash on hand or in banks, stocks, bonds, and the like;
(d) liabilities, and;
(e) all business interests and financial connections.

The documents must be filed:

(a) within thirty (30) days after assumption of office;
(b) on or before April 30, of every year thereafter; and
(c) within thirty (30) days after separation from the service.

[5] Code of Conduct and Ethical Standards for Public Officials and Employees.

[6] *Rollo* (Vol. I), p. 129.

[7] An Act Declaring Forfeiture in Favor of the State Any Property Found to Have Been Unlawfully Acquired by Any Public Officer or Employee and Providing for the Proceedings Therefor.

b) *Joint Order*[8] dated October 2, 2017 affirming with modification such finding of probable cause but reducing on ground of prescription the counts of violation of Section 7 of RA 3019, in relation to Section 8 of RA 6713 against Florencio from nine (9) to four (4).

The Proceedings before the OMB

The assailed OMB *Joint Resolution*[9] dated August 12, 2016 bears the **parties' respective submissions,** *viz*:

[FIELD INVESTIGATION OFFICE'S (FIO)] CHARGES

Complainant (respondent in this case) alleged that respondents (petitioners in this case) amassed wealth disproportionate to their legitimate incomes. It also alleged the following:

1. From the declarations in their 2001-2009 SALNs, the total change in respondent's net worth xxx amounted to **₱4,665,938.02**, while their estimated total compensation xxx income for the same years amounted to **₱4,920,519.00** where ₱3,799,170.00 is Florencio's estimated compensation, while ₱l,121,349.00 is the estimated compensation of Lourdes;

2. The computation of the real properties in their 2001 to 2009 SALNs xxx, shows that the *acquisition costs* were not consistently used as there were times that the *fair market value* of the properties [was] adopted/added; hence the actual value spent to acquire the properties were not declared. The inconsistencies therefor affected the actual [Net worth] of respondents, which upon *re-computation* xxx amounted to **₱10,237,518.02**, not ₱4,665,938.02;

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3. Using respondents' *recomputed* net worth of ₱10,237,518.02 *less* their known income of ₱4,920,519.00, there is a *total unexplained wealth* of **₱5,316,999.02**. This amount, however, does not take into account the expenses incurred by respondents for their numerous travels abroad and other living expenses. The amount of unexplained wealth was taken from

[8] *Rollo* (Vol. I), p. 140.

[9] *Id* at 129.

the acquisition costs of assets and liabilities declared in the 2001 to 2009 SALN;

4. Respondents either overvalued, undervalued or did not declare some of the properties *registered under their names*, such as: (a) the residential land (with improvement) located in Quezon City, which was acquired in 2000 and declared in the 2001 SALN with acquisition cost of only ₱242,620.00 and ₱50,000.00 for improvement. However, based on the annotations at the back of Transfer Certificate of Title (TCT) No. 210613 and Tax Declaration No. D-125-01482, the property costs [**₱1,500,000.00**]; (b) the Mitsubishi Pajero and Toyota Fortuner were undervalued by ₱90,200.00 and ₱118,000.00, respectively, while the Toyota Hi-Ace GL Grandia was overvalued by ₱45,000.00; and (c) the Isuzu Elf, Toyota Pick-up, Nissan Safari Wagon and Kawasaki Motorcycle with a total acquisition cost of **₱708,400.00**, were not declared;

5. Although Lourdes acquired shares of stocks from the Rural Bank of Ibajay, Inc. [(RBII)] in 1989, the value of said shares of stocks amounting to **₱6,497,200.00** was only declared in their 2008 and 2009 SALNs; and

6. The amounts of certain liabilities were either overstated or still declared despite having been fully paid, such as the housing loan and multi-purpose loan (MPL) from Pag- I.B.I.G. Fund Iloilo Branch and the Ember Salary Loan from the Government Insurance System (GSIS).

[SPOUSES MIRAFLORES'] CLAIMS

In denying the accusations against them, respondents asserted that the computation of their total income should be ₱12,132,519.00, an amount which is proportional to the alleged increase in their net worth of ₱10,237,518.02 from 2001 to 2009.

Respondents averred that in the computation of their incomes, complaint disregarded their incomes from their assets, *i.e.* fish ponds, farm and coconut lands, and financial interests in their rural banking business that were consistently declared in their SALNs. Also disregarded were the incomes of their adult children who started to earn in 2009 and other remunerations, including per diems, representation and transportation allowances (RATA) and other fees, all constitute their legitimate sources of funds and may cover the

family expenses. Their loan of almost **₱20,000,000.00** was incurred to subsidize their living and enable them to acquire the properties added to their assets from 2001 to 2009.

Respondents also maintained that the alleged inconsistencies in the use of fair market value or acquisition cost in the computation of their assets arose from the difficulty in determining which reference value of the property should be used in declaring the same in their SALNs. The seeming conflict was also due to the confusion brought upon by the changes in the SALN form as prescribed by the Civil Service Commission in 2008 and 2009.

To show that they declared all their properties, respondents alleged that they included in their SALNs properties which they inherited but which are still undistributed and co-owned with the other heirs. The costs of some assets were also declared based on the amount stated in the deeds of sale and other costs incurred in acquiring such assets, such as loan interest, discount, accessories, insurance, etc., and the mode by which such assets were acquired, e.g. by loan.

Respondents further explained that they did not declare in their 2001 to 2009 SALNs the Nissan Safari Wagon, Mazda Pick-up (alleged in the complaint as Toyota Pick-up) and Kawasaki motorcycle all registered in their names, as they are already owned, used and given to persons who had served their family for many years. The sworn statements of Allen S. Quimpo (Quimpo), Efren Trinidad (Trinidad) and Antonio M. Pamisan (Pamisan) were submitted in support of their claim.

Additionally, to show that their accumulated wealth from 2001 to 2009 is not disproportionate to their sources of income/funds, respondents presented a computation of their net worth, income and liabilities from 2004 to 2013. Allegedly, while their SALNs did not provide every minute detail of information, they, however, provided all necessary data following *the detailed and complete* requirement of RA 6713. As the SALNs were prepared in good faith, the difficulty in determining their net worth and income should not operate to disregard the legal income from them.[10]

The same Joint Resolution shows a summary of petitioner's Statements of Assets, Liabilities and Net worth (SALNs) for 2001-2009,[11] *viz*:

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[10] *Id.* at 111-115.

[11] See *Rollo* (Vol. I), pp. 379-399 and *Rollo* (Vol. II), pp. 638-652.

Table 1: Petitioners' SALNs for years 2001 - 2005

ASSETS	2001	2002	2003	2004	2005
Real Properties					
Riceland in Regador, Ibajay, Aklan	₱1,100,000.00	₱1,200,000.00	₱1,300,000.00	₱1,300,000.00	₱1,300,000.00
Cocoland in Regador, Ibajay, Aklan	2,200,000.00	2,300,000.00	2,400,000.00	2,400,000.00	2,400,000.00 **plus**10,000.00
Residential Lot in Poblacion Ibajay, Aklan	850,000.00	3,000,000.00	3,000,000.00	3,000,000.00	3,000,000.00 **plus** 2,000,000.00
Residential Lot in Quezon City	691,280.00	891,280.00	2,500,000.00	2,500,000.00	2,500,000.00
Fishpond in Capiz	5,000,000.00	5,000,000.00	5,500,000.00	5,500,000.00	5,500,000.00 **plus** 90,000.00
Total	₱9,841,280.00 *Current Fair Market Value	₱12,391,280.00 *Current Fair Market Value	₱14,700,000.00 *Current Fair Market Value	₱14,700,000.00 *Current Fair Market Value	₱16,800,000.00 *Current Fair Market Value & Acquisition Cost
Personal and other Properties					
Pick up (Mazda)	₱450,000.00	₱450,000.00	₱450,000.00	₱450,000.00	
Automobile	600,000.00	600,000.00	600,000.00	600,000.00	₱600,000.00
Jewelries	300,000.00	400,000.00	500,000.00	500,000.00	500,000.00
Books	50,000.00	55,000.00	60,000.00	60,000.00	60,000.00
Clothes/ Appliances	330,000.00	400,000.00	400,000.00	400,000.00	400,000.00
Bank Deposits/ On Hand	600,000.00	700,000.00	900,000.00	900,000.00	500,000.00
Pajero van	1,300,000.00	1,300,000.00	1,300,000.00	1,300,000.00	1,300,000.00
Pick-up (Nissan)					900,000.00
Automobile (Mazda)					780,000.00
Total	**₱3,630,000.00**	**₱3,905,000.00**	**₱4,210,000.00**	**₱4,210,000.00**	**₱5,040,000.00**
TOTAL ASSETS	**₱13,471,280.00**	**₱16,296,280.00**	**₱18,910,000.00**	**₱18,910,000.00**	**₱21,840,000.00**

LIABILITIES	2001	2002	2003	2004	2005
Housing Loan (Pag-ig)	₱1,050,754.02	₱900,000.00	₱700,000.00	₱700,000.00	₱560,000.00
Housing Loan	2,200,000.00 (BPI)	2,000,000.00 (Equitable Bank)	1,650,000.00	1,650,000.00	1,820,759.59
Car Loan	600,000.00	300,000.00	200,000.00	200,000.00	314,628.00 (Mazda)
GSIS (Salary and Policy)	170,000.00	120,000.00	80,000.00	80,000.00	80,000.00
Private Loans	1,300,000.00	1,000,000.00	2,100,000.00	2,100,000.00	5,000,000.00
Multi-purpose Loan (Pag-Ibig)			45,000.00	45,000.00	45,000.00
TOTAL LIABILITIES	**₱4,260.754.02**	**₱4,320,000.00**	**₱ 4,775,000.00**	**₱4,775,000.00**	**₱7,820,387.59**
NETWORTH	₱8,850,525.98	₱11,976,280.00	₱14,135,000.00	₱14,135,000.00	₱14,019,612.41[12]

Table 2: Petitioners' SALNs for years 2006-2009

ASSETS	2006	2007	2008	2009
Real Properties				
Riceland in Regador Ibajay, Aklan	₱1,600,000.00	₱1,600,000.00	₱1,600,000.00	₱1,600,000.00
Cocoland in Regador, Ibajay, Aklan	2,700,000.00 plus 300,000.00	₱3,000,000.00	2,700,000.00	2,700,000.00
Residential Lot in Poblacion Ibajay, Aklan	3,500,000.00 plus 2,000,000.00 plus 500,000.00	6,000,000.00	3,500,000.00	3,500,000.00
Residential Lot in Quezon City	5,000,000.00 plus 4,500,000.00 plus 300,000.00	5,300,000.00	5,000,000.00 plus 4,800,000.00	5,000,000.00 plus 4,800,000.00
Fishpond in Capiz	7,200,000.00 plus 150,000.00	7,350,000.00	7,200,000.00	7,200,000.00

[12] *Rollo* (Vol. I), pp. 119-120.

Residential Property in Quezon City			9,000,000.00	9,000,000.00
Total	₱27,750,000.00 *Current Fair Market Value & Acquition Cost	₱23,250,000.00 *Current Fair Market Value		₱13,800,000.00 *Acquisition Cost
Personal and other Properties				
Automobile	600,000.00	600,000.00		
Stocks (Equity paid)			6,497,200.00	6,497,200.00
Deposits/advanced payments on rentals			180,000.00	180,000.00
Furniture, antiques			600,000.00	600,000.00
Jewelry	870,000.00	700,000.00	990,000.00	990,000.00
Books	60,000.00	60,000.00		
Clothes/Appliances	500,000.00	500,000.00		
Bank Deposits/On Hand	550,000.00	550,000.00	770,000.00	770,000.00
Pajero Van	1,300,000.00	1,300,000.00		
Pick-up (Nissan)	900,000.00	900,000.00	900,000.00	900,000.00
Automobile (Mazda)	780,000.00	780,000.00		
Toyota Fortuner Plate No. ZDE457	1,250,00.00	1,250,00.00	1,250,00.00	1,250,00.00
Toyota Hi Ace Grandia Plate No. ZLZ439		1,465,000.00	1,465,000.00	1,465,000.00
Mitsubishi Pajero Van Plate No. WHN 852			1,300,000.00	1,300,000.00
Mazda Plate No. ZAB 675			780,000.00	780,000.00
Honda Civic Plate No. UHG 842			600,000.00	600,000.00
Mitsubishi Pajero Plate No. ZNZ 924			2,608,000.00	2,608,000.00
Others			60,000.00	60,000.00
Total	₱6,640,000.00	₱8,275,000.00		₱18,540,200.00
TOTAL ASSETS	**₱34,390,000.00**	**₱31,525,000.00**	**₱31,800,200.00**	**₱32,340,200.00**

LIABILITIES	2006	2007	2008	2009
Housing Loan (Pag-Ibig)	560,000.00			
Housing Loan	1,820,759.59	3,000,000.00 (BPI)		2,817,624.00 (BPI)
Personal Loan			8,000,000.00	4,000,000.00
Bank Loans			4,283,736.00	
Car Loan (Mazda)	314,628.00	314,628.00		
GSIS Loan (Salary and Policy)	45,000.00	45,000.00		
Private Loans	6,000,000.00	8,000,000.00		
Multi-purpose Loan (Pag-Ibig)	45,000.00	45,000.00		
Car Loan (Hi-Ace)		879,000.00		
RCBC Grandia Car Loan				483,744.00
RCBC Pajero Car Loan				982,368.00
UCPB Housing Loan				10,000,000.00
TOTAL LIABILITIES	**₱8,785,387.59**	**₱12,283,628.00**	**₱12,238,736.00**	**₱18,283,736.00**
NETWORTH	**₱25,604,612.41**	**₱19,241,372.00**	**₱19,516,464.00**	**₱14,056,464.00**[13]

It also contains a summary of FIO's computation[14] of petitioners' net worth, *viz*:

Year	Networth	Change in Networth	Known Income	Explain/ Unexplained Wealth
2001	-₱288,134.02	0.00	₱402,578.00	-₱402,578.00
2002	1,595,000.00	1,883,134.02	446,063.00	1,437,071.02
2003	1,834,000.00	239,000.00	438,163.00	-199,163.00
2004	1,534,000.00	-300,000.00	412,366.00	-712,366.00
2005	-723,267.59	-2,257,267.59	420,000.00	-2,677,267.59
2006	5,679,732.41	6,403,000.00	420,000.00	5,983,000.00
2007	3,771,492.00	-1908,240.41	636,277.00	-2,544,517.41
2008	6,999,384.00	3,227,892.00	862,936.00	2,364,956.00
2009	9,949,384.00	2,950,000.00	882,136.00	2,067,864.00
Total		**₱10,237,518.02**	**₱4,920,519.00**	**₱5,316,999.02**[15]

[13] *Id.* at 120-121.

[14] *Rollo* (Vol. I), 347-364.

[15] *Id.* at 352 and 112.

Too, the Joint Resolution bears the OMB's finding of probable cause against petitioners for violation of RA 3019[16] in relation to RA 6713;[17] and for forfeiture of unlawfully acquired properties.[18] The OMB held in the main:

1. By declaring amounts higher or lower than the actual costs (Acquisition Costs) of their real and personal properties, petitioners violated the rule on submission of complete and accurate SALNs.

2. As for the undeclared motor vehicles, petitioners admitted having bought the same, albeit they conveniently claimed that they had given these motor vehicles to their long-time employees as accommodation or reward. This is at best self-serving.

3. Regarding Lourdes' RBII shareholdings, she held ownership thereof since 1989 and yet she failed to declare their value in her very first 2007 SALN. She indicated it only in her subsequent 2008 SALN.

4. The alleged source for the purchase of petitioners' family home in Quezon City appeared to be dubious *i.e*. HSBC remittances from Florencio's siblings. No documents were presented to prove Florencio's relationship with the supposed sponsors and the latter's financial capacity.

5. The increase in petitioners' net worth was not supported by their reported incomes/compensations.

In their subsequent motion for reconsideration, petitioners basically averred:

FIRST. The OMB adopted FIO's so-called erroneous and inaccurate re-computation. Petitioners' right to be informed of the charges against them was thereby violated.

SECOND. Whatever criminal liability corresponded to their SALNs for 2001-2009 had already prescribed.

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[16] Anti-Graft and Corrupt Practices Act.

[17] Code of Conduct and Ethical Standards for Public Officials and Employees.

[18] RA 1379.

THIRD. They did not acquire any property grossly disproportionate to their salaries. They had in fact conclusively shown that the increase in their net worth may be attributed to their incomes or earnings for the periods these properties were acquired.

FOURTH. There was no allegation or proof that the entries in their SALNs were intended to mislead or deceive.

FIFTH. They had a valid justification for not disclosing or for otherwise misdeclaring some assets in their SALNs.

SIXTH. The FIO's mechanical "net-worth-to-income-discrepancy" analysis, standing alone, cannot support the finding of probable cause against them.

Pending resolution of their motion for reconsideration, petitioners filed a *Manifestation* dated December 5, 2017 calling attention to the ***Decision***[19] **dated November 17, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 149592.** In that case, they were **cleared of any administrative liability** for serious dishonesty or grave misconduct in relation to the same 2001-2009 SALNs subject of the criminal cases.

By *Joint Order*[20] dated October 2, 2017, the OMB affirmed with modification. It reduced on ground of prescription, the counts of violation of Section 8 of RA 3019, in relation to RA 6713 against Florencio from nine to four.

THE PRESENT PETITION

Petitioners now seek to nullify the OMB's Joint Resolution dated August 12, 2016 and Joint Order dated October 2, 2017. **They assert:**

> The OMB committed grave abuse of discretion when it adopted as bases of finding probable cause the FIO's erroneous and unsubstantiated computation of their net worth, thus, violating their right to be informed of the charges against them.

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[19] *Rollo* (Vol. II), pp. 753-777.

[20] *Rollo* (Vol. I), pp. 132-141.

OMB committed grave abuse of discretion when it failed to accord due recognition to the Court of Appeals' Decision dated November 17, 2017 in CA-G.R. SP No.149592 clearing them of any administrative liability pertaining to the same SALNs subject of the present case.

The OMB committed grave abuse of discretion when it resolved the cases only after eight (8) long years since the investigation commenced in 2010, thus, violating their right to speedy disposition of the cases against them.

In its *Comment,*[21] the OMB counters:

The *Complaint*[22] clearly charged petitioners with vio1ation of Section 8 of RA 3019, in relation to RA 6713 pertaining to their own SALNs on record, hence, they could not have been deprived of their right to be informed of the charges against them.

The FIO's computation was based on the acquisition costs of petitioners' assets, liabilities, and net worth indicated in their own SALNs.

Its finding of probable cause was based on petitioners' incomplete SALNs and the various inconsistencies found therein.

Since petitioners themselves admitted having purchased and registered subject motor vehicles in their names, they may not deny ownership thereof. The letters[23] acknowledging receipt by the supposed persons in whose favor petitioners had allegedly conveyed these motor vehicles as a reward for their loyal service to petitioners' family are self-serving, nay, replete with inconsistencies.

Lourdes cannot disclaim liability for her failure to declare the acquisition cost of her RBII shareholdings in her 2007 SALN. Her bare allegation that RBII had a negative book value is devoid of merit. Petitioners themselves had previously admitted that as condition to acquiring these shareholdings they had to assume the liabilities of the Garcia family to RBII. This simply goes to show that the RBII shareholdings bore a substantial value and were onerously acquired.

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[21] *Rollo* (Vol. II), pp. 804-823.

[22] *Rollo* (Vol. I), pp. 347-364.

[23] *Id.* at 281-283.

ISSUES

1. Did the OMB gravely abuse its discretion when it found probable cause against petitioners for violation of Section 8 of RA 3019, in relation to Section 7 of RA 6713 and for forfeiture of unlawfully acquired properties under RA 1379?
2. Did the OMB violate petitioners' right to be sufficiently informed of the charges against them?
3. Did the OMB violate petitioners' right to speedy disposition of the cases which allegedly got resolved only eight years after their investigation commenced?
4. Does the ruling of the Court of Appeals in CA-G.R. SP No. 149592 affect the present criminal complaints against petitioners?

RULING

In finding probable cause against petitioners for violation of Section 7 of RA 3019,[24] in relation to Section 8 of RA 6713[25] and for forfeiture of unlawfully acquired properties under RA 1379, the OMB made an exhaustive discussion of their alleged undervalued, overvalued, and undeclared properties based on their SALNs for 2001-2009; the Certifications obtained from the Provincial Accountant of Aklan,[26] Accounting Service of the House of Representatives, [27] Pag-I.B.I.G Fund [28] and GSIS;[29] and petitioners' affirmative defenses as pleaded in their Joint

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[24] Anti-Graft and Corrupt Practices Act.

[25] Code of Conduct and Ethical Standards for Public Officials and Employees.

[26] *Rollo* (Vol. I), pp. 448-449.

[27] *Id.* at 451.

[28] *Id.* at 600-607.

[29] *Id.* at 608-612.

Counter-Affidavit,[30] Joint Position Paper[31] and Motion for Reconsideration,[32] including their two-inch thick documentary attachments.

After the evaluation process, the OMB came out with its finding of probable cause that petitioners either undervalued, overvalued, or failed to declare certain properties in their SALNs for 2001-2009. These properties included several motor vehicles, RBII shares of stock worth ₱6,160,000.00, loans, and additional incomes and earnings.

We affirm the OMB's finding of probable cause. Consider:

ONE. Petitioners have not denied that they did fail to declare in their SALNs for 2001-2009 the following motor vehicles *i.e.* Isuzu Elf, Nissan Safari Wagon, Mazda Pick Up and Kawasaki motorcycle.[33] They in fact admitted having purchased these vehicles in their own name and using their own money. They claim, however, that they no longer own these vehicles because they already conveyed them ***gratis et amore*** to their valued employees as reward for their long years of loyal service to their family. In this regard, petitioners submitted to the OMB the letters[34] acknowledging receipt of the vehicles by these alleged beneficiaries.

We agree with the OMB that these documents, as worded, do not alter the fact that it was petitioners themselves who bought the vehicles in their own name and with their own funds. They have not even shown that these vehicles are no longer registered in their names after they allegedly conveyed them in favor of the so-called "beneficiaries". Consequently, there is merit to the finding of the OMB that these affidavits, standing alone, do not negate, nay, justify petitioners' failure to declare

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[30] *Rollo* (Vol. II), pp. 617-633.

[31] *Id.* at 670-687.

[32] *Rollo* (Vol. I), pp. 143-202.

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

[34] *Id.* at 281-283.

them in their SALNs for 2001-2009. At any rate, whether these affidavits reflect the truth is a question of fact which the Court, not being a trier of facts, cannot take cognizance of.

TWO. Under Section 7 of RA 3019, every public officer is directed to file a true, detailed, and sworn statement of assets and liabilities, including among others, a statement of the **amounts and sources of his or her income and/or earnings.**

Petitioners assert that aside from the salaries and allowances they received as government elective officials, they derived other incomes and/or earnings from the fishponds, farm and coconut lots, and rural banking business[35] they own. The record speaks for itself. Petitioners' SALNs for 2001-2009 are totally devoid of any single entry supposedly representing additional income or earnings derived from petitioners' aforesaid assets. Surely, this omission, by itself is a violation of Section 7 of RA 3019, in relation to Section 8 of RA 6713.

THREE. Petitioners vigorously profess that the properties they had acquired over the years were either financed from their salaries or from loans obtained from Pag-I.B.I.G. Fund (*i.e.*, housing loan[36] and Multi-Purpose Loan[37]) and GSIS (*i.e.*, Ember Salary Loan[38]). But per Certifications, respectively, issued by Pag-I.B.I.G. Fund[39] and GSIS,[40] the loan amounts declared in petitioners' SALNs were either bloated or repeatedly entered therein as loans, albeit they had been fully paid long ago. The Court keenly notes that petitioners have conspicuously failed to refute these damaging findings ofthe OMB.

FOUR. Regarding the RBII shareholdings of Lourdes, she claims to have acquired the same in 1989. When she joined

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[35] *Id.* at 114.

[36] *Rollo* (Vol. I), p. 358.

[37] *Id.*

[38] *Id.* at 359.

[39] *Id.* at 600-607.

[40] *Id.* at 608-612.

the government in 2007, however, she did not include the value of these shareholdings in her initial SALN. She began declaring it only in her 2008 SALN where she declared that the asset had a value of Php6,497,200.00.

Lourdes seeks to clarify though that she actually had no value to declare back in 2007 because RBII was then of negative book value. She asserts that the Bangko Sentral ng Pilipinas (BSP) even directed RBII to infuse additional capital to save it from receivership. The best evidence to prove this point are the financial reports submitted by RBII to the BSP and the latter's written directive for RBII's infusion of additional capital. Lourdes could have easily obtained these certifications from the files of RBII itself, but she did not. What she submitted instead were supposed independent Audited Financial Statements,[41] General Information Sheet[42] (GIS) and Accountant's Report[43] on RBII. Whether these documents are sufficient to excuse Lourdes from reporting the actual value of her RBII shareholdings in her 2007 SALN is again a question of fact which the Court still cannot take cognizance of.

For purposes of filing a criminal information, probable cause pertains to facts and circumstances sufficient to create a well-founded belief that a crime has been committed and the accused is probably guilty thereof.[44] As such, a finding of probable cause does not require an inquiry on whether there is sufficient evidence to secure a conviction. The presence or absence of the elements of the crime is evidentiary in nature and a matter of defense which may be passed upon only after a full-blown trial on the merits. In sum, whether a party's defense or accusation is valid and meritorious and whether the evidence presented are admissible fall beyond the process of determining probable cause. They are for the trial court to completely determine through a full-blown trial on the merits.[45]

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[41] *Rollo* (Vol. I), pp. 287-300.

[42] *Id.* at 580-592.

[43] *Id.* at 211-223.

[44] *Villanueva v. Caparas,* 702 Phil. 609, 614 (2013).

[45] *PCGG v. Navarro-Gutierrez,* 772 Phil. 91, 101 (2015).

FIVE. On petitioners' right to be sufficiently informed of the charges against them, the record once more speaks for itself. Petitioners had not once, but twice responded to FIO's charges through their sixteen-page Joint Counter-Affidavit,[46] seventeen-page Joint Position Paper[47] and their two-inch thick documents as attachments. These submissions certainly could not have come from parties who did not sufficiently understand the charges hurled against them.

Petitioners, too, harp on the OMB's purported eight-year delay in disposing of the cases against them. This issue is being raised for the first time here and now. Petitioners never raised it in all the eight years the proceedings below pended. Even then, aside from claiming here that the case had dragged for over eight years before the OMB, petitioners have not cited the specific attendant circumstances in support of their lamentation, *e.g.*, the length of delay, reason for the delay, petitioners' assertion of their right to speedy disposition of the cases against them and consequent prejudice to them,[48] if any.

In any case, whether there was inordinate delay below is another question of fact which, again, the Court, not being a trier of facts, cannot take cognizance of.

In another vein, while indeed the CA had cleared petitioners of any administrative liability for serious dishonesty and grave misconduct based on the same acts for which they are criminally charged, the same does not affect the finding of probable cause against them here. For one, there is no showing that the decision of the CA is final and executory. For another, although the criminal cases involve the same acts or omissions complained of in the administrative cases, petitioners' absolution in the latter does not bar their prosecution in the former, and vice

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[46] *Rollo* (Vol. II), pp. 617-633.

[47] *Id.* at 670-687.

[48] See *Magante v. Sandiganbayan*, G.R. Nos. 230950-51, July 23, 2018.

versa. The quantum of evidence required in one is different from the quantum of evidence required in the other.[49]

Petitioners also raise the issue of whether they can be faulted for their alternate and/or simultaneous use of Fair Market Value and/or Acquisition Cost in the valuation of their real properties declared in their SALNs.[50] Suffice it to state that the presence or absence of good faith still is another question of fact. We reiterate that the Court is not a trier of facts.

In closing, the Court refers to ***Dichaves v. Office of the Ombudsman***,[51] *viz*:

> As a general rule, this Court does not interfere with the Office of the Ombudsman's exercise of its constitutional mandate. Both the Constitution and Republic Act No. 6770 (The Ombudsman Act of 1989) give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. The rule on non-interference is based on the "respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman[.]"
>
> An independent constitutional body, the Office of the Ombudsman is "beholden to no one, acts as the champion of the people [,] and [is] the preserver of the integrity of the public service." Thus, it has the sole power to determine whether there is probable cause to warrant the filing of a criminal case against an accused. This function is *executive* in nature.
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> The executive determination of probable cause is a highly factual matter. It requires probing into the "existence of such *facts and circumstances* as would excite the belief, in a reasonable mind, *acting on the facts within the knowledge of the prosecutor,* that the person charged was guilty of the crime for which he [or she] was prosecuted."
>
> The Office of the Ombudsman is armed with the power to investigate. It is, therefore, in a better position to assess the strengths or weaknesses

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[49] See *De Leon v. People of the Philippines,* G.R. No. 222861, April 23, 2018.

[50] *Rollo* (Vol. I), pp. 379-412.

[51] 802 Phil. 564, 589-591 (2016).

of the evidence on hand needed to make a finding of probable cause. As this Court is not a trier of facts, we defer to the sound judgment of the Ombudsman.

Practicality also leads this Court to exercise restraint in interfering with the Office of the Ombudsman's finding of probable cause. *Republic v. Ombudsman Desierto* explains:

> [T]he functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complaint.

Invoking an exception to the rule on non-interference, petitioner alleges that the Ombudsman committed grave abuse of discretion. According to him: (a) he was not given the opportunity to cross-examine the witnesses, (b) the Ombudsman considered pieces of evidence not presented during the preliminary investigation, and (c) there is no probable cause to charge him with plunder.

While, indeed, this Court may step in if the public prosecutor gravely abused its discretion in acting on the case, such grave abuse must be substantiated, not merely alleged. In *Casing v. Hon. Ombudsman, et al.:*

> Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner - which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law - in order to exceptionally warrant judicial intervention.

As in ***Dichaves***,[52] there is here no showing that the OMB gravely abused its discretion in finding probable cause against petitioners for violation of Section 7 of RA 3019, in relation

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[52] *Id.*, citations omitted.

to Section 8 of RA 6713 and for forfeiture of unlawfully acquired properties under RA 1379. The Court, therefore, adheres to the rule of judicial restraint or non-interference with the OMB's exercise of its constitutional investigative power and its consequent finding of probable cause.

ACCORDINGLY, the petition is **DISMISSED** and the Joint Resolution dated August 12, 2016 and Joint Order dated October 2, 2017, in Case Nos. OMB-V-C-15-0115 and OMB-V-F-15-0001, **AFFIRMED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, and *Reyes, J. Jr., JJ.,* concur.

Lopez, J., on official leave.

EN BANC

[A.C. No. 9459. January 7, 2020]

RENE J. HIERRO, *complainant, vs.* **ATTY. PLARIDEL C. NAVA II,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; A LAWYER SHALL NOT REPRESENT CONFLICTING INTERESTS EXCEPT BY WRITTEN CONSENT OF ALL CONCERNED GIVEN AFTER A FULL DISCLOSURE OF THE FACTS; VIOLATION IN CASE AT BAR.— Canon 15 of the Code of Professional Responsibility requires lawyers to observe candor, fairness and loyalty in all their dealings and transactions with their clients. Particularly, Canon 15.03 demands that: *"A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts."* A

conflict of interest exists when a lawyer represents inconsistent interests of two opposing parties, like when the lawyer performs an act that will injuriously affect his first client in any matter in which he represented him, or when the lawyer uses any knowledge he previously acquired from his first client against the latter. The prohibition against conflict of interest is founded on principles of public policy and good taste, inasmuch as the lawyer-client relationship is based on trust and confidence. Its purpose is to ensure absolute freedom of communication between the lawyer and the client in order to enable the former to suitably represent and serve the latter's interests. Notably, it is both unethical and unacceptable for a lawyer to use any information he gains during the lawyer-client relationship against his client. In the instant case, it is undisputed that Atty. Nava became the retained counsel of Hierro in the latter's cases and also as counsel for Annalyn in the petition for the issuance of a Temporary Protection Order (TPO) against Hierro. It must be highlighted that the petition for the issuance of a TPO contains reference to the criminal cases that were handled by Atty. Nava to demonstrate Hierro's propensity for violence in order to show supposed maltreatment of Hierro to Annalyn x x x Atty. Nava was the lawyer of Hierro in seven of the eight aforementioned cases. As defense counsel for Hierro, Atty. Nava advocates the innocence of his client in these cases. However, in citing these as part of the petition for the issuance of a TPO, in effect, he is implying that there is merit in these cases which is diametrically opposed to his position as defense counsel of Hierro. This clearly violates the rule against conflict of interest.

2. ID.; ATTORNEYS; DISCIPLINARY PROCEEDINGS, BEING ADMINISTRATIVE IN NATURE, MAY PROCEED INDEPENDENTLY AND IS NOT BOUND BY THE OUTCOME OF ANY CRIMINAL AND CIVIL PROCEEDING.— As for the gross immorality charge against Atty. Nava, a thorough review of the records would show that there is merit to the said charge. In order to exculpate himself from any liability, he highlights the dismissal of the complaint for adultery against him and Annalyn by the Office of the Prosecutor. However, it must be noted that administrative cases are *sui generis* and are not affected by the result of any civil or criminal case. They do not involve a trial of an action or a suit, being neither purely civil nor purely criminal, but rather involve

investigations by the Court into the conduct of its officers. Therefore, the instant case, being administrative in nature, may proceed independently and is not bound by the outcome of any criminal and civil proceeding. In disciplinary proceedings against lawyers, public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed to practice law.

3. ID.; CODE OF PROFESSIONAL RESPONSIBILITY; GROSS IMMORALITY; THE ISSUE MUST BE MET AND THE EVIDENCE PRESENTED ON THE CHARGE MUST BE OVERCOME; CASE AT BAR.— Immoral conduct, or immorality, is that which is so willful, flagrant, or shameless as to show indifference to the opinion of good and respectable members of the community. As a basis of disciplinary action, such immoral conduct, or immorality must be so corrupt as to virtually constitute a criminal act or so unprincipled as to be reprehensible to a high degree or committed under such scandalous or revolting circumstances as to shock the common sense of decency. Time and again, the Court has pointed out that when the integrity or morality of a member of the bar is challenged, it is not enough that he/she denies the charge, for he/she must meet the issue and overcome the evidence presented on the charge. He/she must present proof that he/she still maintains the degree of integrity and morality expected of him/her at all times. Atty. Nava failed in this regard. In keeping with the high standards of morality imposed upon every lawyer, Atty. Nava should have desisted from the illicit relationship with Annalyn not only for the reason that she is married, but also because her husband was his client. His act of involving himself in sexual relations with the wife of his client definitely transgressed the clearly-defined bounds of decency and morality. These circumstances were more than sufficient to establish the charge of gross immorality. x x x Atty. Nava's immoral conduct violated Rule 7.03 of the Code of Professional Responsibility.

LEONEN, *J., separate concurring opinion*:

LEGAL ETHICS; LAWYERS; GROSS IMMORALITY AS A GROUND FOR DISBARMENT.— Rule 138, Section 27 of the Rules of Court provides that grossly immoral conduct may disbar a misbehaving lawyer: x x x This finds reinforcement in

> Canon 7, Rule 7.03 of the Code of Professional Responsibility, x x x As a ground for disbarment, gross immorality requires a nuanced analysis of our collective notions of morality, the prevailing reality of relationships and families, and the particular circumstances of each case. x x x Secular standards, independent of religious beliefs, must be the basis for determining immorality. After all, this Court does not have the jurisdiction to weigh in on religious doctrine. Lawyers are held to exacting standards as court officers. Disciplinary proceedings against them serve to curb misbehavior and promote excellent public service in the Judiciary. Thus, what constitutes gross immorality is conduct that severely erodes public trust in the rule of law. The behavior that is penalized "must be so gross as to be 'willful, flagrant, or shameless,' so much so that it 'shows a moral indifference to the opinion of the good and respectable members of the community.'" x x x The State must not excessively intrude into the personal relationships of lawyers to the extent that it *unduly* affects their professional standing. Marital indiscretion by itself is insufficient to strip one's license to practice law. To sensibly implement our notion of secular morality is to reckon with the prevailing realities of how marriage works, and not dwell on its idealized versions.

APPEARANCES OF COUNSEL

Romeo P. Gerochi for complainant.

D E C I S I O N

***PER CURIAM*:**

This resolves the administrative complaint[1] for disbarment filed by complainant Rene J. Hierro (Hierro) against respondent Atty. Plaridel C. Nava II (Atty. Nava) of violating Canons 7.03,[2]

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

[2] 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.

15.03,[3] 17,[4] 21.01[5] and 22[6] of the Code of Professional Responsibility.

Antecedents

Hierro filed a letter-complaint for disbarment with the Supreme Court on May 9, 2012, which was referred to the Integrated Bar of the Philippines (IBP) through a Resolution[7] dated February 13, 2013 charging Atty. Nava of violating Canons 7.03, 15.03, 17, 21.01 and 22 of the Code of Professional Responsibility through the following acts:

1. Conflict of interest on the part of Atty. Nava for acting as counsel for Annalyn Hierro (Annalyn), Hierro's spouse, in her petition with prayer for the issuance of a temporary protection order (TPO)[8] against Hierro before the Regional Trial Court (RTC) of Iloilo City when Hierro used to be a client of Atty. Nava;

2. Grossly immoral conduct for engaging in adulterous relations with Annalyn and fathering a child with her; and

3. Dereliction of duty for abandoning Hierro as the latter's counsel in a case for Grave Threats with the Municipal Trial Court in Cities, Branch 1, docketed as Criminal Case

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[3] Rule 15.03 — A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of facts.

[4] 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.

[5] Rule 21.01 — A lawyer shall not reveal the confidences or secrets of his client except:

a) When authorized by the client after acquainting him of the consequences of the disclosure;

b) When required by law; [and]

c) When necessary to collect his fees or to defend himself, his employees or associates or by judicial action.

[6] CANON 22 — A lawyer shall withdraw his services only for good cause and upon notice appropriate in the circumstances.

[7] *Rollo*, p. 397.

[8] *Id.* at 1207-1211.

No. S-799-09 after the filing of the petition which resulted to Hierro's conviction.

Respondent's Position

Atty. Nava vehemently denied the allegations against him. On the allegation of conflict of interest, Atty. Nava contends that he was compelled to sign the petition with prayer for the issuance of a TPO[9] out of exigency and for humanitarian consideration since prompt and responsive action is needed to preserve the life of Annalyn and her three young daughters. Moreover, Atty. Nava claims that his engagement was limited only to the filing of the petition and securing a TPO from the court. As soon as the TPO was issued, he withdrew as counsel for Annalyn. Furthermore, there was no confidential information in the filing of the civil action because although the narration of all criminal cases involving Hierro was included in the petition for the issuance of a TPO, it is nonetheless based on public records and was not revealed by Hierro to Atty. Nava in confidence. Additionally, Atty. Nava avers that such disclosure is not prejudicial to the case of Hierro and is therefore not covered by the prohibition of Canon 21.01 on conflict of interest.[10]

As to the allegation of grossly immoral conduct, Atty. Nava said that such allegation is a mere afterthought and has no factual basis. As a matter of fact, the complaint for adultery filed against him was dismissed by the investigating prosecutor as the latter found the case to be without merit.[11]

Regarding the allegation of abandonment of Hierro in his Grave Threats case which led to his conviction, Atty. Nava vehemently denied such allegation saying it was Hierro who terminated his services. He also pointed out that the said case was promulgated on September 2, 2011, way before the filing of the civil case of Annalyn on October 21, 2011. This belies

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[9] *Id.* at 1211.

[10] *Id.* at 873-876.

[11] *Id.* at 871-872.

the claim of Hierro that Atty. Nava abandoned him after the filing of the petition against him. Besides, to negate the allegation of abandonment, Atty. Nava claims that he was the one who presented Hierro to the witness stand and was the one who conducted the direct examination until his full testimony was terminated.[12]

Report and Recommendation

In his Report and Recommendation,[13] Investigating Commissioner Rommel V. Cuison (Commissioner Cuison) recommended that Atty. Nava be disbarred and his name be stricken off from the Roll of Attorneys.

On November 28, 2015, a Resolution[14] was passed by the IBP Board of Governors which adopted and approved the Report and Recommendation of Commissioner Cuison, to quote:

RESOLUTION No. XXII-2015-95
CIBD Case No. 13-3823
A.C. No. 9459
Rene Hierro vs. Atty. Plaridel Nava II

RESOLVED to ADOPT the findings of fact and recommended penalty of DISBARMENT on Atty. Plaridel Nava II by the Investigating Commissioner, considering the gravity of his offenses.

Hence, the case was transmitted to this court for review.

The Court's Ruling

After reviewing the records of the case, the Court finds that the recommendation of the IBP Board of Governors regarding CIBD Case No. 13-3823 is in accord with the pertinent rules and jurisprudence on bar discipline. Hence, we are inclined to adopt the said recommendation.

Canon 15 of the Code of Professional Responsibility requires lawyers to observe candor, fairness and loyalty in all their

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[12] *Id.* at 877-878.

[13] *Id.* at 1336-1340.

[14] *Id.* at 1292-1293.

dealings and transactions with their clients. Particularly, Canon 15.03 demands that: "*A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.*" A conflict of interest exists when a lawyer represents inconsistent interests of two opposing parties, like when the lawyer performs an act that will injuriously affect his first client in any matter in which he represented him, or when the lawyer uses any knowledge he previously acquired from his first client against the latter.[15] The prohibition against conflict of interest is founded on principles of public policy and good taste, inasmuch as the lawyer-client relationship is based on trust and confidence.[16] Its purpose is to ensure absolute freedom of communication between the lawyer and the client in order to enable the former to suitably represent and serve the latter's interests. Notably, it is both unethical and unacceptable for a lawyer to use any information he gains during the lawyer-client relationship against his client.[17]

In the instant case, it is undisputed that Atty. Nava became the retained counsel of Hierro in the latter's cases and also as counsel for Annalyn in the petition for the issuance of a TPO against Hierro. It must be highlighted that the petition for the issuance of a TPO contains reference to the criminal cases that were handled by Atty. Nava to demonstrate Hierro's propensity for violence in order to show supposed maltreatment of Hierro to Annalyn, to wit:

x x x x x x x x x

14. [Hierro's] history of violence can be gleaned from the following criminal cases he is presently facing in court which were filed by persons, thus:

Case No.	Crime	Court
S-799-09	GRAVE THREATS	MTCC Br. 1

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[15] See *Hornilla v. Salunat*, 453 Phil. 108, 111-112 (2003).

[16] *Hilado v. David*, 84 Phil. 569, 578 (1949).

[17] *Diongzon v. Atty. Mirano*, 793 Phil. 200, 208 (2016).

S-211-10	GRAVE THREATS	MTCC Br. 2
R189-10	GRAVE COERCION	MTCC Br. 4
S-477-10	RESISTANCE	MTCC Br. 7
444-08/445-08	FALSIFICATION	MTCC Br. 7
446-08	PERJURY	MTCC Br. 7
09-67704-67711	ESTAFA	RTC Br. 33
08-65985	ESTAFA	RTC Br. 26[18]

Atty. Nava was the lawyer of Hierro in seven of the eight aforementioned cases. As defense counsel for Hierro, Atty. Nava advocates the innocence of his client in these cases. However, in citing these as part of the petition for the issuance of a TPO, in effect, he is implying that there is merit in these cases which is diametrically opposed to his position as defense counsel of Hierro. This clearly violates the rule against conflict of interest.

We are not convinced by Atty. Nava's defense that he accepted the engagement by Annalyn because of emergency, exigency and on temporary capacity only. As a lawyer, he should have used better judgment to foresee the possibility of conflict of interest as that is what the society expects of him. Besides, even if the filing of the TPO is an emergency which requires a swift response, he could have easily recommended another competent lawyer in his place.

As for the gross immorality charge against Atty. Nava, a thorough review of the records would show that there is merit to the said charge. In order to exculpate himself from any liability, he highlights the dismissal of the complaint for adultery against him and Annalyn by the Office of the Prosecutor. However, it must be noted that administrative cases are *sui generis* and are not affected by the result of any civil or criminal case. They do not involve a trial of an action or a suit, being neither purely civil nor purely criminal,[19] but rather involve investigations

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[18] *Rollo*, p. 135.

[19] *The Law Firm of Chavez Miranda Aseoche v. Atty. Lazaro*, 794 Phil. 308, 317 (2016).

by the Court into the conduct of its officers.[20] Therefore, the instant case, being administrative in nature, may proceed independently and is not bound by the outcome of any criminal and civil proceeding.

In disciplinary proceedings against lawyers, public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed to practice law.[21]

Besides, as pointed out by the IBP, the dismissal by the Office of the Prosecutor of the adultery case is not yet final and executory as it is still under appeal to the Office of the Secretary of Justice.

On the other hand, to prove the charge of grossly immoral conduct, Annalyn admitted to maintaining adulterous relations with Atty. Nava. It must be emphasized that Annalyn's admission is not the only piece of evidence pointing to such fact. In her judicial affidavit, Atty. Nava's wife, Cecilia Lim-Nava, stated under oath that Atty. Nava admitted having an affair with Annalyn and that he fathered a child with her. Furthermore, the record of the criminal proceedings for the crime of adultery included the affidavits of Mercedes Nava (Mercedes) and Joy Legarda who confirmed the extramarital affair of Atty. Nava and Annalyn. In fact, in Mercedes' affidavit, she categorically stated that she witnessed the affectionate and intimate gestures between Atty. Nava and Annalyn. Aside from that, she testified that she would bring Annalyn to the office of Atty. Nava to make love, to wit:

x x x x x x x x x

9. After that, Rene Hierro and I went directly to their house in Providence and when we reached there, we had lunch there at the house of the spouses and after that we left, and while on board the vehicle, Atty. Nava texted to bring Annalyn Hierro to his office which was on top of the Supermarket. When we reached his office, Annalyn

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[20] *Bertol v. Valencia*, A.C. No. 10397, April 2, 2018 (Minute Resolution).

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

Hierro and Atty. Plaridel Nava made love as they missed each other and after that, Atty. Nava gave instruction to Annalyn that she will be the only beneficiary and not to include the children so that there will be no problem.[22] (Underscoring supplied)

Immoral conduct, or immorality, is that which is so willful, flagrant, or shameless as to show indifference to the opinion of good and respectable members of the community. As a basis of disciplinary action, such immoral conduct, or immorality must be so corrupt as to virtually constitute a criminal act or so unprincipled as to be reprehensible to a high degree or committed under such scandalous or revolting circumstances as to shock the common sense of decency.[23]

Time and again, the Court has pointed out that when the integrity or morality of a member of the bar is challenged, it is not enough that he/she denies the charge, for he/she must meet the issue and overcome the evidence presented on the charge. He/she must present proof that he/she still maintains the degree of integrity and morality expected of him/her at all times.[24] Atty. Nava failed in this regard.

In keeping with the high standards of morality imposed upon every lawyer, Atty. Nava should have desisted from the illicit relationship with Annalyn not only for the reason that she is married, but also because her husband was his client. His act of involving himself in sexual relations with the wife of his client definitely transgressed the clearly-defined bounds of decency and morality. These circumstances were more than sufficient to establish the charge of gross immorality.

"Indeed, any lawyer guilty of gross misconduct should be suspended or disbarred even if the misconduct relates to his or her personal life for as long as the misconduct evinces his or her lack of moral character, honesty, probity or good demeanor.

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[22] *Rollo*, p. 333.

[23] *Advincula v. Atty. Advincula*, 787 Phil. 101, 112-113 (2016).

[24] *Fabie v. Atty. Real*, 795 Phil. 488, 495-496 (2016).

Every lawyer is expected to be honorable and reliable at all times, for a person who cannot abide by the laws in his private life cannot be expected to do so in his professional dealings."[25]

In view of the foregoing, Atty. Nava's immoral conduct violated Rule 7.03 of the Code of Professional Responsibility.

WHEREFORE, the Court finds and declares respondent Atty. Plaridel C. Nava II **GUILTY** of conflict of interest and gross immorality in violation of Rule 15.03 and Rule 7.03 of the Code of Professional Responsibility, respectively; **DISBARS** him from the practice of law effective upon receipt of this Decision; and **ORDERS** his name be stricken off from the Roll of Attorneys.

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

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

SO ORDERED.

Peralta, C.J., Caguioa, Gesmundo, Reyes, J. Jr., Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, and *Delos Santos, JJ.*, concur.

Leonen, J., see separate concurring opinion.

Perlas-Bernabe and *Lopez, JJ.*, on official leave.

Reyes, A. Jr., J., on official business.

SEPARATE CONCURRING OPINION

LEONEN, *J.*:

I fully agree with the majority that respondent Atty. Plaridel C. Nava II should be disbarred. However, I take this opportunity to reiterate a fine point.

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

Rule 138, Section 27 of the Rules of Court provides that grossly immoral conduct may disbar a misbehaving lawyer:

> 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 wilful 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. (Emphasis supplied)

This finds reinforcement in Canon 7, Rule 7.03 of the Code of Professional Responsibility, which states:

> 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.

As a ground for disbarment, gross immorality requires a nuanced analysis of our collective notions of morality, the prevailing reality of relationships and families, and the particular circumstances of each case.

In *Perfecto v. Judge Esidera*[1] this Court discussed how morality is understood in our jurisdiction:

> Morality refers to what is good or right conduct at a given circumstance. In *Estrada v. Escritor*, this court described morality as "how we ought to live and why."
>
> Morality may be religious, in which case what is good depends on the moral prescriptions of a high moral authority or the beliefs of a particular religion. Religion, as this court defined in *Aglipay v. Ruiz*, is "a profession of faith to an active power that binds and elevates man to his Creator." A conduct is religiously moral if it is consistent

[1] 764 Phil. 384 (2015) [Per *J.* Leonen, Second Division].

with and is carried out in light of the divine set of beliefs and obligations imposed by the active power.

Morality may also be secular, in which case it is independent of any divine moral prescriptions. What is good or right at a given circumstance does not derive its basis from any religious doctrine but from the independent moral sense shared as humans.

The non-establishment clause bars the State from establishing, through laws and rules, moral standards according to a specific religion. Prohibitions against immorality should be based on a purpose that is independent of religious beliefs. *When it forms part of our laws, rules, and policies, morality must be secular. Laws and rules of conduct must be based on a secular purpose*.[2] (Emphasis supplied, citations omitted)

Secular standards, independent of religious beliefs, must be the basis for determining immorality. After all, this Court does not have the jurisdiction to weigh in on religious doctrine.[3]

Lawyers are held to exacting standards as court officers. Disciplinary proceedings against them serve to curb misbehavior and promote excellent public service in the Judiciary. Thus, what constitutes gross immorality is conduct that severely erodes public trust in the rule of law.[4] The behavior that is penalized "must be so gross as to be 'willful, flagrant, or shameless,' so much so that it 'shows a moral indifference to the opinion of the good and respectable members of the community.'"[5] In a previous case, I opined:

Grossly immoral conduct must be an act that is "so corrupt and false as to constitute a criminal act or so unprincipled as to be reprehensible to a high degree."

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[2] *Id.* at 397-398.

[3] *Id.* at 399.

[4] *Id.*

[5] *J.* Leonen, Separate Opinion in *Tumbaga v. Teoxon*, A.C. No. 5573, November 21, 2017, 845 SCRA 415, 439 [Per *J.* Leonardo-De Castro, *En Banc*].

There is no fixed formula to define what constitutes grossly immoral conduct. The determination depends on the circumstances. In *Arciga v. Maniwang*:

> It is difficult to state with precision and to fix an inflexible standard as to what is "grossly immoral conduct" or to specify the moral delinquency and obliquity which render a lawyer unworthy of continuing as a member of the bar. The rule implies that what appears to be unconventional behavior to the straight-laced may not be the immoral conduct that warrants disbarment.
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> . . . . . .
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> There is an area where a lawyer's conduct may not be in consonance with the canons of the moral code but he is not subject to disciplinary action because his misbehavior or deviation from the path of rectitude is not glaringly scandalous. It is in connection with a lawyer's behavior to the opposite sex where the question of immorality usually arises. Whether a lawyer's sexual congress with a woman not his wife or without the benefit of marriage should be characterized as "grossly immoral conduct" will depend on the surrounding circumstances.[6] (Citations omitted)

The State must not excessively intrude into the personal relationships of lawyers to the extent that it *unduly* affects their professional standing. Marital indiscretion by itself is insufficient to strip one's license to practice law. To sensibly implement our notion of secular morality is to reckon with the prevailing realities of how marriage works, and not dwell on its idealized versions.

In previous cases, I opined that, generally, complaints for immorality should not be entertained unless initiated by the victims in each case.[7] I proposed the following guidelines in *Anonymous Complaint v. Dagala*:[8]

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[6] *Id.* at 439-440.

[7] See *J.* Leonen, Concurring and Dissenting Opinion in *Anonymous Complaint v. Dagala*, 814 Phil. 103 (2017) [*Per Curiam, En Banc*]; *J.* Leonen, Dissenting Opinion in *Sabillo v. Atty. Lorenzo*, A.C. No. 9392, December 4, 2018, [*Per Curiam, En Banc*]; and *J.* Leonen, Concurring and Dissenting Opinion in *Ceniza v. Atty. Ceniza, Jr.*, A.C. No. 8335, April 10, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65158>[*Per Curiam, En Banc*].

[8] 814 Phil. 103 (2017) [*Per Curiam, En Banc*].

If at all, any complaint for immorality should not be entertained except when it is commenced by its victims. That is, the betrayed spouse, the paramour who has been misled, or the children who have to live with the parent's scandalous indiscretions.

I accept that in some cases, especially where there is some form of violence against women and children within the families affected, it would be difficult for the victims to come forward. It should only be then that a third party's complaint may be entertained. The third party must show that it acts for the benefit of the victims, not as a means to cause more harm on them. Furthermore, the inability of the victims must be pleaded and proven.

. . . . . .

I appreciate the ponente's acknowledgment that "immorality only becomes a valid ground for sanctioning members of the Judiciary when the questioned act challenges his or her capacity to dispense justice." This affirms this Court's principle that our jurisdiction over acts of lawyers and judges is confined to those that may affect the people's confidence in the Rule of Law. There can be no immorality committed when there are no victims who complain. And even when they do, it must be shown that they were directly damaged by the immoral acts and their rights violated. A judge having children with women not his wife, in itself, does not affect his ability to dispense justice. What it does is offend this country's predominantly religious sensibilities.[9] (Citations omitted)

In *Dagala*, respondent Judge Exequil L. Dagala (Judge Dagala) admitted to fathering children with women other than his wife. However, he and his wife had mutually accepted that they were not meant for each other and amicably parted ways. He sent support to his children. More important, the victim had forgiven and forgotten.

I reiterate that caution must be taken against stereotyping women as victims who "are weak and cannot address patriarchy by themselves."[10] The State's over-patronage may infringe on the agency of a woman who has found her voice and chosen to

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[9] *Id.* at 154-155.

[10] *Id.* at 155.

forgive.[11] Secular standards of morality will not view Judge Dagala's conduct as one of perverse nature, such that it undermined public trust in the legal profession.

Nonetheless, this case is different.

Here, complainant Rene Hierro (Hierro) lodged the Complaint against respondent, who engaged in sexual relations with Hierro's wife. As respondent's client *and* the husband of respondent's mistress, he was directly affected by respondent's misconduct. Moreover, Hierro's Complaint was backed by respondent's wife, Cecilia Lim-Nava, who also testified against respondent.

As the *ponencia* narrated, two (2) other witnesses in the criminal case for adultery, one of whom is a relative,[12] attested to respondent's indiscretions. The *ponencia* underscored how witness Mercedes Nava testified that she would accompany his paramour to his office, where they would make love.[13] She also recounted how respondent had told his paramour that "she [would] be the only beneficiary and not to include the children so that there [would] be no problem."[14] This is not the amicable arrangement outside of marriage that may be deemed acceptable. Respondent exhibited sheer indifference to public opinion and appeared to be callous and lacking circumspection. His conduct was "so depraved as to reduce the public's confidence in the Rule of Law"[15]—one that this Court penalizes.

In my separate opinion in *Dagala*, I wrote:

The highest penalty should be reserved for those who commit indiscretions that (a) are repeated, (b) result in permanent rearrangements that cause extraordinary difficulties on existing

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[11] *Id.*

[12] *Ponencia*, p. 6. The *ponencia* named a certain Mercedes Nava as witness, but how she and respondent were related was not mentioned.

[13] *Id.*

[14] *Id.*

[15] *J.* Leonen, Concurring and Dissenting Opinion in *Anonymous Complaint v. Dagala*, 814 Phil. 103, 154 (2017) [*Per Curiam, En Banc*].

legitimate relationships, or (c) are *prima facie* shown to have violated the law. The negligence or utter lack of callousness of spouses who commit indiscretions as shown by their inability to ask for forgiveness, their concealment of the act from their legitimate relationships, or their lack of support for the children born out of wedlock should be aggravating and considered for the penalty to be imposed.[16]

It did not help respondent's case that he represented his paramour in filing a petition against her husband, who was also his client, and in which he cited his client's cases as proof to support his paramour's petition.

All told, respondent is unworthy of continuing as a member of the Bar. He must be disbarred.

ACCORDINGLY, I concur.

EN BANC

[A.M. No. P-19-3996. January 7, 2020]
(Formerly OCA-IPI-12-3875-P)

JOSSIE P. MONDEJAR, *complainant, vs.* **MAY N. LASPIÑAS, Legal Researcher and MAE VERCILLE H. NALLO, Clerk III, both of the Regional Trial Court, Branch 40, Silay City, Negros Occidental,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CODE OF CONDUCT OF COURT PERSONNEL (A.M. NO. 03-06-13-SC); VIOLATION IN CASE AT BAR; INFRACTIONS CLASSIFIED AS GRAVE OFFENSES WARRANT THE

[16] *Id.* at 155.

PENALTY OF DISMISSAL FROM SERVICE.— In *Office of the Court Administrator v. Dalawis*, the Court enunciated that court personnel must follow a high standard of honesty and integrity in the administration of justice. x x x Here, Dalpatan, who worked in the Local Civil Registrar, would meet potential litigants in need of legal assistance in their problems with regard to birth certificates. He would refer them to Laspiñas and Nallos, who were both working in the RTC which has jurisdiction to resolve a petition for correction/cancellation of entries in a birth certificate. Laspiñas, as a law graduate, would prepare the necessary pleading and documents. She would ask Atty. Pabalinas of PAO to sign the pleading. Nallos, as civil cases docket clerk, would handle the mailing, publication, and sending of court processes. In short, respondents were fixers, and they carry out this arrangement for a fee. As correctly held by Judge Chua, respondents violated several provisions of A.M. No. 03-06-13-SC or the Code of Conduct for Court Personnel (Code), promulgated on April 13, 2004. x x x Respondents' infractions are classified as grave offenses and punishable by dismissal from the service under Section 50(A)(3)(10) of the Civil Service Commission Resolution No. 1701077, or the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS), promulgated on July 3, 2017.

2. **ID.; ID.; ID.; CODE ON FIDELITY TO DUTY (SEC. 4) AND CONFLICT OF INTEREST (SEC. 2); VIOLATION IN CASE AT BAR.—** CANON I Fidelity to Duty SEC. 4. Court personnel shall not accept any fee or remuneration beyond what they receive or are entitled to in their official capacity. CANON III Conflict of Interest SEC. 2. Court personnel shall not: (b) Receive tips or other remuneration for assisting or attending to parties engaged in transactions or involved in actions or proceedings with the Judiciary. Laspiñas and Nallos demanded ₱9,000.00 from Mondejar for the preparation and filing of a petition in court. Not satisfied, Laspiñas further solicited gifts from her. Asking and accepting money and goods on top of their compensation is prohibited. Worse, they did so to assist a party in initiating a special proceeding in the court. Their actions violated the code on fidelity to duty and conflict of interest. As it happened, Mondejar's petition was raffled to RTC, Branch 40, where respondents are working. There was a conflict of interest between the expectation to deliver positive results for

having prepared the pleading, and the expectation to be impartial and faithful to their duties as court personnel. Evidently, respondents violated two canons of the code.

3. **ID.; ID.; ID.; CODE ON FIDELITY TO DUTY (SEC. 1) AND PERFORMANCE OF DUTIES (SEC. 1); VIOLATION IN CASE AT BAR.—** CANON I Fidelity to Duty SEC. 1. Court personnel shall not use their official position to secure unwarranted benefits, privileges or exemptions for themselves or for others. CANON IV Performance of Duties SEC. 1. Court personnel shall at all times perform official duties properly and with diligence. They shall commit themselves exclusively to the business and responsibilities of their office during working hours. Respondents used their court positions to run their scheme. As legal researcher and officer-in-charge, Laspiñas used her legal background and knowledge of court operation to initiate a special proceeding. Nallos, as civil cases docket clerk, took care of the mailing, publication, and sending of court processes. To a naive or desperate litigant, this arrangement seemed favorable because he/she was dealing with someone working in the court. An unassuming litigant would easily part with money to solve a legal problem. Logically, this also means that respondents are not devoting their time solely for official work. Their official time is divided between doing official work and running their scheme. Furthermore, Nallos was remiss in her duty as civil cases docket clerk when she did not send out the court orders to Mondejar or to her counsel, Atty. Pabalinas. Clearly, respondents' actions resulted in several infractions of the code on fidelity to and performance of duties.

4. **ID.; ID.; ID.; CODE ON FIDELITY TO DUTY (SEC. 5); VIOLATION IN CASE AT BAR.—** CANON I Fidelity to Duty SEC. 5. Court personnel shall use the resources, property and funds under their official custody in a judicious manner and solely in accordance with the prescribed statutory and regulatory guidelines or procedures. Atty. Gaston testified that the logbook showed Nallos' signature; thus, making her the recipient of the publication fee of ₱3,520.00. However, there was no publication. Nallos did not explain the lack of publication or the money's whereabouts. She simply remitted the money to Atty. Gaston so that the latter can return it to Mondejar. Nallos failed to use the publication fee for its intended purpose, which is a breach of her duty.

D E C I S I O N

***PER CURIAM*:**

This is a case of court employees acting as fixers in a Petition for Correction/Cancellation of Entries in a birth certificate.

The Facts

In 2008, plaintiff Jossie P. Mondejar (Mondejar) went to see a certain Bebot, later identified as Manuel A. Dalpatan, Jr. (Dalpatan), who works in the Local Civil Registrar of Silay City. She sought Dalpatan's help in correcting/cancelling the entries in her son's birth certificate. He said that he would consult a certain May, later identified as respondent May N. Laspiñas (Laspiñas). Laspiñas agreed to help for ₱9,000.00, which Mondejar paid after selling her husband's ring. She gave the money to Dalpatan, and the latter made her sign several documents. Dalpatan said that he would give the money and documents to Laspiñas.[1]

Mondejar checked the progress of her petition[2] with Dalpatan several times. He instructed her to look for a certain May *Tambok* (May the fat one) working in the Regional Trial Court (RTC) in the city hall. She discovered that there were two Mays working in the same RTC branch. The first May she approached was later identified as respondent Mae Vercille H. Nallos (Nallos). Nallos pointed to Laspiñas as the person she was looking for.[3]

Mondejar introduced herself to Laspiñas and said that Dalpatan instructed her to see her. She asked about her petition and Laspiñas replied that there was no result yet because publication must first be made. She advised Mondejar to wait for the court's call, which never happened. She went to Laspiñas

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[1] *Rollo*, p. 7.

[2] Special Proceedings No. 1939-40, In Re: Petition for Cancellation of Certificate of Live Birth of Nephson Dailo with Local Civil Registry No. 97-3161 and Retention of the Certificate of Live Birth with Local Civil Registry No. 91-1347 with changes and/or corrections.

[3] *Id.* at 7.

several times to follow up the status of her petition, and she always received the same answer.[4]

Mondejar had an acquaintance named Dolor in the Office of the City Prosecutor. Mondejar approached her to check the status of her petition. She learned that her case was already dismissed, and got a copy of the dismissal order.[5]

Mondejar went to see Laspiñas and inquired about her petition. As expected, Laspiñas gave the same answer. Mondejar confronted Laspiñas about the dismissal of her petition and showed her the dismissal order. Laspiñas asked Mondejar to go with her to RTC, Branch 40. Upon checking the case records, Laspiñas realized that the petition was indeed dismissed. To appease Mondejar, she said that the case may be re-filed and that they should stop blaming each other. Mondejar asked who prepared the documents, and Laspiñas replied it was Atty. Danilo T. Pabalinas (Atty. Pabalinas) of the Public Attorney's Office (PAO). Mondejar went to see Atty. Pabalinas for clarification. He said that he only affixed his signature but he did not prepare the documents.[6]

On March 5, 2012, after four years of waiting and going to and fro the city hall, Mondejar filed a letter complaint against Laspiñas and Nallos before Executive Judge Dyna Doll Chiongson-Trocio.[7] Judge Trocio forwarded the letter complaint to the Office of the Court Administrator (OCA).[8]

The OCA ordered Laspiñas and Nallos to file their Comment, which they submitted on July 31, 2012.[9] They admitted that they were court employees of the RTC of Negros Occidental, Silay City, Branch 40, with Laspiñas as legal researcher and

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[4] *Id.* at 7-8.

[5] *Id.* at 8.

[6] *Id.* at 8-9.

[7] *Id.* at 1.

[8] *Id.*

[9] *Id.* at 25-26, 27-32.

Nallos as clerk III.[10] Both denied the allegations against them. Laspiñas refuted that Dalpatan approached her regarding Mondejar's problem on correction/cancellation of entries, and that she received documents and ₱9,000.00 in exchange for her services. She claimed that a court order was issued directing Mondejar to amend her petition, and without doing so, the publication could not proceed. She contended that the case was dismissed because of failure to comply with the amendment order for an unreasonable length of time, which the court deemed as lack of interest.[11]

Laspiñas and Nallos averred that the complaint was filed in retaliation to the administrative complaint that they, and the other court employees filed against Judge Felie G. Banzon, who is a close friend of Mondejar's counsel in this complaint, Atty. Leani Jison.[12]

They attached Dalpatan's affidavit in their Comment. He denied receiving money from Mondejar and instructing her to see Laspiñas. What he advised Mondejar, was to see Atty. Pabalinas of PAO regarding her petition.[13]

In her Reply, Mondejar asserted that Laspiñas, Nallos, and Dalpatan were lying. She averred that she had witnesses when she spoke to Dalpatan and Laspiñas. She and Emalyn Moliño Padios (Padios) went to Dalpatan's house to give ₱9,000.00. There were times when Padios accompanied her in checking the status of her petition with Dalpatan, or she would ask Padios to check it by herself.[14]

She further alleged that her sister, Jocelyn Pelaez Bitalac (Bitalac), was with her when she confronted Laspiñas about the dismissal of her petition, and when she inquired with Atty.

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[10] *Id.* at 27.

[11] *Id.* at 27-30.

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

[13] *Id.* at 34-35.

[14] *Id.* at 53.

Pabalinas.[15] She attached Padios' and Bitalac's affidavits in her Reply.[16]

In their Comment to Reply, Laspiñas and Nallos pointed out that Mondejar should have filed a complaint against Dalpatan for receiving ₱9,000.00, and should have asked Laspiñas if she indeed received the money. They also took it against Mondejar for taking four years before filing this complaint.[17]

In her Rejoinder to Comment to Reply, Mondejar reiterated her allegations in the complaint, and insisted that respondents defrauded her and not Dalpatan. She revealed that she gave Laspiñas a pair of Havaianas slippers, a blouse, and Avon underwear, because she thought that the money was not enough and to expedite the resolution of her petition.[18]

The Formal Investigation

On January 8, 2014, the OCA recommended the referral of the complaint to Executive Judge Anita G. Chua (Judge Chua) of RTC, Negros Occidental, Bacolod City for investigation, report and recommendation due to the conflicting versions of the parties.[19]

Judge Chua ordered the parties to submit any additional evidence or documents.[20] Mondejar submitted a Supplemental Affidavit stating that: (1) Atty. Eric B. De Vera (Atty. De Vera), Clerk of Court (CoC) of the Office of the Clerk of Court (OCC), Silay City, notarized her petition; (2) she does not remember appearing before him for notarization; (3) her own records reveal that only ₱515.00 was paid in relation to her petition; and (4) Laspiñas demanded the gifts she gave her.[21]

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[15] *Id.* at 54.

[16] *Id.* at 56-59.

[17] *Id.* at 62-64.

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

[19] *Id.* at 68.

[20] *Id.* at 73.

[21] *Id.* at 77-79.

Laspiñas and Nallos filed a Comment [on] the Supplemental Affidavit still denying the accusations against them. They insisted that: (1) it was immaterial whether they are close friends with Atty. De Vera, because as CoC of the OCC, he was authorized to notarize documents; (2) the certification from the Branch Clerk of Court (BCC) of RTC, Silay City, Branch 40 stating that Nallos remitted to her ₱3,520.00 was malicious, untruthful and baseless; (3) the publication fee of ₱3,520.00 was paid to the OCC and after raffle, Job Jayobo (Jayobo) received it; and (4) Laspiñas denied asking for gifts from Mondejar.[22]

Judge Chua conducted three hearings as part of her investigation. The parties and their witnesses underwent the court's examination.[23]

On August 13, 2014, Padios was the first witness to testify. She was present when Mondejar handed ₱9,000.00 to Dalpatan. She checked the status of Mondejar's petition with him, who gave her a piece of paper containing Laspiñas' name for she was the person to look for in the Hall of Justice of Silay. She spoke to Laspiñas and the latter said that the petition was not yet finished so she should come back. She went to court every day for one week to check the progress of the petition. After speaking to Laspiñas, she talked to Nallos, who gave her two sealed envelopes for mailing, one as ordinary mail while the other as special mail.[24]

The next witness was Atty. Pabalinas, who admitted affixing his signature on the petition but could not remember preparing it. In 2009, he had no office staff so Laspiñas and Nallos helped him in his office work. They would see him in the court where he had a hearing so he could sign the documents. He neither received an amendment order nor a dismissal order on Mondejar's petition.[25]

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[22] *Id.* at 93-96.

[23] *Id.* at 181.

[24] *Id.* at 107-112.

[25] *Id.* at 112-116; *id.*

On the same day, Mondejar took the witness stand and related the incidents as contained in her complaint.[26] Then respondents had their chance to tell their version. Both denied Mondejar's allegations and affirmed their statements in the Comment and other pleadings.[27]

Nallos' testimony focused on the payment of publication fee as she was in charge of the civil, special proceedings, and cadastral cases. Judge Chua confronted her with a certification[28] from Atty. Karen Joy Tan-Gaston (Atty. Gaston), BCC of RTC, Silay City, Branch 40. The certification stated that Atty. Gaston received ₱3,520.00 from Nallos as payment for publication fee for Special Proceeding No. 1939-40, which was Mondejar's petition.[29]

Nallos denied giving money to Atty. Gaston and she does not know the latter's basis for issuing the certification. She presented a photocopy of the OCC's logbook of payment showing that Mondejar paid the publication fee at the RTC, OCC and a certain Jayobo received it on January 20, 2010.[30]

On August 20, 2014, Aileen Gamboa (Gamboa) testified that as cash clerk of the OCC RTC, Silay City, she collects the filing fees and other fees. She was already appointed in her position at the time Mondejar's petition was filed in court. She presented the original logbook containing her collections. She wrote majority of the entries in the logbook, but took exception on Special Proceeding No. 1939-40, which was Mondejar's petition. Based on the logbook, a certain Jayobo received ₱3,520.00 from Mondejar.[31]

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[26] *Id.* at 116-126; *id.*

[27] *Id.* at 126-137; *id.*

[28] *Id.* at 102.

[29] *Id.* at 133-134.

[30] *Id.* at 98 and 134.

[31] *Id.* at 139-144.

Judge Chua commented that he personally knew Jayobo and he was no longer connected with the RTC, Silay City in 2010. She was baffled why he received the money and signed the logbook. She observed several malpractices in the entries in the logbook. There were blank spaces in the logbook, and some entries have no date and time when payments were received. She discovered that the money collected was deposited every Friday and not every day as mandated by the rule. Judge Chua reprimanded Gamboa to correct their practice.[32]

On August 27, 2014, Atty. Gaston underwent questioning. During court inventory, she discovered cases that had paid publication fee but no publication took place. She asked the status of the payment and learned that they were taken from the OCC. She checked the OCC's logbook, which contained entries of payments and names of persons who took them for publication. In Mondejar's petition, it appeared that Nallos took the publication fee based on the signature appearing on the logbook. It could not have been Jayobo because he already resigned from employment. Furthermore, there were other instances, wherein Nallos took out the publication fee. Atty. Gaston confronted Nallos, who said there was no publication and so she remitted the money on March 20, 2012. A certification was presented as proof of the remittance. Atty. Gaston then returned the money to Mondejar on March 22, 2012, and the latter executed an acknowledgement receipt.[33]

The next witness called to the stand was Dalpatan, who could no longer remember whether Mondejar gave him money for the correction of her son's birth certificate. Judge Chua made it of record that Dalpatan was afflicted with brain cancer as evidenced by a Clinical Laboratory Report.[34]

The last witness was Atty. De Vera, who testified that he issued a certification on August 14, 2014 stating that Jayobo

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[32] *Id.* at 143-153.

[33] *Id.* at 155-161.

[34] *Id.* at 162-163; *id.*

received the publication fee for Mondejar's petition. The certification was issued on Nallos' request and based on the logbook.[35]

Atty. De Vera agreed with Judge Chua's observation that the two entries with Jayobo's name had two different signatures. The logbook presented was the only basis of payment to the OCC and withdrawal of publication fee to be given to the BCC where the petition was filed. However, there was no document or monitoring system that the money withdrawn from the OCC was actually remitted to the BCC.[36]

Atty. De Vera confirmed that the regular procedure was not followed. Normally, the cash clerk receives all payments. However, in Mondejar's case, Jayobo received the payment directly and did not pass through the cash clerk's hands. Atty. De Vera was unable to give satisfactory and clear explanation why the procedure was not complied with. It was obvious that he had no personal knowledge where the money went and whether Jayobo received it.[37]

The Investigation Report and/or Recommendation

On November 17, 2014, Judge Chua submitted a November 12, 2014 Investigation Report and/or Recommendation to the OCA.[38] She opined that between a law graduate like Laspiñas, and Mondejar, who finished only Grade 3, the latter was incapable of concocting a story. Hence, Mondejar's version was more credible.[39]

Judge Chua determined that in a petition for correction/ cancellation of entry, the following computation would be made by the OCC:[40]

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[35] *Id.* at 164.

[36] *Id.* at 165-168; *id.*

[37] *Id.* at 168-171; *id.*

[38] *Id.* at 180.

[39] *Id.* at 185-186.

[40] *Id.* at 186.

Filing fee:	500.00
LRF:	10.00
VCF:	5.00
PSF:	1,000.00
Total:	1,515.00
Publication Fee:	3,520.00
Total:	5,035.00

Here, Mondejar paid ₱9,000, which was way more than the total fees. There was an excess of ₱3,965.00, the whereabouts of which was undetermined.[41]

Judge Chua observed that while the petition was filed on December 7, 2009 and raffled to RTC, Branch 40 on December 21, 2009, the publication fee was paid only sometime in January 2010, without official receipt or if there was a receipt, it was never presented during investigation.[42]

After considering the testimonies and documents presented, Judge Chua made the following findings:

A. Laspiñas and Nallos were engaged in the practice of making pleadings/petitions for a fee, while Atty. Pabalinas signed them.[43]

First, Atty. Pabalinas admitted merely affixing his signature in Mondejar's petition but he did not prepare the pleading. He confessed that Laspiñas and Nallos helped him in his office work because he had no secretary. Judge Chua opined that the petition was written by someone who has a legal background, like Laspiñas.[44]

Second, Mondejar's petition is not a PAO case. Every PAO client fills up a personal information sheet and their case recorded with the PAO. Here, the PAO could neither remember Mondejar nor her petition.[45]

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[41] *Id.*

[42] *Id.*

[43] *Id.* at 187.

[44] *Id.* at 186-187.

[45] *Id.* at 187.

Moreover, the PAO did not receive the court orders and notices in Mondejar's petition.[46] The civil cases docket clerk has the duty to send out summons, court orders, and notices for civil and special proceedings cases. Here, Nallos testified that she was in charge of civil, special proceedings, and cadastral cases, while Laspiñas confirmed that she was the officer-in-charge, because there was no BCC. If they were faithful to their duties, Mondejar and Atty. Pabalinas would have received the court orders and acted on the amendment order and dismissal order. Here, the records show that Mondejar, Atty. Pabalinas, the Local Civil Registrar of Silay, and the National Statistics Office of Bacolod City were not furnished the court orders.[47]

Judge Chua theorized that Mondejar's petition was a package case, wherein there was no need to send out court processes because the outcome of the case was predetermined as of the time of filing.[48]

B. The logbook presented was unreliable for being provisional and may possibly be manipulated.[49]

First, the logbook presented was vastly different from the logbook in possession of Judge Trocio. The logbook from Judge Trocio had numerous receipts stapled on the pages, while there were none in the logbook from the cash clerk, Gamboa. The latter's logbook was also newer.[50]

Second, Gamboa confirmed that they had no system in monitoring payments and relied only on the logbook, which was provisional. Judge Chua observed that the OCC's logbook did not indicate the date of payment, name of payee, amount, and name of recipient of the transaction. She remarked that this arrangement was susceptible to manipulation. She theorized

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[46] *Id.*

[47] *Id.* at 187-188.

[48] *Id.* at 188.

[49] *Id.*

[50] *Id.* at 189.

that Mondejar could not have paid the publication fee at the OCC because she did not know it was necessary. Neither she nor Atty. Pabalinas received any court order. The information could not have come from Dalpatan because she was already referred to Laspiñas. Judge Chua opined that someone paid the publication fee and made it appear that Jayobo received it.[51]

C. Laspiñas, Nallos, and their witnesses' testimonial and documentary evidence lack credibility.

First, Dalpatan was unhelpful to the respondents' case as he no longer remembered anything relating to the incident.[52]

Second, Atty. De Vera's certification that Jayobo received the publication fee was only based on the logbook and not from his personal knowledge. He only certified that there was a particular entry in the logbook.[53]

Third, Gamboa's testimony that Mondejar paid the publication fee was unreliable because she admitted having no personal knowledge of the transaction and merely relied on the logbook. Judge Chua noticed that all the entries in the logbook contained the signatures of the recipients without their names, except in Jayobo's entries, which contained his signature and name.[54]

Fourth, Laspiñas claimed having told Mondejar of the amendment order, but she did not give her a copy of the order. As officer-in-charge, she ought to know that receipt of the amendment order is essential in a petition. The records reveal that a copy of the amendment order was never sent to Mondejar. Laspiñas pointed to Nallos as the one in charge of mailing. However, Nallos was unable to explain the same.[55]

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[51] *Id.* at 189.

[52] *Id.* at 185.

[53] *Id.* at 188.

[54] *Id.* at 189.

[55] *Id.* at 189.

Laspiñas contended that the money was released to Jayobo because he was the officer-in-charge then. Judge Chua found it unbelievable to have two officers-in-charge in a court at the same time.[56] She determined that respondents attempted to fabricate evidence to suit their position.[57]

Comparing the logbook and the testimony of Atty. Gaston, Judge Chua decided that the latter is more credible as the manner she testified was direct to the point. She observed that Laspiñas and Nallos never mentioned Jayobo in their pleadings, and he was their convenient excuse to hide their infractions.[58]

Judge Chua resolved that Laspiñas and Nallos violated A.M. No. 03-06-13-SC or the Code of Conduct for Court Personnel. Court personnel must conduct themselves with the strict standards of integrity and morality. They should not receive tips and remunerations for any assistance to litigants. Judge Chua recommended that respondents be dismissed from the service with forfeiture of all retirement benefits and perpetual disqualification from holding public office.[59]

The OCA's Recommendation

On December 10, 2014, the Court referred the matter to the OCA for evaluation, report, and recommendation.[60] On February 18, 2016, the OCA determined that there was no compelling reason to deviate from Judge Chua's findings and recommendation. The OCA recommended that respondents be found guilty of grave misconduct and conduct prejudicial to the best interest of the service, and be dismissed from the service with forfeiture of all retirement benefits, except accrued leave credits, with prejudice to their re-employment in the government, and without prejudice to criminal liabilities arising from their infraction.[61]

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[56] *Id.* at 190.

[57] *Id.* at 189.

[58] *Id.* at 190.

[59] *Id.* at 190-191.

[60] *Id.* at 192.

[61] *Id.* at 199-200.

The OCA mentioned that there was another administrative complaint against respondents, docketed as OCA IPI No. 12-3971-P, for grave misconduct and serious dishonesty due to misappropriation of publication fees in several cases pending in RTC, Silay City, Branch 40. In the second case, the OCA recommended Nallos' dismissal from the service and Laspiñas' exoneration for lack of evidence.[62]

On January 19, 2018, the Court directed the Division Clerk of Court to study the propriety of consolidating the two cases.[63] The Division Clerk of Court submitted a January 31, 2018 Memorandum Report delineating the two cases. In OCA IPI No. 12-3971-P, the charges were serious dishonesty and grave misconduct, while in the present case, OCA IPI No. 12-3875-P, the charge was violation of Republic Act 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees. Although the respondents were the same, the two cases neither arise from the same facts nor raise interrelated issues. Hence, they may not be consolidated.[64]

The Court's Ruling

The Court affirms the OCA's recommendation. We also uphold Judge Chua's findings and conclusions, which were arrived at after an extensive investigation.

In *Office of the Court Administrator v. Dalawis,*[65] the Court enunciated that court personnel must follow a high standard of honesty and integrity in the administration of justice.

> No less than the Constitution mandates that a public office is a public trust and that all public officers must be accountable to the people, and serve them with responsibility, integrity, loyalty and efficiency. This constitutional mandate should always be in the minds

[62] *Id.* at 199.

[63] *Id.* at 203.

[64] *Id.* at 207-208.

[65] *Office of the Court Administrator v. Dalawis*, A.M. No. P-17-3638, March 13, 2018.

of all public servants to guide them in their actions during their entire tenure in the government service. As frontliners in the administration of justice, court personnel should live up to the strictest standards of honesty and integrity in the public service.

x x x x x x x x x

Time and again, this Court has held that it will not countenance any conduct, act or omission on the part of those involved in the administration of justice which violates the norm of public accountability and diminishes the faith of the people in the Judiciary. x x x (Citations omitted)

Here, Dalpatan, who worked in the Local Civil Registrar, would meet potential litigants in need of legal assistance in their problems with regard to birth certificates. He would refer them to Laspiñas and Nallos, who were both working in the RTC which has jurisdiction to resolve a petition for correction/ cancellation of entries in a birth certificate. Laspiñas, as a law graduate, would prepare the necessary pleading and documents. She would ask Atty. Pabalinas of PAO to sign the pleading. Nallos, as civil cases docket clerk, would handle the mailing, publication, and sending of court processes. In short, respondents were fixers, and they carry out this arrangement for a fee.

As correctly held by Judge Chua, respondents violated several provisions of A.M. No. 03-06-13-SC or the Code of Conduct for Court Personnel (Code), promulgated on April 13, 2004:

I. Section 4, Canon I on Fidelity to Duty and Section 2 (b), Canon III on Conflict of Interest:

CANON I
Fidelity to Duty

SEC. 4. Court personnel shall not accept any fee or remuneration beyond what they receive or are entitled to in their official capacity.

CANON III
Conflict of Interest

SEC. 2. Court personnel shall not:

(b) Receive tips or other remuneration for assisting or attending to parties engaged in transactions or involved in actions or proceedings with the Judiciary.

Laspiñas and Nallos demanded ₱9,000.00 from Mondejar for the preparation and filing of a petition in court. Not satisfied, Laspiñas further solicited gifts from her. Asking and accepting money and goods on top of their compensation is prohibited. Worse, they did so to assist a party in initiating a special proceeding in the court. Their actions violated the code on fidelity to duty and conflict of interest.

As it happened, Mondejar's petition was raffled to RTC, Branch 40, where respondents are working. There was a conflict of interest between the expectation to deliver positive results for having prepared the pleading, and the expectation to be impartial and faithful to their duties as court personnel. Evidently, respondents violated two canons of the code.

II. Section 1, Canon I on Fidelity to Duty and Section 1, Canon IV on Performance of Duties:

CANON I
Fidelity to Duty

SEC. 1. Court personnel shall not use their official position to secure unwarranted benefits, privileges or exemptions for themselves or for others.

CANON IV
Performance of Duties

SEC. 1. Court personnel shall at all times perform official duties properly and with diligence. They shall commit themselves exclusively to the business and responsibilities of their office during working hours.

Respondents used their court positions to run their scheme. As legal researcher and officer-in-charge, Laspiñas used her legal background and knowledge of court operation to initiate a special proceeding. Nallos, as civil cases docket clerk, took care of the mailing, publication, and sending of court processes. To a naive or desperate litigant, this arrangement seemed

favorable because he/she was dealing with someone working in the court. An unassuming litigant would easily part with money to solve a legal problem.

Logically, this also means that respondents are not devoting their time solely for official work. Their official time is divided between doing official work and running their scheme.

Furthermore, Nallos was remiss in her duty as civil cases docket clerk when she did not send out the court orders to Mondejar or to her counsel, Atty. Pabalinas. Clearly, respondents' actions resulted in several infractions of the code on fidelity to and performance of duties.

III. Nallos violated Section 5, Canon I on Fidelity to Duty.

CANON I
Fidelity to Duty

SEC. 5. Court personnel shall use the resources, property and funds under their official custody in a judicious manner and solely in accordance with the prescribed statutory and regulatory guidelines or procedures.

Atty. Gaston testified that the logbook showed Nallos' signature; thus, making her the recipient of the publication fee of ₱3,520.00. However, there was no publication. Nallos did not explain the lack of publication or the money's whereabouts. She simply remitted the money to Atty. Gaston so that the latter can return it to Mondejar. Nallos failed to use the publication fee for its intended purpose, which is a breach of her duty.

In sum, respondents' infractions are classified as grave offenses and punishable by dismissal from the service under Section 50(A)(3)(10) of the Civil Service Commission Resolution No. 1701077, or the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS), promulgated on July 3, 2017.

RULE 10
Administrative Offenses and Penalties

SEC. 50. *Classification of Offenses*. — Administrative offenses with corresponding penalties are classified into grave, less grave and light,

depending on their gravity or depravity and effects on the government service.

A. The following grave offenses shall be punishable by dismissal from the service:

x x x x x x x x x

3. Grave Misconduct;

x x x x x x x x x

10. Soliciting or accepting directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value in the course of one's official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of one's office. The propriety or impropriety of the foregoing shall be determined by its value, kinship, or relationship between giver and receiver and the motivation. A thing of monetary value is one which is evidently or manifestly excessive by its very nature[.]

WHEREFORE, premises considered, the Court finds May N. Laspiñas, Legal Researcher, and Mae Vercille H. Nallos, Clerk III, both of the Regional Trial Court of Negros Occidental, Silay City, Branch 40, **GUILTY** of grave misconduct and soliciting and accepting money and gifts in connection with a transaction affecting their official functions.

The Court imposes upon them the penalty of **DISMISSAL** from the service with **FORFEITURE** of all retirement benefits, except accrued leave credits, and perpetual disqualification from holding public office in any branch or instrumentality of the government, including government-owned or controlled corporations.

The Office of the Court Administrator is **DIRECTED** to file the appropriate criminal charges against respondents Laspiñas and Nallos.

The Court also **REFERS** the case to the Public Attorney's Office for their information and appropriate action.

This Decision is immediately **EXECUTORY**.

SO ORDERED.

Peralta, C.J., Leonen, Caguioa, Gesmundo, Reyes, J. Jr., Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, and *Delos Santos, JJ.*, concur.

Perlas-Bernabe and *Lopez, JJ.,* on official leave.

Reyes, A. Jr., on official business.

EN BANC

[G.R. No. 194461. January 7, 2020]

ZOMER DEVELOPMENT COMPANY, INC., *petitioner, vs.* **SPECIAL TWENTIETH DIVISION OF THE COURT OF APPEALS, CEBU CITY and UNION BANK OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; DECLARATORY RELIEF AND SIMILAR REMEDIES; NOTICE TO SOLICITOR GENERAL; THE RULES ONLY REQUIRE THAT NOTICE BE GIVEN TO THE SOLICITOR GENERAL; HIS FAILURE TO PARTICIPATE IN THE CASE WILL NOT DISMISS THE ACTION.— [Under] Rule 63, Section 3 of the Rules of Court x x x SECTION 3. *Notice on Solicitor General.* – In any action which involves the validity of a statute, executive order or regulation, or any other governmental regulation, the Solicitor General shall be notified by the party assailing the same and shall be entitled to be heard upon such question. The Rules only require that notice be given to the Solicitor General. They do not state that if the Solicitor General fails to participate in the action, the action would be dismissed. The Administrative Code provides that the Solicitor General shall appear in any action involving the validity of a statute "when in his [or her]

judgment his intervention is necessary *or when requested by the Court*." In this instance, the trial court sent a copy of the Complaint to the Office of the Solicitor General. The Office of the Solicitor General, however, did not participate in the case. The failure of the Office of the Solicitor General to participate, however, should not prejudice a litigant's cause. The trial court dismissed the action on the ground that the Solicitor General may be deprived of due process. Due process, however, has already been accorded to the Solicitor General when he/she was furnished with a copy of the Complaint. The Solicitor General's failure to comment on the Complaint should have the effect of waiving his or her right to participate in the case.

2. ID.; ID.; ID.; THE GRANT OF DECLARATORY RELIEF IS DISCRETIONARY TO THE COURTS AND CANNOT BE SUBJECT TO A PETITION FOR *MANDAMUS*.— The grant of declaratory relief is discretionary on the courts. Courts may refuse to declare rights or to construe instruments if it will not terminate the controversy or if it is unnecessary and improper under the circumstances. A discretionary act cannot be the subject of a petition for *mandamus*. [Here] Petitioner's Complaint before the trial court was x x x a petition for declaratory relief. Petitioner sought the declaration of Republic Act No. 8791 unconstitutional so that, in effect, the foreclosure proceedings of the properties now held by private respondent would be declared void. Courts, however, have the discretion of whether to entertain an action for declaratory relief. x x x Although the Regional Trial Courts have exclusive original jurisdiction over actions for declaratory relief, the Court of Appeals exercises appellate jurisdiction over final judgments of the trial court. Thus, the Court of Appeals may, in appeals of actions for declaratory relief, apply Rule 63 of the Rules of Court in resolving the appeal. The Court of Appeals, in deferring the question of the validity of Republic Act No. 8791, Section 47 to the Court of Appeals, cited Rule 63, Section 5 of the Rules of Court, and held that to resolve the Petition "would be an empty discourse and will not terminate the controversy." This was an exercise of the Court of Appeals' discretion. Any person may file a verified petition for *mandamus* against any tribunal, corporation, board, officer, or person who "unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station[.]" x x x *Mandamus*, however, may issue only to compel

the performance of a ministerial duty. It cannot be issued to compel the performance of a discretionary act.

3. COMMERCIAL LAW; (R.A. NO. 8791); GENERAL BANKING LAW OF 2002 (R.A. NO. 8791); SECTION 47 DID NOT VIOLATE THE EQUAL PROTECTION CLAUSE WHEN IT PROVIDED A SHORTER REDEMPTION PERIOD FOR JURIDICAL PERSONS.— In *Goldenway Merchandising*, this Court squarely addressed the argument that Republic Act No. 8791, Section 47 violated the equal protection clause when it provided a shorter redemption period for juridical persons. This Court, in finding the argument unmeritorious x x x. While this Court looks with favor on the redemption of properties by its owners, the process of redemption is still a statutory privilege. Parties must still comply with the laws and the procedural rules on the matter.

4. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO EQUAL PROTECTION OF THE LAWS; IT DOES NOT INTEND TO PROHIBIT THE LEGISLATURE FROM ENACTING STATUTES THAT TEND TO CREATE OR AFFECT SPECIFIC CLASSES OF PERSONS OR OBJECTS.— The Constitution guarantees that no person shall be denied equal protection of the laws. The right to equal protection of the laws guards "against undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality." Equal protection, however, was not intended to prohibit the legislature from enacting statutes that either tend to create specific classes of persons or objects, or tend to affect only these specific classes of persons or objects. Equal protection "does not demand absolute equality among residents; it merely requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced." x x x Thus, a statute that treats one class differently from another class will not violate the equal protection clause as long as the classification is valid.

5. ID.; ID.; ID.; ID.; REASONABLENESS OF CLASSIFICATION; JURIDICAL ENTITIES CANNOT BE CONSIDERED A "SUSPECT CLASS"; THE RATIONAL BASIS TEST MAY BE APPLIED TO DETERMINE THE CONSTITUTIONALITY OF R.A. NO. 8741, SECTION 47.— In *Samahan ng Progresibong Kabataan v. Quezon City*, this Court

summarized the three (3) tests to determine the reasonableness of a classification: The strict scrutiny test applies when classification either (i) interferes with the exercise of fundamental rights, including the basic liberties guaranteed under the Constitution, or (ii) burdens suspect classes. The intermediate scrutiny test applies when a classification does not involve suspect classes or fundamental rights, but requires heightened scrutiny, such as in classifications based on gender and legitimacy. Lastly, the rational basis test applies to all other subjects not covered by the first two tests. A "suspect class" is defined as "a class saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." Juridical entities enjoy certain advantages that natural persons do not, such as limited liability. A corporation has a separate and distinct personality from its corporate officers or stockholders. It may incur its own liabilities and is responsible for the payment of its debts. Thus, a corporate officer or a stockholder, as a general rule, is not personally held liable for corporate debts. The properties of juridical entities are also often used for commercial purposes. Corporations will give more attention to assets that are income-generating, and will also be equipped with greater resources for the protection of these assets. In contrast, the properties of natural persons are more often used for residential purposes. They are also directly responsible for the liabilities they incur and, often, are not equipped with the same resources that juridical entities may have. Juridical entities, thus, cannot be considered a "suspect class." The rational basis test may be applied to determine the constitutionality of Republic Act No. 8791, Section 47. "The rational basis test requires only that there be a legitimate government interest and that there is a reasonable connection between it and the means employed to achieve it." A longer period of redemption is given to natural persons whose mortgaged properties are more often used for residential purposes. A shorter period of redemption is given to juridical persons whose properties are more often used for commercial purposes. *Goldenway Merchandising* explains that the shorter period is aimed to ensure the solvency and liquidity of banks. This helps minimize the period of uncertainty in the ownership of commercial properties and enable mortgagee-banks to dispose of these acquired assets quickly.

APPEARANCES OF COUNSEL

Zosa & Quijano Law Offices for petitioner.
The Solicitor General for public respondent.
Tanco & Partners for Union Bank of the Philippines.

D E C I S I O N

LEONEN, *J.*:

Courts have the discretion to entertain an action for declaratory relief.[1] They cannot be compelled, by a writ of *mandamus*, to resolve the case when they exercise this discretion.

This is a Petition for *Mandamus*[2] which seeks to compel the Court of Appeals to rule on the constitutionality of Section 47[3] of Republic Act No. 8791, or the General Banking Law of

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[1] *See* RULES OF COURT, Rule 63, Sec. 5.

[2] *Rollo*, pp. 4-19.

[3] Republic Act No. 8791 (2000), Sec. 47 provides:

SECTION 47. *Foreclosure of Real Estate Mortgage*.— In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan or other credit accommodation granted, the mortgagor or debtor whose real property has been sold for the full or partial payment of his obligation shall have the right within one year after the sale of the real estate, to redeem the property by paying the amount due under the mortgage deed, with interest thereon at the rate specified in the mortgage, and all the costs and expenses incurred by the bank or institution from the sale and custody of said property less the income derived therefrom. However, the purchaser at the auction sale concerned whether in a judicial or extrajudicial foreclosure shall have the right to enter upon and take possession of such property immediately after the date of the confirmation of the auction sale and administer the same in accordance with law. Any petition in court to enjoin or restrain the conduct of foreclosure proceedings instituted pursuant to this provision shall be given due course only upon the filing by the petitioner of a bond in an amount fixed by the court conditioned that he will pay all the damages which the bank may suffer by the enjoining or the restraint of the foreclosure proceeding.

Notwithstanding Act 3135, juridical persons whose property is being sold pursuant to an extrajudicial foreclosure, shall have the right to redeem

2002, in CA-G.R. CV No. 00288. In its Decision,[4] the Court of Appeals refused to rule on the constitutionality of the statute, deferring the resolution of this issue to this Court.

Zomer Development Company, Inc. (Zomer Development), a domestic corporation,[5] owned three (3) parcels of land in Cebu City covered by Transfer Certificate of Title No. 59105, Transfer Certificate of Title No. 59123, and Transfer Certificate of Title No. 59214.[6] The properties were mortgaged to International Exchange Bank as security for its loan.[7]

When Zomer Development failed to pay its indebtedness, International Exchange Bank foreclosed on the properties. A Notice of Extra-judicial Foreclosure Sale was posted and published on October 18, 2001, informing the public that the properties would be sold at an auction.[8] When the auction was conducted, International Exchange Bank emerged as the highest bidder. Thus, the Sheriff issued to it Certificates of Sale on November 19, 2001.[9] The Certificates of Sale provided for a period of redemption of twelve months from registration, "or sooner and/or later, as provided for under applicable laws."[10]

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the property in accordance with this provision until, but not after, the registration of the certificate of foreclosure sale with the applicable Register of Deeds which in no case shall be more than three (3) months after foreclosure, whichever is earlier. Owners of property that has been sold in a foreclosure sale prior to the effectivity of this Act shall retain their redemption rights until their expiration.

[4] *Rollo,* pp. 22-34. The Decision dated October 18, 2010 was penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justices Pampio A. Abarintos and Edgardo L. Delos Santos of the Special Twentieth Division, Court of Appeals, Cebu City.

[5] *Id.* at 4.

[6] *Id.* at 22-23.

[7] *Id.* at 105.

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

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

[10] *Id.* at 25.

On December 10, 2001, International Exchange Bank registered the Certificates of Sale in the Register of Deeds. Consequently, Transfer Certificates of Title Nos. 361006, 361007, and 361008 were issued in its name.[11]

On February 18, 2002, Zomer Development filed a Complaint for *Declaration of Nullity of Notice of Sale, Certificate of Sale & TCTs and Declaration as Unconstitutional Sec. 47, RA No. 8791*.[12] It argued that Section 47 of Republic Act No. 8791,[13] or the General Banking Law of 2002, violates its right to equal protection since the law provides a shorter period for redemption of three (3) months or earlier to juridical entities compared to the one (1) year redemption period given to natural persons.

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[11] *Id.* at 26.

[12] *Id.* at 27.

[13] Rep. Act No. 8791 (2000), Sec. 47 provides:

SECTION 47. *Foreclosure of Real Estate Mortgage*.— In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan or other credit accommodation granted, the mortgagor or debtor whose real property has been sold for the full or partial payment of his obligation shall have the right within one year after the sale of the real estate, to redeem the property by paying the amount due under the mortgage deed, with interest thereon at the rate specified in the mortgage, and all the costs and expenses incurred by the bank or institution from the sale and custody of said property less the income derived therefrom. However, the purchaser at the auction sale concerned whether in a judicial or extrajudicial foreclosure shall have the right to enter upon and take possession of such property immediately after the date of the confirmation of the auction sale and administer the same in accordance with law. Any petition in court to enjoin or restrain the conduct of foreclosure proceedings instituted pursuant to this provision shall be given due course only upon the filing by the petitioner of a bond in an amount fixed by the court conditioned that he will pay all the damages which the bank may suffer by the enjoining or the restraint of the foreclosure proceeding.

Notwithstanding Act 3135, juridical persons whose property is being sold pursuant to an extrajudicial foreclosure, shall have the right to redeem the property in accordance with this provision until, but not after, the registration of the certificate of foreclosure sale with the applicable Register of Deeds which in no case shall be more than three (3) months after foreclosure, whichever is earlier. Owners of property that has been sold in a foreclosure sale prior to the effectivity of this Act shall retain their redemption rights until their expiration.

This discrimination, it argued, gives "undue advantage to lenders who are non-banks."[14]

Copies of the Complaint were furnished to the Office of the Solicitor General upon order of the Regional Trial Court. The Office of the Solicitor General, however, did not participate in the case.[15]

On March 24, 2004, the Regional Trial Court dismissed the Complaint. The trial court refused to rule on the constitutionality of Republic Act No. 8791, Section 47. According to the trial court, to rule on the issue will deprive the Republic of its right to due process since it was not heard on the issue and was not impleaded as party defendant in the case.[16]

Zomer Development appealed this Decision to the Court of Appeals, arguing that the Republic was not required to be impleaded when questions regarding the constitutionality of a statute are raised.[17]

On October 18, 2010, the Court of Appeals rendered a Decision[18] dismissing the appeal "without prejudice to appellant's filing of the appropriate case before the Supreme Court."[19] The Court of Appeals categorized Zomer Development's Complaint as one for declaratory relief and refused to "make a definitive ruling"[20] on the constitutionality issue, citing Rule 63, Section 5 of the Rules of Court on the discretion of courts to entertain petitions for declaratory relief.

The Court of Appeals held that "the case is novel and can be best resolved by the Supreme Court[,]"[21] since any

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[14] *Rollo,* pp. 26-27.

[15] *Id.* at 27.

[16] *Id.* at 28.

[17] *Id.* at 29.

[18] *Id.* at 22-34.

[19] *Id.* at 34.

[20] *Id.* at 31.

[21] *Id.*

pronouncement may have "far reaching effects"[22] on existing procedural rules like Supreme Court Circular No. 7-2002.[23]

Zomer Development now files this Petition for *Mandamus*[24] before this Court, praying that the Court of Appeals be compelled to resolve the issue on the constitutionality of Republic Act No. 8791, Section 47 in CA-G.R. CV No. 00288.

Petitioner argues that *mandamus* was the proper remedy since the Court of Appeals evaded its duty to decide on the constitutionality of Republic Act No. 8791, Section 47.[25] It adds that in declining to rule on the issue, the Court of Appeals deprived it of its right to due process since it did not put an end to the controversy between the parties.[26]

Private respondent, on the other hand, counters that the plain, speedy, and adequate remedy was a motion for reconsideration or an appeal; thus, Petitioner cannot use a petition for *mandamus* as a substitute for a lost appeal.[27] It contends that Petitioner no longer has the right to be protected by a writ of *mandamus*, since ownership over the disputed properties has already been consolidated.[28] Private respondent likewise argues that the

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[22] *Id.* at 32.

[23] Guidelines for the Enforcement of Supreme Court *En Banc* Resolution of December 14, 1999 in Administrative Matter No. 99-10-05-0 (Re: Procedure in Extra-Judicial Foreclosure of Mortgage), as amended by the Resolutions dated January 30, 2001 and August 7, 2001, promulgated on January 2, 2002.

[24] *Rollo,* pp. 4-19. In view of its acquisition of International Exchange Bank, Union Bank of the Philippines entered its appearance with this Court (*rollo,* pp. 40-42). Comment (*rollo,* pp. 43-56) was filed on July 22, 2011 while Reply (*rollo,* pp. 64-70) was filed on March 15, 2012. Parties were ordered to submit their respective memoranda (*rollo,* pp. 76-95 and 104-117) on January 28, 2013 (*rollo,* pp. 74-75).

[25] *Id.* at 90-93.

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

[27] *Id.* at 108-110.

[28] *Id.* at 110.

Petition has become moot in light of *Goldenway Merchandising Corporation v. Equitable PCI Bank*,[29] which has already passed upon the constitutionality of Republic Act No. 8791, Section 47.[30]

From the arguments of the parties, this Court was confronted with the following issues for resolution:

First, whether or not the Petition for *Mandamus* was the proper remedy, or more succinctly, whether the Court of Appeals can be compelled to rule on the constitutionality of a statute by writ of *mandamus*; and

Second, whether or not the case has already become moot in light of *Goldenway Merchandising Corporation v. Equitable PCI Bank*.[31]

However, in order to fully pass upon these issues, this Court later on directed the Office of the Solicitor General to comment on the constitutionality of Section 47 of Republic Act No. 8791. The Bangko Sentral ng Pilipinas and the Bankers Association of the Philippines were also directed to submit their comments on the issue, in order to afford an opportunity to be heard by the parties that may be directly affected by the resolution of the issue.[32]

In its Comment,[33] the Office of the Solicitor General insists that the constitutionality of Section 47 of Republic Act No. 8791 has already been settled in *Goldenway Merchandising Corporation*.[34] It points out that the provision's constitutionality was further reiterated in *White Marketing Development Corporation v. Grandwood Furniture and Woodwork, Inc*.[35]

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[29] 706 Phil. 427 (2013) [Per J. Villarama, Jr., Third Division].

[30] *Rollo*, pp. 111-114.

[31] 706 Phil. 427 (2013) [Per J. Villarama, Jr., Third Division].

[32] *Rollo*, pp. 124-125.

[33] *Id.* at 126-137.

[34] *Id.* at 128-130.

[35] 800 Phil. 845 (2016) [Per J. Mendoza, Second Division].

Thus, it was "indubitable" that the provision did not violate Petitioner's right to equal protection.[36]

The Bankers Association of the Philippines and the Bangko Sentral ng Pilipinas, in their respective Comments,[37] echo the Office of the Solicitor General's sentiments, and reiterate that *Goldenway Merchandising Corporation* has already settled this issue with finality.[38]

In its Consolidated Reply,[39] Petitioner reiterates its earlier argument in the Petition that Section 47 was unconstitutional as it was "a classic example of class legislation which is intended to favor banks, quasi-banks and other trust entities to the prejudice of juridical persons."[40]

Thus, even after the submission of comments from parties that may be affected by this Court's resolution, the issues before us remain the same: *first*, whether or not the Court of Appeals can be compelled by writ of *mandamus* to pass upon the constitutionality of a statute, and *second*, whether or not the issue of constitutionality has been rendered moot.

While not raised as an issue by the parties before this Court, we find that for a complete resolution of all controversies in this case, we must likewise first pass upon the issue of whether or not the trial court erred in dismissing the Complaint on the ground that the Office of the Solicitor General was not impleaded as a party.

I

The trial court erred in dismissing the Complaint on the ground that the Republic, represented by the Office of the Solicitor General, was not impleaded in this case.

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[36] *Rollo*, pp. 130-131.

[37] *Id.* at 138-157 and 158-165.

[38] *Id.* at 143-145 and 159-161.

[39] *Id.* at 170-189.

[40] *Id.* at 173.

The Complaint, while denominated as a *Declaration of Nullity of Notice of Sale, Certificate of Sale & TCTs and Declaration as Unconstitutional Sec. 47, RA No. 8791*, was, in reality, an action for declaratory relief. Petitioner, in seeking the nullification of the foreclosure sale, questioned the validity of Republic Act No. 8791, Section 47 insofar as the law limits the redemption period for juridical persons to only three (3) months. Petitioner was a juridical person affected by the shorter redemption period. Under Rule 63, Section 1 of the Rules of Court, any person whose rights are affected by a statute may bring an action before the trial court to determine its validity:

> SECTION 1. *Who May File Petition.* — Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof[,] bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

In dismissing the action, the trial court cited Rule 63, Section 3 of the Rules of Court, in that the Solicitor General was required to be impleaded in all actions where the validity of a statute was in question:

> SECTION 3. *Notice on Solicitor General.* — In any action which involves the validity of a statute, executive order or regulation, or any other governmental regulation, the Solicitor General shall be notified by the party assailing the same and shall be entitled to be heard upon such question.

The Rules, however, only require that notice be given to the Solicitor General. They do not state that if the Solicitor General fails to participate in the action, the action would be dismissed.

The Administrative Code provides that the Solicitor General shall appear in any action involving the validity of a statute "when in his [or her] judgment his intervention is necessary *or when requested by the Court.*"[41]

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[41] ADMINISTRATIVE CODE, Book IV, Title III, Chapter 12, Section 35 (3).

In this instance, the trial court sent a copy of the Complaint to the Office of the Solicitor General.[42] The Office of the Solicitor General, however, did not participate in the case. The failure of the Office of the Solicitor General to participate, however, should not prejudice a litigant's cause.

The trial court dismissed the action on the ground that the Solicitor General may be deprived of due process. Due process, however, has already been accorded to the Solicitor General when he/she was furnished with a copy of the Complaint. The Solicitor General's failure to comment on the Complaint should have the effect of waiving his or her right to participate in the case. To hold otherwise would be to give the Solicitor General more power than what the law grants. The Solicitor General does not have and should not have unbridled control over cases that were originally filed between private parties.

II

The grant of declaratory relief is discretionary on the courts. Courts may refuse to declare rights or to construe instruments if it will not terminate the controversy or if it is unnecessary and improper under the circumstances. A discretionary act cannot be the subject of a petition for *mandamus*.

While Petitioner's Complaint before the trial court was captioned as one for *Declaration of Nullity of Notice of Sale, Certificate of Sale & TCTs and Declaration as Unconstitutional Sec. 47, RA No. 8791,* it was, as the Court of Appeals correctly found, a petition for declaratory relief. Petitioner sought the declaration of Republic Act No. 8791 unconstitutional so that, in effect, the foreclosure proceedings of the properties now held by private respondent would be declared void.

Courts, however, have the discretion of whether to entertain an action for declaratory relief. In *Chan v. Galang*:[43]

Declaratory relief is discretionary upon the court to entertain. It may refuse to exercise the power to declare rights and to construe

[42] *Rollo,* p. 27.

[43] 124 Phil. 940 (1966) [Per *J.* Bengzon, *En Banc*].

instruments in any case where the declaration or construction is not necessary and proper at the time under all the circumstances[.][44]

The same paragraph now appears in Rule 63, Section 5 of the Rules of Court:

> SECTION 5. *Court Action Discretionary.* — Except in actions falling under the second paragraph of Section 1 of this Rule, the court, *motu proprio* or upon motion, may refuse to exercise the power to declare rights and to construe instruments in any case where a decision would not terminate the uncertainty or controversy which gave rise to the action, or in any case where the declaration or construction is not necessary and proper under the circumstances.

Although the Regional Trial Courts have exclusive original jurisdiction over actions for declaratory relief,[45] the Court of Appeals exercises appellate jurisdiction over final judgments of the trial court.[46] Thus, the Court of Appeals may, in appeals of actions for declaratory relief, apply Rule 63 of the Rules of Court in resolving the appeal.

The Court of Appeals, in deferring the question of the validity of Republic Act No. 8791, Section 47 to the Court of Appeals, cited Rule 63, Section 5 of the Rules of Court, and held that to resolve the Petition "would be an empty discourse and will not terminate the controversy."[47] This was an exercise of the Court of Appeals' discretion.

Any person may file a verified petition for *mandamus* against any tribunal, corporation, board, officer, or person who "unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station[.]"[48] Petitioner submits that the Court of Appeals had

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[44] *Id.* at 947.

[45] See RULES OF COURT, Rule 63, Sec. 1 and *Macasiano v. National Housing Authority*, 296 Phil. 56 (1993) [Per J. Davide, Jr., *En Banc*].

[46] See Republic Act No. 7902 (1995).

[47] *Rollo*, p. 31.

[48] RULES OF COURT, Rule 65, Sec. 3.

the duty to pass upon the issue of the statute's constitutionality. By refusing to pass upon it, it argues that the Court of Appeals unlawfully neglected its duty and may properly be the subject of a petition for *mandamus*.

Mandamus, however, may issue only to compel the performance of a ministerial duty. It cannot be issued to compel the performance of a discretionary act. In *Metro Manila Development Authority v. Concerned Residents of Manila Bay*:[49]

> Generally, the writ of *mandamus* lies to require the execution of a ministerial duty. A ministerial duty is one that "requires neither the exercise of official discretion nor judgment." It connotes an act in which nothing is left to the discretion of the person executing it. It is a "simple, definite duty arising under conditions admitted or proved to exist and imposed by law." *Mandamus* is available to compel action, when refused, on matters involving discretion, but not to direct the exercise of judgment or discretion one way or the other.[50] (Emphasis in the original, citations omitted)

Petitioner cannot file a petition for *mandamus* to compel what is essentially a discretionary act on the Court of Appeals. What Petitioner should have done was to file a petition for *certiorari* to question the exercise of the Court of Appeals' discretion. Unfortunately, Petitioner filed the wrong remedy. As such, the Petition must be denied.

III

Even assuming that the Court of Appeals may be compelled to rule on the issue of the validity of Republic Act No. 8791, Section 47, the Petition has already become moot in view of the promulgation of *Goldenway Merchandising Corporation v. Equitable PCI Bank*.[51]

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[49] 595 Phil. 305 (2008) [Per *J.* Velasco, *En Banc*].

[50] *Id.* at 326 citing *Angchangco, Jr. v. Ombudsman*, 335 Phil. 766 (1997) [Per *J.* Melo, Third Division]; *BLACK'S LAW DICTIONARY* (8th ed., 2004); and *Lamb v. Phipps*, 22 Phil. 456, 490 (1912) (Per *J.* Johnson, First Division].

[51] 706 Phil. 427 (2013) [Per *J.* Villarama, Jr., Third Division].

In *Goldenway Merchandising,* this Court squarely addressed the argument that Republic Act No. 8791, Section 47 violated the equal protection clause when it provided a shorter redemption period for juridical persons. This Court, in finding the argument unmeritorious, stated:

> Petitioner's claim that Section 47 infringes the equal protection clause as it discriminates mortgagors/property owners who are juridical persons is equally bereft of merit.
>
> The equal protection clause is directed principally against undue favor and individual or class privilege. It is not intended to prohibit legislation which is limited to the object to which it is directed or by the territory in which it is to operate. It does not require absolute equality, but merely that all persons be treated alike under like conditions both as to privileges conferred and liabilities imposed. Equal protection permits of reasonable classification. We have ruled that one class may be treated differently from another where the groupings are based on reasonable and real distinctions. If classification is germane to the purpose of the law, concerns all members of the class, and applies equally to present and future conditions, the classification does not violate the equal protection guarantee.
>
> We agree with the CA that the legislature clearly intended to shorten the period of redemption for juridical persons whose properties were foreclosed and sold in accordance with the provisions of Act No. 3135.
>
> The difference in the treatment of juridical persons and natural persons was based on the nature of the properties foreclosed — whether these are used as residence, for which the more liberal one-year redemption period is retained, or used for industrial or commercial purposes, in which case a shorter term is deemed necessary to reduce the period of uncertainty in the ownership of property and enable mortgagee-banks to dispose sooner of these acquired assets. It must be underscored that the General Banking Law of 2000, crafted in the aftermath of the 1997 Southeast Asian financial crisis, sought to reform the General Banking Act of 1949 by fashioning a legal framework for maintaining a safe and sound banking system. In this context, the amendment introduced by Section 47 embodied one of such safe and sound practices aimed at ensuring the solvency and liquidity of our banks. It cannot therefore be disputed that the said provision amending

the redemption period in Act 3135 was based on a reasonable classification and germane to the purpose of the law.[52]

As pointed out by the Office of the Solicitor General, the Bangko Sentral ng Pilipinas, and the Bankers Association of the Philippines, the constitutionality of Section 47 of Republic Act No. 8791 has likewise been passed upon in *White Marketing Development Corporation v. Grandwood Furniture and Woodwork:*[53]

Grandwood had three months from the foreclosure or before the certificate of foreclosure sale was registered to redeem the foreclosed property. This holds true even when Metrobank ceased to be the mortgagee in view of its assignment to ARC of its credit, because the latter acquired all the rights of the former under the mortgage contract — including the shorter redemption period. The shorter redemption period should also redound to the benefit of White Marketing as the highest bidder in the foreclosure sale as it stepped into the shoes of the assignee-mortgagee.

Measured by the foregoing parameters, the Court finds that Grandwood's redemption was made out of time as it was done after the certificate of sale was registered on September 30, 2013. Pursuant to Section 47 of R.A. No. 8791, it only had three (3) months from foreclosure or before the registration of the certificate of foreclosure sale, whichever came first, to redeem the property sold in the extrajudicial sale.

Such interpretation is in harmony with the avowed purpose of R.A. No. 8791 in providing for a shorter redemption period for juridical persons. In *Goldenway Merchandising Corporation v. Equitable PCI*

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[52] *Id*. at 438-440 citing *JMM Promotion and Management, Inc. v. Court of Appeals*, 329 Phil. 87 (1996) [*J*. Kapunan, First Division]; *Ichong v. Hernandez*, 101 Phil. 1155, 1164 (1957) [Per *J*. Labrador, *En Banc*]; *Abbas v. Commission on Elections*, 258-A Phil. 870, 882 (1989) [Per *J*. Cortes, *En Banc*]; *People v. Vera*, 65 Phil. 56 (1937) [Per *J*. Laurel, First Division]; *Laurel v. Misa*, 76 Phil. 372 (1946); *J.M. Tuason and Co., Inc. v. Land Tenure Administration*, 142 Phil. 393 (1970) [Per *J*. Fernando, Second Division], and Records, 11th Cong.; Sponsorship speech of the late Senator Raul S. Roco, Records of the Senate, March 17, 1999, Vol. III, No. 76, pp. 552-559.

[53] 800 Phil. 845 (2016) [Per *J*. Mendoza, Second Division].

Bank, the Court explained that the shortened period under Section 47 of R.A. No. 8791 served as additional security for banks to maintain their solvency and liquidity, to wit:

> The difference in the treatment of juridical persons and natural persons was based on the nature of the properties foreclosed — whether these are used as residence, for which the more liberal one-year redemption period is retained, or used for industrial or commercial purposes, in which case a shorter term is deemed necessary to reduce the period of uncertainty in the ownership of property and enable mortgagee-banks to dispose sooner of these acquired assets. It must be underscored that the General Banking Law of 2000, crafted in the aftermath of the 1997 Southeast Asian financial crisis, sought to reform the General Banking Act of 1949 by fashioning a legal framework for maintaining a safe and sound banking system. In this context, the amendment introduced by Section 47 embodied one of such safe and sound practices aimed at ensuring the solvency and liquidity of our banks. It cannot therefore be disputed that the said provision amending the redemption period in Act 3135 was based on a reasonable classification and germane to the purpose of the law.

To adopt Grandwood's position that Section 47 of R.A. No. 8791 no longer applies would defeat its very purpose to provide additional security to mortgagee-banks. The shorter redemption period is an incentive which mortgagee-banks may use to encourage prospective assignees to accept the assignment of credit for a consideration. If the redemption period under R.A. No. 8791 would be extended upon the assignment by the bank of its rights under a mortgage contract, then it would be tedious for banks to find willing parties to be subrogated in its place. Thus, it would adversely limit the bank's opportunities to quickly dispose of its hard assets, and maintain its solvency and liquidity.[54] (Citations omitted)

The same case has also been cited in *Spouses Limso v. Philippine National Bank*,[55] where this Court upheld the rationale for the shorter redemption period for juridical persons:

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[54] *Id.* at 855-857 citing *Goldenway Merchandising Corporation v. Equitable PCI Bank*, 706 Phil. 427 (2013) [Per *J.* Villarama, Jr., Third Division].

[55] 779 Phil. 287 (2016) [Per *J.* Leonen, Second Division].

We rule that the period of redemption for this case should be not more than three (3) months in accordance with Section 47 of Republic Act No. 8791. The mortgaged properties are all owned by Davao Sunrise. Section 47 of Republic Act No. 8791 states: "the mortgagor or debtor whose real property has been sold" and "juridical persons whose property is being sold[.]" Clearly, the law itself provides that the right to redeem belongs to the owner of the property mortgaged. As the mortgaged properties all belong to Davao Sunrise, the shorter period of three (3) months is the applicable redemption period.

The policy behind the shorter redemption period was explained in *Goldenway Merchandising Corporation v. Equitable PCI Bank:*

. . . . . .

To grant a longer period of redemption on the ground that a co-debtor is a natural person defeats the purpose of Republic Act No. 8791. In addition, the real properties mortgaged by Davao Sunrise appear to be used for commercial purposes.[56] (Citations omitted)

Despite being given numerous opportunities to do so, Petitioner has neither mentioned *Goldenway Merchandising* in any of its pleadings nor argued against its applicability in this case.

While this Court looks with favor on the redemption of properties by its owners, the process of redemption is still a statutory privilege. Parties must still comply with the laws and the procedural rules on the matter. In *City of Davao v. Intestate Estate of Amado D. Dalisay:*[57]

While it is a given that redemption by property owners is looked upon with favor, it is equally true that the right to redeem properties remains to be a statutory privilege. Redemption is by force of law, and the purchaser at public auction is bound to accept it. Further, the right to redeem property sold as security for the satisfaction of an unpaid obligation does not exist preternaturally. Neither is it predicated on proprietary right, which, after the sale of the property on execution, leaves the judgment debtor and vests in the purchaser. Instead, it is a bare statutory privilege to be exercised only by the persons named in the statute.

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[56] *Id.* at 402-403 citing *Goldenway Merchandising Corporation v. Equitable PCI Bank,* 706 Phil. 427 (2013) [Per *J.* Villarama, Jr., Third Division).

[57] 764 Phil. 171 (2015) [Per *J.* Mendoza, Second Division].

In other words, a valid redemption of property must appropriately be based on the law which is the very source of this substantive right. It is, therefore, necessary that compliance with the rules set forth by law and jurisprudence should be shown in order to render validity to the exercise of this right. Hence, when the Court is beckoned to rule on this validity, a hasty resort to elementary rules on construction proves inadequate. Especially so, when there are deeper underpinnings involved, not only as to the right of the owner to take back his property, but equally important, as to the right of the purchaser to acquire the property after deficient compliance with statutory requirements, including the exercise of the right within the period prescribed by law.

The Court cannot close its eyes and automatically rule in favor of the redemptioner at all times. The right acquired by the purchaser at an execution sale is inchoate and does not become absolute until after the expiration of the redemption period without the right of redemption having been exercised. "But inchoate though it be, it is, like any other right, entitled to protection and must be respected until extinguished by redemption." Suffice it to say, the liberal application of redemption laws in favor of the property owner is not an austere solution to a controversy, where there are remarkable factors that lead to a more sound and reasonable interpretation of the law[.][58]

IV

The Constitution guarantees that no person shall be denied equal protection of the laws.[59] The right to equal protection of the laws guards "against undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality."[60]

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[58] *Id.* at 185-186 citing *Mateo vs. Court of Appeals,* 99 Phil. 1042 (1956) [Per *J.* Reyes, *En Banc*]; *Spouses De Robles v. Court of Appeals,* 475 Phil. 518 (2004) [Per *J* . Tinga, Second Division]; *Natino v. Intermediate Appellate Court,* 274 Phil. 602 (1991) [Per *J.* Davide, Jr., Third Division]; *Spouses Paray v. Dra. Rodriguez,* 515 Phil. 546, 554 (2006) [Per *J.* Tinga, Third Division]. See *Magno v. Viola,* 61 Phil. 80, 84 (1934) [Per *J.* Abad Santos, *En Banc*]; *Heirs of Blancaflor v. Court of Appeals,* 364 Phil. 454, 463 (1999) [Per *C.J.* Davide, Jr., *En Banc*]; and *Bautista v. Fule,* 85 Phil. 391, 393 (1950) [Per *J.* Reyes, First Division].

[59] See CONST., Art. III, Sec. 1.

[60] *Ichong v. Hernandez,* 101 Phil. 1155, 1164 (1957) [Per *J.* Labrador, *En Banc*].

Equal protection, however, was not intended to prohibit the legislature from enacting statutes that either tend to create specific classes of persons or objects, or tend to affect only these specific classes of persons or objects. Equal protection "does not demand absolute equality among residents; it merely requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced."[61] As aptly discussed in *Victoriano v. Elizalde Rope Workers Union*:[62]

> The guaranty of equal protection of the laws is not a guaranty of equality in the application of the laws upon all citizens of the state. It is not, therefore, a requirement, in order to avoid the constitutional prohibition against inequality, that every man, woman and child should be affected alike by a statute. Equality of operation of statutes does not mean indiscriminate operation on persons merely as such, but on persons according to the circumstances surrounding them. It guarantees equality, not identity of rights. The Constitution does not require that things which are different in fact be treated in law as though they were the same. The equal protection clause does not forbid discrimination as to things that are different. It does not prohibit legislation which is limited either in the object to which it is directed or by the territory within which it is to operate.
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> The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences; that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary.

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[61] *Id.*

[62] 158 Phil. 60 (1974) [Per *J.* Zaldivar, Second Division].

In the exercise of its power to make classifications for the purpose of enacting laws over matters within its jurisdiction, the state is recognized as enjoying a wide range of discretion. It is not necessary that the classification be based on scientific or marked differences of things or in their relation. Neither is it necessary that the classification be made with mathematical nicety. Hence legislative classification may in many cases properly rest on narrow distinctions, for the equal protection guaranty does not preclude the legislature from recognizing degrees of evil or harm, and legislation is addressed to evils as they may appear.[63]

Thus, a statute that treats one class differently from another class will not violate the equal protection clause as long as the classification is valid. In *Samahan ng Progresibong Kabataan v. Quezon City*,[64] this Court summarized the three (3) tests to determine the reasonableness of a classification:

The strict scrutiny test applies when a classification either (i) interferes with the exercise of fundamental rights, including the basic liberties guaranteed under the Constitution, or (ii) burdens suspect classes. The intermediate scrutiny test applies when a classification does not involve suspect classes or fundamental rights, but requires heightened scrutiny, such as in classifications based on gender and legitimacy. Lastly, the rational basis test applies to all other subjects not covered by the first two tests.[65]

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[63] *Id.* at 86-88 citing 16 Am Jur. 2d, page 850; *International Harvester Co. v. Missouri,* 234 U.S. 199, 58 L. ed., 1276, 1282; *Atchison T.S.F.R. Co. v. Missouri,* 234 U.S. 199, 58 L. ed, 1276, 282; *People v. Vera,* 65 Phil. 56, 126 [Per *J.* Laurel, First Division]; *People v. Carlos,* 78 Phil. 535, 542 [Per *J.* Tuason, *En Banc*]; 16 C.J.S. 997; 16 Am. Jur. 2d, page 862; *Continental Baking Co. v. Woodring,* 286 U.S. 352, 76 L. ed. 1155,1182; *Great Atlantic & Pacific Tea Co. v. Grosjean,* 301 U.S. 412, 81 L. ed., 1193, 1200; and *German Alliance Ins. Co. v. Lewis,* 233 U.S. 389, 58 L. ed., 1011, 1024;

[64] 815 Phil. 1067 (2017) [Per *J.* Perlas-Bernabe, *En Banc*].

[65] *Id.* at 1113-1114 citing *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas,* 487 Phil. 531 (2004) [Per *J.* Puno, *En Banc*]; *White Light Corporation v. City of Manila,* 596 Phil. 444 (2009) [Per *J.* Tinga , *En Banc*]; *Ang Ladlad LGBT Party v. COMELEC,* 632 Phil. 32, 77 (2010) [Per *J.* Del Castillo, *En Banc*]; JOAQUIN BERNAS, S.J., *THE 1987*

A "suspect class" is defined as "a class saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process."[66]

Juridical entities enjoy certain advantages that natural persons do not, such as limited liability. A corporation has a separate and distinct personality from its corporate officers or stockholders. It may incur its own liabilities and is responsible for the payment of its debts. Thus, a corporate officer or a stockholder, as a general rule, is not personally held liable for corporate debts.[67]

The properties of juridical entities are also often used for commercial purposes. Corporations will give more attention to assets that are income-generating, and will also be equipped with greater resources for the protection of these assets.

In contrast, the properties of natural persons are more often used for residential purposes. They are also directly responsible for the liabilities they incur and, often, are not equipped with the same resources that juridical entities may have.

Juridical entities, thus, cannot be considered a "suspect class." The rational basis test may be applied to determine the constitutionality of Republic Act No. 8971, Section 47.

CONSTITUTION OF THE PHILIPPINES: A COMMENTARY 139-140 (2009); Concurring Opinion of Associate Justice Teresita J. Leonardo-De Castro in *Garcia v. Drilon,* 712 Phil. 44, 124-127 (2013) [Per *J.* Perlas-Bernabe , *En Banc*]; *Disini, Jr. v. Secretary of Justice,* 727 Phil. 28, 97-98 (2014) [Per *J.* Abad, *En Banc*]; and *Mosqueda v. Filipino Banana Growers & Exporters Association, Inc.,* 793 Phil. 17 (2016) [Per *J.* Bersamin, *En Banc*].

[66] Dissenting Opinion of *J.* Carpio Morales in *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas,* 487 Phil. 531, 694 (2004) [Per *J.* Puno, *En Banc*] citing *San Antonio Independent School District v. Rodriguez,* 411 U.S. 1; 93 S. Ct. 1278; 36 L. Ed. 2d 16 (1973).

[67] See *Philippine National Bank v. Hydro Resources Contractors Corporation,* 706 Phil. 297 (2013) [Per *J.* Leonardo-De Castro, First Division].

"The rational basis test requires only that there be a legitimate government interest and that there is a reasonable connection between it and the means employed to achieve it."[68] A longer period of redemption is given to natural persons whose mortgaged properties are more often used for residential purposes. A shorter period of redemption is given to juridical persons whose properties are more often used for commercial purposes. *Goldenway Merchandising* explains that the shorter period is aimed to ensure the solvency and liquidity of banks. This helps minimize the period of uncertainty in the ownership of commercial properties and enable mortgagee-banks to dispose of these acquired assets quickly.

There is, thus, a legitimate government interest in the protection of the banking industry and a legitimate government interest in the protection of foreclosed residential properties owned by natural persons. The shortened period of redemption for juridical entities may be considered to be the reasonable means for the protection of both these interests.

WHEREFORE, the Petition is **DENIED.**

SO ORDERED.

Peralta, C.J., Caguioa, Gesmundo, Reyes, J. Jr., Hernando, Carandang, Lazaro-Javier, Inting, and *Zalameda, JJ.*, concur.

Delos Santos, J., no part.

Perlas-Bernabe, J., on official leave.

Reyes, A. Jr., J., on official business.

Lopez, J., on wellness leave.

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[68] Separate Opinion of *J.* Leonen in *Samahan ng Progresibong Kabataan v. Quezon City*, 815 Phil. 1067, 1147 (2017) [Per *J.* Perlas-Bernabe, *En Banc*].

EN BANC

[G.R. No. 208162. January 7, 2020]

DEVIE ANN ISAGA FUERTES, *petitioner, vs.* **THE SENATE OF THE PHILIPPINES, HOUSE OF REPRESENTATIVES, DEPARTMENT OF JUSTICE (DOJ), DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT (DILG), DEPARTMENT OF BUDGET AND MANAGEMENT, DEPARTMENT OF FINANCE, PEOPLE OF THE PHILIPPINES, THROUGH THE OFFICE OF THE SOLICITOR GENERAL (OSG), OFFICE OF THE CITY PROSECUTOR OF TAYABAS CITY (QUEZON PROVINCE), THE PRESIDING JUDGE OF BRANCH 30, REGIONAL TRIAL COURT (RTC) OF LUCENA CITY, and HEIRS OF CHESTER PAOLO ABRACIA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; THE JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; REQUISITES FOR THE EXERCISE OF THE POWER OF JUDICIAL REVIEW.— A requirement for the exercise of this Court's power of judicial review is that the case must be ripe for adjudication: Petitioners must, thus, comply with the requisites for the exercise of the power of judicial review: (1) there must be an actual case or justiciable controversy before this Court; (2) the question before this Court must be ripe for adjudication; (3) the person challenging the act must be a proper party; and (4) the issue of constitutionality must be raised at the earliest opportunity and must be the very *litis mota* of the case.

2. ID.; ID.; ID.; ID.; AN ISSUE IS RIPE FOR ADJUDICATION WHEN AN ASSAILED ACT HAS ALREADY BEEN ACCOMPLISHED OR PERFORMED BY A BRANCH OF GOVERNMENT, AND THE CHALLENGED ACT MUST HAVE DIRECTLY ADVERSELY AFFECTED THE PARTY

CHALLENGING IT.— An issue is ripe for adjudication when an assailed act has already been accomplished or performed by a branch of government. Moreover, the challenged act must have directly adversely affected the party challenging it. In *Philconsa v. Philippine Government:* For a case to be considered ripe for adjudication, it is a prerequisite that an act had then been accomplished or performed by either branch of government before a court may interfere, and the petitioner must allege the existence of an immediate or threatened injury to himself as a result of the challenged action. Petitioner must show that he has sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of.

3. ID.; ID.; ID.; ID.; MATTERS THAT ARE STILL PENDING OR YET TO BE RESOLVED BY SOME OTHER COMPETENT COURT OR BODY ARE NOT YET RIPE FOR THE COURT'S ADJUDICATION, ESPECIALLY WHEN THERE ARE FACTS THAT ARE ACTIVELY CONTROVERTED OR DISPUTED; THE COURT CANNOT PREEMPT THE TRIAL COURT'S DETERMINATION ON THE TRUTH OR FALSITY OF THE PARTIES' CLAIMS.— When matters are still pending or yet to be resolved by some other competent court or body, then those matters are not yet ripe for this Court's adjudication. This is especially true when there are facts that are actively controverted or disputed. Here, petitioner argues that she should not have been charged with violating the Anti-Hazing Law as she allegedly did not have either actual knowledge or participation in the initiation rites of the Tau Gamma Phi Fraternity. She claims that she was "merely walking around the premises with her fellow sisters in the Sorority" and "was completely unaware" that Abracia was being hazed then. That petitioner did not actually know about or participate in the hazing is a matter of defense and must be proved by presentation of evidence during trial. To determine at this stage, where a trial has yet to be conducted, whether petitioner was correctly charged would be to demand that this Court hypothetically admit the truth of her claims. As the criminal case is still ongoing, it would be premature to resolve the factual issues petitioner raises. This Court cannot preempt the trial court's determination on the truth or falsity of petitioner's claims.

4. ID.; ID.; ID.; ID.; DOCTRINE OF HIERARCHY OF COURTS; DIRECT RESORT TO THE COURT, WHEN THERE IS A PERFECTLY COMPETENT TRIAL COURT BEFORE WHICH THE PARTIES MAY RAISE THEIR CONSTITUTIONAL QUESTION, ABROGATES THE DOCTRINE OF HIERARCHY OF COURTS; ELUCIDATED.— Petitioner's direct resort to this Court, when there is a perfectly competent trial court before which she may raise her constitutional question, abrogates the doctrine of hierarchy of courts. "The doctrine of hierarchy of courts ensures judicial efficiency at all levels of courts." In *Aala v. Uy*, x x x. As expressly provided in the Constitution, this Court has original jurisdiction "over petitions for *certiorari*, prohibition, *mandamus, quo warranto,* and *habeas corpus.*" However, this Court has emphasized in *People v. Cuaresma* that the power to issue writs of *certiorari*, prohibition, and *mandamus* does not exclusively pertain to this Court. Rather, it is shared with the Court of Appeals and the Regional Trial Courts. Nevertheless, "this concurrence of jurisdiction" does not give parties unfettered discretion as to the choice of forum. The doctrine on hierarchy of courts is determinative of the appropriate venue where petitions for extraordinary writs should be filed. Parties cannot randomly select the court or forum to which their actions will be directed. There is another reason why this Court enjoins strict adherence to the doctrine on hierarchy of courts. As explained in *Diocese of Bacolod v. Commission on Elections,* "[t]he doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner." . . . Consequently, this Court will not entertain direct resort to it when relief can be obtained in the lower courts. This holds especially true when questions of fact are raised. Unlike this Court, trial courts and the Court of Appeals are better equipped to resolve questions of fact. They are in the best position to deal with causes in the first instance.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; MOTION TO QUASH; THE ACCUSED MAY MOVE TO QUASH AN INFORMATION ON CONSTITUTIONAL GROUNDS, BASED ON THE THEORY THAT THERE CAN BE NO CRIME IF THERE IS NO LAW, THE LAW BEING INVALID.— A motion to quash an information may be filed

at any time before a plea is entered by the accused. The accused may move to quash an information on constitutional grounds, based on the theory that there can be no crime if there is no law, the law being invalid *(nullum crimen sine lege).* Indeed, among the prayers in the Petition is for this Court to quash the Information in Criminal Case No. 2008-895: x x x. Evidently, petitioner herself recognizes that the issue of the constitutionality of the Anti-Hazing Law's provisions is not incompatible with the quashal of the Information. Aside from her bare invocation that her substantive rights are being derogated, petitioner fails to explain the necessity and urgency of her direct resort to this Court. In her Memorandum, petitioner points out that the Information fails to charge her and her fellow sorority members with actual participation in the alleged crime: x x x. This claim is precisely what is addressed in a motion to quash. As correctly pointed out by public respondents, the issues of petitioner's minority and right to bail should be raised in the trial court as well.

6. POLITICAL LAW; CONSTITUTIONAL LAW; THE JUDICIAL DEPARTMENT; THE POWER OF JUDICIAL REVIEW; THE COURT IS THE FINAL ARBITER OF THE CONSTITUTIONALITY OF ANY LAW, BUT IT IS NOT THE SOLE AND EXCLUSIVE FORUM BEFORE WHICH CONSTITUTIONAL QUESTIONS MAY BE POSED, AS THE CONSTITUTION VESTS ALL REGIONAL TRIAL COURTS THE POWER OF JUDICIAL REVIEW OR THE POWER TO DECLARE THE CONSTITUTIONALITY OR VALIDITY OF A LAW, TREATY, INTERNATIONAL OR EXECUTIVE AGREEMENT, PRESIDENTIAL DECREE, ORDER, INSTRUCTION, ORDINANCE, OR REGULATION.— Indeed, this Court is the final arbiter of the constitutionality of any law—but we are not the sole and exclusive forum before which constitutional questions may be posed. We are the court of last resort, not the first. Regional trial courts, including the one before which Criminal Case No. 2008-895 is pending, are vested with judicial power, which embraces the power to determine if a law breaches the Constitution. In *Garcia v. Drilon:* It is settled that [Regional Trial Courts] have jurisdiction to resolve the constitutionality of a statute, "this authority being embraced in the general definition of the judicial power to determine what are the valid

and binding laws by the criterion of their conformity to the fundamental law." The Constitution vests the power of judicial review or the power to declare the constitutionality or validity of a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation not only in this Court, but in all RTCs. We said in *J.M. Tuason and Co., Inc. v. CA* that, "[p]lainly the Constitution contemplates that the inferior courts should have jurisdiction in cases involving constitutionality of any treaty or law, for it speaks of appellate review of *final judgments of inferior courts* in cases where such constitutionality happens to be in issue."

7. ID.; ID.; ID.; ID.; DOCTRINE OF HIERARCHY OF COURTS; THE DOCTRINE OF HIERARCHY OF COURTS IS NOT AN IRON-CLAD RULE, AS THE SUPREME COURT HAS FULL DISCRETIONARY POWER TO TAKE COGNIZANCE AND ASSUME JURISDICTION OVER SPECIAL CIVIL ACTIONS FOR *CERTIORARI* FILED DIRECTLY WITH IT FOR EXCEPTIONALLY COMPELLING REASONS OR IF WARRANTED BY THE NATURE OF THE ISSUES CLEARLY AND SPECIFICALLY RAISED IN THE PETITION; EXCEPTIONS TO THE DOCTRINE OF HIERARCHY OF COURTS; THE DETERMINATION OF WHETHER A PENAL STATUTE WITH GRAVE CONSEQUENCES TO THE LIFE AND LIBERTY OF THOSE CHARGED UNDER IT IS CONSISTENT WITH OUR CONSTITUTIONAL PRINCIPLES IS AN ISSUE OF TRANSCENDENTAL IMPORTANCE.— [R]egardless of petitioner's remedial errors, this Court acknowledges that the doctrine of hierarchy of courts is not ironclad, especially when pressing constitutional matters are at stake. In *Diocese of Bacolod v. Commission on Elections*: Thus, the doctrine of hierarchy of courts is not an iron-clad rule. This court has "full discretionary power to take cognizance and assume jurisdiction [over] special civil actions for *certiorari* ... filed directly with it for exceptionally compelling reasons or if warranted by the nature of the issues clearly and specifically raised in the petition." As correctly pointed out by petitioners, we have provided exceptions to this doctrine: First, a direct resort to this court is allowed when there are genuine issues of constitutionality that must be addressed at the most immediate time. A direct resort to this court includes

availing of the remedies of *certiorari* and prohibition to assail the constitutionality of actions of both legislative and executive branches of the government. . . . A second exception is when the issues involved are of transcendental importance. In these cases, the imminence and clarity of the threat to fundamental constitutional rights outweigh the necessity for prudence. The doctrine relating to constitutional issues of transcendental importance prevents courts from the paralysis of procedural niceties when clearly faced with the need for substantial protection. Third, cases of first impression warrant a direct resort to this court. In cases of first impression, no jurisprudence yet exists that will guide the lower courts on this matter. x x x. Fourth, the constitutional issues raised are better decided by this court. x x x. Here, there is transcendental interest in determining whether a penal statute with grave consequences to the life and liberty of those charged under it is consistent with our constitutional principles. In the interest of judicial economy, this Court shall resolve this case on the merits.

8. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IS NOT VIOLATED WHEN THERE IS A LOGICAL CONNECTION BETWEEN THE FACT PROVED AND THE ULTIMATE FACT PRESUMED, FOR WHEN SUCH *PRIMA FACIE* EVIDENCE IS UNEXPLAINED OR NOT CONTRADICTED BY THE ACCUSED, THE CONVICTION FOUNDED ON SUCH EVIDENCE WILL BE VALID; THE PROSECUTION MUST STILL PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.— While petitioner purports to assail the constitutionality of both Sections 5 and 4 of the Anti-Hazing Law, all her arguments are focused on paragraph 4 of Section 14. This Court has upheld the constitutionality of disputable presumptions in criminal laws. The constitutional presumption of innocence is not violated when there is a logical connection between the fact proved and the ultimate fact presumed. When such *prima facie* evidence is unexplained or not contradicted by the accused, the conviction founded on such evidence will be valid. However, the prosecution must still prove the guilt of the accused beyond reasonable doubt. The existence of a disputable presumption does not preclude the presentation of

contrary evidence. x x x. Here, petitioner fails to show that a logical relation between the fact proved–—presence of a person during the hazing—and the ultimate fact presumed—their participation in the hazing as a principal—is lacking. Neither has it been shown how Section 14 of the Anti-Hazing Law does away with the requirement that the prosecution must prove the participation of the accused in the hazing beyond reasonable doubt.

9. CRIMINAL LAW; ANTI-HAZING LAW (REPUBLIC ACT NO. 8049); SECTION 14, PARAGRAPH 4 THEREOF; THE MERE PRESENCE OF THE OFFENDER DURING THE HAZING IS *PRIMA FACIE* EVIDENCE OF PARTICIPATION AS PRINCIPAL, WHICH CAN BE REBUTTED BY PROVING THAT HE OR SHE TOOK STEPS TO PREVENT THE COMMISSION OF THE HAZING; GROUP MEMBERS WHO DO NOT ACTUALLY PERFORM THE HAZING RITUAL, BUT WHO BY THEIR PRESENCE INCITE OR EXACERBATE THE VIOLENCE BEING COMMITTED, MAY BE PRINCIPALS EITHER BY INDUCEMENT OR BY INDISPENSABLE COOPERATION.— [T]he constitutionality of Section 14, paragraph 4 of the Anti-Hazing Law has already been discussed—and upheld—by this Court. In *Dungo v. People*, this Court acknowledged that the secrecy and concealment in initiation rites, and the culture of silence within many organizations, would make the prosecution of perpetrators under the Anti-Hazing Law difficult: x x x. Because of this, this Court held that the provision that presence during a hazing is *prima facie* evidence of participation in it relates to the conspiracy in the crime: x x x. R.A. No. 8049, nevertheless, presents a novel provision that introduces a disputable presumption of actual participation; and which modifies the concept of conspiracy. Section 4, paragraph 6 thereof provides that the presence of any person during the hazing is *prima facie* evidence of participation as principal, unless he prevented the commission of the punishable acts. This provision is unique because a disputable presumption arises from the mere presence of the offender during the hazing, which can be rebutted by proving that the accused took steps to prevent the commission of the hazing. x x x. Through their express and implicit sanction, observers of hazing aggravate the abuses perpetuated upon neophytes. As an American fraternity member

explained, hazing is "almost like performance art" where the so-called audience plays as much of a role as the neophytes at the center of the initiation rites. Hazing derives its effectiveness from the humiliation it achieves. Humiliation requires an audience. The audience provides the provocation, goading the actors to escalate borderline conduct toward more extreme behavior that would otherwise be intolerable. In situations like this, presence is participation. x x x. Thus, those group members who do not actually perform the hazing ritual, but who by their presence incite or exacerbate the violence being committed, may be principals either by inducement or by indispensable cooperation.

10. ID.; ID.; ID.; HAZING OFTEN INVOLVES A CONSPIRACY AMONG THOSE INVOLVED, BE IT IN THE PLANNING STAGE, THE INDUCEMENT OF THE VICTIM, OR IN THE PARTICIPATION IN THE ACTUAL INITIATION RITES; THUS, THE RULE ON *RES INTER ALIOS ACTA* IS INAPPLICABLE.— [P]etitioner's claim that Section 14 of the Anti-Hazing Law violates the rule on *res inter alios acta* lacks merit. *Res inter alios acta* provides that a party's rights generally cannot be prejudiced by another's act, declaration, or omission. However, in a conspiracy, the act of one is the act of all, rendering all conspirators as co-principals "regardless of the extent and character of their participation[.]" Under Rule 130, Section 30 of the Rules of Court, an exception to the *res inter alios acta* rule is an admission by a conspirator relating to the conspiracy: SECTION 30. *Admission by conspirator.* — The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration. As noted in *Dungo*, hazing often involves a conspiracy among those involved, be it in the planning stage, the inducement of the victim, or in the participation in the actual initiation rites. The rule on *res inter alios acta*, then, does not apply.

11. ID.; ID.; ID.; IMPOSABLE PENALTIES FOR VIOLATION OF THE ANTI-HAZING LAW; PENALTIES IMPOSED FOR VIOLATION OF THE ANTI-HAZING LAW ARE NOT CRUEL, DEGRADING, OR INHUMAN PUNISHMENT, AS THEY ARE SIMILAR TO THOSE IMPOSED FOR THE SAME OFFENSES UNDER THE REVISED PENAL CODE,

ALBEIT A DEGREE HIGHER, IN ORDER TO SUPPRESS THE ESCALATION AND ENCOURAGEMENT OF HAZING, AND TO SEVERELY PUNISH BYSTANDERS AND WATCHERS OF THE REPREHENSIBLE ACTS COMMITTED.— The intent of the Anti-Hazing Law is to deter members of a fraternity, sorority, organization, or association from making hazing a requirement for admission. By making the conduct of initiation rites that cause physical and psychological harm *malum prohibitum*, the law rejects the defense that one's desire to belong to a group gives that group the license to injure, or even cause the person's death: x x x. Petitioner here fails to show how the penalties imposed under the Anti-Hazing Law would be cruel, degrading, or inhuman punishment, when they are similar to those imposed for the same offenses under the Revised Penal Code, albeit a degree higher. To emphasize, the Anti-Hazing Law aims to prevent organizations from making hazing a requirement for admission. The increased penalties imposed on those who participate in hazing is the country's response to a reprehensible phenomenon that persists in schools and institutions. The Anti-Hazing Law seeks to punish the conspiracy of silence and secrecy, tantamount to impunity, that would otherwise shroud the crimes committed. In fact, the amendments on the imposable penalties introduced by Republic Act No. 11053 bolster the State's interest in prohibiting hazing. As noted by public respondents, a ₱3-million fine shall be imposed in addition to the penalty of *reclusion perpetua* for those who actually planned or participated in the hazing if it results in death, rape, sodomy, or mutilation. Further, Republic Act No. 11053 put in place imposable penalties on certain members, officers, and alumni of the organization involved in the hazing, and prescribes the administrative sanctions, if applicable. The concealment of the offense or obstruction of the investigation is also penalized. Notably, Section 14 (c) of Republic Act No. 11053 imposes the penalty of *reclusion temporal* in its maximum period and a ₱1-million fine on all persons present in the conduct of the hazing. This new penalty affirms the law's policy to suppress the escalation and encouragement of hazing, and to severely punish bystanders and watchers of the reprehensible acts committed.

12. ID.; ID.; ID.; THE ANTI-HAZING LAW IS NOT A BILL OF ATTAINDER; FOR A LAW TO BE CONSIDERED A

BILL OF ATTAINDER, IT MUST BE SHOWN TO CONTAIN ALL OF THE FOLLOWING: A SPECIFICATION OF CERTAIN INDIVIDUALS OR A GROUP OF INDIVIDUALS, THE IMPOSITION OF A PUNISHMENT, PENAL OR OTHERWISE, AND THE LACK OF JUDICIAL TRIAL; THE FILING OF INFORMATION AGAINST THE PETITIONER FOR VIOLATION OF THE ANTI-HAZING LAW IS NOT A FINDING OF HER GUILT, AS THE PROSECUTION MUST STILL PROVE THE OFFENSE, AND PETITIONER'S PARTICIPATION IN IT.— [C]ontrary to petitioner's assertion, the Anti-Hazing Law is not a bill of attainder. Bills of attainder are prohibited under Article III, Section 22 of the Constitution, which states: SECTION 22. No *ex post facto* law or bill of attainder shall be enacted. x x x. In modern times, a bill of attainder is generally understood as a legislative act which inflicts punishment on individuals or members of a particular group without a judicial trial. x x x. A bill of attainder encroaches on the courts' power to determine the guilt or innocence of the accused and to impose the corresponding penalty, violating the doctrine of separation of powers. For a law to be considered a bill of attainder, it must be shown to contain all of the following: "a specification of certain individuals or a group of individuals, the imposition of a punishment, penal or otherwise, and the lack of judicial trial." The most essential of these elements is the complete exclusion of the courts from the determination of guilt and imposable penalty. x x x. Here, the mere filing of an Information against petitioner and her fellow sorority members is not a finding of their guilt of the crime charged. Contrary to her claim, petitioner is not being charged merely because she is a member of the Tau Gamma Sigma Sorority, but because she is allegedly a principal by direct participation in the hazing that led to Abracia's death. As stated, these are matters for the trial court to decide. The prosecution must still prove the offense, and the accused's participation in it, beyond reasonable doubt. Petitioner, in turn, may present her defenses to the allegations.

13. ID.; ID.; ID.; THE AMENDMENTS IN REPUBLIC ACT NO. 11053 MAY BE APPLIED RETROACTIVELY IN CASES WHERE HAZING RESULTED IN DEATH; PENALTY FOR ONE'S PRESENCE DURING THE

HAZING LOWERED TO *RECLUSION TEMPORAL* IN ITS MAXIMUM PERIOD WITH A ₱1-MILLION FINE.— [T]he amendments in Republic Act No. 11053 may be applied retroactively in cases like petitioner's where the hazing resulted in death, contrary to the position taken by public respondents. Previously, should an accused fail to overturn the *prima facie* presumption, they would be charged as principals, with a corresponding penalty of *reclusion perpetua* when the hazing resulted in death. Now, Section 14(c) imposes the lower penalty for one's presence during the hazing — *reclusion temporal* in its maximum period with a ₱1-million fine. As the penalty is not *reclusion perpetua*, the accused may also benefit from the application of Republic Act No. 4103, as amended, otherwise known as the Indeterminate Sentence Law.

14. ID.; ID.; SECTION 14, PARAGRAPH 4 OF THE ANTI-HAZING LAW WHICH PROVIDES THAT AN ACCUSED'S PRESENCE DURING A HAZING IS *PRIMA FACIE* EVIDENCE OF HIS OR HER PARTICIPATION, DECLARED CONSTITUTIONAL, AS THE SAME SERVES AS A GRAVE WARNING THAT FAILING TO ACT—KNOWING FULLY WELL THAT OTHERS ARE BEING TRAUMATIZED, INJURED, MAIMED, OR KILLED—DOES NOT MAKE A PERSON ONLY AN OBSERVER OR WITNESS, BUT A PERPETRATOR; LEGISLATIVE ACTS ARE PRESUMED CONSTITUTIONAL, AND TO BE DECLARED UNCONSTITUTIONAL, A STATUTE OR ANY OF ITS PROVISIONS MUST BE SHOWN TO HAVE CLEARLY AND UNMISTAKABLY BREACHED THE CONSTITUTION.— Legislative acts are presumed constitutional. To be declared unconstitutional, a statute or any of its provisions must be shown to have clearly and unmistakably breached the Constitution. Petitioner has failed to discharge her burden of overcoming the presumption of the constitutionality of Section 14 of the Anti-Hazing Law. Those who object to, intervene against, or attempt to stop the despicable or inhumane traditions or rituals of an organization or institution may be branded as *duwag, nakakahiya, walang pakisama, traydor*. Section 14, paragraph 4 of the Anti-Hazing Law turns cowardice into virtue, shame into strength, and disobedience into heroism. More than that, this serves as a grave warning that failing to act—knowing fully well that others are being traumatized, injured,

maimed, or killed—does not make a person only an observer or witness. It makes them a perpetrator.

APPEARANCES OF COUNSEL

Vicente D. Millora & Tomas B. Baga for petitioner.

Sallamillas-Ayuma-Comafay Marquez Mendez (D) Law Offices collaborating counsel for petitioner.

The Solicitor General for public respondents.

D E C I S I O N

LEONEN, *J.*:

Section 14, paragraph 4 of the Anti-Hazing Law,[1] which provides that an accused's presence during a hazing is *prima facie* evidence of his or her participation, does not violate the constitutional presumption of innocence. This disputable presumption is also not a bill of attainder.

This Court resolves a Petition for *Certiorari*[2] seeking to declare unconstitutional Sections 5 and 14 of the Anti-Hazing Law—specifically, paragraph 4 of Section 14. The paragraph provides that one's presence during the hazing is *prima facie* evidence of participation as a principal, unless proven to have prevented or to have promptly reported the punishable acts to law enforcement authorities if they can, without peril to their person or their family.

Devie Ann Isaga Fuertes (Fuertes) is among the 46 accused in Criminal Case No. 2008-895, pending before Branch 30 of the Regional Trial Court of San Pablo City.[3] She and her co-accused had been charged with violating the Anti-Hazing Law, or Republic Act No. 8049, for the death of Chester Paolo Abracia

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[1] Republic Act No. 8049, as amended by Republic Act No. 11053.

[2] *Rollo*, pp. 3-24.

[3] *Id.* at 84.

(Abracia) due to injuries he allegedly sustained during the initiation rites of the Tau Gamma Phi Fraternity.[4] Fuertes is a member of the fraternity's sister sorority, Tau Gamma Sigma, and was allegedly present at the premises during the initiation rites.[5]

Abracia died on or about August 2, 2008 in Tayabas City, Quezon. An Information was filed on October 20, 2008, charging the 46 members of Tau Gamma Phi and Tau Gamma Sigma for violation of Republic Act No. 8049.

The pertinent portion of the Information read:

> That on or about the 2nd day of August 2008, at Barangay Mate, in the City of Tayabas, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all active members of Tau Gamma Phi Fraternity and Tau Gamma Sigma Sorority, acting conspiracy with one another, without prior written notice to the proper school authorities of Manuel S. Enverga University Foundation, Inc. (MSEUF) made seven (7) days prior to aforementioned date and in the absence of the school's assigned representatives during the initiation perform and conduct initiation rite on the person of neophyte and herein deceased victim Chester Paolo Abracia as a prerequisite for his admission into membership in the said fraternity by hazing accomplished through subjection to physical suffering or injury, to wit: by successively hitting his body, using paddle and fist blows, thereby [inflicting] upon him contusion and abrasion located on his chest, abdomen, leg and thigh which resulted to cardio-respiratory arrest secondary to pulmonary embolism and acute myocardial infarction which is the direct and immediate cause of his death thereafter.
>
> That the hazing was committed in the property of Lamberto Villarion O. Pandy situated at Barangay Mate, Tayabas City, a place outside the school premises of Manuel S. Enverga University Foundation, Inc. (MSEUF).
>
> That accused Lamberto Villarion O. Pandy, as owner of the place where the hazing was conducted, acted as accomplice by cooperating

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[4] *Id.* at 11-12.

[5] *Id.* at 4.

in the execution of the offense by failing to take action to prevent the same from happening despite actual knowledge that it will be conducted therein.

CONTRARY TO LAW. Tayabas City for Lucena City, Philippines, October 20, 2008.[6]

Fuertes, a member of Tau Gamma Sigma Sorority, admitted that she was at the premises during the initiation rites. She was then 17 years old and was a student of Manuel S. Enverga University Foundation.[7]

The case was docketed as Criminal Case No. 2008-895, and was initially pending with Branch 54 of the Regional Trial Court of Lucena City. The case was transferred to Branch 30 of the Regional Trial Court of San Pablo City, pursuant to A.M. No. 10-7-224-RTC issued by this Court in July 2010.[8]

On August 1, 2013, Fuertes filed a Petition for *Certiorari*[9] before this Court, raising the sole issue of the unconstitutionality of Sections 3 and 4 of the Anti-Hazing Law. At the time, she had not yet been arraigned and was at large.[10]

Petitioner claims that Sections 3 and 4 of the Anti-Hazing Law are unconstitutional, as they would allow for the conviction of persons for a crime committed by others, in violation of the *res inter alios acta* rule. She also argues that these provisions violate Article III, Sections 1 and 19 of the Constitution for constituting a cruel and unusual punishment, as she was charged as a principal, and penalized with *reclusion perpetua*, for a non-bailable offense.[11]

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[6] *Id.* at 12.

[7] *Id.* at 4.

[8] *Id.* at 84.

[9] *Id.* at 3-24.

[10] *Id.* at 59.

[11] *Id.* at 15.

On August 6, 2013, this Court issued a Resolution[12] requiring respondents to comment on the Petition.

On November 5, 2013, public respondents filed their Comment,[13] arguing that the Petition was procedurally and substantially erroneous,[14] for a multitude of reasons.

First, since petitioner assails the constitutionality of law provisions, public respondents argue that her Petition is one of declaratory relief, over which this Court has no original jurisdiction.[15] Further, they argue that declaratory relief is not the proper remedy, as there had already been a breach of the Anti-Hazing Law.[16]

Second, public respondents claim that petitioner is not entitled to equitable relief, as she has come to court with unclean hands,[17] having evaded arrest for five (5) years since being charged. They claim that, while government resources are directed for her arrest, she has remained a fugitive from justice, able to exercise her civil rights.[18] They pointed out that on September 6, 2010, she obtained a Philippine passport from the Philippine Embassy in Brunei, and a postal identification card in Pasay in May 2013.[19] She also verified the Petition before Atty. Manny V. Gragasin at the Quezon City Hall. Her counsel, Atty. Vicente D. Millora, appears to be in constant contact with her, but has not facilitated her surrender to the authorities.[20]

Third, public respondents argue that even if the Rules of Court were applied liberally, petitioner has still failed to overturn

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[12] *Id.* at 31.

[13] *Id.* at 55-83.

[14] *Id.* at 56.

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

[16] *Id.* at 66.

[17] *Id.*

[18] *Id.* at 67.

[19] *Id.* at 19-20 and 67.

[20] *Id.* at 68.

the presumption of constitutionality of Sections 3 and 4 of the Anti-Hazing Law. They claim that the presumption in Section 4—that the presence of persons during the hazing is *prima facie* evidence of participation, unless they prevented the commission of the punishable acts—is consistent with Sections 1, 14, and 19 of the Constitution.[21] They argue that several penal laws allow for *prima facie* evidence, all of which do not preclude the constitutional presumption of innocence. They also point out that this Court itself recognizes disputable presumptions, as in Rules of Court, Rule 131, Section 3.[22]

Moreover, public respondents claim that certain laws, such as the Revised Penal Code, Article 275, penalize presence and inaction.[23] They cited *People v. Mingoa*[24] and *Bautista v. Court of Appeals*[25] in which this Court upheld disputable presumptions in criminal law.[26]

Fourth, public respondents argue that there is no violation of the *res inter alios acta* rule, because under the assailed law, there must still be a finding of actual participation before a person may be held criminally liable.[27]

Fifth, public respondents claim that the penalty of *reclusion perpetua* that will be imposed is not cruel and unusual punishment.

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[21] *Id.* at 69.

[22] *Id*. at 70-71. The laws mentioned are Revised Penal Code, Article 217 on malversation; Presidential Decree No. 1612, Section 5 on fencing; Presidential Decree No. 1613, Section 6 on arson; Batas Pambansa Blg. 22, Section 2 on bouncing checks; Republic Act No. 7832, Section 4 on illegal use of electricity; Republic Act No. 8041, Section 8 on theft, pilferage, or unlawful acts relating to use of water; Republic Act No. 1379, Section 2 on illegally acquired wealth; Republic Act No. 8424, Section 29 on improperly acquired earnings tax of corporations; and Republic Act No. 8550, Section 86-88 on poaching.

[23] *Id.*

[24] 92 Phil. 856 (1953) [Per J. Reyes, *En Banc*].

[25] 413 Phil. 159 (2001) [Per J. Bellosillo, Second Division].

[26] *Rollo*, pp. 72-73.

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

They argue that consistent with *Furman v. Georgia*[28] and *Perez v. People*,[29] penalties such as life imprisonment and even death may be imposed to discourage crimes harmful to public interest.[30] As for the Anti-Hazing Law itself, *reclusion perpetua* is only imposable on the actual participants in the hazing, and only when the hazing results in death, rape, sodomy, or mutilation.[31]

Sixth, public respondents argue that the provision on *prima facie* evidence in the Anti-Hazing Law is a legislative decision that this Court must respect in view of the doctrine of separation of powers.[32] They raise that the presumption was put in place in view of the legislative policy to discourage fraternities, sororities, organizations, or associations from making hazing a requirement for admission.[33]

Finally, public respondents argue that petitioner's minority and right to bail are matters better left to the judgment of the trial court.[34]

On November 19, 2013, this Court issued a Resolution[35] noting the Comment, and requiring petitioner to file a Reply.

On January 8, 2014, Fuertes filed her Reply[36] to the Comment. On January 21, 2014, this Court issued a Resolution[37] noting the Reply. This Court also gave due course to the Petition, treated the Comment as Answer, and required the parties to submit their memoranda.

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[28] 408 U.S. 238 (1972).

[29] 568 Phil. 491 (2008) [Per *J.* R.T. Reyes, Third Division].

[30] *Rollo,* pp. 74-76.

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

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

[33] *Id.* at 80.

[34] *Id.* at 80-82.

[35] *Id.* at 89-90.

[36] *Id.* at 103-119-A.

[37] *Id.* at 122-A-122-B.

On April 21, 2014, public respondents filed a Manifestation,[38] praying that their Comment be considered their Memorandum.

On April 23, 2014, petitioner filed her Memorandum,[39] arguing that while the Information charges all members of Tau Gamma Phi and Tau Gamma Sigma as principals and conspirators for Abracia's death, it failed to allege that all the accused actually participated in the hazing.[40]

She insists that Sections 3 and 4 of the Anti-Hazing Law violate Sections 1, 14, and 22 of the Constitution. She claims that the Anti-Hazing Law presumes that there is a conspiracy to commit murder or homicide. Further, the Anti-Hazing Law treats persons as principals or co-conspirators simply because of their presence at an initiation rite, or while they are an active member of the fraternity or sorority, even if one did not know, or actually participate, in the act that caused the crime charged.[41] She argues that she and other members of Tau Gamma Sigma should not have been charged, there being no showing that they knew, or actually participated in the hazing which led to the death of Abracia.[42]

Petitioner argues that conspiracy must be proved beyond reasonable doubt, and a mere presumption cannot be the basis to file an information for murder.[43]

She likewise claims that Sections 3 and 4 are a bill of attainder[44]—a legislative act declaring persons guilty of a crime without judicial trial—because they treat members of a particular group as principals or co-conspirators, even if they have no

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[38] *Id.* at 140-145.

[39] *Id.* at 149-171.

[40] *Id.* at 160.

[41] *Id.* at 161.

[42] *Id.* at 167.

[43] *Id.* at 162.

[44] *Id.* at 167.

actual knowledge or participation in the act.[45] She argues that in imposing these provisions, Congress has arrogated judicial power upon itself, since the determination of the degree of participation in a crime is a judicial, and not legislative, function.[46]

Finally, petitioner argues that the procedural errors assigned by public respondent deserve scant consideration, and that this Court should set aside technical defects when there is a violation of the Constitution.[47]

On June 3, 2014, this Court issued a Resolution[48] noting public respondents' Manifestation and petitioner's Memorandum.

In 2018, the Anti-Hazing Law was amended by Republic Act No. 11053. The law now prohibits all forms of hazing in "fraternities, sororities, and organizations in schools, including citizens' military training and citizens' army training[,]" as well as "all other fraternities, sororities, and organizations that are not school-based, such as community-based and other similar fraternities, sororities, and organizations."[49] Among the changes

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[45] *Id.* at 168.

[46] *Id.* at 169.

[47] *Id.* at 169-170.

[48] *Id.* at 175-176.

[49] Republic Act No. 11053 (2018), Sec. 3 states: SECTION 3. Prohibition on Hazing. — All forms of hazing shall be prohibited in fraternities, sororities, and organizations in schools, including citizens' military training and citizens' army training. This prohibition shall likewise apply to all other fraternities, sororities, and organizations that are not school-based, such as community-based and other similar fraternities, sororities, and organizations: Provided, That the physical, mental, and psychological testing and training procedures and practices to determine and enhance the physical, mental, and psychological fitness of prospective regular members of the AFP and the PNP as approved by the Secretary of National Defense and the National Police Commission, duly recommended by the Chief of Staff of the AFP and the Director General of the PNP, shall not be considered as hazing for purposes of this Act: Provided, further, That the exception provided herein shall likewise apply

were the renumbering of Sections 3 and 4 to Sections 5 and 14, respectively, and their amendments. Section 5 of the Anti-Hazing Law now reads:

SECTION 5. *Monitoring of Initiation Rites.* — The head of the school or an authorized representative must assign at least two (2) representatives of the school to be present during the initiation. It is the duty of the school representatives to see to it that no hazing is conducted during the initiation rites, and to document the entire proceedings. Thereafter, said representatives who were present during the initiation shall make a report of the initiation rites to the appropriate officials of the school regarding the conduct of the said initiation: *Provided,* That if hazing is still committed despite their presence, no liability shall attach to them unless it is proven that they failed to perform an overt act to prevent or stop the commission thereof.

The pertinent paragraph of Section 14 was amended to include the additional defense of prompt reporting of the hazing to law enforcement authorities:

The presence of any person, even if such person is not a member of the fraternity, sorority, or organization, during the hazing is *prima facie* evidence of participation therein as a principal unless such person or persons prevented the commission of the acts punishable herein or *promptly reported the same to the law enforcement authorities if they can do so without peril to their person or their family.* (Emphasis supplied)

Moreover, under Section 14, when death occurs during the hazing, the penalty imposed on principals who participated in it was increased from just *reclusion perpetua* to *reclusion perpetua* and a ₱3-million fine.

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to similar procedures and practices approved by the respective heads of other uniformed learning institutions as to their prospective members, nor shall this provision apply to any customary athletic events or other similar contests or competitions or any activity or conduct that furthers a legal and legitimate objective, subject to prior submission of a medical clearance or certificate.

In no case shall hazing be made a requirement for employment in any business or corporation.

Accordingly, this Court required the parties to move in the premises as to whether the law's passage affects this case.[50]

To public respondents, the passage of Republic Act No. 11053 did not render this case moot.[51] They point out that petitioner did not raise issues on the penalty imposed or the defenses that may be presented, only the *prima facie* presumption in Section 14.[52]

Moreover, petitioners claim that, while the additional imposable fine is disadvantageous to petitioner, she may avail of the second defense provided in the amendment, which benefits her. They add that the additional penalty cannot retroactively apply to petitioner since it will disadvantage her. Further, they submit that since Republic Act No. 11053 retains the *prima facie* presumption, petitioner may still incur criminal liability. As such, this case still presents a justiciable controversy.[53]

As of June 25, 2019, petitioner has been detained at the San Pedro City Jail.[54]

The primary issue to be resolved by this Court is whether or not Sections 5 and 14 of the Anti-Hazing Law should be declared unconstitutional.

This Court, however, must first rule upon whether or not the Petition is a proper remedy, and whether or not bringing the Petition directly before this Court was a proper recourse.

I

A requirement for the exercise of this Court's power of judicial review is that the case must be ripe for adjudication:

Petitioners must, thus, comply with the requisites for the exercise of the power of judicial review: (1) there must be an actual case or

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[50] *Rollo,* pp. 180-181.

[51] *Id.* at 216.

[52] *Id.* at 219.

[53] *Id.* at 219-220.

[54] *Id.* at 244.

justiciable controversy before this Court; (2) the question before this Court must be ripe for adjudication; (3) the person challenging the act must be a proper party; and (4) the issue of constitutionality must be raised at the earliest opportunity and must be the very *litis mota* of the case.[55] (Citation omitted)

An issue is ripe for adjudication when an assailed act has already been accomplished or performed by a branch of government. Moreover, the challenged act must have directly adversely affected the party challenging it. In *Philconsa v. Philippine Government*: [56]

For a case to be considered ripe for adjudication, it is a prerequisite that an act had then been accomplished or performed by either branch of government before a court may interfere, and the petitioner must allege the existence of an immediate or threatened injury to himself as a result of the challenged action. Petitioner must show that he has sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of.[57] (Citations omitted)

When matters are still pending or yet to be resolved by some other competent court or body, then those matters are not yet ripe for this Court's adjudication.[58] This is especially true when there are facts that are actively controverted or disputed.[59]

Here, petitioner argues that she should not have been charged with violating the Anti-Hazing Law as she allegedly did not

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[55] *Kilusang Mayo Uno v. Aquino,* G.R. No. 210500, April 2, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65208> [Per *J.* Leonen, *En Banc*].

[56] 801 Phil. 472 (2016) [Per *J.* Carpio, *En Banc*].

[57] *Id.* at 486.

[58] See *Antonio v. Tanco,* 160 Phil. 467(1975) [Per *J* . Aquino, *En Banc*]; *Ferrer v. Roco,* 637 Phil. 310 [Per *J.* Mendoza, Second Division]; *San Vicente Shipping, Inc. v. The Public Service Commission,* 166 Phil. 153 (1977) [Per *J.* Fernando, Second Division].

[59] See *Manila Public School Teachers Association v. Laguio,* 277 Phil. 359 (1991) [Per *J.* Narvasa, *En Banc*]; *Aala v. Uy,* 803 Phil. 36 (2017) [Per *J.* Leonen, *En Banc*].

have either actual knowledge or participation in the initiation rites of the Tau Gamma Phi Fraternity. She claims that she was "merely walking around the premises with her fellow sisters in the Sorority"[60] and "was completely unaware"[61] that Abracia was being hazed then.

That petitioner did not actually know about or participate in the hazing is a matter of defense and must be proved by presentation of evidence during trial. To determine at this stage, where a trial has yet to be conducted, whether petitioner was correctly charged would be to demand that this Court hypothetically admit the truth of her claims. As the criminal case is still ongoing, it would be premature to resolve the factual issues petitioner raises. This Court cannot preempt the trial court's determination on the truth or falsity of petitioner's claims.

II

Petitioner's direct resort to this Court, when there is a perfectly competent trial court before which she may raise her constitutional question, abrogates the doctrine of hierarchy of courts.

"The doctrine of hierarchy of courts ensures judicial efficiency at all levels of courts."[62] In *Aala v. Uy*:[63]

> The doctrine on hierarchy of courts is a practical judicial policy designed to restrain parties from directly resorting to this Court when relief may be obtained before the lower courts. The logic behind this policy is grounded on the need to prevent "inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction," as well as to prevent the congestion of the Court's dockets. Hence, for this Court to be able to "satisfactorily perform the functions assigned to it by the fundamental charter[,]"

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[60] *Rollo,* p.14.

[61] *Id.*

[62] *Falcis v. Civil Registrar General,* G.R. No. 217910, September 3, 2019, <http://sc.judiciary.gov.ph/8227/>92 [Per *J.* Leonen, *En Banc*].

[63] 803 Phil. 36 (2017) [Per *J.* Leonen, *En Banc*].

it must remain as a "court of last resort." This can be achieved by relieving the Court of the "task of dealing with causes in the first instance."

As expressly provided in the Constitution, this Court has original jurisdiction "over petitions for *certiorari,* prohibition, *mandamus, quo warranto,* and *habeas corpus.*" However, this Court has emphasized in *People v. Cuaresma* that the power to issue writs of *certiorari,* prohibition, and *mandamus* does not exclusively pertain to this Court. Rather, it is shared with the Court of Appeals and the Regional Trial Courts. Nevertheless, "this concurrence of jurisdiction" does not give parties unfettered discretion as to the choice of forum. The doctrine on hierarchy of courts is determinative of the appropriate venue where petitions for extraordinary writs should be filed. Parties cannot randomly select the court or forum to which their actions will be directed.

There is another reason why this Court enjoins strict adherence to the doctrine on hierarchy of courts. As explained in *Diocese of Bacolod v. Commission on Elections,* "[t]he doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner."

. . . . . .

Consequently, this Court will not entertain direct resort to it when relief can be obtained in the lower courts. This holds especially true when questions of fact are raised. Unlike this Court, trial courts and the Court of Appeals are better equipped to resolve questions of fact. They are in the best position to deal with causes in the first instance.[64]

A motion to quash an information may be filed at any time before a plea is entered by the accused.[65] The accused may move to quash an information on constitutional grounds,[66] based

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[64] *Id.* at 54-56.

[65] RULES OF COURT, Rule 117, Sec. 1 states:

SECTION 1. *Time to move to quash.* — At any time before entering his plea, the accused may move to quash the complaint or information.

[66] For example, in *People v. Ferrer,* 150-C Phil. 551 (1972) [Per *J.* Castro, First Division], motions to quash informations were filed in the

on the theory that there can be no crime if there is no law, the law being invalid *(nullum crimen sine lege)*. Indeed, among the prayers in the Petition is for this Court to quash the Information in Criminal Case No. 2008-895:

> IT IS MOST RESPECTFULLY PRAYED THAT IN THE ALTERNATIVE TO DECLARE THE INFORMATION DATED OCTOBER 20, 2008 IN CRIMINAL CASE NO. 2008-895 BEFORE BRANCH 30, REGIONAL TRIAL COURT OF LUCENA CITY, IN SO FAR AS PETITIONER AND OTHER MEMBERS OF THE TAU GAMMA SIGMA SORORITY, ARE CONCERNED.[67]

Evidently, petitioner herself recognizes that the issue of the constitutionality of the Anti-Hazing Law's provisions is not incompatible with the quashal of the Information. Aside from her bare invocation that her substantive rights are being derogated, petitioner fails to explain the necessity and urgency of her direct resort to this Court.

In her Memorandum, petitioner points out that the Information fails to charge her and her fellow sorority members with actual participation in the alleged crime:

> The Information in Criminal Case No. 2008-895, above quoted immediately charged all the Members of Tau Gamma Phi fraternity and Tau Gamma Sigma Sorority as principals/conspirators for the death of a neophyte who 3 days after the initiation rites in question, resulting allegedly from the hazing by a member or members of the fraternity as quoted above.
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> The Information did not allege that all of the 46 accused actually participated in the hazing that later allegedly resulted in the death of neophyte Chester Paolo Abracia a few days after; it merely stated that the 46 accused are "all active members of Tau Gamma Phi Fraternity and Tau Gamma Sigma Sorority, acting in conspiracy with one another".[68]

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lower courts questioning the validity of the Anti-Subversion Act. In these motions, the accused argued that the Anti-Subversion Act was a bill of attainder, among others.

[67] *Rollo,* p. 16.

[68] *Id.* at 160.

This claim is precisely what is addressed in a motion to quash. As correctly pointed out by public respondents, the issues of petitioner's minority and right to bail should be raised in the trial court as well.

To justify the filing of this Petition before this Court absent any intermediary decision, resolution, or order by any lower court, petitioner argues that this Court is "the final arbiter whether or not a law violates the Constitution, particularly the rights of citizens under the Bill of Rights."[69]

Indeed, this Court is the final arbiter of the constitutionality of any law-but we are not the sole and exclusive forum before which constitutional questions may be posed.[70] We are the court of last resort, not the first.

Regional trial courts, including the one before which Criminal Case No. 2008-895 is pending, are vested with judicial power, which embraces the power to determine if a law breaches the Constitution. In *Garcia v. Drilon:*[71]

> It is settled that [Regional Trial Courts] have jurisdiction to resolve the constitutionality of a statute, "this authority being embraced in the general definition of the judicial power to determine what are the valid and binding laws by the criterion of their conformity to the fundamental law." The Constitution vests the power of judicial review or the power to declare the constitutionality or validity of a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation not only in this Court, but in all RTCs. We said in *J.M. Tuason and Co., Inc. v. CA* that, "[p]lainly the Constitution contemplates that the inferior courts should have jurisdiction in cases involving constitutionality of any treaty or law, for it speaks of appellate review of *final judgments of inferior courts*

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[69] *Id.* at 169-170.

[70] See *Spouses Mirasol v. Court of Appeals*, 403 Phil. 760 (2001) [Per *J*. Quisumbing, Second Division]; *Equi-Asia Placement, Inc. v. Department of Foreign Affairs*, 533 Phil. 590 (2006) [Per *J*. Chico-Nazario , First Division]; and *Garcia v. Drilon* , 712 Phil. 44 (2013) [Per *J*. Perlas-Bernabe, *En Banc*].

[71] 712 Phil. 44 (2013) [Per *J*. Perlas-Bernabe, *En Banc*].

in cases where such constitutionality happens to be in issue."[72] (Emphasis in the original, citations omitted)

Notably, at the time the Petition was filed before this Court, petitioner admitted that she was "at large"[73] and had not refuted public respondents' claim that she had been a fugitive from justice, having evaded arrest from 2008[74] until the time she was finally detained. The failure to avail of the proper remedies in the proper forum lies with her.

Nonetheless, regardless of petitioner's remedial errors, this Court acknowledges that the doctrine of hierarchy of courts is not ironclad, especially when pressing constitutional matters are at stake. In *Diocese of Bacolod v. Commission on Elections*:[75]

> Thus, the doctrine of hierarchy of courts is not an iron-clad rule. This court has "full discretionary power to take cognizance and assume jurisdiction [over] special civil actions for *certiorari* ... filed directly with it for exceptionally compelling reasons or if warranted by the nature of the issues clearly and specifically raised in the petition." As correctly pointed out by petitioners, we have provided exceptions to this doctrine:
>
> First, a direct resort to this court is allowed when there are genuine issues of constitutionality that must be addressed at the most immediate time. A direct resort to this court includes availing of the remedies of *certiorari* and prohibition to assail the constitutionality of actions of both legislative and executive branches of the government.
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> . . . . . .
>
> A second exception is when the issues involved are of transcendental importance. In these cases, the imminence and clarity of the threat to fundamental constitutional rights outweigh the necessity for prudence. The doctrine relating to constitutional issues of transcendental importance prevents courts from the paralysis of procedural niceties when clearly faced with the need for substantial protection.

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

[73] *Rollo*, p. 4.

[74] *Id.* at 67.

[75] 751 Phil. 301 (2015) [Per *J.* Leonen, *En Banc*].

. . . . . .

Third, cases of first impression warrant a direct resort to this court. In cases of first impression, no jurisprudence yet exists that will guide the lower courts on this matter. In *Government of the United States v. Purganan,* this court took cognizance of the case as a matter of first impression that may guide the lower courts:

> In the interest of justice and to settle once and for all the important issue of bail in extradition proceedings, we deem it best to take cognizance of the present case. Such proceedings constitute a matter of first impression over which there is, as yet, no local jurisprudence to guide lower courts.

. . . . . .

Fourth, the constitutional issues raised are better decided by this court. In *Drilon v. Lim,* this court held that:

> ... it will be prudent for such courts, if only out of a becoming modesty, to defer to the higher judgment of this Court in the consideration of its validity, which is better determined after a thorough deliberation by a collegiate body and with the concurrence of the majority of those who participated in its discussion.[76]

Here, there is transcendental interest in determining whether a penal statute with grave consequences to the life and liberty of those charged under it is consistent with our constitutional principles. In the interest of judicial economy, this Court shall resolve this case on the merits.

III

While petitioner purports to assail the constitutionality of both Sections 5[77] and 14[78] of the Anti-Hazing law, all her

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[76] *Id.* at 330-333.

[77] Republic Act No. 11053 (2018), Sec. 5 provides:

SECTION 5. Monitoring of Initiation Rites. — The head of the school or an authorized representative must assign at least two (2) representatives of the school to be present during the initiation. It is the duty of the school representatives to see to it that no hazing is conducted during the initiation rites, and to document the entire proceedings. Thereafter, said representatives

arguments are focused on paragraph 4 of Section 14. In her Petition, she states:

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who were present during the initiation shall make a report of the initiation rites to the appropriate officials of the school regarding the conduct of the said initiation: Provided, That if hazing is still committed despite their presence, no liability shall attach to them unless it is proven that they failed to perform an overt act to prevent or stop the commission thereof.

[78] Republic Act No. 11053 (2018), Sec. 14 provides:

SECTION 14. Penalties. — The following penalties shall be imposed:

(a) The penalty of *reclusion perpetua* and a fine of Three million pesos (₱3,000,000.00) shall be imposed upon those who actually planned or participated in the hazing if, as a consequence of the hazing, death, rape, sodomy, or mutilation results therefrom;

(b) The penalty of *reclusion perpetua* and a fine of Two million pesos (₱2,000,000.00) shall be imposed upon:

(1) All persons who actually planned or participated in the conduct of the hazing;

(2) All officers of the fraternity, sorority, or organization who are actually present during the hazing;

(3) The adviser of a fraternity, sorority, or organization who is present when the acts constituting the hazing were committed and failed to take action to prevent the same from occurring or failed to promptly report the same to the law enforcement authorities if such adviser or advisers can do so without peril to their person or their family;

(4) All former officers, nonresident members, or alumni of the fraternity, sorority, or organization who are also present during the hazing: Provided, That should the former officer, nonresident member, or alumnus be a member of the Philippine Bar, such member shall immediately be subjected to disciplinary proceedings by the Supreme Court pursuant to its power to discipline members of the Philippine Bar: Provided, further, That should the former officer, nonresident member, or alumnus belong to any other profession subject to regulation by the Professional Regulation Commission (PRC), such professional shall immediately be subjected to disciplinary proceedings by the concerned Professional Regulatory Board, the imposable penalty for which shall include, but is not limited to, suspension for a period of not less than three (3) years or revocation of the professional license. A suspended or revoked professional license pursuant to this section may be reinstated upon submission of affidavits from at least three (3) disinterested persons, good moral certifications from different unaffiliated and credible government, religious, and socio-civic organizations, and such other relevant evidence to show that the concerned professional has become morally fit for readmission into the profession: Provided, That said readmission into

It is most respectfully submitted that the provision of RA No. 8049 in so far as it penalizes a mere member not of the fraternity or sorority,

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the profession shall be subject to the approval of the respective Professional Regulatory Board;

(5) Officers or members of a fraternity, sorority, or organization who knowingly cooperated in carrying out the hazing by inducing the victim to be present thereat; and

(6) Members of the fraternity, sorority, or organization who are present during the hazing when they are intoxicated or under the influence of alcohol or illegal drugs;

(c) The penalty of *reclusion temporal* in its maximum period and a fine of One million pesos (₱1,000,000.00) shall be imposed upon all persons who are present in the conduct of the hazing;

(d) The penalty of *reclusion temporal* and a fine of One million pesos (₱1,000,000.00) shall be imposed upon former officers, nonresident members, or alumni of the fraternity, sorority, or organization who, after the commission of any of the prohibited acts proscribed herein, will perform any act to hide, conceal, or otherwise hamper or obstruct any investigation that will be conducted thereafter: Provided, That should the former officer, nonresident member, or alumnus be a member of the Philippine Bar, such member shall immediately be subjected to disciplinary proceedings by the Supreme Court pursuant to its power to discipline members of the Philippine Bar: Provided, further, That should the former officer, nonresident member, or alumnus belong to any other profession subject to regulation by the PRC, such professional shall immediately be subjected to disciplinary proceedings by the concerned Professional Regulatory Board, the imposable penalty for which shall include, but is not limited to, suspension for a period of not less than three (3) years or revocation of the professional license. A suspended or revoked professional license pursuant to this section may be reinstated upon submission of affidavits from at least three (3) disinterested persons, good moral certifications from different unaffiliated and credible government, religious, and socio-civic organizations, and such other relevant evidence to show that the concerned professional has become morally fit for readmission into the profession: Provided, That said readmission into the profession shall be subject to the approval of the respective Professional Regulatory Board;

(e) The penalty of *prision correccional* in its minimum period shall be imposed upon any person who shall intimidate, threaten, force, or employ, or administer any form of vexation against another person for the purpose of recruitment in joining or promoting a particular fraternity, sorority, or organization. The persistent and repeated proposal or invitation made to a person who had twice refused to participate or join the proposed fraternity,

who was merely present on the occasion of the so-called initiation rites but had not witnessed, much less participated in any wrong doing,

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sorority, or organization, shall be *prima facie* evidence of vexation for purposes of this section; and

(f) A fine of One million pesos (₱1,000,000.00) shall be imposed on the school if the fraternity, sorority, or organization filed a written application to conduct an initiation which was subsequently approved by the school and hazing occurred during the initiation rites or when no representatives from the school were present during the initiation as provided under Section 5 of this Act: Provided, That if hazing has been committed in circumvention of the provisions of this Act, it is incumbent upon school officials to investigate motu proprio and take an active role to ascertain factual events and identify witnesses in order to determine the disciplinary sanctions it may impose, as well as provide assistance to police authorities.

The owner or lessee of the place where hazing is conducted shall be liable as principal and penalized under paragraphs (a) or (b) of this section, when such owner or lessee has actual knowledge of the hazing conducted therein but failed to take any action to prevent the same from occurring or failed to promptly report the same to the law enforcement authorities if they can do so without peril to their person or their family. If the hazing is held in the home of one of the officers or members of the fraternity, sorority, or organization, the parents shall be held liable as principals and penalized under paragraphs (a) or (b) hereof when they have actual knowledge of the hazing conducted therein but failed to take any action to prevent the same from occurring or failed to promptly report the same to the law enforcement authorities if such parents can do so without peril to their person or their family.

The school authorities including faculty members as well as barangay, municipal, or city officials shall be liable as an accomplice and likewise be held administratively accountable for hazing conducted by fraternities, sororities, and other organizations, if it can be shown that the school or barangay, municipal, or city officials allowed or consented to the conduct of hazing or where there is actual knowledge of hazing, but such officials failed to take any action to prevent the same from occurring or failed to promptly report to the law enforcement authorities if the same can be done without peril to their person or their family.

The presence of any person, even if such person is not a member of the fraternity, sorority, or organization, during the hazing is *prima facie* evidence of participation therein as a principal unless such person or persons prevented the commission of the acts punishable herein or promptly reported the same to the law enforcement authorities if they can do so without peril to their person or their family.

is presumed/considered as principal, for whatever acts committed by any member or members, considered as "hazing" punishable by Sections 3 and 4 of the law, RA 8049, and is presumed/considered to have failed to take any action to prevent the same from occurring, as in this case, where petitioner under the circumstances, was immediately indicted as principal for the acts of people albeit members of a fraternity, which is punishable by *reclusion perpetua*, and non-bailable[.][79]

The pertinent portion of Section 14 provides:

The presence of any person, even if such person is not a member of the fraternity, sorority, or organization, during the hazing is *prima facie* evidence of participation therein as a principal unless such person or persons prevented the commission of the acts punishable herein or promptly reported the same to the law enforcement authorities if they can do so without peril to their person or their family.

This Court has upheld the constitutionality of disputable presumptions in criminal laws.[80] The constitutional presumption of innocence is not violated when there is a logical connection between the fact proved and the ultimate fact presumed.[81] When such *prima facie* evidence is unexplained or not contradicted by the accused, the conviction founded on such evidence will

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The incumbent officers of the fraternity, sorority, or organization concerned shall be jointly liable with those members who actually participated in the hazing.

Any person charged under this Act shall not be entitled to the mitigating circumstance that there was no intention to commit so grave a wrong.

This section shall apply to the president, manager, director, or other responsible officer of businesses or corporations engaged in hazing as a requirement for employment in the manner provided herein.

Any conviction by final judgment shall be reflected in the scholastic record, personal, or employment record of the person convicted, regardless of when the judgment of conviction has become final.

[79] *Rollo,* p. 14.

[80] See *People v. Mingoa,* 92 Phil. 856-860 (1953) [Per *J*. Reyes, *En Banc*].

[81] *People v. Baludda,* 376 Phil. 614, 623 (1999) [Per *J*. Purisima, Second Division].

be valid.[82] However, the prosecution must still prove the guilt of the accused beyond reasonable doubt.[83] The existence of a disputable presumption does not preclude the presentation of contrary evidence.[84]

In *People v. Mingoa,*[85] this Court passed upon the constitutionality of Article 217 of the Revised Penal Code. It provides that a public officer's failure "to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer," is *prima facie* evidence that such missing funds or property were put to personal use. Upholding Article 217's constitutionality, this Court declared:

> The contention that this legal provision violates the constitutional right of the accused to be presumed innocent until the contrary is proved cannot be sustained. The question of the constitutionality of the statute not having been raised in the court below, it may not be considered for the first time on appeal. (*Robb vs. People*, 68 Phil. 320.)
>
> In any event, the validity of statutes establishing presumptions in criminal cases is now a settled matter. Cooley, in his work on constitutional limitations, 8th ed., Vol. I, pp. 639-641, says that "there is no constitutional objection to the passage of a law providing that the presumption of innocence may be overcome by a contrary presumption founded upon the experience of human conduct, and enacting what evidence shall be sufficient to overcome such presumption of innocence." In line with this view, it is generally held in the United States that the legislature may enact that when certain facts have been proved they shall be *prima facie* evidence of the existence of the guilt of the accused and shift the burden of proof provided there be a rational connection between the facts proved and

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[82] *Wa-acon v. People,* 539 Phil. 485, 497 (2006) [Per *J.* Velasco, Jr., Third Division].

[83] *People v. Babida,* 258 Phil. 831, 834 (1989) [Per *J.* Sarmiento, *En Banc*].

[84] *Bautista v. Court of Appeals,* 413 Phil. 159, 173 (2001) [Per *J.* Bellosillo, Second Division].

[85] 92 Phil. 856 (1953) [Per *J.* Reyes, *En Banc*].

the ultimate fact presumed so that the inference of the one from proof of the others is not unreasonable and arbitrary because of lack of connection between the two in common experience.[86]

In *People v. Baludda*,[87] this Court affirmed the constitutionality of the disputable presumption that the finding of a dangerous drug in the accused's house or premises, absent a satisfactory explanation, amounts to knowledge or *animus possidendi:*

> Under the Rules of Evidence, it is disputably presumed that things which a person possesses or over which he exercises acts of ownership, are owned by him. In *U.S. vs. Bandoc*, the Court ruled that the finding of a dangerous drug in the house or within the premises of the house of the accused is *prima facie* evidence of knowledge or *animus possidendi* and is enough to convict in the absence of a satisfactory explanation. The constitutional presumption of innocence will not apply as long as there is some logical connection between the fact proved and the ultimate fact presumed, and the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate. The burden of evidence is thus shifted on the possessor of the dangerous drug to explain absence of *animus possidendi*.[88] (Citations omitted)

In *Dizon-Pamintuan v. People*,[89] Section 5 of Presidential Decree No. 1612, which provides that the mere possession of stolen goods is *prima facie* evidence of fencing, was found valid:

> Since Section 5 of P.D. No. 1612 expressly provides that "[m]ere possession of any good, article, item, object, or anything of value which has been the subject of robbery or thievery shall be *prima facie* evidence of fencing," it follows that the petitioner is presumed to have knowledge of the fact that the items found in her possession were the proceeds of robbery or theft. The presumption is reasonable for no other natural or logical inference can arise from the established

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[86] *Id.* at 858-859.

[87] 376 Phil. 614 (1999) [Per J. Purisima, Second Division].

[88] *Id.* at 623.

[89] 304 Phil. 219 (1994) [Per J. Davide, Jr., First Division].

fact of her possession of the proceeds of the crime of robbery or theft. This presumption does not offend the presumption of innocence enshrined in the fundamental law. In the early case of *United States vs. Luling*, this Court held:

> It has been frequently decided, in case of statutory crimes, that no constitutional provision is violated by a statute providing that proof by the state of some material fact or facts shall constitute prima facie evidence of guilt, and that then the burden is shifted to the defendant for the purpose of showing that such act or acts are innocent and are committed without unlawful intention. (Commonwealth vs. Minor, 88 Ky., 422.)
>
> In some of the States, as well as in England, there exist what are known as common law offenses. In the Philippine Islands no act is a crime unless it is made so by statute. The state having the right to declare what acts are criminal, within certain well defined limitations, has a right to specify what act or acts shall constitute a crime, as well as what act or acts shall constitute a crime, as well as what proof shall constitute *prima facie* evidence of guilt, and then to put upon the defendant the burden of showing that such act or acts are innocent and are not committed with any criminal intent or intention.[90] (Citations omitted)

In fact, the constitutionality of Section 14, paragraph 4 of the Anti-Hazing Law has already been discussed—and upheld—by this Court. In *Dungo v. People*,[91] this Court acknowledged that the secrecy and concealment in initiation rites, and the culture of silence within many organizations, would make the prosecution of perpetrators under the Anti-Hazing Law difficult:

> Secrecy and silence are common characterizations of the dynamics of hazing. To require the prosecutor to indicate every step of the planned initiation rite in the information at the inception of the criminal case, when details of the clandestine hazing are almost nil, would be an arduous task, if not downright impossible. The law does not require the impossible (*lex non cognit ad impossibilia*).
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> . . . . . .

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[90] *Id.* at 231-232.

[91] 762 Phil. 630 (2015) [Per J. Mendoza, Second Division].

Needless to state, the crime of hazing is shrouded in secrecy. Fraternities and sororities, especially the Greek organizations, are secretive in nature and their members are reluctant to give any information regarding initiation rites. The silence is only broken after someone has been injured so severely that medical attention is required. It is only at this point that the secret is revealed and the activities become public. Bearing in mind the concealment of hazing, it is only logical and proper for the prosecution to resort to the presentation of circumstantial evidence to prove it.[92] (Citations omitted)

Because of this, this Court held that the provision that presence during a hazing is *prima facie* evidence of participation in it relates to the conspiracy in the crime:

The Court does not categorically agree that, under R.A. No. 8049, the prosecution need not prove conspiracy. Jurisprudence dictates that conspiracy must be established, not by conjectures, but by positive and conclusive evidence. Conspiracy transcends mere companionship and mere presence at the scene of the crime does not in itself amount to conspiracy. Even knowledge, acquiescence in or agreement to cooperate, is not enough to constitute one as a party to a conspiracy, absent any active participation in the commission of the crime with a view to the furtherance of the common design and purpose.

R.A. No. 8049, nevertheless, presents a novel provision that introduces a disputable presumption of actual participation; and which modifies the concept of conspiracy. Section 4, paragraph 6 thereof provides that the presence of any person during the hazing is *prima facie* evidence of participation as principal, unless he prevented the commission of the punishable acts. This provision is unique because a disputable presumption arises from the mere presence of the offender during the hazing, which can be rebutted by proving that the accused took steps to prevent the commission of the hazing.

The petitioners attempted to attack the constitutionality of Section 4 of R.A. No. 8049 before the CA, but did not succeed. "[A] finding of *prima facie* evidence ... does not shatter the presumptive innocence the accused enjoys because, before *prima facie* evidence arises, certain facts have still to be proved; the trial court cannot depend alone on such evidence, because precisely, it is merely *prima facie*. It must still satisfy that the accused is guilty beyond reasonable doubt of the

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[92] *Id.* at 671-679.

offense charged. Neither can it rely on the weak defense the latter may adduce."

Penal laws which feature *prima facie* evidence by disputable presumptions against the offenders are not new, and can be observed in the following: (1) the possession of drug paraphernalia gives rise to *prima facie* evidence of the use of dangerous drug; (2) the dishonor of the check for insufficient funds is *prima facie* evidence of knowledge of such insufficiency of funds or credit; and (3) the possession of any good which has been the subject of robbery or thievery shall be *prima facie* evidence of fencing.

Verily, the disputable presumption under R.A. No. 8049 can be related to the conspiracy in the crime of hazing. The common design of offenders is to haze the victim. Some of the overt acts that could be committed by the offenders would be to (1) plan the hazing activity as a requirement of the victim's initiation to the fraternity; (2) induce the victim to attend the hazing; and (3) actually participate in the infliction of physical injuries.

. . . . . .

Hence, generally, mere presence at the scene of the crime does not in itself amount to conspiracy. Exceptionally, under R.A. No. 8049, the participation of the offenders in the criminal conspiracy can be proven by the *prima facie* evidence due to their presence during the hazing, unless they prevented the commission of the acts therein.[93] (Citations omitted)

Here, petitioner fails to show that a logical relation between the fact proved—presence of a person during the hazing—and the ultimate fact presumed—their participation in the hazing as a principal—is lacking. Neither has it been shown how Section 14 of the Anti-Hazing Law does away with the requirement that the prosecution must prove the participation of the accused in the hazing beyond reasonable doubt.

On the contrary, the study of human behavior has shown that being surrounded by people who approve or encourage one's conduct impairs otherwise independent judgment, be it in the form of peer pressure, herd mentality, or the bystander effect.

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[93] *Id.* at 673-678.

The term "groupthink" was coined by American psychologist Irving L. Janis to describe the phenomenon of "mental deterioration of mental efficiency, reality testing, and moral judgment that results from group pressures."[94] He observed:

> Groups, like individuals, have shortcomings. Groups can bring out the worst as well as the best in man. Nietzsche went so far as to say that madness is the exception in individuals but the rule in groups. A considerable amount of social science shows that in circumstances of extreme crisis, group contagion occasionally gives rise to collective panic, violent acts of scapegoating, and other forms of what could be called group madness.[95]

The failure of individuals in a group to intervene allows evil acts to persist, as explained by Philip Zimbardo, the American psychologist behind the controversial Stanford Prison Experiment:[96]

> In situations where evil is being practiced, there are perpetrators, victims, and survivors. However, there are often observers of the ongoing activities or people who know what is going on and do not intervene to help or to challenge the evil and thereby enable evil to persist by their inaction.
>
> It is the good cops who never oppose the brutality of their buddies beating up minorities on the streets or in the back room of the station house. It was the good bishops and cardinals who covered over the sins of their predatory parish priests because of their overriding concern for the image of the Catholic Church. They knew what was wrong and did nothing to really confront that evil, thereby enabling these pederasts to continue sinning for years on end (at the ultimate cost to the Church of billions in reparations and many disillusioned followers).

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[94] Irving L. Janis, "Groupthink," in *THE HAZING READER* (2004), edited by Hank Nuwer, Indiana University Press, p. 25.

[95] *Id.* at 20.

[96] The Stanford Prison Experiment, conducted in 1971, was an experiment in which a group of university students "played randomly assigned roles of a prisoner or guard in a mock prison" (See PHILIP ZIMBARDO, *THE LUCIFER EFFECT* (2008)) to study, among others, the phenomenon by which people "conform, comply, obey, and be readily seduced into doing things they could not imagine doing" when immersed in certain situations or systems.

Similarly, it was the good workers at Enron, WorldCom, Arthur Andersen, and hosts of similarly corrupt corporations who looked the other way when the books were being cooked. Moreover, as I noted earlier, in the Stanford Prison Experiment it was the good guards who never intervened on behalf of the suffering prisoners to get the bad guards to lighten up, thereby implicitly condoning their continually escalating abuse. It was I, who saw these evils and limited only physical violence by the guards as my intervention while allowing psychological violence to fill our dungeon prison. By trapping myself in the conflicting roles of researcher and prison superintendent, I too was overwhelmed with their dual demands, which dimmed my focus on the suffering taking place before my eyes. I too was thus guilty of the evil of inaction.[97] (Citation omitted)

Through their express and implicit sanction, observers of hazing aggravate the abuses perpetuated upon neophytes. As an American fraternity member explained, hazing is "almost like performance art"[98] where the so-called audience plays as much of a role as the neophytes at the center of the initiation rites. Hazing derives its effectiveness from the humiliation it achieves. Humiliation requires an audience. The audience provides the provocation, goading the actors to escalate borderline conduct toward more extreme behavior that would otherwise be intolerable. In situations like this, presence is participation.

As described by a victim of hazing in the United States:

Nuwer: Is this theater or sadism?

Pledge: It was a lot of theater. In hindsight, every time I talked to him outside the room [where the hazing took place], I always thought he was kind of scared of me. I was 21, just actually four months younger than he was . . . but some of the mystique he had wasn't there when we weren't in the room.

Nuwer: He was like an actor getting ready to come onstage . . . or an athlete before a ballgame?

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[97] PHILIP ZIMBARDO, *THE LUCIFER EFFECT* 317-318 (2008).

[98] Snowden Wright, *In Defense of Hazing*, THE NEW YORK DAILY NEWS, April 12, 2012, available at http://www.nydailynews.com/opinion/defense-hazing-article-1.1059984> (last visited on January 10, 2020).

Pledge: Definitely. I was told that before he came downstairs he would be in his room drinking or whatever, and a lot of the brothers would come in to fire him up. They'd get him all riled up, saying we weren't respecting the house. They would just provoke him, or maybe they'd just get him angry, or a little drunk. He'd come in and, like I said, he'd be this different person.... They were getting him hyped up, jacked up, ready to go.[99]

Thus, those group members who do not actually perform the hazing ritual, but who by their presence incite or exacerbate the violence being committed, may be principals either by inducement or by indispensable cooperation.[100]

Moreover, petitioner's claim that Section 14 of the Anti-Hazing Law violates the rule on *res inter alios acta* lacks merit. *Res inter alios acta* provides that a party's rights generally cannot be prejudiced by another's act, declaration, or omission.[101] However, in a conspiracy, the act of one is the act of all, rendering all conspirators as co-principals "regardless of the extent and character of their participation[.]"[102] Under Rule 130, Section 30 of the Rules of Court, an exception to the *res inter alios acta* rule is an admission by a conspirator relating to the conspiracy:

SECTION 30. *Admission by conspirator*. — The act or declaration of a conspirator relating to the conspiracy and during its existence,

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[99] Hank Nuwer, "Cult-Like Hazing," in THE HAZING READER (2004), edited by Hank Nuwer, Indiana University Press, p. 33.

[100] REV. PEN. CODE, Art. 17 states:

ARTICLE 17. Principals. — The following are considered principals:

1. Those who take a direct part in the execution of the act;
2. Those who directly force or induce others to commit it·
3. Those who cooperate in the commission of the offense by another act without which it would not have been accomplished.

[101] RULES OF COURT, Rule 130, Sec. 28 states:

SECTION 28. *Admission by third-party*. — The rights of a party cannot be prejudiced by an act, declaration, or omission of another, except as hereinafter provided.

[102] *People v. Buntag*, 471 Phil. 82, 94 (2004) [Per *J*. Callejo, Sr., Second Division].

may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration.

As noted in *Dungo,* hazing often involves a conspiracy among those involved, be it in the planning stage, the inducement of the victim, or in the participation in the actual initiation rites.[103] The rule on *res inter alios acta,* then, does not apply.

IV

Petitioner further claims that the Anti-Hazing Law imposes cruel and unusual punishments on those charged under it, as the offense is punishable with *reclusion perpetua,* a non-bailable offense.[104] She also argues that Sections 5 and 14 of the Anti-Hazing Law are a bill of attainder for immediately punishing members of a particular group as principals or co-conspirators, regardless of actual knowledge or participation in the crime.[105] Both these arguments are without merit.

An effective and appropriate analysis of constitutional provisions requires a holistic approach.[106] It starts with the text itself, which, whenever possible, must be given their ordinary meaning, consistent with the basic principle of *verba legis.*[107] The constitutional provisions must be understood as being parts of a greater whole:

> Reading a constitutional provision requires awareness of its relation with the whole of the Constitution. A constitutional provision is but a constituent of a greater whole. It is the framework of the Constitution that animates each of its components through the dynamism of these components' interrelations. What is called into operation is the entire

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[103] *Dungo v. People,* 762 Phil. 630, 673-674 (2015) [Per *J.* Mendoza, Second Division].

[104] *Rollo,* p. 15.

[105] *Id.* at 167-169.

[106] *Social Weather Stations, Inc. v. Commission on Elections,* 757 Phil. 483, 521 (2015) [Per *J.* Leonen, *En Banc*].

[107] *David v. Senate Electoral Tribunal,* 795 Phil. 529, 570 (2016) [Per *J.* Leonen, *En Banc*].

document, not simply a peripheral item. The Constitution should, therefore, be appreciated and read as a singular, whole unit — *ut magis valeat quam pereat.* Each provision must be understood and effected in a way that gives life to all that the Constitution contains, from its foundational principles to its finest fixings.[108] (Citations omitted)

The history of a constitutional provision may also be a source of guidance in its interpretation. Comparing the present wording of the text with its prior counterparts, both as to form and substance, may illuminate on the meaning of the provision.[109]

Article III, Section 19(1) of the 1987 Constitution provides:

SECTION 19. (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to *reclusion perpetua*.

The prohibition against the infliction of cruel, degrading, or inhuman punishment in the Philippines traces its roots to U.S. President William McKinley's Instructions to the Philippine Commission in 1900. There, the prohibition against "cruel and unusual punishment" was first imposed:

Upon every division and branch of the government of the Philippines, therefore, must be imposed these inviolable rules:

> . . .that excessive bail shall not be required, nor excessive fines imposed, *nor cruel and unusual punishment inflicted[.]*[110] (Emphasis supplied)

This phrase has appeared in every fundamental law adopted since, with nearly consistent wording. It was upon the enactment of the 1987 Constitution that the wording of the provision was changed from "unusual" to "degrading or inhuman."

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[108] *Id.*

[109] *Id.*

[110] Instructions of President William McKinley to the Philippine Commission (1900). See also Philippine Organic Act (1902), Sec. 5; Jones Law (1916), Sec. 3; CONST. (1935); CONST. (1973), Art. IV, Sec. 21.

This constitutional prohibition had generally been aimed at the "form or character of the punishment rather than its severity in respect of duration or amount,"[111] such as "those inflicted at the whipping post, or in the pillory, burning at the stake, breaking on the wheel, disemboweling, and the like."[112] It is thus directed against "extreme corporeal or psychological punishment that strips the individual of [their] humanity."[113]

In line with this, this Court has found that the penalty of life imprisonment or *reclusion perpetua* does not violate the prohibition.[114] Even the death penalty in itself was not considered cruel, degrading, or inhuman.[115]

Nonetheless, this Court has found that penalties like fines or imprisonment may be cruel, degrading, or inhuman when they are "flagrantly and plainly oppressive and wholly disproportionate to the nature of the offense as to shock the moral sense of the community."[116] However, if the severe penalty has a legitimate purpose, then the punishment is proportionate and the prohibition is not violated.

In *Spouses Lim v. People,*[117] the penalty of *reclusion perpetua* on a person who committed estafa by means of a bouncing

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[111] *People v. Dela Cruz*, 92 Phil. 906, 908 (1953) [Per *J.* Bengzon, *En Banc*]. See also *Baylosis v. Chavez, Jr.*, 279 Phil. 448 (1991) [*J* . Narvasa, *En Banc*] and *People v. Tongko,* 353 Phil. 37 (1998) [*J.* Puno, Second Division].

[112] *Id.*

[113] *Maturan v. Commission on Elections,* 808 Phil. 86, 94 (2017) [Per *J.* Bersamin, *En Banc*].

[114] *People v. Dapitan,* 274 Phil. 661, 672-673 (1991) [Per *J* . Davide, Jr., Third Division).

[115] See *Echegaray v. Secretary of Justice*, 358 Phil. 410 (1998) [*Per Curiam, En Banc*]; *People v. Mercado,* 400 Phil. 37 (2000) [*Per Curiam, En Banc*].

[116] *Spouses Lim v. People*, 438 Phil. 749, 754 (2002) [Per *J.* Corona, *En Banc*].

[117] 438 Phil. 749 (2002) [Per *J.* Corona, *En Banc*].

check worth ₱365,750.00 was found consistent with the intent of Presidential Decree No. 818. The penalty did not violate Article III, Section 19(1) of the Constitution, this Court found:

> Petitioners contend that, inasmuch as the amount of the subject check is ₱365,750, they can be penalized with *reclusion perpetua* or 30 years of imprisonment. This penalty, according to petitioners, is too severe and disproportionate to the crime they committed and infringes on the express mandate of Article III, Section 19 of the Constitution which prohibits the infliction of cruel, degrading and inhuman punishment.
>
> Settled is the rule that a punishment authorized by statute is not cruel, degrading or disproportionate to the nature of the offense unless it is flagrantly and plainly oppressive and wholly disproportionate to the nature of the offense as to shock the moral sense of the community. It takes more than merely being harsh, excessive, out of proportion or severe for a penalty to be obnoxious to the Constitution. Based on this principle, the Court has consistently overruled contentions of the defense that the penalty of fine or imprisonment authorized by the statute involved is cruel and degrading.
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> In *People vs. Tongko,* this Court held that the prohibition against cruel and unusual punishment is generally aimed at the form or character of the punishment rather than its severity in respect of its duration or amount, and applies to punishments which never existed in America or which public sentiment regards as cruel or obsolete. This refers, for instance, to those inflicted at the whipping post or in the pillory, to burning at the stake, breaking on the wheel, disemboweling and the like. The fact that the penalty is severe provides insufficient basis to declare a law unconstitutional and does not, by that circumstance alone, make it cruel and inhuman.
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> . . . . . .
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> . . .The primary purpose of PD 818 is emphatically and categorically stated in the following:
>
> > *WHEREAS, reports received of late indicate an upsurge of estafa (swindling) cases committed by means of bouncing checks;*
> >
> > *WHEREAS, if not checked at once, these criminal acts would erode the people's confidence in the use of negotiable instruments as a medium of commercial transaction and consequently result in the retardation of trade and commerce and the undermining of the banking system of the country;*

WHEREAS, it is vitally necessary to arrest and curb the rise in this kind of estafa cases by increasing the existing penalties provided therefor.

Clearly, the increase in the penalty, far from being cruel and degrading, was motivated by a laudable purpose, namely, to effectuate the repression of an evil that undermines the country's commercial and economic growth, and to serve as a necessary precaution to deter people from issuing bouncing checks. The fact that PD 818 did not increase the amounts corresponding to the new penalties only proves that the amount is immaterial and inconsequential. What the law sought to avert was the proliferation of *estafa* cases committed by means of bouncing checks. Taking into account the salutary purpose for which said law was decreed, we conclude that PD 818 does not violate Section 19 of Article III of the Constitution.[118] (Citations omitted)

The intent of the Anti-Hazing Law is to deter members of a fraternity, sorority, organization, or association from making hazing a requirement for admission. By making the conduct of initiation rites that cause physical and psychological harm *malum prohibitum*, the law rejects the defense that one's desire to belong to a group gives that group the license to injure, or even cause the person's death:

The public outrage over the death of Leonardo "Lenny" Villa — the victim in this case — on 10 February 1991 led to a very strong clamor to put an end to hazing. Due in large part to the brave efforts of his mother, petitioner Gerarda Villa, groups were organized, condemning his senseless and tragic death. This widespread condemnation prompted Congress to enact a special law, which became effective in 1995, that would criminalize hazing. The intent of the law was to discourage members from making hazing a requirement for joining their sorority, fraternity, organization, or association. Moreover, the law was meant to counteract the exculpatory implications of "consent" and "initial innocent act" in the conduct of initiation rites by making the mere act of hazing punishable or *mala prohibita.*[119] (Citations omitted)

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[118] *Id.* at 754-755.

[119] *Villareal v. People,* 680 Phil. 527, 535 (2012) [Per J. Sereno, Second Division].

Petitioner here fails to show how the penalties imposed under the Anti-Hazing Law would be cruel, degrading, or inhuman punishment, when they are similar to those imposed for the same offenses under the Revised Penal Code, albeit a degree higher.[120] To emphasize, the Anti-Hazing Law aims to prevent organizations from making hazing a requirement for admission.[121] The increased penalties imposed on those who participate in hazing is the country's response to a reprehensible phenomenon that persists in schools and institutions.[122] The Anti-Hazing Law seeks to punish the conspiracy of silence and secrecy, tantamount to impunity, that would otherwise shroud the crimes committed.[123]

In fact, the amendments on the imposable penalties introduced by Republic Act No. 11053 bolster the State's interest in prohibiting hazing. As noted by public respondents, a ₱3-million fine shall be imposed in addition to the penalty of *reclusion perpetua* for those who actually planned or participated in the hazing if it results in death, rape, sodomy, or mutilation. Further, Republic Act No. 11053 put in place imposable penalties on certain members, officers, and alumni of the organization involved in the hazing, and prescribes the administrative sanctions, if applicable.[124] The concealment of the offense or obstruction of the investigation is also penalized.[125]

Notably, Section 14 (c) of Republic Act No. 11053 imposes the penalty of *reclusion temporal* in its maximum period and

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[120] *Dungo v. People,* 762 Phil. 630, 666 (2015) [Per J. Mendoza, Second Division].

[121] *Id.* at 664.

[122] *Id.* at 684.

[123] See *People v. Feliciano, Jr.,* 792 Phil. 371 (2016) [Per J. Leonen, Special Third Division].

[124] Republic Act No. 11053 (2018), Sec. 14(b) states:

(b) The penalty of *reclusion perpetua* and a fine of Two million pesos (₱2,000,000.00) shall be imposed upon:

(1) All persons who actually planned or participated in the conduct of the hazing;

(2) All officers of the fraternity, sorority, or organization who are actually present during the hazing;

a ₱1-million fine on all persons present in the conduct of the hazing. This new penalty affirms the law's policy to suppress the escalation and encouragement of hazing, and to severely

(3) The adviser of a fraternity, sorority, or organization who is present when the acts constituting the hazing were committed and failed to take action to prevent the same from occurring or failed to promptly report the same to the law enforcement authorities if such adviser or advisers can do so without peril to their person or their family;

(4) All former officers, nonresident members, or alumni of the fraternity, sorority, or organization who are also present during the hazing: Provided, That should the former officer, nonresident member, or alumnus be a member of the Philippine Bar, such member shall immediately be subjected to disciplinary proceedings by the Supreme Court pursuant to its power to discipline members of the Philippine Bar: Provided, further, That should the former officer, nonresident member, or alumnus belong to any other profession subject to regulation by the Professional Regulation Commission (PRC), such professional shall immediately be subjected to disciplinary proceedings by the concerned Professional Regulatory Board, the imposable penalty for which shall include, but is not limited to, suspension for a period of not less than three (3) years or revocation of the professional license. A suspended or revoked professional license pursuant to this section may be reinstated upon submission of affidavits from at least three (3) disinterested persons, good moral certifications from different unaffiliated and credible government, religious, and socio-civic organizations, and such other relevant evidence to show that the concerned professional has become morally fit for readmission into the profession: Provided, That said readmission into the profession shall be subject to the approval of the respective Professional Regulatory Board;

(5) Officers or members of a fraternity, sorority, or organization who knowingly cooperated in carrying out the hazing by inducing the victim to be present thereat; and

(6) Members of the fraternity, sorority, or organization who are present during the hazing when they are intoxicated or under the influence of alcohol or illegal drugs[.]

[125] Republic Act No. 11053 (2018), Sec. 14 (d) states:

(d) The penalty of *reclusion temporal* and a fine of One million pesos (₱1,000,000.00) shall be imposed upon former officers, nonresident members, or alumni of the fraternity, sorority, or organization who, after the commission of any of the prohibited acts proscribed herein, will perform any act to hide, conceal, or otherwise hamper or obstruct any investigation that will be conducted thereafter: Provided, That should the former officer, nonresident member, or alumnus be a member of the Philippine Bar, such member shall immediately be subjected to disciplinary proceedings by the Supreme Court pursuant to its power to discipline members of the Philippine Bar: Provided, further, That should the former officer, nonresident member, or alumnus

punish bystanders and watchers of the reprehensible acts committed.

In *People v. Feliciano, Jr.:* [126]

The prosecution of fraternity-related violence, however, is harder than the prosecution of ordinary crimes. Most of the time, the evidence is merely circumstantial. The reason is obvious: loyalty to the fraternity dictates that *brods* do not turn on their *brods*. A crime can go unprosecuted for as long as the brotherhood remains silent.

Perhaps the best person to explain fraternity culture is one of its own.

Raymund Narag was among those charged in this case but was eventually acquitted by the trial court. In 2009, he wrote a blog entry outlining the culture and practices of a fraternity, referring to the fraternity system as "a big black hole that sucks these young promising men to their graves." This, of course, is merely his personal opinion on the matter. However, it is illuminating to see a glimpse of how a fraternity member views his disillusionment of an organization with which he voluntarily associated. In particular, he writes that:

> The fraternities anchor their strength on secrecy. Like the Sicilian code of *omerta,* fraternity members are bound to keep the secrets from the non-members. They have codes and symbols the frat members alone can understand. They know if there are problems in campus by mere signs posted in conspicuous places. They have a different set *[sic]* of communicating, like inverting the spelling of words, so that ordinary conversations cannot be decoded by non-members.

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belong to any other profession subject to regulation by the PRC, such professional shall immediately be subjected to disciplinary proceedings by the concerned Professional Regulatory Board, the imposable penalty for which shall include, but is not limited to, suspension for a period of not less than three (3) years or revocation of the professional license. A suspended or revoked professional license pursuant to this section may be reinstated upon submission of affidavits from at least three (3) disinterested persons, good moral certifications from different unaffiliated and credible government, religious, and socio-civic organizations, and such other relevant evidence to show that the concerned professional has become morally fit for readmission into the profession: Provided, That said readmission into the profession shall be subject to the approval of the respective Professional Regulatory Board.

[126] 792 Phil. 371 (2016) [Per *J*. Leonen, Special Third Division].

> It takes a lot of acculturation in order for frat members to imbibe the code of silence. The members have to be a mainstay of the *tambayan* to know the latest developments about new members and the activities of other frats. Secrets are even denied to some members who are not really in to *[sic]* the system. They have to earn a reputation to be part of the inner sanctum. It is a form of giving premium to become the "true blue member".
>
> The code of silence reinforces the feeling of elitism. The fraternities are worlds of their own. They are sovereign in their existence. They have their own myths, conceptualization of themselves and worldviews. Save perhaps to their alumni association, they do not recognize any authority aside from the head of the fraternity.

The secrecy that surrounds the traditions and practices of a fraternity becomes problematic on an evidentiary level as there are no set standards from which a fraternity-related crime could be measured. In *People v. Gilbert Peralta*, this Court could not consider a fraternity member's testimony biased without any prior testimony on fraternity behavior:

> Esguerra testified that as a fraternity brother he would do anything and everything for the victim. A witness may be said to be biased when his relation to the cause or to the parties is such that he has an incentive to exaggerate or give false color or pervert the truth, or to state what is false. To impeach a biased witness, the counsel must lay the proper foundation of the bias by asking the witness the facts constituting the bias. In the case at bar, there was no proper impeachment by bias of the three (3) prosecution witnesses. *Esguerra's testimony that he would do anything for his fellow brothers was too broad and general so as to constitute a motive to lie before the trial court. Counsel for the defense failed to propound questions regarding the tenets of the fraternity that espouse absolute fealty of the members to each other. The question was phrased so as to ask only for Esguerra's personal conviction....*

The inherent difficulty in the prosecution of fraternity-related violence forces the judiciary to be more exacting in examining all the evidence on hand, with due regard to the peculiarities of the circumstances.[127] (Citations omitted)

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[127] *Id.* at 400-402.

Moreover, contrary to petitioner's assertion, the Anti-Hazing Law is not a bill of attainder.

Bills of attainder are prohibited under Article III, Section 22 of the Constitution, which states:

SECTION 22. No *ex post facto* law or bill of attainder shall be enacted.

A bill of attainder is rooted in the historical practice of the English Parliament to declare certain persons—such as traitors—attainted, or stained, and that the corruption of their blood extended to their heirs, who would not be allowed to inherit from the "source" of the corruption. These attainted persons and their kin were usually so declared without the benefit of judicial process.[128]

In modern times, a bill of attainder is generally understood as a legislative act which inflicts punishment on individuals or members of a particular group without a judicial trial.[129] The earliest form of prohibition against the enactment of bills of attainder was introduced in the Malolos Constitution:[130]

ARTICLE 14. No Filipino can be prosecuted or sentenced except by the judge or court that, by virtue of the laws previous to the crime, has been given jurisdiction, and in the manner that these laws prescribe.

A bill of attainder encroaches on the courts' power to determine the guilt or innocence of the accused and to impose the corresponding penalty, violating the doctrine of separation of powers.[131]

For a law to be considered a bill of attainder, it must be shown to contain all of the following: "a specification of certain

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[128] *J.* Feliciano, Concurring Opinion in *Tuason v. Register of Deeds, Caloocan City*, 241 Phil. 650, 665-666 (1988) [Per *J.* Narvasa, *En Banc*] citing *Ex Parte Garland,* 4 Wall. 333, 18 L. Ed. 366 (1867).

[129] *Id.*

[130] *J.* Sarmiento, Dissenting Opinion in *Baylosis v. Chavez, Jr.*, 279 Phil. 448, 475 (1991) [Per *J.* Narvasa, *En Banc*].

[131] *Id.*

individuals or a group of individuals, the imposition of a punishment, penal or otherwise, and the lack of judicial trial."[132] The most essential of these elements is the complete exclusion of the courts from the determination of guilt and imposable penalty.[133]

In *People v. Ferrer*,[134] this Court delved into the question of whether the Anti-Subversion Act, which declared illegal the Communist Party of the Philippines and any other organizations that constitute an "organized conspiracy to overthrow the Government of the Republic of the Philippines for the purpose of establishing in the Philippines a totalitarian regime and place the Government under the control and domination of an alien power[,]"[135] was a bill of attainder.

This Court found that the law was, in fact, not. It noted that the Anti-Subversion Act would be a bill of attainder only if it had made it unnecessary for members of the Communist Party to have to be charged in court.[136] Moreover, even if the Anti-Subversion Act specifically named the Communist Party, it would be insufficient to declare the law a bill of attainder:

> Even assuming, however, that the Act specifies individuals and not activities, this feature is not enough to render it a bill of attainder. A statute prohibiting partners or employees of securities underwriting firms from serving as officers or employees of national banks on the basis of a legislative finding that the persons mentioned would be subject to the temptation to commit acts deemed inimical to the national economy, has been declared not to be a bill of attainder. Similarly, a statute requiring every secret, oath-bound society having a membership of at least twenty to register, and punishing any person

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[132] *Misolas v. Panga*, 260 Phil. 702, 713 (1990) [Per J. Cortes, *En Banc*].

[133] *Id.*

[134] 150-C Phil. 551 (1972) [Per J. Castro, *En Banc*].

[135] *Id.* at 563, see footnote 1. See also Republic Act No. 1700 (1957), Sec. 2.

[136] See *People v. Ferrer*, 150-C Phil. 551 (1972) [Per J. Castro, *En Banc*].

who becomes a member of such society which fails to register or remains a member thereof, was declared valid even if in its operation it was shown to apply only to the members of the Ku Klux Klan.

In the Philippines the validity of Section 23 (b) of the Industrial Peace Act, requiring labor unions to file with the Department of Labor affidavits of union officers "to the effect that they are not members of the Communist Party and that they are not members of any organization which teaches the overthrow of the Government by force or by any illegal or unconstitutional method," was upheld by this Court.

Indeed, it is only when a statute applies either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial does it become a bill of attainder. It is upon this ground that statutes which disqualified those who had taken part in the rebellion against the Government of the United States during the Civil War from holding office, or from exercising their profession, or which prohibited the payment of further compensation to individuals named in the Act on the basis of a finding that they had engaged in subversive activities, or which made it a crime for a member of the Communist Party to serve as an officer or employee of a labor union, have been invalidated as bills of attainder.

But when the judgment expressed in legislation is so universally acknowledged to be certain as to be "judicially noticeable," the legislature may apply its own rules, and judicial hearing is not needed fairly to make such determination.[137] (Citations omitted)

Similarly, in *Bataan Shipyard & Engineering Company, Inc. v. Presidential Commission on Good Government*,[138] Executive Orders No. 1 and 2, which created the Presidential Commission on Good Government, were also found not to be bills of attainder. This Court declared that the finding of guilt must still be made by a court, namely, the Sandiganbayan:

In the first place, nothing in the executive orders can be reasonably construed as a determination or declaration of guilt. On the contrary, the executive orders, inclusive of Executive Order No. 14, make it

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[137] *Id.* at 569-570.

[138] 234 Phil. 180 (1987) [Per *J.* Narvasa, *En Banc*].

perfectly clear that any judgment of guilt in the amassing or acquisition of "ill-gotten wealth" is to be handed down by a judicial tribunal, in this case, the Sandiganbayan, upon complaint filed and prosecuted by the PCGG. In the second place, no punishment is inflicted by the executive orders, as the merest glance at their provisions will immediately make apparent. In no sense, therefore, may the executive orders be regarded as a bill of attainder.[139]

Here, the mere filing of an Information against petitioner and her fellow sorority members is not a finding of their guilt of the crime charged. Contrary to her claim, petitioner is not being charged merely because she is a member of the Tau Gamma Sigma Sorority, but because she is allegedly a principal by direct participation in the hazing that led to Abracia's death. As stated, these are matters for the trial court to decide. The prosecution must still prove these offense, and the accused's participation in it, beyond reasonable doubt. Petitioner, in turn, may present her defenses to the allegations.

Parenthetically, the amendments in Republic Act No. 11053 may be applied retroactively in cases like petitioner's where the hazing resulted in death, contrary to the position taken by public respondents. Previously, should an accused fail to overturn the *prima facie* presumption, they would be charged as principals, with a corresponding penalty of *reclusion perpetua* when the hazing resulted in death. Now, Section 14(c) imposes the lower penalty for one's presence during the hazing—*reclusion temporal* in its maximum period with a ₱1-million fine. As the penalty is not *reclusion perpetua*, the accused may also benefit from the application of Republic Act No. 4103, as amended, otherwise known as the Indeterminate Sentence Law.

Legislative acts are presumed constitutional.[140] To be declared unconstitutional, a statute or any of its provisions must be shown

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[139] *Id.* at 230-231.

[140] See *Pimentel v. Executive Secretary,* 691 Phil. 143 (2012) [Per *J.* Perlas-Bernabe, *En Banc*]; *Smart Communications, Inc. v. Municipality of Malvar, Batangas,* 727 Phil. 430 (2014) [Per *J.* Carpio, *En Banc*].

to have clearly and unmistakably breached the Constitution.[141] Petitioner has failed to discharge her burden of overcoming the presumption of the constitutionality of Section 14 of the Anti-Hazing Law.

Those who object to, intervene against, or attempt to stop the despicable or inhumane traditions or rituals of an organization or institution may be branded as *duwag, nakakahiya, walang pakisama, traydor.* Section 14, paragraph 4 of the Anti-Hazing Law turns cowardice into virtue, shame into strength, and disobedience into heroism. More than that, this serves as a grave warning that failing to act—knowing fully well that others are being traumatized, injured, maimed, or killed—does not make a person only an observer or witness. It makes them a perpetrator.

WHEREFORE, the Petition is **DISMISSED** for lack of merit.

Let copies of this Decision be furnished the Director of the National Bureau of Investigation and the Director General of the Philippine National Police. Both are **DIRECTED** to cause the immediate arrest of those accused in Criminal Case No. 2008-895 who are still at large, and to inform this Court of their compliance within ten (10) days from notice. The trial judge is likewise **DIRECTED** to issue such other and further orders to take all the accused into custody and to hasten the proceedings in Criminal Case No. 2008-895. This Decision shall be immediately executory.

SO ORDERED.

Peralta, C.J., Caguioa, Gesmundo, Reyes, J. Jr., Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, and *Delos Santos, JJ.,* concur.

Perlas-Bernabe and *Lopez, JJ.,* on official leave.

Reyes, A. Jr., J., on official business.

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[141] See *Spouses Lim v. People,* 438 Phil. 749 (2002) [Per J. Corona, *En Banc*].

FIRST DIVISION

[A.C. No. 4355. January 8, 2020]

ATTY. PEDRO B. AGUIRRE, *complainant, vs.* **ATTY. CRISPIN T. REYES,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DISBARMENT CASE; BEING *SUI GENERIS*, IT MAY PROCEED DESPITE COMPLAINANT'S DESISTANCE OR FAILURE TO PROSECUTE.— [A] disbarment case, being *sui generis*, may proceed despite a complainant's desistance or failure to prosecute, thus: A disbarment case is *sui generis* for it is neither purely civil nor purely criminal, but is rather an investigation by the court into the conduct of its officers. The issue to be determined is whether respondent is still fit to continue to be an officer of the court in the dispensation of justice. **Hence, an administrative proceeding for disbarment continues despite the desistance of a complainant, or failure of the complainant to prosecute the same**, or in this case, the failure of respondent to answer the charges against him despite numerous notices. Further, lawyers are officers of the court who are empowered to appear, prosecute, and defend the causes of their clients. The law imposes on them peculiar duties, responsibilities and liabilities. Membership in the bar imposes on them certain obligations. They are duty bound to uphold the dignity of the legal profession. They must act honorably, fairly and candidly towards each other and otherwise conduct themselves beyond reproach at all times. Being, thus, officers of the court, complainants in cases against lawyers are treated as mere witnesses. Thus, complaints against lawyers may still proceed despite complainants' death.

2. ID.; ID.; ID.; QUANTUM OF EVIDENCE REQUIRED IS SUBSTANTIAL EVIDENCE.— In administrative proceedings, such as disbarment, the quantum of proof necessary for a finding of guilt is substantial evidence, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Complainants have the burden of proving by substantial evidence the allegations in their complaints. The

basic 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.

3. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; PROSCRIPTION AGAINST ADVERTISING OF LEGAL SERVICES OR SOLICITATION OF LEGAL BUSINESS. — Atty. Aguirre charged Atty. Reyes with violating Rule 3.01 of the CPR for allegedly making false statements in his memo. The specific statements pertain to Atty. Reyes claiming that he was "*instrumental in winning the Supreme Court case*" and he made "*special arrangements*." x x x The statements are undoubtedly self-laudatory, nay, undignified. The standards of the legal profession condemn the lawyer's advertisement of his talents. A lawyer cannot, without violating the ethics of his profession, advertise his talents or skills in a manner similar to a merchant advertising his goods. The proscription against advertising of legal services or solicitation of legal business rests on the fundamental postulate that the practice of law is a profession.

4. ID.; ID.; ID.; A LAWYER'S LANGUAGE, EVEN IN HIS PLEADINGS, MUST BE DIGNIFIED; VIOLATION THEREOF IS SIMPLE MISCONDUCT. — Atty. Aguirre also charged Atty. Reyes with violating Rule 8.01 when the latter purportedly employed abusive, offensive, or otherwise improper language in the documents he drafted [in a case] x x x Though a lawyer's language may be forceful and emphatic, it should always be dignified and respectful, befitting the dignity of the legal profession. The use of intemperate language and unkind ascriptions has no place in the dignity of the judicial forum. On many occasions, the Court has reminded the members of the Bar to abstain from any offensive personality and to refrain from any act prejudicial to the honor or reputation of a party or a witness. In keeping with the dignity of the legal profession, a lawyer's language even in his pleadings, must be dignified. x x x As for the appropriate penalty for violation of Rule 8.01, x x x the Court finds Atty. Reyes guilty of simple misconduct for which he is fined ₱2,000.00.

APPEARANCES OF COUNSEL

Gancayco, Balasbas & Associates Law Offices for complainant.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

Almost a quarter of century ago, complainant Atty. Pedro B. Aguirre charged respondent Atty. Crispin T. Reyes with multiple violations of the Code of Professional Responsibility (CPR), *i.e.* Rule 3.01, Rule 8.01 in relation to Rule 19.01, and Rule 10.03 in relation to Rule 12.02.

Antecedents

Atty. Aguirre's Complaint[1] dated December 1, 1994

Atty. Aguirre essentially stated:

Atty. Reyes violated Rule 3.01[2] by making false claims in his memo[3] dated December 20, 1993 addressed to the Board of Directors of Banco Filipino, which partly reads:

x x x x x x x x x

(5) Undersigned counsel was also mainly instrumental in winning the Supreme Court case (GR 70054) to reopen BF. He also made "a special arrangement" that is quite confidential which should not be divulged to "small men" like Mr. Gatmaitan. His Memo of Feb. 8, 1991, Aide Memoire of March 24, 1991 etc. addressed to Don Tomas B. Aguirre attest to his modest but effectively fruitful professional services.

x x x x x x x x x

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

[2] Rule 3.01 — A lawyer shall not use or permit the use of any false, fraudulent, misleading, deceptive, undignified, self-laudatory or unfair statement or claim regarding his qualifications or legal services.

[3] *Rollo*, pp. 10-16.

These false statements, *i.e.*, that he was "*instrumental in winning the Supreme Court case*" and he made "*special arrangements*" put the Supreme Court in a bad light. They amounted to "*false, fraudulent, misleading, deceptive, undignified, self-laudatory or unfair statement or claim regarding his qualifications or legal services*."

Atty. Reyes also violated Rule 8.01[4] in relation to Rule 19.01[5] when he drafted the following: 1) confidential/restricted memo[6] dated March 28, 1994 addressed to all Banco Filipino directors and executive officers; and 2) Amended Complaint[7] dated May 10, 1994 in SEC Case No. 04-94-4750 entitled "*Eduardo Rodriguez, et al. v. Tala Realty Services Corp., et al.*" He wrote the same on behalf of the minority stockholders of Banco Filipino and addressed it to all concerned individuals at Tala Realty Corporation. He stated:

x x x x x x x x x

11. Truly, we have here the biggest bank fraud involving over ₱1 Billion of Banco Filipino properties sold by simulated contracts to Tala controlled by parties who were then BF Directors and now want the properties for themselves. Once litigated, the bank will be affected and damaged, while the good name, reputation, honesty and integrity of the 3 principal parties behind this sophisticated "plunder" will be destroyed. Hence, litigation should be avoided. This delicate case has to be resolved now confidentially and amicably to avoid disastrous scandal for all parties concerned.

12. The 3 principals behind/controlling Tala Realty Corporation should now be guided by their conscience. They are already very very rich. Their immense fortune can neither be taken beyond the grave while

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[4] Rule 8.01 — A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

[5] Rule 19.01— A lawyer shall employ only fair and honest means to attain the lawful objectives of his client and shall not present, participate in presenting or threaten to present unfounded criminal charges to obtain an improper advantage in any case or proceeding.

[6] *Rollo*, pp. 80-86.

[7] *Id.* at 45-78.

their children's children will still continue to live in abundance and luxury for all time.[8]

x x x x x x x x x

In the amended complaint which Atty. Reyes filed with the SEC, he also averred:

33.3 Further, they also fraudulently covet and misappropriate for their own benefit these properties/funds/receivables belonging to Banco Filipino blatantly without the least shame or moral scruples to the great prejudice and gargantuan damage of the bank, hence, they are likewise criminally liable for related grave crimes punishable by the Revised Penal Code and the General Banking Act.[9]

These statements were "*abusive, offensive, or otherwise improper*." The same transcended the permissible bounds of legitimate criticism, hence, were violative of Rule 8.01.

Atty. Reyes, too, violated Rule 19.01 because he "*presented unfounded criminal charges to obtain an improper advantage in any case or proceeding*" when he filed criminal cases for estafa (against Nancy Ty, Pedro Aguirre, Elizabeth Palma, Rolando Salonga, Rubencito del Mundo, Virgilio Gesmundo, Pilar Ongking, Dolly Lim, Cynthia Mesina, John Does and Jane Does) and falsification (against Nancy Ty, Pedro Aguirre, John Doe, Peter Doe, Richard Doe and Jane Doe) with the prosecution services of Rizal, Makati, and Manila. By engaging in forum-shopping, Atty. Reyes committed malpractice.

Atty. Reyes's Comment and Counter Complaint

In his Comment with Counter Complaint for Disbarment,[10] Atty. Reyes asserted in the main:

On October 6, 1993, his legal services were engaged to intervene in SEC Case Nos. 2693 and 219 specifically through

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[8] *Id*. at 92.

[9] *Id.* at 71.

[10] The complaint was dated February 17, 1994, which may have been a typographical error. It was notarized on February 20, 1995. The correct date may have been February 17, 1995, *id*. at 205-242.

a derivative suit purposely to protect the interests of BF Homes, which was being plundered by billions of pesos worth of assets. The measures he took in the SEC case were brought to the attention of BF Homes' directors and management officers, yet, he was viciously subjected to all sorts of blame, ridicule, and aspersion.[11]

On December 13, 1993, BF Homes Vice President Rodrigo Gatmaitan, Jr. issued a defamatory memo against him, prompting him, in turn, to issue a retaliatory memo on December 20, 1993. The memo was in defense of his good name, integrity, and honor as a man and as a professional. He was being blamed for the company's water shortage and the withdrawal of Balgos and Perez as BF Homes' counsel.[12]

The language he used in his memo and amended complaint was not abusive nor offensive. The words were apt, vivid, picturesque, proper, and elegant.[13] He did not initiate unfounded criminal charges to gain improper advantage. The criminal charge was an aspect of the efforts to recover eighteen (18) major Banco Filipino branches from Tala Realty Services Corporation. He pursued the complaints for estafa in Makati and for falsification of public documents in Manila on his client's instructions. [14]

Atty. Aguirre should be the one disbarred for gross violation of the CPR: a) Canon 1 and Rules 1.01, 1.02; b) Canon 7 and Rule 7.03; and c) Canon 10 and Rule 10.01.

Atty. Aguirre was a major stockholder of Tala Realty Services Corporation through his dummy Rubencito del Mundo, a member of the company's board of directors. Sometime between 1979 and 1980, Banco Filipino assets were placed in trust with Tala. Together with other major stockholders, Atty. Aguirre used

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[11] *Id.* at 206.

[12] *Id.* at 206-214.

[13] *Id.* at 217.

[14] *Id.* at 218-219.

Tala to plunder and inflict irreparable damage on Banco Filipino. They sold some of its assets, specifically its major branches and pocketed the profits as their own. Atty. Aguirre had already received millions of pesos from renting out Banco Filipino properties and from selling Banco Filipino's properties situated in Parañaque, Recto, and Cervantes. Atty. Aguirre and his cohorts did not even render a complete accounting of the transactions involving Banco Filipino assets.[15]

Atty. Aguirre's Comment

In his Comment[16] dated May 19, 1995, Atty. Aguirre essentially riposted: the matters raised by Atty. Reyes including Tala's alleged ownership of the controversial properties should be threshed out in appropriate judicial proceedings. The counter-complaint for disbarment against him is another harassment suit which should be dismissed outright.

Proceedings Before the Integrated Bar of the Philippines – Commission on Bar Discipline (IBP-CBD)

By Resolution[17] dated June 7, 1995, the Court referred the case to the Integrated Bar of the Philippines - Commission on Bar Discipline (IBP - CBD). After due proceedings, the IBP-CBD under Order[18] dated February 2, 2006 directed the parties to manifest if they were still interested in pursuing the cases. In their respective manifestations,[19] the parties expressed interest to continue with the case. Atty. Reyes also moved for consolidation of the complaint and the counter[-]complaint.[20]

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[15] *Id.* at 234-242.

[16] *Id.* at 286-290.

[17] *Id.* at 299.

[18] *Id.* at 318.

[19] *Id.* at 319-323.

[20] *Id.* at 319.

Another round of proceedings was held, after which, the parties submitted their respective memoranda.[21]

Report and Recommendation of the IBP-CBD

By its Report and Recommendation[22] dated September 20, 2016, the IBP-CBD recommended the dismissal of both the complaint and the counter-complaint by reason of the death of Atty. Aguirre (ADM Case No. 4355) and for failure of Atty. Reyes to substantiate his charge against Atty. Aguirre who, as stated, had already died (CBD Case No. 06-1664) thus:

> **Adm. Case No. 4355**
> (*Atty. Pedro B. Aguirre v. Atty. Crispin T. Reyes*)
>
> The complainant [Atty. Pedro B. Aguirre] filed his Memorandum in July, 2007. The respondent [Atty. Crispin T. Reyes] filed his Memorandum in August, 2007. Since then, nothing has come out of this case. No proceedings of any kind were held in this case, and the parties alternated in having this case moved from one setting to another.
>
> The complainant died on September 6, 2013. Proof of his death was received by the Commission. He died without being able to submit proof in support of his charges against the respondent.
>
> On the other hand, the respondent is now a centenarian and long retired from professional practice. He had paid his dues, so to speak.
>
> For the reasons that the complainant is already dead, that complainant had not completed his chore of submitting proof in support of his charges against the respondent, and that the respondent is already a centenarian long retired from the practice of the legal profession, it is hereby recommended that this case against respondent Atty. Crispin T. Reyes be dismissed.
>
> **CBD Case No. 06-1664**
> (*Atty. Crispin T. Reyes v. Atty. Pedro B. Aguirre*)
>
> In view of the death of respondent Atty. Pedro B. Aguirre on September 6, 2013, a fact established by a verified Certificate of Death submitted by respondent Aguirre's own counsel, it is respectfully

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[21] *Id.* at 334-385.

[22] *Id.* at 399-400.

recommended that the case against him [Atty. Pedro B. Aguirre] be dismissed for being moot and academic.

RESPECTFULLY SUBMITTED.[23] (*italics supplied*)

Proceedings before this Court

By Resolution[24] dated February 12, 2018, the Court, in A.C. No. 11903, adopted and approved the recommendation of the IBP-CBD, dismissing the complaint against Atty. Aguirre by reason of the latter's death (CBD Case No. 06-1664).

The only unresolved case now is A.C. No. 4355 which Atty. Aguirre filed against Atty. Reyes.

Issue

Should the complaint for disbarment against Atty. Reyes still proceed despite the death of complainant Atty. Aguirre?

Ruling

A disbarment case is sui generis

At the threshold, the Court emphasizes anew that a disbarment case, being *sui generis*, may proceed despite a complainant's desistance or failure to prosecute, thus:

> A disbarment case is *sui generis* for it is neither purely civil nor purely criminal, but is rather an investigation by the court into the conduct of its officers. The issue to be determined is whether respondent is still fit to continue to be an officer of the court in the dispensation of justice. **Hence, an administrative proceeding for disbarment continues despite the desistance of a complainant, or failure of the complainant to prosecute the same**, or in this case, the failure of respondent to answer the charges against him despite numerous notices.[25] (Emphasis supplied)

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[23] *Id.*

[24] *Id.* at 405.

[25] *Bunagan-Bansig v. Atty. Celera*, 724 Phil. 141, 150 (2014).

Further, lawyers are officers of the court who are empowered to appear, prosecute, and defend the causes of their clients. The law imposes on them peculiar duties, responsibilities and liabilities. Membership in the bar imposes on them certain obligations. They are duty bound to uphold the dignity of the legal profession. They must act honorably, fairly and candidly towards each other and otherwise conduct themselves beyond reproach at all times.[26] Being, thus, officers of the court, complainants in cases against lawyers are treated as mere witnesses. Thus, complaints against lawyers may still proceed despite complainants' death. ***Tudtud v. Judge Coliflores***[27] is relevant:

> We do not agree with the recommendation. The death of the complainant herein does not warrant the non-pursuance of the charges against respondent Judge. In administrative cases against public officers and employees, the complainants are, in a real sense, only witnesses. **Hence, the unilateral decision of a complainant to withdraw from an administrative complaint, or even his death, as in the case at bar, does not prevent the Court from imposing sanctions upon the parties subject to its administrative supervision.** (Emphasis supplied)

Verily, Atty. Aguirre's death will not automatically warrant the dismissal of the disbarment complaint against Atty. Reyes.

We now resolve.

Quantum of evidence required in disbarment suits

In administrative proceedings, such as disbarment, the quantum of proof necessary for a finding of guilt is substantial evidence, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Complainants have the burden of proving by substantial evidence the allegations in their complaints. The basic rule is that mere allegation is not evidence and is not equivalent to proof. Charges

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[26] *Garcia v. Atty. Lopez*, 558 Phil. 1, 5 (2007).

[27] 458 Phil. 49, 53 (2003).

based on mere suspicion and speculation likewise cannot be given credence.[28]

Atty. Reyes is liable for violation of Rule 8.01 of the CPR

Here, Atty. Aguirre charged Atty. Reyes with violating Rule 3.01 of the CPR for allegedly making false statements in his memo. The specific statements pertain to Atty. Reyes claiming that he was "*instrumental in winning the Supreme Court case*" and he made "*special arrangements.*" According to Atty. Aguirre, these statements not only put the Court in a bad light, they too, purportedly amounted to "*false, fraudulent, misleading, deceptive, undignified, self-laudatory or unfair statement or claim regarding his qualifications or legal services*."

The thing speaks for itself. The statements are undoubtedly self-laudatory, nay, undignified. The standards of the legal profession condemn the lawyer's advertisement of his talents. A lawyer cannot, without violating the ethics of his profession, advertise his talents or skills in a manner similar to a merchant advertising his goods. The proscription against advertising of legal services or solicitation of legal business rests on the fundamental postulate that the practice of law is a profession.[29]

Whether in fact these statements are false, fraudulent, misleading, or deceptive is another story. There is nothing on record indicating them to be so. Surely, allegations must be proven by sufficient evidence because bare allegation is definitely not evidence.[30]

Regarding Atty. Aguirre's allegations that the statements put this Court in a bad light particularly the reference to "special arrangements," suffice it to state that standing alone, the so-called "special arrangements" are at best equivocal and cannot serve as basis to conclude that Atty. Reyes is guilty of unethical

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[28] *Cabas v. Sususco*, 787 Phil. 167, 174 (2016).

[29] *Ulep v. The Legal Clinic, Inc.*, 295 Phil. 454, 487 (1993).

[30] See *Real v. Sangu Philippines, Inc. and/or Abe*, 655 Phil. 68, 86 (2011).

behavior. To repeat, allegations are not proof and petitioner bears the burden of substantiating the same.[31]

Atty. Aguirre also charged Atty. Reyes with violating Rule 8.01 when the latter purportedly employed abusive, offensive, or otherwise improper language in the following documents he drafted, *viz*.: the confidential/restricted memo dated March 28, 1994 and captioned "*Tala properties 'warehouses' by Banco Filipino*," and the Amended Complaint dated May 10, 1994 in SEC Case 04-94-4750 entitled "*Eduardo Rodriguez, et al. v. Tala Realty Services Corp., et al*." These statements are: 1) "*Truly, we have here the biggest bank fraud involving over ₱1 Billion of Banco Filipino properties sold by simulated contracts to Tala controlled by parties who were then BF Directors and now want the properties for themselves*"; 2) "*The 3 principals behind/controlling Tala Realty Corporation should now be guided by their conscience. They are already very very rich*"; and 3) "*Further, they also fraudulently covet and misappropriate for their own benefit these properties/funds/receivables belonging to Banco Filipino blatantly without the least shame or moral scruples to the great prejudice and gargantuan damage of the bank*."

Though a lawyer's language may be forceful and emphatic, it should always be dignified and respectful, befitting the dignity of the legal profession. The use of intemperate language and unkind ascriptions has no place in the dignity of the judicial forum.[32] On many occasions, the Court has reminded the members of the Bar to abstain from any offensive personality and to refrain from any act prejudicial to the honor or reputation of a party or a witness. In keeping with the dignity of the legal profession, a lawyer's language even in his pleadings, must be dignified.[33]

Atty. Reyes here proudly proclaims that the statements he uttered are apt, vivid, picturesque, proper, and elegant. The

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[31] See *Angeles v. Polytex Design, Inc. and/or Cua and Gabiola*, 562 Phil. 152, 160 (2007).

[32] *Noble III v. Atty. Ailes*, 762 Phil. 296, 301 (2015).

[33] *Gimeno v. Atty. Zaide*, 759 Phil. 10, 23-24 (2015).

Court finds these statements uncalled for and malicious, if not, defamatory. They constitute a personal attack against the persons being referred to. They were no longer relevant to the cases involving Banco Filipino and Tala at that time. ***Saberon v. Atty. Larong***[34] is apropos:

> Respecting respondent's argument that the matters stated in the Answer he filed before the BSP were privileged, **it suffices to stress that lawyers, though they are allowed a latitude of pertinent remark or comment in the furtherance of the causes they uphold and for the felicity of their clients, should not trench beyond the bounds of relevancy and propriety in making such remark or comment.**
>
> **True, utterances, petitions and motions made in the course of judicial proceedings have consistently been considered as absolutely privileged, however false or malicious they may be, but only for so long as they are pertinent and relevant to the subject of inquiry.** The test of relevancy has been stated, thus:
>
> > x x x. As to the degree of relevancy or pertinency necessary to make alleged defamatory matters privileged the courts favor a liberal rule. The matter to which the privilege does not extend must be so palpably wanting in relation to the subject matter of the controversy that no reasonable man can doubt its relevancy and impropriety. In order that matter alleged in a pleading may be privileged, it need not be in every case material to the issues presented by the pleadings. It must, however, be legitimately related thereto, or so pertinent to the subject of the controversy that it may become the subject of inquiry in the course of the trial x x x. (Emphasis supplied)
>
> So must it be.

As for the appropriate penalty for violation of Rule 8.01, *Saberon* ordained:

> With regard to complainant's plea that respondent be disbarred, this Court has consistently considered disbarment and suspension of an attorney as the most severe forms of disciplinary action, which should be imposed with great caution. They should be meted out only for duly proven serious administrative charges.

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[34] 574 Phil. 510, 518 (2008).

Thus, while respondent is guilty of using infelicitous language, such transgression is not of a grievous character as to merit respondent's disbarment. In light of respondent's apologies, the Court finds it best to temper the penalty for his infraction which, under the circumstances, is considered simple, rather than grave, misconduct.

Applying *Saberon*, the Court finds Atty. Reyes guilty of simple misconduct for which he is fined ₱2,000.00.

Atty. Reyes was not guilty of forum-shopping

The Court first proscribed forum-shopping under its Administrative Circular No. 29-91 as the willful and deliberate act of filing multiple suits to ensure favorable action. From the legal ethics standpoint, forum-shopping may also constitute a violation of Canon 1,[35] Canon 12,[36] and Rule 12.04.[37] These provisions direct lawyers to obey the laws of the land and promote respect for the law and legal processes, impose on them the duty to assist in the speedy and efficient administration of justice, and prohibit them from unduly delaying a case by misusing court processes. Additionally, Atty. Reyes is charged with violating Rule 19.01 of the CPR.

Records bear out two (2) complaint-affidavits: the first was executed on August 3, 1994,[38] by Rodolfo Nazareno, Lauro Feliciano, Renato Balibag, and Lester Elido, charging respondents therein with estafa through unfaithfulness or abuse of confidence before the Office of the Provincial Prosecutor of Rizal; and the second was executed in October [21,] 1994[39]

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

[36] CANON 12 — A LAWYER SHALL EXERT EVERY EFFORT AND CONSIDER IT HIS DUTY TO ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE.

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

[38] *Rollo*, pp. 116-135.

[39] *Id.* at 177-196.

by the same complainants, charging the same respondents with falsification of public document before the Office of the City Prosecutor of Manila.

These complaint-affidavits pertain to two (2) distinct crimes, *i.e.* estafa and falsification. There may be identity of parties, rights or causes of action and reliefs sought but a conviction in the first case for estafa through unfaithfulness or abuse of confidence definitely will not preclude a finding of guilt for falsification of public document in another. For each crime requires the concurrence of different elements for conviction. Surely, there is no forum-shopping when the element of identity of right or cause of action is absent in the two (2) cases involved. For then, these cases will never give rise to *litis pendentia* or *res judicata*.

In fine, the charge of forum-shopping against Atty. Reyes must fail. Atty. Aguirre was not able to clearly demonstrate how the filing of the twin criminal complaints could have enabled Atty. Reyes to obtain improper advantage as a member of the bar.

ACCORDINGLY, respondent Atty. Crispin T. Reyes is found guilty of **SIMPLE MISCONDUCT** for using intemperate language in violation of Rule 8.01 of the Code of Professional Responsibility. He is required to pay a fine of two thousand pesos (₱2,000.00) within five (5) days from notice thereof. For this purpose, he is **DIRECTED** to formally inform the Court of the exact date when he shall have received this decision.

Atty. Reyes is **ABSOLVED** of the charges of forum-shopping and violations of Rule 19.01 and Rule 10.03 in relation to Rule 12.02.

Let copy of this Decision be furnished the Office of the Bar Confidant for appropriate annotation in the record of Atty. Crispin T. Reyes.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, and *Reyes, J. Jr., JJ.*, concur.

Lopez, J., on official leave.

FIRST DIVISION

[G.R. No. 191376. January 8, 2020]

RICARIDO[*] GOLEZ, in his own behalf and his children CRISPINO GOLEZ, ISIDRO GOLEZ, EMMA G. DE LOS SANTOS, HELEN G. CABECO, VICTORIA G. NORBE,[**] ANTERO GOLEZ, SIMON GOLEZ and GRACE G. BACLAY, in substitution of the deceased PRESENTACION GOLEZ, *petitioners, vs.* **MARIANO ABAIS,[***]** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW; RULES AND REGULATIONS IN CASE OF DEATH OF A TENANT-BENEFICIARY; MEMORANDUM CIRCULAR NO. 19, SERIES OF 1978 (MC 19), WHICH GOVERNS THE TRANSFER OF FARMHOLDINGS UPON THE DEATH OF THE FARMER-BENEFICIARY, PROVIDES THAT UPON THE DEATH OF THE ORIGINAL FARMER-BENEFICIARY, THE OWNERSHIP AND CULTIVATION OF THE FARMHOLDING SHALL ULTIMATELY BE CONSOLIDATED IN ONE HEIR; SUCH SUCCEEDING SOLE OWNER-CULTIVATOR IS REQUIRED TO COMPENSATE THE *OTHER* COMPULSORY HEIRS OF THE ORIGINAL FARMER-BENEFICIARY, TO THE EXTENT OF THEIR RESPECTIVE LEGAL INTERESTS IN THE FARMLAND AS OF THE DEATH OF THE ORIGINAL FARMER-BENEFICIARY.— The disputed lots had been granted to the original farmer-beneficiary Ireneo pursuant to PD 27. Accordingly, the transferability of said lots upon Ireneo's death remained subject to the limitation set forth under PD 27, *that is*, the disputed lots would be transferable *only* "by hereditary succession or to the Government in accordance with the provisions of [PD 27], the Code of Agrarian

[*] Also appears as "Ricardo" in some parts of the *rollo*.

[**] Also appears as "Nobre" in some parts of the *rollo*.

[***] Also appears as "Abaes" in some parts of the *rollo*.

Reforms and other existing laws and regulations." In this connection, the MAR (now DAR) promulgated the *Rules and Regulations in Case of Death of a Tenant-Beneficiary* set forth in MC 19. MC 19 implemented the limitation on transferability set forth in PD 27 for the purpose of carrying out the Government's declared policy of establishing "owner-cultivatorship x x x as the basis of agricultural development of the country." The pertinent provisions of MC 19 state: 1. **Succession to the farmholding covered by [OLT], shall be governed by the pertinent provisions of the New Civil Code of the Philippines subject to the following limitations:** x x x b. **The ownership and cultivation of the farmholding shall ultimately be consolidated in one heir who possesses the following qualifications**: x x x. c. **Such owner-cultivator shall compensate the other heirs to the extent of their respective legal interest in the land**, subject to the payment of whatever outstanding obligations of the deceased tenant-beneficiary. x x x. x x x Under MC 19, while the succession or transfer of farmholdings granted under PD 27 recognized the pertinent provisions of the Civil Code on succession, such was subject to certain limitations. Accordingly, even as the successional rights of the original farmer-beneficiary were recognized, MC 19 prescribed the manner through which the succeeding sole owner-cultivator should be identified — as this was aligned with the purpose of carrying out PD 27's policy of establishing a system of "owner-cultivatorship." So as not to impair the legitimes of the farmer-beneficiary's other compulsory heirs under the Civil Code, MC 19 thus required the succeeding sole owner-cultivator to compensate the original farmer-beneficiary's *other* compulsory heirs, to the extent of their respective legal interests in the farmland as of the death of the original farmer-beneficiary.

2. ID.; ID.; ID.; ID.; UPON THE DEATH OF THE NEW SOLE OWNER-CULTIVATOR, HIS OR HER SUCCESSOR-IN-INTEREST IS BOUND TO COMPENSATE THE OTHER COMPULSORY HEIRS OF THE DECEASED FARMER-BENEFICIARY, TO THE EXTENT OF THEIR RESPECTIVE LEGAL INTERESTS IN THE DISPUTED LOTS, SUBJECT TO THE PAYMENT OF WHATEVER OUTSTANDING OBLIGATIONS THE DECEASED FARMER-BENEFICIARY MIGHT STILL HAVE; THE

IDENTIFICATION OF THE OTHER HEIRS OF THE DECEASED ORIGINAL FARMER-BENEFICIARY, THE DETERMINATION OF THEIR RESPECTIVE INTERESTS IN THE DISPUTED LOTS, AS WELL AS THE OBLIGATIONS OF THE SUCCESSOR-IN-INTEREST OF THE DECEASED SOLE OWNER-CULTIVATOR, ARE FACTUAL MATTERS WHICH CANNOT BE RESOLVED IN A PETITION FOR REVIEW, AS ALL MATTERS RELATING TO THE IMPLEMENTATION OF AGRARIAN LAWS FALL WITHIN THE PRIMARY JURISDICTION OF THE DAR REGIONAL DIRECTOR.— Presentacion, as lawful successor of Ireneo and new owner-cultivator of the disputed lots, was bound to compensate Ireneo's other compulsory heirs to the extent of their respective legal interests in the disputed lots, subject to the payment of whatever outstanding obligations the deceased farmer-beneficiary might still have, as required by MC 19. This obligation to compensate Ireneo's other compulsory heirs now falls upon Petitioners, as successors-in-interest of the late Presentacion. However, the Court recognizes that the identification of Ireneo's other heirs and the determination of their respective interests in the disputed lots as well as their obligations to said deceased farmer-beneficiary are factual matters which cannot be resolved in a petition for review. Accordingly, the Court deems it proper to remand the case to the DAR Regional Director, the latter having primary jurisdiction over all matters relating to the implementation of agrarian laws.

3. REMEDIAL LAW; JUDGMENTS; *RES JUDICATA* AS A BAR BY PRIOR JUDGMENT; REQUISITES; A PRIOR DECISION IS CONCLUSIVE IN A SECOND SUIT WHERE THE ELEMENTS OF *RES JUDICATA* ARE PRESENT.— The assailed Decision and Regulation affirmed Mariano's claim of possession on the ground of *res judicata*, and cites as basis, previous judgments awarding possession of the disputed lots in Mariano's favor. Accordingly, an examination of the principle of *res judicata* as a bar by prior judgment is in order. On this score, *Dela Rosa v. Mercado* is instructive: A prior decision is conclusive in a second suit where the elements of *res judicata* are present. For a prior judgment to constitute a bar to a subsequent case, the following requisites must concur: a. it must be a final judgment or order; b. the court rendering the same must have jurisdiction over the subject matter and over parties;

c. there must be between the two cases identity of parties, identity of subject matter and identity of causes of action; and d. it must be a judgment or order on the merits.

4. ID.; ID.; ID.; ALTHOUGH THERE IS IDENTITY OF PARTIES AND IDENTITY OF ISSUES RAISED IN BOTH CASES, THE PRIOR DECISION DOES NOT CONSTITUTE A JUDGMENT ON THE MERITS WHICH WOULD OPERATE TO BAR THE RESOLUTION OF THE SUBSTANTIVE ISSUES IN A SUBSEQUENT CASE, WHERE THE SAME WAS PREMISED PRIMARILY ON LACK OF JURISDICTION; PRINCIPLE OF *RES JUDICATA*, NOT APPLICABLE TO CASE AT BAR.— [T]he previous judgments which the CA recognized as basis to apply the principle of *res judicata* are the October 1986 RTC Decision, the August 1996 PA Decision and the Decision rendered by PA Vasquez from which this Petition stems. The October 1986 RTC Decision resolved a complaint for recovery of possession and damages filed by Ireneo's second wife Catalina against Mariano and Vicenta, who, at that time, was still alive. x x x On the other hand, the August 1996 PA Decision resolved a complaint for recovery of possession and damages between Presentacion and Vicenta. Therein, PA Traviña dismissed Presentacion's complaint primarily on the ground of lack of jurisdiction x x x. Taking her cue from the August 1996 PA Decision, Presentacion later filed her Letter-request and Petition for Reallocation with the DAR Regional Director which, as earlier stated, were both granted. Close scrutiny of the foregoing judgments confirms that they do not serve as proper basis to apply the principle of *res judicata*. The October 1986 RTC Decision involved a different party-plaintiff who asserted an entirely different cause of action. Moreover, while the August 1996 PA Decision involved the same parties who raised issues similar to those raised in this case, said Decision does not constitute a judgment on the merits which would operate to bar the resolution of the substantive issues in a subsequent case, inasmuch as it was premised primarily on lack of jurisdiction — recognizing, in fact, that the "question of who among the heirs of the late tenant-beneficiary [Ireneo] should take over the [disputed lots] he left behind" was an administrative concern cognizable only by the DAR Secretary. As well, it is equally evident that the Decision rendered by PA Vasquez in DARAB

Case No. VI-1342-IL-01 cannot prompt the application of *res judicata*. Considering that said Decision is the subject of this present Petition, it cannot, by any means, be deemed a final judgment on the merits. Hence, contrary to Mariano's insistence, *res judicata* does not apply in the present case.

APPEARANCES OF COUNSEL

DAR Bureau of Agrarian Legal Assistance for petitioners.
Salvador P. Demaisip for respondent.

D E C I S I O N

CAGUIOA, *J.*:

The Case

This is a petition for review on *certiorari*[1] (Petition) filed under Rule 45 of the Rules of Court against the Decision[2] dated August 13, 2009 (assailed Decision) and Resolution[3] dated February 5, 2010 (assailed Resolution) in CA-G.R. SP No. 101793 rendered by the Court of Appeals (CA), Eighth Division and Former Eighth Division, respectively.

The assailed Decision and Resolution upheld respondent Mariano Abais' (Mariano) claim of possession over the disputed lots situated in Barangay Jalaud Norte, Zarraga, Iloilo, denominated as Lots 28 and 29[4] (disputed lots).

The Facts

The antecedents, as narrated by the Department of Agrarian Reform Adjudication Board (DARAB) Provincial Adjudicator for Iloilo, are as follows:

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[1] *Rollo*, pp. 14-32.

[2] *Id.* at 34-42. Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Josefina Guevara-Salonga and Romeo F. Barza, concurring.

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

[4] *Id.* at 35.

On March 16, 2001, [Presentacion Golez (Presentacion)] filed this case against her brother-in-law, [respondent Mariano], for ejectment from [the disputed lots] at Barangay Jalaud Norte, Zarraga[,] and for recovery of damages.

In her Complaint[, Presentacion] allege[d] x x x that: she is the eldest daughter of the late Ireneo[5] Deocampo [Ireneo], an Operation Land Transfer [(OLT)] beneficiary of [the disputed lots] with areas of 1.1325 hectares and 0.0835 hectare, respectively, at Barangay Jalaud Norte, Zarraga, Iloilo; [Mariano] is the husband of her late younger sister, Vicenta Deocampo Abais [(Vicenta)], who illegally possessed [the disputed lots] and mortgaged the same to a certain Enrique Pilla; after the death of her sister, [Presentacion] tried to recover possession from [Mariano] who refused to acknowledge [Presentacion's] action; **[Presentacion's] petition to be identified as qualified beneficiary of [the disputed] lots was granted in the Order of the DAR Regional Director dated May 31, 1999; her petition for re-allocation was likewise granted in the Order of the DAR Regional Director dated December 11, 2000; despite these administrative resolutions[, Mariano] refused to vacate x x x the [disputed lots]**; since the death of her father, [Presentacion] was deprived of the possession of [the disputed lots] and her lawful share [in the produce] of about 1,000 sacks of palay.

[Presentacion thus prayed that Mariano], his priv[ies] or any person acting in his behalf, be ordered to vacate [the disputed lots] and deliver to her and maintain her in the peaceful po[s]session and cultivation thereof. Recovery of damages [was also] prayed for.

[Mariano denied Presentacion's] claim x x x; he admit[ted] [that he is] the husband of [Presentacion's] younger sister but denie[d] that his possession is illegal; **[he claimed that] his possession is by virtue of being a tenant as decided by at least three [(3) decisions of the Regional Trial Court [(RTC)] and the DARAB**; he ha[d] been in continuous cultivation of the land for more than thirty [(30)] years and denie[d] having mortgaged the same to a certain Enrique Pilla; he admit[ted] his refusal to turn over the land because he had continuously worked thereon for more than [thirty (30)] years and had fully paid its amortization with the Land Bank of the Philippines, while [Presentacion] ha[d] neither cultivated nor possessed the land nor paid a single centavo for its amortization.

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[5] Also appears as "Irineo" in some parts of the *rollo*.

[Mariano] admit[ted] the existence of the Orders of May 31, 1999 and December 11, 2000 of the DAR Regional Director but denie[d] that he ha[d] been notified thereof; h]e denie[d] the truthfulness of [Presentacion's] [allegations] which were false and misrepresentations. Further, [Mariano claimed that] the Order[s were] contrary to law and the facts of the case being the result of falsehoods.

As special and affirmative defenses, [Mariano] aver[red] that [Presentacion] has no cause of action against him; the case is barred by *res judicata*, conclusiveness of judgment and law of the case; **the RTC in Civil Case N[o]. [16094], entitled *Catalina Deocampo vs. Mariano Abais and Vicenta Abais*, rendered a Decision on October 24, 1986 declaring him and his late wife Vicenta as the actual tillers of [the disputed lots] and as such they are protected by security of tenure, which RTC decision was affirmed by the [CA in CA-G.R. CV No. 13897[6]]**; [Presentacion] herein filed DARAB Case No. 603 for recovery of possession against [Mariano's] wife Vicenta but the case was dismissed in a decision dated August 28, 1996 on the ground of *res judicata*; **DARAB Case N[o]. VI-725-IL-99 was filed by [Presentacion] against [Mariano] for reinstatement but this was dismissed in the Order dated November 29, 1999**.

[Mariano] pray[ed] for the dismissal of the complaint x x x [and sought] recovery of moral damages, attorney's fees and litigation expenses.[7] (Emphasis supplied)

DARAB Proceedings

On July 25, 2001, Provincial Adjudicator Erlinda S. Vasquez (PA Vasquez) issued a Decision[8] declaring Presentacion as the lawful possessor and cultivator of the disputed lots as farmer-beneficiary. Accordingly, PA Vasquez ordered Mariano and all his privies to peacefully vacate the disputed lots and deliver them to Presentacion.[9]

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[6] See CA Decision dated August 14, 1989, *id.* at 87-88. Appears as "CA-G.R. CV No. 13891" in some parts of the *rollo*.

[7] *Rollo*, pp. 59-61.

[8] *Id.* at 59-67.

[9] *Id.* at 67.

PA Vasquez based her Decision on the *Rules and Regulations in Case of Death of a Tenant-Beneficiary* set forth in Ministry Memorandum Circular No. 19, series of 1978 (MC 19) issued by the then Ministry of Agrarian Reform (MAR).[10] Said Decision reads:

> It is clear that [the disputed lots] at Barangay Jalaud Norte, Zarr[a]ga, Iloilo x x x have been placed by the DAR under [OLT] pursuant to [Presidential Decree No. 27[11] (PD 27)] wherein the late [Ireneo], father of [Presentacion] and father-in-law of [Mariano], was identified as qualified beneficiary and became a recipient of Certificates of Land Transfer [(CLTs)] covering these lots.
>
> When these [disputed lots] were placed under OLT[,] these were tenanted by the late [Ireneo as] evidenced by the [CLTs] issued in his name. [As] a CLT holder[, Ireneo] was prohibited from the employment and use of tenants in whatever form in the occupation and cultivation of the land. This negates [Mariano's] contention that he and his late wife, [Vicenta] "were already in possession of the lots in question and had been cultivating the same exclusively as tenants since 1970 x x x." At most, [Mariano] and his late wife [Vicenta] were members of [Ireneo's] immediate farm household who helped him in the cultivation of the land.
>
> [The disputed lots] being covered by [OLT], succession thereto is governed by [MC 19] x x x which provides for the **Rules and Regulations in Case of Death of a Tenant-Beneficiary**, thus:
>
> "x x x x x x x x x
>
> b. Where there are several heirs, and in the absence of extrajudicial settlement or waiver of rights in favor of one heir who shall be the sole owner and cultivator, the heirs shall within one month from death of the tenant-beneficiary be free to choose from among themselves one who shall have sole ownership and cultivation of the land, subject to paragraph 1(b) and (c) hereof;

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[10] *Id.* at 63.

[11] DECREEING THE EMANCIPATION OF TENANTS FROM THE BONDAGE OF THE SOIL, TRANSFERRING TO THEM THE OWNERSHIP OF THE LAND THEY TILL AND PROVIDING THE INSTRUMENTS AND MECHANISM THEREFOR (TENANTS EMANCIPATION DECREE), October 21, 1972.

Provided, however, That the surviving spouse shall be given first preference; otherwise, **in the absence or due to permanent incapacity of the surviving spouse, priority shall be determined among the heirs according to age**.

c. **In case of disagreement or failure of the heirs to determine who shall be the owner-cultivator within the period prescribed herein, the priority rule under the proviso of paragraph 2(b) shall apply.**"

Corollary thereto, Ministry Memorandum Circular No. 5, Series of 1984 has this to say:

"x x x x x x x x x

In order to expedite the reallocation of lands left by deceased beneficiaries, **all MAR Regional Directors are hereby authorized to confirm the selection of the sole owner-cultivator made by the surviving heirs or in appropriate cases, to designate such sole owner-cultivator**."

Having been vested with the authority to determine the successor, as sole owner-cultivator, to this OLT-covered farmholding left by farm[e]r-beneficiary [Ireneo] who died in 1984, the DAR Regional Director, acting on [Presentacion's] LETTER REQUEST FOR IDENTIFICATION AND QUALIFICATION AS FARMER-BENEFICIARY OF [THE DISPUTED LOTS] LOCATED AT BRGY. JALAUD NORTE, ZARRAGA, ILOILO [(Letter-request)], issued an Order dated [May 31, 1999] the dispositive portion of which reads:

"WHEREFORE, premises considered, ORDER is hereby issued:

x x x Declaring [Presentacion] as the qualified farmer-beneficiary of [the disputed lots];

x x x x x x x x x"

and which became final and executory as appearing in the ORDER OF FINALITY dated August 10, 1999.

Accordingly, [Presentacion] filed a PETITION FOR REALLOCATION covering these lots and on December 11, 2000 the DAR Regional Director issued an Order granting [said petition]

x x x which became final and executory as appearing in the ORDER OF FINALITY dated January 4, 2001.

It must be emphasized that [Mariano] was never an heir of his father-in-law, farmer-beneficiary and CLT holder [Ireneo] who died in 1984.

In the case of [*Torres v. Ventura*[12]], it was held that "title to land acquired pursuant to [PD 27] or the land reform program of the government shall not be transferable except by hereditary succession or to the Government in accordance with the provisions of [PD 27], the Code of Agrarian Reforms and other existing laws and regulations." It further explained that "a title refers not only to that issued upon compliance by the tenant-farmer of the said conditions but also includes those rights and interests that the tenant-farmer immediately acquired upon the promulgation of the law." x x x

[Mariano's] late wife, (Vicenta), although one of the heirs of CLT holder [Ireneo], never applied to be, and [was never] identified as, the qualified successor of her father, and [the disputed] lots were never allocated in her favor by the DAR. Had it been otherwise, it would have qualified [Mariano] to succeed her in his own right in accordance with [MC 19]. As it had been, the DAR, through the Regional Director, pronounced and identified Ireneo's eldest child, [Presentacion], as his qualified successor, and [the disputed lots] were reallocated to her x x x. It was only then that the [CLTs] issued to the original farmer-beneficiary, [Ireneo], were "RECALLED/ CANCELLED".

x x x x x x x x x

It must always be borne in mind that [the disputed lots have] never been removed from the coverage of [the OLT], the disposition of which is within the exclusive authority of the DAR and cannot be disposed of from one holder to another without its approval.[13] (Emphasis and underscoring supplied; italics omitted; citations omitted)

PA Vasquez dismissed Presentacion's claim for damages, as well as Mariano's counter-claim for damages, attorney's fees and litigation expenses.[14]

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[12] 265 Phil. 99, 107 and 108 (1990).

[13] *Rollo*, pp. 63-66.

[14] *Id.* at 67.

Mariano filed an appeal with the DARAB, which the latter denied in its Decision[15] dated January 31, 2007 (DARAB Decision). Mariano's subsequent motion for reconsideration was also denied on September 11, 2007.[16]

CA Proceedings

Aggrieved, Mariano filed an appeal with the CA *via* Rule 43 of the Rules of Court.[17] Primarily, Mariano argued that the DARAB Decision is barred by *res judicata*, inasmuch as two prior judgments of the Regional Trial Court (RTC) and another issued by the DARAB have already upheld his right to possess and cultivate the disputed lots as tenant.[18]

In the interim, Presentacion passed away. Hence, she was substituted by her husband Ricarido Golez and their children, namely, Crispino Golez, Isidro Golez, Antero Golez, Simon Golez, Emma G. De Los Santos, Helen G. Cabeco, Victoria G. Norbe and Grace G. Baclay (collectively, Petitioners).[19]

On August 13, 2009, the CA issued the assailed Decision granting Mariano's appeal in part.

Contrary to the DARAB Decision, the CA held that Mariano is entitled to possession of the disputed lots as **co-owner**. The CA anchored its ruling on the principle of *res judicata*, in view of the prior judgments recognizing Vicenta and Mariano as lawful tenants of the disputed lots, particularly:

1. The Decision[20] dated October 24, 1986 (October 1986 RTC Decision) rendered by the RTC in Civil Case No.

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[15] *Id.* at 70-75. Penned by Vice-Chairman Augusto P. Quijano, with the concurrence of Members Delfin B. Samson, Edgar A. Igano and Patricia Rualo-Bello; Chairman Nasser C. Pangandaman and Members Nestor R. Acosta and Narciso B. Nieto, took no part.

[16] *Id.* at 36.

[17] *Id.* at 34.

[18] See *id.* at 36.

[19] *Id.* at 34.

[20] *Id.* at 81-85. Penned by Judge Jesus V. Ramos.

16094, a complaint for recovery of possession and damages filed by Ireneo's second wife Catalina Meder *vda*. de Deocampo (Catalina)[21] against Vicenta and Mariano, which decision was later affirmed by the CA in CA-G.R. CV No. 13897;

2. The Decision[22] dated August 28, 1996 (August 1996 PA Decision) rendered by Provincial Agrarian Reform Adjudicator Manuel Traviña (PA Traviña) in DARAB Case No. 603, a complaint for recovery of possession and damages filed by Presentacion against Vicenta; and

3. The Decision dated July 25, 2001 rendered by PA Vasquez in DARAB Case No. VI-1342-IL-01, the complaint for ejectment and damages subject of this Petition.

Hence, the CA held, as follows:

As had been aptly found by the [CA], speaking through then Justice Nicolas P. Lapeña, Jr. in the decision in CA-G.R. CV No. 1389[7] promulgated on August 14, 1989, "when Ireneo, the registered owner, died, the land went to his heirs, namely, his wife, [Catalina] and his daughter, [Vicenta] by right of succession. [Mariano and Vicenta] were therefore justified in claiming the right to work on the land as co-owners thereof. Moreover, as pointed out by the trial court, it is undisputed that [Mariano and Vicenta] have been the ones actually cultivating the land in question even when Ir[e]neo was still living until he died in 1983 and up to the present. Thus, [Mariano and Vicenta] are not only co-owners, but actual cultivators of the land in question who are covered by the security of tenure provision of PD 27 which was issued in 1972, when [Mariano and Vicenta] were already in actual cultivation of the land in question.

[The CA] did not fail to note that when [Ireneo] died, he was not merely a tenant over [the disputed lots]. He was already the registered owner thereof. What he bequeathed to his heirs upon his death, therefore, was the right of succession as owners-not as [tenants]. [Vicenta], [Mariano's] wife, was one of the children of [Ireneo] who, thus, succeeded her father as one of the owners of [the

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[21] See *id.* at 81.

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

disputed lots]. Upon Vicenta's death, her surviving spouse Mariano became a co-owner of said lots by the right of succession. A co-owner cannot be ejected from any property an aliquot part of which he owns.[23] (Emphasis supplied)

Nevertheless, the CA affirmed the denial of the parties' monetary claims due to lack of evidence.[24]

Petitioners filed a motion for reconsideration coupled with a motion to admit the same on December 16, 2009, 98 days[25] following the expiration of their fifteen (15)-day reglementary period. Accordingly, the CA denied both motions for being filed out of time through the assailed Resolution.[26]

Petitioners received a copy of the assailed Resolution on February 17, 2010.[27]

On March 2, 2010, Petitioners filed an *Urgent Motion for Extension of Time to File Petition for Review*.[28] Therein, Petitioners prayed for an additional period of fifteen (15) days from March 4, 2010, or until March 19, 2010, to file their petition for review.

This Petition was filed on March 19, 2010.

In compliance with the Court's Resolution[29] dated April 26, 2010, Mariano filed his Comment[30] to the Petition. In turn, Petitioners filed their Reply[31] thereto on December 20, 2010.

Foremost, Petitioners fault the CA for declaring Mariano as co-owner and lawful possessor of the disputed lots on the basis

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

[24] *Id.* at 41.

[25] However, the CA Resolution mentions 68 days.

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

[27] *Id.* at 15.

[28] *Id.* at 3-10.

[29] *Id.* at 90-91.

[30] *Id.* at 96-102.

[31] *Id.* at 146-151.

of the October 1986 RTC and August 1996 PA Decisions. In so ruling, Petitioners claim that the CA erroneously applied the principle of *res judicata*.

Instead, Petitioners maintain that the DAR Regional Director's Orders identifying Presentacion as the qualified successor of her father Ireneo and reallocating the disputed lots in her favor should be respected, as they were issued pursuant to the DAR Regional Director's authority to "select a qualified [f]armer[-b]eneficiary [in accordance with the a]dministrative rules and regulations promulgated to implement [the OLT program under PD 27]."[32]

The Issue

The sole issue for the Court's resolution is whether the CA erred when it declared Mariano to be a lawful possessor of the disputed lots as co-owner.

The Court's Ruling

The Petition is granted.

The transfer of farmholdings upon death of the farmer-beneficiary is governed by MC 19.

PD 27 was issued in 1972 for the declared purpose of emancipating farmer-tenants of private agricultural lands by transferring ownership of such lands in their favor.

On the transferability of ownership of awarded land, PD 27 provides:

> Title to land acquired pursuant to this Decree or the Land Reform Program of the Government **shall not be transferable except by hereditary succession** or to the **Government in accordance with the provisions of this Decree, the Code of Agrarian Reforms and other existing laws and regulations**[.] (Emphasis supplied)

The disputed lots had been granted to the original farmer-beneficiary Ireneo pursuant to PD 27. Accordingly, the

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

transferability of said lots upon Ireneo's death remained subject to the limitation set forth under PD 27, *that is*, the disputed lots would be transferable *only* "by hereditary succession or to the Government in accordance with the provisions of [PD 27], the Code of Agrarian Reforms and other existing laws and regulations."[33]

In this connection, the MAR (now DAR) promulgated the *Rules and Regulations in Case of Death of a Tenant-Beneficiary* set forth in MC 19. MC 19 implemented the limitation on transferability set forth in PD 27 for the purpose of carrying out the Government's declared policy of establishing "owner-cultivatorship x x x as the basis of agricultural development of the country."[34]

The pertinent provisions of MC 19 state:

> 1. **Succession to the farmholding covered by [OLT], shall be governed by the pertinent provisions of the New Civil Code of the Philippines subject to the following limitations:**
>
> x x x x x x x x x
>
> b. **The ownership and cultivation of the farmholding shall ultimately be consolidated in one heir who possesses the following qualifications:**
>
> (1) being a full-fledged member of a duly recognized farmers' cooperative;
>
> (2) capable of personally cultivating the farmholding; and
>
> (3) willing to assume the obligations and responsibilities of a tenant-beneficiary.
>
> c. **Such owner-cultivator shall compensate the other heirs to the extent of their respective legal interest in the land**, subject to the payment of whatever outstanding obligations of the deceased tenant-beneficiary.

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[33] PD 27, TENANTS EMANCIPATION DECREE.

[34] See policy declaration in MC 19.

2. For the purpose of determining who among the heirs shall be the sole owner-cultivator, the following rules shall apply:

x x x x x x x x x

b. **Where there are several heirs, and in the absence of extra-judicial settlement or waiver of rights in favor of one heir who shall be the sole owner and cultivator, the heirs shall within one month from death of the tenant-beneficiary be free to choose from among themselves one who shall have sole ownership and cultivation of the land**, subject to Paragraph 1 (b) and (c) hereof: *Provided*, however, That the surviving spouse shall be given first preference; **otherwise, in the absence or due to the permanent incapacity of the surviving spouse, priority shall be determined among the heirs according to age**.

c. **In case of disagreement or failure of the heirs to determine who shall be the owner-cultivator within the period prescribed herein, the priority rule under the *proviso* of Paragraph 2(b) hereof shall apply.** (Emphasis and underscoring supplied)

Under MC 19, while the succession or transfer of farmholdings granted under PD 27 recognized the pertinent provisions of the Civil Code on succession, such was subject to certain limitations. Accordingly, even as the successional rights of the original farmer-beneficiary were recognized, MC 19 prescribed the manner through which the succeeding sole owner-cultivator should be identified — as this was aligned with the purpose of carrying out PD 27's policy of establishing a system of "owner-cultivatorship."[35]

So as not to impair the legitimes of the farmer-beneficiary's other compulsory heirs under the Civil Code, MC 19 thus required the succeeding sole owner-cultivator to compensate the original farmer-beneficiary's *other* compulsory heirs, to the extent of their respective legal interests in the farmland as of the death of the original farmer-beneficiary.[36]

[35] See MC 19.

[36] See CIVIL CODE, Art. 777.

The intent of this rule is analogous to that of Article 1080 of the Civil Code, which provides:

> ART. 1080. Should a person make a partition of his estate by an act *inter vivos*, or by will, such partition shall be respected, insofar as it does not prejudice the legitime of the compulsory heirs.
>
> **A parent who, in the interest of his or her family, desires to keep any agricultural, industrial, or manufacturing enterprise intact, may avail himself of the right granted him in this article, by ordering that the legitime of the other children to whom the property is not assigned, be paid in cash.** (Emphasis supplied).

Presentacion is the qualified sole owner-cultivator under PD 27.

Consistent with the procedure set forth in MC 19, Petitioners' predecessor-in-interest Presentacion filed her Letter-request and Petition for Reallocation with the DAR Regional Director. Presentacion's Letter-request and Petition for Reallocation were successively granted through the DAR Regional Director's Orders dated May 31, 1999[37] and December 11, 2000.[38] In turn, these Orders became final on August 10, 1999[39] and January 4, 2001,[40] respectively.

Mariano does not dispute that Presentacion was the oldest surviving heir of Ireneo at the time of the latter's death. He also does not assail that Presentacion possessed the qualifications necessary to succeed Ireneo as new owner-cultivator under MC 19. Thus, in the absence of any extra-judicial settlement assigning in Vicenta's (Mariano's wife) favor the priority right to become sole owner and cultivator of the disputed lots, her husband Mariano's claim of possession is left with no leg to stand on.

Nevertheless, Presentacion, as lawful successor of Ireneo and new owner-cultivator of the disputed lots, was bound to

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[37] *Rollo*, pp. 46-50.

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

[39] See Order of Finality dated August 10, 1999, *id.* at 51-53.

[40] See Order of Finality dated January 4, 2001, *id.* at 56-58.

compensate Ireneo's other compulsory heirs to the extent of their respective legal interests in the disputed lots, subject to the payment of whatever outstanding obligations the deceased farmer-beneficiary might still have, as required by MC 19.[41] This obligation to compensate Ireneo's other compulsory heirs now falls upon Petitioners, as successors-in-interest of the late Presentacion.

However, the Court recognizes that the identification of Ireneo's other heirs and the determination of their respective interests in the disputed lots as well as their obligations to said deceased farmer-beneficiary are factual matters which cannot be resolved in a petition for review. Accordingly, the Court deems it proper to remand the case to the DAR Regional Director, the latter having primary jurisdiction over all matters relating to the implementation of agrarian laws.[42]

Res judicata does not apply.

The assailed Decision and Resolution affirmed Mariano's claim of possession on the ground of *res judicata*, and cites as basis, previous judgments awarding possession of the disputed lots in Mariano's favor. Accordingly, an examination of the principle of *res judicata* as a bar by prior judgment is in order. On this score, *Dela Rosa v. Mercado*[43] is instructive:

> A prior decision is conclusive in a second suit where the elements of *res judicata* are present. For a prior judgment to constitute a bar to a subsequent case, the following requisites must concur:

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[41] The relevant provision states:

> c. Such owner-cultivator shall compensate the other heirs to the extent of their respective legal interest in the land, subject to the payment of whatever outstanding obligations of the deceased tenant-beneficiary.

[42] See Rule II, Sec. 6, DAR Administrative Order No. 03, series of 2017, entitled "2017 RULES FOR AGRARIAN LAW IMPLEMENTATION (ALI) CASES," May 22, 2017.

[43] 286 Phil. 341 (1992).

a. it must be a final judgment or order;

b. the court rendering the same must have jurisdiction over the subject matter and over parties;

c. there must be between the two cases identity of parties, identity of subject matter and identity of causes of action; and

d. it must be a judgment or order on the merits.[44]

To recall, the previous judgments which the CA recognized as basis to apply the principle of *res judicata* are the October 1986 RTC Decision, the August 1996 PA Decision and the Decision rendered by PA Vasquez from which this Petition stems.

The October 1986 RTC Decision resolved a complaint for recovery of possession and damages filed by Ireneo's second wife Catalina against Mariano and Vicenta, who, at that time, was still alive. Therein, Catalina claimed that she was entitled to possession of the disputed lots as CLT holder. The issue thus raised in said case was whether Catalina could lawfully eject Mariano and Vicenta from the disputed lots.[45] The RTC ruled in the negative, as Catalina failed to produce her alleged CLT. In fact, during the course of the RTC proceedings, both parties admitted that the only CLT issued over the disputed lots was the one issued in favor of Ireneo[46] — the very same one relied upon by Presentacion, and now, by Petitioners.

On the other hand, the August 1996 PA Decision resolved a complaint for recovery of possession and damages between Presentacion and Vicenta. Therein, PA Traviña dismissed Presentacion's complaint primarily on the ground of lack of jurisdiction, holding as follows:

This Adjudicator finds merit in [Vicenta's] position on the jurisdictional incompetence of the Adjudication Board to hear and decide this case x x x. Definitely, this case is infused with a valid

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[44] *Id.* at 345-346.

[45] *Rollo*, p. 84.

[46] *Id.*

issue of tenancy: the question of who among the heirs of the late tenant-beneficiary [Ireneo] should take over the [disputed lots] he left behind.

And **this tenancy issue is met squarely by [MC 19] providing for the *Rules and Regulations in Case of Death of a Tenant-Beneficiary* and making the whole process one of administrative concern cognizable only by the DAR Secretary through the Department's Regional and local field offices**.[47] (Emphasis and italics supplied)

Taking her cue from the August 1996 PA Decision, Presentacion later filed her Letter-request and Petition for Reallocation with the DAR Regional Director which, as earlier stated, were both granted.

Close scrutiny of the foregoing judgments confirms that they do not serve as proper basis to apply the principle of *res judicata*.

The October 1986 RTC Decision involved a different party-plaintiff who asserted an entirely different cause of action.

Moreover, while the August 1996 PA Decision involved the same parties who raised issues similar to those raised in this case, said Decision does not constitute a judgment on the merits which would operate to bar the resolution of the substantive issues in a subsequent case, inasmuch as it was premised primarily on lack of jurisdiction — recognizing, in fact, that the "question of who among the heirs of the late tenant-beneficiary [Ireneo] should take over the [disputed lots] he left behind"[48] was an administrative concern cognizable only by the DAR Secretary.

As well, it is equally evident that the Decision rendered by PA Vasquez in DARAB Case No. VI-1342-IL-01 cannot prompt the application of *res judicata*. Considering that said Decision is the subject of this present Petition, it cannot, by any means, be deemed a final judgment on the merits.

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[47] *Id.* at 77.

[48] *Id.*

Hence, contrary to Mariano's insistence, *res judicata* does not apply in the present case.

WHEREFORE, premises considered, the Petition is **GRANTED**. The Decision dated August 13, 2009 and Resolution dated February 5, 2010 rendered by the Court of Appeals, Eighth Division and Former Eighth Division, respectively, in CA-G.R. SP No. 101793 are **REVERSED and SET ASIDE**.

The Decision dated January 31, 2007 rendered by the Department of Agrarian Reform Adjudication Board in DARAB Case No. 11191 (Reg. Case No. VI-1342-IL-01) is **REINSTATED**.

This case is remanded to the Regional Director of the Department of Agrarian Reform for proper determination of the compensation due to the other heirs of the original farmer-beneficiary Ireneo Deocampo, consistent with the provisions of Ministry Memorandum Circular No. 19, series of 1978.

SO ORDERED.

Peralta, C. J. (Chairperson), Reyes, J. Jr., and *Lazaro-Javier, JJ.*, concur.

Lopez, J., on official leave.

FIRST DIVISION

[G.R. No. 213687. January 8, 2020]

SIMON R. PATERNO, *petitioner, vs.* **DINA MARIE LOMONGO PATERNO,** *respondent.*

SYLLABUS

1. CIVIL LAW; THE FAMILY CODE; CO-OWNERSHIP; WHERE THE PARTIES SUFFER NO LEGAL

IMPEDIMENT AND EXCLUSIVELY LIVED WITH EACH OTHER UNDER A VOID MARRIAGE, THEIR PROPERTY RELATION IS ONE OF CO-OWNERSHIP UNDER ARTICLE 147 OF THE FAMILY CODE; RULE APPLIES EVEN IF THE PARTIES WERE MARRIED BEFORE THE FAMILY CODE TOOK EFFECT BY EXPRESS PROVISION OF THE FAMILY CODE ON ITS RETROACTIVE EFFECT FOR AS LONG AS IT DOES NOT PREJUDICE OR IMPAIR VESTED OR ACQUIRED RIGHTS IN ACCORDANCE WITH THE CIVIL CODE OR OTHER LAWS.— There is no quarrel that the marriage of the petitioner and the respondent had long been declared an absolute nullity by reason of their psychological incapacity to perform their martial obligations to each other. The property relations of parties to a void marriage is governed either by Article 147 or 148 of the Family Code. Since the petitioner and the respondent suffer no legal impediment and exclusively lived with each other under a void marriage, their property relation is one of co-ownership under Article 147 of the Family Code. The said provision finds application in this case even if the parties were married before the Family Code took effect by express provision of the Family Code on its retroactive effect for as long as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code or other laws. Here, no vested rights will be impaired in the application of the said provision given that Article 147 of the Family Code is actually just a remake of Article 144 of the 1950 Civil Code.

2. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; LAW OF THE CASE; WHATEVER IS ONCE IRREVOCABLY ESTABLISHED THE CONTROLLING LEGAL RULE OF DECISION BETWEEN THE SAME PARTIES IN THE SAME CASE CONTINUES TO BE THE LAW OF THE CASE WHETHER CORRECT ON GENERAL PRINCIPLES OR NOT, SO LONG AS THE FACTS ON WHICH SUCH DECISION WAS PREDICATED CONTINUE TO BE THE FACTS OF THE CASE BEFORE THE COURT; LAW OF THE CASE APPLIES ONLY TO THE SAME CASE AND RELATES ENTIRELY TO QUESTIONS OF LAW; THE COURT'S PRONOUNCEMENT IN G.R. NO. 180226 THAT ARTICLE 147 OF THE FAMILY CODE APPLIES ONLY TO PROPERTIES ACQUIRED BY

THE PARTIES DURING THE PERIOD OF THEIR COHABITATION IS BINDING IN THE CASE AT BAR.— [I]t must be emphasized that the Court already resolved G.R. No. 180226 in a Resolution of the Third Division dated April 26, 2017, rendering the issue on whether the CA correctly ruled that the trial court need not await the ruling in G.R. No. 180226 before it rules on the propriety of respondent's motion for partial distribution, moot and academic. The Court must further note that G.R. No. 180226 and the present petition involve, in the main, the partition and distribution of the properties of the union, the natural consequence of the grant of the petition for the declaration of nullity of their marriage that was earlier filed. Undeniably, these cases refer to the same set of facts and involve the same arguments, considering that the present petition is actually an offshoot of G.R. No. 180226 in that the present petition merely seeks the partial distribution of the parties' common assets. Such being the case, the Court must take into account the pronouncement in G.R. No. 180226, the Resolution therein being the law of the case, as it proceeds to resolve the issues pending herein. In the case of *Spouses Sy v. Young*, the Court rules, thus: Law of the case has been defined as the opinion delivered on a former appeal. It means that whatever is once irrevocably established the controlling legal rule of decision between the same parties in the same case continues to be the law of the case whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court. Law of the case applies only to the same case and relates entirely to questions of law. Furthermore, in law of the case, the rule made by an appellate court cannot be departed from in subsequent proceedings in the same case. x x x. This Court's earlier pronouncement in G.R. No. 180226 that Article 147 of the Family Code applies only to properties acquired by the parties during the period of their cohabitation is thus binding in this case.

3. CIVIL LAW; THE FAMILY CODE; CO-OWNERSHIP; FOR AS LONG AS THE PROPERTY HAD BEEN PURCHASED, WHETHER ON INSTALLMENT, FINANCING OR OTHER MODE OF PAYMENT, DURING THE PERIOD OF COHABITATION, THE DISPUTABLE PRESUMPTION THAT THEY HAVE BEEN OBTAINED BY THE PARTIES' JOINT EFFORTS, WORK OR

INDUSTRY, AND SHALL BE OWNED BY THEM IN EQUAL SHARE, SHALL ARISE.— It is not disputed that the Ayala Alabang and Rockwell properties that were acquired during the period of the parties' cohabitation had not yet been fully paid at the time they separated. From the arguments advanced by the petitioner, it can be inferred that he made much of the term "acquired" in that he distinguished portions of the disputed property to that which had been paid for during the period of cohabitation, and to the portion which was yet unpaid when the parties separated. For him, only the paid portion should be encompassed in the term "acquired" and thus, be presumed to belong to the parties in equal shares. The Court does not agree. In the construction of the term "acquired," this Court must be guided by the basic rule in statutory construction that when the law does not distinguish, neither should the court. A reading of Article 147 of the Family Code would show that the provision did not make any distinction or make any qualification in terms of the manner the property must be acquired before the presumption of co-ownership shall apply. As such, the term "acquired" must be taken in its ordinary acceptation. For as long as the property had been purchased, whether on installment, financing or other mode of payment, during the period of cohabitation, the disputable presumption that they have been obtained by the parties' joint efforts, work or industry, and shall be owned by them in equal share, shall arise. Applied in this case, since the Ayala Alabang and Rockwell properties were purchased while the petitioner and the respondent were living together, it is presumed that both parties contributed in their acquisition through their joint efforts (which includes one's efforts in the care and maintenance of the family and of the household), work or industry. Thus, the properties must be divided between them equally.

4. ID.; ID.; ID.; ID.; THE PRESUMPTION THAT THE PROPERTIES ARE CO-OWNED, AND THUS MUST BE SHARED EQUALLY IS NOT CONCLUSIVE BUT MERELY DISPUTABLE, AS A PARTY MAY REBUT THIS PRESUMPTION BY PRESENTING PROOF THAT THE PROPERTIES, ALTHOUGH ACQUIRED DURING THE PERIOD OF THEIR COHABITATION, WERE NOT OBTAINED THROUGH THEIR JOINT EFFORTS, WORK AND INDUSTRY; IN SUCH A CASE, THE PROPERTIES

SHALL BELONG SOLELY TO HIM OR HER; WHERE THE PROPERTIES WERE STILL BEING AMORTIZED WHEN THE PARTIES SEPARATED, THE PARTIES' EQUAL SHARE SHALL ONLY PERTAIN TO THE PAID PORTION BEFORE THEIR SEPARATION, FOR THE PARTNERSHIP IS CONSIDERED TERMINATED UPON THE PARTIES' SEPARATION OR DESISTANCE TO CONTINUE SAID RELATIONS; EVEN IF THE PARTIES ALREADY SEPARATED, BUT THE PAYMENTS FOR THE AMORTIZATIONS OF THE PROPERTIES WERE STILL TAKEN FROM THEIR COMMON FUNDS, THEN THEY WOULD HAVE AN EQUAL SHARE IN SUCH PORTIONS BECAUSE THE PAYMENTS MADE THEREFOR WERE ACTUALLY TAKEN FROM THE CO-OWNERSHIP.— The fear of the petitioner that the respondent will get more than her just share in the properties is unfounded. It must be borne in mind that the presumption that the properties are co-owned and thus must be shared equally is not conclusive but merely disputable. The petitioner may rebut the presumption by presenting proof that the properties, although acquired during the period of their cohabitation, were not obtained through their joint efforts, work and industry. In such a case, the properties shall belong solely to the petitioner. If the respondent is able to present proof that she contributed through her salary, income, work or industry in the acquisition of the properties, the parties' share shall be in proportion to their contributions. In the event that the respondent had not been able to contribute through her salary, income, work or industry, but was able to show that she cared for and maintained the family and the household, her efforts shall be deemed the equivalent of the contributions made by the petitioner. However, equal sharing of the entire properties is not possible in this scenario since the Ayala Alabang and Rockwell properties were still being amortized when the parties' separated. As such, respondent's equal share shall only pertain to the paid portion before their separation, for in this peculiar kind of co-ownership, and in keeping with the pronouncement in G.R. No. 180226, the partnership is considered terminated upon the parties' separation or desistance to continue said relations. Hence, from the moment of separation, there is no more family or household to speak of that the respondent could have cared for or maintained. If the allegation of the respondent that the payments for the amortizations of these properties were

taken from their common funds, then the respondent would have an equal share in such portions because the payments made therefor were actually taken from the co-ownership.

5. ID.; ID.; SUPPORT; THE OBLIGATION OF MUTUAL SUPPORT BETWEEN THE SPOUSES CEASES WHEN A JUDGMENT DECLARING A MARRIAGE VOID BECOMES FINAL AND EXECUTORY.— Anent the issue on the propriety of the increase in the amount of support, Article 198 of the Family Code provides that the obligation of mutual support between the spouses ceases when a judgment declaring a marriage void becomes final and executory. As the parties' marriage was declared void on March 11, 2005, petitioner was only obliged to support, after such date, their three children, Beatriz, Juliana and Margarita,

6. ID.; ID.; ID.; JUDGMENT OF SUPPORT DOES NOT BECOME FINAL, AND MAY BE REDUCED OR INCREASED PROPORTIONATELY ACCORDING TO THE REDUCTION OR INCREASE OF THE NECESSITIES OF THE RECIPIENT AND THE RESOURCES OR MEANS OF THE PERSON OBLIGED TO SUPPORT; THE OBLIGATION TO PROVIDE SUPPORT FOR THE CHILDREN CEASES UPON THE LATTER'S ATTAINMENT OF THE AGE OF MAJORITY.— According to the petition, at the time the assailed Order of the RTC dated November 29, 2011 was issued, two of their three daughters already attained the age of majority. If such is the case, respondent ceased to have the authority to claim support in their behalf. In increasing the amount of support due from petitioner based on the needs of all three children, the RTC gravely abused its discretion. It is also to be noted that the instant petition was filed in 2014. Since then, the parties' youngest daughter had likewise reached the age of majority. In view of this change in circumstance, petitioner can no longer be obliged to pay ₱250,000.00 to respondent. This is without prejudice to petitioner's liability for support in arrears, if any, and for any subsisting obligation to provide support directly to his daughters. Indeed, petitioner is not precluded from seeking the reduction of the amount of support he was obliged to provide in the event that he can sufficiently prove that its reduction is warranted. After all, judgment of support does not become final, and may be reduced or increased proportionately according to the reduction

or increase of the necessities of the recipient and the resources or means of the person obliged to support.

7. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE SUPREME COURT IS NOT A TRIER OF FACTS; REMAND OF THE CASE TO THE REGIONAL TRIAL COURT, WARRANTED.— This Court, not being a trier of facts, must necessarily remand the case to the trial court for the accounting, reception of evidence and evaluation thereof for the proper determination of the ownership and share of the parties in the nine properties mentioned above, which include the Ayala Alabang house and Rockwell condominium, based on the guidelines set forth in this case, as well as the determination of arrears in support of the parties' daughters, if any.

APPEARANCES OF COUNSEL

Puyat Jacinto & Santos for petitioner.
Paras & Manlapaz Lawyers for respondent.

D E C I S I O N

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

The Facts and The Case

Assailed in this Petition for Review on *Certiorari*[1] are the Decision[2] dated October 31, 2013 and Resolution[3] dated July 31, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 124473, which affirmed the Orders dated November 29, 2011[4] and February 27, 2012[5] of the Regional Trial Court (RTC), Branch 136, Makati City (Branch 136) which ordered the partial

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[1] *Rollo*, pp. 10-42.

[2] Penned by Associate Justice Agnes Reyes-Carpio, with Associate Justices Rosalinda Asuncion-Vicente and Priscilla J. Baltazar-Padilla, concurring; *id.* at 49-56.

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

[4] *Id.* at 165-168.

[5] *Id.* at 169-171.

delivery of respondent Dina Marie Lomongo Paterno's share in the conjugal partnership and directed petitioner Simon R. Paterno to increase the monthly support to ₱250,000.00.

The petitioner and the respondent were married on December 27, 1987. After living together for about a decade, the petitioner left the family abode in June 1998. On June 9, 2000, petitioner filed a petition before the RTC seeking the declaration of nullity of his marriage to the respondent on the ground of the latter's psychological incapacity. This was granted by Branch 144 of RTC Makati (Branch 144) in a Decision dated March 11, 2005, where both parties were adjudged to be psychologically incapacitated to fulfill their marital obligations to each other. The March 11, 2005 Decision had attained finality. However, the proceedings for the liquidation, partition, distribution of the common properties and the delivery of their children's presumptive legitimes remain pending before Branch 144.[6]

On September 26, 2006, the respondent filed a motion for the issuance of a *subpoena duces tecum* and *ad testificandum* seeking to present the petitioner as a hostile witness for him to testify and present documents relative to the salaries he received and the properties he acquired from the time the parties separated in fact until the declaration of nullity of their marriage had become final.[7] The same was granted by the trial court, prompting the petitioner to move for the quashal of the subpoena.[8]

In an Order dated November 22, 2006, Branch 144 ruled in favor of the petitioner and recalled the subpoena *duces tecum* and *ad testificandum*. It held that under Article 147 of the Family Code, salaries and wages earned by either party after the *de facto separation* of the parties in June 1998 are not considered part of the co-owned properties but belong solely to the earning spouse. Respondent moved for reconsideration but the trial court denied it.[9]

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[6] *Id.* at 11-12, 254-255.

[7] *Id.* at 12.

[8] *Id.*

[9] *Id.*

Aggrieved, the respondent filed a Petition for *Certiorari* before the CA assailing the Decision and Resolution of Branch 144 for allegedly being issued in excess of jurisdiction or with grave abuse of discretion. In a Decision dated August 28, 2007, the CA dismissed the petition. The respondent moved for reconsideration but the CA denied it in a Resolution dated October 22, 2007.[10]

Not accepting defeat, the respondent filed a Petition for Review on *Certiorari* before this Court, docketed as G.R. No. 180226.

In the meantime, the proceedings for the liquidation, partition, distribution of the common properties of the parties was re-raffled to Branch 136.[11]

On May 6, 2009, without prejudice to the outcome of her Petition for Review (G.R. No. 180226), respondent filed an Omnibus Motion before Branch 144 which sought the following affirmative reliefs: (a) appraisal of the purportedly admitted co-owned properties of the dissolved union of the parties; (b) partition of the purportedly admitted co-owned properties of the dissolved union and delivery of respondent's share therein; (c) require the petitioner to render full accounting of all fruits accruing from the purportedly admitted co-owned properties; and (d) in the alternative the delivery of respondent's share, and the appointment of an independent administrator/ receiver of the purportedly admitted co-owned properties.[12] The following are the properties which the respondent alleged were admitted by both parties to be co-owned by them:

(1) House and lot in Ayala Alabang Village, Muntinlupa City;
(2) Condominium unit in Rockwell, Makati City;
(3) Club membership at the Riviera Gold and Country Club;
(4) Shares of stock in Little Gym;
(5) Shares of stock in Mamita Realty;

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[10] *Id.*

[11] *Id.* at 13.

[12] *Id.* at 13, 95-102.

(6) Dodge Caravan
(7) Paintings by various known artists
(8) Pieces of accent furniture; and
(9) Collection of books by various known authors.[13]

Petitioner opposed the Omnibus Motion in his Comment/ Opposition dated June 1, 2009. He vehemently objected to the characterization of the above-listed properties as being admittedly co-owned properties. Petitioner contended that while the Ayala Alabang and Rockwell properties were purchased during the parties' union, the mortgage payments for these properties have been made after they separated in fact solely from his exclusive funds. As such, the trial court cannot as yet make a true and accurate appraisal of the said properties without ruling on the status of the payments made by the petitioner in servicing the loans taken for the said properties. Thus, the trial court should defer the proceedings before it pending the resolution of the case (G.R. No. 180226) before the Supreme Court (SC).[14]

On September 22, 2009, respondent filed a Manifestation and Urgent Motion to Resolve Respondent's Omnibus Motion dated 06 May 2009 and For Additional Support and/or Establishment of Trust Fund.[15]

In an Order[16] dated November 29, 2011, the RTC granted the motion of the respondent for partial distribution of her share in the conjugal partnership despite the pendency of the Petition for Review before the SC. It held that the resolution of the said motion will not preempt the decision of the SC in the petition before it inasmuch as the issue raised therein is whether the respondent has a share in the properties acquired by the petitioner during their separation in fact and prior to the final declaration of nullity of their marriage, while the matter

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[13] *Id.* at 13, 96.

[14] *Id.* at 14, 104-107.

[15] *Id.* at 132-143.

[16] *Id.* at 165-168.

before the trial court only pertained to the properties of the parties that they admitted were owned in common by them. In this case, even if the parties were married prior to the effectivity of the Family Code, the RTC still applied the same in resolving questions on their property relations. The RTC ruled that when their marriage was declared void, the conjugal partnership of gains was automatically dissolved and their property relations was converted into an ordinary co-ownership. As a co-owner, the respondent has the full ownership of the part, as well as the fruits and benefits pertaining to her share. She may alienate, assign, mortgage, or demand its partition insofar as her share is concerned. Since no evidence exists to show that the club membership at the Riviera Golf and Country Club, shares of stock of Little Gym and Mamita Realty, Dodge Caravan, paintings, pieces of accent furniture, and books are the exclusive property of the petitioner, they are presumed to be conjugal. While petitioner claims that he was the one paying for the monthly amortizations of the Ayala Alabang and Rockwell properties that were acquired during the marriage, he failed to present any proof that the properties belonged to him exclusively. Thus, just like the rest of the properties, they are also presumed to be conjugal. To protect the interest of the respondent and taking into account the needs of the children, the Court deemed it proper to advance her share in the conjugal partnership upon the posting of ₱50,000.00 bond. The RTC also increased the monthly support to ₱250,000.00 taking into consideration the health condition of Juliana Paterno and the standard of living the children have been accustomed to and the financial resources of the petitioner.

Petitioner moved for reconsideration but the trial court denied it in a Resolution[17] dated February 27, 2012.

Not accepting defeat, petitioner elevated the matter to the CA *via* a Petition for *Certiorari* and *Prohibition*.

In a Decision[18] dated October 31, 2013, the CA held that the RTC did not gravely abuse its discretion when it resolved

[17] *Id.* at 169-171.

[18] *Supra* note 2.

respondent's motion despite the pendency of respondent's Petition for Review before the SC considering that the issue raised in the petition before the SC centers on the ownership of the properties acquired after the parties have separated *de facto* but prior to the judicial declaration of nullity of their marriage, while the properties involved in the assailed Orders of the RTC included those properties acquired at the time they were still living together as husband and wife. As such, the determination of the issue before the RTC will not affect the outcome of the case pending before the SC as would necessitate it to defer its proceedings until after the SC shall have resolved the case before it.[19]

The CA rejected petitioner's claim that he was deprived of due process and that the RTC acted with grave abuse of discretion when it resolved the motion for reconsideration without waiting for his Reply to respondent's comment (to the motion for reconsideration) since no ground had been shown to justify why the required Reply could not be filed on time.[20] The CA refused to rule on the other issues raised by the petitioner, namely: whether the trial court gravely abused its discretion in (a) ruling that the property relation of the spouses was converted to an ordinary co-ownership after the dissolution of the marriage; (b) ruling that petitioner claimed the subject properties as his exclusive properties; and (c) awarding an increase in the amount of support to ₱250,000.00 a month for being not proper in a petition for *certiorari* as they were merely errors of judgment, and not errors of jurisdiction.[21]

Not satisfied, petitioner is now before this Court via a Petition for Review on *Certiorari*.

The Issues

The Petitioner submits the following issues for this Court's consideration:

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[19] *Id.* at 54-55a.

[20] *Id.* at 55a.

[21] *Id.* at 54-55a.

THE COURT OF APPEALS GRAVELY ERRED WHEN IT DID NOT SET ASIDE THE ORDERS DATED 29 NOVEMBER 2011 AND 27 FEBRUARY 2012 ISSUED BY THE TRIAL COURT DESPITE SAID ORDERS HAVING BEEN ISSUED IN GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION ON THE FOLLOWING GROUNDS:

I

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT ISSUED THE ASSAILED DECISION, AND AFFIRMED THE SAME IN THE ASSAILED RESOLUTION, DESPITE THE FACT THAT THE ASSAILED DECISION DID NOT EXPRESS THEREIN CLEARLY AND DISTINCTLY THE FACTS AND THE LAW ON WHICH THE SAME WAS BASED.

II

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT RULED THAT RESPONDENT'S OWN PETITION PENDING BEFORE THE SUPREME COURT (*G.R. NO. 180226, ENTITLED "DINA MARIE LOMONGO PATERNO [V.] SIMON R. PATERNO"*) DID NOT NECESSITATE THE OBSERVANCE OF JUDICIAL COURTESY.

III

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT RULED THAT GRAVE ABUSE OF DISCRETION WAS NOT ATTENDANT IN THE TRIAL COURT'S ORDERS DATED 29 NOVEMBER 2011 AND 27 FEBRUARY 2012 THAT WERE PATENTLY CONTRARY TO LAW AND PREVAILING JURISPRUDENCE.

IV

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT RULED THAT GRAVE ABUSE OF DISCRETION WAS NOT ATTENDANT IN THE TRIAL COURT'S ORDERS DATED 29 NOVEMBER 2011 AND 27 FEBRUARY 2012 THAT WERE BASED ON A GROSS MISAPPREHENSION OF FACTS.

V

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT RULED THAT GRAVE ABUSE OF DISCRETION WAS NOT ATTENDANT WHEN THE TRIAL COURT ISSUED THE ORDER DATED 27 FEBRUARY 2012 WITHOUT GIVING HEREIN PETITIONER THE OPPORTUNITY TO FULLY ARGUE HIS POSITION.[22]

The Arguments of the Parties

The petitioner contends that the Decision rendered by the CA did not comply with the Constitutional requirement that decisions must clearly and distinctly state the facts and the law on which it is based when the appellate court brushed aside its last three arguments and simply declared that they were not proper for a petition for *certiorari* as they were errors of judgment and not errors of jurisdiction. Such non-compliance with the Constitutional mandate violates petitioner's right to due process and constitutes a reversible error on the part of the CA.[23]

Petitioner also claims that the CA seriously erred when it ruled that the trial court need not observe judicial courtesy and correctly proceeded to rule on the motion for the partial distribution of the subject properties despite the pendency of the case before the SC. He explains that the presumption of equal shares in the special co-ownership under Article 147 of the Family Code applies only to properties that were acquired during the parties' cohabitation. After their separation *de facto*, the presumption can no longer arise. Although the Ayala Alabang house and Rockwell condominium were acquired while the union was still subsisting, they were only paid long after the parties stopped living together with petitioner's sole efforts constituting the majority of the payments therefor. As such, there is a need for the trial court to await the ruling of the SC on whether the contributions made by the petitioner in the form of amortizations for the relevant properties still form part of the co-ownership

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[22] *Id.* at 19-20.

[23] *Id.* at 21-23.

despite having been paid after the parties had separated, and after the presumption of equal shares had ceased to become applicable.[24]

Petitioner likewise attacks the assailed Decision for contravening established doctrines. He argues that it was reversible error on the part of the CA when it ruled that the trial court did not gravely abuse its discretion when the latter granted the motion for partial distribution of the properties despite non-compliance with the two-tiered procedure required for a valid partition. Petitioner explains that in asking for a partial distribution, respondent was essentially trying to effect the partition of co-owned properties. Before any action for partition may be had, it must first be determined if the parties are indeed co-owners of the properties subject of the partition and how such properties will be divided between the claimants. These two requisites are the very issues in G.R. No. 180266, in that for him, there is no more co-ownership with respect to the payments he made for the Ayala Alabang and Rockwell properties after the parties had separated; whereas for the respondent, the same still form part of the co-owned properties. The allowance by the trial court of the partition of the subject properties without the said issues having been first laid to rest by the SC is clearly grave abuse of discretion.[25]

Petitioner went on to state that the CA erred when it found no grave abuse of discretion in the trial court's pronouncement that the parties' property relation was originally governed by conjugal partnership of gains, which was then converted to an ordinary co-ownership upon the declaration of nullity of their marriage. It is a basic legal precept that a marriage declared void *ab initio* produces no legal effect because the decree of nullity retroacts to the time of the marriage. The property regime in such a situation is governed by special co-ownership right from the beginning and without need of conversion.[26]

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

[25] *Id.* at 26-28.

[26] *Id.* at 28-32.

It was also error on the part of the CA to have ruled that the trial court did not abuse its discretion when it issued its Orders despite the fact that they were based on misapprehension of facts. The trial court grossly misunderstood petitioner's allegations of facts respecting the ownership of the Ayala Alabang and Rockwell properties. He never claimed said properties as his exclusively. He merely stated that since portions of the mortgage payments for both properties were made by him from his own exclusive funds after his separation in fact with the respondent, such payments should not be considered part of the co-owned properties, and must be adjudged to belong to him exclusively.[27]

Furthermore, petitioner claims that the trial court committed the same gross misapprehension of facts in ordering the increase of the monthly support from ₱175,000.00 to ₱250,000.00. According to the petitioner, he had been giving the respondent and their three children support in the amount of ₱175,000.00 per month, the amount approved by the trial court in 2003. The amount was for the support *pendente lite*, at the time when his marriage with the respondent had not yet been declared void *ab initio* and the proceedings for nullity of marriage was still pending. When the trial court issued the November 29, 2011 Order, the circumstances of the parties had already drastically changed which did not justify any increase in support or even maintaining the same amount in that the obligation of mutual support between the petitioner and the respondent ceased after a final decree of nullity of marriage was issued by the trial court. All three of petitioner and respondent's children, Beatriz, Juliana and Margarita, were still minors and living under the custody and care of the respondent at the time the trial court ordered the petitioner to provide support in the amount of ₱175,000.00 monthly. Since then, Beatriz and Juliana had reached the age of majority and had ceased living with the respondent at the time the November 29, 2011 Order was issued. At such time, it was only Margarita who was under the custody of, and living with the respondent at the Rockwell Condominium.

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

Petitioner emphasizes that it was he who exclusively shouldered and continued to shoulder one hundred percent of Beatriz' living, maintenance, and educational expenses all throughout her years in college, beginning 2007, the year she went to the United States of America (USA) to study until she graduated in May 2011. Now that Beatriz is studying law at Harvard Law School, petitioner continues to shoulder all of her expenses. As for Juliana, petitioner contends that she moved to his house in 2010, and then left for the USA in February 2011 for her schooling. He was also the one who shouldered 100% of her living, maintenance, medical and educational expenses. Such expenses, petitioner claims, were on top of the ₱175,000.00 monthly support provided by him which was originally intended for the three children, despite the fact that Beatriz and Juliana were no longer living with the respondent. The increase in support cannot also be justified by reason of Juliana's medical condition because he already paid for all the expenses incurred for Juliana's medical treatment and no proof had been presented to show that her medical condition recurred. Petitioner adds, ever since Beatriz and Juliana became of majority age and stopped living with the respondent, the latter ceased to have personality or authority to claim support from the petitioner in their behalf pursuant to Articles 234 and 236 of the Family Code as she ceased to be their legal guardian. Petitioner claims further that respondent is also obliged to provide support to their children, in proportion to her salary, given that respondent is gainfully employed, support being the joint obligation of the petitioner and the respondent. The respondent cannot ask to be reimbursed for every single expense she had spent. All these show that the necessities of Beatriz and Juliana have been significantly reduced. Thus, the ordered increase in support clearly lacked basis.[28]

Lastly, petitioner avers that the CA erred when it found no grave abuse of discretion on part of the trial court when it issued its February 27, 2012 Order without waiting for his Reply to respondent's Comment and Opposition (to petitioner's Motion

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

for Reconsideration). Since the respondent was given several extensions of time to file various pleadings, he must likewise be accorded the same treatment. However, instead of granting him equal treatment, the trial court, without acting on his motion for extension of time to file his reply, prematurely and hastily issued its February 27, 2012 Order denying his motion for reconsideration. By prematurely deciding his motion for reconsideration, the trial court prevented him from responding to respondent's misleading and inaccurate allegations in her Comment and Opposition. The fact that his counsel belonged to a law firm is not a waiver of his constitutional right to due process.[29]

Respondent, on the other hand, claims that the CA correctly ruled that petitioner's last three arguments are not proper for a petition for *certiorari* since the alleged errors are merely errors of judgment and not errors of jurisdiction considering that the properties covered by the assailed Orders of the trial court pertained only to **those** properties that were admitted to be part of the common properties in petitioner's Petition for Declaration of Nullity of Marriage.[30]

Respondent likewise insists that there was no reason for the trial court to defer its proceedings until after the SC shall have decided G.R. No. 180226 because whatever may be the findings of the trial court in such case will not render the petition pending before the SC moot because the issue before the trial court and concomitantly, its Orders, only referred to properties which the petitioner himself admitted (in his Petition for Declaration of Nullity of Marriage) as having been acquired by him and the respondent during their marriage. In other words, the properties involved are only those recognized as common properties. It has no bearing on the matter before the SC in G.R. No. 180226, which involves the issue of whether the properties acquired by the petitioner after he left the respondent and before the finality of the Decision nullifying his marriage

[29] *Id.* at 39-40.

[30] *Id.* at 357-358.

with the respondent, would still form part of the common assets. Besides, no Temporary Restraining Order had been issued to forestall the proceedings before the trial court.[31]

Respondent labels as devoid of merit petitioner's claim that he is entitled to more share in the subject properties than her because he was the one who continued paying for their amortizations after their separation. The second paragraph of Article 147 of the Family Code created a presumption that the properties acquired by the parties while they live together were obtained by their joint effort, work or industry. Thus, they own such properties in equal shares. The said provision likewise laid down an equitable rule in favor of a party who did not actually participate in property acquisition but exerted efforts in the care and maintenance of the family and the household. Furthermore, respondent avers that the deliberations of the Civil Code and Family Code show that Article 147 was intended to prevent injustice in the property relation of spouses in a void marriage and to recognize that the wife helped in the acquisition of the property by providing inspiration, among other things, regardless of the period of acquisition. Thus, respondent posits that co-ownership of the parties did not end when one spouse stopped living with the other. The marital relationship, as well as the consequences and effects of a marital union, end upon the finality of the declaration of nullity of the marriage. Considering that the Ayala Alabang and Rockwell properties were acquired during their marriage and before petitioner left his family, respondent's efforts in the care and maintenance of the children and of the household were sufficient, if not more than enough contribution to the acquisition of said properties. Hence, the petitioner could not claim more right to any property than her on account of his contention that he was the one who paid for the amortizations of those properties. The fact that the petitioner took with him the salaries he already earned before their separation and that he continue to have full access to their joint bank account where she also deposited her earnings and savings could not also be overlooked.

[31] *Id.* at 358-360.

Petitioner's use of common funds in paying for the monthly amortizations for the Ayala Alabang and Rockwell properties would not make such properties or any portion thereof, belong exclusively to him and place them beyond the co-ownership.[32]

Lastly, respondent avers that petitioner could not claim that he was denied of due process just because his Motion for Reconsideration was resolved without waiting for his Reply inasmuch as petitioner's Motion for Reconsideration should already contain all arguments and objections against the questioned Order, and that petitioner was also afforded an actual hearing on his motion. Given also that he had a number of lawyers at his disposal, petitioner may not claim a right to demand additional period of time to file his Reply.[33]

The Ruling of the Court

Stripped of verbiage, the pivotal issues in this case are the ownership of the Ayala Alabang house and the Rockwell condominium and how these properties should be partitioned between the parties; and the propriety of the increase in the amount of support granted to the respondent.

There is no quarrel that the marriage of the petitioner and the respondent had long been declared an absolute nullity by reason of their psychological incapacity to perform their marital obligations to each other. The property relations of parties to a void marriage is governed either by Article 147 or 148 of the Family Code. Since the petitioner and the respondent suffer no legal impediment and exclusively lived with each other under a void marriage, their property relation is one of co-ownership under Article 147 of the Family Code. The said provision finds application in this case even if the parties were married before the Family Code took effect by express provision of the Family Code on its retroactive effect for as long as it does not prejudice or impair vested or acquired rights in accordance with the Civil

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[32] *Id.* at 360-364.

[33] *Id.* at 364-365.

Code or other laws.[34] Here, no vested rights will be impaired in the application of the said provision given that Article 147 of the Family Code is actually just a remake of Article 144 of the 1950 Civil Code.[35]

Article 147 of the Family Code provides:

ART. 147. When a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, their wages and salaries shall be owned by them in equal shares and the property acquired by both of them through their work or industry shall be governed by the rules on co-ownership.

In the absence of proof to the contrary, properties acquired while they lived together shall be presumed to have been obtained by their joint efforts, work or industry, and shall be owned by them in equal shares. For purposes of this Article, a party who did not participate in the acquisition by the other party of any property shall be deemed to have contributed jointly in the acquisition thereof if the former's efforts consisted in the care and maintenance of the family and of the household.

Neither party can encumber or dispose by acts *inter vivos* of his or her share in the property acquired during cohabitation and owned in common, without the consent of the other, until after the termination of their cohabitation.

When only one of the parties to a void marriage is in good faith, the share of the party in bad faith in the co-ownership shall be forfeited in favor of their common children. In case of default of or waiver by any or all of the common children or their descendants, each vacant share shall belong to the respective surviving descendants. In the absence of descendants, such share shall belong to the innocent party. In all cases, the forfeiture shall take place upon termination of the cohabitation.

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[34] ART. 256. This Code shall have retroactive effect insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code or other laws.

[35] See *Valdes v. RTC, Br. 102, Quezon City*, 328 Phil. 1289, 1295 (1996).

The co-ownership envisioned under this article was explained by this Court in *Barrido v. Nonato*,[36] *viz*:

> This particular kind of co-ownership applies when a man and a woman, suffering no illegal impediment to marry each other, exclusively live together as husband and wife under a void marriage or without the benefit of marriage. It is clear, therefore, that for Article 147 to operate, the man and the woman: (1) must be capacitated to marry each other; (2) live exclusively with each other as husband and wife; and (3) their union is without the benefit of marriage or their marriage is void. Here, all these elements are present. The term "capacitated" in the first paragraph of the provision pertains to the legal capacity of a party to contract marriage. Any impediment to marry has not been shown to have existed on the part of either Nonato or Barrido. They lived exclusively with each other as husband and wife. However, their marriage was found to be void under Article 36 of the Family Code on the ground of psychological incapacity.
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> Under this property regime, property acquired by both spouses through their work and industry shall be governed by the rules on equal co-ownership. Any property acquired during the union is *prima facie* presumed to have been obtained through their joint efforts. A party who did not participate in the acquisition of the property shall be considered as having contributed to the same jointly if said party's efforts consisted in the care and maintenance of the family household. Efforts in the care and maintenance of the family and household are regarded as contributions to the acquisition of common property by one who has no salary or income or work or industry. (Citations omitted)

While the parties concede that their property regime is governed by co-ownership, they do not agree on the properties covered therein. For the respondent, all properties acquired by them, before the judicial decree of nullity of their marriage, including the time they were already separated, form part of the co-ownership. On the other hand, for the petitioner, only those properties acquired by them while they were living together are common assets. Thus, petitioner theorizes that since the amortizations for the Ayala Alabang and Rockwell properties were paid by him after the parties stopped living together, the payments made should not form part of the co-

[36] 745 Phil. 608, 615-616 (2014).

ownership but must belong solely to him. It is for this reason that he insists that the Supreme Court must first be allowed to rule on G.R. No. 180226 before the trial court should have ruled on the motion for the partial distribution of the above-listed properties because the decision of the High Court therein would have determined whether such contributions form part of the co-ownership.

At this juncture, it must be emphasized that the Court already resolved G.R. No. 180226 in a Resolution of the Third Division dated April 26, 2017, rendering the issue on whether the CA correctly ruled that the trial court need not await the ruling in G.R. No. 180226 before it rules on the propriety of respondent's motion for partial distribution, moot and academic.

The Court must further note that G.R. No. 180226 and the present petition involve, in the main, the partition and distribution of the properties of the union, the natural consequence of the grant of the petition for the declaration of nullity of their marriage that was earlier filed. Undeniably, these cases refer to the same set of facts and involve the same arguments, considering that the present petition is actually an offshoot of G.R. No. 180226 in that the present petition merely seeks the partial distribution of the parties' common assets. Such being the case, the Court must take into account the pronouncement in G.R. No. 180226, the Resolution therein being the law of the case, as it proceeds to resolve the issues pending herein.

In the case of *Spouses Sy v. Young*,[37] the Court rules, thus:

> Law of the case has been defined as the opinion delivered on a former appeal. It means that whatever is once irrevocably established the controlling legal rule of decision between the same parties in the same case continues to be the law of the case whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.

Law of the case applies only to the same case and relates entirely to questions of law. Furthermore, in law of the case, the rule

[37] *Spouses Sy v. Young*, 711 Phil. 444, 449-450 (2013).

made by an appellate court cannot be departed from in subsequent proceedings in the same case.[38]

In the April 26, 2017 Resolution in G.R. No. 180226, the Court affirmed the holding of the CA that Article 147 of the Family Code only applies to properties acquired by the parties while they lived exclusively with each other as husband and wife. The relevant portion of the Resolution is quoted hereunder:

> The [respondent] did not discharge her burden of showing in this appeal that the CA committed reversible error in applying Article 147 of the *Family Code* to the case. In disposing of the issues raised for its consideration and resolution, the CA correctly applied the law and its relevant jurisprudence, as the following exposition clearly indicates:
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> The parties do not argue that co-ownership of properties acquired during the union governs them under Article 147 of the Family Code. x x x
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> x x x x x x x x x
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> So what are the common properties included in the dissolution of the co-ownership?
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> [Respondent's] argument implies that despite already being separated *de facto*, as long as a couple remains married (in paper), pending a court declaration of nullity of their union, all the properties gained by each in the meantime before the judicial declaration will be included in the co-ownership regime.
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> [Respondent] however should be reminded of the legal effect of a confirmation of a void *ab initio* marriage: it is retroactive to the time when the marriage ceremony transpired. In short, after the trial court declared her marriage to [petitioner] void in 2005 because of both parties' psychological incapacity, the marriage ceremony on December 27, 1987 was invalidated as if no marriage took place. This means then that during their ten-year cohabitation, [respondent] and [petitioner] lived together merely as common-law spouses. This is where Article 147 comes in, dealing with those "properties acquired while they lived together...obtained by their joint efforts, work or industry..." and the joint effort includes "the care and maintenance of the

[38] *Id.*

family and of the household." Her insistence of the common ownership of the moneys and properties accumulated subsequent to the *de facto* separation would have been correct if the properties had to be liquidated (such as in a spouse's death) and an official declaration of nullity of marriage was never secured. Her stand would have been supported by the case of *Cariño v. Cariño* wherein two women were fighting over the government death benefits of the man they married. The first wife was married to the deceased in 1969 but in 1992, without having his previous marriage nullified for lack of a marriage license, the husband still married another woman with whom he cohabited in 1982. The High Court refused to award the death benefits to the second wife and gave the monetary benefits to the first one. Although Article 147 applies to the first wife, the Court awarded the benefits to her in full because the presumption of a valid marriage stood in her favor by reason of a lack of a judicial declaration of nullity. To stress, in the case at bar, there was a judicial declaration of nullity, and *Cariño* cannot apply to her.

As adverted to earlier, after the judicial declaration, [petitioner] and [respondent's] relationship has relegated to a common-law marriage, and their cohabitation, *i.e.*, living together exclusively as husband and wife, was only for a period of ten years. Obviously, the 'cohabitation' of the parties will definitely not include the years since [petitioner] left [respondent] and the family home. The period of cohabitation of a couple without the benefit of marriage or under a void marriage has been sufficiently explained and has been applied by the Supreme Court in the case of *Aznar* x x x. Expounding on Article 144 of the Civil Code, the provision which Article 147 of the Family Code is based, the Court said:

> It must be noted that such form of co-ownership requires that the man and the woman thus living together must not in any way be incapacitated to contract marriage and that the properties realized during their cohabitation be acquired through the work, industry, employment or occupation of both or either of them. And the same thing may be said of those whose marriages are by provision of law declared *void ab initio*. **While it is true that these requisites are fully met and satisfied in the case at bar, We must remember that the deceased and herein appellee were already estranged as of March, 1950. There being no provision of law governing the cessation of such informal**

> **civil partnership, if it ever existed, [the] same may be considered terminated upon their separation or desistance to continue said relations.**[39]

This Court's earlier pronouncement in G.R. No. 180226 that Article 147 of the Family Code applies only to properties acquired by the parties during the period of their cohabitation is thus binding in this case. The question now that comes to the fore is the proper application of the said ruling with respect to the Ayala Alabang and Rockwell properties.

It is not disputed that the Ayala Alabang and Rockwell properties that were acquired during the period of the parties' cohabitation had not yet been fully paid at the time they separated. From the arguments advanced by the petitioner, it can be inferred that he made much of the term "acquired" in that he distinguished portions of the disputed property to that which had been paid for during the period of cohabitation, and to the portion which was yet unpaid when the parties separated. For him, only the paid portion should be encompassed in the term "acquired" and thus, be presumed to belong to the parties in equal shares.

The Court does not agree. In the construction of the term "acquired," this Court must be guided by the basic rule in statutory construction that when the law does not distinguish, neither should the court.[40] A reading of Article 147 of the Family Code would show that the provision did not make any distinction or make any qualification in terms of the manner the property must be acquired before the presumption of co-ownership shall apply. As such, the term "acquired" must be taken in its ordinary acceptation. For as long as the property had been purchased, whether on installment, financing or other mode of payment, during the period of cohabitation, the disputable presumption that they have been obtained by the parties' joint efforts, work or industry, and shall be owned by them in equal shares, shall arise. Applied in this case, since the Ayala Alabang and Rockwell properties were purchased

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[39] Third Division Resolution, pp. 5-6; *Rollo*, pp. 475-476.

[40] *Ty-Delgado v. House of Representatives Electoral Tribunal*, 79 Phil. 268, 282 (2016).

while the petitioner and the respondent were living together, it is presumed that both parties contributed in their acquisition through their joint efforts (which includes one's efforts in the care and maintenance of the family and of the household), work or industry. Thus, the properties must be divided between them equally.

The fear of the petitioner that the respondent will get more than her just share in the properties is unfounded.[41] It must be borne in mind that the presumption that the properties are co-owned and thus must be shared equally is not conclusive but merely disputable. The petitioner may rebut the presumption by presenting proof that the properties, although acquired during the period of their cohabitation, were not obtained through their joint efforts, work and industry. In such a case, the properties shall belong solely to the petitioner. If the respondent is able to present proof that she contributed through her salary, income, work or industry in the acquisition of the properties, the parties' share shall be in proportion to their contributions. In the event that the respondent had not been able to contribute through her salary, income, work or industry, but was able to show that she cared for and maintained the family and the household, her efforts shall be deemed the equivalent of the contributions made by the petitioner. However, equal sharing of the entire properties is not possible in this scenario since the Ayala Alabang and Rockwell properties were still being amortized when the parties' separated. As such, respondent's equal share shall only pertain to the paid portion before their separation, for in this peculiar kind of co-ownership, and in keeping with the pronouncement in G.R. No. 180226, the partnership is considered terminated upon the parties' separation or desistance to continue said relations. Hence, from the moment of separation, there is no more family or household to speak of that the respondent could have cared for or maintained. If the allegation of the respondent that the payments for the amortizations of these properties were taken from their common funds, then the respondent would have an equal share in such

[41] *Rollo*, p. 25.

portions because the payments made therefor were actually taken from the co-ownership.

Anent the issue on the propriety of the increase in the amount of support, Article 198 of the Family Code provides that the obligation of mutual support between the spouses ceases when a judgment declaring a marriage void becomes final and executory. As the parties' marriage was declared void on March 11, 2005, petitioner was only obliged to support, after such date, their three children, Beatriz, Juliana and Margarita.

According to the petition, at the time the assailed Order of the RTC dated November 29, 2011 was issued, two of their three daughters already attained the age of majority. If such is the case, respondent ceased to have the authority to claim support in their behalf. In increasing the amount of support due from petitioner based on the needs of all three children, the RTC gravely abused its discretion.

It is also to be noted that the instant petition was filed in 2014. Since then, the parties' youngest daughter had likewise reached the age of majority. In view of this change in circumstance, petitioner can no longer be obliged to pay ₱250,000.00 to respondent. This is without prejudice to petitioner's liability for support in arrears, if any, and for any subsisting obligation to provide support directly to his daughters.

Indeed, petitioner is not precluded from seeking the reduction of the amount of support he was obliged to provide in the event that he can sufficiently prove that its reduction is warranted. After all, judgment of support does not become final, and may be reduced or increased proportionately according to the reduction or increase of the necessities of the recipient and the resources or means of the person obliged to support.[42]

This Court, not being a trier of facts, must necessarily remand the case to the trial court for the accounting, reception of evidence and evaluation thereof for the proper determination of the ownership and share of the parties in the nine properties

[42] *Lim-Lua v. Lua*, 710 Phil. 211, 233 (2013).

mentioned above, which include the Ayala Alabang house and Rockwell condominium, based on the guidelines set forth in this case, as well as the determination of arrears in support of the parties' daughters, if any.

WHEREFORE, premises considered, the petition is **GRANTED.** The assailed October 31, 2013 Decision and the July 31, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 124473 are **REVERSED AND SET ASIDE**.

This case is ordered remanded to Regional Trial Court, Branch 136, Makati City for accounting, reception of evidence, and evaluation thereof for the proper determination of the ownership and share of the parties in the nine (9) properties mentioned above, which includes the Ayala Alabang house and Rockwell condominium, based on the guidelines set forth in this case, as well as the determination of arrears in support of the parties' daughters, if any.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, and *Lazaro-Javier, JJ.*, concur.

Lopez, J., on official leave.

FIRST DIVISION

[G.R. No. 227175. January 8, 2020]

NEREN VILLANUEVA, *petitioner*, *vs.* **GANCO RESORT AND RECREATION, INC., PETER MARASIGAN, BENJIE MARASIGAN, LUZ MARASIGAN, BOYA MARASIGAN, and SERGE BERNABE**, *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; LIMITED TO QUESTIONS OF LAW; EXCEPTIONS; WHEN THE FINDINGS OF FACT OF THE QUASI-JUDICIAL AGENCIES ARE CONFLICTING WITH THOSE OF THE COURT OF APPEALS.— It is settled that the jurisdiction of the Court under Rule 45 is limited only to questions of law as the Court is not a trier of facts. This rule, however, allows for exceptions such as when the findings of fact of the trial court, or in this case of the quasi-judicial agencies concerned, are conflicting or contradictory with those of the CA.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; A VALID DISMISSAL REQUIRES COMPLIANCE WITH BOTH SUBSTANTIVE AND PROCEDURAL DUE PROCESS.— In an illegal dismissal case, the *onus probandi* rests on the employer to prove that the employee's dismissal was for a valid cause. A valid dismissal requires compliance with both substantive and procedural due process — that is, the dismissal must be for any of the just or authorized causes enumerated in Article 297 [282] and Article 298 [283], respectively, of the Labor Code, and only after notice and hearing.

3. ID.; ID.; ID.; GROUNDS; INSUBORDINATION; REQUISITES; NOT PRESENT IN CASE AT BAR.— Insubordination or willful disobedience requires the concurrence of the following requisites: (1) the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a "wrongful and perverse attitude"; and (2) 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. Both requirements are not present in this case. As stated by petitioner in her handwritten explanation, she withheld her signature on the Notice to Transfer because she was awaiting answers to the questions she raised to the management *via* e-mail. She cannot be forced to affix her signature thereon if she does not really fully understand the reasons behind and the consequences of her transfer. While her action is willful and intentional, it is nonetheless far from being "wrongful and

perverse." In addition, respondents failed to prove that there is indeed an order or company procedure requiring a transferee's written conformity prior to the implementation of the transfer, and that such order or procedure was made known to petitioner. Given the foregoing, there is no basis to dismiss petitioner on the ground of insubordination for her mere failure to sign the Notice to Transfer.

4. ID.; ID.; ID.; ID.; NEGLECT OF DUTIES; IT MUST BE BOTH GROSS AND HABITUAL; CASE AT BAR.— Anent the charge of habitual neglect for petitioner's absences without leave, jurisprudence provides that in order to constitute a valid cause for dismissal, the neglect of duties must be both gross and habitual. Gross negligence has been defined as "the want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them." On the other hand, habitual neglect "imparts repeated failure to perform one's duties for a period of time, depending on the circumstances." A single or isolated act of negligence does not constitute a just cause for the dismissal of the employee. Petitioner's four-day absence without leave is not gross nor habitual.

5. ID.; ID.; ID.; PRINCIPLE OF "TOTALITY OF INFRACTIONS," DISCUSSED.— [P]etitioner's absences are not justified. x x x The Notice of Preventive Suspension served on her clearly stated that the period of her preventive suspension was from March 14 to March 21, 2014. Thus, she was expected to report back to work on her next working day. Yet, she reported only on March 26, 2014. Therefore, x x x petitioner is still guilty of having committed a violation. It is here that totality of infractions may be considered to determine the imposable sanction for her current infraction. In *Merin v. National Labor Relations Commission*, the Court explained the principle of "totality of infractions" in this wise: **The totality of infractions or the number of violations committed during the period of employment shall be considered in determining the penalty to be imposed upon an erring employee.** The offenses committed by petitioner should not be taken singly and separately. x x x After all, **the record of an employee is a relevant consideration in determining the penalty that should be meted out since an employee's past misconduct and present behavior must be taken together in determining the proper imposable**

penalty. x x x To be sure, the totality of an employee's infractions is considered and weighed in determining the imposable sanction for the current infraction. It presupposes that the employee is already found guilty of the new violation, as in this case. Apropos, it is also worth mentioning that GRRI had already previously warned petitioner that the penalty for her next infraction would be elevated to dismissal. Thus, the dismissal of petitioner, on the basis of the principle of totality of infractions, is justified.

6. **ID.; ID.; ID.; REQUIREMENTS OF PROCEDURAL DUE PROCESS; VIOLATION THEREOF WARRANTS AWARD OF NOMINAL DAMAGES IN THE AMOUNT OF ₱30,000.00.—** The Court delineated the requirements of procedural due process in *King of Kings Transport, Inc. v. Mamac, viz.*: (1) The first written notice to be served on the employees should **contain the specific causes or grounds for termination** against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, **the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.** The records show that GRRI failed to observe the foregoing requirements. x x x Considering that a valid cause for petitioner's dismissal exists but the requirements of procedural due process were not observed, the award of nominal damages in the amount of ₱30,000.00 is in order.

7. **ID.; ID.; ID.; SERVICE INCENTIVE LEAVE PAY (SILP); PROPER DESPITE VALID TERMINATION. —** With respect to petitioner's claim for Service Incentive Leave Pay (SILP),

the Court finds that the same is in order. In *RTG Construction, Inc. v. Facto*, the Court awarded money claims, particularly SILP, despite the validity of the employee's dismissal. The first paragraph of Article 95 of the Labor Code provides that every employee who has rendered at least one year of service shall be entitled to a yearly incentive leave of five days with pay. In the present case, petitioner had been in the employ of GRRI since 2002, or for 12 years, hence she is entitled to SILP. Considering that petitioner is claiming non-payment, the burden also rests on GRRI, as the employer, to prove payment. x x x [T]he computation of petitioner's SILP should cover the period from the beginning of her employment until its termination, as follows: ₱10,000.00 (12) / 365 (5 days) (12 years) = ₱19,726.02 Finally, legal interest at the rate of 6% *per annum* is imposed on the total monetary award from the finality of this Decision until full payment.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Rondain & Mendiola for respondents.

D E C I S I O N

CAGUIOA, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] (Petition) under Rule 45 are the Decision[2] dated June 23, 2016 and Resolution[3] dated September 16, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 143474 which reversed the Decision[4] dated July 30, 2015 and Resolution[5] dated October 19, 2015

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[1] *Rollo*, pp. 10-33.

[2] *Id.* at 35-48. Penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Fernanda Lampas Peralta and Nina G. Antonio-Valenzuela.

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

[4] *Id.* at 70-82.

[5] *Id.* at 85-89.

of the National Labor Relations Commission (NLRC) and upheld the legality of petitioner Neren Villanueva's dismissal.

Facts

In 2002, respondent Ganco Resort and Recreation, Inc. (GRRI) hired petitioner as a part-time employee in its resort, La Luz Beach Resort and Spa (La Luz Resort).[6] She became a regular employee on February 1, 2003, and was eventually promoted as head of the Housekeeping Department in 2005 and as head of the Front Desk Department in 2008.[7]

Sometime in 2013, petitioner was charged with violating company policies, *i.e.*, abuse of authority, when she rejected walk-in guests without management approval, and threat to person in authority, when she threatened the assistant resort manager, respondent Serge Bernabe (respondent Bernabe), with physical harm.[8] After the conduct of administrative investigation, GRRI found petitioner guilty of both charges and was meted the penalty of two days suspension without pay for abuse of authority and termination for threat to person in authority.[9] The penalty of termination was, however, reduced to a five-day suspension without pay subject to the agreement that petitioner would be under strict performance monitoring and that any further violation which would warrant suspension would be elevated to immediate dismissal.[10] After serving her suspension, petitioner resumed her task as a receptionist.[11]

In the early part of 2014, petitioner was transferred from the Front Desk Department to the Team Building Department upon the advice of respondent Bernabe.[12] Thereafter, in March

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[6] *Id.* at 71, 154.

[7] *Id.* at 36-37, 71, 154-155.

[8] *Id.* at 37.

[9] *Id.*

[10] *Id.*

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

[12] *Id.* at 38, 72, 155.

2014, GRRI implemented a reorganization in La Luz Resort and issued a Notice of Employees' Lateral Transfer (Notice to Transfer) to five of its employees, including petitioner.[13] Through the Notice to Transfer, they were informed of the reorganization and were advised that they would be laterally transferred to another department effective immediately. Petitioner was transferred from the Reception Department to Storage Department without diminution in rank and benefits.[14]

However, petitioner refused to sign the Notice to Transfer and remained at the reception area for two days before reporting to her new station on March 4, 2014.[15] Petitioner also sent an e-mail addressed to the management on March 9, 2014 asking questions regarding her transfer.[16]

On March 10, 2014, a Memorandum was issued to petitioner directing her to explain within 24 hours from notice why she should not be penalized for insubordination for her repeated failure to sign the Notice to Transfer.[17] In her handwritten letter dated March 11, 2014, petitioner explained that she refused to sign the Notice to Transfer pending answers to the questions she sent to the management *via* e-mail.[18]

GRRI also issued petitioner a Notice of Preventive Suspension on March 14, 2014 placing her under preventive suspension until March 21, 2014 pending resolution of the charge against her.[19] Petitioner, however, failed to report back to work after the lapse of the period of her preventive suspension on March 22, 2014 until March 26, 2014.[20]

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[13] *Id.* at 38.

[14] *Id.*

[15] *Id.*

[16] *Id.* at 38, 72-73.

[17] *Id.* at 38.

[18] *Id.* at 39.

[19] *Id.*

[20] *Id.*

Thus, on March 26, 2014, GRRI's Human Resource (HR) department issued petitioner another Memorandum directing her to report to the HR department within 24 hours and to explain her absences without leave.[21] Upon reporting thereat, petitioner was handed the Termination Notice dated March 21, 2014 advising her that the management found her guilty of *"inhuman and unbearable treatment to person in authority; abuse of authority; serious misconduct — insubordination by not accepting her memorandum of re-assignment by the Executive Committee; and gross and habitual neglect of duties — AWOL"* and had decided to terminate her from employment effective immediately.[22]

Thus, petitioner filed a complaint for illegal dismissal and money claims (*i.e.*, underpayment of wages, non-payment of overtime pay, rest day premium and service incentive leave pay, unfair labor practice, damages, and separation pay).[23]

Ruling of the Labor Arbiter

In a Decision[24] dated March 24, 2015, the Labor Arbiter (LA) found that petitioner was illegally dismissed and directed respondents to pay petitioner full backwages, separation pay, and unpaid service incentive leave. The LA held that petitioner's failure to sign the Notice to Transfer does not in itself constitute serious misconduct and willful disobedience for her act is neither willful in character nor does it imply a wrongful intent. Furthermore, the facts of the case show that petitioner abided with the order of transfer despite her refusal to sign the Notice to Transfer, and that no harm or prejudice was caused to respondents by reason of petitioner's act.

The dispositive portion of the LA's Decision reads:

WHEREFORE, premises considered, the complainant is declared to have been illegally dismissed by respondents. Respondents La Luz

[21] *Id.* at 39, 73.

[22] *Id.* at 39.

[23] *Id.*

[24] *Id.* at 154-163.

Beach Resort and Spa, Inc./Ganco Resort and Recreation, Inc. are ordered to pay complainant her separation pay with full backwages in the total amount of **₱253,022.43**.

Likewise, it is ordered to pay complainant her unpaid service incentive leave pay in the amount of **₱5,679.23**.

All other claims are dismissed for lack of merit.

SO ORDERED.[25]

Respondents appealed the LA's Decision with the NLRC.

Ruling of the NLRC

In a Decision[26] dated July 30, 2015, the NLRC affirmed the LA's findings but modified the award of damages by deleting the award of separation pay.

The NLRC held that while the totality of infractions may justify an employee's dismissal, past infractions for which an employee has already been penalized, as in this case, can no longer be cited as bases for the present offense and cannot be collectively taken to justify an employee's termination. The NLRC also concurred with the LA that petitioner's failure to sign and accept the Notice to Transfer is not *per se* serious misconduct and willful disobedience. Likewise, the NLRC found no basis to dismiss petitioner on the ground of gross and habitual neglect of duties.

However, the NLRC held that petitioner cannot be left completely unaccountable for the two-day delay in complying with the transfer as well as the confluence of her actions revealing a brashness of language and tone. Thus, the NLRC found it just and proper to impose a penalty of three months suspension without pay on petitioner, which is deemed to have been completely served during the pendency of the case.

Lastly, the NLRC deleted the award of separation pay because there is no showing of strained relations between petitioner

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[25] *Id.* at 163.

[26] *Supra* note 4.

and respondents, and considering also that petitioner has already been reinstated in the payroll of GRRI upon the latter's receipt of the LA ruling.

The dispositive portion of the NLRC Decision reads:

> **WHEREFORE**, respondents' appeal is **DISMISSED**. The Decision dated March 24, 2015 of Labor Arbiter Danna M. Castillon is **MODIFIED** to (1) **DELETE** the award of separation pay, and (2) order respondents to **PAY** complainant Full Backwages reckoned from her dismissal on March 21, 2014 up to the time reinstatement is actually carried out, **less** the total monthly salary corresponding to complainant's three-month suspension which is deemed to have been fully served.
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> The rest of the Decision is **AFFIRMED**.
>
> x x x x x x x x x
>
> **SO ORDERED**.[27]

Aggrieved, respondents sought reconsideration of the said decision but this was denied in a Resolution[28] dated October 19, 2015. Thus, respondents filed a petition for *certiorari* before the CA.

Ruling of the Court of Appeals

In a Decision[29] dated June 23, 2016, the CA reversed and set aside the NLRC ruling and upheld the validity of petitioner's dismissal. The CA held that the NLRC abused its discretion when it failed to apply the principle of totality of infractions and in ruling that petitioner was illegally dismissed from employment. According to the CA, petitioner was already given a stern warning that her next violation of the company policy would warrant her immediate dismissal. The CA found petitioner's refusal to sign the Notice to Transfer as amounting to insubordination or willful disobedience. Thus, her previous infraction of refusal to accept walk-in guests, taken in conjunction

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[27] *Rollo*, pp. 81-82.

[28] *Supra* note 5.

[29] *Supra* note 2.

with her manifest refusal to accept her new assignment pursuant to the Notice to Transfer, served as valid grounds for her dismissal from employment.

The dispositive portion of the Decision of the CA reads:

> **WHEREFORE**, premises considered, the instant Petition for *Certiorari* is **GRANTED**. The Decision dated 30 July 2015 and Resolution dated 19 October 2015 of the National Labor Relations Commission in NLRC LAC NO. 07-001824-15 [NLRC CN. RAB IV-05-00735-14-B] are **ANNULLED** and **SET ASIDE**. Accordingly, private respondent Neren Villanueva's *Complaint* for illegal dismissal is **DISMISSED**.
>
> **SO ORDERED**.[30]

Petitioner filed a motion for reconsideration but the same was denied in a Resolution dated September 16, 2016. Hence, this Petition.

Petitioner insists that her past infractions cannot be used as basis for her dismissal and that the CA erred in applying the principle of totality of infractions.[31] Petitioner also argues that there is no basis to hold her liable for willful disobedience and habitual neglect of duty.[32] Even assuming that there were just causes to dismiss her, petitioner asserts that she was not afforded due process by GRRI.[33] Lastly, petitioner also claims entitlement to Service Incentive Leave Pay (SILP).[34]

In their Comment[35] dated November 10, 2017, respondents argue otherwise and aver that the totality of petitioner's infractions showing her willful disobedience to respondents merits her dismissal. Respondents did not, however, dispute petitioner's claim for SILP.

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[30] *Id.* at 47-48.

[31] See *id.* at 18-22.

[32] See *id.* at 22-24.

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

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

[35] *Id.* at 278-292.

In her Reply[36] dated April 23, 2018, petitioner fortified her arguments.

Issue

Whether the CA erred in reversing the NLRC ruling.

The Court's Ruling

The Petition is partly meritorious.

It is settled that the jurisdiction of the Court under Rule 45 is limited only to questions of law as the Court is not a trier of facts.[37] This rule, however, allows for exceptions such as when the findings of fact of the trial court, or in this case of the quasi-judicial agencies concerned, are conflicting or contradictory with those of the CA.[38]

The main issue in this case is whether petitioner was validly dismissed from employment.

In an illegal dismissal case, the *onus probandi* rests on the employer to prove that the employee's dismissal was for a valid cause.[39] A valid dismissal requires compliance with both substantive and procedural due process[40] — that is, the dismissal must be for any of the just or authorized causes enumerated in Article 297 [282] and Article 298 [283], respectively, of the Labor Code, and only after notice and hearing.[41]

The records of the case show that petitioner was charged with two infractions, *i.e.*, (1) insubordination for her failure to sign the Notice to Transfer and (2) habitual neglect for her

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[36] *Id.* at 324-335.

[37] *Gatan v. Vinarao*, G.R. No. 205912, October 18, 2017, 842 SCRA 602, 609.

[38] *Janssen Pharmaceutica v. Silayro*, 570 Phil. 215, 226-227 (2008).

[39] *Reyes v. Glaucoma Research Foundation, Inc.*, 760 Phil. 779, 789 (2015).

[40] *Dagasdas v. Grand Placement and General Services Corporation*, 803 Phil. 463, 478 (2017).

[41] *San Miguel Corporation v. NLRC*, 225 Phil. 302 (1989).

absences without leave from March 22 to March 26, 2014, as shown by the two memoranda served on her.

In the Memorandum dated March 10, 2014, GRRI charged petitioner with insubordination for her refusal to sign the Notice of Transfer which amounts to a non-compliance with procedure, *viz.*:

> Please explain within 24 hours why you should not be penalized with insubordination by not accepting in writing your memorandum of re-assignment.
>
> You have been re-assigned by the Executive Committee to function in a much needed area where your knowledge is expected to be shared with the need and growth of the company. However, **you refused to comply with its procedure by not signing and affirming your new work assignment**. Further, it has been noticed that **you are reporting and unofficially functioning on your new given assignment when in fact you have not complied with the procedure**.[42] (Emphasis supplied)

Insubordination or willful disobedience requires the concurrence of the following requisites: (1) the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a "wrongful and perverse attitude"; and (2) 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.[43] Both requirements are not present in this case.

As stated by petitioner in her handwritten explanation,[44] she withheld her signature on the Notice to Transfer because she was awaiting answers to the questions she raised to the management *via* e-mail. She cannot be forced to affix her signature thereon if she does not really fully understand the

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[42] *Rollo*, p. 122.

[43] *Gold City Integrated Port Service, Inc. (Inport) v. NLRC*, 267 Phil. 863, 872 (1990).

[44] *Rollo*, pp. 96-98.

reasons behind and the consequences of her transfer.[45] While her action is willful and intentional, it is nonetheless far from being "wrongful and perverse." In addition, respondents failed to prove that there is indeed an order or company procedure requiring a transferee's written conformity prior to the implementation of the transfer, and that such order or procedure was made known to petitioner.

Given the foregoing, there is no basis to dismiss petitioner on the ground of insubordination for her mere failure to sign the Notice to Transfer.

Relevantly, there is also no basis to impose a penalty of three-month suspension without pay on petitioner for her delay in assuming her new role at the Storage Department considering that she was not even cited by GRRI for said act. GRRI is already deemed to have waived its right to terminate or discipline petitioner on such ground. The case of *Exocet Security and Allied Services Corp. v. Serrano*[46] is instructive on this matter, *viz.*:

> Thus, it is manifestly unfair and unacceptable to immediately declare the mere lapse of the six-month period of floating status as a case of constructive dismissal, without looking into the peculiar circumstances that resulted in the security guard's failure to assume another post. This is especially true in the present case where the security guard's own refusal to accept a non-VIP detail was the reason that he was not given an assignment within the six-month period. The security agency, Exocet, should not then be held liable.
>
> Indeed, from the facts presented, Serrano was guilty of willful disobedience to a lawful order of his employer in connection with his work, which is a just cause for his termination under Art. 288 (previously Art. 282) of the Labor Code. **Nonetheless, Exocet did not take Serrano's willful disobedience against him. Hence, Exocet**

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[45] See *Notice to Transfer, id.* at 92-93, where it is stated that employees who affixed their signature "understood that the lateral transfer did not in any way affect or violated [their] rights as an employee [and that they] agree and accept [the] responsibilities [of their new assignment]."

[46] 744 Phil. 403 (2014).

is considered to have waived its right to terminate Serrano on such ground.[47] (Emphasis supplied; citation omitted)

Thus, the CA erred in imposing a three-month suspension without pay on petitioner.

Anent the charge of habitual neglect for petitioner's absences without leave, jurisprudence provides that in order to constitute a valid cause for dismissal, the neglect of duties must be both gross and habitual.[48] Gross negligence has been defined as "the want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them."[49] On the other hand, habitual neglect "imparts repeated failure to perform one's duties for a period of time, depending on the circumstances."[50] A single or isolated act of negligence does not constitute a just cause for the dismissal of the employee.[51]

Petitioner's four-day absence without leave is not gross nor habitual. Even so, petitioner's absences are still not justified. Petitioner alleged that she did not report back to work after serving her preventive suspension because the management did not reply to her query as to when she needed to report.[52] This reasoning does not justify her absences. The Notice of Preventive Suspension served on her clearly stated that the period of her preventive suspension was from March 14 to March 21, 2014. Thus, she was expected to report back to work on her next working day. Yet, she reported only on March 26, 2014. Therefore, while there may be no basis to dismiss her on the ground of gross and habitual neglect, petitioner is still guilty of having committed a violation. It is here that totality of

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[47] *Id.* at 420-421.

[48] *National Bookstore, Inc. v. Court of Appeals*, 428 Phil. 235, 246 (2002).

[49] *Id.* at 245.

[50] *Cavite Apparel, Inc. v. Marquez*, 703 Phil. 46, 55 (2013).

[51] *National Bookstore, Inc. v. Court of Appeals, supra* note 48 at 246.

[52] *Rollo*, p. 130.

infractions may be considered to determine the imposable sanction for her current infraction. In *Merin v. National Labor Relations Commission*,[53] the Court explained the principle of "totality of infractions" in this wise:

> **The totality of infractions or the number of violations committed during the period of employment shall be considered in determining the penalty to be imposed upon an erring employee.** The offenses committed by petitioner should not be taken singly and separately. Fitness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct and ability separate and independent of each other. While it may be true that petitioner was penalized for his previous infractions, this does not and should not mean that his employment record would be wiped clean of his infractions. After all, **the record of an employee is a relevant consideration in determining the penalty that should be meted out since an employee's past misconduct and present behavior must be taken together in determining the proper imposable penalty**. Despite the sanctions imposed upon petitioner, he continued to commit misconduct and exhibit undesirable behavior on board. Indeed, the employer cannot be compelled to retain a misbehaving employee, or one who is guilty of acts inimical to its interests. It has the right to dismiss such an employee if only as a measure of self-protection.[54] (Emphasis supplied; citations omitted.)

To be sure, the totality of an employee's infractions is considered and weighed in determining the imposable sanction for the current infraction.[55] It presupposes that the employee is already found guilty of the new violation, as in this case. Apropos, it is also worth mentioning that GRRI had already previously warned petitioner that the penalty for her next infraction would be elevated to dismissal. Thus, the dismissal of petitioner, on the basis of the principle of totality of infractions, is justified.

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[53] 590 Phil. 596 (2008).

[54] *Id.* at 602-603.

[55] *Aplicador v. Moriroku Philippines, Inc.*, G.R. No. 233133, October 17, 2018 (Unsigned Resolution); *Sy v. Banana Peel*, G.R. No. 213748, November 27, 2017, 846 SCRA 612, 630-631.

However, the Court notes that petitioner's dismissal is tainted with numerous procedural lapses.

The Court delineated the requirements of procedural due process in *King of Kings Transport, Inc. v. Mamac*,[56] *viz.*:

> (1) The first written notice to be served on the employees should **contain the specific causes or grounds for termination** against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, **the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.**[57] (Emphasis supplied; citation omitted)

The records show that GRRI failed to observe the foregoing requirements.

First, while the Termination Notice cited four grounds for petitioner's dismissal, the Memorandum dated March 10, 2014 only charged petitioner with insubordination for her refusal to sign the Notice to Transfer. *Second*, petitioner was only given 24 hours to submit an explanation. *Third*, no administrative hearing was held, or even scheduled. *Lastly*, the Termination Notice already cited petitioner's absences without leave as ground for her dismissal even before she was even given any opportunity to be heard.

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[56] 553 Phil. 108 (2007).

[57] *Id.* at 117.

Considering that a valid cause for petitioner's dismissal exists but the requirements of procedural due process were not observed, the award of nominal damages in the amount of ₱30,000.00 is in order.[58]

With respect to petitioner's claim for SILP, the Court finds that the same is in order. In *RTG Construction, Inc. v. Facto*,[59] the Court awarded money claims, particularly SILP, despite the validity of the employee's dismissal. The first paragraph of Article 95 of the Labor Code provides that every employee who has rendered at least one year of service shall be entitled to a yearly incentive leave of five days with pay. In the present case, petitioner had been in the employ of GRRI since 2002, or for 12 years, hence she is entitled to SILP. Considering that petitioner is claiming non-payment, the burden also rests on GRRI, as the employer, to prove payment.[60] Since, GRRI has not shown any proof that it has paid petitioner SILP or that it is exempted from paying the same, the CA erred in deleting the award of SILP. However, the computation of the LA, as affirmed by the NLRC, must be modified conformably with *Auto Bus Transport Systems, Inc. v. Bautista*.[61]

The LA's computation of SILP due to petitioner is limited only to three years, citing Article 291 of the Labor Code which provides for the three-year prescriptive period for money claims. However, in *Auto Bus Transport Systems, Inc. v. Bautista*, the Court held that the three-year prescriptive period commences not at the end of the year when the employee becomes entitled to the commutation of his service incentive leave, but only from the time the employee becomes entitled to the commutation of his service incentive leave, *i.e.*, from the time he demands its commutation or upon termination of his employment, as

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[58] *Licap Marketing Corp. v. Baquial*, 737 Phil. 349, 361 (2014) and *Better Buildings, Inc. v. NLRC*, 347 Phil. 521, 531 (1997).

[59] 623 Phil. 511 (2009).

[60] *Id.* at 520-521.

[61] 497 Phil. 863 (2005).

the case may be.[62] This pronouncement has also been affirmed by the Court in *Rodriguez v. Park N Ride, Inc.*[63] Thus, the computation of petitioner's SILP should cover the period from the beginning of her employment until its termination, as follows:

₱10,000.00 (12)/365 (5 days) (12 years) = ₱19,726.02

Finally, legal interest at the rate of 6% *per annum* is imposed on the total monetary award from the finality of this Decision until full payment.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is **PARTLY GRANTED.** The Court of Appeals Decision dated June 23, 2016 in CA-G.R. SP No. 143474 is **AFFIRMED** but subject to **MODIFICATION**.

Respondent Ganco Resort and Recreation, Inc. is ordered to pay petitioner Neren Villanueva Thirty Thousand Pesos (₱30,000.00) as nominal damages, and Nineteen Thousand Seven Hundred Twenty-Six and 2/100 Pesos (₱19,726.02) as service incentive leave pay. The total monetary award shall be subject to interest rate of 6% *per annum* from the finality of this Decision until full payment.

SO ORDERED.

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

Lopez, J., on official leave.

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[62] *Id.* at 877.

[63] 807 Phil. 747 (2017).

[*] Designated additional Member per Raffle dated December 11, 2019.

FIRST DIVISION

[G.R. No. 230904. January 8, 2020]

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

SYLLABUS

1. **CRIMINAL LAW; RAPE; ELEMENTS.—** The elements of rape by carnal knowledge under Article 266-A(1)(a) are: (1) the offender had carnal knowledge of a woman; and (2) such act was accomplished through force, threat, or intimidation.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; AN ACCUSED MAY BE CONVICTED OF RAPE ON THE BASIS OF THE VICTIM'S SOLE TESTIMONY PROVIDED IT IS CREDIBLE, CONSISTENT AND CONVINCING.—** Rape is a crime that is almost always committed in isolation or in secret, usually leaving only the victim to testify about the commission of the crime. As such, an accused may be convicted of rape on the basis of the victim's sole testimony provided it is credible, consistent and convincing.

3. **ID.; ID.; ID.; WHEN THE CONSISTENT AND FORTHRIGHT TESTIMONY OF A RAPE VICTIM IS CONSISTENT WITH MEDICAL FINDINGS, THE ESSENTIAL REQUISITES OF CARNAL KNOWLEDGE ARE DEEMED TO HAVE BEEN SUFFICIENTLY ESTABLISHED.—** As stipulated by both the prosecution and the defense, Dr. Legaspi examined AAA and found healed hymenal lacerations at the 4 o'clock, 8 o'clock and 12 o'clock positions. Hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration. And when the consistent and forthright testimony of a rape victim is consistent with medical findings, as here, the essential requisites of carnal knowledge are deemed to have been sufficiently established.

4. **CRIMINAL LAW; RAPE; ELEMENTS; WHEN THE FATHER COMMITS THE ODIOUS CRIME OF RAPE AGAINST HIS OWN DAUGHTER WHO WAS A MINOR AT THE TIME THE CRIME WAS COMMITTED, HIS MORAL ASCENDANCY OR INFLUENCE OVER THE**

LATTER SUBSTITUTES FOR VIOLENCE AND INTIMIDATION.— [W]hen the offender is the victim's father, there need not be actual force, threat or intimidation because when a father commits the odious crime of rape against his own daughter who was a minor at the time the crime was committed, his moral ascendancy or influence over the latter substitutes for violence and intimidation. Here, the fact that appellant is the live-in partner of AAA's mother, and whom she considered her *tatay* since she was six (6) years old, established his moral ascendancy over AAA. Appellant's moral ascendancy and influence over AAA substitutes for threat and intimidation.

5. ID.; SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT (RA 7610); LASCIVIOUS CONDUCT; ELEMENTS.— The elements of lascivious conduct under Section 5(b) of RA 7610 are as follows: (1) The accused commits the act of sexual intercourse or lascivious conduct; (2) The said act is performed with a child exploited in prostitution or other sexual abuse. "*children exploited in prostitution and other sexual abuse*" those children, whether male or female, (1) who for money, profit or any other consideration or (2) due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct; (3) The child, whether male or female, is below 18 years of age.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This appeal assails the Decision dated December 12, 2016[1] of the Court of Appeals in CA-G.R. CR-HC No. 07090 which

[1] Penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Magdangal M. de Leon and Elihu A. Ybañez; *rollo*, p. 2.

affirmed the verdict of conviction against appellant for two (2) counts of rape by carnal knowledge, rape by sexual assault, two (2) counts of acts of lasciviousness, and violation of Section 5(c) of Republic Act (RA) 9262.[2]

Proceedings before the Trial Court

The Charges and Plea

Under six (6) Informations dated August 8, 2006, appellant XXX[3] was charged as follows:

1. Criminal Case No. CR-06-8540 for rape by sexual assault:

That on or about the 3rd day of August 2006, at around 4:00 o'clock in the morning, in [redacted],[4] City of Calapan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd desire, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously sexually assault one AAA,[5] the seventeen (17) year old daughter of his common-law-wife, and living with him in the same house, by inserting his finger in her vagina, against her will and without her consent, acts of child abuse which debase, degrade and demean the intrinsic worth and dignity of the said AAA, as a human being, to her damage and prejudice.

Contrary to law.[6]

2. In Criminal Case No. CR-06-8541 for acts of lasciviousness:

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[2] Otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004."

[3] Pursuant to the Court's ruling in *People v. Cabalquinto* (533 Phil. 703 [2006]), the real name of the victim shall be withheld and fictitious initials will be used to represent her in its decisions. Likewise, the personal circumstances of the victim or any other information tending to establish or compromise her identity as well as those of her immediate family or household members shall not be disclosed.

[4] *Id.*

[5] *Id.*

[6] *Rollo,* p. 5.

That on or about the 5th day of August 2006, at around 8:00 o'clock in the evening, more or less, in [redacted], City of Calapan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, actuated by lust and lewd desire, by means of force and intimidation, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon the person of **BBB**,[7] a fifteen (15) year-old daughter of his common-law wife, living with him in the same house, by then and there touching her legs and private parts, against her will and without her consent, acts which debase, degrade or demean the intrinsic worth and dignity of the said **BBB**, to her damage and prejudice.

Contrary to law.[8]

3. In Criminal Case No. CR-06-8542 for violation of Section 5(c), in relation to Section 6(b) of RA 9262:

That on or about the 5th day of August 2006, at around 9:00 o'clock in the evening, more or less, in [redacted], City of Calapan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who is the father of CCC,[9] 8-year[s]-old, and stepfather of AAA, **17 year**[s] **old,** the latter being the daughter of accused's common-law-wife, with utter disregard of the respect owing to his said son and stepdaughter while armed with a bladed instrument, did then and there, willfully, unlawfully and feloniously attempt to cause said children physical harm by chasing them with the intention of causing them harm, thereby inflicting sufferings to the said CCC and AAA, acts which debase, degrade, and demean the intrinsic worth and dignity of the said children, to their damage and prejudice.

Contrary to law.[10]

4. In Criminal Case No. CR-06-8543 for attempted rape:

That on or about the 4th day of August 2006, at around 3:00 o'clock in the afternoon, at [redacted], City of Calapan,

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[7] *Supra* note 3.

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

[9] *Supra* note 3.

[10] *Rollo,* p. 6.

Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously with lewd design and by means of force, threat and intimidation commence the commission of the crime of rape against **AAA,** the 17-year-old daughter of his common-law-wife and living with him in the same house, directly by overt acts by kissing her, embracing her, forcing her to lay down and touching and mashing her breast, but said accused was not able to perform all the acts of execution that would consummate the crime of rape due to some cause other than his own spontaneous desistance; acts of sexual abuse which debase, degrade or demean the intrinsic worth and dignity of the said **AAA**, to her damage and prejudice.

Contrary to law.[11]

5. In Criminal Case No. CR-06-8544 for rape by carnal knowledge:

That on or about the 14th day of August 2002, at around 6:00 o'clock in the evening, in [redacted], City of Calapan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd desire, and by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously had carnal knowledge of **AAA**, the fourteen (14) year old daughter of his common-law-wife and living with him in the same house, against her will and without her consent, acts of child abuse which debase, degrade and demean the intrinsic worth and dignity of said **AAA**, as a human being, to her damage and prejudice.

Contrary to law.[12]

6. In Criminal Case No. CR-06-8545 for rape by carnal knowledge:

That on or about the 21st day of August 2002, at around 3:00 o'clock in the afternoon, in [redacted], City of Calapan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd desire, and by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously had carnal knowledge of the said **AAA,** the fourteen

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[11] *Id.* at 6-7.

[12] *Id.* at 7.

(14) year old daughter of his common-law-wife and living with him in the same house, against her will and without her consent, acts of child abuse which debase, degrade and demean the intrinsic worth and dignity of said **AAA**, as a human being, to her damage and prejudice.

Contrary to law.[13]

The cases were consolidated and raffled to Regional Trial Court-Br. 39, Calapan City, Oriental Mindoro. On arraignment, appellant pleaded *not guilty* to all six (6) charges. Joint trial ensued.[14]

Prosecution's Evidence

During the trial, the prosecution offered the testimonies of AAA, BBB, CCC and DDD.[15] AAA and BBB were DDD's children with her first live-in partner, while CCC was her son with appellant.

AAA testified that she was born on November 24, 1988. She first met appellant when her mother DDD introduced him as her new live-in partner. At that time, she was still six (6) years old and living with her aunt in Barangay Tibag, Calapan City. When she reached third grade, she started living with DDD and appellant in [redacted], Calapan City. She considered appellant her real father because her biological father left them when she was younger. Meanwhile, her sister BBB remained under the care of their grandmother in Naujan until she was already in high school. DDD and appellant had a child, CCC.[16]

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[13] *Id.* at 7-8.

[14] CA *rollo*, p. 69.

[15] Pursuant to the Court's ruling in *People v. Cabalquinto* (533 Phil. 703 [2006]), the real name of the victim shall be withheld and fictitious initials will be used to represent her in its decisions. Likewise, the personal circumstances of the victim or any other information tending to establish or compromise her identity as well as those of her immediate family or household members shall not be disclosed.

[16] CA *rollo*, p. 70.

The first time appellant raped her was on August 14, 2002. The night before the incident, on appellant's birthday, she overheard appellant talking to DDD downstairs in their house, asking permission to treat AAA as his wife (*"Hinihingi po ako ng step-father ko sa nanay ko. Gusto niya po akong asawahin"*).[17] DDD got mad and immediately refused appellant's request. Alarmed by appellant's intention, she confronted DDD regarding the matter but DDD assured her that such incident would never happen. She felt relieved by DDD's assurance at first but realized later that the person whom she looked up to as her own father would still carry out his bestial desires.[18]

On the day of the incident, around 6 o'clock in the evening, she was left alone doing kitchen chores when appellant suddenly held her arms and forcibly leaned her against the wall. Appellant covered her mouth and removed her jogging pants. He took off his trousers as well. She struggled to free herself from appellant but the latter was just too strong. She also tried to shout for help but appellant simply covered her mouth again and threatened to kill DDD if she reported the incident to anyone.[19]

Appellant was behind her as he pushed her facing the wall. He forcibly inserted his penis into her vagina from behind. She felt a sharp pain during the insertion because it was the first time she had sexual intercourse. And just when she thought that appellant had already satisfied his lust, he sexually assaulted her by inserting his finger inside her private organ. Frightened and helpless, she could no longer fight back. Appellant only stopped when he realized that DDD was already on her way back home. Upon DDD's arrival, appellant acted as if nothing happened. For her part, she was too afraid to tell her mother about the incident for fear that appellant might hurt DDD.[20]

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[17] TSN, June 25, 2007, p. 13.

[18] *Rollo*, p. 9; CA *rollo*, p. 71.

[19] CA *rollo*, p. 70.

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

On August 21, 2002, appellant raped her once again. Around 4 o'clock in the afternoon that day, while DDD and CCC were away, appellant shoved her face-down on the sofa. While she was in a stooping position (*nakadapa*), appellant removed her jogging pants and forcibly inserted his penis into her vagina. She felt pain while appellant made push and pull motions with his erect penis. She was too weak to resist. With her mouth against the sofa, she, too, failed to shout for help. Once again, she kept her silence for fear that appellant would kill DDD.[21]

The third incident of rape was on August 3, 2006. She was already seventeen (17) years old but still shared a bedroom with all her family members. That morning, she was awakened by the malicious embrace and kisses of appellant who groped her inside her jogging pants with his left hand. He proceeded to insert his middle finger into her vagina several times. She felt pain as appellant's nails scratched the inner parts of her vagina. Although CCC was asleep in the same room, this did not prevent appellant from carrying out the deed.[22]

In the evening of August 4, 2006, she was again molested by appellant. While she and appellant were alone inside their house, appellant started kissing and caressing her as she cleaned kitchen utensils. Appellant placed his hands inside her shirt and mashed breasts. He only withdrew from taking advantage of her when he saw DDD about to arrive. Thereupon, he pretended to have sent her to an errand and left the house. The morning after, appellant berated everyone in the house for no apparent reason. He would usually lose his temper and act that way whenever he failed to satisfy his lust at her expense.[23]

On the night of August 5, 2006, while her family was watching television, appellant arrived home drunk and again berated everyone. He ridiculed her family, telling them they were good for nothing. He also called them demons and threatened to hack

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[21] *Id.* at 71.

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

[23] *Id.* at 72.

them into pieces. Later, she saw appellant come down the stairs, carrying a *samurai*. She immediately pulled CCC and ran out the house. They were separated from BBB and DDD who ran ahead of them but they were able to catch up with each other along the way. They proceeded to the police station to have the incident entered in the police blotter but the police did not accompany them back to their house.[24]

On their way home, they saw appellant burning their things. Shaken by what they saw, they decided to ask police officers to escort them home. The police officers obliged and immediately arrested appellant in their house. [25] When she saw appellant behind bars, she finally mustered enough courage to report the abuses she experienced in his hands. But she was more shocked to have learned that appellant molested BBB that same night, too.[26]

BBB testified that she was fifteen (15) years old when appellant performed lascivious acts on her. On August 5, 2006, around 8 o'clock in the evening, an hour before appellant ran amok, appellant molested her by touching her thighs and breasts. She did not cry for help because appellant threatened to kill her family if she disclosed the incident to anyone. This, however, was not the first time she was sexually violated by appellant. She would experience it whenever she was left alone with appellant in their home.[27]

CCC corroborated AAA's testimony. On August 5, 2006, around 9 o'clock in the evening, appellant berated him and his sister before chasing them with a bladed weapon. They immediately went to the police station to report the incident. But when they returned home, they saw appellant burning their things so they went back to the police station to seek assistance,

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[24] *Id.*

[25] *Id.*

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

[27] *Rollo,* p. 10; CA *rollo,* p. 73.

resulting in appellant's arrest. He was only thirteen (13) years old at that time.[28]

DDD testified that when she started living together with appellant, AAA was living with her (DDD's) sister while BBB, with her mother. AAA and BBB only came to live with them when they reached third grade and high school, respectively. AAA and BBB considered appellant as their *tatay*.[29]

On August 5, 2006, she was at home with all her children when appellant arrived drunk. They got frightened when he told them *"Mga hayop kayo! Mga demonyo kayo! Tatadtarin ko kayo! Papatayin ko kayo!"* Appellant went upstairs and they heard banging noises. When appellant went back downstairs, he was already carrying a bladed weapon so she and the children ran outside. She and BBB ran towards the barangay captain's house while appellant chased AAA and CCC. Appellant stopped chasing them when he saw one (1) of their neighbors Eddie Boy. They reported the incident to the police but when they got back home, appellant was already burning their things.[30]

The prosecution and the defense stipulated on the proposed testimony of **Dr. Angelita Legaspi** who examined AAA and found healed hymenal lacerations at 4 o'clock, 8 o'clock and 12 o'clock positions.[31] She formalized her findings in the Medical Certificate she issued to AAA.

Defense's Evidence

Appellant was the lone witness for the defense. He denied the first and second charges of rape against him. He claimed it was impossible for him to have committed these counts of rape since he was working in Puerto Galera for most of 2002. He was not free to leave work and visit DDD and the children regularly in Calapan City.[32]

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[28] CA *rollo*, p. 73.

[29] *Rollo*, pp. 10-11.

[30] *Id.* at 11.

[31] *Id.*

[32] CA *rollo*, p. 74.

He also denied sexually assaulting AAA on August 3, 2006. He could not have committed the crime especially in the presence of CCC in the room. As for BBB's claim that appellant molested her on August 5, 2006, no such molestation could have taken place since he went straight to bed that night.[33]

The alleged August 5, 2006 incident was fabricated. DDD's three (3) children probably held a grudge against him because days before his arrest, he and DDD had several bitter quarrels over the ₱80,000.00 which DDD owed him.[34]

The Trial Court's Ruling

Under Joint Decision dated June 24, 2014,[35] the trial court rendered a verdict of conviction, thus:

ACCORDINGLY, in view of the foregoing, judgment is hereby rendered as follows:

1. In Criminal Case No. CR-06-8540, this Court finds the accused *XXX* **GUILTY** beyond reasonable doubt as principal of the crime charged against him in the aforequoted Information, and hereby sentences him to suffer the penalty of **RECLUSION PERPETUA, WITHOUT ELIGIBILITY FOR PAROLE,** and to **PAY** the private complainant the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱25,000.00 as exemplary damages, and to pay costs;

2. In Criminal Case No. CR-06-8541, this Court finds the accused *XXX* **GUILTY** beyond reasonable doubt as principal of the crime of ACTS OF LASCIVIOUSNESS, defined and penalized under Article 336 of the RPC, and hereby sentences him to suffer the indeterminate penalty of imprisonment ranging from **SIX (6) MONTHS OF ARRESTO MAYOR, AS MINIMUM, TO SIX (6) YEARS OF PRISION CORRECCIONAL, AS MAXIMUM,** and to **PAY** the private complainant the amount of ₱20,000.00 as civil indemnity, ₱30,000.00 as moral damages, ₱30,000.00 as exemplary damages, and to pay the costs.

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[33] *Id.*

[34] *Id.*

[35] Penned by Judge Manuel C. Luna, Jr.; CA *rollo*, p. 65.

3. In Criminal Case No. CR-06-8542, this Court finds the accused *XXX* **GUILTY** beyond reasonable doubt as principal of the crime charged against him in the aforequoted Information and in default of any mitigating or aggravating circumstances, hereby sentences him to suffer the straight penalty of imprisonment for **THREE (3) MONTHS OF ARRESTO MAYOR IN ITS MEDIUM PERIOD** and to **PAY** the FINE OF ONE HUNDRED THOUSAND PESOS (₱100,000.00).

4. In Criminal Case No. CR-06-8543, this Court finds the accused *XXX* **GUILTY** beyond reasonable doubt as principal of the crime of ACTS OF LASCIVIOUSNESS, defined and penalized under Article 336 of the RPC, and hereby sentences him to suffer the indeterminate penalty of imprisonment ranging from **SIX (6) MONTHS OF ARRESTO MAYOR, AS MINIMUM, to SIX (6) YEARS OF PRISION CORRECIONAL** *(sic)***, AS MAXIMUM,** and to **PAY** the private complainant the amount of ₱20,000.00 as civil indemnity, ₱30,000.00 as moral damages, ₱30,000.00 as exemplary damages, and to pay the costs.

5. In Criminal Case No. CR-06-8544, this Court finds the accused *XXX* **GUILTY** beyond reasonable doubt as principal of the crime charged against him in the aforequoted Information, and hereby sentences him to suffer the penalty of **RECLUSION PERPETUA, WITHOUT ELIGIBILITY FOR PAROLE,** and to **PAY** the private complainant the amount [of] ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱25,000.00 as exemplary damages, and to pay costs;

6. In Criminal Case No. CR-06-8545, this Court finds the accused *XXX* **GUILTY** beyond reasonable doubt as principal of the crime charged against him in the aforequoted Information, and hereby sentences him to suffer the penalty of **RECLUSION PERPETUA**, **WITHOUT ELIGIBILITY FOR PAROLE,** and to **PAY** the private complainant the amount [of] ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱25,000.00 as exemplary damages, and to pay costs.

The aforementioned penalties shall be served by the accused **SUCCESSIVELY.**

SO ORDERED.[36]

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[36] *Id.* at 84-86.

The trial court anchored its guilty verdict on the testimonies of the prosecution witnesses.[37] Against their positive and categorical testimonies, appellant merely invoked denial and alibi which were inherently weak.[38]

More, the two (2) counts of rape by carnal knowledge and one (1) count by sexual assault committed against AAA (Criminal Case Nos. CR-06-8540, CR-06-8544 and CR-06-8545) were qualified by minority and relationship. Thus, the penalties against appellant for these crimes would have been death were it not for the enactment of RA 9346.[39]

The charge of attempted rape committed against AAA (Criminal Case No. CR-06-8543), however, was downgraded to acts of lasciviousness considering the prosecution's failure to prove that appellant attempted touch AAA's vagina.[40] Thus, the trial court convicted appellant of two (2) counts of acts of lasciviousness, the other having been committed against BBB (Criminal Case No. CR-06-8541). It also considered the victims' minority and their relationship with appellant in determining the proper penalty against the latter.[41]

Finally, the trial court found appellant's acts of berating DDD's children, running amok, and chasing them with a bladed weapon, to be clear acts of violence penalized under Section 5(b) of RA 9262.[42]

Proceedings before the Court of Appeals

Appellant faulted the trial court for rendering a verdict of conviction despite the alleged incredibility and implausibility of the testimonies of the prosecution witnesses.

On the charges of rape, appellant argued:

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[37] *Id.* at 80.

[38] *Id.* at 81.

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

[40] *Id.* at 82.

[41] *Id.* at 83.

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

First. It was unimaginable why DDD, after hearing appellant's supposed indecent proposal, would not take extraordinary measures to ensure that her daughter would be safe from any form of molestation. She did not even attempt to physically separate her from appellant. She could have prevented the rape had she sent AAA to her grandmother's house where BBB was staying.[43]

Second. The Informations for rape alleged that appellant had carnal knowledge of AAA through force, intimidation and threat. But AAA's testimony did not establish any basis for any alleged threat. Nothing on record showed that appellant was armed with a weapon. None of the witnesses testified on whether appellant had violent tendencies or history of inflicting physical harm. More, it was unusual for AAA to have remained silent while she was being molested when she could have easily pleaded with appellant for mercy.[44]

Third. AAA knew that DDD either goes to the market or to meetings at the cooperative in the afternoon while appellant manages his upholstery business at home. Knowing their routines, she could have easily avoided being left at home with appellant had she exerted more effort. She could have just gone with her mother to the market or to her meetings since she was not under any compulsion to stay home.[45]

Fourth. The alleged rape incident on August 3, 2006 was highly improbable since CCC was asleep in the same bedroom. More, BBB and DDD were already awake when the alleged crime was committed; appellant would not have risked the chance of BBB and DDD stumbling upon them in a compromising situation.[46]

Fifth. Dr. Angelita Legazpi's report on the cervical vaginal examination she conducted on AAA should not be admitted in

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[43] *Id.* at 53-56.

[44] *Id.* at 56.

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

[46] *Id.* at 58.

evidence since she did not testify in open court. Also, her findings could not have proved AAA was raped twice in 2002 since the examination was conducted four (4) years later in 2006.[47]

Finally. It was unfair for the trial court to have placed the burden on appellant to prove his innocence despite the defenses he offered.[48]

On the charge of acts of lasciviousness against BBB, appellant countered that the testimonies of the prosecution witnesses on the events which supposedly happened on August 5, 2006 were contradictory. According to AAA and CCC, appellant arrived home drunk that evening. He allegedly berated and chased them with a *samurai*. BBB testified, however, that she was alone in the house when appellant purportedly molested her.[49]

On the alleged violation of RA 9262, appellant harped on the prosecution's alleged failure to prove that the chasing incident actually happened. The prosecution witnesses claimed that other people saw it as it occurred but none of them testified in court.[50]

The Office of the Solicitor General (OSG), through Assistant Solicitor General Derek R. Puertollano and Associate Solicitor II Mark Ranier C. Arenas, defended the verdict of conviction.

It maintained that AAA's testimony sufficiently established that she was raped by appellant on August 14, 2002, August 21, 2002, and August 3, 2006. No decent and sensible woman will publicly admit to having been raped and run the risk of public contempt unless she is, in fact, a rape victim.[51] More, the crimes were qualified by AAA's minority and her relationship with appellant.

AAA and BBB gave credible testimonies on the lascivious acts which appellant committed on them. The alleged

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

[48] *Id.* at 59.

[49] *Id.* at 59-60.

[50] *Id.* at 60.

[51] *Id.* at 113-117.

inconsistency in their testimonies pertaining to whether BBB was alone in the house on August 5, 2006, around 8 o'clock in the evening, was too minor and immaterial to destroy their credibility as witnesses.[52]

As for the chasing incident, AAA and CCC's testimonies sufficiently established that the same did transpire. More, the reluctance of witnesses to testify in court regarding the incident was understandable.[53]

The Court of Appeals' Ruling

Through its assailed Decision dated December 12, 2016, the Court of Appeals affirmed with modification of the penalties, *viz.*:

WHEREFORE, premises considered, the instant appeal is **DENIED**. The assailed June 24, 2014 Decision of the Regional Trial Court (RTC), Branch 39, of the City of Calapan, Oriental Mindoro, is **MODIFIED** in that:

(1) In Criminal Case No. CR-06-8540, for rape by sexual assault:

(a) the appellant is sentenced to suffer an indeterminate penalty of nine (9) years of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum;

(b) the award of civil indemnity is reduced to ₱30,000.00;

(c) the award of moral damages is reduced to ₱30,000.00;

(d) the award of exemplary damages is increased to ₱30,000.00; and

(e) all damages awarded shall earn interest at the rate of six percent (6%) *per annum* from date of finality of this judgment until fully paid.

(2) In Criminal Case No. CR-06-8541, for acts of lasciviousness:

(a) the maximum term of the penalty is reduced to two (2) years, four (4) months and one (1) day of *prision correccional*;

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[52] *Id.* at 117-119.

[53] *Id.* at 119-121.

(b) the award of exemplary damages is reduced to ₱10,000.00; and

(c) all damages awarded shall earn interest at the rate of six percent (6%) *per annum* from date of finality of this judgment until fully paid.

(3) In Criminal Case No. CR-06-8542, for violation of Section 5 (c) of Republic Act No. 9262, appellant is ordered to undergo mandatory psychological counseling and shall report compliance to the RTC.

(4) In Criminal Case No. CR-06-8543, for acts of lasciviousness:

(a) the maximum term of the penalty is reduced to two (2) years, four (4) months and one (1) day of *prision correccional*;

(b) the award of exemplary damages is reduced to ₱10,000.00; and

(c) all damages awarded shall earn interest at the rate of six percent (6%) *per annum* from date of finality of this judgment until fully paid.

(5) In Criminal Case No. CR-06-8544, for qualified rape, the awards of civil indemnity, moral damages and exemplary damages are all increased to ₱100,000.00 each. In addition, all damages awarded shall earn interest at the rate of six percent (6%) *per annum* from date of finality of this judgment until fully paid.

(6) In Criminal Case No. CR-06-8545, for qualified rape, the awards of civil indemnity, moral damages and exemplary damages are all increased to ₱100,000.00 each. In addition, all damages awarded shall earn interest at the rate of six percent (6%) *per annum* from date of finality of this judgment until fully paid.

SO ORDERED.[54]

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal. In compliance with Resolution dated July 12, 2017,[55] both appellant and the OSG manifested

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[54] *Rollo*, pp. 22-23.

[55] *Id.* at 45.

that, in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.[56]

Issue

Did the Court of Appeals err in affirming the verdict of conviction against appellant for two (2) counts of rape by carnal knowledge, rape by sexual assault, two (2) counts of acts of lasciviousness, and violation of Section 5(c) of Republic Act (RA) 9262?

Ruling

Appellant is guilty of two (2) counts of rape by carnal knowledge committed against AAA

Article 266-A of the Revised Penal states:

Article 266-A. Rape: *When and How Committed.* - Rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

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[56] *Id.* at 45 and 52.

The elements of rape by carnal knowledge under Article 266-A(1)(a) are: (1) the offender had carnal knowledge of a woman; and (2) such act was accomplished through force, threat, or intimidation.[57]

Rape is a crime that is almost always committed in isolation or in secret, usually leaving only the victim to testify about the commission of the crime. As such, an accused may be convicted of rape on the basis of the victim's sole testimony provided it is credible, consistent and convincing.[58]

Here, the prosecution sufficiently established that on August 14, 2002 and August 21, 2002, appellant had carnal knowledge of AAA, a minor daughter of her live-in partner DDD, through force, threat and intimidation. AAA testified on the first rape incident, thus:

PROS. JOYA: You said that on that date end time you were in the kitchen, cleaning, when your stepfather entered the same. When you were alone in the kitchen together with your stepfather what happened?

[AAA]: When he was able to lean me on the well, he covered my mouth so that l could not shout. He started to remove my jogging pants.

Q: That time, how old were you, Ms. Witness?
A: I was 14 Ma'am.

x x x x x x x x x

Q: Where did your mother go at that time?
A: She went to the market Ma'am.

Q: According to you he leaned you on the wall, covered your mouth and removed your jogging pants, what happened after that?
A: After removing my jogging pants, he also removed his short pants. His hand that was covering my mouth was released.

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[57] *People v. Bentayo*, 810 Phil. 263, 269 (2017).

[58] See *People v. Ortega*, 680 Phil. 283, 894 (2012).

I tried to push him away but I could not because he was very strong.

Q: Why did you not shout at the time when his hand covering your mouth was removed?
A: Because every time I would attempt to shout, he would again cover my mouth and threaten me that if ever I would shout and tell the matter to anybody, he would kill my mother.

Q: After he removed his shorts according to you, you tried to fight back. What happened? Were you successful in fighting XXX?
A: No Ma'am.

Q: After he removed his shorts, what happened next?
A: He tried hard to insert his organ to my sex organ.

Q: At that time, what was your position?
A: I was standing.

Q: Straight or what?
A: I was leaning on the wall. Every time I would try to bow down to raise my jogging pants, he would push me and I could not extricate from him.

Q: You said you were leaning on the wall, facing the wall or against the wall?
A: I was facing the wall.

x x x x x x x x x

Q: You said that he was trying to insert his organ on your vagina. From what position was he trying to do that?
A: At my back.

Q: Was he successful in inserting his penis in your vagina?
A: Yes, Ma'am.

Q: While he was inserting his penis in your vagina, what did you feel?
A: It was painful.

Q: Aside from inserting his penis in your vagina, what, if any, was the accused doing?
A: He was fingering me.

Q: What do you mean by "fingering me"?
A: He was inserting his finger inside my vagina.

Q: Which happened first, that fingering you or inserting his organ in your vagina?
A: He first inserted his penis in my vagina.

Q. For how long was the penis of your stepfather inside your vagina?
A: It seemed long.

Q: Pardon me for asking this Ms. Witness, before that Incident, have you had any experience of sexual intercourse?
A: None Ma'am.

Q: Considering that according to you this is your first experience of sexual intercourse, what did you feel when the accused was doing this to you forcibly?
A: I was very mad at him.

Court Interpreter: Witness was crying while answering the question of the prosecutor.[59]

As for the second rape incident on August 21, 2002, AAA testified:

PROS. JOYA: You said that your mother left on that day, August 21. Where was your little brother, CCC?

AAA: He was with my mother.

Q: You know that you would be left alone with the accused, why did you not go with your mother and your little brother?
A: My stepfather would not allow me to go with my mother during that time.

Q: You said you and your stepfather were alone in your house. When you were in the sala, he suddenly pulled you to where did he pull you?
A: To the sofa.

Q: He pulled you towards the sofa. What was your position after he pulled you?
A: I stooped down, *"nakasubsob"*, in the sala set.

Q: At that time, what were you wearing, Ms. Witness?
A: I was still wearing pants. I used to wear jogging pants.

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[59] TSN, June 25, 2007, pp. 15-19.

Q: On the sofa, with your face against the sofa, what happened Ms. Witness?
A: He tried to pull down my jogging pants and tried to insert his sex organ to mine even if I was stooping down or *nakadapa*.

Q: Why did you not resist?
A: He succeeded in doing so.

Q: What did you feel when the accused Inserted his pants into your vagina?
A: Of course I felt pain.

Q: For how long was the penis of your stepfather inside you?

A: Only for a while.

Q: What were you doing white his penis was inside you Ms. Witness?
A: Nothing. I just cried.

Q: Why did you not shout?
A: I could not shout because he was on top of me and my mouth was pushed through the sala set.[60]

Indeed, central to appellant's conviction for rape was the credible and convincing testimony of his minor victim AAA. Her revelation that appellant forcibly had carnal knowledge of her not once but twice, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the sordid details of the assaults on her dignity, could not be so easily dismissed as mere concoction.[61] It is highly improbable that a girl, only seventeen (17) years old, would fabricate a story that would expose herself and her family to a lifetime of dishonor,[62] especially when her charge would mean the long-term imprisonment, if not death, of her "*tatay.*"

By itself, AAA's testimony withstands scrutiny sufficient to sustain a verdict of conviction. But when corroborated by

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[60] TSN, June 25, 2007, pp. 23-25.

[61] *People v. Cadano, Jr.*, 729 Phil. 576, 585 (2014).

[62] *People v. Peyra*, G.R. No. 225339, July 10, 2019.

physical evidence, AAA's testimony assumes even more probative weight.

As stipulated by both the prosecution and the defense, Dr. Legaspi examined AAA and found healed hymenal lacerations at the 4 o'clock, 8 o'clock and 12 o'clock positions. Hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration. And when the consistent and forthright testimony of a rape victim is consistent with medical findings, as here, the essential requisites of carnal knowledge are deemed to have been sufficiently established.[63]

Appellant, nevertheless, claims that the prosecution failed to establish his supposed use of force, threat and intimidation in the commission of the rapes. For nothing on record showed that he was armed. More, it was unusual for AAA to have remained silent throughout her ordeal.

We are not persuaded.

Threat or intimidation need not be shown by appellant's use of a weapon. Instead, these concepts must be viewed in light of AAA's perception and judgment at the time of rape, and not by any hard and fast rule. It is enough that they produced fear – that if she does not yield to the bestial demands of appellant, something would happen to her at the moment or thereafter, as when she was threatened with death if she reports the incident.[64]

At any rate, the Court held in ***People v. Bentayo***[65] that when the offender is the victim's father, there need not be actual force, threat or intimidation because when a father commits the odious crime of rape against his own daughter who was a minor at the time the crime was committed, his moral ascendancy or influence over the latter substitutes for violence and intimidation.[66] Here, the fact that appellant is the live-in partner

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[63] *People v. Sabal,* 734 Phil. 742, 746 (2014).

[64] *People v. Espinosa,* 476 Phil. 42, 55-56 (2004).

[65] *Supra* note 57.

[66] *Id.*

of AAA's mother, and whom she considered her *tatay* since she was six (6) years old, established his moral ascendancy over AAA. Appellant's moral ascendancy and influence over AAA substitutes for threat and intimidation.[67]

AAA could not also be faulted for her failure to shout for help. Rape victims react differently. There is no standard form of reaction for a woman when facing a shocking and horrifying experience such as rape. The workings of the human mind placed under emotional stress are unpredictable, and people react differently: some may shout, some may faint, and some may be shocked into insensibility, while others may openly welcome the intrusion. None of these conducts, however, impair the credibility of a rape victim.[68]

Appellant next claims that these incidents could have been avoided had DDD taken extraordinary measures to ensure AAA's safety, such as physically separating them and sending AAA to live with her grandmother. More, AAA was well aware of DDD's routine of leaving their house every afternoon. Hence, she could have exerted more effort to avoid being left alone at home with appellant.

In so arguing, appellant essentially blames AAA and DDD for exposing AAA to a vulnerable situation. This is unacceptable. Indeed, the Court has chastised appellants for resorting to the appalling act of victim-blaming. In ***People v. Villaros,***[69] the Court pronounced:

> This reasoning is outrageous, if not outright despicable. In his desperate attempt to exculpate himself from criminal liability, the accused-appellant turned on his victim who, to repeat, was a minor at the time the rape incidents were committed, and blamed her for putting herself in a vulnerable position ***in her own home***. Grasping at straws, the accused-appellant not only committed the abhorrent practice of victim-blaming so prevalent in sexual abuse cases, but he

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[67] See *People v. Belen*, 803 Phil. 751, 774 (2017).

[68] *People v. Palanay*, 805 Phil. 116, 126-127 (2017).

[69] G.R. No. 228779, October 08, 2018.

also failed to recognize that he made the irrational proposition that the victim should not have been comfortable ***in her own abode***. (Emphasis and italics in the original)

In fine, the trial court and the Court of Appeals correctly gave credence to AAA's testimony. Surely, the trial court's factual findings on the credibility of witnesses are accorded high respect. This is because the trial court has the unique opportunity to observe the witnesses' demeanor, and is in the best position to discern whether they are telling the truth or not.[70] This rule becomes more compelling when such factual findings carry the full concurrence of the Court of Appeals, as here.[71]

In this light, appellant's negative and self-serving defenses of denial and alibi crumble and cannot prevail over AAA's affirmative testimony and her categorical and positive identification of the appellant as the person who raped her.[72]

In any event, appellant's claim that he was in Puerto Galera when the two (2) counts of rape were committed is no reason for this Court to render a verdict of acquittal. Puerto Galera is only about 40 kilometers from Calapan City. The proximity between the two places does not render appellant's commission of the crime on two separate occasions impossible.

Appellant committed two (2) counts of lascivious conduct on AAA

AAA testified on the sexual assault she experienced in the hands of appellant on August 3, 2006:

> PROS. JOYA: So what happened, Miss Witness while you were still upstairs with your little brother and the accused in the same room?

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[70] See *People v. Nelmida,* 694 Phil. 529, 556 (2012).

[71] See *People v. Regaspi*, 768 Phil. 593, 598 (2015).

[72] See *People v. Gabriel,* 807 Phil. 516, 524 (2017).

A: He went near me and tried to start embracing me since he was stronger than I am, although I was trying to struggle, I could not do so Ma'am.

Q: Your mother and your sister BBB was just downstairs, why did you not shout for help?
A: Because he was threatening me that if I would tell this matter to my mother, he would kill her Ma'am.

Q: And you believed his threat?
A: Yes Ma'am.

Q: So what happened while the accused was trying to embrace and kiss you?
A: He was trying to insert his hand inside my jogging pants Ma'am.

Q: Was he successful in inserting his hand inside your jogging pants?
A: Yes Ma'am;

Q: What did he do after?
A: He started kissing me and then his hand remained on my private part Ma'am.

Q: Moving to what direction?
A: I cannot explain how but his hand was moving.

PROS. JOYA: The witness is crying while answering the question, Your Honor.

Q: So for how long did the hand of the accused was in your private part?
A: Only for a while Ma'am.

Q: And for a while that it was in your vagina. how did (discontinued) in what way was (discontinued) please explain to us, Miss Witness the hand of the accused was doing in your vagina?
A: His hand was continuously moving and it seemed that he was inserting in and out of his finger into my vagina, Ma'am.

Q: Pardon me for using this word Miss Witness but do I understand that he fingered you or he inserted his finger into your vagina?
Court Interpreter: Witness nodded.

PROS. JOYA. What did you feel, Miss Witness when the finger of the accused was going in and out of your vagina?

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A: It was painful because his nail would touch the inner portion of my vagina, Ma'am.[73]

AAA also testified that appellant molested her on August 4, 2006, *viz.*:

Q: So what happened when you were alone with the accused on August 4, 2006?
A: He went near me, started kissing me and embracing me and then he inserted his hand inside my shirt ma'am.

Q: So what happened, Miss Witness while the accused's hand was inside your shirt?
A: He was mashing my breast, ma'am.

Q: And what was your position during that time?
A: He was at my back, ma'am.

Q: And in what part of the house were you then?
A: Near the kitchen ma'am.

Q: Before the incident happened what were you doing?
A: I was about to clean our kitchen utensils ma'am.

Q: So he came from behind you, what did you feel when you felt his hand on your body?
A: "Nandidiri po ako sa kanya" whenever he would touch or mash my breast, it hurts ma'am.

Q: So Miss Witness, aside from mashing your breast, kissing and embracing you, what did the accused do, if any?
A: Nothing more because he already saw my mother coming ma'am.

Q: Were you able to likewise see your mother coming?
A: No ma'am.

Q: What did the accused do upon noticing that your mother was arriving?
A: Nothing ma'am, he left and pretended that he was sending me to an errand.

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[73] TSN, July 15, 2008, pp. 7-10.

Q: What did you do when your mother arrived?
A: None ma'am. I just remained silent.

Q: Why did you not report the incident to your mother?
A: Because I was afraid, ma'am.

Q: Afraid of what?
A: About any possible thing that he would do to my mother, ma'am.[74]

Contrary to appellant's defense, CCC's presence in the same room on August 3, 2006 did not render impossible appellant's act of sexually assaulting AAA right there. Instead, appellant's depraved behavior only proved that lust is not a respecter of people, time, or place.[75]

Noted in ***People v. Peyra,***[76] we have already encountered far too many instances where rape was committed in plain view. We even took judicial notice of the fact that among poor couples with big families cramped in small quarters, copulation does not seem to be a problem despite the presence of other persons there. Rape could be committed under circumstances as indiscreet as a room full of family members sleeping side by side.

Appellant's act of inserting his finger into AAA's vagina would have amounted to rape by sexual assault punishable under Article 266-A(2) of the Revised Penal Code, as amended. Considering, however, that AAA was only seventeen (17) years old when she was abused by appellant, there is a need to modify the nomenclature of appellant's crime.

In ***People v. Tulagan***,[77] the Court elucidated that when sexual assault is committed against a victim 12 years old or older but below 18, or is 18 years old but under special circumstances, the crime committed is lascivious conduct under Section 5 (b)

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[74] *Id.* at 16-17.

[75] See *People v. Ofemiano,* 625 Phil. 92, 100 (2010).

[76] *Supra* note 62.

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

of RA 7610, the *Special Protection of Children Against Abuse, Exploitation and Discrimination Act, viz.*:

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:

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(b) Those who commit the act of sexual intercourse or **lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse**: Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, 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.

The Implementing Rules and Regulations (IRR) of RA 7610 defines lascivious conduct, thus:

Section 2. Definition of Terms. — As used in these Rules, unless the context requires otherwise —

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h. "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; (emphasis added)

The elements of lascivious conduct under Section 5(b) of RA 7610 are as follows:

(1) The accused commits the act of sexual intercourse or lascivious conduct;

(2) The said act is performed with a child exploited in prostitution or other sexual abuse. "*children exploited in prostitution and other sexual abuse"* those children, whether male or female, (1) who for money, profit or any other consideration or (2) due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct;

(3) The child, whether male or female, is below 18 years of age.[78]

Under the foregoing legal edicts, appellant's act of sexually assaulting AAA on August 3, 2006 qualifies as lascivious conduct under Section 5(b) of RA 7610. The Information, in fact, sufficiently alleged the elements of the offense, thus:

x x x **by means of force, threat and intimidation**, did then and there willfully, unlawfully and feloniously sexually assault one **AAA, the seventeen (17) year old daughter of his common-law-wife**, and living with him in the same house**, by inserting his finger in her vagina, against her will and without her consent**, acts of child abuse **which debase, degrade and demean the intrinsic worth and dignity of the said AAA, as a human being, to her damage and prejudice**.[79]

Hence, the trial court and Court of Appeals' designation of appellant's crime as *"rape by sexual assault"* must be modified to *"lascivious conduct under Section 5(b) of RA 7610."*

As for the lascivious conduct appellant committed on AAA on August 4, 2006, suffice it to state that appellant did not offer any argument specifically assailing such finding. Instead, he merely relied on his general assertions against AAA's credibility which the courts below had already established.

Appellant committed lascivious conduct on BBB

BBB testified on the harrowing ordeal she experienced on August 5, 2006, *viz.*:

Q: Now you said [Miss] Witness that after sometime that you resided with your mother and the accused, the situation became

[78] *Id.*

[79] *Rollo,* p. 5.

unpleasant. Why? Please elaborate on that.

A: Because I treated him as a real father but he did not treat as a real daughter and he was doing acts of lasciviousness on me.

PROS. JOYA: Witness is crying while giving the answer.

Q: You said that he committed acts of lasciviousness against you. What specific acts of lasciviousness against you. What specific acts of lasciviousness did he commit on you?

A: He was touching my thighs and even some other parts of my body.

Q: Which specific part of your body did he touch?

A: My breast.

Q: How many times did XXX do that to you?

A: Everytime that only the two (2) of us were at home.

Q: And what did you feel when XXX was doing that to you?

A: Anger and fear, Ma'am.

Q: Did you relay to anybody of that acts of lasciviousness being committed by your stepfather to you?

A: No ma'am because he threatened me that if I tell this thing to anybody he would kill us.

Q: And what made you come out in the open and finally relayed what you are telling us right now?

A: When he was already caught by the police.

Q: Under what circumstances was XXX arrested by the police?

A: Because there was a time when he was caught in the act by the police officers burning some of our things and he even chased my two (2) siblings with a bolo.

Q: That was the incident of August 5, 2006?

A: Yes Ma'am.

Q: Now during that day August 5, 2006 as according to you usually done by XXX against your person, did he likewise commit acts of lasciviousness to your person during that time?

A: Yes Ma'am.[80]

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[80] TSN, November 23, 2010, pp. 6-7.

Appellant countered that the testimonies of the prosecution witnesses on that day's events were contradictory: on the one hand, CCC testified that appellant arrived home drunk that evening, berated and chased them with a *samurai*; on the other, BBB testified she was alone in the house that evening when appellant molested her.

Appellant's alleged inconsistency is more imagined than real. BBB's testimony on cross is illuminating, thus:

Q: Now a few more questions, Madam Witness. BBB, the last instance happened on August 5, 2006 at around 8:00 o'clock p.m. is it not?
A: Yes Sir.

Q: Did it happen upstairs or downstairs?
A: Downstairs Sir.

Q: But according to CCC, your stepbrother, you were together with him and your ate AAA downstairs, do you confirm this?
A: My older sister and CCC went somewhere together with my mother, Sir.

Q: So you mean to say that you were left downstairs at the sala?
A: Yes sir.

Q: Then your father arrived drunk and ready to create trouble that night?
A: He was not really drunk. He was tipsy.

Q: When he arrived, you and him were the only ones inside the house, is that correct?
A: Yes, sir.

Q: That is why he was able to molest you?
A: Yes, sir.

Q: Then he went upstairs?
A: Yes sir.

Q: So nobody else were in the house because according to you, AAA and CCC and your mother were somewhere out of the house?
A: There was nobody upstairs, Ma'am (sic).

Q: And you heard him yell and bang a lot upstairs?
A: No Sir, when he molested me that evening, my mother, older sister, and brother suddenly came.

Q: And that was when he went upstairs and started yelling?
A: Yes Sir. (emphases added)[81]

Meanwhile, CCC testified, thus:

Q: Now Mr. Witness, do you recall the 5th day of August 2006?
A: Yes Ma'am.

Q: In the evening of that day around 9:00 o'clock where were you?
A: I was at home, Ma'am.

Q: Who was with you at the house at that time?
A: AAA

Q: So what happened Mister Witness at that date and time while you and your Ate AAA was at home?
A: Our father suddenly arrived.[82]

Clearly, there was no inconsistency between the testimonies of the minor witnesses. BBB testified that on August 5, 2006, around **8 o'clock** in the evening, she was alone with appellant in their house when the latter molested her. Appellant only stopped when AAA, CCC and DDD arrived home. Thereafter, appellant started yelling at them and went upstairs. This corroborates CCC's testimony that around **9 o'clock** that evening, they were watching television when appellant started berating them. During the one (1)-hour window, appellant accomplished his dastardly deed of maliciously touching BBB's thighs and breasts.

As with AAA's testimony, both the trial court and Court of Appeals rightfully gave full weight and credit to the testimonies of the minor witnesses BBB and CCC. The Court has repeatedly held that youth and immaturity are generally badges of truth

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[81] *Id.* at 12-13.

[82] TSN, May 18, 2010, p. 4.

and sincerity.[83] Absent any ill-motive on the part of the minor witnesses, the credibility of their testimonies are not diminished.

As earlier discussed, however, there is a similar need here to modify the designation of appellant's offense from *"acts of lasciviousness"* to *"lascivious conduct under Section 5(b) of RA 7610."*

Appellant violated Section 5(c) of RA 9262

Finally, the Court of Appeals did not err in affirming appellant's conviction for violation of Section 5(c) of RA 9262, *viz.*:

SECTION 5. *Acts of Violence Against Women and Their Children.* — The crime of violence against women and their children is committed through any of the following acts:

x x x x x x x x x

(c) Attempting to cause the woman or her child physical harm;

x x x x x x x x x

Here, AAA, CCC and DDD testified that on August 5, 2006, appellant, in a drunken stupor, berated them *"Mga demonyo kayo! Mga walang kwenta! Tatadtarin ko kayo!"* Thereupon, appellant went upstairs, took a *samurai*, and chased AAA's family with it. These acts of the appellant clearly evince an attempt to cause them physical harm.

Appellant claims, however, that the prosecution failed to prove that the chasing incident actually happened. The prosecution witnesses testified that their neighbors saw it as it occurred but none of them testified in open court.[84] The argument, however, essentially assails the credibility and sufficiency of the testimonies of the prosecution witnesses. Again, these are matters that have already been addressed by the courts below.

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[83] *People v. Galuga*, G.R. No. 221428, February 13, 2019.

[84] CA *rollo*, p. 60.

At any rate, the testimonies of the victims' neighbors are unessential and merely corroborative at best.

Penalties

For the two (2) counts of rape by carnal knowledge (CR-06-8544 and CR-06-8545), both the trial court and Court of Appeals correctly sentenced appellant to *reclusion perpetua* without eligibility for parole for each count. Since the minor victim was the daughter of appellant's common-law spouse, the proper penalty under Article 266-B of the Revised Penal Code[85] would have been death were it not for the enactment of RA 9346.[86] As such, the trial court correctly specified that appellant is not eligible for parole.[87] Pursuant to ***People v. Jugueta***,[88] appellant

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[85] Article 266-B. *Penalty*. – x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

l) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

x x x x x x x x x

[86] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES.

[87] Under A.M. 15-08-02, the following guidelines shall be observed in the imposition of penalties and in the use of the phrase *"without eligibility for parole"*:

(1) In cases where the death penalty is not warranted, there is no need to use the phrase *"without eligibility for parole"* to qualify the penalty of *reclusion perpetua*; it is understood that convicted persons penalized with an indivisible penalty are not eligible for parole; and

(2) When circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. 9346, the qualification of *"without eligibility for parole" shall be used* in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346.

[88] 783 Phil. 806, 846 (2016).

is also liable for civil indemnity, moral damages, and exemplary damages of Php100,000.00 each for every count of rape.

For the three (3) counts of lascivious conduct under Section 5(b) of RA 7610 (CR-06-8540, CR-06-8541 and CR-06-8543), appellant's penalties must be modified in accordance with ***People v. Tulagan.***[89] The Court instructed that the proper penalty for each count of lascivious conduct is *reclusion temporal* in its medium period to *reclusion perpetua*. Since appellant is the stepfather of the victims, the penalty shall be imposed in its maximum period in consonance with Section 31(c) of RA 7610.[90] Appellant shall therefore be sentenced to *reclusion perpetua* for each count. Appellant shall also pay civil indemnity, moral damages, and exemplary damages of ₱75,000.00 each for every count of lascivious conduct under Section 5(b) of RA 7610.[91]

Finally, appellant's violation of Section 5(c) of RA 9262 (CR-06-8542) is punishable by one (1) month and one (1) day to six (6) months of *arresto mayor* pursuant to Section 6(b) of the same law.[92] In view of the attendant alternative circumstance

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[89] *Supra* note 77.

[90] **Section 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, stepparent 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 x x x x x x

[91] *Supra* note 77.

[92] **SECTION 6.** *Penalties*. — The crime of violence against women and their children, under Section 5 hereof shall be punished according to the following rules:

x x x x x x x x x

(b) Acts falling under Section 5(c) and 5(d) shall be punished by *arresto mayor*;

x x x x x x x x x

of relationship between appellant and his victims, the maximum penalty of six (6) months of *arresto mayor* shall be imposed. Since the penalty does not exceed one (1) year, the indeterminate sentence law does not apply. In addition to imprisonment, appellant shall pay fine of ₱100,000.00. He shall also undergo mandatory psychological counseling and report his compliance to the trial court.[93]

All amounts, except for the fine, shall earn six percent (6%) interest *per annum* from finality of this resolution until fully paid.

WHEREFORE, the appeal is **DENIED**. The Decision of the Court of Appeals dated December 12, 2016 in CA-G.R. CR-HC No. 07090 is **AFFIRMED with MODIFICATION**:

a. In CR-06-8540, **XXX** is found **GUILTY** of **lascivious conduct under Section 5(b) of Republic Act 7610** and sentenced to *reclusion perpetua*. He is required to pay civil indemnity, moral damages, and exemplary damages of ₱75,000.00 each. These amounts shall earn six percent (6%) interest *per annum* from finality of this decision until fully paid;

b. In CR-06-8542, **XXX** is found **GUILTY** of **lascivious conduct under Section 5(b) of Republic Act 7610** and sentenced to *reclusion perpetua*. He is required to pay civil indemnity, moral damages, and exemplary damages of ₱75,000.00 each. These amounts shall earn six percent (6%) interest *per annum* from finality of this decision until fully paid;

c. In CR-06-8541, **XXX** is found **GUILTY** of **violation of Section 5(c) of Republic Act 9262** and sentenced to six (6) months of *arresto mayor* and fine of ₱100,000.00. He is ordered to undergo psychological counseling and report compliance to the trial court;

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[93] Section 6(b), RA 9262.

d. In CR-06-8543, **XXX** is found **GUILTY** of **lascivious conduct under Section 5(b) of Republic Act 7610** and sentenced to *reclusion perpetua*. He is required to pay civil indemnity, moral damages, and exemplary damages of ₱75,000.00 each. These amounts shall earn six percent (6%) interest *per annum* from finality of this decision until fully paid.

e. In CR-06-8544, **XXX** is found **GUILTY** of **Rape**, qualified by minority and relationship, and is sentenced to *reclusion perpetua* without eligibility for parole. He is required to pay civil indemnity, moral damages, and exemplary damages of ₱100,000.00 each. These amounts shall earn six percent (6%) interest *per annum* from finality of this decision until fully paid; and

f. In CR-06-8545, **XXX** is found **GUILTY** of **Rape**, qualified by minority and relationship, and is sentenced to *reclusion perpetua* without eligibility for parole. He is required to pay civil indemnity, moral damages, and exemplary damages of ₱100,000.00 each. These amounts shall earn six percent (6%) interest *per annum* from finality of this decision until fully paid.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, and *Reyes, J. Jr., JJ.,* concur.

Lopez, J., on official leave.

FIRST DIVISION

[G.R. No. 232157. January 8, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NOEL DOLANDOLAN,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WHEN THE ISSUE IS THE CREDIBILITY OF WITNESSES AND OF THEIR TESTIMONIES, THE TRIAL COURT IS GENERALLY DEEMED TO HAVE BEEN IN A BETTER POSITION TO OBSERVE THEIR DEPORTMENT AND MANNER OF TESTIFYING DURING THE TRIAL, BUT THE APPELLATE COURTS MAY REVIEW THE FACTUAL FINDINGS OF THE TRIAL COURT WHEN IT OVERLOOKED CERTAIN FACTS OF SUBSTANCE AND VALUE OR WHEN THE TRIAL COURT'S FINDINGS OF FACT ARE CONTRADICTED BY EVIDENCE ON RECORD.— The Court finds merit in the appeal. The prosecution failed to prove the guilt of accused-appellant beyond reasonable doubt. In *People v. Salidaga,* the Court explained: It is inherent in the crime of rape that the conviction of an accused invariably depends upon the **credibility of the victim** as she is oftentimes the sole witness to the dastardly act. Thus, the rule is that when a woman claims that she has been raped, she says in effect all that is necessary to show that rape has been committed and that if her testimony meets the crucible test of credibility, the accused may be convicted on the basis thereof. However, the courts are not bound to treat the testimony of the victim as gospel truth. **Judges are duty-bound to subject her testimony to the most rigid and careful scrutiny lest vital details which could affect the outcome of the case be overlooked or cast aside.** The Court has held that "when the issue is the credibility of witnesses and of their testimonies, the trial court is generally deemed to have been in a better position to observe their deportment and manner of testifying during the trial." However, appellate courts may review the factual findings of the trial court when the lower court overlooked certain facts of substance and value or when the

lower court's findings of fact are contradicted by evidence on record.

2. ID.; ID.; ID.; SUBSTANTIAL DISCREPANCIES BETWEEN THE AFFIDAVIT AND TESTIMONY OF THE ALLEGED RAPE VICTIM, WHEN NOT RECONCILED, EXPLAINED, CORRECTED, OR JUSTIFIED BY THE PROSECUTION, CAST DOUBTS ON THE CREDIBILITY OF THE VICTIM; GUIDING PRINCIPLES IN REVIEWING RAPE CASES.— In *People v. Bermas*, the Court discussed the peculiar nature of Rape charges in this wise: x x x [I]n rape cases, the accused may be convicted on the basis of the lone, uncorroborated testimony of the rape victim, provided that her testimony is **clear, convincing, and otherwise consistent with human nature**. This is a matter best assigned to the trial court which had the first-hand opportunity to hear the testimonies of the witnesses and observe their demeanor, conduct, and attitude during cross-examination. Hence, the trial court's findings carry very great weight and substance. However, it is equally true that in reviewing rape cases, the Court observes the following guiding principles: (1) an accusation for rape can be made with facility; it is difficult to prove but **more difficult for the person accused, though innocent, to disprove**; (2) in view of the intrinsic nature of the crime where **only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution**; (3) the **evidence for the prosecution must stand or fall on its own merits**, and cannot be allowed to draw strength from the weakness of the evidence for the defense. This must be so as the guilt of an accused must be **proved beyond reasonable doubt**. Before he is convicted, there should be **moral certainty** — a certainty that convinces and satisfies the reason and conscience of those who are to act upon it. Absolute guarantee of guilt is not demanded by the law to convict a person of a criminal charge but there must, at least, be moral certainty on each element essential to constitute the offense and on the responsibility of the offender. Proof beyond reasonable doubt is meant to be that, all things given, the mind of the judge can rest at ease concerning its verdict. x x x In light of the foregoing principles and after a careful review of the records and transcripts of stenographic notes of the instant case, the Court believes, and accordingly holds, that there are substantial discrepancies between AAA's *Sinumpaang Salaysay* dated February 13, 1995 (*Sinumpaang Salaysay*) and her

testimony, both during her direct examination and her cross-examination, which discrepancies were never reconciled, explained, corrected, or justified by the prosecution. As a result, the Court doubts the credibility of AAA. Thus, the guilt of accused-appellant has not been proved beyond reasonable doubt.

3. ID.; ID.; ID.; INCONSISTENCIES AND CONTRADICTIONS IN THE VICTIM'S TESTIMONIES DO NOT NECESSARILY IMPAIR HER CREDIBILITY, AND WILL BE DISMISSED SO AS TO GIVE FULL CREDENCE TO THE VICTIM, WHERE THE SAME ARE MINOR, TRIVIAL AND AS FAR AS PRACTICABLE, FEW AND FAR BETWEEN; THE ALLEGED VICTIM'S CONTRADICTORY ACCOUNTS OF THE CIRCUMSTANCES SURROUNDING THE PURPORTED RAPE, WHICH WERE NEVER EXPLAINED, RECONCILED, OR JUSTIFIED BY THE PROSECUTION, CONSTITUTE MATERIAL DOUBT AS TO THE CREDIBILITY OF THE VICTIM AND THE GUILT OF THE ACCUSED-APPELLANT.— While inconsistencies and contradictions in the complainant's testimony do not necessarily impair her credibility, "for said inconsistencies to be dismissed so as to give full credence to the alleged victim, **they must be minor, trivial and as far as practicable, few and far between**." In the instant case, the transcripts of stenographic notes unequivocally show that AAA gave conflicting accounts in her *Sinumpaang Salaysay*, direct examination, and cross-examination about the circumstances surrounding the purported rape, specifically as regards: (1) where she met accused-appellant; (2) the circumstances surrounding said meeting; (3) the circumstances leading up to the alleged rape; (4) the place of the alleged rape; and (5) the place where she was eventually found. The allegation that AAA was threatened at knife-point while on her way to a dance (*sayawan*) is completely inconsistent with the claim that accused-appellant befriended AAA in a carnival (*peryahan*) and invited her to his house. Similarly, the categorical statement that AAA was raped near a creek or *sapaan* is completely inconsistent with the statement that she was raped in a dark vacant lot, which statements are inconsistent with her other statement that she did not know where she was raped. Contrary to the findings of the RTC and the CA therefore, the discrepancies in AAA's testimony, taken as a whole, cannot be considered minor or trivial. She gave manifestly contradictory

accounts of the circumstances surrounding the purported rape and forgot many other details. As a result, the Court cannot help but wonder whether AAA's recollection and narration is truthful or even reliable. This constitutes material doubt as to the credibility of AAA and the guilt of accused-appellant. Worse, the prosecution never even attempted to explain, reconcile, or justify the inconsistencies.

4. ID.; ID.; ID.; WHILE A "TRUTH-TELLING" WITNESS IS NOT ALWAYS EXPECTED TO GIVE AN ERROR-FREE TESTIMONY, CONSIDERING THE LAPSE OF TIME AND TREACHERY OF HUMAN MEMORY, THE PROSECUTION BEARS THE BURDEN OF RECONCILING AND EXPLAINING ANY LAPSES, ERRORS, OR INCONSISTENCIES IN SAID TESTIMONY, AS THE EVIDENCE FOR THE PROSECUTION MUST STAND OR FALL ON ITS OWN MERITS, AND CANNOT BE ALLOWED TO DRAW STRENGTH FROM THE WEAKNESS OF THE EVIDENCE FOR THE DEFENSE; THE FAILURE OF THE PROSECUTION TO CLARIFY OR CORRECT THE CONFLICTING STATEMENTS MADE BY THE ALLEGED RAPE VICTIM IN HER *SINUMPAANG SALAYSAY VIS-A-VIS* HER TESTIMONY IN OPEN COURT OR THE CONFLICTING STATEMENTS SHE MADE DURING HER DIRECT EXAMINATION AND HER CROSS-EXAMINATION, IS FATAL TO THE PROSECUTION'S CASE.— While the Court recognizes that a "truth-telling witness is not always expected to give an error-free testimony, considering the lapse of time and treachery of human memory" the prosecution bears the burden of reconciling and explaining any lapses, errors, or inconsistencies in said testimony, in accordance with the principle that the "evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense." In this instant case, the prosecution never bothered to explain or reconcile the evident inconsistencies in AAA's testimony. In fact, the Court notes that during AAA's re-direct examination, the prosecution focused solely on the age and physical size of AAA in relation to accused-appellant. AAA was never asked to clarify or correct the conflicting statements made in her *Sinumpaang Salaysay vis-a-vis* her testimony in open court or the conflicting statements made during

her direct examination and her cross-examination. This omission is fatal to the case.

5. ID.; ID.; BURDEN OF PROOF AND PRESUMPTIONS; THE COURT CANNOT ENTERTAIN "WHAT-IFS" WHEN THE LIFE AND LIBERTY OF A PERSON IS AT STAKE CERTAINLY, AS IT IS NOT PROPER TO TORTURE THE MINDS OF THE MEMBERS OF THE COURT BY PLACING THEM IN THE TRYING POSITION OF RUNNING THE RISK OF CONVICTING AN INNOCENT MAN, ALL BECAUSE OF THE PROSECUTION'S FAILURE TO DO ITS DUTY OF GATHERING EVIDENCE TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.— [A]lthough the warrant was issued on November 12, 1998, accused-appellant was only arrested on November 7, 2012. Accused-appellant claims, however, that he never attempted to evade prosecution or delay the proceedings. x x x. In his re-direct examination, accused-appellant confirmed that he did not go into hiding x x x. Accused-appellant's claims, while self-serving, were neither denied nor rebutted by the prosecution. It is certainly possible, even probable, that AAA's testimony would not have been infected with the aforementioned contradictions had accused–appellant been arrested and the complainant presented at an earlier date. Unfortunately, the Court cannot entertain "what-ifs" when the life and liberty of a person is at stake certainly, as "[i]t is not proper to torture the minds of the members of this Court by placing them in the trying position of running the risk of convicting an innocent man, all because of the prosecution's failure to do its duty of gathering evidence to establish his guilt beyond reasonable doubt." The prosecution was remiss in its duty and failed to sufficiently explain, reconcile, or justify the many substantial inconsistencies in AAA's testimony. As such, and given the particular nature of a charge of Rape, *i.e.*, that the court is often called upon to determine the innocence or guilt of an accused based solely on the conflicting testimony of two people, the Court is constrained to acquit accused-appellant on the basis of reasonable doubt.

6. ID.; ID.; ID.; IF THE INCULPATORY FACTS AND CIRCUMSTANCES ARE CAPABLE OF TWO OR MORE EXPLANATIONS, ONE OF WHICH IS CONSISTENT WITH THE INNOCENCE OF THE ACCUSED AND THE OTHER CONSISTENT WITH HIS GUILT, THEN THE

EVIDENCE DOES NOT PASS THE TEST OF MORAL CERTAINTY AND WILL NOT SUFFICE TO SUPPORT A CONVICTION; THE *POSSIBILITY* THAT THE FACTS ARE NOT AS THE COMPLAINANT CLAIMS — NO MATTER HOW RARE OR UNLIKELY — CONSTITUTES MORE THAN SUFFICIENT BASIS FOR AN ACQUITTAL, AS ACCUSED IS PRESUMED INNOCENT UNTIL THE CONTRARY IS PROVED, BEYOND REASONABLE DOUBT.— The Court, in *People v. Lagramada*, explained: In a criminal prosecution, the law always presumes that the defendant is not guilty of any crime whatsoever, and this presumption stands until it is overcome by competent and credible proof. Where two conflicting probabilities arise from the evidence, the one compatible with the presumption of innocence will be adopted. It is therefore incumbent upon the prosecution to establish the guilt of the accused with moral certainty or beyond reasonable doubt as demanded by law. When a person cries rape, society reacts with sympathy for the victim, admiration for her bravery in seeking retribution for the crime committed against her, and condemnation for the accused. However, being interpreters of the law and dispensers of justice, judges must look at each rape charge sans the above proclivities and deal with it with caution and circumspection. Judges must free themselves of the natural tendency to be overprotective of every girl or woman decrying her defilement and demanding punishment for the abuser. While they ought to be cognizant of the anguish and humiliation the rape victim goes through as she demands justice, they should equally bear in mind that their responsibility is to render justice in accordance with law. Hence, accused shall be presumed innocent until the contrary is proved. **Before the accused in a criminal case may be convicted, the evidence must be strong enough to overcome the presumption of innocence and to exclude every hypothesis except that of the guilt of the defendant. If the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not pass the test of moral certainty and will not suffice to support a conviction.** As already explained, AAA's many contradictory statements, which the prosecution never bothered to explain or justify, raise material doubt on AAA's credibility. In finding for accused-appellant, the Court makes no

> pronouncement as to the truth or falsity of AAA's claims. It considers only the *slightest possibility* that the facts are not as the complainant claims. Under the Constitution, however, this *possibility* — no matter how rare or unlikely — constitutes more than sufficient basis for an acquittal. This is what it means to be presumed innocent until the contrary is proved, beyond reasonable doubt.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Noel Dolandolan (accused-appellant) assailing the November 22, 2016 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08128, which affirmed the Decision[3] dated September 30, 2015 of the Regional Trial Court of XYZ, Zambales, Branch 70 (RTC), in Criminal Case No. RTC-1712-I. The RTC found accused-appellant guilty beyond reasonable doubt of the crime of Rape.

The Facts

The Information[4] filed against accused-appellant for the rape of AAA[5] reads:

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[1] See Notice of Appeal dated December 15, 2016; *rollo*, pp. 18-21.

[2] *Rollo*, pp. 2-17. Penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Marlene Gonzales-Sison and Henri Jean Paul B. Inting (now a Member of the Court).

[3] CA *rollo*, pp. 47-54. Penned by Judge Marifi P. Chua.

[4] Records, pp. 2-3.

[5] The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as

That on or about the 10th day of February, 1995, at nighttime, Brgy. [NBL], in the municipality of [BLT], Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation and with the use of a sharp pointed instrument, forcibly take, kidnap and deprive [AAA] of her liberty and take her to [NBL, BLT], Zambales, and thereafter at the point of said sharp pointed instrument, did then and there willfully, unlawfully and feloniously have carnal knowledge of said [AAA], a minor of fifteen (15) years old, against her will and consent, to the damage and prejudice of the latter.

CONTRARY TO LAW.[6]

After his arrest and upon his motion, accused-appellant was released on recognizance of his father on account of his purported minority.[7] Also, upon motion, the case was remanded to the prosecutor's office for reinvestigation. However, for failure of accused-appellant to file his counter-affidavit, the case was returned to the RTC and the charge against him was maintained.[8] Later, it was found that accused-appellant was charged with another rape case filed by another minor woman before the City Prosecutor's Office of Olongapo City.[9] Hence, the Department of Social Welfare and Development prayed for the revocation of his release on recognizance.[10] When the father of accused-appellant failed to produce accused-appellant despite the RTC's order, a warrant of arrest was issued on November 12, 1998.[11]

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

[6] *Id.* at 2.

[7] *Rollo*, p. 3.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

It appears that accused-appellant was only arrested on November 7, 2012.[12]

Upon arraignment, accused-appellant pleaded not guilty to the crime charged. Thereafter, pre-trial and trial ensued.[13]

During trial, the prosecution presented: (1) AAA; and (2) Dr. Crizalda Abrigo-Peralta (Dr. Abrigo-Peralta). The CA summarized the version of the prosecution as follows:

> x x x On February 10, 1995, when [AAA] was 15 years old, she went with two of her friends to a *peryahan* in [Brgy. RTD, XYZ,] Zambales. When her friends went home, she was left alone in the *peryahan* playing games with bets and promenading when [accused-appellant], an employee of the *peryahan* and who she has not met before, introduced himself to her. During her direct examination, she narrated that [accused-appellant] invited her to his place, and that he talked to her in a pleasant manner and she thought that the intention of [accused-appellant] was just to befriend her. [Accused-appellant] forced her to walk with him for more than an hour to his place at [Brgy. NBL, BLT, Zambales] then brought her to a *sapaan*, or a creek. [Accused-appellant] was holding something which looked like a knife which he pointed at her. [Accused-appellant] then raped her by inserting his private part to her private part. She cried because of too much pain. After that, her parents saw her in the place where it happened and they took her to the police. Thereafter, her mother accompanied her to the hospital because she was traumatized by the incident. She presented a Medico-legal Certificate dated February 13, 1995.
>
> During her cross-examination, she averred that [accused-appellant] was just strolling around the *peryahan* when, without talking to her, he kissed her and forced her to go with him by threatening her with bodily harm. [Accused-appellant] used a weapon which looked like a stick or a ballpen. Although there were many people at the *peryahan*, she did not scream, shout nor do any thing to alarm other people around her because she was already afraid. She could no longer recall at what time they left [RTD] or arrived in [NBL], or for how long and for how far they walked. She likewise did not resist [accused-appellant] while walking to [NBL] because she was taken by fear. She [could not] say if she was taken to a house in [NBL], but they

[12] *Id.*

[13] *Id.*

met a few people. She denied being brought to a *sapa* or a creek. She also [could not] say that the alleged attack happened in a house; in fact she [could not] recall in what area she was raped, but it was a vacant lot and it was dark. [Accused-appellant] forced her, kissed her while holding the stick, and then inserted his penis in her private part. It was at the place of [accused-appellant] where her mother found her.

On re-direct examination, private complainant stated that at the time of the incident, she was small and thin, while [accused-appellant] was older and bigger than her.

The prosecution also formally offered private complainant's *Sinumpaang Salaysay* which she executed on February 13, 1995. She narrated therein that on the night of February 10, 1995, while she was on her way to a *sayawan* in [RTD, XYZ,] Zambales, [accused-appellant] pointed a ballpen-like knife at her, dragged her to a field and they passed by [AGH]. [Accused-appellant then made her ride a tricycle until they reached [STG, BLT,] Zambales. After that, [accused-appellant] made her walk until they reached a place beside a river in [NBL, BLT,] Zambales where [s]he was raped by [accused-appellant]. [Accused-appellant] held both of private complainant's hands, removed her shorts and panties. He then pulled down his pants and inserted his penis to her private part. Because a ballpen-like knife [was] pointed at her, she just followed [accused-appellant] out of fear. She did not shout while they were riding the tricycle because [accused-appellant] warned her not to shout, otherwise he [would] kill her.

x x x x x x x x x

Dr. Crizalda Abrigo-Peralta appeared before the RTC and identified the Medico-Legal Certificate dated February 19, 1995 of AAA that she issued. The Medico-Legal Certificate states that there was redness and swelling around the vaginal canal which [could] be caused by trauma, tension and pressure. The vaginal canal was also positive for blood clot, meaning that there was something that entered inside the vaginal canal that caused the bleeding, specially that she was a child. She found the hymen to be intact, and that there was no laceration. Dr. Abrigo-Peralta explained that the hymen's elasticity, especially since the private complainant was young at that time, allowed for slight penetration without causing laceration. In her examination of private complainant, her hymen was intact but inside the vaginal canal,

there were blood clots which could indicate that there was rubbing of some foreign object inside.

On cross-examination, Dr. Abrigo-Peralta negated any hematoma or bruises on the body of the private complainant, or any spermatozoa in her vagina. She also stated that the erythema or redness in private complainant's vaginal canal could also be caused by any foreign body like bottles or vibrators.[14]

On the other hand, the defense presented the sole testimony of accused-appellant, who alleged that:

x x x [I]n 1995, he was 18 years old and residing with his parents and sibling at [Brgy. LPB, BLT,] Zambales. At that time, he was working at a *peryahan* in [Brgy. RTD, XYZ,] Zambales, which was in operation in the place for about two (2) weeks during the fiesta. He courted private complainant for a week before he brought her to his house to introduce [her] to his parents. They left [Brgy. RTD] at about 10 o'clock or 11 o'clock in the evening. At that time, private complainant had not yet accepted him as her boyfriend. He did not know her age. When they reached his house, his parents were awake and he was scolded. Private complainant stayed in their house the whole evening until morning but they did not sleep. [Accused-appellant], his parents and private complainant stayed awake the whole evening just sitting outside their house. His father told him that he [would] bring private complainant home in the morning because her parents might already be looking for her. Between 1995 to 2012 when he was arrested, he claimed to be just in their place in [Brgy. LPB] but he did not receive any notice for him to appear before the [RTC].

His Judicial Affidavit dated June 8, 2015 was also offered as part of his testimony. He narrated therein that he met private complainant at a *peryahan* in [Brgy. RTD, XYZ,] Zambales. He worked at the *peryahan* while private complainant [was] a bettor who had been playing at the *peryahan* for about a week. Two days after he saw her, [accused-appellant] asked private complainant if he could court her, to which she acceded. Almost a week later, or on February 10, 1995, he asked her if she wanted to come with him to his place to meet his father. Private complainant agreed. Private complainant waited for [accused-appellant] until the *peryahan* closed around 11 o'clock PM or 12 o'clock midnight. x x x [Accused-appellant] woke his parents,

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

but only his father woke up. He told his father that there was a girl from [Brgy. RTD] with him. His father scolded him and told him that the girl's parents would surely look for her. His father sat in front of [accused-appellant] and private complainant and watched them until morning. His father told private complainant to go home in the morning because her parents would look for her. Nothing happened between [accused-appellant] and private complainant because his father was watching them. The following day, private complainant asked if there [was] a river where she could take a bath. [Accused-appellant] then took her to a nearby falls about 30 meters away, accompanied by his younger brother and they swam. After only five minutes in the water, people arrived and invited them to the barangay but [accused-appellant] was taken to the police station at the Municipal Hall of [XYZ]. The police told him that he was being charged with rape. x x x[15]

Ruling of the RTC

In its Decision[16] dated September 30, 2015, the RTC convicted accused-appellant of the crime of Rape. The dispositive portion of the said Decision stated:

WHEREFORE, foregoing considered, the Court finds Noel Dolandolan GUILTY beyond reasonable doubt of the crime of Rape and is sentenced to suffer the penalty of *Reclusion Perpetua* without eligibility for parole and is ordered to pay Php50,000.00 as moral damages, Php50,000.00 as civil indemnity and Php20,000.00 as exemplary damages.

SO ORDERED.[17]

The RTC held that although the prosecution failed to establish the crime of Kidnapping, it successfully proved the crime of Rape through force and intimidation.[18]

While there were contradictions in AAA's written statement in relation to her testimony, the RTC held that said variance

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

[16] CA *rollo*, pp. 47-54.

[17] *Id.* at 54.

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

did not alter the essential fact that AAA was raped. Further, the claim of rape was supported by the medical records, which accused-appellant failed to sufficiently refute.[19]

Finally, the RTC held that while the defense presented a certificate of live birth stating that accused-appellant was born on May 29, 1978, another certification was issued indicating that accused-appellant was actually born on September 15, 1972 and as such, was already 23 years old at the time of the commission of the crime.[20]

Aggrieved, accused-appellant appealed to the CA.

Ruling of the CA

The CA affirmed the RTC's Decision but increased the award of exemplary damages to ₱30,000.00.[21] The CA held that although there were glaring inconsistencies between AAA's *Sinumpaang Salaysay* and her open court testimony, AAA never wavered in her claim that accused-appellant inserted his private part into her private part after pointing a ballpen-like knife at her.[22] Further, the CA held that the inconsistencies in AAA's testimony (1) referred only to inconsequential matters and (2) were justified, considering that 18 long years had lapsed between the time the incident occurred and the time AAA was presented in court.[23]

Hence, the instant appeal.

Issue

Whether the RTC and the CA erred in convicting accused-appellant of the crime of Rape.

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[19] See *id.* at 51-52.

[20] *Id.* at 54.

[21] *Rollo*, p. 16.

[22] *Id.* at 10.

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

The Court's Ruling

The Court finds merit in the appeal. The prosecution failed to prove the guilt of accused-appellant beyond reasonable doubt.

In *People v. Salidaga*,[24] the Court explained:

> It is inherent in the crime of rape that the conviction of an accused invariably depends upon the **credibility of the victim** as she is oftentimes the sole witness to the dastardly act. Thus, the rule is that when a woman claims that she has been raped, she says in effect all that is necessary to show that rape has been committed and that if her testimony meets the crucible test of credibility, the accused may be convicted on the basis thereof. However, the courts are not bound to treat the testimony of the victim as gospel truth. **Judges are duty-bound to subject her testimony to the most rigid and careful scrutiny lest vital details which could affect the outcome of the case be overlooked or cast aside.**[25]

The Court has held that "when the issue is the credibility of witnesses and of their testimonies, the trial court is generally deemed to have been in a better position to observe their deportment and manner of testifying during the trial."[26] However, appellate courts may review the factual findings of the trial court when the lower court overlooked certain facts of substance and value[27] or when the lower court's findings of fact are contradicted by evidence on record.[28]

In *People v. Bermas*,[29] the Court discussed the peculiar nature of Rape charges in this wise:

> x x x [I]n rape cases, the accused may be convicted on the basis of the lone, uncorroborated testimony of the rape victim, provided

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[24] 542 Phil. 295 (2007).

[25] *Id.* at 307-308. Emphasis and underscoring supplied.

[26] *People v. Lagramada*, 436 Phil. 758, 766 (2002).

[27] *Id.* at 766.

[28] *Mendoza v. People*, 500 Phil. 550, 559 (2005).

[29] G.R. No. 234947, June 19, 2019.

that her testimony is **clear, convincing, and otherwise consistent with human nature**. This is a matter best assigned to the trial court which had the first-hand opportunity to hear the testimonies of the witnesses and observe their demeanor, conduct, and attitude during cross-examination. Hence, the trial court's findings carry very great weight and substance.

However, it is equally true that in reviewing rape cases, the Court observes the following guiding principles:

(1) an accusation for rape can be made with facility; it is difficult to prove but **more difficult for the person accused, though innocent, to disprove**;

(2) in view of the intrinsic nature of the crime where **only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution**;

(3) the **evidence for the prosecution must stand or fall on its own merits**, and cannot be allowed to draw strength from the weakness of the evidence for the defense.

This must be so as the guilt of an accused must be **proved beyond reasonable doubt**. Before he is convicted, there should be **moral certainty** — a certainty that convinces and satisfies the reason and conscience of those who are to act upon it. Absolute guarantee of guilt is not demanded by the law to convict a person of a criminal charge but there must, at least, be moral certainty on each element essential to constitute the offense and on the responsibility of the offender. Proof beyond reasonable doubt is meant to be that, all things given, the mind of the judge can rest at ease concerning its verdict. x x x[30]

In light of the foregoing principles and after a careful review of the records and transcripts of stenographic notes of the instant case, the Court believes, and accordingly holds, that there are substantial discrepancies between AAA's *Sinumpaang Salaysay*[31] dated February 13, 1995 (*Sinumpaang Salaysay*) and her testimony, both during her direct examination and her cross-

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[30] *Id.* at 5-6. Citations omitted; additional emphasis and underscoring supplied.

[31] Records, p. 6.

examination, which discrepancies were never reconciled, explained, corrected, or justified by the prosecution. As a result, the Court doubts the credibility of AAA. Thus, the guilt of accused-appellant has not been proved beyond reasonable doubt.

The discrepancies as to circumstances leading up to the alleged rape are substantial

In AAA's *Sinumpaang Salaysay*, she stated that accused-appellant threatened her with a ballpen knife while she was on her way to a *sayawan* and transported her *via* tricycle to the purported scene of the crime, *viz.*:

08. T - Isalaysay mo nga kung paano ka hinalay ni Noel Dolandolan?

S - Ganito po iyon, habang ako ay papunta **sa may sayawan** sa [RTD], [XYZ], Zambales ay **tinutukan ako ni Noel Dolandolan ng isang di baleng ball pen na kutsilyo**. Ako ay hinila sa may bukid at x x x dumaan kami sa may [AGH]. **Pagkatapos ay isinakay niya ako sa tricycle hanggang [STG], [BLT], Zambales. Pagkatapo[s] ay pinalakad nya ako hanggang doon sa pinaghalayan sa akin.**[32]

When AAA was presented for her direct testimony on March 5, 2013, she narrated that she met accused-appellant at a *peryahan* and that he introduced himself to her, spoke to her in a pleasant manner, and invited her to his place. Thereafter, they walked together for about an hour. Unlike her statements in her *Sinumpaang Salaysay*, there was no mention of a *sayawan*, of being threatened at knife-point to accompany accused-appellant, or of a tricycle ride to the purported scene of the crime:

Q Can you recall where were you on February 10, 1995?
A I was then **at a *peryahan*** when he took me, Ma'am.

x x x x x x x x x

[32] *Id.*

Q And then what were you doing at the carnival?
A **I was playing games in that carnival with bets, then I was also promenading.**

Q Who was your companion at that time?
A I was alone, Ma'am.

Q What time was it?
A 7:00 o'clock in the evening.

Q Can you recall anything unusual that happened in that night?
A There was, Ma'am.

Q What was it?
A **He invited me** Ma'am but then I did not know where he was taking me.

Q Who was the person who invited you?
A Noel Dolandolan, Ma'am.

Q Prior to that date on February 10, 1995, did you know already Noel Dolandolan?
A No, Ma'am.

Q How did you know that it was Noel Dolandolan who invited you?
A **He introduced himself to me.**

Q How did he introduce, I withdraw that. When did he introduce himself to you?
A Also during that evening when the incident happened.

x x x x x x x x x

Q And then where did he invite you?
A There at their place, Ma'am. I was taken there.

Q How did he take you?
A **We walked, Ma'am up to their place.**

Q So, you went with him?
A No, Ma'am.

Q So, how was he able to take you to that place when he just introduced himself to you?
A **He talked to me in a pleasant manner and I thought that his intention was just to be friend to me.**

Q Where did he again bring you?
A I think in their house, Ma'am. It was [their] house at [LPB].

x x x x x x x x x

Q And you said you just walked until you reached [LPB]. How far was [LPB], how many minutes did you walk until you reached [LPB]?
A For quite a long time, Ma'am.

Q <u>Did it take you one (1) hour?</u>
A <u>Yes, Ma'am.</u>

Q <u>So the two (2) of you were just walking?</u>
A <u>Yes, Ma'am.</u>

Q So when you reached [LPB], what happened?
A He did what he has to do with me.

Q What did he do?
A He forced me, Ma'am but I did not want him to do that.[33]

During her cross-examination on September 17, 2013, AAA's recollection again changed, this time with her saying that while she was at the *peryahan*, accused-appellant directly threatened her with a ballpen-like *stick* and forced her to accompany him to the purported scene of the crime. In direct contrast to her direct testimony, AAA stated on cross-examination that accused-appellant never spoke to her and never invited her to his house, *viz*. :

Q Madam Witness, you stated during your direct testimony that you were in the **[*<u>peryahan</u>*]** located at Brgy. [RTD], [XYZ], Zambales on February 10, 1995, is that correct?
A Yes, Sir.

Q What were you doing in the [*<u>peryahan</u>*]?
A I was strolling around because it was then our fiesta, Sir.

x x x x x x x x x

Q You already knew [accused-appellant] in this case before February 10, 1995, is that correct?

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[33] TSN, March 5, 2013, pp. 4-8; records, pp. 77-81. Emphasis and underscoring supplied.

A Not yet, Sir.

Q So, you only knew him on February 10, 1995?
A I do not know him very well, Sir. I just saw him there.

Q What was he doing in the [*peryahan*]?
A He was working there, Sir.

x x x x x x x x x

Q And you had no companion at that time?
A I had a companion during that time, Sir.

Q What was the name of your companion?
A My friends, Sir.

Q What are their names?
A I cannot anymore recall the names of my friends during that time, Sir.

x x x x x x x x x

Q So, this statement in page 4 wherein you were asked: Who was your companion at that time? And your answer: I was alone, Ma'am, is not true?
A I was alone because my friends went home and I was the only one who stayed there, Sir.

x x x x

Q In what part of the [*peryahan*] did he operate or did he work on?
A I do not know, Sir because **he was just strolling around there.**

Q Then, Madam Witness, you stated that he started talking to you?
A No, Sir.

Q He did not talk to you?
A No, Sir.

Q How did you know him?
A He kissed me and he forced me, Sir.

Q He forced you to do what?
A To go with him, Sir.

Q **How did he force you, Madam Witness?**
A ***Sapilitan po.***

x x x x x x x x x

Q **Now, Madam Witness, you also stated just a while ago that he forced you and he forcibly took you at that time?**
A **Yes, Sir.**

Q **So you are saying now that he threatened you?**
A **Yes, Sir.**

Q **He threatened you with bodily harm?**
A **Yes, Sir.**

Q He used a weapon, Madam Witness?
A Yes, Sir.

Q What weapon did he use?
A It looked like a stick, it looked like a ballpen, Sir.

Q A stick looked like a ballpen?
A Yes, Sir.

Q Now, you are a resident of Brgy. [RTD], [XYZ], Zambales where the [*peryahan*] is located?
A Yes, Sir.

Q And that is a [*peryahan*] and you will agree with me that there were many people around, is that correct?
A There were many people, Sir.

Q And yet you are saying that you were being threatened with bodily harm so that he can take you, and yet you did not scream, you did not shout, you did not do anything to alarm other people around you, is that correct?
A I was already afraid, Sir.

x x x x x x x x x

Q And you stated also, Madam Witness that **you walked from [RTD] to [BLT] in [NBL]**. You also stated: *Sinabi mo rin sa* direct testimony *na naglakad kayo mula* [RTD] *hanggang* [BLT]. What time did you leave [RTD]?
A I do not know, Sir.

Q How about the time you arrived in [NBL]?
A I do not also remember, Sir.

Q **How many hours did you walk from [RTD] to [NBL]?**
A **I cannot recall anymore, Sir.**

x x x x x x x x x

ATTY. LAPPAY:
Q x x x So, Madam Witness but you walked for a long time, is that correct?
A Yes, Sir.

Q And in that span of time, you also did not resist [accused-appellant] who was holding a mere stick, that is correct?
A I was not able to do that because I was stricken by fear, Sir.

Q **Am I correct to say, Madam [W]itness, that you voluntarily went with [accused-appellant] to their house in [NBL]?**
A **No, Sir.**[34]

The Court notes that the claim that AAA was threatened at knife-point while on her way to a *sayawan* is starkly different and absolutely inconsistent with the claim that accused-appellant befriended her in a *peryahan* and thereafter invited her to his house. While seemingly immaterial, the contradictory statements that: (1) accused-appellant and AAA took a tricycle to the scene of the crime; (2) accused-appellant and AAA walked for about an hour while talking; and, (3) accused-appellant and AAA walked for a period of time that AAA could no longer recall, all the while under threat of violence — taken with all other evident discrepancies undoubtedly calls AAA's credibility into question.

There were substantial discrepancies as to the place of the alleged rape

In like manner, there were substantial discrepancies as to the place where the alleged rape purportedly occurred. In her *Sinumpaang Salaysay*, AAA described the circumstances surrounding the alleged rape as follows:

06. T - Ano ba ang ginawa sa iyo ni Noel Dolandolan?

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[34] TSN, September 17, 2013, pp. 3-10; records, pp. 108-115. Emphasis and underscoring supplied.

S - Hinalay po niya ako.

07. T - Kailan at saan ka niya hinalay?

S - Noon pong gabi ng Biyernes, petsa Pebrero 10, 1995, **sa tabi ng ilog** sa may [NBL], [BLT], Zambales.

x x x x x x x x x

09. T - Paano ka ba hinalay ni Noel Dolandolan?

S - Hinawakan po niya ang aking dalawang kamay pagkatapos ay inalis niya ang aking short pant at pantie. Matapos niyang maalis ang aking short pant at pantie ay ibinaba niya ang kanyang pantalon. At saka niya ipinasok ang kanyang ari sa aking ari.

10. T - Noong tinutukan ka niya ng isang [ballpen] na kutsilyo o patalim, ano ang ginawa mo?

S - Sinunod ko na lang po ang gusto niya, dahil po sa pagkatakot.[35]

Consistent with AAA's *Sinumpaang Salaysay*, AAA stated during her direct examination that she was brought to a creek and raped by force and intimidation, *viz*.:

Q **You said that you were brought to INBL], and you don't know where [NBL] is. In what particular place did he bring you in [NBL]?**

A **I could recall that he brought me to a "*sapaan*", to a creek, Ma'am.**

Q So he forced you to do something **at the creek**?
A **Yes, Ma'am.**

Q What did he do exactly?
A He was holding something which looked like a knife and he pointed that to me.

Q And then what happened?
A The thing happened which was supposed to happen. *Nangyari ang dapat mangyari.*

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[35] Records, p. 6. Emphasis and underscoring supplied.

PROS. NON

Your Honor, it seemed that the witness had difficulty of narrating what really happened, Your Honor. So may I request that she be allowed to continue to testify later. May I request that this case be called last or if there is no more time, that she will testify on the next hearing x x x.

x x x x x x x x x

Q Madam Witness, you said you were brought to [NBL] by [accused-appellant]. What did [accused-appellant] do to you?
A *Hinalay niya po ako.*

Q How did he rape you?
A He inserted his private part to my private part.

Q What did you do when he was doing that to you?
A I was crying because of too much pain.[36]

On cross-examination however, AAA denied that she was raped at or near a creek. Instead, she first stated that she did not know, or could not remember the place of the purported crime. Thereafter, she again changed her answer and testified that she was raped in a dark, vacant lot, as shown below:

Q **x x x [Y]ou said that you were brought to [NBLI, in what place in (NBL] did he take you?**
A **I do not know that, Sir.**

Q But can you describe in what location in [NBL], was it a house?
A I do [not] know, Sir if it is a house.

Q But did you meet many people around, Madam Witness?
A Few people, Sir.

x x x x x x x x x

Q You went to a creek also?
A No, Sir.

Q Now, he did not bring you to a *sapa*, a creek?
A No, Sir.

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[36] TSN, March 5, 2013, pp. 8-11; *id.* at 81-84. Emphasis and underscoring supplied.

Q Now, Madam Witness, the alleged attack happened in a house, is that correct?
A No, Sir.

Q So, **where did it happen,** Madam Witness, [i]f you can still remember?
A **I do not know, Sir because he forced me.**

Q You did not know where it happened?
A Because I became afraid of him, Sir.

Q Now, Madam Witness, you said that he forced himself upon you, he started kissing you, Madam Witness?
A He kissed me and I was forced, Sir.

Q And of course, at this time, Madam Witness, he was still holding that stick?
A Yes, Sir.

x x x x x x x x x

Q Madam Witness, you said that after he raped you, he took you to their house, is that correct?
A No, Sir.

Q So, where did he take you?
A In a vacant lot which was dark, Sir.

Q And after that, what happened?
A He inserted his penis in my private part, Sir.

Q Can you tell us, how that was done, Madam [W]itness?

PROS. NON:
May I pray again that it be placed on record that the witness is crying probably, she cannot anymore continue her testimony.[37]

Again, while seemingly innocuous, the glaring inconsistencies as to the place where the purported crime was committed cast reasonable doubt on AAA's testimony.

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[37] TSN, September 17, 2013, pp. 10-12; *id.* at 115-117. Emphasis and underscoring supplied.

There were substantial discrepancies as to where AAA was found after the alleged rape

Finally, AAA gave inconsistent accounts as to where she was found after the purported rape — whether at accused-appellant's house or at the scene of the crime. During her direct examination, AAA stated:

Q So after that, what happened?
A <u>After that, he brought me to their house.</u>

Q After he raped you, he brought you to your house?

COURT
Sa bahay niya o sa bahay niyo?

WITNESS
A My parents saw me **<u>in the place where it happened</u>** and they took me.

PROS. NON
Q Where did you[r] parents take you?
A To the police, Ma'am.[38]

AAA was similarly vague during her cross-examination. Despite having stated that she was found at accused-appellant's place but not at his house, she eventually admitted that she did not actually remember the details:

Q Now, Madam Witness, you said that your mother found you?
A Yes, Sir.

Q Where did she find you, Madam Witness?
A **<u>There at their place, Sir.</u>**

Q <u>In their house, Madam Witness?</u>
A <u>No, Sir.</u>

Q You do not remember, Madam Witness?
A **<u>No, I cannot remember, Sir.</u>**[39]

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[38] TSN, March 5, 2013, p. 11; *id.* at 84. Emphasis and underscoring supplied.

[39] TSN, September 17, 2013, p. 13; *id.* at 118. Emphasis and underscoring supplied.

The substantial inconsistencies affect AAA's credibility

It bears reiterating that the complainant's credibility is the single most important issue in a prosecution for Rape.[40] In *People v. Lagramada*,[41] the Court recognized that —

> x x x [M]inor variations between the affidavit and the testimony of the complainant are normally not enough to cast doubt upon her credibility and truthfulness. After all, errorless statements and testimonies cannot be expected, especially when she is recounting details of a harrowing experience. In accordance with human nature and experience, there can be honest inconsistencies on minor and trivial matters, but these serve to strengthen rather than destroy her credibility, especially when the crime is shocking to the conscience and numbing to the senses. Hence, she is ordinarily not deemed discredited by such discrepancies — for example, whether or not she was able to buy ice before the rape, or whether the accused held both of her hands or only one of them.[42]

While inconsistencies and contradictions in the complainant's testimony do not necessarily impair her credibility, "for said inconsistencies to be dismissed so as to give full credence to the alleged victim, **they must be minor, trivial and as far as practicable, few and far between**."[43]

In the instant case, the transcripts of stenographic notes unequivocally show that AAA gave conflicting accounts in her *Sinumpaang Salaysay*, direct examination, and cross-examination about the circumstances surrounding the purported rape, specifically as regards: (1) where she met accused-appellant; (2) the circumstances surrounding said meeting; (3) the circumstances leading up to the alleged rape; (4) the place of the alleged rape; and (5) the place where she was eventually

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[40] *People v. Buenaflor*, 412 Phil. 399, 408 (2001).

[41] *Supra* note 26.

[42] *Id.* at 771-772.

[43] *People v. Buenaflor*, *supra* note 40, at 409. Emphasis and underscoring supplied.

found. The allegation that AAA was threatened at knife-point while on her way to a dance (*sayawan*) is completely inconsistent with the claim that accused-appellant befriended AAA in a carnival (*peryahan*) and invited her to his house. Similarly, the categorical statement that AAA was raped near a creek or *sapaan* is completely inconsistent with the statement that she was raped in a dark vacant lot, which statements are inconsistent with her other statement that she did not know where she was raped.

Contrary to the findings of the RTC and the CA therefore, the discrepancies in AAA's testimony, taken as a whole, cannot be considered minor or trivial. She gave manifestly contradictory accounts of the circumstances surrounding the purported rape and forgot many other details. As a result, the Court cannot help but wonder whether AAA's recollection and narration is truthful or even reliable. This constitutes material doubt as to the credibility of AAA and the guilt of accused-appellant.

Worse, the prosecution never even attempted to explain, reconcile, or justify the inconsistencies.

Substantial inconsistencies were never reconciled nor justified

While the Court recognizes that a "truth-telling witness is not always expected to give an error-free testimony, considering the lapse of time and treachery of human memory,"[44] the prosecution bears the burden of reconciling and explaining any lapses, errors, or inconsistencies in said testimony, in accordance with the principle that the "evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense."[45]

In this instant case, the prosecution never bothered to explain or reconcile the evident inconsistencies in AAA's testimony. In fact, the Court notes that during AAA's re-direct examination,

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[44] *People v. Alcantara*, 471 Phil. 690, 700 (2004).

[45] *People v. Bermas*, *supra* note 29, at 6. Emphasis and underscoring omitted.

the prosecution focused solely on the age and physical size of AAA in relation to accused-appellant.[46] AAA was never asked to clarify or correct the conflicting statements made in her *Sinumpaang Salaysay vis-a-vis* her testimony in open court or the conflicting statements made during her direct examination and her cross-examination. This omission is fatal to the case.

Even assuming *arguendo* that the inconsistencies could be considered minor and reasonable in view of the long period of time that lapsed between the purported incident in 1995 and the date AAA was finally presented in court in 2013,[47] the Court cannot disregard or overlook the same to the prejudice of accused-appellant who did not in any way contribute to the 18-year delay.

Notably, although the warrant was issued on November 12, 1998, accused-appellant was only arrested on November 7, 2012.[48] Accused-appellant claims, however, that he never attempted to evade prosecution or delay the proceedings. During his cross-examination on June 9, 2015, accused-appellant stated:

Q This date of accusation happened in 1995, where were you from 1995 to 2012?
A **I was there in our place.**

Q Where?
A [LPB].

Q You have not received any notice from the Court that you should appear in court?
A There was none.[49]

In his re-direct examination, accused-appellant confirmed that he did not go into hiding, *viz*.:

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[46] TSN, September 17, 2013, pp. 13-14; records, pp. 118-119.

[47] *Rollo*, p. 14.

[48] *Id.* at 3.

[49] TSN, June 9, 2015, p. 11; records, p. 211. Emphasis and underscoring supplied.

Q **Mr. Witness, did you hide during the period that you did not come to the court during the hearing of this case?**

A **No, Sir**.[50]

Accused-appellant's claims, while self-serving, were neither denied nor rebutted by the prosecution.

It is certainly possible, even probable, that AAA's testimony would not have been infected with the aforementioned contradictions had accused-appellant been arrested and the complainant presented at an earlier date. Unfortunately, the Court cannot entertain "what-ifs" when the life and liberty of a person is at stake certainly, as "[i]t is not proper to torture the minds of the members of this Court by placing them in the trying position of running the risk of convicting an innocent man, all because of the prosecution's failure to do its duty of gathering evidence to establish his guilt beyond reasonable doubt."[51]

The prosecution was remiss in its duty and failed to sufficiently explain, reconcile, or justify the many substantial inconsistencies in AAA's testimony. As such, and given the particular nature of a charge of Rape, *i.e.*, that the court is often called upon to determine the innocence or guilt of an accused based solely on the conflicting testimony of two people, the Court is constrained to acquit accused-appellant on the basis of reasonable doubt.

The prosecution must establish the guilt of the accused beyond reasonable doubt based on the strength of its own evidence

The Court, in *People v. Lagramada*,[52] explained:

In a criminal prosecution, the law always presumes that the defendant is not guilty of any crime whatsoever, and this presumption stands until it is overcome by competent and credible proof. Where two

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[50] *Id.* Emphasis and underscoring supplied.

[51] *People v. Lagramada*, *supra* note 26, at 778.

[52] *Supra* note 26.

conflicting probabilities arise from the evidence, the one compatible with the presumption of innocence will be adopted. It is therefore incumbent upon the prosecution to establish the guilt of the accused with moral certainty or beyond reasonable doubt as demanded by law.

When a person cries rape, society reacts with sympathy for the victim, admiration for her bravery in seeking retribution for the crime committed against her, and condemnation for the accused. However, being interpreters of the law and dispensers of justice, judges must look at each rape charge sans the above proclivities and deal with it with caution and circumspection. Judges must free themselves of the natural tendency to be overprotective of every girl or woman decrying her defilement and demanding punishment for the abuser. While they ought to be cognizant of the anguish and humiliation the rape victim goes through as she demands justice, they should equally bear in mind that their responsibility is to render justice in accordance with law.

Hence, accused shall be presumed innocent until the contrary is proved. **Before the accused in a criminal case may be convicted, the evidence must be strong enough to overcome the presumption of innocence and to exclude every hypothesis except that of the guilt of the defendant. If the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not pass the test of moral certainty and will not suffice to support a conviction.**[53]

As already explained, AAA's many contradictory statements, which the prosecution never bothered to explain or justify, raise material doubt on AAA's credibility. In finding for accused-appellant, the Court makes no pronouncement as to the truth or falsity of AAA's claims. It considers only the *slightest possibility* that the facts are not as the complainant claims. Under the Constitution, however, this *possibility* — no matter how rare or unlikely — constitutes more than sufficient basis for an acquittal. This is what it means to be presumed innocent until the contrary is proved, beyond reasonable doubt.

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[53] *Id.* at 779-780. Emphasis and underscoring supplied.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The November 22, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 08128 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Noel Dolandolan is **ACQUITTED** of the crime charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

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

SO ORDERED.

Peralta, C.J. (Chairperson), Reyes, J. Jr., and *Lazaro-Javier, JJ.,* concur.

Lopez, J., on official leave.

FIRST DIVISION

[G.R. No. 235110. January 8, 2020]

JESUS EDANGALINO Y DIONISIO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL POSSESSION OF PROHIBITED DRUGS; IT IS ESSENTIAL THAT THE IDENTITY OF THE PROHIBITED DRUG BE ESTABLISHED BEYOND DOUBT.— [P]rosecution for illegal

possession of prohibited drugs necessitates that the elemental act of possession of a prohibited substance be established with moral certainty, together with the fact that the same is not authorized by law. The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction. Therefore, it is essential that the identity of the prohibited drug be established beyond doubt. This requirement necessarily arises from the unique characteristic of the illegal drugs that renders them indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused; otherwise, the prosecution for possession under R.A. No. 9165 fails.

2. ID.; ID.; SECTION 21 PROVIDES FOR THE PROCEDURAL SAFEGUARDS IN THE HANDLING OF SEIZED DRUGS; WITNESSES REQUIRED BEFORE AND AFTER AMENDMENT UNDER R.A. NO. 10640.— Section 21 of R.A. No. 9165 provides for the procedural safeguards in the handling of seized drugs by the apprehending officer/team. x x x R.A. No. 10640 amended Section 21 of R.A. No. 9165 and incorporated the saving clause contained in the IRR, and requires that the conduct of the physical inventory and taking of photograph of the seized items be done in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) an elected public official; and (3) a representative of the National Prosecution Service or the media. Since the alleged crime was committed in 2011, the old provisions of Section 21 of R.A. No. 9165 and its IRR are applicable which provide that after seizure and confiscation of the drugs, the apprehending team is required to immediately conduct a physically inventory and photograph the seized items in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) a representative from the media **and** (3) from the Department of Justice (*DOJ*); and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. It is assumed that the presence of these persons will guarantee "against planting of evidence and frame-up, [*i.e.*, they are] necessary to insulate

the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."

3. ID.; ID.; ID.; SAVING CLAUSE; FAILURE TO COMPLY REQUIRES JUSTIFIABLE GROUND FOR NON-COMPLIANCE AND THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.–– While the failure of the apprehending team to strictly comply with the procedure laid down in Section 21 of R.A. No. 9165 and the IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, the prosecution must satisfactorily prove that (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. The justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.

4. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; REGULAR PERFORMANCE OF OFFICIAL DUTIES; LAPSES IN THE PERFORMANCE OF REQUIRED LEGAL PROCEDURES ARE AFFIRMATIVE PROOFS OF IRREGULARITY.–– We find no basis on the RTC's and the CA's findings that the police officer regularly performed his official duty. Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally flawed because the lapses themselves are affirmative proofs of irregularity. The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *C.J.*:

Assailed in this petition for review on *certiorari*[1] is the Decision[2] dated March 28, 2017 of the Court of Appeals (*CA*) in CA-G.R. CR No. 37912 which affirmed *in toto* the Decision[3] dated May 4, 2015 of the Regional Trial Court (*RTC*), Branch 263, Marikina City, finding petitioner Jesus Edangalino *y* Dionisio guilty of violation of Section 11, Article II of Republic Act (*R.A.*) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. Also assailed is the Resolution[4] dated October 11, 2017 of the CA which denied reconsideration thereof.

In an Information[5] dated September 12, 2011, petitioner was charged with violation of Section 11, Article II of R.A. No. 9165, the accusatory portion of which reads:

> That on or about the 8th day of September 2011, in the City of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess or otherwise use any dangerous drugs, did then and there willfully, unlawfully and knowingly have in his possession, direct custody and control 0.02 [gram] of Methamphetamine Hydrochloride (shabu), a dangerous drug, in violation of the above-cited law.[6]

During his arraignment on September 29, 2011, petitioner, duly assisted by his counsel *de oficio*, pleaded not guilty to the charge.[7] Pre-trial and trial thereafter ensued.

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[1] *Rollo*, pp. 11-28.

[2] *Id.* at 32-44. Penned by Associate Justice Elihu A. Ybañez, and concurred in by Associate Justices Magdangal M. De Leon and Carmelita Salandanan Manahan.

[3] *Id.* at 68-75. Penned by Presiding Judge Armando C. Velasco.

[4] *Id.* at 46-47.

[5] Records, pp. 1-2.

[6] *Id.* at 1.

[7] *Id.* at 25.

The facts of the case as stated by the CA, thus:

Version of the Prosecution:

The antecedent facts as narrated by the Office of the Solicitor General (OSG) are as follows:

> On September 7, 2011, around 11:00 in the evening, an informant arrived at the office of the District Anti-Illegal Drugs Special Operation Task Group (DAID-SOTG) of the Eastern Police District located at Meralco Avenue, Pasig City, and reported that a certain "Amboy" of Barangay Malanday, Marikina City was engaged in illegal drug trade activities. Acting on the said report, P/Supt. Elmer R. Cereno (P/Supt. Cereno) immediately informed (*sic*) a team to conduct a buy-bust operation against "Amboy". The members of the team were subsequently briefed of the plan for the operation, and PO1 Rey Lambino (PO1 Lambino) was assigned as the poseur-buyer while PO1 Yon Enguio (PO1 Enguio) was tasked to be a back-up officer together with the members of the team. A five hundred-peso (Php500.00) bill with its serial number RJ697456 was also marked with "RL" at its upper right corner to serve as the buy-bust money. It was likewise agreed during the briefing that PO1 Lambino will ring the phone of PO1 Enguio to signify that the sale is consummated and he needs assistance to effect the arrest of "Amboy".
>
> Around 11:45 in the evening, armed with a coordination form from Philippine Drug Enforcement Agency (PDEA) with MMRO Control # 0911-00072, the buy-bust team proceeded to Barangay Malanday, Marikina City where their informant agreed to meet them.
>
> Around 1:40 in the morning of the following day, September 8, 2011, the team together with the informant proceeded to Jocson Street, Barangay Malanday, Marikina City. Thereat, PO1 Lambino and the informant looked for "Amboy" while the rest of the team positioned themselves strategically where they can oversee the transaction and immediately respond.
>
> A few minutes later, PO1 Lambino and the informant saw "Amboy" standing along an alley. When they approached him, the informant introduced PO1 Lambino to "Amboy" as the one who wants to buy shabu. "Amboy" immediately brought one

(1) piece of plastic sachet of suspected shabu and said that the same was worth ₱300.00. Before PO1 Lambino can even respond to "Amboy", someone shouted in background "May mga pulis." Upon hearing the same, "Amboy" attempted to run and flee the area but he was successfully restrained by PO1 Lambino. PO1 Lambino then introduced himself as a police officer, and confiscated from him one (1) plastic sachet of suspected shabu which should have been the subject of the sale between them if not for the interruption. PO1 Lambino then informed "Amboy", later on identified as the appellant, of his violation as well as his constitutional rights while under arrest. While at the place of the arrest and in front of the appellant, the plastic sachet of suspected shabu seized from the appellant was immediately marked by PO1 Lambino with "RL/Amboy 09-08-2011," photographed and inventoried. The certificate of inventory was then signed by the appellant.

The appellant and the seized item were then brought to DAID-SOTG office at the Eastern Police District in Meralco Avenue, Pasig City for investigation. After a request for laboratory examination of the seized specimen was prepared, the seized item was then brought by PO1 Lambino to the EPD Crime Laboratory where the same was received by PCI Cejes. The results of the laboratory examination conducted by PCI Cejes revealed that the contents of the plastic sachet confiscated from the appellant are positive for the presence of methamphetamine hydrochloride, a dangerous drug. The same plastic sachet of shabu was presented during trial and was identified to be the same item seized from the appellant during the operation on September 7-8, 2011.

Version of the Defense:

For its part, the defense [proffered] the sole testimony of the appellant to refute the foregoing accusations and aver a different version of the story.

According to the appellant, he met and brought a certain "Melvin" to his house on 07 September 2011. While inside his house, Melvin asked him if he knew someone selling drugs in the area so he accompanied him to the house of his neighbor, Cedie. At Cedie's house, Melvin immediately consumed the *shabu* that he bought and left at 11:00 o'clock (*sic*) in the evening.

Thirty (30) minutes later, Melvin returned and asked to be accompanied again to Cedie's house which appellant acceded. Melvin purchased shabu again, used half of it and kept the other half. Sensing Melvin's uneasiness, appellant asked him if he intended to contact his police companions to arrest their target. Melvin then went inside the comfort room to contact the police. Thereafter, he sat by the door and opened it when the police arrived. The policemen searched the house for illegal drugs but were unable to find any. Appellant and three (3) others were thereafter arrested.[8] (Citations omitted)

On May 4, 2015, the RTC rendered its Decision[9] finding petitioner guilty of violating Section 11, Article II of R.A. No. 9165, the dispositive portion of which reads:

WHEREFORE, above premises considered, the court finds accused JESUS EDANGALINO y DIONISIO GUILTY of the offense charged against him.

The accused is hereby sentenced to suffer the penalty of imprisonment of TWELVE (12) YEARS and ONE (1) DAY to TWENTY (20) YEARS in accordance with par. (3) of Sec. 11 of R.A. No. 9165.

He is also ordered to pay the fine in the amount of Three Hundred Thousand Pesos (₱300,000.00).

SO ORDERED.[10]

The RTC found that while the police failed to strictly follow the requirements of Section 21 of R.A. No. 9165, what is important is the preservation of the integrity and the evidentiary value of the seized items, because the same will be utilized in ascertaining the guilt or the innocence of the accused. Police Officer 1 (*PO1*) Rey Lambino categorically stated that he recovered from petitioner the illegal drugs presented in court; thus, the presumption that the integrity of the evidence has been preserved subsists unless it can be shown that there was

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[8] *Rollo*, pp. 34-36.

[9] *Supra* note 3.

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

bad faith, ill will or tampering with evidence which obligation rests on the accused. The RTC did not give weight to petitioner's denial for being inherently weak and it relied on the presumption of regularity in the official function of the police operatives.

On March 28, 2017, the CA rendered its assailed Decision,[11] the decretal portion of which reads:

> FOR THESE REASONS, the appealed Decision dated 04 May 2015 rendered by Branch 263 of the Regional Trial Court, Marikina City convicting appellant for violation of Section 11, Article II of Republic Act No. 9165, otherwise known as The Comprehensive Dangerous Drugs Act of 2002, in Criminal Case No. 2011-3935-D-MK is AFFIRMED in toto.[12]

The CA found that all the elements for the prosecution of illegal possession of dangerous drugs, *i.e.*, (1) the accused is in possession of an item or object which is identified as a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possesses the said drug, had been established. It gave credence to the testimony of the prosecution witness who is a police officer, thus presumed to have performed his duty in a regular manner. It ruled that there was no confusion surrounding the *corpus delicti* in this case since the illegal drug confiscated from petitioner, taken to the police headquarters, subjected to laboratory examination, introduced in evidence and identified in court, was the same illegal drug seized from petitioner during the buy-bust operation. It found petitioner's denial unsubstantiated by any convincing evidence and it cannot prevail against the positive testimony of PO1 Lambino. The CA ruled that non-compliance with the procedural requirements under Section 21 of R.A. No. 9165 and its Implementing Rules and Regulations (*IRR*) is not a serious flaw that can render void the seizures and custody of drugs in a buy-bust operation.

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[11] *Supra* note 2.

[12] *Id.* at 43.

Petitioner's motion for reconsideration was denied in a Resolution[13] dated October 11, 2017.

Petitioner files the instant petition for review on *certiorari* on the lone issue of:

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE PETITIONER'S CONVICTION FOR VIOLATION OF SECTION 11, ARTICLE II OF REPUBLIC ACT NO. 9165, DESPITE THE SERIOUS IRREGULARITIES IN THE CONDUCT OF THE POLICE OPERATION AND THE PROSECUTION'S FAILURE TO ESTABLISH THE IDENTITY AND INTEGRITY OF THE ALLEGED CONFISCATED DRUGS CONSTITUTING THE *CORPUS DELICTI* OF THE CRIME CHARGED.[14]

Petitioner claims, among others, that the records failed to show that the police officers complied with the mandatory procedures provided under paragraph 1, Section 21, Article II of R.A. No. 9165; that the prosecution failed to establish the presence of the indispensable witnesses during the conduct of the inventory and the photographing of the seized item; that there was no justifiable ground presented on why the presence of these persons was not secured; and that it was only the CA that acknowledged the supposed preservation of the integrity and evidentiary value of the seized item that, to its opinion, justified non-compliance.

We find the petition meritorious.

To begin with, prosecution for illegal possession of prohibited drugs necessitates that the elemental act of possession of a prohibited substance be established with moral certainty, together with the fact that the same is not authorized by law. The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction.[15] Therefore, it is essential that the identity of the

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[13] *Supra* note 4.

[14] *Rollo*, p. 17.

[15] *Carino, et al. v. People*, 600 Phil. 433, 444 (2009).

prohibited drug be established beyond doubt. This requirement necessarily arises from the unique characteristic of the illegal drugs that renders them indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused; otherwise, the prosecution for possession under R.A. No. 9165 fails.[16]

Section 21 of R.A. No. 9165 provides for the procedural safeguards in the handling of seized drugs by the apprehending officer/team, to wit:

> (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[.]

And Section 21 (a) of the IRR of R.A. No. 9165 provides:

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

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[16] *People of the Philippines v. Rogelio Yagao y Llaban*, G.R. No. 216725, February 18, 2019.

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

R.A. No. 10640[17] amended Section 21 of R.A. No. 9165 and incorporated the saving clause contained in the IRR, and requires that the conduct of the physical inventory and taking of photograph of the seized items be done in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) an elected public official; and (3) a representative of the National Prosecution Service or the media.

Since the alleged crime was committed in 2011, the old provisions of Section 21 of R.A. No. 9165 and its IRR are applicable which provide that after seizure and confiscation

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[17] Took effect on July 23, 2014.

Section 1 of Republic Act No. 10640 provides:

Section 1. x x x.

"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."

of the drugs, the apprehending team is required to immediately conduct a physically inventory and photograph the seized items in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) a representative from the media **and** (3) from the Department of Justice (*DOJ*); and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. It is assumed that the presence of these persons will guarantee "against planting of evidence and frame-up, [*i.e.*, they are] necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."[18]

A review of the records shows that there were no representatives from the media and the DOJ, and an elected public official when the marking, physical inventory and photographing of the seized item were done. PO1 Lambino admitted the absence of the required witnesses in his cross-examination, as follows:

Q: When this operation happened, how long have you been a police officer assigned in Anti-Illegal Drugs?
A: Almost six months, sir.

Q: During that time you would agree with me that you are familiar with the provisions of Republic Act 9165?
A: Yes, sir.

Q: You are familiar with Section 21 of that RA 9165, correct?
A: Not really, sir.

Q: Not really?
A: Yes, sir.

Q: Are you saying that you are implementing a law which you are not familiar with?
A: No, sir.

Q: So what does Section 21 states (*sic*)?
A: I did (*sic*) not familiar in (*sic*) Section 21 but I know the other sections of RA 9165, sir.

[18] *People of the Philippines v. Roben D. Duran*, G.R. No. 233251, March 13, 2019.

Q: Because you do not know what is stated in Section 21 of RA 9165, you did not ask any barangay official to witness the preparation of the inventory?
A: Sir, we make (*sic*) an effort.

Q: Please answer yes or no[.]
A: Yes, sir.

Q: You also did not ask any media representative or representative from the DOJ to witness that inventory?
A: Yes, sir.

Q: No one was also present when you were taking a photograph of the accused and the specimen that you confiscated?
A: Yes, sir.

Q: Where did you mark the evidence?
A: At the place of arrest, sir.

Q: At the place of arrest?
A: Yes, sir.

Q: You also mentioned that you took the photograph of the accused as well as the specimen at the place of arrest, is that right?
A: The photograph of the accused at the office but the evidence our (*sic*) recovered to (*sic*) the suspect at the place of arrest, sir.

Q: The marking?
A: Marking and taking of the photographs of the evidence recovered, sir.

Q: How about the photograph of the accused?
A: At the office, sir.

Q: At the office?
A: Yes, sir.

Q: Why is it that you did not take the photograph of the accused at the area?
A: We don't have the white board, sir.

Q: When you were marking the evidence that you allegedly confiscated there were no representative from media, barangay and DOJ, right?
A: Yes, sir.[19]

While the failure of the apprehending team to strictly comply with the procedure laid down in Section 21 of R.A. No. 9165 and the IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, the prosecution must satisfactorily prove that (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. 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.[20] Here, PO1 Lambino's testimony failed to establish any plausible explanation or justification on why the presence of the representatives from the media and the DOJ, and the elective official was not secured, to wit:

Q: Mr. Witness, why is it that you were not able to have barangay official signed (*sic*) the inventory of evidence?
A: Because sometimes, sir...

Q: No, that time, at the time when you had the marking why was there no barangay official?
A: At that time sir, we make (*sic*) effort to coordinate at the barangay but there [was] no available barangay official.

Q: What about the member of the media, why was there no member of media?

COURT:

Was Edwin Moreno not around during that time?

A: He [was] around, sir.

COURT:

He [was] around.

PROSECUTOR ABUAY, JR.:

Q: Why did he not sign the certificate?

[19] TSN, February 27, 2013, pp. 12-15.

[20] *People v. De Guzman y Danzil*, 630 Phil. 637, 649 (2010).

COURT:

Answer.

WITNESS:

A: He did not sign, sir.

PROSECUTOR ABUAY, JR.:

Q: Why?

A: Our Chief, DAID, did not sign any...

COURT:

Si Edwin Moreno, sabi mo kasi [kanina] andun siya, ang tanong ni fiscal bakit hindi mo pinapirma?

A: Edwin Moreno?

COURT:

Oo, sabi mo [kanina], he [was] around.

PROSECUTOR ABUAY, JR.:

Why was (*sic*) no media (*sic*) signed?

A: There [was] no media around and also barangay official.[21]

In *People v. Reyes*,[22] this Court enumerated certain instances where the absence of the required witnesses may be justified, thus:

It must be emphasized that the prosecution must be able to prove a justifiable ground in omitting certain requirements provided in Sec. 21 such as, but not limited to the following: (1) media representatives are not available at that time or that the police operatives had no time to alert the media due to the immediacy of the operation they were about to undertake, especially if it is done in more remote areas; (2) the police operatives, with the same reason, failed to find an available representative of the National Prosecution Service; (3) the police officers, due to time constraints brought about by the urgency of the operation to be undertaken and in order to comply with the provisions

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[21] TSN, February 27, 2013, pp. 21-23.

[22] G.R. No. 219953, April 23, 2018, 862 SCRA 352, 367-368.

of Article 125[23] of the Revised Penal Code in the timely delivery of prisoners, were not able to comply with all the requisites set forth in Section 21 of R.A. 9165.

And in *People of the Philippines v. Vicente Sipin y De Castro*,[24] we held:

> The prosecution never alleged and proved that the presence of the required witnesses was not obtained for any of the following reasons, such as: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official[s] themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.
>
> The prosecution's failure to offer any justifiable reason for its non-compliance with Section 21 of R.A. No. 9165 resulted in a substantial gap in the chain of custody of the seized item

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[23] Article 125. *Delay in the delivery of detained persons to the proper judicial authorities*. — The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent and thirty-six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, or their equivalent. In every case, the person detained shall be informed of the cause of his detention and shall be allowed upon his request, to communicate and confer at any time with his attorney or counsel. (As amended by E.O. Nos. 59 and 272, Nov. 7, 1986 and July 25, 1987, respectively).

[24] G.R. No. 224290, June 11, 2018.

from petitioner which placed the integrity and evidentiary value of the seized item in question. Therefore, we find petitioner's acquittal of the crime charged in order.

We find no basis on the RTC's and the CA's findings that the police officer regularly performed his official duty. Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally flawed because the lapses themselves are affirmative proofs of irregularity.[25] The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.[26]

WHEREFORE, premises considered, the petition for review on *certiorari* is **GRANTED**. The Decision dated March 28, 2017 and the Resolution dated October 11, 2017 of the Court of Appeals in CA-G.R. CR No. 37912 are hereby **REVERSED** and **SET ASIDE**. Petitioner Jesus Edangalino *y* Dionisio is accordingly **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. The Director of the Bureau of Corrections is **ORDERED** to immediately cause the release of petitioner from detention, unless he is being held for some other lawful cause, and to inform this Court his action hereon within five (5) days from receipt of this Decision.

SO ORDERED.

Caguioa, Reyes, J. Jr., and *Lazaro-Javier, JJ.*, concur.

Lopez, J., on wellness leave.

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[25] *People of the Philippines v. Gerald Arvin Elinto Ramirez and Belinda Galienba Lachica*, G.R. No. 225690, January 17, 2018.

[26] *People of the Philippines v. Dave Claudel y Lucas*, G.R. No. 219852, April 3, 2019.

THIRD DIVISION

[G.R. No. 236020. January 8, 2020]

PAPERTECH, INC., *petitioner, vs.* **JOSEPHINE P. KATANDO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; ILLEGAL DISMISSAL; DOCTRINE OF STRAINED RELATIONS; DISCUSSED.— The doctrine of strained relations was first introduced in the case of *Balaquezon Employees & Workers Transportation Union v. Zamora.* In *Balaquezon,* the Court awarded backwages as severance pay based on equity. The Court explained, "[t]his means that a monetary award is to be paid to the striking employees as an alternative to reinstatement which can no longer be effected in view of the long passage of time or because of the "realities of the situation." After *Balaquezon,* the Court further expounded on the doctrine of strained relations in the case of *Globe-Mackay Cable and Radio Corp. v. National Labor Relations Commission,* wherein We discussed the following considerations in applying the doctrine of strained relations: (1) the employee must occupy a position where he or she enjoys the trust and confidence of his or her employer; (2) it is likely that if reinstated, an atmosphere of antipathy and antagonism may be generated as to adversely affect the efficiency and productivity of the employee concerned; (3) it cannot be applied indiscriminately because some hostility is invariably engendered between the parties as a result of litigation; and (4) it cannot arise from a valid and legal act of asserting one's right. After *Globe-Mackay,* We clarified that the doctrine cannot apply when the employee has not indicated an aversion to returning to work, or does not occupy a position of trust and confidence in, or has no say in the operation of, the employer's business. In addition, strained relations between the parties must be proven as a fact.

2. ID.; ID.; ID.; ID.; APPLICATION; WHERE THE PROTRACTED LITIGATION BETWEEN THE PARTIES SUFFICIENTLY DEMONSTRATE THAT THEIR RELATIONSHIP WAS STRAINED.— Although Katando does

not occupy a position of trust and confidence as a machine operator, the circumstances of this case nonetheless calls for the application of the doctrine of strained relations. It is true that litigation between the parties *per se* should not bar the reinstatement of an employee. However, as observed by the NLRC, this is not the only case involving Papertech and Katando. They have been in conflict since 2008, or for 11 years now. In the case of *Digital Telecommunications Philippines, Inc. v. Digitel Employees Union*, We held that the length of time from the occurrence of the incident to its resolution and the demonstrated litigiousness of the parties showed that their relationship is strained. Similarly, the protracted litigation between the parties here sufficiently demonstrate that their relationship is strained. It is notable that Papertech has not even bothered to appeal the ruling of the Labor Arbiter, and even stated that "in order not to prolong the proceedings, and for both parties to peacefully move on from this unwanted situation, Papertech is willing to pay the judgment award of separation pay." Clearly, Papertech does not want Katando back as its employee.

3. ID.; ID.; LEGAL INTEREST IN ADDITION TO THE MONETARY AWARDS, NOT WARRANTED AS DELAY IN PAYMENT WAS CAUSED BY THE EMPLOYEE. — In addition to the monetary awards to Katando, legal interest to be counted from the time of extrajudicial or judicial demand, if the amount was established with reasonable certainty, or otherwise from the date of judgment of the court which quantified the amount until full payment, may also be imposed. However, the imposition of legal interest is subject to the discretion of the court. Considering that Papertech was willing to pay Katando's backwages and separation pay after Labor Arbiter Nicolas rendered his Decision, We find that the imposition of an interest in this case is not warranted. Papertech should not be penalized for the delay in payment of the monetary awards because it was Katando who opted to elevate the case before the NLRC and the CA.

APPEARANCES OF COUNSEL

Andres Padernal & Paras Law Offices for petitioner.
Remigio D. Saladero, Jr. for respondent.

D E C I S I O N

CARANDANG, *J.*:

This is a Petition for Review on *Certiorari*[1] filed by petitioner Papertech, Inc. (Papertech) assailing the Decision[2] dated August 18, 2017 and Resolution[3] dated December 1, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 142250. The CA reversed and set aside the Decision[4] dated May 25, 2015 and Resolution[5] dated June 30, 2015 of the National Labor Relations Commission (NLRC), which affirmed the Decision[6] dated January 30, 2015 of Labor Arbiter Nicolas B. Nicolas (Labor Arbiter Nicolas), insofar as it ordered the payment of separation pay to respondent Josephine P. Katando (Katando) in lieu of her reinstatement.

Antecedents

On June 6, 1996, Papertech hired Katando as a machine operator[7] in its office at 835 Felipe Pike Street, Bagong Ilog, Pasig City.[8] In 2007, Katando and other employees of Papertech filed a Petition for Certification Election.[9] They conducted a picket in the company on February 28, 2008.[10] This prompted

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[1] *Rollo*, pp. 10-31.

[2] Penned by Associate Justice Mario V. Lopez, with Associate Justices Remedios A. Salazar-Fernando and Ramon Paul L. Hernando (now a Member of this Court), concurring; *id.* at 32-38.

[3] *Id.* at 39-40.

[4] Penned by Commissioner Dolores M. Peralta-Beley, with Commissioners Grace E. Maniquiz-Tan and Mercedes R. Posada-Lacap, concurring; *id.* at 219-228.

[5] *Id.* at 234-236. Commissioner Grace E. Maniquiz-Tan dissented and stated that she was for the reinstatement of the complainant.

[6] Penned by Labor Arbiter Nicolas B. Nicolas; *id.* at 201-208.

[7] *Id.* at 220.

[8] *Id.* at 157.

[9] *Id.* at 163-166.

[10] *Id.* at 220.

Papertech to file a Complaint for Illegal Strike [11] against Katando and the other participants in the picket on May 24, 2008. Papertech prayed that the participants be declared to have lost their employment.[12]

Labor Arbiter Thomas T. Que, Jr. (Labor Arbiter Que) ruled in favor of Papertech on May 30, 2008, but his ruling was reversed by the NLRC on appeal in its Decision on May 29, 2009.[13] The NLRC ordered the reinstatement of Katando and her fellow employees. The ruling of the NLRC was upheld by the CA and this Court, and became final and executory on September 2, 2011. Upon motion of Katando and the other employees, Labor Arbiter Que issued a Writ of Execution on April 17, 2013 ordering their reinstatement at Papertech's premises in Pasig City.[14]

On May 14, 2013, Papertech sent a notice to Katando and other employees ordering them to report to various posts in Cagayan De Oro, Davao City, Cebu City, Iloilo City, and Pangasinan, under pain of removal in case of non-compliance. They filed a Manifestation with Urgent Motion to Cite Respondent Company in Contempt and to Order Payment of their Salaries.[15] On August 5, 2013, Labor Arbiter Que denied their manifestation with motion, so they filed a verified petition for extraordinary remedies before the NLRC. The NLRC granted it in its Resolutions dated September 30, 2013[16] and November 29, 2013[17] and declared the Order[18] dated August 5, 2013 of Labor Arbiter Que null and void. The NLRC ordered Labor

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[11] *Id.* at 41-48.

[12] *Id.* at 220.

[13] *Id.* at 288.

[14] *Id.* at 220.

[15] *Id.* at 127-132.

[16] *Id.* at 220-221.

[17] *Id.* at 287-288.

[18] Not attached to the *rollo*.

Arbiter Que to resolve the issues on the salaries as contained in Katando and her co-respondents' manifestation with motion, and to proceed with the execution of the NLRC Decision dated May 29, 2009 without delay.[19] Papertech assailed the NLRC Resolutions before the CA.[20]

On December 14, 2013, Katando received a memorandum from Papertech stating that due to urgency of business, she will be transferred to its Makati office.[21] The memorandum states that she will still be under the same employment terms and conditions but will be tasked to clean the area.[22] Three days later, Katando received another memorandum asking her to explain why she should not be subjected to disciplinary action for failing to sign the December 14, 2013 memorandum, for her refusal to transfer to the Makati office, and for shouting at Papertech's representative. Papertech sent Katando a memorandum on Dcember 26, 2013 imposing a seven-day suspension upon her for her disrespectful behaviour to her fellow employees and officials of the company.[23]

Katando served her suspension. However, she was suspended yet again for one week for her disobedience or refusal to transfer as directed. Katando then filed a complaint for illegal suspension before the NLRC.[24]

Papertech issued a memorandum dated February 6, 2014 to Katando reiterating her transfer to its Makati office.[25] Thereafter, Papertech issued a notice to Katando requiring her to explain within 48 hours why she refused to receive the February 6, 2014 memorandum. Katando submitted her explanation.[26]

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[19] *Rollo*, p. 145.

[20] Docketed as CA-G.R. SP No. 135557.

[21] *Rollo*, p. 221.

[22] *Id.* at 61.

[23] *Id.* at 221.

[24] *Id.*

[25] *Id.*

[26] *Id.* at 221-222.

Papertech issued another notice to Katando on February 17, 2014 directing her to explain why she should not be administratively charged for refusing to transfer to its Makati office. Despite submitting her explanation, Papertech issued a notice on February 24, 2014 dismissing Katando for her insubordination. Katando filed a complaint for illegal dismissal, moral and exemplary damages, and attorney's fees against Papertech[27] and its Chairman of the Board of Directors, Alexander Wong, and Human Resource Manager Joan M. Balde.[28]

On May 26, 2014, Labor Arbiter Rosalina Maria O. Apita-Battung issued a Decision[29] finding that Katando 's suspension was illegal.[30]

Ruling of the Labor Arbiter

On January 30, 2015, Labor Arbiter Nicolas issued a ruling in favor of Katando in this case, to wit:

> **WHEREFORE**, premises considered, complainant is declared illegally dismissed. Accordingly, respondent Papertec Inc. is ordered to pay her backwages, other benefits, separation pay plus attorney's fees, in the total amount of ₱429,258.72. Other claims are denied for lack of merit.
>
> **SO ORDERED.**[31]

Labor Arbiter Nicolas held that there was no just cause for Katando's termination. Papertech failed to prove the existence of a legitimate urgency justifying her transfer to the Makati office. In fact, they did not disprove the certification from the Makati City Business Permit Office that it is not a registered entity in Makati City.[32] Thus, Labor Arbiter Nicolas ordered

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[27] *Id.* at 222.

[28] *Id.* at 201.

[29] *Id.* at 156-160.

[30] *Id.* at 223.

[31] *Id.* at 207-208.

[32] *Id.* at 206.

Papertech to pay Katando backwages from the time that she was illegally dismissed until the finality of its decision based on her daily wage plus allowance amounting to ₱480.00. However, Katando's prayer for reinstatement was not granted. Instead, Papertech was ordered to pay her separation pay of one month pay for every year of service from the commencement of her employment on June 6, 1996 until the finality of its decision. According to Labor Arbiter Nicolas, "[t]he filing of the instant case and the attempts of the Papertech to transfer the complainant have brought about antipathy and antagonism between them, thereby resulting to strained relationship."[33] With respect to the claim for damages, it was, likewise, denied due to Katando's failure to discuss or pray for it in her position paper. Labor Arbiter Nicolas granted attorney's fees because Katando was forced to litigate. Katando partially appealed to the NLRC.[34]

Ruling of the NLRC

On May 25, 2015, the NLRC denied the partial appeal but ordered Papertech to pay Katando her backwages from the time that she was illegally dismissed on February 25, 2014 until the finality of its decision, and separation pay computed at one month pay for every year of service up to the finality of the decision.[35]

The NLRC agreed with the Labor Arbiter that separation pay should be given to Katando in lieu of her reinstatement. The NLRC cited several cases involving Papertech and Katando, namely: (1) Papertech's complaint in 2008 for illegal strike; (2) Katando's verified petition for extraordinary remedies in September 2013; (3) Katando's complaint for illegal suspension in February 2014; and (4) Katando's complaint for illegal dismissal on April 24, 2014. The NLRC held that these cases

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[33] *Id.* at 207.

[34] *Id.*

[35] *Id.* at 227.

created an atmosphere of antipathy and antagonism.[36] According to the NLRC, "separation pay is the better alternative as it liberates Katando from what could be a highly hostile work environment, while releasing respondents from the grossly unpalatable obligation of maintaining in their employ a worker they could no longer trust."[37]

Katando appealed to the CA.

Meanwhile on November 9, 2015, the CA, in CA-G.R. SP No.135557,[38] nullified the Resolutions dated September 30, 2013 and November 29, 2013 of the NLRC and directed Katando and her co-respondents to report back to work in the place designated by Papertech per notice of job assignments dated May 4, 2013, or if they obstinately refuse such assignment, ordered Papertech to pay them separation pay equivalent to one month salary for every year of service, as fraction of at least six months being considered as one whole year.[39] The CA held that Papertech was able to prove that it could no longer reinstate Katando and her co-petitioners to their previous positions. The abolition of these positions in its premises in Pasig City and the employees' reassignment to its provincial plants were a valid exercise of its management prerogative.[40] Should the employees refuse their reinstatement to an equivalent position, the CA held that the payment of separation pay is a viable remedy.[41] This Court upheld the ruling of the CA in Our Resolution[42] dated August 15, 2016, which became final and executory on November 21, 2016.[43]

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[36] *Id.* at 226.

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

[38] Penned by Associate Justice Zenaida T. Galapate-Laguilles, with Associate Justices Mariflor P. Punzalan-Castillo and Fiorito S. Macalino, concurring; *id*. at 287-297.

[39] *Id.* at 296-297.

[40] *Id.* at 294.

[41] *Id.* at 295-296.

[42] *Id.* at 298.

[43] *Id.* at 299.

Ruling of the CA

On August 18, 2017, the CA granted Katando's petition and ordered Papertech to immediately reinstate her to her previous position without loss of seniority rights in addition to the award of backwages.[44]

The CA ruled that the doctrine of strained relations cannot apply to Katando as she is part of the rank and file workforce and does not occupy a managerial or key position in the company. She even asked for her reinstatement. In addition, there is no proof of strained relations between her and Papertech.[45] It is not sufficient that the parties were involved in several cases because no strained relations should arise from a valid and legal act of asserting one's right.[46]

Papertech filed a motion for reconsideration but it was denied by the CA. Thus, it filed a petition for review on *certiorari* before this Court seeking the reversal of the ruling of the CA. In compliance with the Resolution of this Court, Katando filed her comment and/or opposition to Papertech's petition.

Issue

Whether the CA erred in ordering the reinstatement of Katando instead of granting her separation pay.

Ruling of the Court

We grant the petition.

The doctrine of strained relations was first introduced in the case of *Balaquezon Employees & Workers Transportation Union v. Zamora.*[47] In *Balaquezon,* the Court awarded backwages as severance pay based on equity. The Court explained, "[t]his

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[44] *Id.* at 37.

[45] *Id.* at 36.

[46] *Id.* at 37.

[47] *Esmalin v. National Labor Relations Commission*, 258 Phil. 335, 349 (1989).

means that a monetary award is to be paid to the striking employees as an alternative to reinstatement which can no longer be effected in view of the long passage of time or because of the "realities of the situation."[48] After *Balaquezon,* the Court further expounded on the doctrine of strained relations in the case of *Globe-Mackay Cable and Radio Corp. v. National Labor Relations Commission*,[49] wherein We discussed the following considerations in applying the doctrine of strained relations: (1) the employee must occupy a position where he or she enjoys the trust and confidence of his or her employer;[50] (2) it is likely that if reinstated, an atmosphere of antipathy and antagonism may be generated as to adversely affect the efficiency and productivity of the employee concerned; (3) it cannot be applied indiscriminately because some hostility is invariably engendered between the parties as a result of litigation; and (4) it cannot arise from a valid and legal act of asserting one's right.[51] After *Globe-Mackay,* We clarified that the doctrine cannot apply when the employee has not indicated an aversion to returning to work, or does not occupy a position of trust and confidence in, or has no say in the operation of, the employer's business.[52] In addition, strained relations between the parties must be proven as a fact.[53]

Although Katando does not occupy a position of trust and confidence as a machine operator, the circumstances of this case nonetheless calls for the application of the doctrine of strained relations. It is true that litigation between the parties *per se* should not bar the reinstatement of an employee. However, as observed by the NLRC, this is not the only case involving

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[48] *Balaquezon Employees & Workers Transportation Union v. Zamora*, 186 Phil. 3, 9 (1980).

[49] 283 Phil. 649, 664 (1992).

[50] See *TPG Corp. v. Pinas*, 804 Phil. 222, 232 (2017).

[51] *Supra* note 49 at 661.

[52] *Fernandez, Jr. v. Manila Electric Co.,* G.R. No. 226002, June 25, 2018, 868 SCRA 156, 169.

[53] *Rodriguez v. Sintron Systems, Inc.,* G.R. No. 240254, July 24, 2019.

Papertech and Katando. They have been in conflict since 2008, or for 11 years now. In the case of *Digital Telecommunications Philippines, Inc. v. Digitel Employees Union*,[54] We held that the length of time from the occurrence of the incident to its resolution and the demonstrated litigiousness of the parties showed that their relationship is strained. Similarly, the protracted litigation between the parties here sufficiently demonstrate that their relationship is strained. It is notable that Papertech has not even bothered to appeal the ruling of the Labor Arbiter, and even stated that "in order not to prolong the proceedings, and for both parties to peacefully move on from this unwanted situation, Papertech is willing to pay the judgment award of separation pay."[55] Clearly, Papertech does not want Katando back as its employee.

Moreover, the CA stated in its final and executory November 9, 2015 Decision in CA-G.R. SP No. 135557, wherein Katando was one of the respondents together with Papertech's other employees, that what remained in Papertech's Pasig City premises was its sales, marketing, and distribution operations. In that lease, the CA held that the transfer of Papertech's manufacturing and production departments to its provincial plants was valid. Consequently, the positions held by Katando and her co-respondents in Pasig City were abolished.[56] Bearing this in mind, Katando's reinstatement as a machine operator in Papertech's Pasig City premises is no longer possible. Thus, separation pay is the only viable option for Katando.

In addition to the monetary awards to Katando, legal interest to be counted from the time of extrajudicial or judicial demand, if the amount was established with reasonable certainty, or otherwise from the date of judgment of the court which quantified the amount until full payment, may also be imposed. However, the imposition of legal interest is subject to the discretion of

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[54] 697 Phil. 132, 157 (2012).

[55] *Rollo*, p. 25.

[56] *Id.* at 294.

the court.[57] Considering that Papertech was willing to pay Katando's backwages and separation pay after Labor Arbiter Nicolas rendered his Decision,[58] We find that the imposition of an interest in this case is not warranted. Papertech should not be penalized for the delay in payment of the monetary awards because it was Katando who opted to elevate the case before the NLRC and the CA.

WHEREFORE, the petition is **GRANTED**. The Decision dated August 18, 2017 and the Resolution dated December 1, 2017 of the Court of Appeals in CA-G.R. SP No. 142550 are hereby **REVERSED** and **SET ASIDE**. The Decision dated May 25, 2015 and the Resolution dated June 30, 2015 of the National Labor Relations Commission in NLRC NCR Case No. 04-04837-14 are **REINSTATED**.

SO ORDERED.

Leonen (*Chairperson*), *Gesmundo, Zalameda,* and *Delos Santos,*[*] *JJ.* concur.

FIRST DIVISION

[G.R. No. 240458. January 8, 2020]

HILARIO P. SORIANO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

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[57] *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*, G.R. No. 225433, August 28, 2019.

[58] See *rollo,* p. 255.

[*] Designated as Additional Member of the Third Division.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT WHEN AFFIRMED BY THE COURT OF APPEALS, RESPECTED. — [T]he arguments raised by petitioner inarguably require to inquire into the sufficiency of the evidence presented by the prosecution, a course of action which this Court will, generally, not do, consistent with our repeated holding that this Court is not a trier of facts. It is basic that factual findings of trial courts, including their assessment of witnesses' credibility, are entitled to great weight and respect by this Court, especially when affirmed by the CA. None of the jurisprudential exceptions to this rule obtain in this case.

2. MERCANTILE LAW; THE GENERAL BANKING ACT (RA NO. 337); SECTION 83 RE DIRECTORS, OFFICERS, STAKEHOLDERS, AND OTHER RELATED INTERESTS (DOSRI) LAW; ELEMENTS FOR VIOLATION THEREOF. — [Under] Section 83 (the DOSRI Law) of the General Banking Act (R.A. No. 337), x x x the following elements must be present to constitute a violation of the provision: (1) the offender is a director or officer of any banking institution; (2) the offender, either directly or indirectly, for himself or as a representative or agent of another, performs any of the following acts: (a) he borrows any of the deposits or funds of such bank; or (b) he becomes a guarantor, indorser, or surety for loans from such bank to others; or (c) he becomes in any manner an obligor for money borrowed from bank or loaned by it; and (3) the offender has performed any of such acts without the written approval of the majority of the directors of the bank, excluding the offender, as the director concerned. The essence of the crime is becoming an obligor of the bank without securing the necessary written approval of the majority of the bank's directors.

3. ID.; ID.; ID.; PENALTY FOR VIOLATION THEREOF.— For the violation of the DOSRI law, Section 83 of R.A. No. 337, as amended provides for the penalty of imprisonment of not less than one year nor more than 10 years and a fine of not less than ₱1,000.00 nor more than ₱10,000.00. Hence the imposed penalty of 10 years of imprisonment and a fine of ₱10,000.00 is well within the range of the prescribed penalty.

4. CRIMINAL LAW; FALSIFICATION OF DOCUMENTS; ELEMENTS.— The elements of falsification of documents under paragraph 1, Article 172 of the Revised Penal Code (RPC) are: (1) that the offender is a private individual or a public officer or employee who did not take advantage of his official position; (2) that he committed any of the acts of falsification enumerated in Article 171 of the RPC; and (3) that the falsification was committed in a public, official or commercial document.

5. ID.; ESTAFA THROUGH FALSIFICATION OF COMMERCIAL DOCUMENTS COMMITTED IN CASE AT BAR.— [T]he falsification [here] was committed in bank loan application, promissory note, checks and disclosure statement, among others, which are commercial documents. Commercial documents are, in general, documents or instruments which are "used by merchants or businessmen to promote or facilitate trade or credit transactions" such as the above-said documents and instruments. This committed falsification was also established to have been a necessary means to commit estafa. x x x As in this case, the crime of falsification was already consummated, and the falsified documents were, thereafter, used to defraud the bank to release money purportedly to Malang. Records show that the elements of estafa obtain in this case. Petitioner falsely represented that Malang pursued the loan application and promissory note that were signed in blank through petitioner's prodding; and orchestrating the whole process until he, with his now deceased co-accused Ilagan, succeeded in withdrawing the proceeds thereof from [the] Rural Bank of San Miguel (RBSM), coursing them through Merchants Rural Bank of Talavera, Inc. (MRBTI) and Land Bank, and thereafter applying the same to his previous irregular loans also with RBSM. Clearly, petitioner employed deceit to acquire money, on another person's account, and use the same for his personal use and benefit, which resulted to the damage and prejudice of the RBSM in the amount of ₱14,775,000.00. Again, petitioner could not have acquired the said amount to pay off his previous loans without the act of falsification. The falsification was, therefore, a necessary means to commit estafa, and falsification was already consummated even before the falsified documents were used to defraud the bank. Thus, the complex crime of estafa through falsification of documents is committed when the offender commits on a public, official or commercial document any of

the acts of falsification enumerated in Article 171 as a necessary means to commit estafa.

6. ID.; ID.; PENALTY.— For the crime of estafa through falsification of commercial documents, being a complex crime, the penalty for the more serious crime, which is estafa in this case, shall be imposed in its maximum period. The CA correctly modified the penalty imposed by the RTC pursuant to the amendments under R.A. No. 10951, the same being applicable retroactively as held in the recent case of *Hernan v. Sandiganbayan*. Thus, under Section 85 of R.A. No. 10951, the penalty for estafa is *prision correccional* in its maximum period to *prision mayor* in its minimum period if the amount of the fraud is over ₱2,400,000.00 but does not exceed ₱4,400,000.00. If the amount of the fraud exceeds the latter sum, the penalty shall be imposed in its maximum period, adding one year for each additional ₱2,000,000.00 but the total penalty shall not exceed 20 years. In such cases, and also for purposes of the imposition of accessory penalties, the imposable penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be. Applying the Indeterminate Sentence Law and considering that the amount involved herein is ₱14,775,000.00, the minimum term of the imposable penalty should be within the range of the penalty next lower to that prescribed by law for the offense, *i.e.*, *prision correccional* in its minimum and medium periods applied in its maximum period, which is 2 years, 11 months, and 11 days to 4 years and 2 months. The CA, thus, correctly imposed the penalty of 4 years and 2 months of *prision correccional* as minimum. On the other hand, the maximum term of the imposable penalty shall be taken from the maximum of the prescribed penalty or 6 years, 8 months, and 21 days to 8 years, adding one year to the floor or the ceiling of the prescribed penalty at the discretion of the court, for each additional ₱2,000,000.00 from the threshold amount of ₱4,400,000.00. Thus, as ₱14,775,000.00 exceeded ₱4,400,00.00 by ₱10,375,000.00, the difference shall be divided by ₱2,000,000.00 to bring us to the number of years to be added as incremental penalty, *i.e.*, 5.1875. Prevailing jurisprudence dictates that any fraction of a year shall be discarded, hence, we only add 5 years either to the floor of the prescribed penalty or 6 years, 8 months, and 21 days or to the ceiling, which is 8 years. Thus, again, the CA correctly imposed the penalty of 13 years of *reclusion temporal* as maximum. We, however, find it

proper to modify the 12% interest imposed by the CA on the civil indemnity pursuant to recent jurisprudence and BSP Circular No. 799. Thus, the interest rate of 6% per annum shall be imposed on the amount of ₱14,775,000.00 from the date of the finality of this Decision until full payment.

APPEARANCES OF COUNSEL

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

D E C I S I O N

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

Before this Court is a Petition for Review on *Certiorari*,[1] assailing the Decision[2] dated February 28, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 39252, which affirmed with modification, only as to the penalty imposed, the Decision[3] dated October 13, 2015 of the Regional Trial Court (RTC) of Malolos City, Bulacan, finding petitioner Hilario P. Soriano (petitioner) guilty beyond reasonable doubt of violating Section 83 of Republic Act (R.A.) No. 337, as amended by Presidential Decree (P.D.) No. 1795 or the General Banking Act, and of estafa thru falsification of commercial documents.

Factual Antecedents

Two separate Information were filed against petitioner as follows:

Criminal Case No. 1719-M-2000

That on or about June 27, 1997 and thereafter and within the jurisdiction of this Honorable Court, the said accused, in his capacity

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[1] *Rollo*, pp. 13-37.

[2] Penned by Associate Justice Manuel M. Barrios, with Associate Justices Victoria Isabel A. Paredes and Jhosep Y. Lopez, concurring; *id*. at 41-53.

[3] Penned by Presiding Judge Ma. Theresa V. Mendoza-Arcega; *id*. at 85-102.

as president of the Rural Bank of San Miguel (Bulacan), Inc., did then and there, unlawfully and feloniously, indirectly borrow or secure a loan with the Rural Bank of San Miguel, San Miguel Branch, a domestic rural banking institution created, organized and existing under Philippine Laws, amounting to Ph[₱]15 million, knowing fully well that the same has been done by him without the written consent and approval of the majority of the board of directors of the said bank, and which consent and approval the said accused deliberately failed to obtain and enter the same upon the records of said banking institution and to transmit a copy of which to the supervising department of the said bank as required by the General Banking Act, by using the name of one depositor VIRGILIO J. MALANG of San Miguel, Bulacan, who have no knowledge of the said loan, and once in possession of the said amount of Ph[₱]14,775,000.00 net of interest, converted the same to his own personal use and benefit, in flagrant violation of the said law.

CONTRARY TO LAW.[4]

Criminal Case No. 1720-M-2000

That on or about June 27, 1997 and thereafter, in San Miguel, Bulacan and within the jurisdiction of this Honorable Court, the said accused HILARIO P. SORIANO and ROSALINDA ILAGAN, as principals by direct participation, with unfaithfulness or abuse of confidence and taking advantage of their position as president of the Rural Bank of San Miguel (Bulacan) Inc., and Manager of the Rural Bank of San Miguel-San Miguel Branch, a duly organized banking institutions (sic) under Philippine laws, conspiring, confederating and mutually helping one another, did then and there, willfully and feloniously falsify loan documents consisting of loan application/ information sheet, promissory note dated June 27, 1997, disclosure statement on loan/credit transaction, credit proposal report, manager's check no. 06514 (sic) dated June 27, 1997 and undated RBSM-San Miguel Branch check voucher, by making it appear that one VIRGILIO J. MALANG filed the aforementioned loan documents when in truth and in fact, VIRGILIO J. MALANG did not participate in the execution of the said loan documents and that by virtue of the said falsification and with deceit and intent to cause damage, the accused credited the loan proceeds of the loan (sic) amounting to Ph[P]14,777,000.00, (sic) net of interest to the account of VIRGILIO J. MALANG with

[4] Amended Information; *id*. at 88.

the RBSM and thereafter converted the same amount to their own personal gain and benefit, to the damage and prejudice of the Rural Bank of San Miguel-San Miguel Branch, its creditors and the Bangko Sentral ng Pilipinas in the amount of Ph[P]14,775,000.00.

CONTRARY TO LAW.[5]

Petitioner was charged of securing an indirect loan from Rural Bank of San Miguel (RBSM) while being an officer thereof by falsifying loan documents and making it appear that a certain Virgilio Malang (Malang) obtained the same, and thereafter, converting the proceeds for his personal gain and benefit.

To prove the charges, the prosecution presented, aside from pertinent documentary evidence, the following witnesses, to wit: (1) Herminio Principio (Principio) of the Department of Rural Bank Supervision and Examination Section, Bangko Sentral ng Pilipinas (DRB-BSP);[6] (2) Malang, a businessman and depositor of the (RBSM) in Bulacan;[7] (3) Andres Santillana (Santillana), president of Mechants Rural Bank of Talavera, Inc. (MRBTI);[8] (4) Epifanio Posada (Posada), branch manager of MRBTI, Sta. Rosa Branch;[9] (5) Evelyn Ramos (Ramos), a representative of the Land Bank of the Philippines (Land Bank), Gapan Branch;[10] (6) Nancy Angeles (Angeles), a cashier from Land Bank-Gapan;[11] (7) Francisco Gementiza (Gementiza) of the Philippine Clearing House (PCH);[12] (8) Nonito Cristobal (Cristobal), former branch manager of Land Bank-Gapan;[13] and

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[5] *Id*. at 87.

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

[7] *Id*. at 92-93.

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

[9] *Id*. at 94.

[10] *Id*.

[11] *Id*. at 95.

[12] *Id*.

[13] *Id*.

(9) Elmer Haber (Haber) of the Philippine Deposit Insurance Corporation (PDIC).[14]

Principio testified that he was tasked to ascertain the financial conditions of rural banks and determine if these banks comply with the banking laws and the regulations, as well as the directives of the BSP. He became in-charge of RBSM. During the general examination, RBSM was found to have several violations, particularly the grant of loans "without proper and complete loan documentation" and "clean or unsecured loans were being granted in such a large amount that would be considered excessive for the substance of needs of the borrowers."[15]

Upon further investigation, it was discovered that on June 27, 1997, RBSM released an unsecured loan with a principal amount of ₱15,000,000.00 to Malang, without a co-maker and collateral; without approval from the Credit Committee or the Board of Directors; and through an incomplete loan application, the same being signed in blank except for the name and address.[16] In a Letter[17] dated September 15, 1997 addressed to the BSP, petitioner stated that said loan was "approved/confirmed under BR No. 64A-1997 dated July 9, 1997" and that the same was "secured with the following collaterals: TCT-RT25807 (T-111040) situated in San Miguel, Bulacan, TCT-T34464 situated in Baliuag, Bulacan, [and] TCT-285848 situated in Caloocan City."[18] Records, however, show that no report regarding said loan was submitted to the DRB-BSP and that there were no annotations on the transfer certificates of title purportedly subject of the real estate mortgage.[19]

Principio demanded from petitioner's co-accused, Rosalinda Ilagan (Ilagan), RBSM General Manager, to produce the credit

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

[15] *Id.* at 16-17.

[16] *Id*. at 17.

[17] Exhibits "P-series", records, Vol. V-A. pp. 249-253.

[18] Exhibit "P-5", *id*. at 252.

[19] *Rollo*, p. 91; Exhibits "Q", "R", "S", *id.* at 254-256.

folder of the subject loan. Ilagan furnished Principio the following documents: (a) Loan Application/Information Sheet, signed in blank and without any information except the name and address of the alleged borrower; (b) Promissory Note No. 101-97-110 dated June 27, 1997, in the principal amount of ₱15,000,000.00, purportedly executed by Malang; (c) Disclosure Statement on Loan/Credit Transaction, purportedly signed by Malang; and (d) unnumbered Credit Proposal Report dated May 14, 1997, for spouses Malang, which was prepared, recommended for approval and signed by Ilagan, approved by petitioner as member of the Board of Directors of RBSM, and does not bear the signatures of the majority of the Board of Directors of RBSM.[20]

Pursuant to the said loan, Manager's Check No. 016514[21] dated June 27, 1997 in the amount of ₱14,775,000.00 payable to Malang was released.

Malang, however, denied having applied for and received any proceeds of the said loan. This was corroborated by an Affidavit[22] executed by Ilagan. Instead, Malang testified that he knew petitioner as the president of RBSM and because they were both stockholders of MRBTI. He narrated that petitioner encouraged him to apply for a loan and gave him documents to fill up and sign. He, however, withdrew the application later on due to his wife's objection thereto, and also due to their lawyer's advice that the loan will not be granted because of the insufficient collateral. He was, thus, surprised to discover that the loan proceeds were deposited to his purported current account with RBSM, when he does not have one. Two personal checks with Nos. 0122077[23] and 0122076[24] dated July 1, 1997, amounting to ₱12,409,791.99 and ₱2,365,000.00, respectively,

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[20] *Id*. at 17.

[21] Exhibit "Z", records, Vol. V-A, pp. 288-290.

[22] Exhibit "Y", *id*. at 287.

[23] Exhibit "BB", *id*. at 293.

[24] Exhibit "CC", *id*.

payable to himself, were thereafter issued and drawn from the said current account.[25] These checks were then deposited to another purported account of Malang in MRBTI.[26]

Upon confronting Santillana, MRBTI's president, about the deposit, he found out that it was Ilagan, upon petitioner's instruction, who deposited the two checks to the account.[27]

Santillana testified that, indeed, sometime in July 1997, Ilagan deposited checks in Malang's account and thereafter, also withdrawn by Ilagan, per petitioner's instruction. According to Santillana, petitioner instructed him as follows: "*x x x Andy may padadala akong tseke riyan ideposito mo [sa] account ni Malang pagka clear ika, pababalikan ko kay Rose dyan, kukunin sayo ipalit mo ng kuwan ipakiusap mo sa Landbank na ipalit ng tseke sa ganong pangalan*."[28] Thus, the deposited amount was withdrawn through the issuance of 30 MRBTI checks,[29] drawn against MRBTI's Land Bank account, payable to Malang. Thereafter, as arranged, said checks were taken by a certain Diosa Marquez with Ilagan and used to buy two Land Bank cashier's checks, amounting to ₱12,409,791.99 (Check No. 000000992) and ₱2,365,000.00 (000000993) both dated July 3, 1997, payable to Norma Rayo (Rayo) and Teresa Villacorta (Villacorta), respectively.[30]

Ramos and Angeles of Land Bank-Gapan corroborated this testimony.[31]

These Land Bank checks, among others, were then deposited to RBSM to pay off petitioner's previous irregular loans. Said payments were evidenced by official receipts issued by RBSM.[32]

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[25] *Rollo*, pp. 92-93.

[26] Deposit Slip dated July 3, 1997, Exhibit "EE", records, Vol. V-A, p. 295.

[27] *Rollo*, p. 88.

[28] *Id*. at 94.

[29] Exhibits "FF-series", records, Vol. V-A, pp. 296-303.

[30] *Rollo*, pp. 93-94.

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

[32] Exhibits "TT" and "UU", records, Vol. V-A, pp. 427-428.

Despite several opportunities given, the defense failed to file its formal offer of evidence.[33]

Incidentally, on May 18, 2014, the RTC received a copy of the Certificate of Death dated February 13, 2014 of Ilagan.[34]

In a Decision[35] dated October 13, 2015, the RTC found petitioner guilty as charged, *viz*.:

> **WHEREFORE**, judgment is hereby rendered finding the accused **Hilario P. Soriano**:
>
> a) [I]n Criminal Case No. 1719-M-2000, **GUILTY** beyond reasonable doubt for violation of Section 83, R.A. No. 337 as amended by P.D. No. 1795 (General Banking Act) and hereby sentences him to suffer imprisonment of ten years and a fine of Ph[P]200,000.00;
>
> b) In Criminal Case No. 1720-M-2000, **GUILTY** beyond reasonable doubt of Estafa thru Falsification of Commercial Documents and hereby sentences him to an indeterminate prison sentence ranging from ten years and one day of prision mayor as minimum, to twenty years of reclusion temporal as maximum, and to indemnify the Rural Bank of San Miguel-San Miguel Branch, its creditors and Bangko Sentral ng Pilipinas the total sum of Php14,775,000.00, with interests thereon at the rate of 12% per annum from the filing of the Informations until paid, plus costs. Further, the accessory penalties as provided by law shall be imposed upon the accused.
>
> On the other hand, the liability of accused, **Rosalinda Ilagan**, is extinguished in view of her death, as per Death Certificate dated 13 February 2014.
>
> **SO ORDERED.**[36]

On appeal, the CA affirmed the RTC's Decision with modification only as to the penalties imposed as follows:

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[33] *Id*. at 97.

[34] *Id*.

[35] *Supra* note 3.

[36] *Rollo*, pp. 101-102.

WHEREFORE, the foregoing considered, the appeal is **DENIED**. The Decision dated 13 October 2015 of the Regional Trial Court (Branch 17, Malolos City) in Crim. Case Nos. 1719-M-2000 and 1720-M-2000 is **AFFIRMED WITH MODIFICATION** as to the following penalties prescribed:

(a) In Criminal Case No. 1719-M-2000, accused-appellant Hilario P. Soriano is found **GUILTY** beyond reasonable doubt for violation of Section 83, R.A. No. 337 as amended by P.D. No. 1795 (General Banking Act) and is hereby sentenced to suffer imprisonment of Ten (10) Years and a fine of Ten Thousand Pesos (₱10,000.00); and

(b) In Criminal Case No. 1720-M-2000, accused-appellant Hilario P. Soriano is found **GUILTY** beyond reasonable doubt for the complex crime of Estafa thru Falsification of Commercial Documents and is hereby sentenced to an indeterminate sentence of imprisonment ranging from Four (4) Years and Two (2) Months of *prision correccional* as minimum to Thirteen (13) Years of *reclusion temporal* as maximum, and to indemnify the Rural Bank of San Miguel-San Miguel Branch, its creditors and Bangko Sentral ng Pilipinas the total sum of ₱14,775,000.00, with interests thereon at the rate of 12% per annum from the filing of the Informations until paid, plus costs. Further, the accessory penalties as provided by law shall be imposed upon the accused.

SO ORDERED.[37]

Petitioner's motion for reconsideration was likewise denied by the CA in its June 26, 2018 assailed Resolution.[38]

Hence, this petition.

Issues

1. Was petitioner's guilt in Criminal Case No. 1719-M-2000 for violation of Section 83 of R.A. No. 337, as amended, proved beyond reasonable doubt?

2. Was petitioner's guilt in Criminal Case No. 1720-M-2000 for the complex crime of estafa thru falsification of commercial documents proved beyond reasonable doubt?

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[37] *Id*. at 52.

[38] *Id*. at 55-57.

Petitioner maintains that he did not violate Section 83 of R.A. No. 337, as amended, or the DOSRI[39] law. Specifically, petitioner avers that the prosecution attempted to establish that he obtained an indirect loan under Malang's name in the net amount of ₱14,775,000.00 but its evidence, namely the General Examination Report, refers to a different loan, *i.e.*, his irregular loan amounting to ₱34,000,000.00. Petitioner also argues that the prosecution's failure to present Rayo as witness was fatal to its case. Petitioner also points out that the prosecution failed to check his bank account to see if the subject went straight to his coffers to prove that it inured to his benefit.

Petitioner also argues that the prosecution evidence was insufficient to prove his participation in the commission of the crime of estafa through falsification of commercial documents. Specifically, petitioner stresses the fact that it was actually Malang who signed the loan application was established. Further, petitioner points out that as RBSM's president, he was not engaged in frontline services for him to be able to process loan applications.

The Court's Ruling

We find no merit in the instant petition.

At the outset, it must be noted that the arguments raised by petitioner inarguably require to inquire into the sufficiency of the evidence presented by the prosecution, a course of action which this Court will, generally, not do, consistent with our repeated holding that this Court is not a trier of facts. It is basic that factual findings of trial courts, including their assessment of witnesses' credibility, are entitled to great weight and respect by this Court, especially when affirmed by the CA.[40] None of the jurisprudential exceptions[41] to this rule obtain in this case.

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[39] Director, Officer, Stockholder and Related Interest.

[40] *Pucay v. People*, 536 Phil. 1117, 1125 (2006).

[41] (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd

We find no cogent reason to deviate from the courts *a quo*'s ruling that petitioner was guilty beyond reasonable doubt of violating the DOSRI law, as well as of the complex crime of estafa through falsification of commercial documents. The clear, positive, and categorical testimonies of the nine prosecution witnesses that corroborate each other on all material points, coupled with the voluminous documentary evidence on record clearly establish petitioner's guilt on the offenses charged.

Violation of the DOSRI Law

Section 83 of R.A. No. 337, as amended, states:

SEC. 83. No director or officer of any banking institution shall, either directly or indirectly, for himself or as the representative or agent of others, borrow any of the deposits of funds of such bank, nor shall he become a guarantor, indorser, or surety for loans from such bank to others, or in any manner be an obligor for moneys borrowed from the bank or loaned by it, except with the written approval of the majority of the directors of the bank, excluding the director concerned. Any such approval shall be entered upon the records of the corporation and a copy of such entry shall be transmitted forthwith to the Superintendent of Banks. The office of any director or officer of a bank who violates the provisions of this section shall immediately become vacant and the director or officer shall be punished by imprisonment of not less than one year nor more than ten years and by a fine of not less than one thousand nor more than ten thousand pesos.

x x x x x x x x x.

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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. *Id.* (Citation omitted)

From the foregoing, the following elements must be present to constitute a violation of the above-quoted provision: (1) the offender is a director or officer of any banking institution; (2) the offender, either directly or indirectly, for himself or as a representative or agent of another, performs any of the following acts: (a) he borrows any of the deposits or funds of such bank; or (b) he becomes a guarantor, indorser, or surety for loans from such bank to others; or (c) he becomes in any manner an obligor for money borrowed from bank or loaned by it; and (3) the offender has performed any of such acts without the written approval of the majority of the directors of the bank, excluding the offender, as the director concerned.[42]

The essence of the crime is becoming an obligor of the bank without securing the necessary written approval of the majority of the bank's directors. The DOSRI law was enacted as the Congress deemed it essential to impose certain restrictions on the borrowings undertaken by directors and officers in order to protect the public, especially the depositors. Such restriction is necessary because of the advantage these bank officers have because of their position, in acquiring loans or borrowing funds from the bank funds. Indeed, banks were not created for the benefit of their directors and officers; they cannot use the assets of the bank for their own benefit, except as may be permitted by law.[43]

As borne by the records, the aforecited elements were established beyond reasonable doubt in this case. There is no question that petitioner was a director and officer of RBSM, being the president thereof. It was also established that the subject loan had no approval from RBSM's board of directors. Petitioner, however, questions the existence of the second element. Petitioner argues that the evidence of the prosecution was not able to prove that the subject loan under Malang's name, was his indirect loan as the prosecution evidence pertained to a different loan; nor was the prosecution able to establish

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[42] *Go v. Bangko Sentral ng Pilipinas*, 619 Phil. 306, 317 (2009).

[43] *Id.* at 317.

that the alleged proceeds of said loan inured to his benefit to make him an obligor thereof.

According to petitioner, the prosecution evidence, particularly the General Examination Report of RBSM as of September 15, 1996, pertained to the another irregular loan under his name amounting to ₱34,000,000.00, which was divided into two names: his and Rayo's. Put differently, petitioner avers that what the prosecution was able to prove was his previous irregular loans, not the indirect loan under Malang's name, which was the subject of the Information in Criminal Case No. 1719-M-2000. Petitioner avers that the prosecution was "muddling the issues".

Contrary to petitioner's position, it is not the prosecution, but his averments, which muddle the factual circumstances.

Indeed, petitioner was charged and convicted under the DOSRI law because of his indirect loan under Malang's name. This was established through the testimonies of the prosecution witnesses, found credible by the trial court and the CA, coupled with the documentary evidence presented. Evidence on record clearly establish that petitioner orchestrated the release of the subject fictitious loan under Malang's name, the proceeds thereof were used to pay petitioner's other irregular loans from RBSM. The prosecution witnesses testified that the whole process—from the loan application, the purported approval thereof, the release, up to the use of the proceeds—were made to happen through the direct instructions of petitioner.

Contrary to what petitioner attempts to impress to this Court, the General Examination Report was not the only evidence presented by the prosecution to prove his hand in the indirect loan under Malang's name. There was no error on the part of the prosecution in finding it relevant to prove petitioner's previous irregular loans to establish his interest or motive in obtaining the subject indirect loan, *i.e.*, to apply the same to said previous loans, among others. Indeed, as found by the courts *a quo*, the prosecution's evidence was sufficient, not only to prove that petitioner orchestrated the whole process to obtain

the subject loan, but also to prove that the proceeds thereof were used to pay off his previous irregular loans. Principio testified:

Q: Now, you pointed to a hand-written notation appearing at the dorsal portion of Exh. HH which dorsal portion was marked Exh. HH-1-a and the written notation which are O.R. No. 187038 and another O.R. is 187039, what are these ORs all about?

(Witness examining)

A: These [receipts] were issued by the Rural Bank of San Miguel, Plaridel Branch, sir.

Q: Why did the Rural Bank of San Miguel, Plaridel Branch issued said O.R.[s]?

A: [They are] for the receipt of the check[s] in the name of Teresa Villacorta and Norma Rayo, sir. [These] checks [were] applied to the loan[sl of Norma Rayo, Hilario Soriano and other names, sir.

Q: Now, let's go to the two checks, one by one, to which loan was the check marked as Exh. HH in the amount of ₱2,365,000.00 applied to?

(Witness examining)

A: The check No. 00992 in the amount of ₱12,409,791.99 was applied to the loan of Norma Rayo and Hilario Soriano, sir.

Q: How about the check marked Exh. HH?

A: **It was applied to the loan of Hilario P. Soriano**, E. Perdigonez, C. de Guzman, and R. Carlos and M.V. Tecson, sir.[44] (Emphasis supplied)

Neither was the non-presentation of Rayo as a witness fatal to the prosecution's case. The testimonies of the prosecution witnesses which were corroborative of each other in all the relevant and material points, coupled with the documentary evidence on record, established in detail, not only petitioner's

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[44] TSN, Redirect Examination of Principio, Transcript of Stenographic Notes, April 28, 2005, pp. 9-10.

connection with Rayo, as well as Villacorta, but also the scheme perpetrated by petitioner to obtain the fictitious loan under Malang's name.

That the proceeds of the subject loan did not go "straight to his coffers," as petitioner points out, is of no moment. The established fact remains that petitioner obtained the subject indirect loan and used the proceeds thereof to pay his other obligations, among others. To this Court's mind, it would be absurd for a high-ranking bank officer to orchestrate the processing and acquisition of a fictitious loan and to deposit the proceeds thereof straight to his personal bank account only to leave paper trails and put himself at the risk of easy apprehension. Precisely, petitioner resorted to a circuitous scheme to perpetrate his plan.

As held by this Court in the related case of *Soriano v. People*,[45] the prohibition under the DOSRI law is broad enough to cover various modes of borrowing, *viz.*:

> It covers loans by a bank director or officer (like herein petitioner) which are made either: (1) directly, (2) *indirectly*, (3) for himself, (4) or as the representative or agent of others. It applies even if the director or officer is a mere guarantor, indorser or surety for *someone else's* loan or is in any manner an obligor for money borrowed from the bank or loaned by it. The covered transactions are prohibited unless the *approval*, *reportorial* and *ceiling* requirements under Section 83 are complied with. The prohibition is intended to protect the public, especially the depositors, from the overborrowing of bank funds by bank officers, directors, stockholders and related interests, as such overborrowing may lead to bank failures. It has been said that "banking institutions are not created for the benefit of the directors [or officers]. While directors have great powers as directors, they have no special privileges as individuals. They cannot use the assets of the bank for their own benefit except as permitted by law. Stringent restrictions are placed about them so that when acting both for the bank and for one of themselves at the same time, they must keep within certain

[45] 625 Phil. 33, 53-54 (2010).

prescribed lines regarded by the legislature as essential to safety in the banking business.

A *direct* borrowing is obviously one that is made in the name of the DOSRI himself or where the DOSRI is a named party, while an *indirect* borrowing includes one that is made by a third party, but the DOSRI has a stake in the transaction. The latter type — indirect borrowing — applies here. x x x (Citations omitted)

Considering all the foregoing established circumstances, we find that the courts *a quo* correctly ruled that the prosecution evidence proved beyond reasonable doubt that petitioner, as president of RBSM, indirectly borrowed or secured a loan with RBSM without the written consent and approval of the majority of the board of directors, which consent and approval petitioner deliberately failed to obtain, by using the name of one depositor Malang, the latter having no knowledge of said loan, and thereafter converted the same to his own personal use and benefit.

Estafa through Falsification of Commercial Documents

The elements of falsification of documents under paragraph 1, Article 172 of the Revised Penal Code (RPC) are: (1) that the offender is a private individual or a public officer or employee who did not take advantage of his official position; (2) that he committed any of the acts of falsification enumerated in Article 171 of the RPC;[46] and (3) that the falsification was committed in a public, official or commercial document.[47]

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[46] ART. 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;

All these elements were likewise established in this case beyond reasonable doubt.

First, petitioner is a private individual.

Second, petitioner committed one of the acts of falsification under Article 171 of the RPC, *i.e.*, he caused it to appear that Malang applied for the subject loan when he, in fact, did not do so. Records show that petitioner was able to convince Malang to sign the loan application, promissory note, and disclosure statement in blank, and together with his now deceased co-accused Ilagan, processed and approved the loan even if the same was retracted and discontinued by Malang, not to mention that the documents and requirements therefor were incomplete. Checks were later on issued and the proceeds thereof withdrawn under Malang's name, again without the latter's knowledge. Petitioner also made it appear, as can be gleaned from the Letter dated September 15, 1997 addressed to the BSP signed by petitioner, that the purported loan application of Malang was approved by RBSM board of directors and secured by real estate properties. Records, however, show that there was no such approval from the board nor was there any collateral for the subject loan.

Third, the falsification was committed in bank loan application, promissory note, checks and disclosure statement, among others, which are commercial documents. Commercial documents are, in general, documents or instruments which are "used by merchants or businessmen to promote or facilitate

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5. Altering true dates;
6. Making any alteration or intercalation in a genuine document which changes its meaning;
7. Issuing in an 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. (Emphasis supplied)

[47] *Tanenggee v. People*, 712 Phil. 310, 332-333 (2013).

trade or credit transactions" such as the above-said documents and instruments.[48]

This committed falsification was also established to have been a necessary means to commit estafa.

In *Tanenggee*[49] the Court explained that:

> The falsification of a public, official, or commercial document may be a means of committing estafa, because before the falsified document is actually utilized to defraud another, the crime of falsification has already been consummated, damage or intent to cause damage not being an element of the crime of falsification of public, official or commercial document. In other words, the crime of falsification has already existed. Actually utilizing that falsified public, official or commercial document to defraud another is estafa. But the damage is caused by the commission of estafa, not by the falsification of the document. Therefore, the falsification of the public, official or commercial document is only a necessary means to commit estafa.
>
> Estafa is generally committed when (a) the accused defrauded another by abuse of confidence, or by means of deceit, and (b) the offended party or a third party suffered damage or prejudice capable of pecuniary estimation." "[D]eceit is the false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury." (Citations omitted)

As in this case, the crime of falsification was already consummated, and the falsified documents were, thereafter, used to defraud the bank to release money purportedly to Malang.

Records show that the elements of estafa obtain in this case. Petitioner falsely represented that Malang pursued the loan application and promissory note that were signed in blank through petitioner's prodding; and orchestrating the whole process until he, with his now deceased co-accused Ilagan, succeeded in

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[48] *Id.* at 333.

[49] *Id.* at 334-335, citing the case of *Domingo v. People*, 618 Phil. 499 (2009).

withdrawing the proceeds thereof from RBSM, coursing them through MRBTI and Land Bank, and thereafter applying the same to his previous irregular loans also with RBSM. Clearly, petitioner employed deceit to acquire money, on another person's account, and use the same for his personal use and benefit, which resulted to the damage and prejudice of the RBSM in the amount of ₱14,775,000.00.

Again, petitioner could not have acquired the said amount to pay off his previous loans without the act of falsification. The falsification was, therefore, a necessary means to commit estafa, and falsification was already consummated even before the falsified documents were used to defraud the bank.[50]

Thus, the complex crime of estafa through falsification of documents is committed when the offender commits on a public, official or commercial document any of the acts of falsification enumerated in Article 171 as a necessary means to commit estafa.[51]

The fact that the loan application was actually signed by Malang, not by petitioner, could not belie his direct hand in perpetrating the crime. To reiterate, it was established that the loan application was signed by Malang in blank and processed through petitioner's instructions, to make it appear that Malang purportedly participated in applying for the subject loan, despite the fact that the purported loan application was withdrawn by Malang. It was likewise established that it was petitioner's scheme that made the issuance of the check in the name of Malang, and thereafter, the checks in the names of Rayo and Villacorta, possible. Hence, as correctly found by the RTC and the CA, one of the acts of falsification under Article 171 of the RPC, particularly paragraph 2 thereof — causing it to appear that a person has participated in any act when he did not in fact participate — is present in this case.

Also, while it may be true that petitioner, as RBSM president, was not engaged in frontline services for him to be able to

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[50] *Id.* at 335.

[51] *Id.*

actually process loan applications, his direct participation in the "circuitous scheme" which perpetrated the falsification and deception cannot be denied as borne by the records. Again, the prosecution's evidence established beyond reasonable doubt that said nefarious scheme was devised by petitioner and was successfully executed through his direct instructions to the working participants.

In fine, as correctly synthesized by the appellate court:

> There is overwhelming evidence to establish the fact that upon the instructions of [petitioner] Soriano, a fictitious loan in the amount of ₱15,000,000.00 was made to appear to have been granted by RBSM and released to Malang, and later on, the money was misappropriated by [petitioner] Soriano. From the extant evidence, it is indubitable that this intricate process was orchestrated by [petitioner] Soriano, with the help of accused Ilagan, to the detriment of Malang and RBSM. Earlier on, [petitioner] Soriano was able to convince Malang to sign the loan application, promissory note, and disclosure statement in blank and, together with accused Ilagan, processed and approved the loan, even though the same was retracted and discontinued by Malang, not to mention that the documents were incomplete, and the loan was not approved by the Board of Directors nor was it secured by any collateral. It was also established that it was [petitioner] Soriano who instructed Santillana to accept the RBSM manager's check in the amount of ₱14,775,000.00, and to issue in its stead thirty (30) manager's checks that were negotiated with Land Bank-Gapan Branch to secure the two (2) checks under the names of Rayo and Villacorta, for whatever purpose [petitioner] Soriano wanted to achieve.[52]

Imposable Penalty

For the violation of the DOSRI law, Section 83 of R.A. No. 337, as amended provides for the penalty of imprisonment of not less than one year nor more than 10 years and a fine of not less than ₱1,000.00 nor more than ₱10,000.00. Hence the imposed penalty of 10 years of imprisonment and a fine of ₱10,000.00 is well within the range of the prescribed penalty.

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[52] *Rollo*, pp. 47-48.

For the crime of estafa through falsification of commercial documents, being a complex crime, the penalty for the more serious crime, which is estafa in this case, shall be imposed in its maximum period. The CA correctly modified the penalty imposed by the RTC pursuant to the amendments under R.A. No. 10951,[53] the same being applicable retroactively as held in the recent case of *Hernan v. Sandiganbayan*.[54] Thus, under Section 85 of R.A. No. 10951, the penalty for estafa is *prision correccional* in its maximum period to *prision mayor* in its minimum period if the amount of the fraud is over ₱2,400,000.00 but does not exceed ₱4,400,000.00. If the amount of the fraud exceeds the latter sum, the penalty shall be imposed in its maximum period, adding one year for each additional ₱2,000,000.00 but the total penalty shall not exceed 20 years. In such cases, and also for purposes of the imposition of accessory penalties, the imposable penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

Applying the Indeterminate Sentence Law and considering that the amount involved herein is ₱14,775,000.00, the minimum term of the imposable penalty should be within the range of the penalty next lower to that prescribed by law for the offense, *i.e.*, *prision correccional* in its minimum and medium periods applied in its maximum period, which is 2 years, 11 months, and 11 days to 4 years and 2 months. The CA, thus, correctly imposed the penalty of 4 years and 2 months of *prision correccional* as minimum.

On the other hand, the maximum term of the imposable penalty shall be taken from the maximum of the prescribed penalty[55]

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[53] AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS "THE REVISED PENAL CODE," as AMENDED. Approved August 29, 2017.

[54] G.R. No. 217874, December 5, 2017.

[55] THE REVISED PENAL CODE, Article 48; "The falsification, which is the means used to commit the crime of malversation, is in the nature of

or 6 years, 8 months, and 21 days to 8 years, adding one year to the floor or the ceiling of the prescribed penalty at the discretion of the court,[56] for each additional ₱2,000,000.00 from the threshold amount of ₱4,400,000.00. Thus, as ₱14,775,000.00 exceeded ₱4,400,00.00 by ₱10,375,000.00, the difference shall be divided by ₱2,000,000.00 to bring us to the number of years to be added as incremental penalty, *i.e.*, 5.1875. Prevailing jurisprudence dictates that any fraction of a year shall be discarded, hence, we only add 5 years either to the floor of the prescribed penalty or 6 years, 8 months, and 21 days or to the ceiling, which is 8 years. Thus, again, the CA correctly imposed the penalty of 13 years of *reclusion temporal* as maximum.

We, however, find it proper to modify the 12% interest imposed by the CA on the civil indemnity pursuant to recent jurisprudence[57] and BSP Circular No. 799. Thus, the interest rate of 6% per annum shall be imposed on the amount of ₱14,775,000.00 from the date of the finality of this Decision until full payment.

WHEREFORE, premises considered, the petition is **DENIED**. Accordingly, the Decision dated February 28, 2018 of the Court of Appeals is hereby **AFFIRMED with MODIFICATION** only as to the interest imposed. Accordingly, an interest of 6% per annum shall be **IMPOSED** on the amount of Fourteen Million Seven Hundred Seventy-Five Thousand (₱14,775,000.00) Pesos from the date of the finality of this Decision until full payment.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa (*Working Chairperson*), and *Lazaro-Javier, JJ.*, concur.

Lopez, J., on official leave.

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a generic aggravating circumstance that effectively directs the imposition of the prescribed penalty in its maximum period"; *People v. Valdez*, G.R. Nos. 216007-09, 774 Phil. 723, 743 (2015).

[56] *People v. Ocden*, 665 Phil. 268, 294 (2011).

[57] *Desmoparan v. People*, G.R. No. 233598, March 27, 2019.

THIRD DIVISION

[G.R. No. 221457. January 13, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GILBERT SEBILLENO *y* CASABAR,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— The elements to sustain convictions for violation of Section 5 of the Comprehensive Dangerous Drugs Act, or the illegal sale of dangerous drugs are "(1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence." The prosecution must prove with moral certainty the *corpus delicti* x x x [T]he police officers' testimonies are not enough to prove that the confiscated item from the accused was the same drug presented in court.

2. ID.; ID.; CHAIN OF CUSTODY AS ORIGINALLY WORDED UNDER SECTION 21; NONCOMPLIANCE THEREOF CASTS DOUBT ON THE INTEGRITY OF THE *CORPUS DELICTI*.— Section 21 of the Comprehensive Dangerous Drugs Act, as originally worded, provides the requirements for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia: x x x Noncompliance with Section 21 casts doubt on the integrity of the *corpus delicti*, and essentially, on accused's guilt. Considering that the constitutional presumption of innocence mandates proof beyond reasonable doubt, "conviction cannot be sustained if there is a persistent doubt on the identity of the drug." Acquittal thus, ensues.

3. ID.; ID.; ID.; PRESENCE OF THREE WITNESSES, REQUIRED; FAILURE THEREOF NECESSITATES JUSTIFIABLE GROUND OR PROOF THAT EARNEST EFFORTS WERE EMPLOYED TO SECURE THEIR PRESENCE.— [A] local government employee witnessed the inventory and taking of photographs of the seized items [but]

none of the three (3) people required by Section 21(1), as originally worded, was present. The prosecution has "the positive duty to establish that *earnest efforts* were employed in contacting the representatives enumerated under Section 21(1) of [Republic Act No.] 9165, or that *there was a justifiable ground* for failing to do so." x x x This Court has previously held that attendance of third-party witnesses must be secured as early as the actual seizure of the items, and not only during inventory and taking of photographs.

4. ID.; ID.; ID.; THE INVENTORY AND TAKING OF PHOTOGRAPHS MUST BE CONDUCTED IMMEDIATELY AFTER SEIZURE AND CONFISCATION OF THE ITEMS; DEVIATIONS MAY BE EXCUSED BY A JUSTIFIABLE GROUND.— Section 21 directs the conduct of inventory and taking of photographs "immediately after seizure and confiscation." *People v. Que* explained that these must be done *at the place of arrest* x x x The Implementing Rules allow the conduct of inventory of the seized items and taking of photographs "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable." Deviations from the law may be excused, but the prosecution must plead and prove a justifiable ground.

5. ID.; ID.; ID.; THE POLICE OFFICER WHO RECEIVED THE ARTICLES IN THE LABORATORY MUST TESTIFY IN COURT.— [T]he prosecution failed to present as witness PCI Rodis, the police officer who received the specimen for laboratory examination. This Court acquitted the accused-appellant in *People v. Sagana* when it found that the persons who handled the seized items were not presented as witnesses, without ample explanation: x x x PO1 Julaton's testimony that the confiscated items were turned over to PCI Rodis is insufficient. Jurisprudence requires that the police officer who received the articles in the laboratory testify in court. Neither does the Chemistry Report suffice.

6. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY; CANNOT ARISE WHERE THE OFFICIAL ACT IS IRREGULAR ON ITS FACE.— The Regional Trial Court and the Court of Appeals' reliance on the presumption of regularity in the performance of the law enforcers' official duty is misplaced. We clarified in

People v. Kamad that: Given the flagrant procedural lapses the police committed in handling the seized *shabu* and the obvious evidentiary gaps in the chain of its custody, a presumption of regularity in the performance of duties cannot be made in this case. A presumption of regularity in the performance of official duty is made in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. ***The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise.***

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

LEONEN, *J.*:

Just because a community outside of Mindanao is predominantly Muslim does not mean that it should be considered presumptively "notorious." It is this type of misguided, unfortunately uneducated, cultural stereotype that has caused internal conflict and inhumane treatment of Filipinos of a different faith from the majority.

Conviction in cases involving dangerous drugs cannot be sustained if there is persistent doubt on the drug's identity.[1] This Court will not be a party to using a worn out prejudice to justify noncompliance with Section 21 of Republic Act No. 9165.

We acquit.

For this Court's resolution is an appeal challenging the Decision[2] of the Court of Appeals, which affirmed *in toto* the

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[1] *People v. Lorenzo*, 633 Phil. 393 (2010) [Per *J.* Perez, Second Division].

[2] *Rollo*, pp. 2-20. The January 26, 2015 Decision was penned by Associate

Decision[3] of the Regional Trial Court. The courts found accused-appellant Gilbert Sebilleno *y* Casabar (Sebilleno) guilty beyond reasonable doubt of violating Article 11, Section 5 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Two (2) separate Informations for violating the Comprehensive Dangerous Drugs Act of 2002 were filed against Sebilleno and Kyle Enrique *y* Damba (Enrique).

The charge for the illegal sale of dangerous drugs against Sebilleno, read:

> That on or about *the* **4th** *day of* **June, 2008**, in the City of Muntinlupa. Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully and unlawfully sell, trade, deliver and give away to another Methylamphetamine [sic] Hydrochloride, a dangerous drug, weighing **0.16 gram**, contained in one (1) heat-sealed transparent plastic sachet, in violation of the above-cited law.[4] (Emphasis in the original)

The charge for the illegal possession of dangerous drugs against Enrique, read:

> That on or about the **4th** day of **June, 2008**, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully and unlawfully have in his possession custody and control Methylamphetamine [sic] Hydrochloride, a dangerous drug, weighing **0.07 gram**, contained in one (1) heat-sealed transparent plastic sachet, in violation of the above-cited law.[5]

Justice Fernanda Lampas Peralta and concurred in by Associate Justices Stephen C. Cruz and Nina G. Amonio-Valenzuela of the Eighth Division, Court of Appeals, Manila.

[3] CA *Rollo*, pp. 59-74. The September 30, 2013 Decision was penned by Presiding Judge Juanita T. Guerrero of the Regional Trial Court of Muntinlupa, Branch 204.

[4] *Rollo*, p. 6.

[5] *Id*.

When arraigned on June 27, 2008, Sebilleno and Enrique pleaded not guilty to the crimes charged.[6] During the February 12, 2010 pre-trial conference, the following were admitted:

1. The identity of the accused Gilbert Sebillano [sic] y Casabar as the same person charged in criminal case no. 08-399;
2. That this Court has jurisdiction over the persons of the accused and over this case;
3. That P/Chief Insp. Maridel Cuadra Rodis is the Forensic Chemist connected with the PNP Crime Laboratory, Camp Crame, Quezon City as of June 04. 2008 and that she is an expert in Forensic Chemistry;
4. That pursuant to the Request for Laboratory Examination she conducted the same on the accompanying specimens which consist of two (2) heat-sealed transparent plastic sachets with markings "GSC" and "KE" containing yellowish substance suspected as shabu;
5. The existence and due execution of the Request for Laboratory Examination and of the Physical Science Report No. D-228-08.[7]

Joint trial then ensued.[8]

The prosecution presented two (2) witnesses, namely: (1) Police Officer 1 Domingo Julaton III (PO1 Julaton), and (2) Police Officer 1 Elbert Ocampo (PO1 Ocampo).[9] For the defense, Sebilleno and his son, Gilbert Nano Sebilleno, Jr., took the witness stand.[10]

According to the prosecution, at around 9:00 a.m. on June 4, 2008, Police Superintendent Alfredo Valdez (P/Supt. Valdez) instructed PO1 Ocampo and PO1 Julaton to conduct a

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[6] CA *rollo*, pp. 60.

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

[8] *Id.* at 61.

[9] *Id.* The Court of Appeals Decision incorrectly wrote "Police Officer 2" for Ocampo and Julaton; see *Rollo*, p. 3.

[10] *Id.*

surveillance against a certain "Boy Trolly," who was reported to be selling illegal drugs in Purok 7-C, Kalentong, Barangay Alabang, Muntinlupa City.[11]

Police Senior Inspector Ariel Sanchez (PSI Sanchez), designated poseur-buyer PO1 Julaton, and back-up PO1 Ocampo, formed a team to conduct a buy-bust operation. The team, together with the confidential informant, arrived at the target site at around 2:15 p.m.[12]

PO1 Julaton and the confidential informant proceeded to a nearby alley. The informant pointed at "Boy Trolly," later identified as Sebilleno, who was then talking to Enrique in front of a store.[13]

When PO1 Julaton and the informant reached the store, the informant greeted Sebilleno[14] and introduced PO1 Julaton as a "*balikbayan*" friend who wanted to buy *shabu*.[15] Sebilleno replied, "*[t]amang-tama at may natira pa akong isang 'kasang shabu' dito na tag limang daan at nakuha na rin nitong si Kyle yong isa pang kasa*."[16]

PO1 Julaton passed the marked ₱500.00 bill with serial number JX777664 to Sebilleno, who, in exchange, gave him a small plastic sachet containing white crystalline substance. Upon receipt of the sachet, PO1 Julaton performed the pre-arranged signal for the team by scratching his head.[17]

PO1 Julaton then grabbed Sebilleno's right hand, which held the marked money, and arrested him.[18] PO1 Ocampo arrested

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[11] *Id*

[12] *Id*. at 4.

[13] *Id*.

[14] *Id.*

[15] CA *rollo*, p. 62.

[16] *Id*.

[17] *Rollo*, p. 4.

[18] *Id*.

Enrique and recovered from him a plastic sachet that he previously purchased from Sebilleno.[19] The officers apprised Sebilleno and Enrique of their constitutional rights. Afterwards, PO1 Julaton marked the sachet Sebilleno handed to him with the latter's initials, "GSC," while the sachet seized from Enrique was marked "KE."[20]

PO1 Julaton kept the sachet bought from Sebilleno, while PO1 Ocampo retained the sachet seized from Enrique.[21] Sebilleno and Enrique were brought to the police station, where PO1 Julaton conducted the inventory and took photographs of the seized items. Raquel L. Dilao, a local government employee, witnessed the inventory and taking of photographs.[22] PO1 Julaton prepared the Request for Laboratory Examination of the sachets.[23]

At 7:15 p.m., PO1 Julaton submitted the seized items to the PNP Crime Laboratory for examination.[24] Sebilleno and Enrique were also subjected to a drug test. The laboratory examination of the sachets was found positive for shabu. Sebilleno's drug test and Enrique's urine sample respectively yielded positive and negative results for the presence of dangerous drugs.[25]

Testifying in his defense, Sebilleno denied the charge. He claimed that around 7:00 a.m. to 8:00 a.m. on June 4, 2008, he was sleeping at home when his son woke him up and told him that there were two (2) men waiting outside. He asked the men who they were looking for. The men, whom he later identified as "Genova" and PO1 Julaton, asked who he was. He replied and identified himself as Boy Sebilleno. PO1 Julaton allegedly pointed a gun at him and forced him to say that he was "Boy

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[19] *Id*. at 5.

[20] *Id*.

[21] *Rollo*, p. 5.

[22] CA *rollo*, p. 63.

[23] *Rollo*, p. 5.

[24] *Id*.

[25] *Id*. at 6.

Trolly." Sebilleno refused, and was subsequently hit in the stomach with PO1 Julaton's gun. He asked Genova and PO1 Julaton what crime he committed, but he was ignored.[26]

Thereafter, Sebilleno was forced to ride the Police vehicle and was brought to the police station.[27] He was incarcerated and informed that he was being charged with illegal sale of drugs.[28]

In its September 30, 2013 Decision,[29] the Regional Trial Court found Sebilleno guilty beyond reasonable doubt of illegal sale of dangerous drugs, punished under Section 5 of the Comprehensive Dangerous Drugs Act. On the other hand, Enrique was acquitted for insufficiency of evidence.

The Regional Trial Court, upon evaluation of the evidence, found "no ill motive or bad faith on the part of the arresting officers to concoct the allegations contained in their affidavit."[30] Thus, the police officers' testimonies deserve full faith and credit.[31] The dispositive portion of the Decision read:

> WHEREFORE, premises considered and finding the accused GILBERT SEBILLENO y CASABAR, guilty beyond reasonable doubt, he is sentenced to LIFE IMPRISONMENT and to pay a FINE of PHP500,000.00. The preventive imprisonment undergone by said accused shall be credited in his favor.
>
> As regards the other accused, KYLE ENRIQUE y DAMBA, for insufficiency of evidence, he is ACQUITTED of the crime charged. The warrant of arrest issued against him is hereby lifted and set aside without prejudice to the liability or the bondsman for its failure to produce him when required by the court to do so.
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> The drug evidence are ordered transmitted to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

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[26] CA *rollo*, p. 64.

[27] *Id*.

[28] *Id.* at 65.

[29] *Id*. at 59-74.

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

[31] *Id*. at 70.

SO ORDERED.[32]

In its January 26, 2015 Decision,[33] the Court of Appeals affirmed Sebilleno's conviction *in toto*. It likewise gave credence to the police officers' testimonies and found that they were "replete with material details showing the elements of the crime[.]"[34] It ruled that the presumption that official duty was regularly performed was not overcome.[35]

The Court of Appeals held that Republic Act No. 9165 "admits of exceptions and need not be followed with pedantic rigor."[36] Ruling that what is essential is the preservation of the seized items' integrity, it excused the absence of the witnesses during inventory since "*tanods*" were afraid to witness in Barangay Alabang.[37] The dispositive portion of its Decision read:

WHEREFORE, the trial court's Judgment dated September 30, 2013 convicting accused-appellant of violation of Section 5, Article II, RA No. 9165 is affirmed in toto.

SO ORDERED.[38] (Emphasis in the original)

Thus, Sebilleno filed his Notice of Appeal.[39] Giving due course to his appeal per its March 4, 2015 Resolution,[40] the Court of Appeals elevated[41] the case records to this Court.

In its January 27, 2016 Resolution,[42] this Court noted the case records and informed the parties that they may file their supplemental briefs.

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[32] *Id*. at 74.

[33] *Rollo*, pp. 2-20.

[34] *Id*. at 11.

[35] *Id.* at 15.

[36] *Id.* at 18.

[37] *Id*. at 19.

[38] *Id*. at 20.

[40] *Id*. at 24.

[41] *Id*. at 1.

[42] *Id*. at 26.

Accused-appellant[43] and the Office of the Solicitor General[44] filed their respective Manifestations stating that they will no longer file a supplemental brief. These were noted by this Court in its June 8, 2016[45] and July 25, 2016 Resolutions.[46]

In its January 27, 2016 Resolution,[47] this Court noted the records of this case and directed the parties to file their respective supplemental briefs.

Both accused-appellant[48] and plaintiff-appellee People of the Philippines, through the Office of the Solicitor General,[49] manifested that they would no longer file supplemental briefs. These were noted by this Court in its November 8, 2017 Resolution.[50]

In his brief before the Court of Appeals,[51] accused-appellant asserts that the Court of Appeals erred in affirming his conviction despite the prosecution's failure to prove an unbroken chain of custody. The inventory was done in the police station, and the copy was neither signed by accused-appellant nor his representative or counsel. Likewise, there were no signatures from representatives from the media and the Department of Justice (DOJ), or any elected public official.[52]

Accused-appellant also argues that the nonpresentation of Police Chief Inspector Maridel Cuadra Rodis (PCI Rodis), the police officer who allegedly received the specimen for

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[43] *Id*. at 34-38.

[44] *Id*. at 28-33.

[45] *Id*. at 39-40.

[46] *Id*. at 41.

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

[48] *Id*. at 34-38.

[49] *Id*. at 28-33.

[50] Unpaginated.

[51] CA *rollo*, pp. 38-58.

[52] CA *rollo*, p. 53.

examination, casts doubt on the identity and integrity of the seized items.[53]

On the other hand, the Office of the Solicitor General maintains in its Brief[54] that failure to comply with the requirements of Republic Act No. 9165 is not fatal to the prosecution of illegal sale of dangerous drugs as long as the integrity of the seized drugs is preserved. It avers that the testimonies of PO1 Julaton and PO1 Ocampo duly established the chain of custody, hence, the seized drug from the accused was the same drug presented in court.[55] It claims that failure to present the concerned forensic chemist is immaterial since the Chemistry Report yielded positive results for shabu.[56]

The Solicitor General justifies the police officers' conduct of the inventory in the police station rather than at the place of arrest, since "the apprehending team would be putting their lives in peril considering that the area where the buy-bust operation was conducted is a notorious Muslim community."[57]

For this Court's resolution is the lone issue of whether or not accused-appellant Gilbert Sebilleno y Casabar is guilty beyond reasonable doubt of violating Article 11, Section 5 of the Comprehensive Dangerous Drugs Act.

This Court grants the appeal and acquits accused-appellant.

I

The elements to sustain convictions for violation of Section 5 of the Comprehensive Dangerous Drugs Act, or the illegal sale of dangerous drugs are "(1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus*

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[53] *Id*. at 48.

[54] *Id*. at 85-105.

[55] *Id*. at 101.

[56] *Id*. at 97.

[57] *Id*. at 99.

delicti or the illicit drug as evidence."[58] The prosecution must prove with moral certainty the *corpus delicti*:[59]

> It is of paramount importance that the existence of the drug, the *corpus delicti* of the crime, be established beyond doubt. Its identity and integrity must he proven to have been safeguarded. Aside from proving the elements of the charges, the fact that the substance illegally possessed and sold was the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict. The chain of custody carries out this purpose as it ensures that unnecessary doubts concerning the identity of the evidence are removed.[60] (Citations omitted)

Contrary to the Solicitor General's position, the police officers' testimonies are not enough to prove that the confiscated item from the accused was the same drug presented in court. *Mallilin v. People*[61] explained:

> A unique characteristic of narcotic substances is that *they are not readily identifiable* as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases — by accident or otherwise — in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, ***a standard more stringent than that applied to cases involving objects which are readily identifiable***

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[58] *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 500 [Per J. Leonen, Third Division] citing *People v. Morales*, 630 Phil. 215, 228 (2010) [Per J. Del Castillo, Second Division]; *People v. Darisan*, 597 Phil. 479, 485 (2009) [Per J. Corona, First Division]; and *People v. Partoza*, 605 Phil. 883, 890 (2009) [Per J. Tinga, Second Division].

[59] *People v. Sagana*, 815 Phil. 356, 367 (20l7) [Per J. Leonen, Second Division] citing *People v. Ismael*, 806 Phil. 21 (2017) [Per J. Del Castillo, First Division].

[60] *Id*. at 367-368 citing *Lopez v. People*, 725 Phil. 499, 507 (2014) [Per J. Perez, Second Division]; *People v. Lagahit*, 746 Phil. 896, 908 (2014) [Per J. Perez, First Division]; and *People v. Ismael*, 806 Phil. 21 (2017) [Per J . Del Castillo, First Division].

[61] 576 Phil. 576 (2008) [Per J. Tinga, Second Division].

must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.[62] (Emphasis supplied)

The nature of narcotic substances necessarily entails heightened scrutiny. Further, "the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small."[63] Here, allegedly seized from the accused-appellant was 0.16 gram of suspected *shabu*.[64] Thus, we employ the heightened scrutiny which *Mallillin* espoused in evaluating evidence.

II

Section 21 of the Comprehensive Dangerous Drugs Act, as originally worded, provides the requirements for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia:

(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 or the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after

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[62] *Id.* at 588-589.

[63] *Id.* at 588.

[64] *Rollo*, p. 6.

> 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[.] (Emphasis supplied)

Lescano v. People[65] summarized the requisites under Section 21 (1), as amended by Republic Act No. 10640:

> As regards the items seized and subjected to marking, Section 21(l) of the Comprehensive Dangerous Drugs Act, as amended, requires the performance of two (2) actions: physical inventory and photographing. Section 21(l) is specific as to when and where these actions must be done. As to when, it must be "immediately after seizure and confiscation." As to where, it depends on whether the seizure was supported by a search warrant. If a search warrant was served, the physical inventory and photographing must be done at the exact same place that the search warrant is served. In case or warrantless seizures, these actions must be done "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable.
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> Moreover, Section 21(l) requires at least three (3) persons to be present during the physical inventory and photographing. These persons are: first, the accused or the person/s from whom the items were seized; second, an elected public official; and third, a representative of the National Prosecution Service. There are, however, alternatives to the first and the third. As to the first (*i.e.* the accused or the person/s from whom items were seized), there are two (2) alternatives: first, his or her representative; and second, his or her counsel. As to the representative of the National Prosecution Service, a representative of the media may be present in his or her place.[66]

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[65] 778 Phil. 460 (2016) [Per *J.* Leonen, Second Division].

[66] *Id.* at 475.

Noncompliance with Section 21 casts doubt on the integrity of the *corpus delicti*, and essentially, on accused's guilt.[67] Considering that the constitutional presumption of innocence mandates proof beyond reasonable doubt,[68] "conviction cannot be sustained if there is a persistent doubt on the identity of the drug."[69] Acquittal thus, ensues.

Here, the prosecution failed to show the apprehending officers' strict compliance with Section 21.

First, Racquel L. Dilao, a local government employee, witnessed the inventory and taking of photographs of the seized items.[70] Second, none of the three (3) people required by Section 21(l), as originally worded,[71] was present.

The prosecution has "the positive duty to establish that *earnest efforts* were employed in contacting the representatives enumerated under Section 21(l) of [Republic Act No.] 9165, or that *there was a justifiable ground* for failing to do so."[72] *People v. Mendoza*[73] stressed the third-party witnesses' insulating presence in securing the custody of the seized items:

> 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 sachets of shabu, the evils of switching,

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[67] *People v. Holgado*, 741 Phil. 78 (2014) [Per J. Leonen, Third Division].

[68] *Macayan v. People*, 756 Phil. 202, 213 (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 v. People*, 591 Phil. 508 (2008) [Per J. Velasco, Jr., Second Division].

[69] *People v. Lorenzo*, 633 Phil. 393 (2010) [Per J. Perez, Second Division].

[70] CA *Rollo*, p. 63.

[71] The buy-bust operation was conducted in 2008, prior to Republic Act No. 10640's amendment. Thus, what applies is Republic Act No. 9165 as originally worded.

[72] *People v. Umipang*, 686 Phil. 1024, 1053 (2012) [Per J. Sereno, Second Division].

[73] 736 Phil. 749 (2014) [Per J. Bersamin, First Division].

"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 sachets of shabu 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.[74]

This Court has previously held that attendance of third-party witnesses must be secured as early as the actual seizure of the items, and not only during inventory and taking of photographs.[75]

PO1 Julaton attempted to justify the presence of a local government employee, instead of an elected public official. The "*barangay tanods*" in Barangay Alabang allegedly refused to witness the inventory out of fear.[76] However, PO2 Julaton did not explain why the apprehending officers could not have asked other elected public officials to witness the inventory and photographing.

Worse, the prosecution failed to prove that earnest efforts were employed in securing the presence of the other two (2) witnesses from the media and the Department of Justice. No justification was proffered to excuse the law enforcers' deviation from the law's simple requirements.

Second, Section 21 directs the conduct of inventory and taking of photographs "immediately after seizure and confiscation." *People v. Que*[77] explained that these must be done *at the place of arrest*:

What is critical in drug cases is not the bare conduct of inventory, marking, and photographing. Instead, it is the certainty that the items

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[74] *Id.* at 764.

[75] *People v. Que*, G.R. No. 212994. January 31, 2018, 853 SCRA 487, 520-521 [Per *J.* Leonen, Third Division].

[76] *Rollo*, p. 19.

[77] *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487 [Per *J.* Leonen, Third Division].

allegedly taken from the accused retain their integrity, even as they make their way from the accused to an officer effecting the seizure, to an investigating officer, to a forensic chemist and ultimately, to courts where they are introduced as evidence. . .

Section 21 (l)'s requirements are designed to make the first and second links foolproof. *Conducting the inventory and photographing immediately after seizure, exactly where the seizure was done, or at a location as practicably close to it, minimizes, if not eliminates, room for adulteration or the planting of evidence[.]*[78] (Emphasis supplied)

The Implementing Rules allow the conduct of inventory of the seized items and taking of photographs "at the nearest police station or at the nearest office of the apprehending officer/ team, whichever is practicable."[79] Deviations from the law may be excused, but the prosecution must plead and prove a justifiable ground.[80]

The Solicitor General averred that inventory was conducted in the police station, because "the apprehending team would be putting their lives in peril considering that the area where the buy-bust operation was conducted is a *notorious Muslim community*."[81]

The Office of the Solicitor General, which represents no less than the Government of the Philippines in a number of legal matters,[82] *ought to be circumspect in its language. This averment from the Solicitor General exhibits biased, discriminatory, and bigoted views; unbecoming of a public official mandated to act with justice and sincerity, and who*

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[78] *Id*. at 518-519.

[79] Implementing Rules and Regulations of Republic Act No. 9165 (2002), Sec. 21 (a).

[80] *People v. Holgado*, 741 Phil. 78, 98 (2014) [Per J. Leonen, Third Division].

[81] CA *rollo*, p. 99.

[82] Adm. Order No. 130 (1994).

swore to respect the rights of persons.[83] *This is the kind of language that diminishes the public's trust in our state agents. These are the words that when left unguarded, permeate in the public's consciousness, encourage further divide and prejudices against the religious minority, and send this country backward.*

We cannot condone this.

As stressed, the prosecution must not only plead, but also prove an excusable ground. This Court fails to see how a Muslim community can be threatening or dangerous, that would put our law enforcers' lives to peril. The Solicitor General's colorful choice of word, "notorious," does not inspire confidence either.

Third, the prosecution failed to present as witness PCI Rodis, the police officer who received the specimen for laboratory examination.[84]

This Court acquitted the accused-appellant in *People v. Sagana*[85] when it found that the persons who handled the seized items were not presented as witnesses, without ample explanation:

> The prosecution has the "burden of establishing the identity of the seized items." Considering the sequence of the people who have dealt with the confiscated articles, the prosecution failed to justify why three (3) other significant persons were not presented as witnesses. These persons were the desk officer who supposedly recorded the incident in the police blotter, the investigator who prepared the request for examination, and *the police officer who received the articles in the laboratory*. "In effect, there is no reasonable guaranty as to the integrity of the exhibits inasmuch as it failed to rule out the possibility of substitution of the exhibits, which cannot but inure to its own detriment."[86] (Emphasis supplied, citations omitted)

PO1 Julaton's testimony that the confiscated items were turned over to PCI Rodis is insufficient. Jurisprudence requires that

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[83] Republic Act No. 6713 (1989), Sec. 4 (c).

[84] CA *rollo*, p. 48.

[85] 815 Phil. 356 (2017) [Per *J.* Leonen, Second Division].

[86] *Id.* at 376.

the police officer who received the articles in the laboratory testify in court.[87] Neither does the Chemistry Report suffice.

III

The Regional Trial Court and the Court of Appeals' reliance on the presumption of regularity in the performance of the law enforcers' official duty is misplaced. We clarified in *People v. Kamad*[88] that:

> Given the flagrant procedural lapse the Police committed in handling the seized *shabu* and the obvious evidentiary gaps in the chain of its custody, a presumption of regularity in the performance of duties cannot be made in this case. A presumption or regularity in the performance of official duty is made in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. ***The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise.*** In light of the flagrant lapses we noted, the lower courts were obviously wrong when they relied on the presumption of regularity in the performance of official duty.
>
> We rule, too, that the discrepancy in the prosecution evidence on the identity of the seized and examined *shabu* and that formally offered in court cannot but lead to serious doubts regarding the origins of the shabu presented in court. This discrepancy and the gap in the chain of custody immediately affect proof of the *corpus delicti* without which the accused must be acquitted.[89] (Emphasis supplied, citation omitted)

There were persistent doubts in the origins of the drugs supposedly seized from accused-appellant. The absence of the required witnesses during seizure, marking, inventory, and taking of photographs, along with the police officers' failure to conduct

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[87] *Id.*

[88] 624 Phil. 289 (2010) [Per *J.* Brion, Second Division].

[89] *Id.* at 311.

these at the place of arrest, and their nonpresentation of material witnesses who handled the items; and, lastly, their utter failure to justify these blatant lapses, reveal a seriously compromised chain of custody. Taken together, these instances raise doubt on the integrity of the confiscated items and, ultimately, on the commission of the crime.

This Court is, thus, constrained to acquit accused-appellant. However, we echo this Court's declarations in *People v. Holgado*:[90]

> It is lamentable that while our dockets are clogged with prosecutions under Republic Act No. 9165 involving small-time drug users and retailers, we are seriously short of prosecutions involving the proverbial "big fish." We are swamped with cases involving small fry who have been arrested for miniscule amounts. While they are certainly a bane to our society, small retailers are but low-lying fruits in an exceedingly vast network of drug cartels. Both law enforcers and prosecutors should realize that the more effective and efficient strategy is to focus resources more on the source and true leadership of these nefarious organizations. Otherwise, all these executive and judicial resources expended to attempt to convict an accused for 0.05 gram of shabu under doubtful custodial arrangements will hardly make a dent in the overall picture. It might in fact be distracting our law enforcers from their more challenging task: to uproot the causes of this drug menace. We stand ready to assess cases involving greater amounts of drugs and the leadership of these cartels.[91]

WHEREFORE, the Court of Appeals' January 26, 2015 Decision in CA-G.R. CR-HC No. 06441 is **REVERSED and SET ASIDE**. Accused-appellant Gilbert Sebilleno *y* Casabar is **ACQUITTED** for the prosecution's failure to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for some other lawful cause.

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[90] 741 Phil. 78 (2014) [Per *J.* Leonen, Third Division].

[91] *Id.* at 100.

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 the action he has taken to this Court within five (5) days from receipt of this Decision. Copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

The Regional Trial Court is directed to turn over the seized sachets of methamphetamine hydrochloride to the Dangerous Drugs Board for destruction in accordance with law.

Let entry of final judgement be immediately issued.

SO ORDERED.

Gesmundo, Carandang, Zalameda, and *Gaerlan, JJ.*, concur.

FIRST DIVISION

[A.C. No. 6281. January 15, 2020]

VALENTIN C. MIRANDA, *complainant, vs.* **ATTY. MACARIO D. CARPIO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; OBEDIENCE TO COURT ORDERS AND PROCESSES IS THE HIGHEST FORM OF RESPECT FOR JUDICIAL AUTHORITY; VIOLATION IN CASE AT BAR.— On September 26, 2011, the Court issued a Decision which suspended respondent from the practice of law for a period of six (6) months, and ordered him to return to complainant the owner's duplicate of Original Certificate of Title (OCT) No. 0-94 immediately upon receipt of the said

Decision. Respondent was warned that a repetition of the same or similar acts shall be dealt with more severely. x x x As an officer of the court, it is a lawyer's duty to uphold the dignity and authority of the Court. The highest form of respect for judicial authority is shown by a lawyer's obedience to court orders and processes. Respondent cannot escape the fact that he disobeyed the order of the Court by reasoning that it was complainant's fault for not personally claiming the copy of the [subject] OCT from him. The order of the Court was clearly directed at him, and for him alone, to comply. He cannot simply pass this obligation to the complainant. We do not give any credence to respondent's contention that his failure to return the said copy is also due to his advance age and sickly condition. It may be noted that respondent maintains a law office, which is more than capable to effect the delivery of the said document to the complainant, either personally or through mail.

2. ID.; ID.; SUSPENSION FROM THE PRACTICE OF LAW; AN ORDER FROM THE COURT LIFTING SAID SUSPENSION AT THE END OF THE PERIOD IS NECESSARY TO RESUME THE PRACTICE OF LAW.— [R]espondent's arguments that he was only forced to accept a case without first having his suspension lifted by the Court because of financial necessity, and that he firmly believed that his suspension was automatically lifted, are untenable. In *Paras v. Paras*, We held respondent administratively liable when he accepted new clients and cases and worked on an amicable settlement for his client with the Department of Agrarian Reform even before the Court lifted his suspension order. Financial necessity is not a valid excuse to disregard the order of suspension as meted against respondent. Jurisprudence is replete with cases where the Court held that "the lifting of a lawyer's suspension is not automatic upon the end of the period stated in the Court's decision, and an order from the Court lifting the suspension at the end of the period is necessary in order to enable him to resume the practice of his profession."

APPEARANCES OF COUNSEL

Christine P. Carpio-Aldeguer for respondent.

RESOLUTION

PERALTA, *C.J.*:

For the consideration of the Court is the Report and Recommendation[1] dated June 20, 2019 of the Office of the Bar Confidant (*OBC*), which was submitted pursuant to this Court's Resolution[2] dated December 3, 2014.

On September 26, 2011, the Court issued a Decision[3] which suspended respondent from the practice of law for a period of six (6) months, and ordered him to return to complainant the owner's duplicate of OCT No. 0-94 immediately upon receipt of the said Decision. Respondent was warned that a repetition of the same or similar acts shall be dealt with more severely.

In a Resolution[4] dated July 28, 2014, the Court required the respondent to show cause why he should not be held in contempt of court for failure to comply with the lawful order of the Court; and to comply with the said Order by returning to the complainant the owner's duplicate of OCT No. 0-94. Furthermore, the Court required respondent to file his sworn statement with motion to lift order of suspension with certification to that effect, from the IBP Local Chapter where he is affiliated, and from the Office of the Executive Judge of the courts where he practices his legal profession, to affirm that he has fully served his six (6) months suspension from October 12, 2011 to April 12, 2012, all within ten (10) days from notice.

In a letter[5] dated August 21, 2014, respondent attached a copy of his last letter[6] dated May 25, 2014 to the Court, stating that he was always ready to return the owner's duplicate of

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[1] *Rollo*, pp. 537-539.

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

[3] *Id.* at 438-447.

[4] *Id.* at 453.

[5] *Id.* at 478.

[6] *Id.* at 479-480.

OCT No. 0-94. He stated, however, that it was complainant who failed to claim the said title from respondent. He reasoned that he cannot release the said title to anyone but only to the complainant in the interest of security. He also asserted his advance age as reason to his inability to personally deliver the said title.

In his Explanation/Compliance/Motion to Lift Order of Suspension[7] dated October 28, 2014, respondent also argued that he cannot return the owner's duplicate of OCT No. 0-94 since it was not complainant who gave it to him. He stressed that he received the said copy as proof of his success in handling LRC Case No. M-226 as complainant's counsel. In the same motion, respondent reiterated complainant's failure to personally claim the said copy of the OCT from him.

Further, respondent argued that he was only forced to accept a case without first having his suspension lifted by the Court because of financial necessity, and that he firmly believed that his suspension was automatically lifted.

The OBC recommended that the respondent's motion to lift order of suspension be denied, and to impose a more severe penalty due to the continuing failure of respondent to comply with the Court's Decision dated September 26, 2011.

After a careful review of the records of the case, We resolve to adopt the recommendation of the OBC.

Respondent's contentions that (1) it was complainant who failed to personally claim the owner's duplicate of OCT No. 0-94 from him; and (2) he should not be made to return the said copy of the OCT because he secured the same from the court and not from the complainant, are absurd, and shall not be given any weight or consideration.

As a matter of fact, respondent's actuations are violative of the oath he took before admission to the practice of law, which provides:

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[7] *Id.* at 489-534.

I, do solemnly swear that I will maintain allegiance to the Republic of the Philippines; I will support its Constitution and **obey laws as well as the legal orders of the duly constituted authorities therein; I will do no falsehood**, nor consent to the doing of any in court; I will not wittingly nor willingly promote or sue any groundless, false or unlawful suit, or give aid nor consent to the same; I will delay no man for money or malice, and **will conduct myself as a lawyer according to the best of my knowledge and discretion, with all good fidelity** as well to the courts as to my clients; and I impose upon myself these voluntary obligations without any mental reservation or purpose of evasion. So help me God.[8]

As an officer of the court, it is a lawyer's duty to uphold the dignity and authority of the Court. The highest form of respect for judicial authority is shown by a lawyer's obedience to court orders and processes.[9]

Respondent cannot escape the fact that he disobeyed the order of the Court by reasoning that it was complainant's fault for not personally claiming the copy of the said OCT from him. The order of the Court was clearly directed at him, and for him alone, to comply. He cannot simply pass this obligation to the complainant.

We do not give any credence to respondent's contention that his failure to return the said copy is also due to his advance age and sickly condition. It may be noted that respondent maintains a law office, which is more than capable to effect the delivery of the said document to the complainant, either personally or through mail.

Also, respondent's arguments that he was only forced to accept a case without first having his suspension lifted by the Court because of financial necessity, and that he firmly believed that his suspension was automatically lifted, are untenable.

In *Paras v. Paras*,[10] We held respondent administratively liable when he accepted new clients and cases and worked on

[8] Emphasis supplied.

[9] *Santeco v. Atty. Avance*, 659 Phil. 48, 51 (2011).

[10] 807 Phil. 153 (2017).

an amicable settlement for his client with the Department of Agrarian Reform even before the Court lifted his suspension order.

Financial necessity is not a valid excuse to disregard the order of suspension as meted against respondent. Jurisprudence is replete with cases where the Court held that "the lifting of a lawyer's suspension is not automatic upon the end of the period stated in the Court's decision, and an order from the Court lifting the suspension at the end of the period is necessary in order to enable him to resume the practice of his profession."[11]

WHEREFORE, respondent's motion to lift the order of suspension is hereby **DENIED**. Atty. MACARIO D. CARPIO is further **SUSPENDED** from the practice of law for another six (6) months, effective upon receipt of this Resolution.

Likewise, Atty. Carpio is **DIRECTED** to **RETURN** the owner's duplicate copy of the OCT No. 0-94 to the complainant. He is again hereby warned that a repetition of the same or similar acts shall be dealt with more severely.

Let a copy of this Resolution be made part of the records of respondent in the Office of the Bar Confidant, Supreme Court of the Philippines, and be furnished the Integrated Bar of the Philippines, and be circulated to all courts.

SO ORDERED.

Caguioa, Reyes, J. Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

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[11] *Maniago v. Atty. De Dios*, 631 Phil. 139, 144 (2010), citing A.C. No. 3066, entitled *J.K. Mercado and Sons Agricultural Enterprises, Inc. v. De Vera* and A.C. No. 4438, entitled *Atty. De Vera v. Atty. Mervyn G. Encanto, et al.*, 375 Phil. 766 (1999); Memorandum dated November 4, 2008 addressed to Justice Consuela Ynares-Santiago, Chairperson, Third Division.

FIRST DIVISION

[A.M. No. 2019-08-SC. January 15, 2020]

RE: INCIDENT REPORT ON THE ALLEGED IMPROPER CONDUCT OF ALLAN CHRISTER C. CASTILLO, DRIVER I, MOTORPOOL SECTION, PROPERTY DIVISION, OFFICE OF ADMINISTRATIVE SERVICES.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; CONDUCT UNBECOMING OF A COURT EMPLOYEE AMOUNTING TO SIMPLE MISCONDUCT.—** In the afternoon of June 14, 2019, while the Supreme Court is celebrating its anniversary, a personnel of the Security Division reported that in the vicinity of the Supreme Court gate at the corner of Padre Faura Street and Taft Avenue, Castillo (Driver I of the Motorpool Section, Property Division, Office of Administrative Services.) slapped Andrew Alojacin, a 16-year-old helper and nephew of Emelinda V. Taotao, a concessionaire selling food at stall space number 85. x x x Being an employee of the Supreme Court, a high degree of comportment and decorum is expected from the respondent. His acts, whether part of his official duties or in his private capacity, reflect upon the Court as an institution. It also bears stressing that even if the act was committed after office hours and was not in any way connected with his official duties, respondent must still be held accountable. x x x The acts of the respondent of lashing out and striking Mr. Alojacin constitute the administrative offense of Conduct Unbecoming of a Court Employee amounting to Simple Misconduct, as defined in the case of *De Los Santos v. Vasquez* as any scandalous behavior or act that may erode the people's esteem for the Judiciary.

2. **ID.; ID.; 2017 RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; SIMPLE MISCONDUCT; PENALTY.—** The administrative liability of court personnel — who are not judges or justices of the lower courts — shall be governed by the Code of Conduct for Court Personnel, which incorporates, among others, the civil service laws and rules.

> Under the 2017 Rules on Administrative Cases in the Civil Service, simple Misconduct may be penalized by one (1) month and one (1) day to six (6) months suspension for the first offense. x x x We do not agree with the Office of the Administrative Services that respondent had shown great remorse concerning the matter simply because he tried to concoct a different story in order to evade liability. The CCTV recording belies the narration of the respondent in his explanation letter dated July 1, 2019. Respondent does not even admit his wrongdoings. Thus, there is no circumstance to be considered to mitigate the penalty to be meted out against the respondent. x x x He is hereby suspended without pay for a period of one (1) month and (1) day, with a stern warning that a repetition of the same or similar acts in the future shall be dealt with more severely.

D E C I S I O N

PERALTA, *C.J.*:

Before Us is an administrative complaint for simple misconduct against Allan Christer C. Castillo, Driver I of the Motorpool Section, Property Division, Office of Administrative Services.

In the afternoon of June 14, 2019, while the Supreme Court is celebrating its anniversary, a personnel of the Security Division reported that in the vicinity of the Supreme Court gate at the corner of Padre Faura Street and Taft Avenue, Castillo slapped Andrew Alojacin, a 16-year-old helper and nephew of Emelinda V. Taotao, a concessionaire selling food at stall space number 85.[1]

Per on-site investigation conducted by the Security Division, Ms. Taotao alleged that Castillo, who appeared to be under the influence of liquor, was ordering a sausage when he seemingly got annoyed at her nephew's laughter while the latter was having a happy conversation with another person. Castillo then slapped her nephew and threatened them with the words "*Kahit*

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[1] *Rollo,* p. 1.

magsumbong pa kayo sa taas," while gesturing towards the upper side of the Supreme Court Centennial Building.[2]

On the other hand, in the July 1, 2019 explanation letter[3] of Mr. Castillo, he stated that he was looking at items at the stalls in the area when he noticed two (2) women laughing at him. Moments later, one of them called Mr. Alojacin, who drew close to him and placed his face next to his while simultaneously bursting into laughter. The latter then called the attention of another boy and shouted "*Huy, kamukha mo oh!*" while continuing to laugh.

He said that while he was insulted by these antics, he did not strike Mr. Alojacin. He only rebuffed him saying "*hindi kita kabiruan ha?*" while pointing his right index finger at him, and coincidentally touching the latter's forehead while doing so.[4]

The said incident was recorded by a Supreme Court CCTV camera monitoring the area at the time.

As shown by the CCTV recording, occupants of stall 85 did not engage in any kind of banter or horseplay as claimed by the respondent, but were merely selling their wares. Instead, it was respondent who was the aggressor, contrary to his explanation letter[5] dated July 1, 2019.

It can be clearly seen on the CCTV recording that respondent, who was carrying a pizza box and wearing a ball cap turned backwards with his face clearly visible, casually walked from the right side of the screen and exited the gate to Padre Faura Street. Seconds later, he returned and walked straight to stall 85 and confronted a youth in a red shirt working therein. He then argued with one of the women manning the stall and suddenly threw a right hook punch at the youth, who flinched

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[2] *Id.* at 1-2.

[3] *Id.* at 5.

[4] *Id.*

[5] *Id.*

and gripped the frame of the tent stall. Respondent was pacified by the responding Security Division personnel and eventually left the area.

Being an employee of the Supreme Court, a high degree of comportment and decorum is expected from the respondent. His acts, whether part of his official duties or in his private capacity, reflect upon the Court as an institution.

It also bears stressing that even if the act was committed after office hours and was not in any way connected with his official duties, respondent must still be held accountable. In *Bonono, Jr. v. Sunit*,[6] We aid that "employees of the Judiciary should be very circumspect on how they conduct themselves inside and outside the office. It matters not that his acts were not work-related."

The acts of the respondent of lashing out and striking Mr. Alojacin constitute the administrative offense of Conduct Unbecoming of a Court Employee amounting to Simple Misconduct, as defined in the case of *De Los Santos v. Vasquez*[7] as any scandalous behavior or act that may erode the people's esteem for the Judiciary.

The administrative liability of court personnel — who are not judges or justices of the lower courts — shall be governed by the Code of Conduct for Court Personnel, which incorporates, among others, the civil service laws and rules.

Under the 2017 Rules on Administrative Cases in the Civil Service,[8] simple Misconduct may be penalized by one (1) month and one (1) day to six (6) months suspension for the first offense.

Records show that respondent has an unblemished record for more than four (4) years since he commenced working for the Judiciary on February 25, 2015, and has received very satisfactory ratings in his work performance.

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[6] 708 Phil. 1, 6 (2013).

[7] A.M. No. P-18-3792, February 20, 2018.

[8] Resolution No. 1701077, July 3, 2017.

However, We do not agree with the Office of the Administrative Services that respondent had shown great remorse concerning the matter simply because he tried to concoct a different story in order to evade liability.

The CCTV recording belies the narration of the respondent in his explanation letter dated July 1, 2019. Respondent does not even admit his wrongdoings. Thus, there is no circumstance to be considered to mitigate the penalty to be meted out against the respondent.

This Court has often emphasized that court employees shall adhere to the exacting standards of morality and decency in order to preserve the Judiciary's good name and standing as a true temple of justice.[9] Respondent indeed fell short of this exacting standard. He had shown lack of decorum, propriety, and respect in his dealings with other people. His actuations also debased the public's regard for the very institution for which he works, warranting administrative sanction. Any conduct that would be a bane to the public trust and confidence reposed in the Judiciary cannot be countenanced.[10]

WHEREFORE, the Court finds respondent Allan Christer C. Castillo, Driver I of the Motorpool Section, Property Division, Office of Administrative Services, **GUILTY** of Conduct Unbecoming of a Court Employee amounting to Simple Misconduct. He is hereby suspended without pay for a period of one (1) month and (1) day, with a stern warning that a repetition of the same or similar acts in the future shall be dealt with more severely.

This Decision takes effect immediately.

SO ORDERED.

Caguioa, Reyes, J. Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

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[9] *Judge Reyes v. Vidor*, 441 Phil. 526, 530 (2002).

[10] *In Re: Complaint for Failure to Pay Just Debts against Esther T. Andres*, 493 Phil. 1, 12 (2005).

EN BANC

[A.M. No. P-19-4021. January 15, 2020]
(Formerly OCA IPI No. 15-4410-P)

HON. CARMELITA SARNO-DAVIN, Presiding Judge, Regional Trial Court, Digos, Davao del Sur, Branch 19, *complainant, vs.* **ROSALITA L. QUIRANTE, Clerk III, Regional Trial Court, Digos, Davao del Sur, Branch 19,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE OFFENSES REQUIRE SUBSTANTIAL EVIDENCE TO SUSTAIN A FINDING OF CULPABILITY.— In order to sustain a finding of culpability for the administrative offenses, substantial evidence is required, or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The standard of substantial evidence is satisfied when there is reasonable ground to believe that a person is responsible for the misconduct complained of.

2. ID.; ID.; COURT EMPLOYEES; MISCONDUCT; GROSS MISCONDUCT DIFFERENTIATED FROM SIMPLE MISCONDUCT; TAKING OF COURT DOCUMENTS IS GRAVE MISCONDUCT.— Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. It is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior and to constitute an administrative offense, the misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, and not a mere error of judgment, or flagrant disregard of established rule, must be manifest in the former. x x x [Here,] respondent's taking of the court documents is a grave misconduct because it is an unlawful behavior or intentional wrongdoing; and there was a clear intent to violate the law when she took great steps to conceal her offenses.

3. ID.; ID.; ID.; NEGLECT OF DUTY; SIMPLE NEGLECT OF DUTY CONTRASTED FROM GROSS NEGLECT OF DUTY.— Neglect of duty is the failure of a public official or employee to give attention to a task expected of him. The public official or employee of the Judiciary responsible for such act or omission cannot escape the disciplinary power of this Court. Simple neglect of duty is contrasted from gross neglect. Gross neglect of duty refers to negligence characterized by the glaring want of care; by acting or omitting to act in a situation where there is a duty to act, not inadvertently, but willfully and intentionally; or by acting with a conscious indifference to consequences with respect to other persons who may be affected. It is such neglect which, from the gravity of the case or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare. It does not necessarily include willful neglect or intentional official wrongdoing.

4. ID.; ID.; REVISED RULES OF ADMINISTRATIVE CASES IN THE CIVIL SERVICE (RRACCS); GROSS MISCONDUCT AND GROSS NEGLECT OF DUTY; THEY ARE GRAVE OFFENSES THAT WARRANT THE PENALTY OF DISMISSAL.— Section 46, Rule 10 of the Revised Rules of Administrative Cases in the Civil Service (RRACCS) classifies grave misconduct and gross neglect of duty as grave offenses punishable by dismissal from the service even on the first violation. Section 52(a) of the RRACCS states that the penalty of dismissal shall carry with it the cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from holding public office and bar from taking civil service examinations. x x x [A] review of respondent's administrative records shows that the present case is her third infraction. x x x Accordingly, the Court cannot appreciate respondent's years of service to mitigate her liability due to the gravity of her offenses and the past transgressions she had committed. Time and again, the Court warned respondent that she will be disciplined harshly if she committed similar or graver offenses. However, she did not heed the Court's warning, thus, the ultimate penalty of dismissal must be imposed against her.

D E C I S I O N

***PER CURIAM*:**

This is a Complaint[1] filed by Presiding Judge Carmelita Sarno-Davin, (*complainant*), Regional Trial Court of Digos, Davao del Sur, Branch 19 (*RTC*) against Rosalita L. Quirante (*respondent*), Clerk III, of the same court before the Office of the Court Administrator (*OCA*), for Dishonesty, Misconduct, and Neglect of Duty.

Antecedents

Complainant alleged that sometime in the 3rd week of May 2014, Mercedita P. Dela Sierra (*Dela Sierra*), secretary of the defense counsel in Criminal Case Nos. 240(06) and 241(06), both entitled *People of the Philippines v. Alviola, et al.*, approached Atty. Louise Marie Therese B. Escobido (*Atty. Escobido*), Clerk of Court of the RTC. Dela Sierra sought to substitute cash bonds for the property bonds that were posted with the RTC for the accused's bail therein. The property bonds were constituted over several lands, particularly, Transfer Certificate of Title (*TCT*) No. T-161470 and T-161471, and Tax Declaration Nos. E-G-G-25928 and 02-00002-00454 and 02-00009-004987 (*subject titles and tax declarations*).[2]

However, when Atty. Escobido checked the case records, she could not find the subject titles and tax declarations. Thus, she inquired from respondent, who was in charge of the records of the criminal cases, regarding the whereabouts of the titles. Respondent denied any knowledge of the titles and tax declarations. Thus, Atty. Escobido informed complainant of the situation. Complainant initiated an investigation on the matter. Respondent eventually admitted that she delivered the subject titles and tax declarations to Atty. Leonardo Suario (*Atty. Suario*), the accused's former counsel in the said criminal cases. When asked to explain in writing, respondent stated in her Letter dated June 2, 2014, to wit:

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

[2] *Id.* at 53.

To be honest, your Honor, the late Atty. Leonardo Suario asked me to help his client, that's why I used the tax declaration of my properties to be used as the property bond for all the accused and in order to protect me, I just reflected the title numbers of the property which was submitted by the accused to Atty. Suario in the Order of release, so that the accused will be compelled to make good of their undertakings, because the accused were not personally known by the undersigned. I also did not reflect that tax declaration of the property in my name in the Order, because per computation the amount of the two (2) property bonds is already more than the required bailbond.[3]

Complainant further alleged that after the discovery of the bonding anomaly, she ordered an inventory of the RTC's records. The inventory uncovered that respondent failed to transmit to the Court of Appeals (*CA*) the records of three (3) criminal cases that had long been completed, namely, Criminal Case No. 309(00), entitled *People v. Buenaflor*, Criminal Case No. 70(05), entitled *People v. Rodrigo Esma*, and Criminal Case No. 66(05), entitled *People v. Enciso*.[4]

When directed to explain, respondent shifted the blame to the court stenographers who were no longer connected with the RTC. She alleged that they failed to transcribe their stenographic notes. Respondent also blamed the party litigants because they purportedly failed to pay for the photocopying of the records.[5]

Further investigations showed that respondent apparently concealed the fact that the accused filed, in Criminal Case Nos. 70(05) and 66(05), separate notices of appeal and that the said appeals were given due course by the RTC. However, due to the concealment of respondent, Atty. Escobido erroneously issued a "Certificate of Non-Appeal" in Criminal Case No. 66(05).[6]

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[3] *Id.* at 13.

[4] *Id.* at 54.

[5] *Id.*

[6] *Id.*

Thus, complainant charges respondent with dishonesty and misconduct for unlawfully taking the subject titles in Criminal Case Nos. 240(06) and 241(06) without authorization from the RTC. Complainant also charges respondent with neglect of duty because she failed to transmit the records of Criminal Case Nos. 309(00), 70(05), and 66(05). She even concealed the timely separate notices of appeal filed by the accused in Criminal Case Nos. 70(05) and 66(05).

In her Comment,[7] respondent admitted taking the subject titles and tax declarations from the case records without any authority and delivering them to the office of the late Atty. Suario. However, she denied that her actions were compelled by any sinister motive or corruption and, instead, asserted that she did it out of compassion for the accused, who are mostly farm laborers.[8]

As to the charge of neglect of duty, she apologized and attributed it to her inability to complete the compilation of the Transcript of Stenographic Notes (*TSN*) of the witnesses and secure the signature of the former court stenographers in the duplicate TSN. She claimed that it was the usual practice in the office for the appellants to shoulder the expenses for the reproduction of the four (4) sets of certified true copies of the TSN. However, she encountered a dilemma when the counsel for the accused told her that his clients were indigent. Thus, she could not charge them for the said fees. It was only when she brought the matter with Atty. Escobido and complainant that the records of the criminal cases were finally transmitted to the CA in Cagayan de Oro (*CA Cagayan de Oro*).[9]

With respect to Criminal Case No. 66(05), where a "Certificate of Non-Appeal" was erroneously issued by Atty. Escobido, respondent defended that she honestly believed that there was no notice of appeal filed in that case. As it turned out, the

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[7] *Id.* at 43-51.

[8] *Id.* at 44.

[9] *Id.* at 46-47.

notice of appeal was inadvertently attached to the records of a different case. She attributed her lapses to her old age and her preoccupation with several domestic issues.[10]

Respondent begged the Court's compassion for her transgressions. She prayed that her twenty-five (25) years of service in the Judiciary and the fact that she had not been previously involved in any irregularity be taken into account by the Court.[11]

Meanwhile, the records of the Docket and Clearance Division of the OCA showed that respondent had two previous administrative complaints against her. In A.M. No. P-94-1010,[12] respondent was charged with gross ignorance of the law and negligence in the performance of duty and was reprimanded by the Court. In another case, A.M. No. P-16-3461,[13] respondent was found administratively liable for simple neglect of duty and was reprimanded by the Court with a stem warning that the commission of the same or similar acts in the future shall be dealt with more harshly.[14]

OCA Report and Recommendation

In its Report and Recommendation[15] dated October 24, 2019, the OCA found that respondent committed grave misconduct and simple neglect of duty. It held that respondent's acts of taking the subject titles and tax declarations in *custodia legis* and delivering them to the late Atty. Suario are highly improper and constitute grave misconduct. It also found that respondent even attempted to conceal her transgressions by not reflecting in the court records that she took the said documents. The OCA

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[10] *Id.* at 47.

[11] *Id.* at 48.

[12] Dated October 19, 1994; see the Unsigned Resolution in *Mabaga v. Quirante*, A.M. No. P-16-3461, January 10, 2018.

[13] *Mabaga v. Quirante*, *supra*.

[14] *Rollo*, p. 55.

[15] *Id.* at 53-58.

also held that respondent's failure to transmit the records of the case to the CA Cagayan de Oro constituted neglect of duty. However, it only found respondent guilty of simple neglect of duty because there was no evidence that such failure was willful and intentional on her part.[16]

The OCA recommended that respondent be administratively penalized for the most serious offense, grave misconduct, that carries a penalty of dismissal from service. It disregarded the plea of leniency of respondent because this was her third infraction. She was previously administratively held liable in the two cases of A.M. No. P-94-1010 and A.M. No. P-16-3461. Thus, the extreme penalty of dismissal must be imposed upon respondent.[17]

The Court's Ruling

The Court adopts and accepts the Report and Recommendation of the OCA, with modification on the administrative offenses committed.

In order to sustain a finding of culpability for the administrative offenses, substantial evidence is required, or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The standard of substantial evidence is satisfied when there is reasonable ground to believe that a person is responsible for the misconduct complained of.[18]

Grave Misconduct

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. It is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior and to constitute an administrative offense, the misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. In order to differentiate

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[16] *Id.* at 55-57.

[17] *Id.* at 57.

[18] *Masion v. Valderrama*, A.M. No. P-18-3869, October 8, 2019.

gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, and not a mere error of judgment, or flagrant disregard of established rule, must be manifest in the former.[19]

In the Matter of the Loss of One (1) Tamaya Transit, An Exhibit in Criminal Case No. 193,[20] a court employee took out a wristwatch from *custodia legis*, which was a case exhibit. The Court found him guilty of dishonesty and grave misconduct and directed his dismissal from the service with forfeiture of his retirement benefits and with prejudice to reinstatement in any branch of the government.

Recently, in *Zarate-Fernandez v. Lovendino*,[21] the Court found a court aide liable for grave misconduct because he unlawfully took the drug specimens stored in the court's vault, which were exhibits in a pending case. For tarnishing the image and integrity of the bench, the employee's name was perpetually stripped from the rolls of the men and women of the Judiciary.

In this case, the Court finds that the complaint sufficiently proved with substantial evidence that respondent committed grave misconduct. Respondent admitted that she removed the subject titles and tax declarations as property bonds in Criminal Case Nos. 240(06) and 241(06) and delivered these official court documents to Atty. Suario, former counsel of accused. These documents are under *custodia legis* and should not have been taken by any court employee for personal reasons and without authorization from the court. Respondent even concealed her acts by making it appear that the property bonds of the accused were intact. She also admitted that she tampered with the RTC Order dated October 5, 2006, by not reflecting that the tax declarations of her properties were used for the property bonds of these cases to hide her transgressions.

The explanation she gave for unlawfully taking the subject titles and tax declarations in *custodia legis* is utterly insufficient.

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[19] *Duque v. Calpo*, A.M. No. P-16-3505, January 22, 2019.

[20] 200 Phil. 82 (1982).

[21] A.M. No. P-16-3530, March 6, 2018, 857 SCRA 420.

She claimed that she delivered the said documents in order to help the accused, who are mostly labor farmers. However, this is completely unsubstantiated and it is absolutely unjustified to tamper with court records without proper authority. Thus, respondent's taking of the court documents is a grave misconduct because it is an unlawful behavior or intentional wrongdoing; and there was a clear intent to violate the law when she took great steps to conceal her offenses.

Gross Neglect of Duty

The Court, however, modifies the finding of the OCA of simple neglect of duty against respondent to gross neglect of duty.

Neglect of duty is the failure of a public official or employee to give attention to a task expected of him. The public official or employee of the Judiciary responsible for such act or omission cannot escape the disciplinary power of this Court. Simple neglect of duty is contrasted from gross neglect. Gross neglect of duty refers to negligence characterized by the glaring want of care; by acting or omitting to act in a situation where there is a duty to act, not inadvertently, but willfully and intentionally; or by acting with a conscious indifference to consequences with respect to other persons who may be affected. It is such neglect which, from the gravity of the case or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare. It does not necessarily include willful neglect or intentional official wrongdoing.[22]

In *Absin v. Montalla*,[23] the Court ruled that the failure to submit the records of the case, particularly the TSN, within the period prescribed under Administrative Circular No. 24-90, constitutes gross neglect of duty. The court employee therein, who repeatedly failed to submit the required TSN, was dismissed from service.

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[22] *Malubay v. Guevara*, A.M. No. P-18-3791, January 29, 2019.

[23] 667 Phil. 560 (2011).

Here, the Court finds that respondent committed gross neglect of duty. Complainant alleged that when an inventory of the RTC cases was conducted, it was discovered that respondent failed to transmit to the CA the records of three (3) criminal cases that had long been completed, namely, Criminal Case No. 309(00), 70(05), and 66(05). Respondent shifted the blame to the litigants, who were purportedly required to pay for the four (4) duplicate copies of the TSN before the records could be forwarded. However, she could not cite any official rule for the same. As long as the accused has timely filed and served the notice of appeal, and it was given due course, then respondent, as the clerk for the criminal cases, is dutybound to complete the records of the case and forward the same to the CA. Further, respondent cannot attribute her negligence to the former stenographers because, aside from it being unsupported that they failed to sign the TSN, their signatures could have easily been secured if respondent prepared the records and immediately raised the matter with her superior.

In addition, respondent failed to record the notices of appeal filed separately by the accused in Criminal Case Nos. 70(05) and 66(05) even though the said appeals were already given due course by the RTC. Through sheer negligence, she set aside such crucial court submissions that affect the litigants' right to appeal and review their criminal cases. Due to the irresponsibility of respondent in failing to acknowledge the notices of appeal, Atty. Escobido erroneously issued a "Certificate of Non-Appeal" in Criminal Case No. 66(05). The prejudice caused to the accused in failing to institute their appeal was due to the negligence of respondent.

Evidently, due to the number and gravity of the negligent acts committed by respondent in her duty as clerk in the criminal cases of the RTC, there is substantial evidence proving her administratively liable for gross neglect of duty. Her neglect was so serious in character that it endangers or threatens the public welfare, particularly, the right to appeal of the litigants.

Proper penalty

Section 46, Rule 10 of the Revised Rules of Administrative Cases in the Civil Service (*RRACCS*) classifies grave misconduct and gross neglect of duty as grave offenses punishable by dismissal from the service even on the first violation.[24] Section 52(a) of the RRACCS states that the penalty of dismissal shall carry with it the cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from holding public office and bar from taking civil service examinations.[25]

Respondent pleads that the Court exercise its compassion in imposing the penalty against her and to consider her twenty-five (25) years of service in the Judiciary wherein she had not been previously involved in any irregularity.

However, a review of respondent's administrative records shows that the present case is her third infraction. In the first administrative case filed against her, docketed as A.M. OCA IPI No. P-94-1010, respondent was charged with gross ignorance of the law and negligence in the performance of duty and was reprimanded by the Court. In the second administrative case, entitled *Mabaga v. Quirante*,[26] respondent was found guilty of simple neglect of duty and was reprimanded. Nevertheless, the Court sternly warned her that commission of the same or similar acts in the future shall be dealt with more harshly.

Accordingly, the Court cannot appreciate respondent's years of service to mitigate her liability due to the gravity of her offenses and the past transgressions she had committed. Time and again, the Court warned respondent that she will be disciplined harshly if she committed similar or graver offenses. However, she did not heed the Court's warning, thus, the ultimate penalty of dismissal must be imposed against her.

No less than the Constitution mandates that all public officers and employees should serve with responsibility, integrity and

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[24] *Malubay v. Guevara*, *supra* note 22; *Duque v. Calpo*, *supra* note 19.

[25] *Duque v. Calpo*, *supra*.

[26] *Mabaga v. Quirante*, *supra* note 12.

efficiency, for public office is a public trust. No other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than the Judiciary. Thus, this Court has often stated that the conduct of court personnel, from the presiding judge to the lowliest clerk, must be beyond reproach and must be circumscribed with the heavy burden of responsibility as to let them be free from any suspicion that may taint the Judiciary. The Court condemns any conduct, act, or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and diminish the faith of the people in the Judiciary.[27]

WHEREFORE, Rosalita L. Quirante, Clerk III, of the Regional Trial Court of Digos, Davao del Sur, Branch 19, is **GUILTY** of Grave Misconduct and Gross Neglect of Duty. She is **DISMISSED** from service with cancellation of civil service eligibility, perpetual disqualification from holding public office, and forfeiture of retirement benefits, except accrued leave credits.

SO ORDERED.

Peralta, C.J., Leonen, Caguioa, Gesmundo, Reyes, J. Jr., Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos, and *Gaerlan, JJ.,* concur.

Perlas-Bernabe and *Reyes, A. Jr., JJ.,* on official leave.

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[27] *Office of the Court Administrator v. Silongan*, 793 Phil. 667, 681 (2016).

FIRST DIVISION

[G.R. No. 195957. January 15, 2020]

CEZAR T. QUIAMBAO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and STAR INFRASTRUCTURE DEVELOPMENT CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; COMPLAINT OR INFORMATION; AMENDMENT OR SUBSTITUTION; AMENDMENTS THAT DO NOT CHARGE ANOTHER OFFENSE DIFFERENT FROM THAT CHARGED IN THE ORIGINAL ONE, OR DO NOT ALTER THE PROSECUTION'S THEORY OF THE CASE SO AS TO CAUSE SURPRISE TO THE ACCUSED AND AFFECT THE FORM OF DEFENSE HE HAS OR WILL ASSUME, ARE CONSIDERED MERELY AS FORMAL AMENDMENTS; SUBSTANTIAL MATTERS IN THE COMPLAINT OR INFORMATION CONSIST OF THE RECITAL OF FACTS CONSTITUTING THE OFFENSE CHARGED AND DETERMINATIVE OF THE JURISDICTION OF THE COURT, BUT THE PROSECUTION IS GIVEN THE RIGHT TO AMEND THE INFORMATION, REGARDLESS OF THE NATURE OF THE AMENDMENT, SO LONG AS THE AMENDMENT IS SOUGHT BEFORE THE ACCUSED ENTERS HIS PLEA.— Although the precise date of the commission of the offense is not required to be stated in the information unless it is a material ingredient— and the time of occurrence is not a material ingredient of the crime of estafa, Quiambao's concern was well-taken by the RTC. However, the RTC did not grant the motion to quash as it is clearly provided by the Rules of Criminal Procedure that **if the motion to quash is based on an alleged defect in the information which can be cured by amendment, the court shall order the amendment to be made**. In this regard: Section 14, Rule 110 of the Revised Rules of Criminal Procedure governs the matter of amending the information: x x x. There is no precise definition of what constitutes a substantial amendment. According to jurisprudence, substantial matters in the complaint or information consist of the recital of facts constituting the offense charged and

determinative of the jurisdiction of the court. Under Section 14, however, **the prosecution is given the right to amend the information, regardless of the nature of the amendment, so long as the amendment is sought before the accused enters his plea**, subject to the qualification under second paragraph of Section 14. x x x. "[A]mendments that do not charge another offense different from that charged in the original one; or do not alter the prosecution's theory of the case so as to cause surprise to the accused and affect the form of defense he has or will assume are considered merely as formal amendments." Furthermore, as relevantly pointed out by the CA, Quiambao has not yet entered his plea; hence, the Amended Information could still be further amended.

2. ID.; ID.; ID.; ID.; THE AMENDMENTS TO THE ORIGINAL INFORMATION FOR THE CRIME OF ESTAFA, SPECIFYING THE VARIOUS DATES OF THE ACTS COMPLAINED OF, ARE MERELY FORMAL AND NOT SUBSTANTIAL, AS THE SAME DO NOT AMOUNT TO A CHANGE IN THE NATURE OF THE CHARGES SUCH THAT THE ACCUSED WOULD HAVE TO PREPARE A NEW DEFENSE, AND IT WOULD NOT CAUSE PREJUDICE TO THE ACCUSED SUCH THAT A NEW PRELIMINARY INVESTIGATION WOULD BE NECESSARY TO ACCORD HIM DUE PROCESS.— [T]he RTC agreed that "[s]ometime between 1997 to 2004" is so broad and general. As a result, the phrase was replaced with **specific dates within 1997 to 2004** relating to the dates of issuance of various checks and vouchers as appearing in the documentary exhibits submitted during the preliminary investigation and enumerated in the OCP-Pasig's Consolidated Resolution. There is no merit in Quiambao's insistence that the specified dates were not among the prosecutor's findings from the preliminary investigation. We have reason to believe that the subject dates were considered by the OCP-Pasig when it arrived at the phrase "sometime between 1997 to 2004." Thus, we agree with the CA that the eventual amendments directed by the RTC were not new facts and any controverting evidence that Quiambao presented during the preliminary investigation would still be available and applicable for his defense during trial on the merits. It cannot be said that Quiambao was not informed of the existence of these pieces of evidence, much less that specifying the dates of the acts complained of amounted to a change in the nature

of the charges such that Quiambao would have to prepare a new defense. x x x. After careful assessment, we concur with the observation that the questioned amendments were merely formal and not substantial as would cause prejudice to Quiambao such that a new preliminary investigation would be necessary to accord him due process.

3. ID.; EVIDENCE; FACTUAL ISSUES AND THE DETERMINATION WHETHER THE ALLEGATIONS ARE TRUE ARE MATTERS APPROPRIATE FOR THE TRIAL COURT TO THRESH OUT.— [I]t is not for this court to determine whether or not the dates inserted were unfounded, much less whether Quiambao's acts amounted to estafa because that factual issue is for the trial court to thresh out. Furthermore, Quiambao asserts that he was charged with having committed estafa in the present consolidated cases by co-signing company checks with other corporate officers of the SIDC. Allegedly, for the similar act of co-approving check payments with other officers of the SIDC, Quiambao was indicted for qualified theft. That another criminal case was dismissed by the trial court, which was sustained by the CA on January 19, 2009 and affirmed by this Court on February 17, 2010. Again, whether the allegations are true and the same would have a bearing in the consolidated cases for estafa from which this petition stemmed, are also matters appropriate for the RTC to thresh out.

APPEARANCES OF COUNSEL

Tan Acut Lopez & Pison for petitioner.
Fortun Narvasa & Salazar for private respondent.
The Solicitor General for public respondent.

D E C I S I O N

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

Before us is a Petition for Review on *Certiorari* against the Court of Appeals' (CA's) Decision[1] dated November 18, 2010

[1] Penned by Associate Justice Ramon R. Garcia, with Associate Justices Rebecca De Guia-Salvador and Manuel M. Barrios, concurring; *rollo*, pp. 39-56.

and Resolution[2] dated March 10, 2011 in CA-G.R. SP No. 113553, finding no grave abuse of discretion on the part of the Regional Trial Court (RTC) of Pasig City, Branch 161, when it directed the filing of as many information for estafa as alleged against petitioner Cezar T. Quiambao (Quiambao).

The Antecedents

From criminal complaints for estafa filed by the Star Infrastructure Development Corporation (SIDC) against Quiambao, docketed as I.S. Nos. 06-10-11685 to 89,[3] the Office of the City Prosecutor of Pasig City (OCP- Pasig) rendered a Consolidated Resolution[4] dated May 2, 2007 finding probable cause to charge Quiambao with two counts of estafa. Consequently, two separate Information[5] were filed against Quiambao before the RTC on June 4, 2007, worded as follows:

(a) Criminal Case No. 135413-PSG[6] Estafa through misappropriation.

Sometime between 1997 to 2004, in Pasig City, and within the jurisdiction of this Honorable Court, [Quiambao] being then in the capacity as a Chairman of the Board of Directors, CEO and/or Treasurer of Star Infrastructure Development Corporation (SIDC) represented by Louie A. Turgo, as such is in the position of influence and control [to] receive in trust corporate funds and made disbursements and release of funds in favor of STRADEC and Strategic Alliance Holdings, Inc. (SAHI), which is owned and fully operated by [Quiambao] and to [sic] Roberto Quiambao, which corporations are neither affiliated to nor connected with SJDC nor said disbursement to Roberto Quiambao is with justification, but [Quiambao] once in possession of the same and far from complying with his obligation, with unfaithfulness and abuse of confidence and with intent to defraud the complainant, [SIDC],

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

[3] Also referred to as I.S. Nos. PSG 06-l0-11685 to 89 in some parts of the *rollo.*

[4] *Rollo,* pp. 64-70.

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

[6] Also referred to as Criminal Case No. 135413 in some parts of the *rollo.*

did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert to his own personal use and benefit the said money, and despite demand, [Quiambao] failed and refused and still fails and refuses to return the amount of Eighty[-]Five Million, Eight Hundred Eight Thousand, Seven Hundred Seventy[-]Eight Pesos and Twenty[-]Six Centavos (₱85,808,778.26), to the damage and prejudice of the complainant. (Emphasis supplied)

Contrary to Law.[7]

(b) Criminal Case No. 135414-PSG[8] — Estafa through deceit and false pretenses.

Sometime between 1997 to 2004, in Pasig City, and within the jurisdiction of this Honorable Court, [Quiambao], by means of deceit and false pretenses executed prior to or simultaneously with the commission of fraud, did then and there willfully, unlawfully and feloniously defraud complainant Star Infrastructure Development Corporation (SIDC) represented by Louie A. Turgo in the following manner, to wit: [Quiambao] through fraudulent means, by falsely pretending to possess power, qualification and/or similar deceit, obtained funds from the corporation either as a loan repayments or salary or compensation, to which [Quiambao succeeded] in defrauding/ inducing the said corporation, which actually made the disbursements in the total amount of Fifteen Million, One Hundred Eighty Thousand Pesos (₱15,180,000.00), and [Quiambao] once in possession of the aforementioned amount, misapplied, misappropriated and converted to his own personal use and benefits to the damage and prejudice of the complainant [SIDC] represented by Louie A [Turgo] in the aforementioned total amount of Fifteen Million, One Hundred Eighty Thousand Pesos (₱15,180,000.00). (Emphasis supplied)

Contrary to Law.[9]

Aggrieved by the OCP-Pasig's finding of probable cause and accusing the SIDC of forum shopping, Quiambao lodged a Petition for Review of the OCP-Pasig's May 2, 2007 Consolidated Resolution before the Department of Justice (DOJ)

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[7] *Rollo,* p. 60.

[8] Also referred to as Criminal Case No. 135414 in some parts of the *rollo.*

[9] *Rollo,* p. 62.

on June 19, 2007.[10] Quiambao invited the attention of the DOJ to the 11 criminal complaints (I.S. Nos. PSG 05-05-04326 to 27 and 05-08-07924 to 32) pending review before it, involving the same issues and subject matter as I.S. Nos. 06-10-11685 to 89 from which the May 2, 2007 Consolidated Resolution originated.[11] The OCP-Pasig had dismissed the said 11 criminal complaints, which the SIDC appealed to the DOJ.[12]

Meanwhile, on November 9, 2007, Quiambao moved to quash[13] the twin Information in Criminal Case Nos. 135413-14-PSG for merely stating the date of commission of the offenses as "[s]ometime between 1997 to 2004." Agreeing that the phrasing of the date is so broad and general, but such defect is merely in form that is curable by amendment, the RTC issued an Order[14] on February 6, 2008, directing the prosecution to specify the approximate months or years from 1997 to 2004 when the acts causing the total defraudation stated in the information were committed.

As a result, on April 15, 2008, the OCP-Pasig issued two Amended Information[15] that replaced the phrase "[s]ometime between 1997 to 2004" with 72 specific dates, in the following manner:

(a) Criminal Case No. 135413-PSG — Estafa through misappropriation.

That on November 21 and December 22, 1997, April 6, April 28, May 4, May 7, May 15, May 18, May 19, 1998, June 28, July 14, July 16, and August 14, 1999, May 30, June 7, June 13, June 22, June 23, July 13, July 14, July 17, August 11, and August 21, 2000, January 31, March 12, March 27, April 6, April 10, April 11, April 19, April 20, April 26, May 2, May 3, May 4, and May

[10] *Id.* at 71-132.

[11] *Id.* at 73.

[12] *Id.*

[13] *Id.* at 134-140.

[14] Docketed as Criminal Case[Nos.] 135413-14-CR; *id.*at 158-160.

[15] *Id.* at 161-164.

8, 2001, July 30, August 2, September 11, October 8, and October 29, 2002, January 13, January 15, March 25, May 14, and May 20, 2003, in Pasig City, and within the jurisdiction of this Honorable Court, [Quiambao] being then in the capacity as a Chairman of the Board of Directors, CEO and/or Treasurer of Star Infrastructure Development Corporation (SIDC) [16] x x x. (Emphasis supplied)

(b) Criminal Case No. 135414-PSG — Estafa through deceit and false pretenses.

That on July 14 and August 14, 1999, May 30, June 13, June 22, June 23, July 17, and August 11, 2000, August 2, 2002, July 30, August 18, August 21, September 12, September 29, October 15, October 30, November 13, November 20, December 11, and December 17, 2003, January 14, January 28, February 13, February 27, March 12, and March 30, 2004, in Pasig City, and within the jurisdiction of this Honorable Court,[17] x x x. (Emphasis supplied)

In another Motion to Quash with Motion to Dismiss[18] filed on June 13, 2008, Quiambao alleged that the insertion of various dates was a substantial amendment requiring the conduct anew of a preliminary investigation, contending that the prosecution failed to comply with the directive to formally amend the Information. The RTC denied the motions through an Order[19] dated August 28, 2008, ruling that the Amended Information merely alleged with particularity the months and years the defraudation was committed and that Quiambao remains charged with the same offense.

Undeterred, Quiambao filed a Motion for Reconsideration with Motion for Judicial Re-determination of Probable Cause[20] on September 26, 2008, reiterating that the patent defects in

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[16] *Id.* at 161.

[17] *Id.* at 163.

[18] *Id.* at 165-176.

[19] *Id.* at l96-197.

[20] *Id.* at 198-216.

the original information were not cured and claiming that a judicial re-determination of probable cause was warranted. In its Comment on the said motions, the OCP-Pasig argued that Quiambao was being charged with a continuing crime of estafa committed from 1997 to 2004.[21] The RTC denied Quiambao's motions in an Order[22] dated January 26, 2009, maintaining that the prosecution had substantially complied with the order to amend the two Information.

Quiambao then filed an Omnibus Motion[23] to clarify the RTC's January 26, 2009 Order and to quash the Amended Information for allegedly charging multiple offenses, assailing the prosecution's theory of Quiambao being charged with a continuing crime of estafa committed from 1997 to 2004 which the RTC allegedly failed to address in its order. This time, ruling that each misappropriation and conversion is an independent complete felony and not the result of a single criminal intent to defraud, the RTC issued an Order[24] dated May 7, 2009, directing the quashal of the twin Amended Information for charging multiple offenses.

The SIDC moved for reconsideration[25] of the May 7, 2009 Order, arguing that the RTC should not have considered a situation contrary to that set forth in the criminal complaint. Acting on the motion, the RTC issued its October 5, 2009 Order,[26] directing the prosecution to file the corresponding information for each act of estafa as alleged in the Amended Information.

On November 5, 2009, Quiambao sought partial reconsideration of the October 5, 2009 Order, but this was denied by the RTC on February 8, 2010.[27] Consequently, Quiambao

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[21] *Id.* at 221-224.

[22] *Id.* at 228-229.

[23] *Id.* at 230-240.

[24] *Id.* at 266-267.

[25] *Id.* at 268-275.

[26] *Id.* at 303-304.

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

filed a Petition for *Certiorari*[28] with prayer for injunctive relief with the CA. The CA, however, found no merit in Quiambao's petition, which it dismissed on November 18, 2010 through the Decision[29] presently under review.

According to the CA, the amendments which the RTC directed the city prosecutor to make are only of form and not of substance. It held that the amendments were not new facts because they were based on the same documentary evidence presented during the preliminary investigation. Furthermore, it pointed out that the RTC is not subservient to the findings of the DOJ and is mandated to make its own determination of probable cause.

Quiambao sought reconsideration, insisting that the dates enumerated in the quashed Amended Information could not be the basis of filing new criminal information without the conduct of another preliminary investigation.[30] The motion was denied by the CA in its March 10, 2011 Resolution[31] for merely reiterating the grounds already considered when it arrived at its decision.

In view of the CA's November 18, 2010 Decision and the March 10, 2011 Resolution upholding the RTC's Order to file the corresponding information for each act of estafa, the OCP-Pasig filed a motion on March 14, 2011, for the RTC to admit 81 Amended Information.[32] Hence, Quiambao filed the present petition on March 24, 2011 against the said CA Decision and Resolution, citing the following grounds:

I.

IN RESOLVING CA-G.R. SP NO. 113553, THE [CA] HAS NOT ONLY DECIDED QUESTIONS OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE

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[28] *Id.* at 341-364.

[29] *Supra* note 1.

[30] *Rollo,* p. 50l.

[31] *Supra* note 2.

[32] *Rollo,* pp. 505-507.

DECISIONS OF THE HONORABLE SUPREME COURT, BUT HAS ALSO SO FAR SANCTIONED THE TRIAL COURT'S DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS HONORABLE COURT'S POWER OF SUPERVISION, INASMUCH AS BOTH THE TRIAL COURT AND THE [CA] DEPRIVED PETITIONER HIS RIGHT TO THE CONDUCT OF A NEW PRELIMINARY INVESTIGATION, WHICH IS MANDATORY UNDER THE CIRCUMSTANCES.

II.

INSTEAD OF AFFIRMING THE TRIAL COURT'S DIRECTIVE TO FILE ANOTHER SET OF CRIMINAL INFORMATION, THE [CA] SHOULD HAVE ALTOGETHER DISMISSED THE CHARGES AGAINST PETITIONER.[33]

The SIDC filed its Comment[34] on July 4, 2011, delineating the issue in Quiambao's petition as whether the eventual amendments made to the twin Information filed in Criminal Case Nos. 135413-14-PSG were formal or substantial. It reiterated that the subject amendments were merely formal because they merely specified the various dates during which the crimes charged were committed and nothing more was added. The SIDC argued that the amendments did not alter the nature of the crimes charged and Quiambao failed to show how the amendments entitled him to a new preliminary investigation.

In its Comment[35] filed on September 5, 2011, the Office of the Solicitor General (OSG) argued that Quiambao's original defenses would still be equally available even after the amendments. The OSG reasoned that an amendment that simply eliminates vagueness in the information without introducing new and material facts, only stating with precision something already contained in the original information, is merely one of form.

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[33] *Id.* at 18-19.

[34] *Id.* at 69l-698.

[35] *Id.* at 705-720.

Quiambao filed a Consolidated Reply[36] on September 23, 2011, insisting that the various dates inserted in the quashed Amended Information were not part of the findings during the preliminary investigation stage of Criminal Case Nos. 135413-14-PSG. Quiambao also manifested that the RTC had issued an Order[37] on August 8, 2011, deciding to defer action on the prosecution's motion to admit the 81 Amended Information until this Court has resolved the present petition.

On November 16, 2011, Quiambao filed a Manifestation[38] regarding the October 6, 2011 Resolution[39] of the DOJ which reversed and set aside the OCP-Pasig's May 2, 2007 Consolidated Resolution. The DOJ found that the OCP-Pasig's Consolidated Resolution (I.S. Nos. 06-10-11685 to 89) from which the present controversy arose involved the same issues and subject matter between the same parties as a prior Consolidated Resolution of the OCP-Pasig dated December 8, 2005 (I.S. Nos. PSG 05-05-04326 to 27 and 05-08-07924 to 32) pending review before the DOJ.

The SIDC filed a Counter-Manifestation[40] on November 23, 2011 pointing out that upon filing of the information in court, findings of the prosecutorial arm of the government on the existence of probable cause are merely recommendatory, recalling that the RTC had already made a finding that probable cause exists in the case under review.

In a Manifestation[41] dated October 24, 2013, Quiambao manifested that, through a Decision[42] dated September 10, 2013

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[36] *Id.* at 725-736.

[37] *Id.* at 756-758.

[38] *Id.* at 760-766.

[39] *Id.* at 764-766.

[40] *Id.* at 767-769.

[41] *Id.* at 800-802.

[42] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Eduardo B. Peralta, Jr. and Nina G. Antonio-Valenzuela, concurring; *id.* at 805-823.

in CA-G.R. SP No. 123298, the CA had dismissed the SIDC's Petition for *Certiorari* assailing the DOJ's Resolution dated October 6, 2011. In that case, the CA found that the DOJ did not abuse its discretion in ruling that the OCP-Pasig's December 8, 2005 and May 2, 2007 Consolidated Resolutions have identical facts, issues and parties. In this regard, Quiambao argued that the DOJ's order to withdraw the information arising from the OCP-Pasig's May 2, 2007 Consolidated Resolution, as upheld by the CA, necessarily includes the withdrawal of the 81 Amended Information that are pending before the RTC.

In compliance with our directive for the parties to file their respective memoranda, the OSG manifested on September 14, 2017 that it is adopting its prior Comment as its Memorandum.[43] Quiambao, on the other hand, filed a Memorandum on October 18, 2017 reiterating his arguments.[44] Also on record is the SIDC's Memorandum filed on October 25, 2017, likewise reiterating its key points.[45]

The Issue

Bearing in mind that the petition arose from the RTC's order for the prosecution to file as many information for estafa as alleged in a previous amended information *sans* the conduct of a new preliminary investigation, our main concern here is whether or not it was reversible error for the CA to find no grave abuse of discretion on the part of the RTC when the latter issued the said order.

Although the present petition also attempts to put in issue whether or not the CA should have instead dismissed the charges against Quiambao, the finding of probable cause *per se*, by either the prosecutor or the RTC, was not the subject of the CA Decision and Resolution under present review. The grounds raised in the Rule 65 petition before the CA leading to the present petition indicate that what it assailed was the directive

[43] *Id.* at 828-829.

[44] *Id.* at 839-867.

[45] *Id.* at 873-888.

for the prosecutor to file new information in lieu of the defective Amended Information and despite the pendency of an appeal before the DOJ.[46]

Note that the appeal before the DOJ which questioned, among others, the sufficiency of the evidence in support of Quiambao's indictment proceeded independently and was itself the subject of another Rule 65 petition before the CA.[47] We would then be out of bounds if we were to delve into the propriety or impropriety of the finding that there exists probable cause to hold Quiambao to trial, as this issue was the subject of another case and was not what triggered the petition before us.

Resolution of the present controversy is confined to whether or not the amendments to the information, as ordered by the trial court, are substantial and prejudicial to Quiambao's rights.

The Ruling of the Court

It may be remembered that in the original information, the charge of estafa was extrapolated into two charges based on the manner the defraudation was committed within a span of eight years. It was upon Quiambao's own motion that the RTC directed the OCP-Pasig to state with particularity when the alleged acts that led to the defraudation were committed.

Although the precise date of the commission of the offense is not required to be stated in the information unless it is a material ingredient[48] — and the time of occurrence is not a material ingredient of the crime of estafa, Quiambao's concern was well-taken by the RTC. However, the RTC did not grant the motion to quash as it is clearly provided by the Rules of Criminal Procedure that **if the motion to quash is based on an alleged defect in the information which can be cured by**

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[46] *Id.* at 48.

[47] *Supra* note 42.

[48] See *Corpuz v. People*, 734 Phil. 353, 393 (2014), in relation to the RULES OF COURT, Rule 110, Sec. 11.

amendment, the court shall order the amendment to be made.[49]

In this regard:

Section 14, Rule 110 of the Revised Rules of Criminal Procedure governs the matter of amending the information:

> *Amendment or substitution.* A complaint or information may be amended, in form or in substance, without leave of court, at any time **before the accused enters his plea.** After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.
>
> However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party.

There is no precise definition of what constitutes a substantial amendment. According to jurisprudence, substantial matters in the complaint or information consist of the recital of facts constituting the offense charged and determinative of the jurisdiction of the court. Under Section 14, however, **the prosecution is given the right to amend the information, regardless of the nature of the amendment, so long as the amendment is sought before the accused enters his plea,** subject to the qualification under the second paragraph of Section 14.

Once the accused is arraigned and enters his plea, however, Section 14 prohibits the prosecution from seeking a substantial amendment, particularly mentioning those that may prejudice the rights of the accused. One of these rights is the constitutional right of the accused to be informed of the nature and cause of accusation against him, a right which is given life during the arraignment of the accused of the charge against him. The theory in law is that since the accused officially begins to prepare his defense against the accusation on the basis of the recitals in the information read to him during arraignment, then

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[49] *People v. Andrade,* 747 Phil. 703, 706 (2014). (Emphasis supplied)

the prosecution must establish its case on the basis of the same information.[50] (Emphases supplied)

"[A]mendments that do not charge another offense different from that charged in the original one; or do not alter the prosecution's theory of the case so as to cause surprise to the accused and affect the form of defense he has or will assume are considered merely as formal amendments."[51] Furthermore, as relevantly pointed out by the CA, Quiambao has not yet entered his plea; hence, the Amended Information could still be further amended.[52]

To recall, the RTC agreed that "[s]ometime between 1997 to 2004" is so broad and general. As a result, the phrase was replaced with **specific dates within 1997 to 2004** relating to the dates of issuance of various checks and vouchers as appearing in the documentary exhibits submitted during the preliminary investigation and enumerated in the OCP-Pasig's Consolidated Resolution. There is no merit in Quiambao's insistence that the specified dates were not among the prosecutor's findings from the preliminary investigation. We have reason to believe that the subject dates were considered by the OCP-Pasig when it arrived at the phrase "sometime between 1997 to 2004." Thus, we agree with the CA that the eventual amendments directed by the RTC were not new facts and any controverting evidence that Quiambao presented during the preliminary investigation would stil1 be available and applicable for his defense during trial on the merits. It cannot be said that Quiambao was not informed of the existence of these pieces of evidence, much less that specifying the dates of the acts complained of amounted to a change in the nature of the charges such that Quiambao would have to prepare a new defense.

Despite this case having dragged on for more than a decade, Quiambao has not yet entered a plea in the proceedings below.

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[50] *Dr. Mendez v. People*, 736 Phil. 181, 191-192 (2014).

[51] *Id.* at l93.

[52] *Rollo*, p. 49, in relation to the RULES OF COURT, Rule 110, Sec. 14.

Relative to this, any discussion on whether the amendments were substantial or merely formal would have been called for had Quiambao already entered a plea, but he has not. Even if we were to assume a scenario where Quiambao has already been arraigned:

> x x x The test as to when the rights of an accused are prejudiced by the amendment of a Complaint or Information is when a defense under the Complaint or Information, as it originally stood, would no longer be available after the amendment is made, and when any evidence the accused might have, would be inapplicable to the Complaint or Information as amended.
>
> On the other hand, an amendment which merely states with additional precision something which is already contained in the original information, and which, therefore, adds nothing essential for conviction for the crime charged is an amendment to form that can be made at any time.[53]

After careful assessment, we concur with the observation that the questioned amendments were merely formal and not substantial as would cause prejudice to Quiambao such that a new preliminary investigation would be necessary to accord him due process.

While it is true that the twin Amended Information had been ordered quashed for charging multiple offenses due to the various dates enumerated, it bears mentioning that it was upon Quiambao's own motion to clarify and quash these Amended Information which led the RTC to reconsider the theory that Quiambao was charged with two continuing crimes of estafa. After being convinced that each act of misappropriation or conversion was an independent complete felony, the RTC agreed with Quiambao that it was tantamount to being charged with multiple offenses. It was this that led to the quashal. However, to Quiambao's utter dismay, the RTC reconsidered upon realizing that the better remedy is to order that information be filed, considering that the ground relied on is neither extinction of

[53] *Gabionza v. Court of Appeals,* 408 Phil. 58, 64-65 (2001).

the alleged criminal liability nor double jeopardy.[54] For this reason, the alleged acts of defraudation were eventually extrapolated into as many acts as alleged in the twin Amended Information.

Again, it is not for this court to determine whether or not the dates inserted were unfounded, much less whether Quiambao's acts amounted to estafa because that factual issue is for the trial court to thresh out. Furthermore, Quiambao asserts that he was charged with having committed estafa in the present consolidated cases by co-signing company checks with other corporate officers of the SIDC.[55] Allegedly, for the similar act of co-approving check payments with other officers of the SIDC, Quiambao was indicted for qualified theft.[56] That another criminal case was dismissed by the trial court, which was sustained by the CA on January 19, 2009 and affirmed by this Court on February 17, 2010.[57] Again, whether the allegations are true and the same would have a bearing in the consolidated cases for estafa from which this petition stemmed, are also matters appropriate for the RTC to thresh out.

As to the effect of the DOJ's order to withdraw the information arising from the OCP-Pasig's May 2, 2007 Consolidated Resolution, as upheld by the CA, we reiterate that jurisdiction over the criminal complaints had already vested with the RTC. It does not follow that the directive necessarily includes the Amended Information pending admission with the RTC. It is also worth recalling that the order to withdraw the information did not arise from a finding of lack of probable cause to charge Quiambao, but because there were other identical resolutions

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[54] RULES OF COURT, Rule 117, Sec. 5, in relation to Sec. 6 thereof.

[55] *Rollo*, p. 26.

[56] *Id.* at 27.

[57] *Star Infrastructure Development Corp. v. Quiambao*, G.R. No. 190174 (*id.* at 681-682), upholding the CA Decision in CA-G.R. CR No. 31169, penned by Associate Justice Rosmari D. Carandang (now a Member of the Court), with Associate Justices Teresita Dy-Liacco Flores and Sixto C. Marella, Jr., concurring; *id.* at 670-680.

pending review with the DOJ. Neither party has apprised us of the current status of those related resolutions of the OCP-Pasig, a matter also that should properly be brought to the attention of the RTC as to any possible bearing on the present cases. At any rate, the subject matter of this petition pertains to the eventual amendments made on the original information.

WHEREFORE, premises considered, the petition is **DENIED** for lack of merit.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Lazaro-Javier, and *Lopez, JJ.*, concur.

THIRD DIVISION

[G.R. No. 197022. January 15, 2020]

PHILIPPINE-JAPAN ACTIVE CARBON CORPORATION, *petitioner, vs.* **HABIB BORGAILY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; COURTS; JURISDICTION; A CLAIM WHICH IS PRIMARILY FOR RECOVERY OF A SUM OF MONEY IS CONSIDERED AS ONE WHICH IS CAPABLE OF PECUNIARY ESTIMATION, COGNIZABLE BY THE MUNICIPAL TRIAL COURTS; WHERE THE BASIC ISSUE OF THE CASE IS SOMETHING OTHER THAN THE RIGHT TO RECOVER A SUM OF MONEY, WHERE THE MONEY CLAIM IS MERELY INCIDENTAL TO THE PRINCIPAL RELIEF SOUGHT, THEN THE SUBJECT MATTER OF THE ACTION IS NOT CAPABLE OF PECUNIARY ESTIMATION, AND IS WITHIN THE JURISDICTION

OF THE REGIONAL TRIAL COURT.— In order to determine whether the subject matter of an action is one which is capable of pecuniary estimation, the nature of the principal action or remedy sought must be considered. If it is primarily for recovery of a sum of money, then the claim is considered as capable of pecuniary estimation, and the jurisdiction lies with the municipal trial courts if the amount of the claim does not exceed ₱300,000.00 outside Metro Manila, and does not exceed ₱400,000.00 within Metro Manila. However, where the basic issue of the case is something other than the right to recover a sum of money, where the money claim is merely incidental to the principal relief sought, then the subject matter of the action is not capable of pecuniary estimation, and is within the jurisdiction of the RTC.

2. ID.; ID.; ID.; A DEMAND FOR THE RETURN OF THE SECURITY DEPOSIT AFTER THE LEASE AGREEMENT HAD ALREADY EXPIRED IS A COLLECTION SUIT, NOT AN ACTION FOR SPECIFIC PERFORMANCE FOR BREACH OF CONTRACT, WHICH IS COGNIZABLE BY THE MUNICIPAL TRIAL COURT.— The CA held that the allegations of the complaint filed by petitioner make out a case for breach of contract where an action for specific performance is an available remedy. Since the same is incapable of pecuniary estimation, the same is cognizable by the RTC. The refund of the ₱90,000.00 security deposit was merely incidental to the main action for specific performance. The CA was mistaken in appreciating the facts of the case. Contrary to its ruling, a perusal of the complaint filed by petitioner makes out a case for collection of sum of money and not for breach of contract. It is to be noted that the lease agreement had already expired when petitioner filed an action for the return of the security deposit. Since the lease had already expired, there is no more contract to breach. The demand for the return of the security deposit was merely a collection suit. What the petitioner prayed for before the MTCC was the return of the amount of ₱90,000.00, and not to compel respondent to comply with his obligation under the lease agreement. As such, the CA erred when it held that the MTCC has no jurisdiction over the case and dismissed the same for lack of jurisdiction.

3. CIVIL LAW; LEASE; THE LESSOR MUST RETURN THE SECURITY DEPOSIT TO THE LESSEE AFTER THE

EXPIRATION OF THE LEASE, BUT HE HAS THE RIGHT TO WITHHOLD THE SAME AND TO APPLY IT TO THE DAMAGES MADE ON THE LEASED PREMISES BY THE LESSEE; A LESSEE, WHEN IT OCCUPIES THE PREMISES, ACKNOWLEDGES THAT THE LEASED PREMISES ARE IN GOOD AND TENANTABLE CONDITION, AND THAT UPON TERMINATION OF THE LEASE, IT WILL SURRENDER THE PREMISES, ALSO IN THE SAME GOOD AND TENANTABLE CONDITION WHEN TAKEN, WITH THE EXCEPTION OF ORDINARY WEAR AND TEAR.— Respondent pleaded as counterclaim in his answer the cost of the repairs amounting to ₱79,534.00, which he incurred in fixing the two units leased by the petitioner. Petitioner rendered the two apartment units hazardous because petitioner recklessly and with impunity disregarded all norms of decent living. Petitioner destroyed the two apartment units and rendered it inhabitable and in need of major repairs. Thus, while respondent must return the security deposit to petitioner, respondent had the right to withhold the same and to apply it to the damages incurred by the apartment units occupied by petitioner. The RTC found that respondent spent a total of ₱79,534.00 for the repairs on the leased premises. Petitioner, when it occupied the apartment units, acknowledged that the leased premises were in good and tenantable condition. Petitioner shouldered all expenses for repairs of the apartment units, regardless of its nature, and that upon termination of the lease, petitioner must surrender the premises, also in the same good and tenantable condition when taken, with the exception of ordinary wear and tear. However, photographs of the extent of the damage on the leased premises presented during trial showed that when petitioner vacated the apartment units, they were in need of major repairs. The repairs undertaken by respondent were all covered by receipts, which the latter furnished to petitioner. The failure of petitioner to inspect the repairs undertaken by respondent, despite notice of the same, bars petitioner to question the propriety of the repairs on the apartment units. Therefore, the RTC was correct when it ordered the offsetting of the ₱90,000.00 security deposit to the expenses of the repairs amounting to ₱79,534.00.

4. ID.; DAMAGES; NOMINAL DAMAGES CANNOT CO-EXIST WITH ACTUAL DAMAGES, AS THE SAME IS

ADJUDICATED IN ORDER THAT A RIGHT OF THE PLAINTIFF, WHICH HAS BEEN VIOLATED OR INVADED BY THE DEFENDANT, MAY BE VINDICATED OR RECOGNIZED, AND NOT FOR THE PURPOSE OF INDEMNIFYING THE PLAINTIFF FOR ANY LOSS SUFFERED BY HIM.— [T]he award of nominal damages has no basis. It has been settled that nominal damages cannot co-exist with actual damages. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him. Since respondent has already been indemnified for the damages made on the leased premises, there is no more reason to further grant nominal damages.

APPEARANCES OF COUNSEL

Dominguez Paderna & Tan Law Offices Co. for petitioner.
Honesto Ancheta Cabarroguis for respondent.

D E C I S I O N

CARANDANG, *J.*:

Before Us is a Petition for Review on *Certiorari*[1] filed by petitioner Philippine-Japan Active Carbon Corporation assailing, the Decision[2] dated February 25, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 01315 dismissing the complaint of petitioner for lack of jurisdiction.

Antecedents

On July 17, 2002, Philippine-Japan Active Carbon Corporation (petitioner) leased two apartment units from Habib Borgaily (respondent) for ₱15,000.00 each unit. The two lease contracts[3]

[1] *Rollo*, pp. 10-25.

[2] Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Romulo V. Borja and Ramon Paul L. Hernando (now a Member of his Court), concurring; *id.* at 30-37.

[3] *Id.* at 70-78.

have a lease period from August 1, 2002 to August 1, 2003. To secure faithful compliance of the obligations of petitioner under the lease contracts, a security deposit was required, to wit:

> 19. Upon signing hereof, the LESSEE shall pay a deposit of FORTY FIVE THOUSAND PESOS (₱45,000.00) as a security for the faithful performance by the LESSEE of his obligations herein provide[d], as well as to answer for any liability or obligation that the LESSEE may incur to third parties arising from or regarding the use of the subject premises. Accordingly, said deposit may not be applied to any rental due under this contract and shall be refunded to the LESSEE only upon termination hereof after ascertaining that the latter has no further obligations under this contract or to any person or entity from or regarding the use of the premises.[4]

Petitioner deposited the amount of ₱90,000.00 as security deposit for the two apartment units.

The lease contract was not renewed after the expiration of the lease on August 1, 2003. However, petitioner still occupied the premises until October 31, 2003.

After vacating the premises, petitioner asked respondent to return the amount of ₱90,000.00. Petitioner alleged that it has no outstanding obligation to any person or entity relative to the use of the apartment units to which the security deposit may be held accountable.

As counterclaim in his Answer,[5] respondent claimed that petitioner failed to comply with its obligations in the lease contracts, such as keeping the apartment units "neat[-]looking" and keeping the lawns and hedges watered and trimmed.[6] Petitioner was also obliged to keep the leased premises in good and tenantable condition.[7] Further, upon termination of the lease,

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[4] *Id.* at 77.

[5] *Id.* at 78-86.

[6] *Id.* at 70-71. Paragraph 3 of the Lease Agreement.

[7] *Id.* at 71. Paragraph 6 of the Lease Agreement.

the lessee should surrender the leased premises to the lessor in a good and tenantable condition with the exception of ordinary fair wear and tear.[8]

Respondent alleged that when petitioner vacated the leased premises, the same was destroyed and rendered inhabitable. As such, respondent had to make the necessary repairs amounting to ₱79,534.00 to the units. Respondent furnished petitioner with the receipts of the expenses incurred from the labor and materials for the repair of the units. Hence, respondent had the right to withhold the release of the deposits due to the violation of the terms and conditions of the lease agreements.

Respondent claimed that when petitioner leased the two apartment units, the latter made respondent believe that the apartment units were going to be occupied by petitioner's executives and their families while assigned in Davao City. Instead, petitioner used the apartment units as staff houses. The use and occupancy of the apartment units became hazardous because petitioner's occupants, recklessly and with impunity, disregarded all norms of decent living in apartments and destroyed the units. Thus, as counterclaim, respondent claimed that he had the right to withhold the refund of the security deposit amounting to ₱90,000.00 and apply the same to the cost of the repairs amounting to ₱79,534.00.[9]

Since respondent refused to return the security deposit, petitioner filed an action for collection of sum of money equivalent to the amount of the security deposit against the respondent.

MTCC ruling

In a Decision[10] dated May 20, 2005, the Municipal Trial Court Cities (MTCC) of Davao City, 11th Judicial Region, Branch 1, found that respondent had the obligation to return the security

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[8] *Id.* at 72. Paragraph 16 of the Lease Agreement.

[9] *Id.* at 83-85.

[10] Penned by Judge Jose Emmanuel M. Castillo; *id.* at 58-62.

deposit. Under the lease agreement, it is provided that the security deposit shall be returned after the expiration of the lease. The lease agreement does not authorize the outright withholding of the security deposit by the lessor if it appears to him that the terms and conditions of the lease are violated. The lessor should first bring it to the proper forum to determine whether the lease contracts were violated, thus:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant:
>
> a.) Ordering the defendant to refund plaintiff its security deposit in the amount of Ninety Thousand Pesos (₱90,000.00) with interest at twelve percent (12%) per annum, until refunded in full;
>
> b.) Ordering the defendant to pay plaintiff the amount of Ten Thousand Pesos (₱10,000.00) as attorney's fees plus cost of suit.
>
> SO ORDERED.[11]

RTC ruling

In a Decision[12] dated August 16, 2006, the Regional Trial Court (RTC) of Davao City, 11th Judicial Region, Branch 13, reversed the ruling of the MTCC. The RTC held that, according to Paragraph 19 of the lease agreements, the security deposit is for the faithful performance by the lessee of its obligations under the lease agreement.[13] Respondent had the right to withhold the deposit until his claim for damages to the units which were not caused by ordinary wear and tear have been reimbursed.[14] The pictures showing the damage to the leased premises presented by the respondent during the hearing showed that when petitioner vacated the premises, the same were in need of major repairs.[15] Furthermore, the RTC found that the major

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[11] *Id.* at 61.

[12] Penned by Judge Isaac G. Robillo, Jr.; *id.* at 53-57.

[13] *Id.* at 53.

[14] *Id.* at 53-54.

[15] *Id.* at 56.

repairs were all covered by receipts, which convinced the court that respondent spent ₱79,534.00 for the repairs for the two apartment units, thus:

> WHEREFORE, the decision of the court a quo is hereby reversed and set aside.
>
> The court finds that the claim of plaintiff for refund of the amount of ₱90,000.00 which it paid defendant as security deposit for the two apartment units which plaintiff leased, had already been offset by amount of ₱79,534.00 which defendant spent for the repairs of the leased premises and the nominal damage in the amount of ₱11,464.00 which the court hereby awards to defendant. Plaintiff and defendant have therefore no more claims against each other.
>
> SO ORDERED.[16]

CA ruling

Upon Petition for Review under Rule 42 to the CA, petitioner ascribed to the RTC grave abuse of discretion when it ruled that the claim for the refund of the security deposit has already been offset by the amount respondent spent for the repairs, and when the RTC ruled that defendant is entitled to nominal damages.

However, the CA in its Decision[17] dated February 25, 2011, resolved the case completely different from the raised errors by petitioner. The CA held that the pivotal issue was whether the MTCC has jurisdiction over the complaint.[18] The CA ruled that the allegations in petitioner's complaint make out a case for breach of contract and, therefore, an action for specific performance is an available remedy.[19] As such, the same is an action incapable of pecuniary estimation. Therefore, the MTCC has no jurisdiction over the case. The action for sum of money representing the security deposit is merely incidental to the

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[16] *Id.* at 57.

[17] *Supra* note 2.

[18] *Rollo*, p. 37.

[19] *Id.* at 35.

main action for specific performance.[20] Thus, the CA dismissed the case for lack of jurisdiction, to wit:

> **WHEREFORE**, the instant petition is DENIED. The Decision dated August 16, 2006 and the Order dated September 19, 2006 of the RTC are SET ASIDE. The Decision dated May 20, 2005 of the MTCC is also SET ASIDE. The Complaint is DISMISSED for lack of jurisdiction.
>
> **SO ORDERED.**[21]

Aggrieved by the CA Decision, petitioner filed a Petition for Review on *Certiorari*[22] before this Court, alleging that the nature of its complaint is one for collection of sum of money and attorney's fees, and not one for breach of contract.[23] Petitioner claimed that the lease contracts were already terminated at the time of respondent's refusal to return the security deposit.[24] Since an action of breach of contract presupposes the existence of a contract, and that breach must be committed during the effectivity of the same, petitioner's action for the return of the security deposit cannot be considered as an action for breach of contract.[25]

Respondent, in his Comment,[26] claimed that the ruling of the CA that the action is one for breach of contract is correct. However, respondent has a legal and justifiable reason to withhold the refund of the security deposits, because petitioner vandalized the leased units and destroyed the same when the latter left the premises.[27]

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[20] *Id.* at 36.

[21] *Id.* at 37.

[22] *Supra* note 1.

[23] *Rollo*, pp. 17-21.

[24] *Id.* at 18.

[25] *Id.*

[26] *Rollo*, pp. 97-109.

[27] *Id.* at 103-107.

Issues

The issues for Our resolution are: (1) whether the MTCC has jurisdiction over the case; and (2) whether the RTC was correct when it offset the amount of the security deposit with the amount of the repairs made by the respondent, plus the amount of nominal damages awarded to respondent.

Ruling of the Court

In order to determine whether the subject matter of an action is one which is capable of pecuniary estimation, the nature of the principal action or remedy sought must be considered. If it is primarily for recovery of a sum of money, then the claim is considered as capable of pecuniary estimation, and the jurisdiction lies with the municipal trial courts if the amount of the claim does not exceed ₱300,000.00 outside Metro Manila, and does not exceed ₱400,000.00 within Metro Manila. However, where the basic issue of the case is something other than the right to recover a sum of money, where the money claim is merely incidental to the principal relief sought, then the subject matter of the action is not capable of pecuniary estimation, and is within the jurisdiction of the RTC.[28]

The CA held that the allegations of the complaint filed by petitioner make out a case for breach of contract where an action for specific performance is an available remedy. Since the same is incapable of pecuniary estimation, the same is cognizable by the RTC. The refund of the ₱90,000.00 security deposit was merely incidental to the main action for specific performance.[29]

The CA was mistaken in appreciating the facts of the case. Contrary to its ruling, a perusal of the complaint filed by petitioner makes out a case for collection of sum of money and not for breach of contract. It is to be noted that the lease agreement had already expired when petitioner filed an action

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[28] *Pajares v. Remarkable Laundry and Dry Cleaning*, 818 SCRA 144, 149 (2017).

[29] *Rollo*, p. 35.

for the return of the security deposit. Since the lease had already expired, there is no more contract to breach.[30] The demand for the return of the security deposit was merely a collection suit. What the petitioner prayed for before the MTCC was the return of the amount of ₱90,000.00, and not to compel respondent to comply with his obligation under the lease agreement. As such, the CA erred when it held that the MTCC has no jurisdiction over the case and dismissed the same for lack of jurisdiction.

Respondent pleaded as counterclaim in his answer the cost of the repairs amounting to ₱79,534.00, which he incurred in fixing the two units leased by the petitioner. Petitioner rendered the two apartment units hazardous because petitioner recklessly and with impunity disregarded all norms of decent living. Petitioner destroyed the two apartment units and rendered it inhabitable and in need of major repairs. Thus, while respondent must return the security deposit to petitioner, respondent had the right to withhold the same and to apply it to the damages incurred by the apartment units occupied by petitioner. The RTC found that respondent spent a total of ₱79,534.00 for the repairs on the leased premises. Petitioner, when it occupied the apartment units, acknowledged that the leased premises were in good and tenantable condition. Petitioner shouldered all expenses for repairs of the apartment units, regardless of its nature, and that upon termination of the lease, petitioner must surrender the premises, also in the same good and tenantable condition when taken, with the exception of ordinary wear and tear. However, photographs of the extent of the damage on the leased premises presented during trial showed that when petitioner vacated the apartment units, they were in need of major repairs. The repairs undertaken by respondent were all covered by receipts, which the latter furnished to petitioner. The failure of petitioner to inspect the repairs undertaken by respondent, despite notice of the same, bars petitioner to question the propriety of the repairs on the apartment units. Therefore, the RTC was correct when it ordered the offsetting of the ₱90,000.00 security deposit to the expenses of the repairs

[30] *Ballesteros v. Abion*, 517 Phil. 253, 264 (2006).

amounting to ₱79,534.00.

However, the award of nominal damages has no basis. It has been settled that nominal damages cannot co-exist with actual damages.[31] Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him. Since respondent has already been indemnified for the damages made on the leased premises, there is no more reason to further grant nominal damages.

Since respondent must return the security deposit of ₱90,000.00 less than the cost of repairs amounting to ₱79,534.00, the remaining amount of ₱10,466.00, should still be returned by respondent to petitioner.

WHEREFORE, the Decision dated February 25, 2011 of the Court of Appeals in CA-G.R. SP No. 01315 dismissing the complaint and holding that the case is one for specific performance incapable of pecuniary estimation and, therefore, within the original jurisdiction of the Regional Trial Court is hereby **REVERSED** and **SET ASIDE**. Accordingly, the Decision dated August 16, 2006 of the Regional Trial Court of Davao City, Branch 13 in Civil Case No. 31, 103-2005 is **AFFIRMED with MODIFICATION**. The security deposit in the amount of ₱90,000.00 has already been offset by the amount of ₱79,534.00 as expenses for the repairs of the apartment units. Nevertheless, respondent Habib Borgaily is **ORDERED** to return the amount of ₱10,466.00, the remaining amount of the security deposit, to petitioner Philippine-Japan Active Carbon Corporation.

SO ORDERED.

Leonen (Chairperson), Gesmundo, Zalameda, and *Gaerlan, JJ.*, concur.

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[31] *Metroheights Subdivision Homeowners Association Inc. v. CMS Construction and Development Corporation, et al.*, G.R. No. 209359, October 17, 2018.

THIRD DIVISION

[G.R. No. 205266. January 15, 2020]

SPOUSES LAURETO V. FRANCO and NELLY DELA CRUZ-FRANCO, LARRY DELA CRUZ FRANCO, and ROMEO BAYLE, *petitioners, vs.* **SPOUSES MACARIO GALERA, JR. and TERESITA LEGASPINA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; WHETHER A PERSON IS AN AGRICULTURAL TENANT IS A QUESTION OF FACT, NOT LAW, WHICH IS OUTSIDE THE SCOPE OF A PETITION FOR REVIEW ON *CERTIORARI*; THE LOWER COURTS' FACTUAL FINDINGS ARE CONSIDERED FINAL, BINDING, OR CONCLUSIVE ON THE PARTIES AND ON THE COURT WHEN THESE ARE SUPPORTED BY SUBSTANTIAL EVIDENCE; EXCEPTIONS.— This Court agrees with respondents that the Petition raises questions of fact outside the scope of a petition for review on *certiorari* under Rule 45 of the Rules of Court. Whether a person is an agricultural tenant is a question of fact, not law. In *Pascual v. Burgos*, this Court emphasized that it does not entertain factual questions in a petition for review because the lower courts' factual findings are considered final, binding, or conclusive on the parties and on this Court when these are supported by substantial evidence. These findings are not to be disturbed on appeal. Nonetheless, there are 10 recognized exceptions this rule: (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.

2. ID.; ID.; ID.; ID.; PARTIES CANNOT SIMPLY ASSERT THAT THE EXCEPTION TO THE RULE THAT FACTUAL ISSUES ARE BEYOND THE SCOPE OF A PETITION FOR REVIEW, SHOULD APPLY TO THEIR CASE WITHOUT SUBSTANTIATING AND PROVING THEIR CLAIM; MERE ALLEGATION OF ANY OF THE EXCEPTIONS DOES NOT SUFFICE, BUT THE SAME MUST BE ALLEGED, SUBSTANTIATED, AND PROVED BY THE PARTIES SO THE COURT MAY EVALUATE AND REVIEW THE FACTS OF THE CASE.— [T]he mere allegation of any of the exceptions does not suffice. Exceptions must be "alleged, substantiated, and proved by the parties so this [C]ourt may evaluate and review the facts of the case." Parties cannot simply assert an exception as applicable without substantiating and proving their claim. In this case, petitioners merely allege that the Court of Appeals Decision conflicted with the Department of Agrarian Reform Adjudication Board's Decision. They admit that the main issue of whether there was a Tenancy relationship is factual, but still insist that this Court may resolve it by way of exception. Petitioners cite *Rosario v. PCI Leasing and Finance, Inc.*, where this Court listed the exceptions to the rule that factual issues are beyond the scope of a petition for review. Petitioners have not demonstrated how these conflicting decisions would warrant this Court's review of the Court of Appeals' factual findings. They have not substantiated, much less proven, that an exception should apply to their case. All they have done was to plead a ground for exception and pray that this Court exercise its discretionary power to review the factual issues they raised. This cannot be done. On this ground alone, the petition should be denied.

3. LABOR AND SOCIAL LEGISLATION; THE COMPREHENSIVE AGRARIAN REFORM LAW (REPUBLIC ACT NO. 3844); AGRICULTURAL TENANCY ARRANGEMENT; ELEMENTS TO BE VALID; ALL THE

ELEMENTS MUST BE PROVEN BY SUBSTANTIAL EVIDENCE, AS THE ABSENCE OF ONE OR MORE REQUISITES IS FATAL.— For a valid agricultural tenancy arrangement to exist, these elements must concur: (1) the parties are the landowner and the tenant; (2) the subject matter is agricultural land; (3) there is consent between the parties; (4) the purpose is agricultural production; (5) there is personal cultivation by the tenant; and, (6) there is sharing of the harvests between the parties. All these elements must be proven by substantial evidence; "the absence of one or more requisites is fatal." As with any affirmative allegation, the burden of proof rests on the party who alleges it. The tenancy relationship cannot be presumed.

4. ID.; ID.; ID.; AGRICULTURAL TENANCY ARRANGEMENTS MAY BE ESTABLISHED EITHER ORALLY OR IN WRITING; THE FORM OF THE CONTRACT IS ONLY PRESCRIBED WHEN PARTIES DECIDE TO REDUCE THEIR AGREEMENT IN WRITING, BUT IT NO LONGER AFFECTS THE TENANCY ARRANGEMENT'S VALIDITY; EXISTENCE OF TENANCY RELATIONSHIP BETWEEN THE PARTIES IN CASE AT BAR, SUBSTANTIALLY PROVED.— Contrary to Act No. 4054, agricultural tenancy arrangements under Republic Act No. 3844 may be established either orally or in writing. The form of the contract is only prescribed when parties decide to reduce their agreement in writing, but it no longer affects the tenancy arrangement's validity. Here, the Court of Appeals agreed with the Regional Adjudicator that a tenancy relationship exists. Based on both parties' evidence, it found substantial proof that Benita and Apolonio installed respondents as tenants of their landholdings. The statements of disinterested persons, namely, Wilma Bayle-Lardizabal, Janice B. Lardizabal, Emilia C. Pantuca, and corroborated by the declarations of Dolores Velasco and Quirico Adriatico, all proved this. Their testimonies showed that the Bayles installed the Galera Spouses as their tenants, and that there was a delivery of harvest shares. As the Court of Appeals further found, Lorenzo Balao-as, a tribal leader in Danglas, Abra, also corroborated the sharing arrangement of the farm produce in his affidavit. He testified that the Galera Spouses and the Bayles, whom he knew personally, agreed on a 50-50 sharing arrangement. He also affirmed that it is a practice

in Danglas, Abra that for one to be a tenant, he or she may simply secure the landowner's verbal consent, without any written agreement. The Court of Appeals' factual findings are substantially based on the evidence on record, and must not be disturbed on appeal.

5. ID.; ID.; ID.; AN EXPRESS AGREEMENT OF AGRICULTURAL TENANCY IS NOT NECESSARY, AS TENANCY RELATIONSHIP CAN BE IMPLIED FROM THE CONDUCT OF THE PARTIES.— [E]ven if the Bayles had not expressly instituted the Galera Spouses as tenants, agricultural tenancy may be established either expressly or impliedly. Section 7 of Republic Act No. 1199 state: SECTION 7. Tenancy Relationship; How established; Security of Tenure. — Tenancy relationship may be established either verbally or in writing, expressly or impliedly. Once such relationship is established, the tenant shall be entitled to security of tenure as hereinafter provided. x x x. Section 5 of Republic Act No. 3844 also allows agricultural leasehold relations to be established impliedly: SECTION 5. Establishment of Agricultural Leasehold Relation. — The agricultural leasehold relation shall be established by operation of law in accordance with Section four of this Code and, in other cases, either orally or in writing, expressly or impliedly. Petitioners argue that Santos is not applicable, maintaining that *Reyes* and *Heirs of Magpily* should instead apply. They are mistaken. In those cases, this Court ruled that the existence of agricultural tenancy cannot be concluded based only on the self-serving statements of one (1) of the parties. In both *Reyes* and *Heirs of Magpily*, the parties claiming that an agricultural tenancy existed did not adduce evidence of the landowners' intent to institute them as tenants. They also failed to show the presence of a sharing arrangement as required by agricultural tenancy. In both cases, the reason why this Court found no such arrangement existed was not because there was no express agreement, but because there was no proof showing the parties' intent to enter into a tenancy agreement. An express agreement of agricultural tenancy is not necessary. The tenancy relationship can be implied from the conduct of the parties. Here, the Court of Appeals found that respondents had been tilling and cultivating the lands since 1990, and that the Bayle Spouses had been receiving their share of the harvest. After the spouses' death, respondents continued to deliver the

landowner's share of the harvest to the heirs, through Romeo. These indicate that the Bayle Spouses, and later Romeo, their successor-in-interest, had known and consented to the tenancy arrangement.

6. ID.; ID.; AGRICULTURAL LEASEHOLD RELATIONS; DEFINED; A LEASEHOLD RELATION IS NOT EXTINGUISHED BY THE MERE EXPIRATION OF THE CONTRACT'S TERM OR PERIOD, NOR BY THE SALE, ALIENATION, OR TRANSFER OF LEGAL POSSESSION OF THE LAND TO ANOTHER, AS THE PURCHASER OR TRANSFEREE OF THE LANDHOLDING SHALL BE SUBROGATED TO THE RIGHTS AND SUBSTITUTED TO THE OBLIGATIONS OF THE AGRICULTURAL LESSOR WHEN THE LATTER SELLS OR DISPOSES OF THE PROPERTY.— In agricultural leasehold relations, the agricultural lessor—who can be the owner, civil law lessee, usufructuary, or legal possessor of the land—grants his or her land's cultivation and use to the agricultural lessee, who in turn pays a price certain in money, or in produce, or both. The definition and elements of leasehold tenancy relations are similar to those of share tenancy. A slight difference, however, exists: a leasehold relation is not extinguished by the mere expiration of the contract's term or period, nor by the sale or transfer of legal possession of the land to another. Section 10 of Republic Act No. 3844 states: SECTION 10. Agricultural Leasehold Relation Not Extinguished by Expiration of Period, *etc*. — The agricultural leasehold relation under this Code shall not be extinguished by mere expiration of the term or period in a leasehold contract nor by the sale, alienation or transfer of the legal possession of the landholding. In case the agricultural lessor sells, alienates or transfer the legal possession of the landholding, the purchaser or transferee thereof shall be subrogated to the rights and substituted to the obligations of the agricultural lessor. Thus, the agricultural lessor is not prohibited from selling or disposing of the property. In case he or she does, the agricultural leasehold relation subsists.

7. ID.; ID.; ID.; LESSEE'S RIGHT OF REDEMPTION; THE AGRICULTURAL LESSEE HAS THE RIGHT TO REDEEM THE PROPERTY AT A REASONABLE PRICE AND CONSIDERATION, WHERE THE SAME WAS SOLD TO A THIRD PERSON WITHOUT HIS OR HER

KNOWLEDGE.—The law also grants the agricultural lessee the right to preempt an intended sale. But if the property has been sold without the agricultural lessee's knowledge, he or she shall have the right to redeem the property, as in line with the law's objective of allowing tenant-farmers to own the land they cultivate. Section 12 of Republic Act No. 3844, as amended, states: SECTION 12. Lessee's Right of Redemption. –– In case the landholding is sold to a third person without knowledge of the agricultural lessee, the latter shall have the right to redeem the same at a reasonable price and consideration: x x x. Under the law, the agricultural lessor must first inform the agricultural lessee of the sale in writing. From this point, a 180-day period commences, within which the agricultural lessee must file a petition or request to redeem the land. The written notice shall be served on the agricultural lessee as well as on the Department of Agrarian Reform upon registration of the sale.

8. ID.; ID.; ID.; ID.; THE RIGHT OF REDEMPTION GRANTED TO THE AGRICULTURAL LESSEE ENJOYS PREFERENCE OVER ANY OTHER LEGAL REDEMPTION THAT MAY BE EXERCISED OVER THE PROPERTY.— The right of redemption granted to the agricultural lessee enjoys preference over any other legal redemption that may be exercised over the property. Upon filing of the petition or request, the 180-day period shall cease to run, and will commence again upon the resolution of the petition or request or within 60 days from its filing. Here, since the Court of Appeals found that respondents are the agricultural tenants of the landholdings, they are also entitled to the right of redemption. Accordingly, respondents may exercise their right to purchase the lots by paying a reasonable price of the land at the time of the sale.

APPEARANCES OF COUNSEL

Froilan M. Bacungan & Associates for petitioners.
Elmer S. Sudcalen for respondents.

D E C I S I O N

LEONEN, *J.*:

An express agreement is not necessary to establish the existence of agricultural tenancy. The tenancy relationship can be implied when the conduct of the parties shows the presence of all the requisites under the law.

This Court resolves a Petition for Review on *Certiorari*[1] filed by Spouses Laureto V. Franco and Nelly Dela Cruz-Franco (the Franco Spouses), their son Larry Dela Cruz Franco (Larry), and Romeo Bayle (Romeo), assailing the Court of Appeals' Decision[2] and Resolution.[3] The Court of Appeals reversed the Decision[4] and Resolution[5] of the Department of Agrarian Reform Adjudication Board, which in turn reversed the Regional Adjudicator's Decision[6] finding Spouses Macario Galera, Jr. and Teresita Legaspina (the Galera Spouses) as tenants of the contested landholdings, and are therefore entitled to the right or redemption.[7]

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[1] *Rollo*, pp. 7-27.

[2] *Id.* at 29-47. The June 22, 2012 Decision was penned by Associate Justice Leoncia Real-Dimagiba and concurred in by Associate Justices Normandie B. Pizarro and Stephen C. Cruz of the Special Seventh Division, Court of Appeals, Manila.

[3] *Id*. at 49-50. The January 7, 2013 Resolution was penned by Associate Justice Leoncia Real-Dimagiba and concurred in by Associate Justices Normandie B. Pizarro and Stephen C. Cruz of the Former Special Seventh Division, Court of Appeals, Manila.

[4] *Id*. at 74-80. The January 29, 2009 Decision was penned by member Ma. Patricia P. Rualo-Bello and concurred in by Chair Nasser C. Pangandaman, members Delfin B. Samson, Gerundio C. Madueño, Augusto P. Quijano, Edgar A. Igano, and Ambrosio B. De Luna.

[5] *Id*. at 81-82, June 28, 2010 Resolution.

[6] *Id*. at 70-73. The December 28, 2005 Decision was penned by Walter R. Carantes, the Agrarian Judge/Regional Agrarian Reform Adjudicator for the Cordillera Administrative Region.

[7] *Id*. at 46.

This case arose out of a dispute over two (2) agricultural lots in Nagalangan, Danglas, Abra: (1) the 6,197-square meter Lot No. 2282, owned by Benita Bayle (Benita); and (2) the 1,336-square meter Lot No. 2344, owned by Spouses Apolonio and Charing Bayle (the Bayle Spouses), Romeo's parents.[8]

On February 5, 2006, the Galera Spouses filed a Complaint[9] for legal redemption against the Franco Spouses, Larry, and Romeo before the Regional Adjudicator in Baguio City.[10]

In their Complaint, the Galera Spouses alleged that in 1990, the Bayle Spouses and Benita instituted them as tenants of the two (2) agricultural landholdings. Apolonio Bayle (Apolonio) also used both lots as collateral for a ₱20,000.00 loan they obtained from the Galera Spouses.[11]

In December 2002, after the death of Benita and Charing Bayle, Apolonio allegedly offered to sell the two (2) lots to Teresita Galera and her daughter, Elsie, for ₱100,000.00.[12] Yet, the sale was not consummated. It was not until two (2) years later, long after Apolonio had died, that his son Romeo again offered to sell the lots to Elsie for ₱150,000.00. Elsie, for her part, made a counter-offer of ₱100,000.00.[13]

Eventually, Romeo agreed to sell the properties to the Galera Spouses, through their daughter Elsie, for ₱150,000.00. Of that amount, ₱125,000.00 would be given on June 15, 2005. while the remaining balance would be paid before the end of December 2005.[14]

However, on June 13, 2005, Romeo allegedly canceled the sale. A few days later, Elsie learned from Nelly Dela Cruz-

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

[9] *Id.* at 51-57.

[10] *Id.* at 30.

[11] *Id.* at 31.

[12] *Id.*

[13] *Id.*

[14] *Id.*

Franco (Nelly) herself that it was her and her husband to whom Romeo had sold the two (2) lots for ₱150,000.00. The sale was embodied in a July 19, 2005 Extra-Judicial Adjudication of Real Property with Absolute Sale[15] that Romeo executed in favor of the Franco Spouses. In the document, Romeo declared that he was the sole heir of the Bayle Spouses and his aunt Benita.[16]

The Galera Spouses immediately brought the matter to the Legal Division of the Provincial Land Reform Office in Bangued, Abra. However, the parties failed to reach an amicable settlement,[17] hence the Complaint.

The Galera Spouses prayed, among others, that: (1) as agricultural tenants, they be allowed to redeem the two (2) lots from the Franco Spouses; and (2) the Franco Spouses be ordered to reconvey the lots to them.[18]

In their Answer, the Franco Spouses, Larry, and Romeo argued that the Galera Spouses, not being parties to the sale, had no cause of action against them. They further pointed out that the Galera Spouses were merely caretakers and had no tenancy relationship with the Bayle Spouses, and as such, had no right of redemption available to agricultural tenants under Section 12 of Republic Act No. 3844. Lastly, they argued that the alleged mortgage of the lots was unenforceable, as it failed to comply with the Statute of Frauds.[19]

On December 28, 2005, the Regional Adjudicator rendered a Decision[20] in the Galera Spouses' favor. He found that the Galera Spouses had a tenancy relationship with the Bayle

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[15] *Id*. at 62.

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

[17] *Id*.

[18] *Id.*

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

[20] *Id*. at 70-73.

Spouses, making them entitled to the right of redemption, with ₱150,000.00 as the reasonable price.[21]

Accordingly, the Regional Adjudicator ordered that the tax declarations in Benita and the Bayle Spouses' favor be canceled, and new ones be issued to the Galera Spouses. He also ordered the Franco Spouses, Larry, and Romeo to preserve the Galera Spouses' "peaceful possession, occupation[,] and cultivation"[22] over the lots. Lastly, he declared the Extra-Judicial Adjudication of Real Property with Absolute Sale as having no force and effect.[23]

The Franco Spouses, Larry, and Romeo appealed before the Department of Agrarian Reform Adjudication Board Central Office.[24]

In its January 29, 2009 Decision,[25] the Department of Agrarian Reform Adjudication Board reversed the Regional Adjudicator's Decision. It ruled that the Galera Spouses failed to prove that they were the lots' tenants, as they had failed to establish the elements of agricultural tenancy, namely the landowners' consent and a sharing arrangement over the produce. Hence, it declared that the Galera Spouses were not entitled to redeem the lots.[26]

The Galera Spouses filed a Motion for Reconsideration, which the Department of Agrarian Reform Adjudication Board later denied in its June 28, 2010 Resolution.[27] Hence, they appealed before the Court of Appeals.[28]

In a June 22, 2012 Decision,[29] the Court of Appeals reversed the Department of Agrarian Reform Adjudication Board's

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[21] *Id*. at 73.

[22] *Id.*

[23] *Id*.

[24] *Id*. at 35.

[25] *Id*. at 74-80.

[26] *Id*. at 35 and 79.

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

[28] *Id*. at 38.

[29] *Id*. at 29-47.

rulings. Reinstating the Regional Adjudicator's Decision, it ruled that the Regional Adjudicator was in a better position to examine the parties' claims as he was located in the locality where the dispute arose and directly heard the parties and examined the evidence presented.[30]

Akin to the Regional Adjudicator, the Court of Appeals found sufficient evidence that a tenancy relationship existed between the Galera and Bayle Spouses.[31] It held that the Galera Spouses, through their witnesses' statements, proved all the elements of a tenancy relationship.[32]

Moreover, the Court of Appeals cited *Santos v. vda. de Cerdenola*,[33] where it was held that an implied contract of tenancy exists when a landholder allows another to till his or her land for six (6) years.[34]

Applying *Santos*, the Court of Appeals noted that the Galera Spouses had since 1990 been tilling the lot, the harvest shares of which had been delivered to the Bayle Spouses, and later to their heirs, through Romeo. This, the Court of Appeals ruled, showed that even if Apolonio did not authorize Benita to make the Galera Spouses tenants, the Bayles knew of and consequently ratified the transaction entered into by Benita and the Galera Spouses.[35] As such, the Court of Appeals ruled that the Galera Spouses, as agricultural tenants, had the right to redeem the property.[36]

The Franco Spouses moved for reconsideration, but their Motion was denied by the Court of Appeals in a January 7, 2013 Resolution.[37]

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[30] *Id*. at 44.

[31] *Id*. at 46.

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

[33] 115 Phil. 813 (1962) [Per *J.* Barrera, *En Banc*].

[34] *Rollo*, p. 44.

[35] *Id*.

[36] *Id*. at 45.

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

Hence. the Franco Spouses, Larry, and Romeo filed this Petition against the Galera Spouses.[38]

Petitioners argue that while the case involves factual issues, this Court may still review it in view of the lower tribunals' conflicting positions: the Regional Adjudicator and the Court of Appeals on one hand, and the Department of Agrarian Reform Adjudication Board on the other.[39]

Petitioners add that the Court of Appeals limited its discussions only to respondents' evidence, overlooking petitioners' evidence which consist of several third-party sworn statements attesting to a certain Joel Bacud as the lots' tenant.[40] Petitioners submit that their pieces of evidence are more credible and corroborative on the material points of the case.[41]

Petitioners also argue that when there is no agreed sharing system, the "mere receipt of the landowner of the produce of the land cannot be considered as proof of tenancy relationship."[42] They assert that *Santos* does not apply here, and instead advance *Reyes v. Joson*[43] and *Heirs of Magpily v. De Jesus*,[44] in which this Court ruled that parties must have a clear intent to create a tenancy relationship; it cannot simply be assumed.[45]

In their Comment,[46] respondents argue that petitioners raise a factual issue not covered by Rule 45 of the Rules of Court.[47] Moreover, they claim that petitioners merely restated the same

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

[39] *Id*. at 11.

[40] *Id*. at 15-16.

[41] *Id*. at 16.

[42] *Id*. at 20.

[43] 551 Phil. 345 (2007) [Per *J*. Sandoval-Gutierrez, First Division].

[44] 511 Phil. 14 (2005) [Per *J*. Ynares-Santiago, First Division].

[45] *Rollo*, p. 17.

[46] *Id*. at 107-121.

[47] *Id*. at 112.

factual and legal arguments already passed upon by the Court of Appeals.[48]

In their Reply,[49] petitioners reiterate their argument that a review of the Court of Appeals' factual findings is necessary. They again reason that the Court of Appeals failed to consider petitioners' evidence, relying only on respondents' evidence. They insist that theirs is more credible.[50]

Hence, the issues for this Court's resolution are:

First, whether or not a factual review of the Court of Appeals Decision is appropriate under Rule 45 of the Rules of Court; and

Second, whether or not the Court of Appeals erred in reversing the Department of Agrarian Reform Adjudication Board's Decision and reinstating the Regional Adjudicator's Decision finding respondent Spouses Macario Galero, Jr. and Teresita Legaspina to be agricultural tenants and, therefore, entitled to legal redemption.

This Court affirms the Court of Appeals Decision. The Petition should be denied.

I

This Court agrees with respondents that the Petition raises questions of fact outside the scope of a petition for review on *certiorari* under Rule 45 of the Rules of Court. Whether a person is an agricultural tenant is a question of fact, not law.

In *Pascual v. Burgos*,[51] this Court emphasized that it does not entertain factual questions in a petition for review because the lower courts' factual findings are considered final, binding, or conclusive on the parties and on this Court when these are

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[48] *Id.* at 115.

[49] *Id.* at 124-128.

[50] *Id.* at 125.

[51] 776 Phil. 167 (2016) [Per *J.* Leonen, Second Division].

supported by substantial evidence. These findings are not to be disturbed on appeal.[52]

Nonetheless, there are l0 recognized exceptions to this rule:

> (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 Appeal, 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 arc 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.[53] (Citations omitted)

However, the mere allegation of any of the exceptions does not suffice. Exceptions must be "alleged, substantiated, and proved by the parties so this [C]ourt may evaluate and review the facts of the case."[54] Parties cannot simply assert an exception as applicable without substantiating and proving their claim.

In this case, petitioners merely allege that the Court of Appeals Decision conflicted with the Department of Agrarian Reform Adjudication Board's Decision. They admit that the main issue of whether there was a tenancy relationship is factual, but still insist that this Court may resolve it by way of exception.[55] Petitioners cite *Rosario v. PCI Leasing and Finance, Inc.*,[56] where this Court listed the exceptions to the rule that factual issues are beyond the scope of a petition for review.[57]

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[52] *Id.* at 182.

[53] *Id.* at 182-183.

[54] *Id.* at 169.

[55] *Rollo*, p. 11.

[56] 511 Phil. 115 (2005) [Per *J.* Callejo, Sr., Second Division].

[57] *Rollo*, p. 11.

Petitioners have not demonstrated how these conflicting decisions would warrant this Court's review of the Court of Appeals' factual findings. They have not substantiated, much less proven, that an exception should apply to their case. All they have done was to plead a ground for exception and pray that this Court exercise its discretionary power to review the factual issues they raised. This cannot be done. On this ground alone, the Petition should be denied.

II

Nevertheless, the Petition fails even on substantive grounds.

Agricultural tenancy laws in the Philippines have evolved throughout centuries and are tied with the country's history. Prior to the Spanish colonization, lands were held in common by inhabitants of barangays. Access to land and the fruits it produced were equally shared by members of the community.

This system of communal ownership, however, was replaced by the regime of private ownership of property.[58] When the Spaniards arrived, they purchased communal lands from heads of the different barangays and registered the lands in their names. With the regalian doctrine imposed, uninhibited lands were decreed to be owned by the Spanish crown. Consequently, the *encomienda* system was introduced, in which the Spanish crown awarded tracts of land to *encomenderos*, who acted as caretakers of the *encomienda*.[59] Under this system, natives could not own either the land they worked on or their harvest. To till the land, they had to pay tribute to their *encomenderos*.[60]

Encomiendas mostly focused on small-scale food production, until the *hacienda* system was developed to cater to the international export market. Still, natives were not allowed to

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[58] Dissenting Opinion of *J.* Leonen, *J.V. Lagon Realty Corporation v. Heirs of vda. de Terre*, G.R. No. 219670, June 27, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64252> [*J.* Martires, Third Division] *citing* R.P. Barte, *LAW ON AGRARIAN REFORM* 6-7 (2003).

[59] *Id.*

[60] *Id.* citing R.P. Barte, *LAW ON AGRARIAN REFORM* 7 (2003).

own land, and the larger demand by the wider market required them to live away from their homes. Families of natives who worked on farms were reduced to being slaves pushed into forced labor either as *aliping namamahay* or *aliping sagigilid*.[61]

The *encomienda* and *hacienda* systems were analogous to share tenancy arrangements, which persisted in our agricultural tenancy laws.

Enacted in 1933, Act No. 4054, or the Philippine Rice Share Tenancy Act, contained the earliest iteration of share tenancy in the country. To promote the well-being of tenants in agricultural lands devoted to rice production, the law regulated relations between landlords and tenant-farmers. Under this law, share tenancy was the prevailing arrangement.[62] Share tenancy contracts must be expressed in writing and registered with the proper office to be valid.[63]

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[61] *Id.*

[62] Act No. 4054 (1933), Sec. 2.

[63] Act No. 4054 (1933), Secs. 4-5 provide:

SECTION 4. Form of Contract. - The contract on share tenancy, in order to be valid and binding, shall be drawn in triplicate in the language or dialect known to all the parties thereto, to be signed or thumb-marked both by the landlord or his authorized representative and by the tenant, before two witnesses, one to be chosen by each party. The party who does not know how to read and write may request one of the witnesses to read the contents of the document. Each of the contracting parties shall retain a copy of the contract and the third copy shall be filed with, and registered in the office of the municipal treasurer of the municipality, where the land, which is the subject-matter of the contract, is located: Provided, however, That in order that a contract may be considered registered, both the copy of the landlord and that of the tenant shall contain an annotation made by the municipal treasurer to the effect that same is registered in his office.

SECTION 5. Registry of Tenancy Contract. - For the purposes of this Act, the municipal treasurer of the municipality wherein the land, which is the subject-matter of a contract, is situated, shall keep a record of all contracts made within his jurisdiction, to be known as Registry of Tenancy Contracts. He shall keep this registry together with a copy of each contract entered therein, and make annotations on said registry in connection with the outcome of a particular contract, such as the way same is extinguished: Provided, however, That the municipal treasurer shall not charge fees for the registration of said contract which shall be exempt from the documentary stamp tax.

In 1954, Republic Act No. 1199, or the Agricultural Tenancy Act of the Philippines, repealed Act No. 4054.[64] In line with its objective of pursuing social justice, this subsequent law redefined agricultural tenancy arrangements and recognized more tenant-farmers' rights.[65] The law also expanded the coverage beyond lands devoted to rice production and included share arrangement provisions for crops other than rice.[66]

More important, Republic Act No. 1199 categorized agricultural tenancy into either share tenancy or a new system called leasehold tenancy. Whereas under share tenancy, the landlord and tenant contribute land and labor and later divide the resulting produce in proportion to their contribution,[67] under leasehold tenancy, the lessee cultivates the landlord's piece of land for a fixed amount of money or in produce, or both.[68]

Over time, share tenancy proved to be an abusive arrangement that heavily disadvantaged tenant-farmers. Thus, for being contrary to public policy, it was abolished with the passage of Republic Act No. 3844, or the Agricultural Law Reform Code.[69] President Diosdado Macapagal, in his address during the signing of the law, recognized the need to end the oppressive system of share tenancy:

> This document before us, a bill which in a few minutes will become a statute to be known as the Agricultural Land Reform Code, will provide us with the legal powers to remove once and for all the system of share-tenancy that has plagued our agricultural countryside. In one statement it declares share tenancy as violative of the law of the land, a system which will he abolished and will no longer he tolerated by law. But the Code does not only provide us with the powers to remove an organic disease from our agricultural society; it also provides

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[64] Republic Act No. 1199 (1954), Sec. 59.

[65] Republic Act No. 1199 (1954), Sec. 22.

[66] Republic Act No. 1199 (1954), Sec. 41.

[67] Republic Act No. 1199 (1954), Sec. 4

[68] Republic Act No. 1199 (1954), Sec. 4, as amended by Republic Act No. 2263 (1959), Sec. 1.

[69] Republic Act No. 3844 (1963), Sec. 4.

the means of injecting new health, new vigor. new muscles, and new strength into the new social order that will arise. Its first and immediate step is to destroy an oppressive and intolerable system; its ensuing objectives—which will constitute the sinews of land reform—is to nurse our agricultural economy into a state of healthy productivity. It not only aims to turn the Filipino tenant into a free man; it aims, most of all, to turn him into a more productive farmer.[70]

Still in line with the government's policy of eliminating existing share tenancy arrangements, the law was amended such that all existing share tenancy relations are automatically converted to agricultural leasehold relations.[71] Today, agricultural leasehold relations remain to be the only form of agricultural tenancy arrangement under the law.

For a valid agricultural tenancy arrangement to exist, these elements must concur:

(1) the parties are the landowner and the tenant:(2) the subject matter is agricultural land; (3) there is consent between the parties: (4) the purpose is agricultural production; (5) there is personal cultivation by the tenant; and, (6) there is sharing of the harvests between the parties.[72] (Citation omitted)

All these elements must be proven by substantial evidence; "the absence of one or more requisites is fatal."[73] As with any affirmative allegation, the burden of proof rests on the party who alleges it.[74] The tenancy relationship cannot be presumed.[75]

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[70] Address of President Macapagal at the Signing of the Agricultural Land Reform Code, August 8, 1963, https://www.officialgazette.gov.ph/1963/08/08/address-of-president-macapagal-at-the-signing-of-the-agricultural-land-reform-code/ (last accessed on January 14, 2020).

[71] Republic Act No. 3844 (1963), Sec. 4, as amended by Republic Act No. 6389 (1971), Sec. 1.

[72] *Adriano v. Tanco*, 637 Phil. 218, 227 (2010) [Per J. Del Castillo, First Division].

[73] *Id.*

[74] *J.V. Lagon Realty Corporation v. Heirs of vda. de Terre*, G.R. No. 219670, June 27, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64252> [J. Martires, Third Division].

[75] *Adriano v. Tanco*, 637 Phil. 218, 227 (2010) [Per J. Del Castillo, First Division].

Contrary to Act No. 4054, agricultural tenancy arrangements under Republic Act No. 3844 may be established either orally or in writing.[76] The form of the contract is only prescribed when parties decide to reduce their agreement in writing,[77] but it no longer affects the tenancy arrangement's validity.

Here, the Court of Appeals agreed with the Regional Adjudicator that a tenancy relationship exists. Based on both parties' evidence, it found substantial proof that Benita and Apolonio installed respondents as tenants of their landholdings.[78] The statements of disinterested persons, namely, Wilma Bayle-Lardizabal, Janice B. Lardizabal, Emilia C. Pantuca, and corroborated by the declarations of Dolores Velasco and Quirico Adriatico, all proved this. Their testimonies showed that the Bayles installed the Galera Spouses as their tenants, and that there was a delivery of harvest shares.[79]

As the Court of Appeals further found, Lorenzo Balao-as, a tribal leader in Danglas, Abra, also corroborated the sharing arrangement of the farm produce in his affidavit. He testified that the Galera Spouses and the Bayles, whom he knew personally, agreed on a 50-50 sharing arrangement. He also affirmed that it is a practice in Danglas, Abra that for one to be a tenant, he or she may simply secure the landowner's verbal consent, without any written agreement.[80]

The Court of Appeals' factual findings are substantially based on the evidence on record, and must not be disturbed on appeal.

Nonetheless, even if the Bayles had not expressly instituted the Galera Spouses as tenants, agricultural tenancy may be established either expressly or impliedly. Section 7 of Republic Act No. 1199 states:

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[76] Republic Act No. 3844 (1963), Sec. 5.

[77] Republic Act No. 3844 (1963), Sec. 17.

[78] *Rollo*, p. 41.

[79] *Id*. at 41-43.

[80] *Id*. at 43.

SECTION 7. Tenancy Relationship; How established; Security of Tenure. — Tenancy relationship may be established either verbally or in writing, expressly or impliedly. Once such relationship is established, the tenant shall be entitled to security of tenure as hereinafter provided.

In *Santos*, this Court held:

While this may be true, the fact that respondent, assisted by members of her immediate farm household, was allowed to continue to cultivate the land under the same terms of tenancy from 1952 up to 1958 when she was ejected, made her, in her own right, a tenant by virtue of Section 7 of Republic Act 1199 which provides that tenancy relationship may be established either expressly or impliedly. In this case, such tenancy relationship resulted from the conduct of both the tenant and the landholder represented by his overseer in permitting the tilling of the soil for a period of 6 years.[81]

Section 5 of Republic Act No. 3844 also allows agricultural leasehold relations to be established impliedly:

SECTION 5. Establishment or Agricultural Leasehold Relation. — The agricultural leasehold relation shall be established by operation of law in accordance with Section four of this Code and, in other cases, either orally or in writing, expressly or impliedly.

Petitioners argue that *Santos* is not applicable, maintaining that *Reyes* and *Heirs of Magpily* should instead apply. They are mistaken.

In those cases, this Court ruled that the existence of agricultural tenancy cannot be concluded based only on the self-serving statements of one (1) of the parties. In both *Reyes*[82] and *Heirs of Magpily*,[83] the parties claiming that an agricultural tenancy existed did not adduce evidence of the landowners' intent to

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[81] *Santos v. vda. de Cerdenola*, 115 Phil. 813, 819 (1962) [Per *J.* Barrera, *En Banc*].

[82] 551 Phil. 345, 354 (2007) [Per *J.* Sandoval-Gutierrez, First Division].

[83] 511 Phil. 14, 24-25 (2005) [Per *J.* Ynares-Santiago, First Division].

institute them as tenants. They also failed to show the presence of a sharing arrangement as required by agricultural tenancy. In both cases, the reason why this Court found no such arrangement existed was not because there was no express agreement, but because there was no proof showing the parties intent to enter into a tenancy agreement.

An express agreement of agricultural tenancy is not necessary. The tenancy relationship can be implied from the conduct of the parties. Here, the Court of Appeals found that respondents had been tilling and cultivating the land since 1990, and that the Bayle Spouses had been receiving their share of the harvest. After the spouses' death, respondents continued to deliver the landowner's share of the harvest to the heirs, through Romeo. These indicate that the Bayle Spouses, and later Romeo, their successor-in-interest, had known and consented to the tenancy arrangement.

III

In agricultural leasehold relations, the agricultural lessor — who can be the owner, civil law lessee, usufructuary, or legal posessor of the land — grants his or her land's cultivation and use to the agricultural lessee, who in turn pays a price certain in money, or in produce, or both.[84]

The definition and elements of leasehold tenancy relations are similar to those of share tenancy.[85] A slight difference, however, exists: a leasehold relation is not extinguished by the mere expiration of the contract's term or period, nor by the sale or transfer of legal possession of the land to another. Section 10 of Republic Act No. 3844 states:

SECTION 10. Agricultural Leasehold Relation Not Extinguished by Expiration of Period, etc. — The agricultural leasehold relation

[84] Dissenting Opinion of *J.* Leonen, *J.V. Lagon Realty Corporation v. Heirs of vda. de Terre*, G.R. No. 219670, June 27, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64252> [*J.* Martires, Third Division] *citing* R.P. Barte, *LAW ON AGRARIAN REFORM* 6-7 (2003).

[85] *Id.* citing *Cuaño v. Court of Appeals*, 307 Phil. 128, 141 (1994) [Per *J.* Feliciano, Third Division].

under this Code shall not be extinguished by mere expiration of the term or period in a leasehold contract nor by the sale, alienation or transfer of the legal possession of the landholding. In case the agricultural lessor sells, alienates or transfers the legal possession of the landholding, the purchaser or transferee thereof shall be subrogated to the rights and substituted to the obligations of the agricultural lessor.

Thus, the agricultural lessor is not prohibited from selling or disposing of the property. In case he or she does, the agricultural leasehold relation subsists.

Corollary to this, the law also grants the agricultural lessee the right to preempt an intended sale. But if the property has been sold without the agricultural lessee's knowledge, he or she shall have the right to redeem the property, as in line with the law's objective of allowing tenant-farmers to own the land they cultivate.

Section 12 of Republic Act No. 3844, as amended,[86] states:

SECTION 12. Lessee's Right of Redemption. — In case the landholding is sold to a third person without the knowledge of the agricultural lessee. the latter shall have the right to redeem the same at a reasonable price and consideration: Provided, That where there are two or more agricultural lessees, each shall he entitled to said right of redemption only to the extent of the area actually cultivated by him. The right of the redemption under this Section may be exercised within one hundred eighty days from notice in writing which shall be served by the vendee on all lessees affected and the Department of Agrarian Reform upon the registration of the sale, and shall have priority over any other right of legal redemption. The redemption price shall be the reasonable price of the land at the time of the sale.

Upon the filing of the corresponding petition or request with the department or corresponding case in court by the agricultural lessee or lessees, the said period of one hundred and eighty days shall cease to run.

Any petition or request for redemption shall be resolved within sixty days from the filing thereof; otherwise, the said period shall start to run again.

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[86] Republic Act No. 3844 (1963), Sec. 12, as amended by Republic Act No. 6389 (1971), Sec. 2.

Under the law, the agricultural lessor must first inform the agricultural lessee of the sale in writing. From this point, a 180-day period commences, within which the agricultural lessee must file a petition or request to redeem the land. The written notice shall be served on the agricultural lessee as well as on the Department of Agrarian Reform upon registration of the sale.

The right of redemption granted to the agricultural lessee enjoys preference over any other legal redemption that may be exercised over the property. Upon filing of the petition or request, the 180-day period shall cease to run, and will commence again upon the resolution of the petition or request or within 60 days from its filing.

Here, since the Court of Appeals found that respondents are the agricultural tenants of the landholdings, they are also entitled to the right of redemption. Accordingly, respondents may exercise their right to purchase the lots by paying a reasonable price of the land at the time of the sale.

Our agrarian reform laws are witness to the country's attempts at reversing unjust structures developed throughout centuries of oppressive land regimes. Agrarian justice aims to liberate sectors that have been victimized by a system that has perpetuated their bondage to debt and poverty. Its goal is to dignify those who till our lands-to give land to those who cultivate them.

The protection of tenancy relations is only one of agrarian reform's significant features. The State, acknowledging that tenancy relations have an inherent imbalance that disadvantages farmer-tenants and privileges landowners, sought to it that this relationship is regulated so that social justice might be achieved. Ultimately, the program aims to remove farmer-tenants from the system that had once oppressed them by making the tenant, once just the tiller, owner of his or her land.

WHEREFORE, the Petition is **DENIED**. The assailed June 22, 2012 Decision and January 7, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 115608 are **AFFIRMED**.

SO ORDERED.

Gesmundo, Carandang, Zalameda, and *Gaerlan, JJ.*, concur.

FIRST DIVISION

[G.R. No. 212050. January 15, 2020]

QUINTIN ARTACHO LLORENTE, *petitioner, vs.* **STAR CITY PTY LIMITED, represented by the JIMENO AND COPE LAW OFFICES as Attorney-in-Fact,** *respondent*.

[G.R. No. 212216. January 15, 2020]

STAR CITY PTY LIMITED, represented by the JIMENO AND COPE & DAVID LAW OFFICES as its Attorney-in-Fact, *petitioner, vs.* **QUINTIN ARTACHO LLORENTE and EQUITABLE PCI BANK (now BDO Unibank, Inc.),** *respondents.*

SYLLABUS

1. MERCANTILE LAW; REVISED CORPORATION CODE OF THE PHILIPPINES (REPUBLIC ACT NO. 11232); ISOLATED TRANSACTION RULE; A FOREIGN CORPORATION THAT IS NOT DOING BUSINESS IN THE PHILIPPINES CAN SEEK REDRESS IN PHILIPPINE COURTS FOR AN ISOLATED TRANSACTION PROVIDED IT DISCLOSES SUCH FACT, AS THE SAME IS AN ESSENTIAL PART OF THE ELEMENT OF THE PLAINTIFF'S CAPACITY TO SUE AND MUST BE AFFIRMATIVELY PLEADED; THE RIGHT AND CAPACITY TO SUE, BEING MATTERS OF PLEADING AND PROCEDURE, DEPEND UPON THE SUFFICIENCY OF THE ALLEGATIONS IN THE COMPLAINT.— On the capacity of a foreign corporation to sue before Philippine courts, the applicable law is clear. Under Republic Act No. (RA) 11232 or the Revised Corporation Code of the Philippines (Revised Corporation Code), which became effective on February 23, 2019, the pertinent provision is Section 150, which states: SEC. 150. *Doing Business Without a License*. — No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative

agency of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws. x x x. While the law (presently the Revised Corporation Code or its predecessor, the Corporation Code) grants to foreign corporations with Philippine license the right to sue in the Philippines, the Court, however, in a long line of cases under the regime of the Corporation Code has held that a foreign corporation not engaged in business in the Philippines may not be denied the right to file an action in the Philippine courts for an isolated transaction. The issue on whether a foreign corporation which does not have license to engage in business in the Philippines can seek redress in Philippine courts depends on whether it is doing business or it merely entered into an isolated transaction. A foreign corporation that is not doing business in the Philippines must disclose such fact if it desires to sue in Philippine courts under the "isolated transaction rule" because without such disclosure, the court may choose to deny it the right to sue. The right and capacity to sue, being, to a great extent, matters of pleading and procedure, depend upon the sufficiency of the allegations in the complaint. Thus, as to a foreign corporation, the qualifying circumstance that if it is doing business in the Philippines, it is duly licensed or if it is not, it is suing upon a singular and isolated transaction, is an essential part of the element of the plaintiff's capacity to sue and must be affirmatively pleaded. x x x. Based on the parameters discussed above, the CA has correctly ruled that SCPL has personality to sue before Philippine courts under the isolated transaction rule x x x. The appointment of JJC Law as attorney-in-fact of SCPL is irrelevant on the latter's capacity to sue in the Philippines under an isolated transaction.

2. REMEDIAL LAW; COURTS; JURISDICTION; THE REGIONAL TRIAL COURTS HAVE EXCLUSIVE JURISDICTION OVER COMPLAINT FOR COLLECTION OF SUM OF MONEY, WHERE THE DEMAND, EXCLUSIVE OF INTEREST, DAMAGES OF WHATEVER KIND, ATTORNEY'S FEES, LITIGATION EXPENSES, AND COSTS OR THE VALUE OF PROPERTY IN CONTROVERSY EXCEEDS THREE HUNDRED THOUSAND PESOS (₱300,000.00); IN CRIMINAL CASES INVOLVING CHECKS, ANY OF THE PLACES WHERE

THE CHECK IS DRAWN, ISSUED, DELIVERED, OR DISHONORED, HAS JURISDICTION OVER THE CASE.— On the issue of jurisdiction, the argument of Llorente that Australian courts have jurisdiction over the case because all the material acts and transactions between him and SCPL transpired in Australia, except for the mere issuance of the two bank drafts by EPCIB in the Philippines also fails. It must be remembered that the complaint filed by SCPL against Llorente and EPCIB is for collection of sum of money, which is a civil case. Under BP 129, Section 19, RTCs have exclusive jurisdiction "[i]n all other cases in which the demand, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs or the value of property in controversy exceeds Three hundred thousand pesos (₱300,000.00) or, in such other cases in Metro Manila, where the demand, exclusive of the abovementioned items exceeds Four hundred thousand pesos (₱400,000.00)." Since the amount demanded by SCPL against Llorente and EPCIB in solidary capacity, which is "USD $300,000.00 plus legal interest from date of first demand on December 20, 2000 until full payment," is above ₱400,000.00, the RTC has jurisdiction over SCPL's complaint. Also, from the point of view of territorial jurisdiction in criminal cases involving checks, any of the places where the check is drawn, issued, delivered, or dishonored has jurisdiction. As the CA emphasized, "[w]hile it is true that the stopped payment occurred in Australia per advice of Union Bank of California to the Bank of New York, x x x the subject matter of the instant complaint are the subject drafts drawn by EPCIB, which is a Philippine bank."

3. **MERCANTILE LAW; NEGOTIABLE INSTRUMENTS LAW; LIABILITY OF DRAWER; THE LIABILITY OF THE DRAWER IS NOT PRIMARY BUT SECONDARY, PARTICULARLY AFTER ACCEPTANCE, BECAUSE IT IS CONDITIONAL UPON PROPER PRESENTMENT AND NOTICE OF DISHONOR, AND, IN CASE OF A FOREIGN BILL OF EXCHANGE, PROTEST, UNLESS SUCH CONDITIONS ARE EXCUSED OR DISPENSED WITH; WHEN THE INSTRUMENT IS DISHONORED, AN IMMEDIATE RIGHT OF RECOURSE TO ALL PARTIES SECONDARILY LIABLE THEREON ACCRUES TO THE HOLDER.—** Both the RTC and CA correctly recognized EPCIB

as the drawer of the subject demand/bank drafts. The liability of the drawer is spelled out in Section 61 of the NIL x x x. When the bank, as the drawer of a negotiable check, signs the instrument its engagement is then as absolute and express as if it were written on the check; and a dual promise is implied from the issuance of a check: first, that the bank upon which it is drawn will pay the amount thereof; and second, if such bank should fail to make the payment, the drawer will pay the same to the holder. Generally, by drawing a check, the drawer: admits the existence of the payee and his then capacity to endorse; impliedly represents that he (the payee) has funds or credits available for its payment in the bank in which it is drawn; engages that if the bill is not paid by the drawee and due proceedings on dishonour are taken by the holder, he will upon demand pay the amount of the bill together with the damages and expenses accruing to the holder by reason of the dishonor of the instrument; and, if the drawee refuses to accept a bill drawn upon him, becomes liable to pay the instrument according to his original undertaking. However, The liability of the drawer is not primary but **secondary**, particularly after acceptance because it is conditional upon proper presentment and notice of dishonor, and, in case of a foreign bill of exchange, protest, unless such conditions are excused or dispensed with. Thus, under Section 84 of the NIL, when the instrument is dishonored by non-payment, an **immediate right of recourse to all parties secondarily liable** thereon accrues to the holder, subject to the provisions of the NIL.

4. ID.; ID.; ID.; ID.; STOPPING PAYMENT DOES NOT DISCHARGE THE LIABILITY OF THE DRAWER OF A CHECK OR OTHER BILL TO THE PAYEE OR OTHER HOLDER; WHERE PAYMENT HAS BEEN STOPPED BY THE DRAWER, THE RELATION BETWEEN THE DRAWER AND PAYEE BECOMES THE SAME AS IF THE INSTRUMENT HAD BEEN DISHONORED AND NOTICE THEREOF GIVEN TO THE DRAWER; THUS, THE DRAWER'S CONDITIONAL LIABILITY IS CHANGED TO ONE FREE FROM THE CONDITION AND HIS SITUATION IS LIKE THAT OF THE MAKER OF A PROMISSORY NOTE DUE ON DEMAND; AND HE IS LIABLE ON THE INSTRUMENT IF HE HAS NO SUFFICIENT DEFENSE.— Regarding the effect of

countermand or stopping payment, the drawer of a bill, including a draft or check, as a general rule, may by notice to the drawee prior to acceptance or payment countermand his order and command the drawee not to pay, in which case the drawee is obliged to refuse to accept or pay. There are however cases which hold that a draft drawn by one bank upon another and bought and paid for by a remitter, as the equivalent of money or as an executed sale of credit by the drawer, is not subject to rescission or countermand so as to avoid the drawer's liability thereon. Moreover, the right to stop payment cannot be exercised so as to prejudice the rights of holders in due course without rendering the drawer liable on the instrument to such holders. Stated differently, stopping payment does not discharge the liability of the drawer of a check or other bill to the payee or other holder. However, where payment has been stopped by the drawer the relation between the drawer and payee becomes the same as if the instrument had been dishonored and notice thereof given to the drawer. Thus, the drawer's conditional liability is changed to one free from the condition and his situation is like that of the maker of a promissory note due on demand; and he is liable on the instrument if he has no sufficient defense. In the instant case, on July 27, 2002 Llorente applied for and executed a Stop Payment Order (SPO) on the subject demand/bank drafts on the pretext that the said drafts which he issued/negotiated to SCPL allegedly exceeded the amount he was obliged to pay SCPL contrary to his position that SCPL committed fraud and unfair gaming practices. The execution of the SPO by Llorente did not discharge the liability of EPCIB, the drawer, to SCPL, the holder of the subject demand/bank drafts. Given that an SPO was issued, the dishonor and non-payment of the subject demand/bank drafts were to be expected, triggering the immediate right of recourse of the holder to all parties secondarily liable, including the drawer, pursuant to the NIL. As the RTC noted: "[Llorente and EPCIB] could not seek refuge on the alleged lack of notice of dishonor to them since they were responsible for the dishonor of the subject drafts aside from the fact that it would be futile to require such notice since it was EPCIB who countermanded the payment."

5. ID.; ID.; ID.; PETITIONER STAR CITY PTY LIMITED (SCPL) IS A HOLDER IN DUE COURSE; THUS, IT HOLDS THE INSTRUMENT FREE FROM ANY DEFECT

IN THE TITLE OF PRIOR PARTIES, AND FREE FROM DEFENSES AVAILABLE TO PRIOR PARTIES AMONG THEMSELVES, AND MAY ENFORCE PAYMENT OF THE INSTRUMENT FOR THE FULL AMOUNT THEREOF AGAINST ALL PARTIES LIABLE THEREON.— The finding of both the RTC and the CA that SCPL is a holder in due course is not even disputed by EPCIB in its Comment dated October 4, 2014 to the SCPL Petition. To recall, EPCIB merely argued that the CA was correct in absolving it from liability by applying the principle of unjust enrichment. EPCIB added that it had no privity of contract between SCPL and Llorente. Under Section 57 of the NIL, "[a] holder in due course holds the instrument free from any defect in the title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon." In addition, under Section 51 of the NIL, every holder of a negotiable in instrument may sue thereon in his own name; and payment to him in due course discharges the instrument.

6. CIVIL LAW; CONTRACTS; THE INDEMNITY AGREEMENT BETWEEN RESPONDENTS WILL NOT BIND PETITIONER STAR CITY PTY LIMITED (SCPL) PURSUANT TO THE PRINCIPLE OF RELATIVITY OF CONTRACTS.— Having recognized the status of SCPL as a holder in due course and EPCIB as the drawer of the subject demand/bank drafts, was the CA correct in absolving EPCIB from any liability in view of the Indemnity Agreement dated August 8, 2002 between Llorente and EPCIB? The Court finds, and so holds, that the CA erred in discharging EPCIB from its liability as the drawer of the subject demand/bank drafts. A review of the records confirms SCPL's argument that the Indemnity Agreement cannot be considered as evidence because it was not formally offered. In addition, even if it were given some evidentiary weight, it will nevertheless not bind SCPL pursuant to the principle of relativity of contracts under Article 1311 of the Civil Code, which provides that "[c]ontracts 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."

7. ID.; UNJUST ENRICHMENT; IF SOMETHING IS RECEIVED WHEN THERE IS NO RIGHT TO DEMAND IT, AND IT WAS UNDULY DELIVERED THROUGH MISTAKE, THE OBLIGATION TO RETURN IT ARISES; APPLICATION OF THE PRINCIPLE OF UNJUST ENRICHMENT PRINCIPLE, NOT PROPER.— As to the unjust enrichment principle applied by the CA, the same is not proper. EPCIB's invocation of unjust enrichment to avoid its liability as the drawer of the subject demand/bank draft evinces bad faith in that rather than discharging its obligation as the drawer, EPCIB presents the Indemnity Agreement as an afterthought to shield itself from liability. x x x. x x x [F]or the unjust enrichment principle to apply against SCPL, it should be the party who is benefitted from the reimbursement or return of the funds by EPCIB. In this case, the party who received the benefit was Llorente. Any payment to SCPL arising from the subject demand/bank drafts by EPCIB and/or Llorente can never be by mistake. As provided in Article 2154 of the Civil Code, if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises; and, under Article 2163, there is payment by mistake if something which has never been due or has already been paid is delivered.

8. MERCANTILE LAW; NEGOTIABLE INSTRUMENTS LAW; LIABILITY OF THE DRAWER; THE SECONDARY LIABILITY OF THE DRAWER BECAME PRIMARY WHEN THE PAYMENT OF THE DEMAND/BANK DRAFTS HAD BEEN STOPPED, WHICH HAD THE SAME EFFECT AS IF THE INSTRUMENTS HAD BEEN DISHONORED AND NOTICE THEREOF WAS GIVEN TO THE DRAWER. — [T]he liability of EPCIB as the drawer cannot be abrogated by virtue of the Indemnity Agreement because it arises from the subject demand/bank drafts, which are negotiable instruments, that it issued. Its secondary liability under Section 61 of the NIL became primary when the payment of the subject demand/bank drafts had been stopped which had the same effect as if the instruments had been dishonored and notice thereof was given to the drawer pursuant to Section 84 of the NIL. Given the nature of the liability of the drawer of a negotiable instrument, EPCIB's argument that it is not liable to SCPL because they have no privity of contract is utterly without merit.

9. CIVIL LAW; OBLIGATIONS; SOLIDARY LIABILITY; THERE IS SOLIDARY LIABILITY ONLY WHEN THE OBLIGATION EXPRESSLY SO STATES, OR WHEN THE LAW OR THE NATURE OF THE OBLIGATION REQUIRES SOLIDARITY; BOTH RESPONDENTS ARE INDIVIDUALLY AND PRIMARILY LIABLE; THUS, THE PETITIONER STAR CITY PTY LIMITED (SCPL) MAY PROCEED TO COLLECT THE DAMAGES AWARDED SIMULTANEOUSLY AGAINST BOTH RESPONDENTS, OR ALTERNATIVELY AGAINST EITHER OF THE RESPONDENTS, PROVIDED THAT IN NO EVENT CAN PETITIONER RECOVER FROM BOTH MORE THAN THE DAMAGES AWARDED.— While EPCIB is clearly liable as the drawer of the subject demand/bank drafts, there is no legal basis to make it solidarily liable with Llorente. According to Article 1207 of the Civil Code, there is solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity. In this case, there is no contract or agreement wherein the solidary liability of EPCIB is expressly provided. Under the NIL and the nature of the liability of the drawer, solidary obligation is also not provided. Thus, EPCIB's liability is not solidary but primary due to the SPO that Llorente issued against the subject demand/ bank drafts. Consequently both Llorente and EPCIB are individually and primarily liable as endorser and drawer of the subject demand/bank drafts, respectively. Given the nature of their liability, SCPL may proceed to collect the damages hereinafter awarded simultaneously against both Llorente and EPCIB, or alternatively against either Llorente or EPCIB, provided that in no event can SCPL recover from both more than the damages awarded. In the event that SCPL is able to collect from EPCIB based on this judgment, any amount that EPCIB pays to SCPL can be collected by EPCIB from Llorente by virtue of its cross-claim against Llorente and pursuant to the indemnity clause of the Indemnity Agreement, which is valid as between Llorente and EPCIB.

10. ID.; DAMAGES; MONETARY AWARDS, MODIFIED.— The monetary awards imposed by the RTC upon Llorente and EPCIB have to be modified pursuant to *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*, wherein the majority of the Court *en banc* revised the guidelines on interest in *Eastern*

Shipping Lines, Inc. v. Court of Appeals and *Nacar v. Gallery Frames* and the *ponente* filed a Concurring and Dissenting Opinion. Thus, the payment of the amount of the subject bank drafts in the sum of US$300,000.00 should bear interest at the legal rate of 12% per annum from the date of extrajudicial demand, which is August 30, 2002 (as this is the date the extrajudicial demand against EPCIB that was made subsequent to the extrajudicial demand for payment against Llorente), to June 30, 2013 and at 6% per annum from July 1, 2013 until full payment and the payment of the attorney's fees equivalent to 5% of the amount of demand or US$15,000.00 should bear interest at the rate of 6% per annum from finality of this Decision until full payment.

APPEARANCES OF COUNSEL

Victor C. Fernandez for Quintin Artacho Llorente.

Victor R. De Guzman, collaborating counsel for Quintin Artacho Llorente.

Jimeno Cope & David Law Offices for Star City Pty Ltd.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court are petitions for review on *certiorari*[1] under Rule 45 of the Rules of Court respectively filed by petitioner Quintin Llorente (Llorente) in G.R. No. 212050 and petitioner Star City Pty Limited (SCPL) in G.R. No. 212216 assailing the Decision[2] dated September 30, 2013 (Decision) and the Resolution[3] dated April 10, 2014 of the Court of Appeals[4] (CA)

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[1] *Rollo* (G.R. No. 212050), pp. 10-23, excluding Annexes; *rollo* (G.R. No. 212216), pp. 45-62, excluding Annexes.

[2] *Id.* at 24-38; *id.* at 10-24. Penned by Associate Justice Elihu A. Ybañez, with Associate Justices Japar B. Dimaampao and Victoria Isabel A. Paredes concurring.

[3] *Id.* at 55-57; *id.* at 41-43.

[4] Fourteenth Division and Former Fourteenth Division, respectively.

in CA-G.R. CV No. 94736. The CA Decision affirmed with modification the Decision[5] dated April 16, 2009 rendered by the Regional Trial Court, Branch 134, City of Makati (RTC) in Civil Case No. 02-1423. The CA Resolution dated April 10, 2014 denied the motions for reconsideration filed by Llorente and SCPL.

The Facts and Antecedent Proceedings

The CA Decision narrates the factual antecedents as follows:

x x x [SCPL] is an Australian corporation which operates the Star City Casino in Sydney, New South Wales, Australia. Claiming that it is not doing business in the Philippines and is suing for an isolated transaction, it filed on 25 November 2002 through its attorney-in-fact, Jimeno Jalandoni and Cope Law Offices, a complaint for collection of sum of money with prayer for preliminary attachment against x x x Llorente, who was a patron of its Star City casino and Equitable PCI Bank (EPCIB, for brevity). This case was docketed as Civil Case No. 02-1423 and raffled to Branch 134 of the Regional Trial Court (RTC) in the City of Makati.

[SCPL] alleged that Llorente is one of the numerous patrons of its casino in Sydney, Australia. As such, he maintained therein Patron Account Number 471741. On 12 July 2000, he negotiated two (2) Equitable PCI bank drafts with check numbers 034967 and 034968 worth US $150,000.00 each or for the total amount of US $300,000.00 ("subject [demand/bank][6] drafts" [or simply "subject drafts"]) in order to play in the Premium Programme of the casino. This Premium Programme offers the patron a 1% commission rebate on his turnover at the gambling table and a .10% rebate for complimentary expenses. Before upgrading x x x Llorente to this programme, [SCPL] contacted first EPCIB to check the status of the subject drafts. The latter confirmed that the same were issued on clear funds without any stop payment orders. Thus, Llorente was allowed to buy in on a Premium Programme and his front money account in the casino was credited with US $300,000.00.

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[5] *Rollo* (G.R. No. 212050), pp. 39-54. Penned by Presiding Judge Perpetua Atal-Paño.

[6] EPCIB in its "Comment on the Petition for Review" dated October 4, 2014 used the terms "demand/bank drafts," "subject bank drafts" and "bank drafts" to refer to the drafts which it drew with Llorente as payee. *Rollo* (G.R. No. 212216), pp. 132-145.

On 18 July 2000, [SCPL] deposited the subject drafts with Thomas Cook Ltd. On 1 August 2000, it received the advice of Bank of New York about the "Stop Payment Order" prompting it to make several demands, the final being on 22 August 2002, upon Llorente to make good his obligation. However, the latter refused to pay. It likewise asked EPCIB on 30 August 2002 for a settlement which the latter denied on the ground that it was Llorente who requested the Stop Payment Order and no notice of dishonor was given.

On 28 January 2003, the [RTC] deemed it proper to grant and issue a writ of preliminary attachment because the acts of Llorente, *i.e.*, leaving the hotel premises without informing [SCPL] of his whereabouts, failing to pay for all the services he had availed and/or not making sure that these would be paid by the checks he negotiated and indorsed, requesting for a Stop Payment Order despite knowledge that these checks are to answer for the payment for all services he had availed, failing to communicate for the settlement of his outstanding obligation and for leaving and/or transferring residence without notifying [SCPL] of his forwarding address, are clear indications of his intention to renege on his obligation and defraud [SCPL].

For his part, Llorente alleged that he caused the stoppage of the subject drafts' payment because (SCPL's] personnel and representatives committed fraud and unfair gaming practices during his stay in the casino on 12 July up to 17 July 2000. He also countered that the case should be dismissed on the ground that [SCPL] lacks the legal capacity to sue since the "isolated transaction rule" for which it anchored its right to bring action in our courts presupposes that the transaction subject matter of the complaint must have occurred in the Philippines, which however, is not the situation at bar since it is clear from the narration that the same occurred in Australia.

On the other hand, EPCIB, in its Answer, not only alleged [SCPL's] lack of personality to sue before Philippine courts, but denied also that it unjustifiably and maliciously refused to settle the obligation since it merely complied with the instructions of Llorente, as payee of the subject drafts, to stop payment thereon. It further went on saying that [SCPL] had no cause of action against it because there was no privity of contract between them. EPCIB likewise filed a cross-claim against Llorente since it already reimbursed the face value of the subject drafts, pursuant to the demand of the latter. For such reason, it should be relieved of any and all liabilities under the subject drafts.

Finding that [SCPL] had the legal capacity to sue and seek judicial relief before Philippine courts, the [RTC], on 16 April 2009, rendered a Decision holding both [Llorente and EPCIB] solidarily liable for the value of the subject drafts. It ruled that when Llorente, as payee of the subject drafts, signed at the back thereof, he is said to ha[ve] become an indorser who warrants that on due presentment, the instruments would be accepted or paid or both, as the case may be, according to their tenor, and that if they be dishonored and the necessary proceedings on dishonor be duly taken, they will pay the amount thereof to the holder. The same is also true for EPCIB, being the drawer of the subject drafts. It is of no moment if the bank was not a privy to the transaction for its liability as a drawer is not based on direct transaction but by virtue of the warranties it made within the purview of the Negotiable Instruments Law. The [RTC] even pointed that [Llorente and EPCIB] could not seek refuge on the alleged lack of notice of dishonor to them since they were responsible for the dishonor of the subject drafts aside from the fact that it would be futile to require such notice since it was EPCIB who countermanded the payment.

The trial court did not also consider Llorente's justification for ordering a stopped payment as it found that it was done in order to escape liability of paying his obligations with [SCPL]. The decretal portion of [the RTC] Decision reads as:

> "WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff [SCPL] and against both defendants Llorente and [EPCIB], as follows:
>
> 1. Ordering defendants Quintin Llorente and Equitable PCI Bank to pay the plaintiff [SCPL], jointly and severally the amount of the subject bank drafts in the sum of us $300,000[.00];
>
> 2. Ordering defendants Quintin Llorente and Equitable PCI Bank to pay the plaintiff [SCPL], jointly and severally, five (5%) percent of the amount claimed, or US $15,000.00, x x x as and by way of attorney's fees; and,
>
> 3. Costs of suit.
>
> For lack of merit, both defendants Llorente and Equitable PCI Bank's counterclaims as well as defendant Equitable PCI Bank's cross-claim against defendant Llorente are DENIED.
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> SO ORDERED."

Aggrieved with the said ruling, both [Llorente and EPCIB] appealed before [the CA]. x x x[7]

Ruling of the CA

The CA identified the following 3 issues raised in the appeals filed by Llorente and Equitable PCI Bank[8] (EPCIB): (1) SCPL's personality to sue before Philippine courts under the isolated transaction rule; (2) SCPL's being a holder in due course; and (3) solidary liability of EPCIB.[9]

Anent the first issue, the CA held that SCPL has pleaded the required averments in the complaint — it is a foreign corporation not doing business in the Philippines suing upon a singular and isolated transaction — which sufficiently clothed it the necessary legal capacity to sue in this jurisdiction.[10] The CA emphasized that the subject drafts were drawn by EPCIB, which is a Philippine bank, and since the drawer is a bank organized and existing in the Philippines then naturally a suit on the draft or check it issued can be filed in any of the places where the check is drawn, issued, delivered or dishonored, which, in this case, can be either the Philippines where the drafts were drawn and issued, or Australia where the indorsement and dishonor happened.[11]

On the second issue, the CA held that, contrary to EPCIB's assertion that the subject drafts were drawn without any value, the fact that Llorente used them to "buy in" into the Premium Programme of SCPL's casino which would entitle him to earn 1% cash commission or 0.1%[12] rebate on his gaming turn-over

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[7] *Rollo* (G.R. No. 212050), pp. 25-29; *rollo* (G.R. No. 212216), pp. 11-15.

[8] Now BDO Unibank, Inc.; *rollo* (G.R. No. 212216), p. 132.

[9] *Rollo* (G.R. No. 212050), p. 31; *rollo* (G.R. No. 212216), p. 17.

[10] *Id.* at 32-33; *id.* at 18-19.

[11] *Id.* at 33; *id.* at 19.

[12] Erroneously reflected as 1% in CA Decision, *id.* at 36; *id.* at 22.

is enough to constitute as the "value" contemplated by the law, making SCPL a holder in due course.[13]

On SCPL's good faith in view of Llorente's averment about the impossibility of having no face cards coming out after seven consecutive deals, the CA found the following explanation in the judicial affidavit of Paul Arbuckle[14] (Arbuckle) sufficient:

> x x x The game of Baccarat as played at Star City uses 8 decks of cards by 52 cards in each deck. There are 416 cards in total with 128 cards being denoted as "face" cards including the "ten value card". A single deal of [B]accarat consists of a minimum of 4 cards to a maximum of 6 cards. If we use 5 cards as an average then over 6 or 7 deals of Baccarat approximately 35 to 42 cards will be expended. Around 8.4% to a maximum of 10% of the total amount of cards available, I would consider it possible, and in fact, very likely that with such a small percentage of the total number of cards exposed that no face cards would appear.[15]

Also, the CA pointed out that Llorente's conduct — "in spite of the alleged irregularities in the [B]accarat table, continued to play in said casino x x x [and] he should have stopped playing and betting because it would entail huge losses on his part"[16] — counteracted whatever truth his claim has.[17]

Regarding the third issue, the CA deemed it proper to discharge EPCIB from any responsibility considering that it already paid Llorente the face amount of the subject drafts amounting to US $300,000.00 as evidenced by the Quitclaim, Indemnity and

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[13] *Rollo* (G.R. No. 212050), pp. 36-37; *rollo* (G.R. No. 212216), pp. 22-23.

[14] As Star City Casino's Head of Gaming and given his 30 years work experience in the different casinos located in Australia, Arbuckle had gained knowledge and expertise in the different casino games particularly Baccarat according to the CA. *Id.* at 35; *id.* at 21.

[15] *Id.*; *id.*

[16] *Id.* at 36; *id.* at 22, citing the RTC Decision dated April 16, 2009, *rollo* (G.R. No. 212050), p. 49.

[17] *Id.*; *id.*

Confidentiality Agreement[18] (Indemnity Agreement) executed on August 8, 2002.[19] The CA further reasoned that allowing EPCIB's solidary liability would sanction unjust enrichment on Llorente's part who would be allowed to profit or enrich himself inequitably at EPCIB's expense.[20]

Thus, the CA in its Decision dated September 30, 2013 ruled that Llorente's appeal was bereft of any merit while that of EPCIB was partially considered.[21] The dispositive portion of the CA Decision states:

> **WHEREFORE**, premises considered, the instant appeal is **PARTIALLY GRANTED**. The assailed Decision dated 16 April 2009 of the Regional Trial Court is **AFFIRMED with the modification** that EPCIB is **ABSOLVED** from any liability under Civil Case No. 02-1423.
>
> **SO ORDERED.**[22]

Llorente filed a motion for reconsideration while SCPL filed a motion for partial reconsideration. The CA denied both motions in its Resolution[23] dated April 10, 2014.

Hence, the instant Rule 45 petitions for review on *certiorari* in G.R. No. 212050 filed by Llorente and in G.R. No. 212216 filed by SCPL, respectively. Regarding G.R. No. 212050, SCPL filed its Comment[24] dated September 24, 2014 and Llorente filed his Reply[25] dated October 8, 2014. Regarding G.R. No. 212216, EPCIB filed its Comment[26] dated October 4, 2014.

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[18] *Rollo* (G.R. No. 212216), pp. 146-149.

[19] *Rollo* (G.R. No. 212050), p. 37; *id.* at 23.

[20] *Id.*; *id.*

[21] *Id.* at 31; *id.* at 17.

[22] *Id.* at 37-38; *id*. at 23-24.

[23] *Id.* at 55-57; *id.* at 41-43.

[24] *Id.* at 82-97.

[25] *Id.* at 98-104.

[26] *Rollo* (G.R. No. 212216), pp. 132-145.

Llorente filed an Explanation[27] dated August 14, 2015 wherein he manifested that he deemed it more proper and appropriate to forego the filing of a Comment in G.R. No. 212216 considering the consolidation of the two petitions and the issues and arguments raised therein are substantially the same and inter-related with one another.[28]

The Issues

In G.R. No. 212050, Llorente raises the following issues:

1. whether the CA erred in affirming the RTC Decision despite the latter's lack of jurisdiction over the subject matter of the complaint;

2. whether the CA erred in finding that SCPL has legal capacity to sue under the isolated transaction rule; and

3. whether the designation of the law firm of Jimeno, Jalandoni and Cope (JJC Law) as attorney-in-fact of SCPL constitutes gross violation of Section 69 of the Corporation Code.[29]

In G.R. No. 212216, SCPL raises the following issues:

1. whether the CA erred when it modified the RTC Decision by absolving EPCIB of any liability; and

2. whether in absolving EPCIB the CA ignored the express provisions of law and anchored its ratio on evidence that was not at all proven in trial.[30]

The Court's Ruling

G.R. No. 212050

Llorente's Petition lacks any merit.

On the issue of jurisdiction, Llorente argues that except for the mere issuance of the 2 bank drafts by EPCIB, all the material

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[27] *Id.* at 165-170.

[28] *Id.* at 166.

[29] *Rollo* (G.R. No. 212050), p. 14.

[30] *Rollo* (G.R. No. 212216), pp. 52-53.

acts and transactions between him and SCPL transpired in Australia; and, in fact, his front money account with SCPL was even credited while he was in Australia.[31] Thus, the sole jurisdiction to hear and decide SCPL's complaint pertains to the Australian Court rather than the Philippine Court.[32]

On SCPL's capacity to sue, Llorente argues that the condition *sine qua non* of the application of the isolated transaction rule is that the alleged delict or wrongful act must have occurred in the Philippines and the transaction between him and SCPL was in pursuance of the latter's casino business.[33]

Regarding the resignation of JJC Law as SCPL's attorney-in-fact, Llorente argues that it is violative of Section 69 of the Corporation Code because SCPL is not licensed to do business in the Philippines.[34] As such, SCPL's complaint is a mere scrap of paper and any judgment rendered in connection therewith is a nullity which may be struck down even on appeal.[35]

On the capacity of a foreign corporation to sue before Philippine courts, the applicable law is clear.

Under Republic Act No. (RA) 11232[36] or the Revised Corporation Code of the Philippines (Revised Corporation Code), which became effective on February 23, 2019,[37] the pertinent provision is Section 150, which states:

SEC. 150. *Doing Business Without a License*. — No foreign corporation transacting business in the Philippines without a license,

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[31] *Rollo* (G.R. No. 212050), pp. 14-15.

[32] *Id.* at 15.

[33] *Id.* at 15-16.

[34] *Id.* at 16-17.

[35] *Id.* at 17.

[36] AN ACT PROVIDING FOR THE REVISED CORPORATION CODE OF THE PHILIPPINES. Approved on February 20, 2019.

[37] Upon completion of its publication in Manila Bulletin and the Business Mirror on February 23, 2019, see < http://www.sec.gov.ph/wp-content/uploads/2019/03/2019Legislation_RevisedCorporationCodeEffectivity.pdf >.

or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws.

Section 150 of the Revised Corporation Code is a verbatim reproduction of Section 133 of *Batas Pambansa Blg.* (BP) 68 or the Corporation Code of the Philippines (Corporation Code), which provided:

> Sec. 133. ***Doing business without a license.*** — No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws. (69a)

It must be noted that the Revised Corporation Code repealed the Corporation Code and any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary or inconsistent with any provision of the Revised Corporation Code is modified or repealed accordingly.[38]

While the law (presently the Revised Corporation Code or its predecessor, the Corporation Code) grants to foreign corporations with Philippine license the right to sue in the Philippines, the Court, however, in a long line of cases under the regime of the Corporation Code has held that a foreign corporation not engaged in business in the Philippines may not be denied the right to file an action in the Philippine courts for an isolated transaction.[39] The issue on whether a foreign corporation which does not have license to engage in business

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[38] RA 11232, Sec. 187.

[39] *The Commissioner of Customs v. K.M.K. Gani, Indrapal & Co.*, 261 Phil. 717, 723 (1990), citing *Bulakhidas v. Navarro*, 225 Phil. 500, 501 (1986); *Antam Consolidated, Inc. v. CA*, 227 Phil. 267 (1986); *Universal Rubber Products, Inc. v. CA*, 215 Phil. 85 (1984).

in the Philippines can seek redress in Philippine courts depends on whether it is doing business or it merely entered into an isolated transaction.[40] A foreign corporation that is not doing business in the Philippines must disclose such fact if it desires to sue in Philippine courts under the "isolated transaction rule" because without such disclosure, the court may choose to deny it the right to sue.[41]

The right and capacity to sue, being, to a great extent, matters of pleading and procedure, depend upon the sufficiency of the allegations in the complaint. Thus, as to a foreign corporation, the qualifying circumstance that if it is doing business in the Philippines, it is duly licensed or if it is not, it is suing upon a singular and isolated transaction, is an essential part of the element of the plaintiffs capacity to sue and must be affirmatively pleaded.[42]

These pronouncements equally obtain under the Revised Corporation Code given the reproduction of the exact wording of Section 133, Corporation Code in Section 150 of the Revised Corporation Code.

Based on the parameters discussed above, the CA has correctly ruled that SCPL has personality to sue before Philippine courts under the isolated transaction rule, to wit:

x x x [A] foreign corporation needs no license to sue before Philippine courts on an isolated transaction.[43] However, to say merely that a foreign corporation not doing business in the Philippines does not need a license in order to sue in our courts does not completely resolve the issue. When the allegations in the complaint have a bearing

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[40] *The Commissioner of Customs v. K.M.K. Gani, Indrapal & Co., id.* at 723.

[41] *Id.*, citing *Atlantic Mutual Insurance Co. v. Cebu Stevedoring Co.*, 124 Phil. 463 (1966).

[42] *Id.* at 725, citing *Atlantic Mutual Insurance Co. v. Cebu Stevedoring Co., id.* at 466-467.

[43] Citing *Lorenzo Shipping Corp. v. Chubb and Sons, Inc.*, 475 Phil. 169, 183 (2004).

on the plaintiff's capacity to sue and merely state that the plaintiff is a foreign corporation existing under the laws of a country, such averment conjures two alternative possibilities: either the corporation is engaged in business in the Philippines, or it is not so engaged. In the first, the corporation must have been duly licensed in order to maintain the suit; in the second, and the transaction sued upon is singular and isolated, no such license is required. In either case, compliance with the requirement of license, or the fact that the suing corporation is exempt therefrom, as the case may be, cannot be inferred from the mere fact that the party suing is a foreign corporation. The qualifying circumstance being an essential part of the plaintiff's capacity to sue must be affirmatively pleaded. Hence, the ultimate fact that a foreign corporation is not doing business in the Philippines must first be disclosed for it to be allowed to sue in Philippine courts under the isolated transaction rule. Failing in his requirement, the complaint filed by plaintiff with the trial court, it must be said, fails to show its legal capacity to sue.[44] x x x

In the case at bar, [SCPL] alleged in its complaint that "it is a foreign corporation which operates its business at the Star City Casino in Sydney, New South Wales, Australia; that it is not doing business in the Philippines; and that it is suing upon a singular and isolated transaction". It also appointed Jimeno, Jalandoni and Cope Law Offices as its attorney-in-fact. Following the pronouncement mentioned above and having pleaded these averments in the complaint sufficiently clothed [SCPL] the necessary legal capacity to sue before Philippine courts.[45]

The appointment of JJC Law as attorney-in-fact of SCPL is irrelevant on the latter's capacity to sue in the Philippines under an isolated transaction.

Further, the following observation of the RTC is apropos:

Besides, it is observed that defendant Llorente in [his] answer pleaded [an] affirmative relief for damages from plaintiff [SCPL] by way of a counterclaim. This is contrary to his position that plaintiff has no capacity to sue in the Philippines because such contention

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[44] Citing *New York Marine Managers, Inc. v. Court of Appeals*, 319 Phil. 538, 543-544 (1995).

[45] *Rollo* (G.R. No. 212050), pp. 32-33.

likewise entails that plaintiff may be sued in the Philippines as defendant Llorente also prayed for affirmative relief against the plaintiff. He is deemed to have admitted the capacity of plaintiff to be subject of our judicial process. It would be unfair to rule that plaintiff may be sued in the Philippines without at the same time allowing it to sue on an isolated transaction here.[46]

On the issue of jurisdiction, the argument of Llorente that Australian courts have jurisdiction over the case because all the material acts and transactions between him and SCPL transpired in Australia, except for the mere issuance of the two bank drafts by EPCIB in the Philippines also fails.

It must be remembered that the complaint filed by SCPL against Llorente and EPCIB is for collection of sum of money, which is a civil case. Under BP 129, Section 19, RTCs have exclusive jurisdiction "[i]n all other cases in which the demand, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs or the value of property in controversy exceeds Three hundred thousand pesos (₱300,000.00) or, in such other cases in Metro Manila, where the demand, exclusive of the abovementioned items exceeds Four hundred thousand pesos (₱400,000.00)."[47] Since the amount demanded by SCPL against Llorente and EPCIB in solidary capacity, which is "USD $300,000.00 plus legal interest from date of first demand on December 20, 2000 until full payment,"[48] is above ₱400,000.00, the RTC has jurisdiction over SCPL's complaint.

Also, from the point of view of territorial jurisdiction in criminal cases[49] involving checks, any of the places where the check is drawn, issued, delivered, or dishonored has jurisdiction.[50] As the CA emphasized, "[w]hile it is true that

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[46] *Id.* at 44.

[47] BP 129, Sec. 19(8), as amended by RA 7691.

[48] *Rollo* (G.R. No. 212050), p. 64.

[49] Like violation of BP 22.

[50] See *Brodeth v. People*, G.R. No. 197849, November 29, 2017, 847 SCRA 92, 111.

the stopped payment occurred in Australia per advice of Union Bank of California to the Bank of New York, x x x the subject matter of the instant complaint are the subject drafts drawn by EPCIB, which is a Philippine bank."[51]

G.R. No. 212216

SCPL's Petition is meritorious.

The CA absolved EPCIB from any liability in this wise:

> Relative to EPCIB's solidary liability, We deem it proper to discharge it from any responsibility considering that it already paid Llorente the face value of the subject drafts amounting to US $300,000.00 as evidenced by the Quitclaim, Indemnity and Confidentiality Agreement executed on 8 August 2002. It would be very unfair to hold EPCIB solidarily liable with Llorente because it already paid/refunded to the latter the total amount of the subject drafts. Moreover, allowing such solidary liability would, indeed, be to sanction unjust enrichment on the part of Llorente, who will be allowed to profit or enrich himself inequitabl[y] at EPCIB's expense,[52] since he was already paid and yet, the latter, who was without any fault, is still bound to share the responsibility without any assurance of being paid. Hence, it is only just and equitable to relieve the bank from any liability to pay considering the execution of the above agreement in favor of Llorente.[53]

In its Petition, SCPL posits that it is an established fact that EPCIB issued the subject demand drafts since it was never denied by EPCIB and was even confirmed by the bank's counsel in a letter dated September 16, 2002 to SCPL's counsel.[54] According to SCPL, in issuing the subject demand drafts, EPCIB is considered by law as the drawer and being the drawer, it represented that on due presentment the checks would be accepted or paid, or both, according to their tenor and if they

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[51] *Rollo* (G.R. No. 212050), p. 33.

[52] Citing *Grandteq Industrial Steel Products, Inc. v. Margallo*, 611 Phil. 612, 627-628 (2009).

[53] *Rollo* (G.R. No. 212050), p. 37; *rollo* (G.R. No. 212216), p. 23.

[54] *Rollo* (G.R. No. 212216), p. 53.

be dishonored and the necessary proceedings be taken it would be the one who would pay pursuant to Section 61 of the Negotiable Instruments Law (NIL).[55]

Additionally, SCPL argues that under the NIL, while the maker and the acceptor of the negotiable instrument are primarily liable, the drawer and endorser are secondarily liable; and the drawer's secondary liability to pay the amount of the checks arises from its warranties as the drawer.[56] Being a holder in due course, as the CA has recognized, SCPL may enforce payment of the instrument for its full amount against all parties liable thereon.[57] SCPL concludes that there is no room for the application of equity and unjust enrichment because the rights, liabilities and representations of the parties are explicitly provided in the NIL and equity, being invoked only in the absence of law, may supplement the law but it can neither contravene nor supplant it.[58]

As to the Indemnity Agreement allegedly executed on August 8, 2002, SCPL further posits that the CA has no basis to give it weight as it was never presented as evidence on EPCIB's behalf and was never formally offered or identified by a proper witness in court.[59] Even assuming that the Indemnity Agreement can be used as evidence, SCPL takes the position that it is only valid between Llorente and EPCIB and cannot be enforced to defeat SCPL's right as a holder in due course to enforce payment of the instrument for the full amount thereof against all parties liable thereon.[60]

In its Comment,[61] EPCIB counters that the CA correctly absolved EPCIB from any liability by reason of unjust enrichment

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[55] *Id.* at 54.

[56] *Id.*

[57] *Id.* at 55-56.

[58] *Id.* at 56.

[59] *Id.* at 57.

[60] *Id.* at 58.

[61] *Id.* at 132-145.

and cites Article 22 of the Civil Code, which provides that every person who through an act or performance of another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.[62] EPCIB argues that the unjust enrichment principle is applicable considering that Llorente already received the value of the subject bank drafts from EPCIB; and requiring it again to pay the face value of the bank drafts would amount to Llorente's unjust enrichment to its prejudice.[63]

As another ground, EPCIB argues that SCPL and EPCIB have no privity of contract as they never transacted with each other.[64] Invoking the basic principle of relativity of contracts, EPCIB states that it would be highly iniquitous if it is made liable in any way for whatever controversy that arose between SCPL and Llorente.[65]

Given the foregoing, EPCIB has apparently abandoned its arguments before the CA that: (1) SCPL is not a holder in due course because it took the subject bank drafts without any value since the funds corresponding thereto had been withdrawn by Llorente, and (2) SCPL cannot be considered in good faith because of Llorente's averment regarding the impossibility of having no face cards coming out of several deals despite a considerable amount of time.[66]

The CA has rejected the said arguments and admitted that SCPL is a holder in due course, *viz*.:

> Section 52 of the [NIL] gives the conditions in order to consider [a] person as a holder in due course, *to wit*:

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[62] *Id.* at 139.

[63] *Id.* at 140.

[64] *Id.*

[65] *Id.*

[66] *Id.* at 19; *rollo* (G.R. No. 212050), p. 33.

"SEC. 52. *What constitutes a holder in due course*. — A holder in due course is a holder who has taken the instrument under the following conditions:

(a) That it is complete and regular upon its face;

(b) That he became the holder of it before it was overdue and without notice that it had been previously dishonored, if such was the fact;

(c) That he took it in good [faith] and for value;

(d) That at the time it was negotiated to him, he had no notice of any infirmity or defect in the title of [the] person negotiating it."

As a general rule, under the above provision, every holder is presumed *prima facie* to be a holder in due course. One who claims otherwise has the *onus probandi* to prove that one or more of the conditions required to constitute a holder in due course are lacking.[67] At bar, EPCIB failed to prove that the elements of good faith and value are wanting.

Anent the element of good faith, [SCPL] showed that Llorente's averment about the impossibility of having no face cards coming out after seven consecutive deals, is not unusual in view of the small percentage of the total number of cards exposed [as explained in the] judicial affidavit [of] Paul Arbuckle, Head of Gaming of Star City Casino x x x [.]

x x x x x x x x x

It bears to emphasize that Arbuckle had thirty (30) years work experience in the different casinos located in Australia such that his knowledge and expertise about the different casino games particularly Baccarat, could not easily be disregarded and overturned by a simple allegation of cheating which has not been substantiated in view of the absence of a complaint [by] Llorente to [SCPL's] personnel.

Moreover, Llorente's conduct after he complained about the purported fraud in the casino counteracted whatever truth his claim has. For this purpose, We acknowledge the [RTC's] disquisition, *viz*[.]:

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[67] Citing *Bank of Philippine Islands v. Roxas*, 562 Phil. 161, 165 (2007).

> The [c]ourt finds it quite interesting, and contrary to human behavior, that x x x Llorente, in spite of the alleged irregularities in the [B]accarat table, continued to play in said casino. If there were indeed irregularities, as being claimed by x x x Llorente, he should have stopped playing and betting the cause it would entail huge losses on his part. Considering that the amount of capital involved was very substantial and considering further that x x x Llorente, as his qualifications show, is admittedly an experienced casino player x x x, the court finds it hard to believe that, if indeed there were unlawful activities going on in the casino, specifically in the [B]accarat table, that x x x Llorente would still choose to continue playing, further risking his money.
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> x x x x x x x x x

Contrary to EPCIB's assertion that the subject drafts were taken without any value, We would like to point out that value "in general terms, may be some right, interest, profit or benefit to the party who makes the contract or some forbearance, detriment, loan, responsibility, etc. on the other side."[68] Here, it was established that Llorente used the subject drafts to buy-in into the Premium Programme of [SCPL's] casino which would entitle him to earn one x x x percent [(1%)] cash commission or [zero point] one x x x percent [(0.1%)] rebate on his gaming turn-over. This right to play under the Premium Programme is enough to constitute as a "value" contemplated by the law, thus, making [SCPL] a holder in due course.

Said status of [SCPL] remained despite the withdrawal of the funds because at the time Llorente negotiated the subject drafts, [SCPL] had no notice that the same had been previously dishonored. In fact, it even verified the status by calling x x x EPCIB, who advised it through the latter's employee x x x Consuelo Conigado that the same were issued on clear funds and there [was] no stop payment orders.[69]

The Court notes that while Llorente testified that he purportedly reported the fraud or "cheating" incident in SCPL's casino to the branch office of the Australian Gaming Commission (AGC) at the ground floor of the casino, he presented no proof, documentary or otherwise, that he in fact did file a complaint;

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[68] Citing *Bank of Philippine Islands v. Roxas*, *id.* at 166.

[69] *Rollo* (G.R. No. 212216), pp. 20-23.

and the RTC found his account of how he allegedly brought the matter to the AGC "not highly persuasive" noting that Llorente never mentioned anything about him having reported the incident to the AGC in his Answer, an information so vital to support his claim of fraud.[70]

American jurisprudence explains the nature of drafts in this wise:

> A draft in the law of bills and notes is a "drawing" and has been defined as an open letter of request from, and an order by, one person on another to pay a sum of money therein mentioned to a third person on demand or at a future time specified therein. A draft is a bill of exchange, and the term "draft" is commonly employed as a synonym for the words "bill of exchange" or "check," although it cannot be the latter if it lacks the requirements of a check as distinguished from other bills of exchange. Banks are perhaps the greatest users of drafts, and they sell them to persons who desire to transmit funds. Thus **a draft has been defined as a check drawn by a bank**, the only distinguishing feature between a draft and an ordinary check being the character of the drawer. The instrument which is usually denominated a "bank draft"[71] is in the customary form of a check and is generally drawn by one bank upon another bank in which it has deposits much the same as the ordinary depositor draws his check upon his bank. The general rule is that such instrument is a check and subject to the rules applicable to checks. Since the term check is limited to a demand instrument and "draft" is not [as it may be payable on demand or at a fixed or determinable future time[72]], there is a distinction between the two in this respect.
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> In its usual form a draft is a negotiable instrument.[73] (Emphasis and underscoring provided)

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[70] *Rollo* (G.R. No. 212050), pp. 51-53.

[71] Bank draft is a bill of exchange payable on demand. 11 Am. Jur. 2d, *Drafts*, §14, note 6, p. 43 (1963), citing *Bank of Republic v. Republic State Bank*, 328 Mo 848, 42 SW2d 27.

[72] 11 Am. Jur. 2d, *Drafts*, §14, note 12, p. 43 (1963), citing *Branch Banking & Trust Co. v. Bank of Washington*, 255 NC 205, 120 SE2d 830.

[73] *Id.* at 43-44, citations omitted.

When the CA recognized SCPL as a holder in due course[74] and it did not overturn the finding of the RTC that the subject demand/bank drafts are negotiable instruments,[75] the CA in effect ruled that the two demand/bank drafts drawn by EPCIB with Llorente as the payee are negotiable instruments. The Court totally agrees with the RTC's finding, to wit:

> A draft is a form of a bill of exchange used mainly in transactions between persons physically remote from each other. It is an order made by one person, say the buyer of goods, addressed to a person having in his possession funds of such buyer, ordering the addressee to pay the purchase price to the seller of the goods. Where the order is made by one bank to another bank, as in this case, it is referred to as a bank draft. Needless to say, the bank drafts, subject of this case are negotiable instruments and are therefore governed by the provisions of the Negotiable Instruments Law.[76]

Both the RTC and CA correctly recognized EPCIB as the drawer of the subject demand/bank drafts. The liability of the drawer is spelled out in Section 61 of the NIL, which provides:

> Sec. 61. ***Liability of drawer.*** - The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse; and engages that, on due presentment, the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negativing or limiting his own liability to the holder.

When the bank, as the drawer of a negotiable check, signs the instrument its engagement is then as absolute and express

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[74] The CA found that the conditions in order to consider a person a holder in due course are present in this case and discussed extensively the elements of good faith, for value and lack of notice of infirmity or defect in the title of the person negotiating the negotiable instrument. See *rollo* (G.R. No. 212216), pp. 20-23.

[75] *Rollo* (G.R. No. 212050), p. 46.

[76] *Id.*

as if it were written on the check;[77] and a dual promise is implied from the issuance of a check: first, that the bank upon which it is drawn will pay the amount thereof; and second, if such bank should fail to make the payment, the drawer will pay the same to the holder.[78]

Generally, by drawing a check, the drawer: admits the existence of the payee and his then capacity to endorse; impliedly represents that he (the payee) has funds or credits available for its payment in the bank in which it is drawn; engages that if the bill is not paid by the drawee and due proceedings on dishonor are taken by the holder, he will upon demand pay the amount of the bill together with the damages and expenses accruing to the holder by reason of the dishonor of the instrument; and, if the drawee refuses to accept a bill drawn upon him, becomes liable to pay the instrument according to his original undertaking.[79]

However, the liability of the drawer is not primary but **secondary**, particularly after acceptance because it is conditional upon proper presentment and notice of dishonor, and, in case of a foreign bill of exchange, protest, unless such conditions are excused or dispensed with.[80] Thus, under Section 84 of the NIL, when the instrument is dishonored by non-payment, an **immediate right of recourse to all parties secondarily liable** thereon accrues to the holder, subject to the provisions of the NIL.

Regarding the effect of countermand or stopping payment, the drawer of a bill, including a draft or check, as a general rule, may by notice to the drawee prior to acceptance or payment countermand his order and command the drawee not to pay, in

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[77] 11 Am. Jur. 2d, *Drawer, Generally*, § 589, p. 657 (1963). Citations omitted.

[78] *Gambord Meat Co. v. Corbari*, 109 Cal App 2d 161, 240 P2d 342 cited in 11 Am. Jur. 2d, *id.*, note 20.

[79] 11 Am. Jur. 2d, *Drawer, Generally*, § 589, pp. 658-660 (1963). Citations omitted.

[80] *Id.* at 659. Citations omitted.

which case the drawee is obliged to refuse to accept or pay.[81] There are however cases which hold that a draft drawn by one bank upon another and bought and paid for by a remitter, as the equivalent of money or as an executed sale of credit by the drawer, is not subject to rescission or countermand so as to avoid the drawer's liability thereon.[82] Moreover, the right to stop payment cannot be exercised so as to prejudice the rights of holders in due course without rendering the drawer liable on the instrument to such holders.[83] Stated differently, stopping payment does not discharge the liability of the drawer of a check or other bill to the payee or other holder.[84] However, where payment has been stopped by the drawer the relation between the drawer and payee becomes the same as if the instrument had been dishonored and notice thereof given to the drawer.[85] Thus, the drawer's conditional liability is changed to one free from the condition and his situation is like that of the maker of a promissory note due on demand; and he is liable on the instrument if he has no sufficient defense.[86]

In the instant case, on July 27, 2002 Llorente applied for and executed a Stop Payment Order (SPO) on the subject demand/bank drafts on the pretext that the said drafts which he issued/negotiated to SCPL allegedly exceeded the amount he was obliged to pay SCPL[87] contrary to his position that SCPL committed fraud and unfair gaming practices. The execution of the SPO by Llorente did not discharge the liability of EPCIB, the drawer, to SCPL, the holder of the subject demand/bank drafts. Given that an SPO was issued, the dishonor and non-payment of the subject demand/bank drafts were to be expected,

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[81] *Id.*, *Countermand or stopping payment*, § 590, p. 660. Citations omitted.

[82] *Id.*

[83] *Id.* at 660-661. Citations omitted.

[84] *Id.* at 661.

[85] *Id.*

[86] *Id.* Citations omitted.

[87] *Rollo* (G.R. No. 212216), p. 146.

triggering the immediate right of recourse of the holder to all parties secondarily liable, including the drawer, pursuant to the NIL. As the RTC noted: "[Llorente and EPCIB] could not seek refuge on the alleged lack of notice of dishonor to them since they were responsible for the dishonor of the subject drafts aside from the fact that it would be futile to require such notice since it was EPCIB who countermanded the payment."[88]

The finding of both the RTC and the CA that SCPL is a holder in due course is not even disputed by EPCIB in its Comment[89] dated October 4, 2014 to the SCPL Petition. To recall, EPCIB merely argued that the CA was correct in absolving it from liability by applying the principle of unjust enrichment.[90] EPCIB added that it had no privity of contract between SCPL and Llorente.[91]

Under Section 57 of the NIL, "[a] holder in due course holds the instrument free from any defect in the title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon." In addition, under Section 51 of the NIL, every holder of a negotiable in instrument may sue thereon in his own name; and payment to him in due course discharges the instrument.

Having recognized the status of SCPL as a holder in due course and EPCIB as the drawer of the subject demand/bank drafts, was the CA correct in absolving EPCIB from any liability in view of the Indemnity Agreement dated August 8, 2002 between Llorente and EPCIB?

In absolving EPCIB from liability, the CA forwarded the following justification:

Relative to EPCIB's solidary liability, We deem it proper to discharge it from any responsibility considering that it already paid

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[88] *Rollo* (G.R. No. 212050), p. 28; *id.* at 14.

[89] *Rollo* (G.R. No. 212216), pp. 132-145.

[90] *Id.* at 139-140.

[91] *Id.* at 140-141.

Llorente the face value of the subject drafts amounting to US $300,00[0].00 as evidenced by the Quitclaim, Indemnity and Confidentiality Agreement executed on 8 August 2002. It would be very unfair to hold EPCIB solidarily liable with Llorente because it already paid/refunded to the latter the total amount of the subject drafts. Moreover, allowing such solidary liability would, indeed, be to sanction unjust enrichment on the part of Llorente, who [would] be allowed to profit or enrich himself inequitabl[y] at EPCIB's expense, since he was already paid and yet, the latter, who was without any fault, is still bound to share the responsibility without any assurance of being paid. Hence, it is only just and equitable to relieve the bank from any liability to pay considering the execution of the above agreement in favor of Llorente.[92]

The Court finds, and so holds, that the CA erred in discharging EPCIB from its liability as the drawer of the subject demand/bank drafts.

A review of the records confirms SCPL's argument that the Indemnity Agreement cannot be considered as evidence because it was not formally offered. In addition, even if it were given some evidentiary weight, it will nevertheless not bind SCPL pursuant to the principle of relativity of contracts under Article 1311 of the Civil Code, which provides that "[c]ontracts 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."

As to the unjust enrichment principle applied by the CA, the same is not proper. EPCIB's invocation of unjust enrichment to avoid its liability as the drawer of the subject demand/bank draft evinces bad faith in that rather than discharging its obligation as the drawer, EPCIB presents the Indemnity Agreement as an afterthought to shield itself from liability.

Firstly, the liability of EPCIB as the drawer cannot be abrogated by virtue of the Indemnity Agreement because it arises from the subject demand/bank drafts, which are negotiable instruments, that it issued. Its secondary liability under Section

[92] *Id.* at 23.

61 of the NIL became primary when the payment of the subject demand/bank drafts had been stopped which had the same effect as if the instruments had been dishonored and notice thereof was given to the drawer pursuant to Section 84 of the NIL. Given the nature of the liability of the drawer of a negotiable instrument, EPCIB's argument that it is not liable to SCPL because they have no privity of contract is utterly without merit.

Secondly, the reimbursement/return by EPCIB to Llorente of the face value of the subject demand/bank drafts in the total amount of US$300,000.00 by virtue of the Indemnity Agreement, assuming this had any probative value, is subject to the following provision:

> 4. Claimant ([Llorente)] also agrees to execute and post an indemnity bond in an amount equivalent to US$300,000.00 in favor of EPCIBank, Star Casino (US$ Drafts Holder/Endorsee), Union Bank of California: (UBOC), and to any other person or entity who may have been prejudiced by Claimant for whatever damages that may be suffered by EPCIBank, and other third parties as a consequence of Claimant's SPO [(Stop Payment Order)] and reimbursement of the amount of US$300,000.00.[93]

Thus, if EPCIB is made liable on the subject demand/bank drafts, it has a recourse against the indemnity bond. To be sure, the posting of the indemnity bond required by EPCIB of Llorente is in effect an admission of his liability to SCPL and the provision in the Whereas clause that: "On 27 July 2002, Claimant [(Llorente)] applied for and executed a Stop Payment Order (SPO) on the two drafts, citing as reason that the drafts he issued/negotiated to Star Casino exceeded the amount he was [obliged] to pay"[94] may be taken against him to weaken his allegation of fraud and unfair gaming practices against SCPL.

Lastly, for the unjust enrichment principle to apply against SCPL, it should be the party who is benefitted from the reimbursement or return of the funds by EPCIB. In this case,

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[93] *Id.* at 147.

[94] *Id.* at 146.

the party who received the benefit was Llorente. Any payment to SCPL arising from the subject demand/bank drafts by EPCIB and/or Llorente can never be by mistake. As provided in Article 2154 of the Civil Code, if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises; and, under Article 2163, here is payment by mistake if something which has never been due or has already been paid is delivered.

While EPCIB is clearly liable as the drawer of the subject demand/bank drafts, there is no legal basis to make it solidarily liable with Llorente.

According to Article 1207 of the Civil Code, there is solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity. In this case, there is no contract or agreement wherein the solidary liability of EPCIB is expressly provided. Under the NIL and the nature of the liability of the drawer, solidary obligation is also not provided Thus, EPCIB's liability is not solidary but primary due to the SPO that Llorente issued against the subject demand/bank drafts.

Consequently both Llorente and EPCIB are individually and primarily liable as endorser and drawer of the subject demand/bank drafts, respectively. Given the nature of their liability, SCPL may proceed to collect the damages hereinafter awarded simultaneously against both Llorente and EPCIB, or alternatively against either Llorente or EPCIB, provided that in no event can SCPL recover from both more than the damages awarded.

In the event that SCPL is able to collect from EPCIB based on this judgment, any amount that EPCIB pays to SCPL can be collected by EPCIB from Llorente by virtue of its cross-claim against Llorente and pursuant to the indemnity clause of the Indemnity Agreement, which is valid as between Llorente and EPCIB.

The monetary awards imposed by the RTC upon Llorente and EPCIB have to be modified pursuant to *Lara's Gifts &*

Decors, Inc. v. Midtown Industrial Sales, Inc.,[95] wherein the majority of the Court *en banc* revised the guidelines on interest in *Eastern Shipping Lines, Inc. v. Court of Appeals*[96] and *Nacar v. Gallery Frames*[97] and the *ponente* filed a Concurring and Dissenting Opinion. Thus, the payment of the amount of the subject bank drafts in the sum of US$300,000.00 should bear interest at the legal rate of 12% per annum from the date of extrajudicial demand, which is August 30, 2002[98] (as this is the date the extrajudicial demand against EPCIB that was made subsequent to the extrajudicial demand for payment against Llorente), to June 30, 2013 and at 6% per annum from July 1, 2013 until full payment and the payment of the attorney's fees equivalent to 5% of the amount of demand or US$15,000.00 should bear interest at the rate of 6% per annum from finality of this Decision until full payment.

WHEREFORE, the Petition in G.R. No. 212050 is hereby **DENIED** while the Petition in G.R. No. 212216 is **GRANTED**. The Decision dated September 30, 2013 and the Resolution dated April 10, 2014 of the Court of Appeals in CA-G.R. CV No. 94736 are **PARTIALLY REVERSED** and **SET ASIDE** insofar as the Court of Appeals absolved Equitable PCI Bank from any liability is concerned. The Decision dated April 16, 2009 rendered by the Regional Trial Court, Branch 134, Makati City in Civil Case No. 02-1423 is **REINSTATED** with **MODIFICATION**:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff Star City Pty Limited and against both defendants Quintin Llorente and Equitable PCI Bank, as follows:

1. Finding both defendants Quintin Llorente and Equitable PCI Bank individually and primarily liable and:

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

[96] 304 Phil. 236 (1994).

[97] 716 Phil. 267 (2013).

[98] *Rollo* (G.R. No. 212050), p. 26; *rollo* (G.R. No. 212216), p. 12.

(a) Ordering defendants Quintin Llorente and Equitable PCI Bank to pay the plaintiff Star City Pty Limited the amount of the subject bank drafts in the sum of US $300,000.00 with interest at 12% *per annum* from August 30, 2002 to June 30, 2013 and at 6% *per annum* from July 1, 2013 until full payment;

(b) Ordering defendants Quintin Llorente and Equitable PCI Bank to pay the plaintiff Star City Pty Limited 5% of the amount claimed, or US $15,000.00, as and by way of attorney's fees with interest at 6% *per annum* from the finality of this Decision until full payment; and,

2. Costs of suit.

For lack of merit, both defendants Quintin Llorente's and Equitable PCI Bank's counterclaims are **DENIED**. Defendant Equitable PCI Bank's cross-claim against defendant Quintin Llorente is **GRANTED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Reyes, J. Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

FIRST DIVISION

[G.R. No. 212111. January 15, 2020]

CASILDA D. TAN and/or C & L LENDING INVESTOR, *petitioners, vs.* **LUZVILLA B. DAGPIN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FILING AND SERVICE OF COURT PAPERS; WHERE A PARTY APPEARS BY ATTORNEY IN AN ACTION OR PROCEEDING IN A COURT OF RECORD, ALL NOTICES MUST BE SERVED ON THE ATTORNEY OF RECORD.

— Where a party appears by attorney in an action or proceeding in a court of record, all notices must be served on the attorney of record. Service of the court's order on any person other than the counsel of record is not legally effective, nay, binding on the party; nor may it start the corresponding reglementary period for the subsequent procedural steps which may be taken by the attorney. This rule is founded on considerations of fair play. A party engages a counsel precisely because he or she does not feel competent to deal with the intricacies of law and procedure. When the notice/order is directly served on the party, he or she would have to communicate with his or her attorney and turn over the notice/order to the latter, thereby shortening the remaining period for taking the proper steps to protect the party's interest. In the absence of a notice of withdrawal or substitution of counsel, the court will rightly assume that the counsel of record continues to represent his client and receipt of notice by the former is the reckoning point of the reglementary period.

2. ID.; ID.; PROCEDURAL RULES; MAY BE RELAXED TO ADVANCE SUBSTANTIAL JUSTICE.— [T]ime and again, this Court has relaxed the observance of procedural rules to advance substantial justice. Legal technicalities may be excused when strict adherence thereto will impede the achievement of justice it seeks to serve. Ultimately, what should guide judicial action is that a party is given the fullest opportunity to establish the merits of his or her action or defense rather than for him or her to lose life, honor, or property on mere technicalities. After all, the NLRC is not bound by the technical niceties of law and procedure and the rules obtaining in the courts of law. It is mandated to use every and all reasonable means to ascertain the facts in each case speedily objectively, without regard to technicalities of law or procedure, all in the interest of due process.

3. ID.; ID.; EXECUTION OF JUDGMENT; A FINAL JUDGMENT MAY NO LONGER BE DISTURBED; CASE AT BAR.— Execution is the final stage of litigation, the end of the suit. Our labor laws dictate that backwages must be computed from the time the employee was unjustly dismissed until his or her actual reinstatement or upon payment of his or her separation pay if reinstatement is no longer feasible. Hence, insofar as accrued backwages and other benefits are concerned,

> the employer's obligation to the employee continues to accumulate until he actually implements the reinstatement aspect of the final judgment or fully satisfies the monetary award in case reinstatement is no longer possible. It is undisputed here that the NLRC Resolution dated July 29, 2004 which affirmed the fact of respondent's illegal dismissal and monetary award became final and executor on January 10, 2005. As soon as an entry of judgment thereon was issued on January 17, 2005, the corresponding writ of execution got implemented and satisfied in full. x x x It is settled that a final judgment may no longer be altered, amended, or modified, even if the alteration, amendment or modification is meant to correct a perceived error in conclusions of fact and law and regardless of what court renders it. More so when as in this case, such final judgment had already been executed and fully satisfied.

APPEARANCES OF COUNSEL

Eliezer C. Bacho for petitioners.
Verduguez Law Office for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

Antecedents

By Decision[1] dated September 12, 2003, the Labor Arbiter declared petitioners Casilda D. Tan and/or C & L Lending Investor liable for illegal dismissal of respondent Luzvilla B. Dagpin, with separation pay, backwages, service incentive leave pay, 13th month pay, moral and exemplary damages, and attorney's fees.

By Resolution dated July 29, 2004, the National Labor Relations Commission (NLRC) dismissed petitioners' appeal for non-perfection for failure to attach the required certification

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[1] Penned by Labor Arbiter Celenito N. Daing (Decision dated September 12, 2003), *rollo*, pp. 115-127.

of non-forum shopping. It also denied petitioners' subsequent motion for reconsideration.[2]

Petitioners then filed before the Court of Appeals a petition for *certiorari* docketed as CA-G.R. SP No. 00038.[3] On January 11, 2005, the Court of Appeals issued a temporary restraining order (TRO) against the enforcement of the labor arbiter's Decision dated September 12, 2003.[4]

Meantime, Entry of Judgment[5] dated January 17, 2005 was issued on the NLRC Resolution dated July 29, 2004. On March 29, 2005, respondent filed with the Executive Labor Arbiter (ELA) a Motion to Admit Computation and Issuance of Writ of Execution[6] where she computed her separation pay, backwages, and other claims up to the finality of judgment on January 10, 2005 in the total sum of ₱1,080,566.66. Petitioners opposed.[7]

On May 17, 2005, after the TRO issued by the Court of Appeals expired, the ELA ordered the release of petitioners' cash bond of ₱449,665.90 in partial satisfaction of the judgment.[8]

In yet another Order[9] dated May 19, 2005, the ELA also granted respondent's Motion to Admit Computation and Issuance of Writ of Execution. The ELA awarded respondent a total of ₱1,005,146.83. After deducting the amount of ₱449,665.90 representing the cash bond earlier released and paid to respondent, the ELA ordered the issuance of a writ of execution

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[2] *Id.* at 50, 128-128-A.

[3] *Id.* at 78.

[4] *Id.*

[5] *Id.* at 51, 128-128-A.

[6] *Id.* at 129-134.

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

[8] *Id.* at 79.

[9] Penned by Executive Labor Arbiter Rhett Julius J. Plagata, *Id.* at 135-137.

on the remaining amount of ₱555,480.93. The writ was fully enforced and satisfied as of October 12, 2005.[10]

Back to CA-G.R. SP No. 00038, the Court of Appeals, by Decision[11] dated October 18, 2007, dismissed the petition for *certiorari*, for lack of merit.

Petitioners further sought relief from the Court through a Petition for Review on *Certiorari* docketed as G.R. 182268. The Court denied the same under Resolution dated June 23, 2008, which became final and executory on August 21, 2008.[12]

Respondent, thereafter, on November 3, 2008, filed another Motion for Approval of Computation and Issuance of Writ of Execution;[13] and later, on November 12, 2008, a Manifestation[14] seeking additional increments to her monetary award. She claimed that her backwages and separation pay should be computed up to August 21, 2008 when the Court's resolution on the issue of illegal dismissal became final and executory. Petitioners again opposed.

When the aforesaid motion was heard on December 16, 2008, respondent appeared, sans her counsel Atty. Lawrence Carin who advised her to engage the services of Atty. Kenneth P. Rosal only for the incident at hand. Atty. Carin was allegedly attending to some personal matters in Dumaguete City aside from the fact that he had "suspended" himself from the practice of law because of his failure to comply with the Mandatory Continuing Legal Education (MCLE) requirements. Complying with Atty. Carin's instruction, respondent engaged Atty. Kenneth P. Rosal to represent her in the subsequent hearing on the motion. Atty. Rosal, in turn, entered his appearance as counsel for respondent.[15]

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[10] *Id.* at 12-13, 79.

[11] *Id.* at 99-112.

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

[13] *Id.* at 88-93.

[14] *Id.* at 96-97.

[15] *Id.* at 305-318, Respondent's Comments to the Petition for Review on *Certiorari* dated October 24, 2014.

Ruling of the ELA

By Order[16] dated February 19, 2009, the ELA denied respondent's Motion for Approval of Computation and Issuance of Writ of Execution. The ELA emphasized that since respondent had already enforced and received full payment of the monetary award she was entitled to up until January 10, 2005, she was already estopped from claiming, thereafter, the so-called increments to such monetary award.

Proceedings before the NLRC

On April 13, 2009, Atty. Rosal filed respondent's appeal memorandum but the NLRC dismissed it under Resolution[17] dated August 27, 2009 for having been filed out of time. The NLRC ruled that the ten (10)-day appeal period must be reckoned from the time respondent received the ELA's February 19, 2009 Order on March 19, 2009 and not from Atty. Rosal's purported receipt on March 30, 2009 of copy of the Order handed him by respondent. For Atty. Rosal was not respondent's counsel of record while Atty. Carin was no longer respondent's counsel when the aforesaid Order was served. Consequently, respondent, who received it on March 19, 2009, had until March 29, 2009 to perfect her appeal. Since respondent filed her appeal memorandum only on April 13, 2009 or fifteen (15) days late, the Order dated February 19, 2009 had already become final and executory.

In her motion for reconsideration, respondent explained that the ELA Order dated February 19, 2009, albeit addressed to "L. Dagpin c/o Atty. Kenneth P. Rosal" was directly delivered to her on March 19, 2009, not to her counsel. Since Atty. Carin could not prepare her appeal as he had "suspended" himself from the practice of law and was attending an IBP Convention

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[16] Penned by Executive Labor Arbiter Rhett Julius J. Plagata in NLRC Case No. Sub-RAB-09-06-10033-03, *Id.* at 76-82.

[17] Penned by Presiding Commissioner Salic B. Dumarpa, and concurred in by Commissioners Proculo T. Sarmen and Dominador B. Medroso, Jr., *Id.* at 83-85.

in Bacolod City from March 26 to 29, 2009, he instructed her to refer the case to Atty. Rosal who, unfortunately, was also attending the convention. Thus, she was able to give the Order to Atty. Rosal only on March 30, 2009 and the latter was able to file the appeal only on April 13, 2009.[18]

By Resolution[19] dated October 30, 2009, the NLRC denied reconsideration. Respondent, thus, filed a petition for *certiorari* before the Court of Appeals, asserting that the ten (10)-day appeal period should be reckoned not from her receipt of the ELA Order, but from the date of her counsel's receipt.[20]

Ruling of the Court of Appeals

In its Decision[21] dated September 24, 2013, the Court of Appeals reversed. It ruled that the service of the February 19, 2009 Order on respondent herself, instead of her counsel, was not the legal service contemplated by law. The NLRC, therefore, gravely abused its discretion when it dismissed the appeal for non-perfection, albeit there was no proper service of said notice/order. For this reason and on consideration of compassionate justice, respondent's Appeal Memorandum filed on April 13, 2009 may still be considered filed within the reglementary period.

On the merits, the Court of Appeals decreed that a recomputation of the monetary consequences of illegal dismissal does not violate the principle of immutability of final judgments for it does not affect the illegal dismissal ruling itself. Since petitioners pursued the review of the case up to the Supreme Court, the backwages and separation pay should be computed until August 21, 2008 when the Supreme Court's resolution in respondent's favor became final. This is regardless of the fact that respondent had already secured a writ of execution from the executive labor arbiter who computed her monetary awards

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[18] *Id.* at 86-87.

[19] *Id.* at 86-87.

[20] *Id.* at 144-159.

[21] *Id.* at 50-57.

only up until the dismissal of petitioners' appeal to the NLRC became final on January 10, 2005. The Court of Appeals, thus, ordered the labor arbiter to recompute the monetary awards due respondent and to deduct therefrom the amount of ₱1,005,146.83 which respondent had already received sometime in 2004. It further imposed a twelve percent (12%) legal interest on the remaining monetary awards from finality of judgment on August 21, 2008 until fully paid.

Petitioners' motion for reconsideration[22] was denied through Resolution[23] dated March 26, 2014.

The Present Petition

Petitioners now seek affirmative relief from the Court and pray for reversal of the Court of Appeals' dispositions. They essentially argue: The Court of Appeals erred in applying compassionate justice in allowing respondent's appeal to the NLRC despite the fact that it was filed beyond the ten (10)-day reglementary period. Too, a recomputation and payment of respondent's accrued benefits violates the principle of immutability of final judgment. Since respondent had already executed in full the NLRC Resolution dated July 29, 2004 which became final and executory on January 10, 2005, she is no longer entitled to additional benefits up until the finality of this Court's Resolution (in G.R. No. 182268) on August 21, 2008.

In her Comment[24] respondent posits that the Court of Appeals correctly applied compassionate justice in considering her appeal to have been timely filed before the NLRC. Also, a recomputation of her accrued benefits does not violate the principle of immutability of judgment. Thus, the Court of Appeals properly awarded her additional benefits up until the finality of the Court's Resolution on August 21, 2008.

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[22] *Id.* at 58-68.

[23] *Id.* at 70-75.

[24] *Id.* at 305-318.

The Core Issues

(1) Did the Court of Appeals err when it ruled that respondent's appeal to the NLRC was timely filed?

(2) Did the Court of Appeals err when it ruled that respondent is entitled to a recomputation of and consequently an increase in the monetary awards already given and paid her during the execution of the labor arbiter's decision?

The Ruling

Respondent's appeal to the NLRC was timely filed.

Where a party appears by attorney in an action or proceeding in a court of record, all notices must be served on the attorney of record.[25] Service of the court's order on any person other than the counsel of record is not legally effective, nay, binding on the party; nor may it start the corresponding reglementary period for the subsequent procedural steps which may be taken by the attorney.[26] This rule is founded on considerations of fair play. A party engages a counsel precisely because he or she does not feel competent to deal with the intricacies of law and procedure. When the notice/order is directly served on the party, he or she would have to communicate with his or her attorney and turn over the notice/order to the latter, thereby shortening the remaining period for taking the proper steps to protect the party's interest.[27]

In the absence of a notice of withdrawal or substitution of counsel, the court will rightly assume that the counsel of record

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[25] Section 2 of Rule 13 of the Rules of Court provides:

SEC. 2. *Filing and service, defined.* - x x x

Service is the act of providing a party with a copy of the pleading or paper concerned. If any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the patty himself is ordered by the court.

[26] *Cervantes v. City Service Corporation and Valentin Prieto, Jr.*, 784 Phil. 694, 698 (2016).

[27] *Zoleta v. Hon. Drilon*, 248 Phil. 777, 783 (1988) citing *J.M Javier Logging Corporation v. Mardo, et al.*, 133 Phil. 766, 769 (1968).

continues to represent his client and receipt of notice by the former is the reckoning point of the reglementary period.[28]

Here, respondent's counsel of record, Atty. Carin merely instructed respondent to refer the case to Atty. Rosal at the tail end of the proceedings before the labor arbiter since he could not then continue practicing law because he failed to comply with the MCLE requirements and he was then attending an IBP Convention in Bacolod City. There is no showing though that he filed a notice of withdrawal or that respondent herself declared that she was terminating Atty. Carin's services. Notices, decisions, and resolutions should have, therefore, been sent to Atty. Carin as respondent's counsel of record. But even assuming that Atty. Carin had indeed withdrawn his representation, notices, decisions, and resolutions should have at least been served on Atty. Rosal for the latter had also entered his appearance as respondent's counsel. The fact that copy of the ELA Order dated February 19, 2009 was addressed to "L/ Dagpin c/o Atty. Kenneth P. Rosal" clearly indicates that the NLRC acknowledged Atty. Rosal as respondent's new counsel.

As it was, however, copy of the ELA Order dated February 19, 2009 was served not on Atty. Rosal but directly on respondent herself who received it on March 19, 2009. This is not the proper service contemplated by law. Consequently, the reglementary period for appeal was not deemed to have commenced from respondent's receipt of the ELA Order.

Even then, Atty. Rosal was deemed to have acknowledged it when, on the basis thereof, he computed the ten (10)-day period from March 30, 2009 to April 9, 2009 for purposes of filing respondent's memorandum of appeal. Since April 9, 2009 fell on a holiday (Day of Valor and Maundy Thursday), and April 10, 11, and 12, 2009 were also holidays (Good Friday, Black Saturday, and Easter Sunday, respectively), the filing of respondent's memorandum of appeal on April 13, 2009 was within the reglementary period, as correctly ruled by the Court

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[28] *Manaya v. Alabang Country Club Incorporated*, 552 Phil. 226, 233 (2007).

of Appeals. Surely, respondent cannot be said to have been deprived of due process inasmuch as Atty. Rosal actually received the ELA Order and, accordingly, filed respondent's appeal memorandum to establish the merits of respondent's case.

In any event, time and again, this Court has relaxed the observance of procedural rules to advance substantial justice.[29] Legal technicalities may be excused when strict adherence thereto will impede the achievement of justice it seeks to serve.[30] Ultimately, what should guide judicial action is that a party is given the fullest opportunity to establish the merits of his or her action or defense rather than for him or her to lose life, honor, or property on mere technicalities.[31] After all, the NLRC is not bound by the technical niceties of law and procedure and the rules obtaining in the courts of law. It is mandated to use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process.[32]

Respondent is not entitled to recomputation of or increase of the monetary award already paid her.

The next question: May respondent seek a recomputation of the final and executory monetary award which she had already received in full in 2005?

We rule in the negative.

Execution is the final stage of litigation, the end of the suit.[33] Our labor laws dictate that backwages must be computed from

[29] *Malixi v. Baltazar*, November 22, 2017, G.R. No. 208224, 846 SCRA 244, 260.

[30] *La Sallian Educational Innovators Foundation, Inc. v. Commissioner of Internal Revenue*, G.R. No. 202792, February 27, 2019.

[31] *Diamond Taxi v. Llamas, Jr.*, 729 Phil. 364, 380 (2014).

[32] *Malixi v. Mexicali Philippines, et al.*, 786 Phil. 672, 684-685 (2016).

[33] *Mt. Carmel College v. Resuena, et al.*, 561 Phil. 620, 645 (2007) citing *Torres v. National Labor Relations Commission*, 386 Phil. 513, 520 (2000).

the time the employee was unjustly dismissed until his or her actual reinstatement or upon payment of his or her separation pay if reinstatement is no longer feasible.[34] Hence, insofar as accrued backwages and other benefits are concerned, the employer's obligation to the employee continues to accumulate until he actually implements the reinstatement aspect of the final judgment[35] or fully satisfies the monetary award in case reinstatement is no longer possible.

It is undisputed here that the NLRC Resolution dated July 29, 2004 which affirmed the fact of respondent's illegal dismissal and monetary award became final and executory on January 10, 2005. As soon as an entry of judgment thereon was issued on January 17, 2005, the corresponding writ of execution got implemented and satisfied in full.

But this notwithstanding, petitioners still opted to fight it out before the Court of Appeals and later, before the Court. As it was, petitioners also lost in both fora. The Court's Resolution dated June 23, 2008 dismissing the petition in G.R. No. 182268 became final and executory on August 21, 2008. Notably, there was no modification of the NLRC Resolution dated July 29, 2004 which had been earlier executed and satisfied in respondent's favor.

Although petitioners formally opposed respondent's claims all the way up to this Court, they, nonetheless, yielded to the execution of judgment sought by respondent way back in 2005 at the ELA's level. Inasmuch as petitioners had already satisfied the final monetary benefits awarded to respondent, the latter may not ask for another round of execution, lest, it violates the principle against unjust enrichment.

To emphasize, there is no additional increment which accrued to respondent by reason of the Court's Resolution dated June 23, 2008 which did not modify, let alone, alter the long executed judgment of the NLRC.

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[34] *Mt. Carmel College v. Resuena, et al.*, 561 Phil. 620, 644-645 (2007).

[35] *Id.* at 645.

The Court of Appeals' application of ***Javellana, Jr. v. Belen***[36] and ***Session Delights Ice Cream & Fast Foods v. Hon. Court of Appeals***[37] to the present case for the purpose of allowing a recomputation of respondent's backwages and separation pay is misplaced. These two (2) cases are not on all fours with the present case. There was no prior execution in these two (2) cases, unlike here where the NLRC judgment in respondent's favor had long been executed and satisfied way back in 2005. For her to seek supplemental execution based on the finality of the Court's Resolution dated June 23, 2009 is devoid of legal and factual basis. For there are no supplemental benefits to speak of owing to respondent arising from the aforesaid Resolution.

It is settled that a final judgment may no longer be altered, amended, or modified, even if the alteration, amendment or modification is meant to correct a perceived error in conclusions of fact and law and regardless of what court renders it.[38] More so when, as in this case, such final judgment had already been executed and fully satisfied.

Suffice it to state that respondent's receipt of the full separation pay and other benefits effectively severed the employer-employee relationship between her and petitioners. From that point up until the finality of the Court's Resolution dated June 23, 2008, respondent was no longer an employee of petitioners. Hence, she has no more right to demand further benefits as such.[39]

To repeat, granting a recomputation and, consequently, another round of execution would indubitably alter the original decision which had been completely satisfied, nay, unjust enrichment would certainly result.

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[36] 628 Phil. 241 (2010).

[37] 625 Phil. 612 (2010).

[38] *Mercury Drug Corporation, et al. v. Spouses Huang, et al.*, 817 Phil. 434, 445 (2017) citing *National Housing Authority v. Court of Appeals, et al.*, 731 Phil. 400, 405 (2014).

[39] *Sarona v. NLRC*, 679 Phil. 394, 423 (2012); *Triad Security & Allied Services, Inc. v. Ortega*, 517 Phil. 133, 149 (2006).

ACCORDINGLY, the petition is **PARTIALLY GRANTED**. The Decision dated September 24, 2013 and Resolution dated March 26, 2014 in CA G.R. SP. No. 03459-MIN are **MODIFIED** and the Executive Labor Arbiter's Order dated February 19, 2009, **REINSTATED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Reyes, J. Jr., and *Lopez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 215801. January 15, 2020]

IN THE MATTER OF DECLARATORY RELIEF ON THE VALIDITY OF BIR REVENUE MEMORANDUM CIRCULAR NO. 65-2012 "CLARIFYING THE TAXABILITY OF ASSOCIATION DUES, MEMBERSHIP FEES AND OTHER ASSESSMENTS/ CHARGES COLLECTED BY CONDOMINIUM CORPORATIONS"

BUREAU OF INTERNAL REVENUE (BIR), as herein represented by its COMMISSIONER KIM S. JACINTO-HENARES and REVENUE DISTRICT OFFICER (RDO) RICARDO B. ESPIRITU, *petitioner, vs.* **FIRST E-BANK TOWER CONDOMINIUM CORP.,** *respondent.*

[G.R. No. 218924. January 15, 2020]

IN THE MATTER OF DECLARATORY RELIEF ON THE VALIDITY OF BIR REVENUE MEMORANDUM CIRCULAR NO. 65-2012 "CLARIFYING THE

TAXABILITY OF ASSOCIATION DUES, MEMBERSHIP FEES AND OTHER ASSESSMENTS/ CHARGES COLLECTED BY CONDOMINIUM CORPORATIONS"

FIRST E-BANK TOWER CONDOMINIUM CORP., *petitioner, vs.* **BUREAU OF INTERNAL REVENUE (BIR), as herein represented by its COMMISSIONER KIM S. JACINTO-HENARES,*** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; DECLARATORY RELIEF; ELEMENTS; NOT THE PROPER REMEDY TO ASSAIL THE VALIDITY OR CONSTITUTIONALITY OF EXECUTIVE ISSUANCES.— An action for declaratory relief is governed by Section 1, Rule 63 of the Revised Rules of Court. x x x Declaratory relief requires the following elements: (1) the subject matter of the controversy must be a deed, will, contract or other written instrument, statute, executive order or regulation, or ordinance; (2) the terms of said documents and the validity thereof are doubtful and require judicial construction; (3) there must have been no breach of the documents in question; (4) there must be an actual justiciable controversy or the "ripening seeds" of one between persons whose interests are adverse; (5) the issue must be ripe for judicial determination; and (6) adequate relief is not available through other means or other forms of action or proceeding. The Court rules that *certiorari* or prohibition, not declaratory relief, is the proper remedy to assail the validity or constitutionality of executive issuances.

2. ID.; ID.; ID.; A PETITION FOR DECLARATORY RELIEF MAY BE TREATED AS ONE FOR PROHIBITION IF THE CASE HAS FAR-REACHING IMPLICATIONS AND RAISE QUESTIONS THAT NEED TO BE RESOLVED FOR

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* Petitioner First E-Bank Tower Condominium Corp. sought to change the caption of its petition in order to include the Court of Appeals as public respondent but its motion to amend the title was denied under Resolution dated October 12, 2015 in G.R. No. 218924.

THE PUBLIC GOOD; CASE AT BAR.— In ***Diaz v. The Secretary of Finance, et al***., the Court, nonetheless, held that a petition for declaratory relief may be treated as one for prohibition if the case has far-reaching implications and raises questions that need to be resolved for the public good; or if the assailed act or acts of executive officials are alleged to have usurped legislative authority. x x x Here, RMC No. 65-2012 has far-reaching ramifications among condominium corporations which have proliferated throughout the country. For numerous Filipino families, professionals, and students have, for quite sometime now, opted for condominium living as their new way of life. The matter of whether indeed the contributions of unit owners solely intended for maintenance and upkeep of the common areas of the condominium building are taxable is imbued with public interest. Suffice it to state that taxes, being the lifeblood of the government, occupy a high place in the hierarchy of State priorities, hence, all questions pertaining to their validity must be promptly addressed with the least procedural obstruction.

3. ID.; ID.; *CERTIORARI*; INSTANCES WHEN A PETITION FOR *CERTIORARI* MAY BE ALLOWED TO PROSPER NOTWITHSTANDING THE AVAILABILITY OF APPEAL; CASE AT BAR.— A petition for *certiorari* is proper where the impugned dispositions, as in this case, are tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. More so where a petition for review on *certiorari* does not appear to be a plain, speedy, and adequate remedy to address the First E-Bank's urgent concerns on its accumulated supposed tax liabilities which will never get halted until the validity of RMC No. 65-2012 is finally resolved, and considerations of public welfare and public policy compel the speedy resolution of the cases through the extraordinary remedy of *certiorari*. The Court, in some instances, allowed a petition for *certiorari* to prosper notwithstanding the availability of appeal. ***Mallari v. Banco Filipino Savings & Mortgage Bank*** enumerates these instances, *viz.:* Indeed, the Court in some instances has allowed a petition for *certiorari* to prosper notwithstanding the availability of an appeal, such as, (a) when public welfare and the advancement of public policy dictate it; (b) when the broader interest of justice so requires; (c) when the writs issued are null; and (d) when the questioned order amounts to an oppressive exercise of judicial authority.

4. ID.; CIVIL PROCEDURE; JURISDICTION; COURT OF TAX APPEALS (CTA); POSSESSES ALL SUCH IMPLIED, INHERENT, AND INCIDENTAL POWERS NECESSARY TO THE FULL AND EFFECTIVE EXERCISE OF ITS APPELLATE JURISDICTION OVER TAX CASES.— On February 4, 2014, the Court *en banc* recognized that the Court of Tax Appeals possessed all such implied, inherent, and incidental powers necessary to the full and effective exercise of its appellate jurisdiction over tax cases. ***City of Manila v. Judge Grecia-Cuerdo*** is relevant, thus: A grant of appellate jurisdiction implies that there is included in it the power necessary to exercise it effectively, to make all orders that will preserve the subject of the action, and to give effect to the final determination of the appeal. It carries with it the power to protect that jurisdiction and to make the decisions of the court thereunder effective. The court, in aid of its appellate jurisdiction, has authority to control all auxiliary and incidental matters necessary to the efficient and proper exercise of that jurisdiction. For this purpose, it may, when necessary, prohibit or restrain the performance of any act which might interfere with the proper exercise of its rightful jurisdiction in cases pending before it. x x x Consequently, the Court held that the authority of the Court of Tax Appeals to take cognizance of petitions for *certiorari* against interlocutory orders of the RTC in local tax cases was deemed included in the authority or jurisdiction granted it by law. The Court underscored that the grant of appellate jurisdiction to the Court of Tax Appeals included such power necessary to exercise it effectively. Besides, a split-jurisdiction between the Court of Tax Appeals and the Court of Appeals is anathema to the orderly administration of justice. *"The Court cannot accept that such was the legislative motive, especially considering that the law expressly confers on the CTA, the tribunal with the specialized competence over tax and tariff matters, the role of judicial review over local tax cases without mention of any other court that may exercise such power."*

5. ID.; ID.; ID.; ID.; CTA HAS JURISDICTION TO RULE ON THE CONSTITUTIONALITY OR VALIDITY OF A TAX LAW OR REGULATION OR ADMINISTRATIVE ISSUANCE, WHETHER RAISED BY THE TAXPAYER DIRECTLY OR AS A DEFENSE.— On August 16, 2016, in ***Banco de Oro v. Republic of the Phils., et al.,*** the Court *en*

banc pronounced in no uncertain terms that the Court of Tax Appeals had jurisdiction to rule on the constitutionality or validity of a tax law or regulation or administrative issuance. x x x ***Banco de Oro*** further stressed that such undoubted jurisdiction is exclusively vested in the Court of Tax Appeals whether it is raised by the taxpayer directly or as a defense.

6. MERCANTILE LAW; REPUBLIC ACT NO. 4726 (CONDOMINIUM ACT); CONDOMINIUM, DEFINED; A CORPORATION CONDOMINIUM IS NOT DESIGNED TO ENGAGE IN ACTIVITIES THAT GENERATE INCOME OR PROFIT BUT IS AUTHORIZED TO COLLECT ASSOCIATION DUES, MEMBERSHIP FEES AND OTHER ASSESSMENT/CHARGES PURELY FOR THE BENEFIT OF THE CONDOMINIUM OWNERS.— ***Yamane*** did emphasize that a corporation condominium is not designed to engage in activities that generate income or profit. A discussion on the nature of a condominium corporation is, indubitably, in order. The creation of the condominium corporation is sanctioned by Republic Act No. 4726 (RA 4726) (The Condominium Act). Under the law, a condominium is an interest in real property consisting of a separate interest in a unit in a residential, industrial or commercial building and an undivided interest in common, directly or indirectly, in the land on which it is located and in other common areas of the building. To enable the orderly administration over these common areas which the unit owners jointly own, RA 4726 permits the creation of a condominium corporation for the purpose of holding title to the common areas. The unit owners shall in proportion to the appurtenant interests of their respective units automatically be members or shareholders of the condominium corporation to the exclusion of others. x x x Further, Section 9 allows a condominium corporation to provide for the means by which it should be managed. Specifically, it authorizes a condominium corporation to collect association dues, membership fees, and other assessments/charges for: a) maintenance of insurance policies; b) maintenance, utility, gardening and other services benefiting the common areas, for the employment of personnel necessary for the operation of the building, and legal, accounting and other professional and technical services; c) purchase of materials, supplies and the like needed by the common areas; d) reconstruction of any portion or portions of any damage to or destruction of the project; and

e) reasonable assessments to meet authorized expenditures. In fine, the collection of association dues, membership fees, and other assessments/charges is purely for the benefit of the condominium owners. It is a necessary incident to the purpose to effectively oversee, maintain, or even improve the common areas of the condominium as well as its governance. As held in ***Yamane*** *"[t]he profit motive in such cases is hardly the driving factor behind such improvements, if it were contemplated at all. Any profit that would be derived under such circumstances would merely be incidental, if not accidental."* More, a condominium corporation is especially formed for the purpose of holding title to the common area and exists only for the benefit of the condominium owners. Nothing more.

7. TAXATION; INCOME TAXATION; BIR REVENUE MEMORANDUM CIRCULAR (RMC) NO. 65-2012; INVALIDLY DECLARES THAT THE AMOUNTS PAID AS DUES OR FEES BY MEMBERS AND TENANTS OF A CONDOMINIUM CORPORATION FORM PART OF THE GROSS INCOME OF THE LATTER, THUS SUBJECT TO INCOME TAX, VALUE ADDED TAX, AND WITHHOLDING TAX; RMC NO. 65-2012 IS INVALID.— RMC No. 65-2012, sharply departs from ***Yamane*** and the law on condominium corporations. It invalidly declares that the amounts paid as dues or fees by members and tenants of a condominium corporation form part of the gross income of the latter, thus, subject to income tax, value-added tax, and withholding tax. The reason given — a condominium corporation furnishes its members and tenants with benefits, advantages, and privileges in return for such payments, consequently, these payments constitute taxable income or compensation for beneficial services it provides to its members and tenants, hence, subject to income tax, value-added tax, and withholding tax.

8. ID.; REPUBLIC ACT NO. 8424 (TAX REFORM ACT OF 1997); TAXABLE INCOME; GROSS INCOME, DEFINED; ASSOCIATION DUES, MEMBERSHIP FEES AND OTHER ASSESSMENTS COLLECTED BY CONDOMINIUM CORPORATION ARE NOT SOURCES OF GROSS INCOME.— Capital is a fund or property existing at one distinct point in time while income denotes a flow of wealth during a definite period of time. Income is gain derived and severed from capital. Republic Act No. 8424 (RA 8424) or the Tax Reform

Act of 1997 was in effect when RMC No. 65-2012 was issued on October 31, 2012. In defining taxable income, Section 31 of RA 8424 states: Section 31. Taxable Income Defined. - The term taxable income means the pertinent items of gross income specified in this Code, less the deductions and/or personal and additional exemptions, if any, authorized for such types of income by this Code or other special laws. Gross income means income derived from whatever source, including compensation for services; the conduct of trade or business or the exercise of a profession; dealings in property; interests; rents; royalties; dividends; annuities; prizes and winnings; pensions; and a partner's distributive share in the net income of a general professional partnership, among others. x x x Section 32 of RA 8424 does not include association dues, membership fees, and other assessments/charges collected by condominium corporations as sources of gross income. The subsequent amendment under the TRAIN Law substantially replicates the old Section 32. Clearly, RMC No. 65-2012 expanded, if not altered, the list of taxable items in the law. RMC No. 65-2012, therefore, is void. Besides, where the basic law and a rule or regulation are in conflict, the basic law prevails.

9. ID.; ID.; VALUE-ADDED TAX; DEFINED; ASSOCIATION DUES, MEMBERSHIP FEES, AND OTHER ASSESSMENTS DO NOT ARISE FROM TRANSACTIONS INVOLVING SALE, BARTER, OR EXCHANGE OF GOODS OR PROPERTY AND ARE NOT GENERATED BY THE PERFORMANCE OF SERVICES.— Association dues, membership fees, and other assessments/charges do not arise from transactions involving the sale, barter, or exchange of goods or property. Nor are they generated by the performance of services. As such, they are not subject to value-added tax per Section 105 of RA 8424. x x x The value-added tax is a burden on transactions imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services, even in the absence of profit attributable thereto, so much so that even a non-stock, non-profit organization or government entity, is liable to pay value-added tax on the sale of goods or services.

10. ID.; ID.; WITHHOLDING TAX; INTENDED TO FACILITATE THE COLLECTION OF INCOME TAX; IF THERE IS NO INCOME TAX, WITHHOLDING TAX

CANNOT BE COLLECTED.— The withholding tax system was devised for three (3) primary reasons, *i.e.* — (1) to provide taxpayers a convenient manner to meet their probable income tax liability; (2) to ensure the collection of income tax which can otherwise be lost or substantially reduced through failure to file the corresponding returns; and (3) to improve the government's cash flow. This results in administrative savings, prompt and efficient collection of taxes, prevention of delinquencies and reduction of governmental effort to collect taxes through more complicated means and remedies. Succinctly put, withholding tax is intended to facilitate the collection of income tax. And if there is no income tax, withholding tax cannot be collected. Section 57 of RA 8424 directs that only income, be it active or passive, earned by a payor-corporation can be subject to withholding tax.

11. ID.; ID.; COMMISSIONER OF INTERNAL REVENUE; IN THE EXERCISE OF ITS POWER TO INTERPRET TAX LAWS AND DECIDE TAX CASES, IT CANNOT ISSUE ADMINISTRATIVE RULINGS OR CIRCULARS INCONSISTENT WITH THE LAW TO BE IMPLEMENTED; GRAVE ABUSE OF DISCRETION, COMMITTED IN CASE AT BAR.— Section 4 of RA 8424 empowers the BIR Commissioner to interpret tax laws and to decide tax cases. x x x But the BIR Commissioner cannot, in the exercise of such power, issue administrative rulings or circulars inconsistent with the law to be implemented. Administrative issuances must not override, supplant, or modify the law, they must remain consistent with the law intended to carry out. Surely, courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with the law they seek to apply and implement. As shown, the BIR Commissioner expanded or modified the law when she declared that association dues, membership fees, and other assessments/charges are subject to income tax, value-added tax, and withholding tax. In doing so, she committed grave abuse of discretion amounting to lack or excess of jurisdiction. As to what constitutes 'grave abuse of discretion' and when a government branch, agency, or instrumentality is deemed to have committed it, ***Kilusang Mayo Uno v. Aquino III*** instructs: Grave abuse of discretion denotes a "capricious, arbitrary[,] and whimsical exercise of power. The abuse of discretion must

be patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, as not to act at all in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility." x x x In sum, the BIR Commissioner is empowered to interpret our tax laws but not expand or alter them. In the case of RMC No. 65-2012, however, the BIR Commissioner went beyond, if not, gravely abused such authority.

12. CIVIL LAW; OBLIGATIONS AND CONTRACTS; JUDICIAL CONSIGNATION; REQUISITES; CASE AT BAR.— Petitioner resorted to judicial consignation of its alleged tax payments in the court, thus, reckons with the requirements of judicial consignation, *viz.:* (1) a debt due; (2) the creditor to whom tender of payment was made refused without just cause to accept the payment, or the creditor was absent, unknown or incapacitated, or several persons claimed the same right to collect, or the title of the obligation was lost; (3) the person interested in the performance of the obligation was given notice before consignation was made; (4) the amount was placed at the disposal of the court; and (5) the person interested in the performance of the obligation was given notice after the consignation was made. Here, it is imperative to determine whether the First E-Bank actually complied with the requirements for judicial consignation. This is a question of fact which by this Court, not being a trial court cannot pass upon. The trial court, therefore, thus correctly held that the First E-Bank may initiate the appropriate motion for the release of the consignated funds, upon finality of the judicial determination on the validity of RMC No. 65-2012 and only after it has determined the presence of the requirements for judicial consignation.

APPEARANCES OF COUNSEL

The Solicitor General for Bureau of Internal Revenue.
Jose D. Melgarejo for First E-Bank Tower Condo Corporation.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Cases

These twin cases refer to the: 1) Petition for Review filed by the Bureau of Intemal Revenue (BIR) (G.R. No. 215801); and 2) Special Civil Action for *Certiorari* initiated by the First E-Bank Tower Condominium Corp. (First E-Bank) (G.R. No. 218924). Both cases assail the following dispositions of the Court of Appeals in CA-G.R. CV No. 102266 entitled "*In the Matter of Declaratory Relief on the Validity of BIR Revenue Memorandum Circular No. 65-2012 'Clarifying the Taxability of Association Dues, Membership Fees and Other Assessments/ Charges Collected by Condominium Corporations,' First E-Bank Tower Condominium Corp. v. Bureau of Internal Revenue (BIR) represented by its Commissioner Kim S. Jacinto-Henares, et al.:*"

1) Resolution[1] dated June 26, 2014 dismissing for alleged lack of jurisdiction the respective appeals of the First E-Bank and the BIR, *et al*., *viz.:*

It appearing from the records that the subject matter of the instant appeal is the Resolution dated 05 September 2013 of the RTC-Branch 146, Makati City, declaring "to have been invalidly issued" BIR Revenue Memorandum Circular No. 65-2012 dated 31 October 2012 which imposed 12% value added tax and 32% income tax on association dues/membership fees and other charges collected by condominium corporation from its members and tenants, taking into account Section 7 (a) of Republic Act No. 9282 (which took effect on 23 April 2004) which expressly provides that the Court of Tax Appeals has exclusive appellate jurisdiction over "Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved

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[1] Penned by Associate Justice Ramon M. Bato, Jr., with the concurrence of Associate Justices Rodil V. Zalameda (now a member of this Court) and Agnes Reyes-Carpio, all members of the Special Seventeenth Division, G.R. No. 218924, *rollo*, pp. 37-38.

by them in the exercise of their original or appellate jurisdiction," considering that the Court of Tax Appeals is a highly specialized body specifically created for the purpose of reviewing tax cases and resolving tax problems, the instant appeal is hereby ***DISMISSED*** outright for lack of jurisdiction over the nature and subject matter of the action.

The Compliance/Manifestation dated 16 May 2014 of RTC Judge Encarnacion Jaja G. Moya and Branch Clerk of Court Therese Lynn R. Bandong, Manifestations dated 29 May 2014 and 30 May 2014 of First E-Bank Tower Condominium Corporation and the Manifestation dated 02 June 2014 of the Republic of the Philippines are ***NOTED***.

Let the instant appeal be considered ***CLOSED*** and ***TERMINATED***.

Let the original records be returned to the trial court.

SO ORDERED.

2) Resolution[2] dated November 27, 2014 denying the parties' respective motions for reconsideration.

The Facts

The First E-Bank filed the petition below for declaratory relief seeking to declare as invalid Revenue Memorandum Circular No. 65-2012 (RMC No. 65-2012) dated October 31, 2012.[3] The case was raffled to the Regional Trial Court, Branch 146, Makati City.

RMC No. 65-2012 entitled "*Clarifying the Taxability of Association Dues, Membership Fees and Other Assessments/ Charges Collected by Condominium Corporations*" relevantly reads:

x x x x x x x x x

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[2] Penned by Associate Justice Ramon M. Bato, Jr. with the concurrence of Associate Justices Rodil V. Zalameda (now a member of this Court) and Agnes Reyes-Carpio, all members of the Former Special Seventeenth Division, *id.* at 12-16.

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

CLARIFICATION

The taxability of association dues, membership fees, and other assessments/charges collected by a condominium corporation from its members, tenants and other entities are discussed hereunder.

I. Income Tax — The amounts paid in as dues or fees by members and tenants of a condominium corporation form part of the gross income of the latter subject to income tax. This is because a condominium corporation furnishes its members and tenants with benefits, advantages, and privileges in return for such payments. For tax purposes, the association dues, membership fees, and other assessments/charges collected by a condominium corporation constitute income payments or compensation for beneficial services it provides to its members and tenants. The previous interpretation that the assessment dues are funds which are merely held in trust by a condominium corporation lacks legal basis and is hereby abandoned.

Moreover, since a condominium corporation is subject to income tax, income payments made to it are subject to applicable withholding taxes under existing regulations.

II. Value-Added Tax (VAT) — Association dues, membership fees, and other assessments/charges collected by a condominium corporation are subject to VAT since they constitute income payment or compensation for the beneficial services it provides to its members and tenants.

> Section 105 of the National Internal Revenue Code of 1997, as amended, provides:
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> "SECTION 105. Persons Liable. — Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.
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> x x x x x x x x x
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> The phrase 'in the course of trade or business' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, **by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells**

exclusively to members or their guests), or government entity." (Emphasis supplied)

The above provision is clear — even a non-stock, non-profit organization or government entity is liable to pay VAT on the sale of goods or services. This conclusion was affirmed by the Supreme Court in Commissioner of Internal Revenue v. Court of Appeals and Commonwealth Management and Services Corporation, G.R. No. 125355, March 30, 2000. In this case, the Supreme Court held:

> "(E)ven a non-stock, non-profit organization or government entity, is liable to pay VAT on the sale of goods or services. VAT is a tax on transactions, imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services, even in the absence of profit attributable thereto." The term "in the course of trade or business" requires the regular conduct or pursuit of a commercial or an economic activity, regardless of whether or not the entity is profit-oriented.
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> The definition of the term "in the course of trade or business" incorporated in the present law applies to all transactions even to those made prior to its enactment. Executive Order No. 273 stated that any person who, in the course of trade or business, sells, barters or exchanges goods and services, was already liable to pay VAT. The present law merely stresses that even a nonstock, nonprofit organization or government entity is liable to pay VAT for the sale of goods and services.
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> Section 108 of the National Internal Revenue Code of 1997 defines the phrase "sale of services" as the "performance of all kinds of services for others for a fee, remuneration or consideration." It includes "the supply of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking or project."
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> On February 5, 1998, the Commissioner of Internal Revenue issued BIR Ruling No. 010-98 emphasizing that a domestic corporation that provided technical, research, management and technical assistance to its affiliated companies and received payments on a reimbursement-of-cost basis, without any intention of realizing profit, was subject to VAT on services rendered.

In fact, even if such corporation was organized without any intention of realizing profit, any income or profit generated by the entity in the conduct of its activities was subject to income tax.

Hence, **it is immaterial whether the primary purpose of a corporation indicates that it receives payments for services rendered to its affiliates on a reimbursement-on-cost basis only, without realizing profit, for purposes of determining liability for VAT on services rendered. As long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to VAT**."

Accordingly, the gross receipts of condominium corporations including association dues, membership fees, and other assessments/ charges are subject to VAT, income tax and income payments made to it are subject to applicable withholding taxes under existing regulations.[4]

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The First E-Bank's Allegations

In its Petition dated December 20, 2012, the First E-Bank essentially alleged: It was a non-stock non-profit condominium corporation. It owned and possessed, through its members, a condominium office building. RMC No. 65-2012 imposed on it two (2) tax liabilities: 1) value-added tax (VAT) of ₱118,971. 53 to be paid on December 2012 and every month thereafter; and b) income tax of ₱665,904.12 to be paid on or before April 15, 2013 and every year thereafter.[5]

RMC No. 65-2012 burdened the owners of the condominium units with income tax and VAT on their own money which they exclusively used for the maintenance and preservation of the building and its premises. RMC No. 65-2012 was oppressive and confiscatory because it required condominium unit owners to produce additional amounts for the thirty-two percent (32%) income tax and twelve percent (12%) VAT.[6]

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[4] Bureau of Internal Revenue, Revenue Memorandum Circular No. 65-2012 https://www.bir.gov.ph/images/bir_files/old_files/pdf/66019RMC%20No% 2065-2012.pdf (Accessed on July 24, 2019).

[5] G.R. No. 218924, *rollo*, p. 51.

[6] *Id.*

Through the Makati Commercial Estate Association, Inc., it sent a Letter dated December 5, 2012 to the BIR Commissioner requesting deferment of RMC No. 65-2012. A Letter dated December 19, 2012 was likewise sent to Makati City Revenue District Officer Ricardo B. Espiritu informing him of the continuous judicial consignation of the income tax and VAT payments due under RMC No. 65-2012.[7]

The BIR, et al.'s Comments

Under Comment dated February 11, 2013, the BIR and RDO Espiritu through the Office of the Solicitor General (OSG) riposted that declaratory relief was no longer proper here considering that RMC No. 65-2012 already took effect on October 31, 2012. The alleged injury which the First E-Bank sought to prevent had already arisen as of that date.[8]

By its separate comment,[*] the BIR's Litigation Division argued that the petition should be dismissed for violation of the principle of primary jurisdiction. Several condominium corporations had already referred the issue to the BIR Law Division for further clarification. Ultimately, only the Secretary of Finance had primary jurisdiction over the issue raised here. Too, a petition for declaratory relief will not prosper if the questioned statute had already been breached, as in this case. RMC No. 65-2012 was only a clarificatory issuance on pertinent laws, specifically the National Internal Revenue Code (NIRC). It was merely a restatement of the BIR's prevailing position on the issue of taxation.[9]

The First E-Bank's Reply

The First E-Bank replied that judicial consignation of its tax payments under protest was necessary.[10]

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[7] *Id.*

[8] *Id.* at 52.

[*] date unknown.

[9] *Id.*

[10] *Id.* at 54.

The Trial Court's Ruling

By Resolution[11] dated September 5, 2013, the trial court ruled that the First E-Bank correctly resorted to a petition for declaratory relief for the purpose of invalidating RMC No. 65-2012. On this score, the trial court declared as invalid RMC No. 65-2012 for it purportedly expanded the law, created an additional tax burden on condominium corporations, and was issued without the requisite notice and hearing, thus:

> As to the validity of the Memorandum Circular issued, it is respondent's contention that it merely clarified and was simply issued to restate and clarify the prevailing position and ruling of the BIR. It was a mere interpretation of an existing law which has already been in effect and which was not set to be amended. However, the same appears to be not true as it goes beyond its objective to clarify the existing statute. The assailed Revenue Memorandum Circular not merely interpreted or clarified the existing BIR Ruling but in fact legislated or introduced a new legislation under the mantle of its quasi-legislative authority. The BIR Commissioner, under the guise of clarifying income tax on association dues, made Revenue Memorandum Circular effective immediately. In so doing, the passage contravenes the constitutional mandate of due process of law.[12]
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> x x x x x x x x x
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> The above cited portion of the Memorandum Circular failed to show what particular law it clarified. Instead it shows that it merely departed from the several rulings of the Bureau exempting from income tax the assessments/charges collected by condominium corporations from its members, on the ground that the collection of association dues and other assessments/charges are merely held in trust to be used solely for administrative expenses in implementing its purpose. The new circular in effect made its own legislation abandoning the previous rulings of the BIR which became the practice of the condominium corporations including herein petitioner. The Revenue Circular changed and departed from the long standing ruling of the BIR that association dues and other fees and charges collected from members are tax exempt. In so doing, it abruptly charges from taxpayer

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[11] *Id.* at 50-63.

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

an imposition which was then not existing, and worse made it immediately effective which is prejudicial to the rights of the petitioner. It did not merely interpret or clarify but changed altogether the long standing rules of the Bureau of Internal Revenue.[13]

x x x x x x x x x

Moreover, it is already the common business practice of petitioner that the association dues, membership fees and the like are not included as part of its income and therefore of the VAT. The advent of the Memorandum Circular 65-2012 issued by the Commissioner changes the tax liability of petitioner in the sense that it is now subject to tax. It created a new tax burden upon petitioner. Petitioner then could not be faulted to consign judicially as they claim, the (VAT) amount pending resolution of the petition for declaratory relief herein filed. Respondent BIR Commissioner should have accorded petitioner the opportunity to be heard, which was the bone of contention of the letter sent to the Honorable Commissioner which was not acted upon.

The Revenue Memorandum Circular did not only clarify an existing law, but changes its import and interpretation that in so doing it prejudices the right of the petitioner as a tax payer.[14]

x x x x x x x x x

Since the BIR in passing the subject memorandum circular failed to accord respondent or those similarly situated as a tax payer due notice and opportunity to be heard, before issuing said circular it is this court's opinion that the issuance was arbitrarily and in violation of the due process clause of the constitution. The respondent in imposing additional tax burden on petitioner violated the latter's constitutional right to due notice and hearing.[15]

x x x x x x x x x

In another vein, the trial court noted the absence of proof that the First E-Bank actually made a judicial consignation of its purported tax payments.[16]

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[13] *Id.* at 59.

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

[15] *Id.* at 62.

[16] G.R. No. 218924, *Id.* at 62.

The BIR, *et al*. moved for reconsideration. It argued that the petition was premature, RMC No. 65-2012 was valid, and the petition for declaratory relief should be dismissed for violating the principle of primary jurisdiction. For its part, the First E-Bank moved for partial reconsideration, praying that the consignated funds be released.[17]

By Order[18] dated December 18, 2013, the trial court denied the parties' respective motions for reconsideration. It reiterated that the First E-Bank properly resorted to a petition for declaratory relief for the purpose of invalidating RMC No. 65-2012. It also noted that the First E-Bank appeared to have judicially consignated the funds only on November 17, 2013, following the resolution of the case on September 5, 2013. For sure, this judicial consignation, which was belatedly done, cannot justify a modification of the aforesaid resolution. The trial court, nonetheless, pronounced that the First E-Bank was not precluded from filing the proper motion to withdraw the consignated amounts upon the finality of the ruling on the validity of RMC 65-2012.

The Proceedings before the Court of Appeals

Aggrieved, both parties appealed to the Court of Appeals. On one hand, the BIR, *et al*. challenged the trial court's ruling insofar as it: a) decreed that the First E-Bank correctly availed of the petition for declaratory relief when it sought to nullify RMC No. 65-2012; and b) declared the same as invalid. On the other hand, the First E-Bank assailed the trial court's ruling insofar as it declined to order the release of the judicially consignated amounts.

The Court of Appeals' Dispositions

By its first assailed Resolution dated June 26, 2014, the Court of Appeals dismissed the appeal of the First E-Bank and the joint appeal of the BIR, *et al*. on ground of lack of jurisdiction. It emphasized that jurisdiction over the case was exclusively

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

[18] *Id.* at 45-48.

vested in the Court of Tax Appeals since the trial court's impugned resolution involved a tax matter.

Both the First E-Bank and the BIR, *et al*., moved for reconsideration. They commonly asserted that the Court of Appeals had appellate jurisdiction over their respective appeals emanating from a petition for declaratory relief which sought to invalidate RMC No. 65-2012.[19]

By its second assailed Resolution[20] dated November 27, 2014, the Court of Appeals denied the motions for reconsideration and stressed anew that the Court of Tax Appeals had exclusive jurisdiction over the appeals.

The Present Petitions

In G.R. No. 218924, the First E-Bank initiated, on alleged ground of grave abuse of discretion, a Special Civil Action for *Certiorari*[21] to nullify the assailed dispositions of the Court of Appeals. According to the First E-Bank, the Court of Appeals, not the Court of Tax Appeals, has jurisdiction over its appeal since the subject matter of the case is not local tax or taxes *per se* but a petition to declare as invalid RMC No. 65-2012. The Court of Appeals purportedly based its rulings on conjectures and surmises, not on established facts and law.

In G.R. No. 215801,[22] the BIR, *et al*. availed of Ru1e 45 of the Revised Rules of Court. They plead the same legal issue pertaining to which court has jurisdiction over the trial court's decision.

Issues

First: Is a petition for declaratory relief proper for the purpose of invalidating RMC No. 65-2012?

Second: Did the Court of Appeals validly dismiss the twin appeals on ground of lack of jurisdiction?

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[19] *Id.* at 12-16.

[20] *Id.* at 16.

[21] *Id.* at 2-11.

[22] G.R. No. 21580l, *rollo,* pp. 23-39.

Third: Is RMC No. 65-2012 valid?

a) Is a condominium corporation engaged in trade or business?

b) Are association dues, membership fees, and other assessments/charges subject to income tax, value-added tax, and withholding tax?

Fourth: Is the First E-Bank entitled to the release of its judicially consignated tax payments?

Ruling

A petition for declaratory relief is not the proper remedy to seek the invalidation of RMC No. 65-2012

An action for declaratory relief is governed by Section 1, Rule 63 of the Revised Rules of Court, thus:

> Section l. Who may file petition. — Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

Declaratory relief requires the following elements: (1) the subject matter of the controversy must be a deed, will, contract or other written instrument, statute, executive order or regulation, or ordinance; (2) the terms of said documents and the validity thereof are doubtful and require judicial construction; (3) there must have been no breach of the documents in question; (4) there must be an actual justiciable controversy or the "ripening seeds" of one between persons whose interests are adverse; (5) the issue must be ripe for judicial determination; and (6) adequate relief is not available through other means or other forms of action or proceeding.[23]

[23] *CIR v. Standard Insurance Co., Inc.*, G.R. No. 219340, November 7, 2018.

The Court rules that *certiorari* or prohibition, not declaratory relief, is the proper remedy to assail the validity or constitutionality of executive issuances. ***DOTR v. PPSTA***[24] is apropos:

The Petition for Declaratory Relief is not the proper remedy

One of the requisites for an action for declaratory relief is that it must be filed before any breach or violation of an obligation. Section 1, Rule 63 of the Rules of Court states, thus:

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Thus, there is no actual case involved in a Petition for Declaratory Relief. It cannot, therefore, be the proper vehicle to invoke the judicial review powers to declare a statute unconstitutional.

It is elementary that before this Court can rule on a constitutional issue, there must first be a justiciable controversy. A justiciable controversy refers to an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory. As We emphasized in Angara v. Electoral Commission, any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities.

To question the constitutionality of the subject issuances, respondents should have invoked the expanded *certiorari* jurisdiction under Section 1 of Article VIII of the 1987 Constitution. The adverted section defines judicial power as the power not only "to settle actual controversies involving rights which are legally demandable and enforceable," but also "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."

There is a grave abuse of discretion when there is patent violation of the Constitution, the law, or existing jurisprudence. On this score, it has been ruled that "the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition may be issued to correct errors of jurisdiction committed

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[24] G.R. No. 230107, July 24, 2018.

not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions, but also to set right, undo[,] and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions." **Thus, petitions for *certiorari* and prohibition are the proper remedies where an action of the legislative branch is seriously alleged to have infringed the Constitution**. (Emphasis supplied)

In ***Diaz v. The Secretary of Finance, et al***.,[25] the Court, nonetheless, held that a petition for declaratory relief may be treated as one for prohibition if the case has far-reaching implications and raises questions that need to be resolved for the public good; or if the assailed act or acts of executive officials are alleged to have usurped legislative authority, thus:

On August 24, 2010 the Court issued a resolution, treating the petition as one for prohibition rather than one for declaratory relief, the characterization that petitioners Diaz and Timbol gave their action. The government has sought reconsideration of the Court's resolution, however, arguing that petitioners' allegations clearly made out a case for declaratory relief, an action over which the Court has no original jurisdiction. The government adds, moreover, that the petition does not meet the requirements of Rule 65 for actions for prohibition since the BIR did not exercise judicial, quasi-judicial, or ministerial functions when it sought to impose VAT on toll fees. Besides, petitioners Diaz and Timbol has a plain, speedy, and adequate remedy in the ordinary course of law against the BIR action in the form of an appeal to the Secretary of Finance.

But there are precedents for treating a petition for declaratory relief as one for prohibition if the case has far-reaching implications and raises questions that need to be resolved for the public good. The Court has also held that a petition for prohibition is a proper remedy to prohibit or nullify acts of executive officials that amount to usurpation of legislative authority.

Here, the imposition of VAT on toll fees has far-reaching implications. Its imposition would impact, not only on the more than

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[25] G.R. No. 193007, 669 Phil. 371, 382-383 (2011).

half a million motorists who use the tollways everyday, but more so on the government's effort to raise revenue for funding various projects and for reducing budgetary deficits. (Emphasis supplied)

Here, RMC No. 65-2012 has far-reaching ramifications among condominium corporations which have proliferated throughout the country. For numerous Filipino families, professionals, and students have, for quite sometime now, opted for condominium living as their new way of life. The matter of whether indeed the contributions of unit owners solely intended for maintenance and upkeep of the common areas of the condominium building are taxable is imbued with public interest. Suffice it to state that taxes, being the lifeblood of the government, occupy a high place in the hierarchy of State priorities, hence, all questions pertaining to their validity must be promptly addressed with the least procedural obstruction.

Notably, the issue at hand has already pended for six (6) years now, first with the trial court, then with the Court of Appeals, and now with this Court. Hence, to forestall any further delay, instead of remanding the cases to the Court of Appeals, we here and now write *finis* to these cases once and for all, ***Diaz*** enunciated:

> To dismiss the petition and resolve the issues later, after the challenged VAT has been imposed, could cause more mischief both to the tax-paying public and the government. A belated declaration of nullity of the BIR action would make any attempt to refund to the motorists what they paid an administrative nightmare with no solution. Consequently, it is not only the right, but the duty of the Court to take cognizance of and resolve the issues that the petition raises.
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> Although the petition does not strictly comply with the requirements of Rule 65, the Court has ample power to waive such technical requirements when the legal questions to be resolved are of great importance to the public. The same may be said of the requirement of *locus standi* which is a mere procedural requisite.

G.R. No. 218924

The First E-Bank faults the Court of Appeals with grave abuse of discretion amounting to lack or excess of jurisdiction

when the latter dismissed the former's appeal from the trial court's Resolution dated September 5, 2013 and Order dated December 18, 2013.

A petition for *certiorari* is proper where the impugned dispositions, as in this case, are tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.[26] More so where a petition for review on *certiorari* does not appear to be a plain, speedy, and adequate remedy to address the First E- Bank's urgent concerns on its accumulated supposed tax liabilities which will never get halted until the validity of RMC No. 65-2012 is finally resolved, and considerations of public welfare and public policy compel the speedy resolution of the cases through the extraordinary remedy of *certiorari*.

The Court, in some instances, allowed a petition for *certiorari* to prosper notwithstanding the availability of appeal. ***Mallari v. Banco Filipino Savings & Mortgage Bank***[27] enumerates these instances, *viz.:*

> Indeed, the Court in some instances has allowed a petition for *certiorari* to prosper notwithstanding the availability of an appeal, such as, (a) when public welfare and the advancement of public policy dictate it; (b) when the broader interest of justice so requires; (c) when the writs issued are null; and (d) when the questioned order amounts to an oppressive exercise of judicial authority.

So must it be.

G.R. No. 215801

On the part of the BIR, *et al.*, they opted to pursue the regular route under Rule 45 of the Revised Rules of Court. Surely, being the beneficiary of the taxes paid by the First E-Bank, the State has no compelling need to avail of the extraordinary remedy under Rule 65. At any rate, Rule 45 is undoubtedly an available remedy in the ordinary course of law.

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[26] See *Rural Bank of Calinog (Iloilo), Inc. v. Court of Appeals*, G.R. No. 146519, August 8, 2005.

[27] G.R. No. 157660, 585 Phil. 657, 662 (2008).

The parties' resort to the Court of Appeals was proper in light of the then prevailing jurisprudence

We now resolve the issue of jurisdiction.

Section 7 of Republic Act No. 9282 (RA 9282)[28] outlines the appellate jurisdiction of the Court of Tax Appeals, *viz.:*

Sec. 7. Jurisdiction. — The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

3. Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;

4. Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

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[28] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

5. Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;

6. Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code;

7. Decisions of the Secretary of Trade and Industry, in the case of non-agricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Section 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties.

On August 30, 2008, the Court *en banc* decreed in ***British American Tobacco v. Camacho, et al.*** [29] that the Court of Tax Appeals did not have jurisdiction to pass upon the constitutionality or validity of a law or rule, thus:

While the above statute confers on the CTA jurisdiction to resolve tax disputes in general, this does not include cases where the constitutionality of a law or rule is challenged. **Where what is assailed is the validity or constitutionality of a law, or a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon the same. The determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts. Indeed, the Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts**. This is within the scope of judicial power, which includes the authority of the courts to determine in an appropriate action the validity of the

[29] 584 Phil. 489, 511 (2008).

acts of the political departments. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. (Emphasis supplied)

The prevailing *dictum* then was only regular courts had jurisdiction to pass upon the constitutionality or validity of tax laws and regulations.

On February 4, 2014, the Court *en banc* recognized that the Court of Tax Appeals possessed all such implied, inherent, and incidental powers necessary to the full and effective exercise of its appellate jurisdiction over tax cases. ***City of Manila v. Judge Grecia-Cuerdo***[30] is relevant, thus:

A grant of appellate jurisdiction implies that there is included in it the power necessary to exercise it effectively, to make all orders that will preserve the subject of the action, and to give effect to the final determination of the appeal. It carries with it the power to protect that jurisdiction and to make the decisions of the court thereunder effective. The court, in aid of its appellate jurisdiction, has authority to control all auxiliary and incidental matters necessary to the efficient and proper exercise of that jurisdiction. For this purpose, it may, when necessary, prohibit or restrain the performance of any act which might interfere with the proper exercise of its rightful jurisdiction in cases pending before it.

Lastly, it would not be amiss to point out that a court which is endowed with a particular jurisdiction should have powers which are necessary to enable it to act effectively within such jurisdiction. These should be regarded as powers which are inherent in its jurisdiction and the court must possess them in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of such process.

In this regard, Section 1 of RA 9282 states that the CTA shall be of the same level as the CA and shall possess all the inherent powers of a court of justice.

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[30] 726 Phil. 9, 26-27 (2014).

Indeed, courts possess certain inherent powers which may be said to be implied from a general grant of jurisdiction, in addition to those expressly conferred on them. These inherent powers are such powers as are necessary for the ordinary and efficient exercise of jurisdiction; or are essential to the existence, dignity and functions of the courts, as well as to the due administration of justice; or are directly appropriate, convenient and suitable to the execution of their granted powers; and include the power to maintain the court's jurisdiction and render it effective in behalf of the litigants.

Thus, this Court has held that "while a court may be expressly granted the incidental powers necessary to effectuate its jurisdiction, a grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it, and, subject to existing laws and constitutional provisions, every regularly constituted court has power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction and for the enforcement of its judgments and mandates." Hence, demands, matters or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance. (Emphasis supplied)

Consequently, the Court held that the authority of the Court of Tax Appeals to take cognizance of petitions for *certiorari* against interlocutory orders of the RTC in local tax cases was deemed included in the authority or jurisdiction granted it by law.

The Court underscored that the grant of appellate jurisdiction to the Court of Tax Appeals included such power necessary to exercise it effectively. Besides, a split-jurisdiction between the Court of Tax Appeals and the Court of Appeals is anathema to the orderly administration of justice. *"The Court cannot accept that such was the legislative motive, especially considering that the law expressly confers on the CTA, the tribunal with the specialized competence over tax and tariff matters, the role*

of judicial review over local tax cases without mention of any other court that may exercise such power."[31]

On August 16, 2016, in ***Banco de Oro v. Republic of the Phils., et al.,***[32] the Court *en banc* pronounced in no uncertain terms that the Court of Tax Appeals had jurisdiction to rule on the constitutionality or validity of a tax law or regulation or administrative issuance, *viz.*:

The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund. It is only in the lawful exercise of its power to pass upon all maters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended.

This Court, however, declares that the Court of Tax Appeals may likewise take cognizance of cases directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance (revenue orders, revenue memorandum circulars, rulings).

Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought exclusively to the Court of Tax Appeals.

In other words, within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems. Petitions for writs of *certiorari* against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals.

Republic Act No. 9282, a special and later law than Batas Pambansa Blg. 129 provides an exception to the original jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax laws or regulations. Except for local tax cases, actions directly challenging the constitutionality

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[31] *Id.*

[32] 793 Phil. 97, 124-125 (2016).

or validity of a tax law or regulation or administrative issuance may be filed directly before the Court of Tax Appeals.

Furthermore, with respect to administrative issuances (revenue orders, revenue memorandum circulars, or rulings), these are issued by the Commissioner under its power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws. Tax rulings, on the other hand, are official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the National Internal Revenue Code, other tax laws, or their implementing regulations. Hence, the determination of the validity of these issuances clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7 (1) of Republic Act No. 1125, as amended, subject to prior review by the Secretary of Finance, as required under Republic Act No. 8424. (Emphasis supplied)

Banco de Oro further stressed that such undoubted jurisdiction is exclusively vested in the Court of Tax Appeals whether it is raised by the taxpayer directly or as a defense.

Here, following the trial court's denial of their respective motions for reconsideration, the parties appealed to the Court of Appeals. On June 26, 2014, the Court of Appeals dismissed the appeals, and on November 27, 2014, denied the parties' motions for reconsideration.[33]

Based on this sequence of events, the whole time the case was ongoing below, the prevailing doctrine had been *British American Tobacco* ordaining that the Court of Tax Appeals did not have jurisdiction to decide the validity or constitutionality of laws or rules. Consequently, the parties correctly elevated the trial court's resolution to the Court of Appeals, which should have taken cognizance of, and resolved, the appeals on the merits.

RMC No. 65-2012 is invalid

We now turn to the substantive issue: Is RMC No. 65-2012 valid?

a) A condominium corporation is not engaged in trade or business

[33] G.R. No. 215801, *rollo,* pp. 26-27.

The issue on whether association dues, membership fees, and other assessments/charges collected by a condominium corporation in the usual course of trade or business is not novel. ***Yamane v. BA Lepanto Condominium Corp.***[34] positively resolved it, *viz.:*

Obviously, none of these stated corporate purposes are geared towards maintaining a livelihood or the obtention of profit. Even though the Corporation is empowered to levy assessments or dues from the unit owners, these amounts collected are not intended for the incurrence of profit by the Corporation or its members, but to shoulder the multitude of necessary expenses that arise from the maintenance of the Condominium Project. Just as much is confirmed by Section 1, Article V of the Amended By-Laws, which enumerate the particular expenses to be defrayed by the regular assessments collected from the unit owners. These would include the salaries of the employees of the Corporation, and the cost of maintenance and ordinary repairs of the common areas.

The City Treasurer nonetheless contends that the collection of these assessments and dues are "with the end view of getting full appreciative living values" for the condominium units, and as a result, profit is obtained once these units are sold at higher prices. The Court cites with approval the two counterpoints raised by the Court of Appeals in rejecting this contention. First, if any profit is obtained by the sale of the units, it accrues not to the corporation but to the unit owner. Second, if the unit owner does obtain profit from the sale of the corporation, the owner is already required to pay capital gains tax on the appreciated value of the condominium unit.

Moreover, the logic on this point of the City Treasurer is baffling. By this rationale, every Makati City car owner may be considered as being engaged in business, since the repairs or improvements on the car may be deemed oriented towards appreciating the value of the car upon resale. **There is an evident distinction between persons who spend on repairs and improvements on their personal and real property for the purpose of increasing its resale value, and those who defray such expenses for the purpose of preserving the property. The vast majority of persons fall under the second category, and it would be highly specious to subject these persons to local business taxes. The profit motive in such cases is hardly**

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[34] 510 Phil. 750, 775-777 (2005).

the driving factor behind such improvements, if it were contemplated at all. Any profit that would be derived under such circumstances would merely be incidental, if not accidental.

Besides, we shudder at the thought of upholding tax liability on the basis of the standard of "full appreciative living values," a phrase that defies statutory explication, commonsensical meaning, the English language, or even definition from Google." **The exercise of the power of taxation constitutes a deprivation of property under the due process clause, and the taxpayer's right to due process is violated when arbitrary or oppressive methods are used in assessing and collecting taxes. The fact that the Corporation did not fall within the enumerated classes of taxable businesses under either the Local Government Code or the Makati Revenue Code already forewarns that a clear demonstration is essential on the part of the City Treasurer on why the Corporation should be taxed anyway.** "Full appreciative living values" is nothing but blather in search of meaning, and to impose a tax hinged on that standard is both arbitrary and oppressive.

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Again, whatever capacity the Corporation may have pursuant to its power to exercise acts of ownership over personal and real property is limited by its stated corporate purposes, which are by themselves further limited by the Condominium Act. A condominium corporation, while enjoying such powers of ownership, is prohibited by law from transacting its properties for the purpose of gainful profit. (Emphasis supplied)

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Yamane did emphasize that a corporation condominium is not designed to engage in activities that generate income or profit. A discussion on the nature of a condominium corporation is, indubitably, in order.

The creation of the condominium corporation is sanctioned by Republic Act No. 4726 (RA 4726)[35] (The Condominium Act). Under the law, a condominium is an interest in real property consisting of a separate interest in a unit in a residential, industrial or commercial building and an undivided interest in common,

[35] AN ACT TO DEFINE CONDOMINIUM, ESTABLISH REQUIREMENTS FOR ITS CREATION, AND GOVERN ITS INCIDENTS.

directly or indirectly, in the land on which it is located and in other common areas of the building. To enable the orderly administration over these common areas which the unit owners jointly own, RA 4726 permits the creation of a condominium corporation for the purpose of holding title to the common areas. The unit owners shall in proportion to the appurtenant interests of their respective units automatically be members or shareholders of the condominium corporation to the exclusion of others.[36]

Sections 10 and 22 of RA 4726 focus on the non-profit purpose of a condominium corporation. Under Section 10,[37] the corporate purposes of a condominium corporation are limited to holding the common areas, either in ownership or any other interest in real property recognized by law; management of the project; and to such other purposes necessary, incidental, or convenient to the accomplishment of these purposes. Additionally, Section 10 prohibits the articles of incorporation or by-laws of the condominium corporation from containing any provisions contrary to the provisions of RA 4726, the enabling or master deed, or the declaration of restrictions of the condominium project.[38]

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[36] Section 2, RA 8424 (The Condominium Act).

[37] Sec. 10. Whenever the common areas in a condominium project are held by a condominium corporation, such corporation shall constitute the management body of the project. The corporate purposes of such a corporation shall be limited to the holding of the common areas, either in ownership or any other interest in real property recognized by law, to the management of the project, and to such other purposes as may be necessary, incidental or convenient to the accomplishment of said purposes. The articles of incorporation or by-laws of the corporation shall not contain any provision contrary to or inconsistent with the provisions of this Act, the enabling or master deed, or the declaration of restrictions of the project. Membership in a condominium corporation, regardless of whether it is a stock or non-stock corporation, shall not be transferable separately from the condominium unit of which it is an appurtenance. When a member or stockholder ceases to own a unit in the project in which the condominium corporation owns or holds the common areas, he shall automatically cease to be a member or stockholder of the condominium corporation.

[38] *Yamane v. BA Lepanto Condominium Corp.*, 510 Phil. 750, 773-774 (2005).

Also, under Section 22,[39] the condominium corporation, as the management body, may only act for the benefit of the condominium owners in disposing tangible and intangible personal property by sale or otherwise in proportion to the condominium owners' respective interests in the common areas.

Further, Section 9[40] allows a condominium corporation to provide for the means by which it should be managed.

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[39] Sec. 22. Unless otherwise provided for by the declaration of restrictions, the management body, provided for herein, may acquire and hold, for the benefit of the condominium owners, tangible and intangible personal property and may dispose of the same by sale or otherwise; and the beneficial interest in such personal property shall be owned by the condominium owners in the same proportion as their respective interests in the common areas. A transfer of a condominium shall transfer to the transferee ownership of the transferor's beneficial interest in such personal property.

[40] Sec. 9. The owner of a project shall, prior to the conveyance of any condominium therein, register a declaration of restrictions relating to such project, which restrictions shall constitute a lien upon each condominium in the project, and shall insure to and bind all condominium owners in the project. Such liens, unless otherwise provided, may be enforced by any condominium owner in the project or by the management body of such project. The Register of Deeds shall enter and annotate the declaration of restrictions upon the certificate of title covering the land included within the project, if the land is patented or registered under the Land Registration or Cadastral Acts.

The declaration of restrictions shall provide for the management of the project by anyone of the following management bodies: a condominium corporation, an association of the condominium owners, a board of governors elected by condominium owners, or a management agent elected by the owners or by the board named in the declaration. It shall also provide for voting majorities quorums, notices, meeting date, and other rules governing such body or bodies. Such declaration of restrictions, among other things, may also provide:

(a) As to any such management body;

(1) For the powers thereof, including power to enforce the provisions of the declarations of restrictions;

(2) For maintenance of insurance policies, insuring condominium owners against loss by fire, casualty, liability, workmen's compensation and other insurable risks, and for bonding of the members of any management body;

(3) Provisions for maintenance, utility, gardening and other services benefiting the common areas, for the employment of personnel necessary

Specifically, it authorizes a condominium corporation to collect association dues, membership fees, and other assessments/ charges for: a) maintenance of insurance policies; b) maintenance, utility, gardening and other services benefiting the common areas, for the employment of personnel necessary for the operation of the building, and legal, accounting and

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for the operation of the building, and legal, accounting and other professional and technical services;

(4) For purchase of materials, supplies and the like needed by the common areas;

(5) For payment of taxes and special assessments which would be a lien upon the entire project or common areas, and for discharge of any lien or encumbrance levied against the entire project or the common areas;

(6) For reconstruction of any portion or portions of any damage to or destruction of the project;

(7) The manner for delegation of its powers;

(8) For entry by its officers and agents into any unit when necessary in connection with the maintenance or construction for which such body is responsible;

(9) For a power of attorney to the management body to sell the entire project for the benefit of all of the owners thereof when partition of the project may be authorized under Section 8 of this Act, which said power shall be binding upon all of the condominium owners regardless of whether they assume the obligations of the restrictions or not.

(b) The manner and procedure for amending such restrictions: Provided, That the vote of not less than a majority in interest of the owners is obtained.

(c) For independent audit of the accounts of the management body;

(d) For reasonable assessments to meet authorized expenditures, each condominium unit to be assessed separately for its share of such expenses in proportion (unless otherwise provided) to its owners fractional interest in any common areas;

(e) For the subordination of the liens securing such assessments to other liens either generally or specifically described;

(f) For conditions, other than those provided for in Sections eight and thirteen of this Act, upon which partition of the project and dissolution of the condominium corporation may be made. Such right to partition or dissolution may be conditioned upon failure of the condominium owners to rebuild within a certain period or upon specified inadequacy of insurance proceeds, or upon specified percentage of damage to the building, or upon a decision of an arbitrator, or upon any other reasonable condition.

other professional and technical services; c) purchase of materials, supplies and the like needed by the common areas; d) reconstruction of any portion or portions of any damage to or destruction of the project; and e) reasonable assessments to meet authorized expenditures.

In fine, the collection of association dues, membership fees, and other assessments/charges is purely for the benefit of the condominium owners. It is a necessary incident to the purpose to effectively oversee, maintain, or even improve the common areas of the condominium as well as its governance.

As held in ***Yamane*** *"[t]he profit motive in such cases is hardly the driving factor behind such improvements, if it were contemplated at all. Any profit that would be derived under such circumstances would merely be incidental, if not accidental."* More, a condominium corporation is especially formed for the purpose of holding title to the common area and exists only for the benefit of the condominium owners. Nothing more.

RMC No. 65-2012, sharply departs from ***Yamane*** and the law on condominium corporations. It invalidly declares that the amounts paid as dues or fees by members and tenants of a condominium corporation form part of the gross income of the latter, thus, subject to income tax, value-added tax, and withholding tax. The reason given — a condominium corporation furnishes its members and tenants with benefits, advantages, and privileges in return for such payments, consequently, these payments constitute taxable income or compensation for beneficial services it provides to its members and tenants, hence, subject to income tax, value-added tax, and withholding tax.

We cannot agree.

b) Association dues, membership fees, and other assessments/charges are not subject to income tax, value-added tax and withholding tax

First. Capital is a fund or property existing at one distinct point in time while income denotes a flow of wealth during a

definite period of time. Income is gain derived and severed from capital.[41] Republic Act No. 8424 (RA 8424)[42] or the Tax Reform Act of 1997 was in effect when RMC No. 65-2012 was issued on October 31, 2012. In defining taxable income, Section 31 of RA 8424 states:

> Section 31. Taxable Income Defined.— The term taxable income means the pertinent items of gross income specified in this Code, less the deductions and/or personal and additional exemptions, if any, authorized for such types of income by this Code or other special laws.

Gross income means income derived from whatever source, including compensation for services; the conduct of trade or business or the exercise of a profession; dealings in propetiy; interests; rents; royalties; dividends; annuities; prizes and winnings; pensions; and a partner's distributive share in the net income of a general professional partnership,[43] among others.

On December 19, 2017, Section 31 was amended by Republic Act No. 10963 (RA 10963)[44] (The TRAIN Law). The provision now reads:

> Sec. 31. Taxable Income Defined. — The term "taxable income" means the pertinent items of gross income specified in this Code, less deductions if any, authorized for such types of income by this Code or other special laws.

There is no substantial difference between the original definition under RA 8424 and the subsequent definition under the TRAIN Law. The only difference is that the phrase *"and/or personal and additional exemptions"* was deleted. Still, both the former and current definitions are consistent— 'taxable income' refers to *"the pertinent items of gross income specified*

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[41] *Chamber of Real Estate and Builders' Assn., Inc. v. Hon. Executive Sec. Romulo, et al.*, 562 Phil. 508, 530 (2010).

[42] AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES.

[43] See *CIR v. PAL*, 535 Phil. 95, 106 (2006).

[44] Tax Reform for Acceleration and Inclusion (TRAIN) Act.

in this Code." A comparison of RA 8424 and the TRAIN Law shows the items under gross income insofar as they are relevant to the present case, *viz.:*

RA 8424[45] **(the law in effect when RMC No. 65- 2012 was issued on October 31, 2012)**	**RA 10963 (signed into law on December 19, 2017 and took effect on January 1, 2018)**
Section 32. *Gross Income.* —	**Section 32.** *Gross Income.*—
(A) *General Definition.* — Except when otherwise provided in this Title, gross income means all income derived from whatever source, including (but not limited to) the following items:	(A) *General Definition.* — Except when otherwise provided in this Title, gross income means all income derived from whatever source, including (but not limited to) the following items:
(1) Compensation for services in whatever form paid, including, but not limited to fees, salaries, wages, commissions, and similar items;	(1) Compensation for services in whatever form paid, including, but not limited to fees, salaries, wages, commissions, and similar items;
(2) Gross income derived from the conduct of trade or business or the exercise of a profession;	(2) Gross income derived from the conduct of trade or business or the exercise of a profession;
x x x	x x x

Section 32 of RA 8424 does not include association dues, membership fees, and other assessments/charges collected by condominium corporations as sources of gross income. The subsequent amendment under the TRAIN Law substantially replicates the old Section 32.

Clearly, RMC No. 65-2012 expanded, if not altered, the list of taxable items in the law. RMC No. 65-2012, therefore, is void. Besides, where the basic law and a rule or regulation are in conflict, the basic law prevails.[46]

As established in ***Yamane,*** the expenditures incurred by condominium corporations on behalf of the condominium owners

[45] As amended by Republic Act Nos. 8424, 9337, 9442, and 9504.

[46] *PAGCOR v. BIR,* 660 Phil. 636, 664 (2011).

are not intended to generate revenue nor equate to the cost of doing business.

In the very recent case of ***ANPC v. BIR,***[47] the Court pronounced that membership fees, assessment dues, and other fees collected by recreational clubs are not subject to income tax, thus:

> As corectly argued by ANPC, **membership fees, assessment dues, and other fees of similar nature only constitute contributions to and/or replenishment of the funds for the maintenance and operations of the facilities offered by recreational clubs to their exclusive members. They represent funds "held in trust" by these clubs to defray their operating and general costs and hence, only constitute infusion of capital.**
>
> Case law provides that in order to constitute "income," there must be realized "gain." Clearly, because of the nature of membership fees and assessment dues as funds inherently dedicated for the maintenance, preservation, and upkeep of the clubs' general operations and facilities, nothing is to be gained from their collection. This stands in contrast to the tees received by recreational clubs coming from their income-generating facilities, such as bars, restaurants, and food concessionaires, or from income-generating activities, like the renting out of sports equipment, services, and other accommodations: In these latter examples, regardless of the purpose of the fees' eventual use, gain is already realized from the moment they are collected because capital maintenance, preservation. or upkeep is not their pre-determined purpose. As such, recreational clubs are generally free to use these fees for whatever purpose they desire and thus, considered as unencumbered "fruits" coming from a business transaction.
>
> **Further, given these recreational clubs' non-profit nature, membership fees and assessment dues cannot be considered as funds that would represent these clubs' interest or profit from any investment. In fact, these fees are paid by the clubs' members without any expectation of any yield or gain (unlike in stock subscriptions), but only for the above-stated purposes and in order to retain their membership therein.**
>
> **In fine, for as long as these membership fees, assessment dues, and the like are treated as collections by recreational clubs from**

[47] G.R. No. 228539, June 26, 2019.

their members as an inherent consequence of their membership, and are, by nature, intended for the maintenance, preservation, and upkeep of the clubs' general operations and facilities, then these fees cannot be classified as "the income of recreational clubs from whatever source" that are "subject to income tax. Instead, they only form part of capital from which no income tax may be collected or imposed. (Emphasis supplied)

Similarly, therefore, association dues, membership fees, and other assessments/charges are not subject to income tax because they do not constitute profit or gain. To repeat, they are collected purely for the benefit of the condominium owners and are the incidental consequence of a condominium corporation's responsibility to effectively oversee, maintain, or even Improve the common areas of the condominium as well as its governance.

Second. Association dues, membership fees, and other assessments/charges do not arise from transactions involving the sale, barter, or exchange of goods or property. Nor are they generated by the performance of services. As such, they are not subject to value-added tax per Section 105 of RA 8424, *viz.*:

Section 105. Persons Liable. — Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.

The phrase "in the course of trade or business" means the regular conduct or pursuit of a commercial or an economic activity including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, non-profit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being course of trade or business. (Emphasis supplied)

The value-added tax is a burden on transactions imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services, even in the absence of profit attributable thereto, so much so that even a non-stock, non-profit organization or government entity, is liable to pay value-added tax on the sale of goods or services.[48]

Section 106 of RA 8424 imposes value-added tax on the sale of goods and properties. The term 'goods' or 'properties' shall mean all tangible and intangible objects which are capable of pecuniary estimation. These 'goods' or 'properties' include real property, intellectual property, equipment, and rights over motion picture films.[49] Section 106 of RA 8424 likewise imposes value-added tax on transactions such as transfer of goods, properties, profits, or inventories.[50]

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[48] *CIR v. Negros Consolidated Farmers Multi-Purpose Cooperative*, G.R. No. 212735, December 5, 2018.

[49] The term 'goods' or 'properties' shall mean all tangible and intangible objects which are capable of pecuniary estimation and shall include: a) real properties held primarily for sale to customers or held for lease in the ordinary course of trade or business; b) the right or the privilege to use patent, copyright, design or model, plan, secret formula or process, goodwill, trademark, trade brand or other like property or right; c) the right or the privilege to use in the Philippines of any industrial, commercial or scientific equipment; d) the right or the privilege to use motion picture films, tapes and discs; and e) radio, television, satellite transmission and cable television time.

[50] Section 106 of RA 8424 likewise imposes VAT on the following transactions: 1) transfer, use or consumption not in the course of business of goods or properties originally intended for sale or for use in the course of business; 2) distribution or transfer to shareholders or investors as share in the profits of the VAT-registered persons; 3) distribution or transfer of profits of VAT-registered persons to creditors in payment of debt; 4) consignment of goods if actual sale is not made within sixty (60) days following the date such goods were consigned; and 5) retirement from or cessation of business, with respect to inventories of taxable goods existing as of such retirement or cessation.

Section 108 of RA 8424 further imposes value-added tax on sale of services and use or lease of properties. It defines "sale or exchange of services," as follows:

The phrase **'sale or exchange of services'**[51] means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, rest-houses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land relative to their transport of goods or cargoes; common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines; sales of electricity by generation companies, transmission, and distribution companies; services of franchise grantees of electric utilities, telephone and telegraph, radio and television broadcasting and all other franchise

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[51] The phrase 'sale or exchange of services' shall likewise include: a) the lease or the use of or the right or privilege to use any copyright, patent, design or model, plan secret formula or process, goodwill, trademark, trade brand or other like property or right; 2) the lease of the use of, or the right to use of any industrial, commercial or scientific equipment; 3) the supply of scientific, technical, industrial or commercial knowledge or information; 4) the supply of any assistance that is ancillary and subsidiary to and is furnished as a means of enabling the application or enjoyment of any such property, or right or any such knowledge or information; 5) the supply of services by a non-resident person or his employee in connection with the use of property or rights belonging to, or the installation or operation of any brand, machinery or other apparatus purchased from such non-resident person; 6) the supply of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme; 7) the lease of motion picture films, films, tapes and discs; and 8) the lease or the use of or the right to use radio, television, satellite transmission and cable television time.

grantees except those under Section 119 of this Code and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. x x x

The phrase 'sale or exchange of services' shall include the use of intellectual property, use of certain types of equipment, supplying certain types of knowledge or information, lease of motion picture films, and use of transmission or air time.

Both under RA 8424 (Sections 106, 107,[52] and 108) and the TRAIN Law, there, too, is no mention of association dues, membership fees, and other assessments/charges collected by condominium corporations being subject to VAT. And rightly so. For when a condominium corporation manages, maintains, and preserves the common areas in the building, it does so only for the benefit of the condominium owners. It cannot be said to be engaged in trade or business, thus, the collection of association dues, membership fees, and other assessments/charges is not a result of the regular conduct or pursuit of a commercial or an economic activity, or any transactions incidental thereto.

Neither can it be said that a condominium corporation is rendering services to the unit owners for a fee, remuneration or consideration. Association dues, membership fees, and other assessments/charges form part of a pool from which a condominium corporation must draw funds in order to bear the costs for maintenance, repair, improvement, reconstruction expenses and other administrative expenses.

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[52] x x x There shall be levied, assessed and collected on every importation of goods a value-added tax x x x based on the total value used by the Bureau of Customs in determining tariff and customs duties, plus customs duties, excise taxes, if any, and other charges, such tax to be paid by the importer prior to the release of such goods from customs custody: Provided, That where the customs duties are determined on the basis of the quantity or volume of the goods, the value-added tax shall be based on the landed cost plus excise taxes, if any, x x x

Indisputably, the nature and purpose of a condominium corporation negates the *carte blanche* application of our value-added tax provisions on its transactions and activities. ***CIR v. Magsaysay Lines, Inc.,***[53] stated:

> Yet VAT is not a singular-minded tax on every transactional level. Its assessment bears direct relevance to the taxpayer's role or link in the production chain. Hence, as affirmed by Section 99 of the Tax Code and its subsequent incarnations, **the tax is levied only on the sale, barter or exchange of goods or services by persons who engage in such activities, in the course of trade or business. These transactions outside the course of trade or business may invariably contribute to the production chain, but they do so only as a matter of accident or incident. As the sales of goods or services do not occur within the course of trade or business, the providers of such goods or services would hardly, if at all, have the opportunity to appropriately credit any VAT liability as against their own accumulated VAT collections since the accumulation of output VAT arises in the first place only through the ordinary course of trade or business**. (Emphasis supplied)

Too, ***ANPC***[54] held that membership fees, assessment dues, and the like collected by recreational clubs are not subject to value-added tax *"because in collecting such fees, the club is not selling its service to the members. Conversely, the members are not buying services from the club when dues are paid; hence, there is no economic or commercial activity to speak of as these dues are devoted for the operations/maintenance of the facilities of the organization. As such, there could be no 'sale, barter or exchange of goods or properties, or sale of a service' to speak of, which would then be subject to VAT under the 1997 NIRC."* This principle equally applies to condominium corporations which are similarly situated with recreational clubs insofar as membership fees, assessment dues, and other fees of similar nature collected from condominium owners are devoted to the operations and maintenance of the facilities of the condominium. In sum, RMC No. 65-2012 illegally imposes

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[53] 529 Phil. 64, 73 (2006).

[54] *Id.*

value-added tax on association dues, membership fees, and other assessments/charges collected and received by condominium corporations.

Third. The withholding tax system was devised for three (3) primary reasons, *i.e.* — (1) to provide taxpayers a convenient manner to meet their probable income tax liability; (2) to ensure the collection of income tax which can otherwise be lost or substantially reduced through failure to file the corresponding returns; and (3) to improve the government's cash flow. This results in administrative savings, prompt and efficient collection of taxes, prevention of delinquencies and reduction of governmental effort to collect taxes through more complicated means and remedies.[55] Succinctly put, withholding tax is intended to facilitate the collection of income tax. And if there is no income tax, withholding tax cannot be collected.

Section 57 of RA 8424 directs that only income, be it active or passive, earned by a payor-corporation can be subject to withholding tax, *viz.*:

> Section 57. Withholding of Tax at Source.—
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> (A) Withholding of Final Tax on Certain Incomes.— Subject to rules and regulations the Secretary of Finance may promulgate, upon the recommendation of the Commissioner, requiring the filing of income tax return by certain income payees, the tax imposed or prescribed by Sections 24(B)(1), 24(B)(2), 24(C), 24(D)(l); 25(A)(2), 25(A)(3), 25(B), 25(C), 25(D), 25(E), 27(D)(l), 27(D)(2), 27(D)(3), 27(D)(5), 28 (A)(4), 28(A)(5), 28(A)(7)(a), 28(A)(7)(b), 28(A)(7) (c), 28(B)(1), 28(B)(2), 28(B)(3), 28(B)(4), 28(B)(5)(a), 28(B)(5)(b), 28(B)(5)(c); 33; and 282 of this Code on specified items of income shall be withheld by payor-corporation and/or person and paid in the same manner and subject to the same conditions as provided in Section 58 of this Code.
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> (B) Withholding of Creditable Tax at Source.— The Secretary of Finance may, upon the recommendation of the Commissioner, require the withholding of a tax on the items of income payable to natural or juridical persons, residing in the Philippines, by payor-corporation/

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[55] *COURAGE v. Commissioner, Bureau of Internal Revenue*, G.R. No. 213446, July 3, 2018.

persons as provided for by law, at the rate of not less than one percent (l%) but not more than thirty-two percent (32%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year.

x x x x x x x x x

Although Section 57 (B) was later amended by the TRAIN Law, it still decrees that the withholding of tax covers only the income payable to natural or juridical persons, thus:

Sec. 57. Withholding of Tax at Source.—

(A) x x x —

(B) Withholding of Creditable Tax at Source. — The Secretary of Finance may, upon the recommendation of the Commissioner, require the withholding of a tax on the items of income payable to natural or juridical persons, residing in the Philippines, by payor-corporation/ persons as provided for by law, at the rate of not less than one percent (1%) but not more than thirty-two percent (32%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year: Provided, That, beginning January 1, 2019, the rate of withholding shall not be less than one percent (1%) but not more than fifteen percent (15%) of the income payment.

x x x x x x x x x

Yamane aptly stated "*[e]ven though the Corporation is empowered to levy assessments or dues from the unit owners, these amounts collected are not intended for the incurrence of profit by the Corporation or its members, but to shoulder the multitude of necessary expenses that arise from the maintenance of the Condominium Project.*"

Fourth. Section 4 of RA 8424 empowers the BIR Commissioner to interpret tax laws and to decide tax cases:

SEC. 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases — The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

But the BIR Commissioner cannot, in the exercise of such power, issue administrative rulings or circulars inconsistent with the law to be implemented. Administrative issuances must not override, supplant, or modify the law, they must remain consistent with the law intended to carry out. Surely, courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with the law they seek to apply and implement.[56]

As shown, the BIR Commissioner expanded or modified the law when she declared that association dues, membership fees, and other assessments/charges are subject to income tax, value-added tax, and withholding tax. In doing so, she committed grave abuse of discretion amounting to lack or excess of jurisdiction. As to what constitutes 'grave abuse of discretion' and when a government branch, agency, or instrumentality is deemed to have committed it, ***Kilusang Mayo Uno v. Aquino III***[57] instructs:

> Grave abuse of discretion denotes a "capricious, arbitrary[,] and whimsical exercise of power. The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, as not to act at all in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility."
>
> Any act of a government branch, agency, or instrumentality that violates a statute or a treaty is grave abuse of discretion. However, **grave abuse of discretion pertains to acts of discretion exercised in areas outside an agency's granted authority and, thus, abusing the power granted to it**. Moreover, it is the agency's exercise of its

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[56] *Id.*

[57] G.R. No. 210500, April 2, 2019.

power that is examined and adjudged, not whether its application of the law is correct. (Emphasis supplied)

In sum, the BIR Commissioner is empowered to interpret our tax laws but not expand or alter them. In the case of RMC No. 65-2012, however, the BIR Commissioner went beyond, if not, gravely abused such authority.

If proper, the First E-Bank may recover the consignated amounts, through a separate action or proceeding

The general rule is that a void law or administrative act cannot be the source of legal rights or duties. Article 7 of the Civil Code enunciates this general rule, as well as its exception: "*Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or custom or practice to the contrary. When the courts declared a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution.*"[58] Jurisprudence is replete with instances when this Court had directed the refund of taxes that were paid under invalid tax measures, thus:

1) In ***Icard v. The City Council of Baguio,***[59] this Court held that the City of Baguio's ordinances, namely, Ordinance No. 6 -V (which imposed an amusement tax of 0.20 for each person entering a night club) and Ordinance No. 11 -V (which provides for a property tax on motor vehicles) were *ultra vires.* As a consequence, this Court ordered the City of Baguio to refund to petitioner-appellee in that case the sum of ₱254.80 which he paid as amusement tax.

2) In ***Matalin Coconut Co., Inc. v. The Municipal Council of Malabang***[60] the Court agreed with the trial court's finding that the Municipality of Malabang's Municipal

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[58] *CIR v. San Roque Power Corporation,* 719 Phil. 137, 157 (2013).

[59] 83 Phil. 870 (1949).

[60] 227 Phil. 370 (1986).

Ordinance No. 45-66, imposing a "police inspection fee" of ₱0.30 per sack of cassava starch or flour was an invalid act of taxation. The trial court's directive to the municipal treasurer *"to refund to the petitioner the payments it made under the said ordinance from September 27, 1966 to May 2, 1967, amounting to ₱25,500.00, as well as all payments made subsequently thereafter"* was likewise affirmed by this Court.

3) In *Cagayan Electric Power and Light, Co. Inc. v. City of Cagayan de Oro,*[61] this Court directed the City of Cagayan de Oro to refund to CEPALCO the tax payments made by the latter *"on the lease or rental of electric and/or telecommunication posts, poles or towers by pole owners to other pole users at ten percent (10%) of the annual rental income derived from such lease or rental"* after the city's tax Ordinance No. 9503-2005 was declared invalid.

Petitioner resorted to judicial consignation of its alleged tax payments in the court, thus, reckons with the requirements of judicial consignation, *viz.:* (1) a debt due; (2) the creditor to whom tender of payment was made refused without just cause to accept the payment, or the creditor was absent, unknown or incapacitated, or several persons claimed the same right to collect, or the title of the obligation was lost; (3) the person interested in the performance of the obligation was given notice before consignation was made; (4) the amount was placed at the disposal of the court; and (5) the person interested in the performance of the obligation was given notice after the consignation was made.[62]

Here, it is imperative to determine whether the First E-Bank actually complied with the requirements for judicial consignation. This is a question of fact which by this Court, not being a trial court cannot pass upon. The trial court, therefore, thus correctly held that the First E-Bank may initiate the appropriate motion for the release of the consignated funds, upon finality of the judicial determination on the validity of RMC No. 65-2012

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[61] 698 Phil. 788, 793 (2012).

[62] *Dalton v. FGR Realty and Dev't. Corp.,* 655 Phil. 93, 97-98 (2011).

and only after it has determined the presence of the requirements for judicial consignation.

A final word

RMC No. 65-2012 is invalid for ordaining that *"gross receipts of condominium corporations including association dues, membership fees, and other assessments/charges are subject to VAT, income tax and income payments made to it are subject to applicable withholding taxes."* A law will not be construed as imposing a tax unless it does so clearly and expressly. In case of doubt, tax laws must be construed strictly against the government and in favor of the taxpayer.[63] Taxes, as burdens that must be endured by the taxpayer, should not be presumed to go beyond what the law expressly and clearly declares.[64]

ACCORDINGLY, the Court **RESOLVES:**

1) To **REVERSE** and **SET ASIDE** the assailed Resolutions dated June 26, 2014 and November 27, 2014 of the Court of Appeals in CA-G.R. CV No. 102266;

2) To **DENY** the Petition for Review dated February 17, 2015 in G.R. No. 215801 and the Special Civil Action for *Certiorari* dated February 12, 2015 in G.R. No. 218924; and

3) To **AFFIRM** the Resolution dated September 5, 2013 and Order dated December 18, 2013 of the Regional Trial Court, Branch 146, Makati City in Special Civil Action No. 12-1236.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Reyes, J. Jr., and *Lopez, JJ.,* concur.

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[63] See *CIR v. SM Prime Holdings, Inc.*, 627 Phil. 581 (2010).

[64] *Philacor Credit Corporation v. CIR*, 703 Phil. 26, 46 (2013).

FIRST DIVISION

[G.R. No. 217898. January 15, 2020]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **BASES CONVERSION AND DEVELOPMENT AUTHORITY,** *respondent*.

SYLLABUS

1. **POLITICAL LAW; REPUBLIC ACT NO. 7227, AS AMENDED BY REPUBLIC ACT NO. 7917 (BASES CONVERSION AND DEVELOPMENT [BCDA] ACT OF 1992); SECTION 8 THEREOF; GOVERNS BCDA'S DISPOSITION OF THE PROPERTIES ENUMERATED THEREIN AND THEIR SALE PROCEEDS; SALE PROCEEDS ARE EXEMPT FROM ALL KINDS OF FEES AND TAXES AS THEY ARE ALREADY APPROPRIATED FOR SPECIFIC PURPOSES AND FOR DESIGNATED BENEFICIARIES.—** Section 8 [of R.A. No. 7227, as amended] is two (2) pronged. The first commands that the sale proceeds of certain properties in Fort Bonifacio and Villamor (Nicholas) Air Base are **deemed appropriated by Congress** to each of the aforenamed recipients and for the respective purposes specified therein. Consequently, the sale proceeds are not BCDA income but **public funds subject to the distribution scheme and purposes provided in the law itself**. Book VI, Chapter 5, Section 32 of the Administrative Code of 1987 directs that "[a]ll monies appropriated for functions, activities, projects and programs shall be available solely for the specific purposes for which these are appropriated." The second expressly enjoins that the **proceeds of the sale shall not be diminished** by any item or circumstance, including **all forms of taxes and fees**.

2. **STATUTORY CONSTRUCTION; WHEN THE LAW SPEAKS IN CLEAR AND CATEGORICAL LANGUAGE, THERE IS NO OCCASION FOR INTERPRETATION, THERE IS ONLY ROOM FOR APPLICATION.—** The Court has invariably ruled that when the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application.

3. ID.; ID.; AS A RULE, A GENERAL LAW CANNOT IMPLIEDLY REPEAL A SPECIAL LAW; CASE AT BAR.— [The Supreme Court agrees] with the CTA-*En Banc* that Section 27 is a general law while Section 8 of RA 7227, as amended by RA 7917 is a special law. As a rule, a general law cannot impliedly repeal a special law. ***Commissioner of Internal Revenue v. Semirara Mining Corporation*** is *apropos*: x x x [T]his Court had the occasion to discuss in depth the reasons why PD No. 972 cannot be impliedly repealed by the repealing clause of R.A. No. 9337, a general law, to wit: It is a fundamental rule in statutory construction that a special law cannot be repealed or modified by a subsequently enacted general law in the absence of any express provision in the latter law to that effect. A special law must be interpreted to constitute an exception to the general law in the absence of special circumstances warranting a contrary conclusion. The repealing clause of RA No. 9337, a general law, did not provide for the express repeal of PD No. 972, a special law x x x There are two categories of repeal by implication. The first is where provisions in the two acts on the same subject matter are in an irreconcilable conflict. The later act to the extent of the conflict constitutes an implied repeal of the earlier one. The second is if the later act covers the whole subject of the earlier one and is clearly intended as a substitute, it will operate to repeal the earlier law. Implied repeal by irreconcilable inconsistency takes place when the two statutes cover the same subject matter; they are so clearly inconsistent and incompatible with each other that they cannot be reconciled or harmonized; and both cannot be given effect, that is, that one law cannot [be] enforced without nullifying the other. Another. Section 27 governs all corporations, agencies, or instrumentalities owned or controlled by the Government (GOCCs), with the exception of a few. It directs these GOCCs to "pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in a similar business, industry, or activity." The directive ***presupposes*** that the funds are *income*, hence, *taxable*. On the other hand, Section 8 of RA 7227, as amended by RA 7917, specifically governs BCDA's disposition of the properties enumerated therein and their sale proceeds. The law exempts these sale proceeds from all kinds of fees and taxes as the same law has already appropriated them for specific purposes and for designated beneficiaries.

4. ID.; ID.; BETWEEN A GENERAL LAW AND A SPECIAL LAW, THE LATTER PREVAILS.— It is settled that between a general law and a special law, the latter prevails. For a special law reveals the legislative intent more clearly than a general law does. Verily, the special law should be deemed an exception to the general law.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
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[1] assails the following dispositions of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 1123 (CTA Case No. 8140) entitled "*Commissioner of Internal Revenue v. Bases Conversion and Development Authority*:"

1. Decision[2] dated December 16, 2014 granting the claim for tax refund of respondent Bases Conversion and Development Authority (BCDA); and,
2. Resolution[3] dated April 15, 2015, denying the motion for reconsideration of petitioner Commissioner of Internal Revenue (CIR).

Antecedents

Respondent BCDA was the owner of four (4) real properties in Bonifacio Global City, Taguig City which had a total area of 12,036 sq. m. The lots were collectively referred to as the

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[1] *Rollo*, pp. 67-106.

[2] *Id.* at 109-139.

[3] *Id.* at 140-144.

"Expanded Big Delta Lots." It entered into a contract to sell with the "Net Group," an unincorporated joint venture composed of four (4) corporations: (1) 18-14 Property Holdings, Incorporated; (2) 14-8b Property Holdings, Inc.; (3) The Net Group Project Management Corporation; and (4) The Net Group Property Management Corporation. The total purchase price was Php2,032,749,327.96. The "Net Group" committed *not* to remit to the Bureau of Internal Revenue (BIR) the total amount of Php101,637,466.40 as Creditable Tax Withheld at source (CWT) to give time to respondent to present a certification of tax exemption on or before June 9, 2008.

On May 28, 2008, respondent sought from petitioner the aforesaid certification but the CIR did not respond.

On July 31, 2008, respondent and the "Net Group" executed the corresponding Deeds of Absolute Sale. In view of respondent's failure to present a certification of tax exemption, the "Net Group" deducted the amount of Php101,637,466.40 as CWT and issued to respondent the corresponding certificates of creditable tax withheld at source.[4] The "Net Group" remitted the amount to the BIR Regional District Office No. 44.

On March 9, 2009, respondent wrote the BIR for refund of the amount but, again, petitioner did not respond.

On July 29, 2010, respondent sought affirmative relief from the CTA, specifically for refund of the amount in question. Respondent claimed that it was exempt from all taxes and fees arising from or in relation to the sale, as provided under its charter, Republic Act (RA) 7227, as amended by RA 7917.

In its answer, petitioner countered that respondent failed to support its claim for tax refund. In particular, respondent allegedly failed to show, by competent evidence, that the CWT was erroneously or illegally withheld. Respondent's claim for tax refund purportedly did not comply with the procedural requirements. Besides, all taxes paid to the BIR are presumed lawful and proper.

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[4] BIR Form No. 2307.

Ruling of the CTA First Division

In its Decision dated September 13, 2013, the CTA First Division ruled in respondent's favor, *viz.*:

> WHEREFORE, premises considered, the instant Petition for Review is hereby GRANTED. Accordingly, respondent Commissioner of Internal Revenue is ORDERED to REFUND in favor of petitioner BASES CONVERSION DEVELOPMENT AUTHORITY the amount of ₱101,637,466.40, representing creditable withholding tax paid on July 31, 2008 in connection with the sale/disposition of the 12,036 square-meter property, otherwise known as the "Expanded Big Delta Lots", located in Fort Bonifacio, Taguig City.
>
> SO ORDERED.[5]

Petitioner's subsequent motion for reconsideration was denied under Resolution dated January 30, 2014.

On the CIR's petition for review,[6] the CTA *En Banc* affirmed under Decision dated December 16, 2014. It also denied petitioner's motion for reconsideration under Resolution dated April 15, 2015.

The CTA *En Banc* ruled that while respondent is, indeed, not among the exempt corporations listed under Section 27 (C) of the 1997 National Internal Revenue Code[7] (NIRC) or RA 8424, as amended by RA 9337 and RA 10026, nevertheless, insofar as the sale of the "Expanded Big Delta Lots" is concerned, RA 7227, as amended by RA 7917 specifically exempts

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[5] *Rollo*, p. 29.

[6] CTA Case No. 8140.

[7] Section 27.C Government-owned or Controlled-Corporations, Agencies or Instrumentalities - The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government, except the Government Service Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), the Philippine Charity Sweepstakes Office (PCSO) and the Philippine Amusement and Gaming Corporation (PAGCOR), shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in a similar business, industry, or activity.

respondent from taxes. While the NIRC and its amending statutes were only promulgated after respondent was established, RA 7227, as amended is a special law. The NIRC, being a general law, is not deemed to have amended or superseded the special law in the absence of an express repeal thereof in the NIRC itself.

Additionally, Section 32(B) (7) (b) of the NIRC excludes from gross income and exempts from income tax, "the income derived from any public utility or from the exercise of any essential governmental functions accruing to the Government of the Philippines or to any political subdivisions." Section 2.57.5 of Revenue Regulations No. 2-98 likewise provides that "withholding of CWT should not apply to income payments made to national Government and its instrumentalities."

The CTA further ruled that the sale proceeds of the subject properties are excluded from respondent's gross income pursuant Section 32 of the NIRC. Also, Section 2.57.5 of Revenue Regulation No. 2-98,[8] the creditable withholding tax system does not apply to the National Government and its instrumentalities.

Finally, the CTA *En Banc* upheld the tax-exempt provision in respondent's Charter. It ordained:

x x x x x x x x x

xxx petitioner's reliance in the cases of Philam Asset Management, Inc. v. Commissioner of Internal Revenue, United International Pictures AB v. Commissioner of Internal Revenue and Asiaworld Properties Phil. Corp v. Commissioner of Internal Revenue, is misplaced. It is noteworthy that the petitioner-taxpayers in these cases do not have a tax-exempt provision on its transaction that is akin to respondent's charter.[9]

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[8] Revenue Regulation No. 2-98, Section 2.57.5: Exemption from Withholding. — The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:

(A) National government and its instrumentalities, including provincial, city or municipal governments;

x x x x x x x x x

[9] *Rollo,* p. 137.

The Present Petition

Petitioner now urges this Court to nullify the CTA *En Banc*'s Decision dated December 16, 2014 and Resolution dated April 15, 2015. Petitioner reiterates that respondent is not exempt from CWT. But even assuming it is, respondent's failure to comply with the requirements for tax refund negates its entitlement to such refund. Petitioner argues, in the main:

1. RA 7227, as amended by RA 7917 was *supplanted* by the NIRC specifically its Section 27(c). The NIRC got enacted in 1997 and took effect on January 1, 1998. In case of conflict, a later law prevails over an earlier law.

2. In claiming for tax refund, respondent did not comply with Section 10 of Revenue Regulation No. 6-85[10] requiring that the income which was supposedly taxed must be shown to have been included in the gross income. It must also be proved that the tax was in fact withheld at source.

Petitioner cites ***Commissioner of Internal Revenue v. Far East Bank and Trust Company***[11] where the claim for refund was denied for failure of therein respondent to present the Certificates of Creditable Tax Withheld at source.

Additionally, petitioner asserts that respondent's Annual Income Tax Return, copies of the Deeds of Absolute Sale, BIR payment Forms 0605, BIR Tax Payment Deposit Slips, and Certificates of Creditable Withholding Tax do not sufficiently establish that the income from the sale of the subject properties is part of the gross income.

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[10] Section 10. Claims for credit or tax refund - Claims for tax credit or refund of income tax deducted and withheld on income payments shall be given due course only when it is shown on the return that the income payment received has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee (BIR Form No. 1743.1) showing the amount paid and the amount of tax withheld therefrom.

[11] 629 Phil. 405, 412, 417-418 (2010), citing *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, 548 Phil. 32, 39-42 (2007).

3. Respondent failed to indicate in its income tax return whether it was availing of a tax credit or a tax refund. Since respondent *carried over the 2008 excess credit, then this "carry over" should also apply to the CWT that was withheld from the sale of the properties. When "carry over" is availed of, the option for refund is no longer available.*

In its Comment, respondent ripostes: Section 8 of RA 7227 as amended by RA 7917 provides that the proceeds from [respondent's] sale of government lands and other properties are exempt from all forms of taxes and fees. Further, Administrative Order (AO) 236 has declared that (a) the proceeds from the sale of government lands and other properties pursuant to RA 7227, as amended, are government funds and shall be remitted to the National Treasury and shall accrue to the General Fund of the Government and (b) the funds are automatically appropriated for the budget requirement of the several beneficiary-agencies identified under RA 7917.

Respondent further calls attention to paragraph (d), Section 8 of RA 7227, as amended by RA 7917.[12] The provision

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[12] Section 1. Paragraph (d), Section 8 of Republic Act No. 7227: xxx (d) A proposed 30.15 hectares as relocation site for families to be affected by circumferential road 5 and radial road 4 construction: Provided further, That the boundaries and technical descriptions of these exempt areas shall be determined by an actual ground survey.

The President is hereby authorized to sell the above lands, in whole or in part, which are hereby declared alienable and disposable, pursuant to the provisions of existing laws and regulations governing sales of government properties: Provided, That no sale or disposition of such lands will be undertaken until a development plan embodying projects for conversion shall be approved by the President in accordance with paragraph (b), Section 4 of this Act. However, six (6) months after approval of this Act, the President shall authorize the Conversion Authority to dispose of certain areas in Fort Bonifacio and Villamor as the latter so determines. The Conversion Authority shall provide the President a report on any such disposition or plan for disposition within one (1) month from such disposition or preparation of such plan. The proceeds from any sale, after deducting all expenses related to the sale of portions of Metro Manila military camps as authorized under this Act, shall be deemed appropriated for the purposes herein provided for the following purposes with their corresponding percent shares of proceeds: xxx

commands that respondent's Global City properties shall be sold and the sale proceeds shall not be diminished. Respondent asserts that this provisions signifies that such sales are not subject to any taxes or fees.

Respondent avers that RA 7227, as amended, a special law, was not deemed superseded by the NIRC, a general law. On this score, respondent cites ***Lichauco & Company, Inc. v. Apostol***,[13] ***Fajardo v. Villafuerte***,[14] ***De Villa v. Court of Appeals***,[15] and ***Commissioner of Internal Revenue v. Court of Tax Appeals***.[16]

Too, respondent posits that the income from the sale of the Expanded Big Delta Lots was not included in its 2008 Income Tax Return precisely because the sale was excluded from its gross income per Section 8 of RA 7227, as amended. The sale proceeds are in the nature of a special appropriation because their disposition has already been determined by RA 7227, as amended. Thus, the use of the disposition proceeds for purposes other than that for which they were specifically intended violates not only RA 7227 but also the Constitution.

Core Issue

Is the BCDA exempt from Creditable Withholding Tax (CWT) on the sale of its Global City properties?

Ruling

The affirmative answer is found in Section 8 of RA 7227, as amended by RA 7917, otherwise known as the Bases Conversion and Development Act of 1992, *viz.*:

The provisions of law to the contrary notwithstanding, the proceeds of the sale thereof shall not be diminished and, therefore, exempt from all forms of taxes and fees.

[13] 44 Phil. 138 (1922).

[14] G.R. No. 89135, December 21, 1989, as cited by petitioner, see *rollo*, p. 173.

[15] G.R. No. 87416, April 8, 1991, 195 SCRA 722, as cited by petitioner, see *rollo*, p. 174.

[16] G.R. No. L-44007, March 20, 1991, 195 SCRA 444.

SECTION 8. Funding Scheme. — The capital of the Conversion Authority shall come from the sales proceeds and/or transfers of certain Metro Manila military camps, including all lands covered by Proclamation No. 423, series of 1957, commonly known as Fort Bonifacio and Villamor (Nicholas) Air Base, namely:

Camp		Area in has. (more or less)
x x x	x x x	x x x

The President is hereby authorized to sell the above lands, in whole or in part, which are hereby declared alienable and disposable, pursuant to the provisions of existing laws and regulations governing sales of government properties: Provided, That no sale or disposition of such lands will be undertaken until a development plan embodying projects for conversion shall be approved by the President in accordance with paragraph (b), Section 4, of this Act. However, six (6) months after approval of this Act, the President shall authorize the Conversion Authority to dispose of certain areas in Fort Bonifacio and Villamor as the latter so determines. The Conversion Authority shall provide the President a report on any such disposition or plan for disposition within one (1) month from such disposition or preparation of such plan. **The proceeds from any sale, after deducting all expenses related to the sale, of portions of Metro Manila military camps** as authorized under this Act, **shall be *deemed appropriated* for the purposes herein provided for the following purposes with their corresponding percent shares of proceeds:**

(1) Thirty-five percent (35%) — To primarily finance the self-reliance and modernization program of the AFP, the transfer of the AFP military camps and the construction of new camps and the rehabilitation and expansion of the AFP's medical facilities, and the modernization of the government arsenal;

(2) Twenty-seven and a half percent (27.5%) — To finance the construction and upgrading of infrastructure such as highways, railways and other transport facilities to make Subic, Clark and other former bases accessible: Provided, That other public works, utilities and irrigation projects not specified herein shall be included: Provided, further, That the conversion into commercial uses of the former military baselands proper and their extensions shall be undertaken as much as practicable through the Build-Operate-Transfer (BOT) scheme or financed by locator enterprises: Provided, finally, That this appropriation shall be

retained by the Conversion Authority as part of its paid-up capital, pursuant to Section 6 of this Act;

(3) Twelve Percent (12%) — To finance the National Shelter Program: Provided, That fifty percent (50%) thereof, shall be used to finance mass social housing project for the underprivileged and homeless citizens of the country and the other fifty percent (50%) to concessional and long-term housing loan assistance for the homeless of Metro Manila, Olongapo City, Angeles City and other affected municipalities contiguous to the base areas;

(4) Three percent (3%) — To finance the National Health Insurance Program;

(5) Five percent (5%) — To finance critical infrastructure projects not covered by the Build-Operate-Transfer (BOT) program in areas surrounding the former base lands;

(6) Two percent (2%) — To finance the benefits/claims of Military War Veterans and their dependents under Republic Act No. 7696;

(7) One percent (1%) — As contribution for the Higher Education Development Fund under Section 10 of Republic Act No. 7722, otherwise known as the Higher Education Act of 1994, the amount of Five hundred million pesos (₱500,000,000) or so much thereof, and the balance to finance [students'] scholarship, faculty development and the improvement of physical plants of colleges and universities under the Commission on Higher Education (CHED);

(8) Two percent (2%) — To finance the science and technology scholarships and training of thousands of young Filipino scientists and students in selected countries to be identified by the Department of Science and Technology; and the Study Now Pay Later Program for poor but deserving youths who shall enrol or are enrolled in science and technology (S&T) courses which will propel the country to achieve modernization and competitive excellence in the 21st century: Provided, That at least one (I) scholar/trainee shall be selected from each municipality/city of the country: Provided, further, That they shall render service to the Government for at least three (3) years or shall engage in S&T entrepreneurial activities within the country;

(9) One percent (1%) — To finance the multi-year program of the prosecution service;

(10) Two percent (2%), but in no case exceeding Two billion pesos (₱2,000,000,000) — To finance a multi-year modernization program of the National Bureau of Investigation (NBI), the Philippine National Police (PNP) and improvement of prison facilities.

Provided, That seventy percent (70%) of this appropriations shall be used for capital outlay and thirty percent (30%) for training programs and early retirement schemes for their officers and personnel.

(11) One percent (1%), but in no case to exceed One billion pesos (₱1,000,000,000) — To finance a multi-year judicial reform program;

(12) Two percent (2%) to finance the establishment of pre-school and daycare centers nationwide;

(13) One-half percent (1/2%) but not to exceed Five hundred million pesos (₱500,000,000) for the summer program for the education of students (SPES) in accordance with Republic Act No. 7323;

(14) One percent (1%) for the construction of Senior Citizens Centers as provided under Republic Act No. 7876;

(15) Three percent (3%) to the emergency and contingent needs of the areas devastated by the Mount Pinatubo eruptions;

(16) Two percent (2%) for infrastructure development of future special economic zones to be created;

Approximately forty hectares (40 has.) of land in Fort Bonifacio, Phase I, shall be retained as a national government and local government centers, sports facilities and parks: Provided, That, in the case of Fort Bonifacio, two and five-tenths percent (2.5%) of the proceeds thereof in equal shares shall each go to the Municipalities of Makati, Taguig and Pateros: Provided, further, That in no case shall farmers affected be denied due compensation.

The provisions of law to the contrary notwithstanding, ***the proceeds of the sale thereof shall not be diminished and, therefore, exempt from all forms of taxes and fees.*** (Emphasis supplied)

Section 8 is two (2) pronged. The first commands that the sale proceeds of certain properties in Fort Bonifacio and Villamor (Nicholas) Air Base are **deemed appropriated by Congress** to each of the aforenamed recipients and for the respective

purposes specified therein. Consequently, the sale proceeds are not BCDA income but **public funds subject to the distribution scheme and purposes provided in the law itself**. Book VI, Chapter 5, Section 32 of the Administrative Code of 1987 directs that "[a]ll monies appropriated for functions, activities, projects and programs shall be available solely for the specific purposes for which these are appropriated." The second expressly enjoins that the **proceeds of the sale shall not be diminished** by any item or circumstance, including **all forms of taxes and fees**, to wit:

> The provisions of law to the contrary notwithstanding, the proceeds of the sale thereof shall not be diminished and, therefore, exempt from all forms of taxes and fees.

The provision is self-explanatory.

The Court has invariably ruled that when the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application.[17] In ***Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue***,[18] the Court clarified that petitioner remained exempt from payment of corporate income tax on its gaming revenues since the PAGCOR Charter or Presidential Decree No. 1869[19] explicitly provides tax exemption for persons or entities contracting with PAGCOR relative to casino operations.

The CIR, nonetheless, argues against the application of Section 8 here because the same had been purportedly repealed by Section 27 of the NIRC, as amended:

> SECTION 27. Rates of Income Tax on Domestic Corporations. —
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> x x x x x x x x x

[17] *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue*, 792 Phil. 751, 767 (2016).

[18] *Id.* at 767-768.

[19] As amended by Republic Act No. 9487 also known as "An Act Further Amending Presidential Decree No. 1869, Otherwise Known as PAGCOR Charter," duly approved on 20 June 2007.

> C) Government-owned or Controlled Corporations, Agencies or Instrumentalities. — The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government, except the Government Service Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), the local water districts (LWDs), and the Philippine Charity Sweepstakes Office (PCSO), shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in a similar business, industry, or activity.

The argument does not persuade. We agree with the CTA-*En Banc* that Section 27 is a general law while Section 8 of RA 7227, as amended by RA 7917 is a special law. As a rule, a general law cannot impliedly repeal a special law. ***Commissioner of Internal Revenue v. Semirara Mining Corporation***[20] is *apropos*:

> As regards the claim of petitioner that respondent SMC's VAT exemption has already been repealed, this Court affirms the CTA decision that respondent SMC's VAT exemption remains intact. R.A. No. 9337's amendment of the NIRC did not remove the VAT exemption of respondent SMC x x x
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> x x x x x x x x x
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> x x x [T]his Court had the occasion to discuss in depth the reasons why PD No. 972 cannot be impliedly repealed by the repealing clause of R.A. No. 9337, a general law, to wit:
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> > It is a fundamental rule in statutory construction that a special law cannot be repealed or modified by a subsequently enacted general law in the absence of any express provision in the latter law to that effect. A special law must be interpreted to constitute an exception to the general law in the absence of special circumstances warranting a contrary conclusion. The repealing clause of RA No. 9337, a general law, did not provide for the express repeal of PD No. 972, a special law xxx
> >
> > x x x x x x x x x

[20] G.R. No. 202534, December 8, 2018.

> x x x Had Congress intended to withdraw or revoke the tax exemptions under PD No. 972, it would have explicitly mentioned Section 16 of PD No. 972, in the same way that it specifically mentioned Section 13 of RA No. 6395 and Section 6, paragraph 5 of RA No. 9136, as among the laws repealed by RA No. 9337.
>
> x x x x x x x x x
>
> There are two categories of repeal by implication. The first is where provisions in the two acts on the same subject matter are in an irreconcilable conflict. The later act to the extent of the conflict constitutes an implied repeal of the earlier one. The second is if the later act covers the whole subject of the earlier one and is clearly intended as a substitute, it will operate to repeal the earlier law.
>
> Implied repeal by irreconcilable inconsistency takes place when the two statutes cover the same subject matter; they are so clearly inconsistent and incompatible with each other that they cannot be reconciled or harmonized; and both cannot be given effect, that is, that one law cannot [be] enforced without nullifying the other.

Another. Section 27 governs all corporations, agencies, or instrumentalities owned or controlled by the Government (GOCCs), with the exception of a few. It directs these GOCCs to "pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in a similar business, industry, or activity." The directive ***presupposes*** that the funds are *income*, hence, *taxable*.

On the other hand, Section 8 of RA 7227, as amended by RA 7917, specifically governs BCDA's disposition of the properties enumerated therein and their sale proceeds. The law exempts these sale proceeds from all kinds of fees and taxes as the same law has already appropriated them for specific purposes and for designated beneficiaries.

It is settled that between a general law and a special law, the latter prevails. For a special law reveals the legislative intent more clearly than a general law does. Verily, the special law should be deemed an exception to the general law.[21]

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[21] *Mandanas v. Ochoa*, G.R. Nos. 199802 & 208488, April 10, 2019.

In light of the foregoing considerations, therefore, the standard procedural and documentary requirements for tax refund applicable to GOCCs in general do not apply to BCDA *vis-a-vis* the properties and the sale proceeds specified under Section 8 of RA 7227, as amended. To repeat, there is no income to speak of here; only the sale proceeds of specific properties which the legislature itself exempts from all taxes and fees.

ACCORDINGLY, the petition is **DENIED**. The Decision dated December 16, 2014 and Resolution dated April 15, 2015 of Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 1123 (CTA Case No. 8140) are **AFFIRMED**. No costs.

SO ORDERED.

Peralta, C. J. (Chairperson), Caguioa, Reyes, J. Jr., and *Lopez, JJ.*, concur.

FIRST DIVISION

[G.R. No. 222239. January 15, 2020]

ASSOCIATION OF INTERNATIONAL SHIPPING LINES, INC., APL CO. PTE LTD., and MAERSK-FILIPINAS, INC., *petitioners, vs.* **SECRETARY OF FINANCE and COMMISSIONER OF INTERNAL REVENUE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; BAR BY PRIOR JUDGMENT; REQUISITES.— *Res judicata* applies in the concept of "bar by prior judgment" if the following requisites concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) the decision must have been

rendered by a court having jurisdiction over the subject matter and the parties; and (4) there must be, between the first and the second action, identity of parties, of subject matter, and of causes of action. Here, we rule that there is no substantial identity of parties and subject matter.

2. ID.; SPECIAL CIVIL ACTIONS; DECLARATORY RELIEF; NATURE OF A PETITION FOR DECLARATORY RELIEF, EXPLAINED; A JUDGMENT IN A PETITION FOR DECLARATORY RELIEF BINDS ONLY THE IMPLEADED PARTIES.— ***Tambunting, Jr. v. Sumabat*** explains the nature of a petition for declaratory relief, thus: An action for declaratory relief should be filed by a person interested under a deed, will, contract or other written instrument, and whose rights are affected by a statute, executive order, regulation or ordinance before breach or violation thereof. **The purpose of the action is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, contract, *etc*. for their guidance in its enforcement or compliance and not to settle issues arising from its alleged breach.** It may be entertained only before the breach or violation of the statute, deed, contract, *etc*. to which it refers. Where the law or contract has already been contravened prior to the filing of an action for declaratory relief, the court can no longer assume jurisdiction over the action. In other words, a court has no more jurisdiction over an action for declaratory relief if its subject, *i.e*., the statute, deed, contract, *etc*., has already been infringed or transgressed before the institution of the action. Under such circumstances, inasmuch as a cause of action has already accrued in favor of one or the other party, there is nothing more for the court to explain or clarify short of a judgment or final order. Thus, it is required that the parties to the action for declaratory relief be those whose rights or interests are affected by the contract or statute being questioned. Section 2 of Rule 63 of the Rules of Court further underscores that a judgment in a petition for declaratory relief binds only the impleaded parties x x x. Applying the foregoing principles here, we find that there is no identity of parties between Civil Case No. Q-09-64241 and this case.

3. ID.; CIVIL PROCEDURE; JUDGMENTS; A JUDGMENT IN CIVIL CASE DOES NOT RISE TO A LEVEL OF A JUDICIAL PRECEDENT TO BE FOLLOWED IN SUBSEQUENT CASES BY ALL COURTS IN THE LAND,

WHERE THE SAME WAS RENDERED BY A REGIONAL TRIAL COURT, AND NOT BY THE SUPREME COURT; THE INVALIDITY OF RMC 31-2008 ISSUED BY THE COMMISSIONER OF INTERNAL REVENUE (CIR), WHICH TREATS DEMURRAGE AND DETENTION FEES TO BE WITHIN THE PRISM OF REGULAR CORPORATE INCOME TAX RATE, DOES NOT PRECLUDE THE SECRETARY OF FINANCE FROM PROMULGATING RR 15-2013, WHICH TOUCHES ON THE SAME SUBJECT, AS THE CIR AND THE SECRETARY OF FINANCE DERIVE THEIR RESPECTIVE POWERS FROM TWO (2) DISTINCT SOURCES; THUS, THEIR RESPECTIVE ISSUANCES, ARE SEPARATE AND INDEPENDENT OF EACH OTHER.— While it is true that RMC 31-2008, subject of Civil Case No. Q-09- 64241, on one hand, and RR 15-2013, subject of the present case, on the other, both treat demurrage and detention fees to be within the prism of regular corporate income tax rate, each, however, differs from the other with respect to the authority from which it emanated. In Civil Case No. Q-09-64241, what was challenged was the CIR's authority to issue RMC 31-2008 pursuant to Section 4 of the NIRC. On the other hand, what is being challenged here is the Secretary of Finance's authority to issue RR 15-2013 in accordance with Section 244 of the NIRC and Section 5 of RA 10378. The CIR and the Secretary of Finance derive their respective powers from two (2) distinct sources, thus, their respective issuances, too, are separate and independent of each other. More, the supposed invalidity of the CIR's issuance in Civil Case No. Q-09-64241 does not preclude the Secretary of Finance from rendering his issuance on the same subject. More important, the judgment in Civil Case No. Q-09-64241 does not rise to a level of a judicial precedent to be followed in subsequent cases by all courts in the land, since the same was rendered by a regional trial court, and not by this Court. Verily, the Order dated May 18, 2012 of RTC-Branch 98, although binding on the CIR, cannot serve as a judicial precedent for the purpose of precluding the Secretary of Finance from promulgating a similar issuance on the same subject.

4. ID.; SPECIAL CIVIL ACTIONS; DECLARATORY RELIEF; REGIONAL TRIAL COURTS HAVE NO JURISDICTION OVER PETITIONS FOR DECLARATORY RELIEF

AGAINST THE IMPOSITION OF TAX LIABILITY OR VALIDITY OF TAX ASSESSMENTS.— [T]he trial court dismissed the case below, among others, for lack of jurisdiction pursuant to Section 1 of CA 55 x x x. In ***CJH Development Corp. v. BIR,*** this Court clarified that CA 55 is still good law, thus: x x x. **As a substantive law that has not been repealed by another statute, CA No. 55 is still in effect and holds sway. Precisely, it has removed from the courts' jurisdiction over petitions for declaratory relief involving tax assessments.** x x x. ***CIR v. Standard Insurance, Co., Inc.*** further reinforced the rule that regional trial courts have no jurisdiction over petitions for declaratory relief against the imposition of tax liability or validity of tax assessments: The more substantial reason that should have impelled the RTC to desist from taking cognizance of the respondent's petition for declaratory relief except to dismiss the petition was its lack of jurisdiction. We start by reminding the respondent about the inflexible policy that taxes, being the lifeblood of the Government, should be collected promptly and without hindrance or delay. Obeisance to this policy is unquestionably dictated by law itself. Indeed, Section 218 of the NIRC expressly provides that "[n]o court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by th[e] [NIRC]." **Also, pursuant to Section 11[15] of R.A. No. 1125, as amended, the decisions or rulings of the Commissioner of Internal Revenue, among others, assessing any tax, or levying, or distraining, or selling any property of taxpayers for the satisfaction of their tax liabilities are immediately executory, and their enforcement is not to be suspended by any appeals thereof to the Court of Tax Appeals unless "in the opinion of the Court [of Tax Appeals] the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and/or the taxpayer," in which case the Court of Tax Appeals "at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount."**

5. ID.; ID.; ID.; A PETITION FOR DECLARATORY RELIEF CANNOT BE THE PROPER VEHICLE TO INVOKE THE POWER OF JUDICIAL REVIEW TO DECLARE A

STATUTE AS INVALID OR UNCONSTITUTIONAL, FOR THERE IS NO ACTUAL CASE INVOLVED IN A PETITION FOR DECLARATORY RELIEF; THE PROPER REMEDY TO SEEK INVALIDATION OF RR 15-2013 IS A PETITION FOR *CERTIORARI* OR PROHIBITION, NOT A PETITION FOR DECLARATORY RELIEF.— [S]ince there is no actual case involved in a petition for declaratory relief, it cannot be the proper vehicle to invoke the power of judicial review to declare a statute as invalid or unconstitutional. As decreed in ***DOTR v. PPSTA***, the proper remedy is *certiorari* or prohibition, thus: **The Petition for Declaratory Relief is not the proper remedy.** One of the requisites for an action for declaratory relief is that it must be filed before any breach or violation of an obligation. Section 1, Rule 63 of the Rules of Court states, thus: x x x **Thus, there is no actual case involved in a Petition for Declaratory Relief. It cannot, therefore, be the proper vehicle to invoke the judicial review powers to declare a statute unconstitutional.** x x x. **To question the constitutionality of the subject issuances, respondents should have invoked the expanded *certiorari* jurisdiction under Section 1 of Article VIII of the 1987 Constitution. The adverted section defines judicial power as the power not only "to settle actual controversies involving rights which are legally demandable and enforceable," but also "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."**

6. ID.; ID.; ID.; A PETITION FOR DECLARATORY RELIEF MAY BE TREATED AS ONE FOR PROHIBITION IF THE CASE HAS FAR-REACHING IMPLICATIONS AND RAISES QUESTIONS THAT NEED TO BE RESOLVED, OR IF THE ASSAILED ACT OR ACTS OF EXECUTIVE OFFICIALS ARE ALLEGED TO HAVE USURPED LEGISLATIVE AUTHORITY; THE PRESENT PETITION FOR DECLARATORY RELIEF WAS TREATED AS ONE FOR *CERTIORARI* OR PROHIBITION BECAUSE RR 15-2013 GREATLY IMPACTS THE PHILIPPINE MARITIME INDUSTRY.— In ***Diaz, et al. v. Secretary of Finance, et al.***, the Court, nonetheless, held that a petition for declaratory relief may be treated as one for prohibition if the case has far-reaching implications and raises questions that need to be resolved for

the public good; or if the assailed act or acts of executive officials are alleged to have usurped legislative authority, thus: x x x. **But there are precedents for treating a petition for declaratory relief as one for prohibition if the case has far-reaching implications and raises questions that need to be resolved for the public good. The Court has also held that a petition for prohibition is a proper remedy to prohibit or nullify acts of executive officials that amount to usurpation of legislative authority.** x x x. Here, RR 15-2013 greatly impacts the Philippine maritime industry since it is considered "*as more of the 'backbone' of the Philippines' burgeoning economy due to its significance both for trade and transportation*." For this reason and the fact that the issue at hand has already pended since 2013 or for more than six (6) years now, first with the trial court and now with this Court, we resolve to treat the present case as one for *certiorari* or prohibition and settle the controversy once and for all.

7. TAXATION; NATIONAL INTERNAL REVENUE CODE OF 1997 (NIRC), AS AMENDED; REVENUE REGULATION NO. 15-2013 (RR 15-2013); GROSS PHILIPPINE BILLINGS (GPB), DEFINED; GROSS PHILIPPINE BILLINGS COVERS GROSS REVENUE DERIVED FROM TRANSPORTATION OF PASSENGERS, CARGO AND/OR MAIL ORIGINATING FROM THE PHILIPPINES UP TO THE FINAL DESTINATION; ANY OTHER INCOME IS SUBJECT TO THE REGULAR INCOME TAX RATE; WHEN THE LAW IS CLEAR, THERE IS NO OTHER RECOURSE BUT TO APPLY IT REGARDLESS OF ITS PERCEIVED HARSHNESS.— To determine whether demurrage and detention fees are subject to the preferential 2.5% rate, we refer to the definition of "Gross Philippine Billings" (GPB) under Section 28(A)(I)(3a) of the NIRC, as amended by RA 10378, *viz*.: "*gross revenue whether for passenger, cargo or mail originating from the Philippines up to final destination, regardless of the place of sale or payments of the passage or freight documents*." RR 15-2013 echoes this definition, thus: B) Determination of Gross Philippine Billings of International Sea Carriers. — In computing for "Gross Philippine Billings" of international sea carriers, there shall be included the total amount of gross revenue whether for passenger, cargo, and/or mail originating from the Philippines up to final destination,

regardless of the place of sale or payments of the passage or freight documents. x x x Verily, the GPB covers gross revenue derived from transportation of **passengers, cargo and/or mail** originating from the Philippines up to the final destination. Any other income, therefore, is subject to the regular income tax rate. When the law is clear, there is no other recourse but to apply it regardless of its perceived harshness. *Dura lex sed lex*.

8. ID.; ID.; ID.; DEMURRAGE AND DETENTION FEES, DISTINGUISHED.— Under RR 15-2013, demurrage and detention fees are not deemed within the scope of GPB. For demurrage fees "*which are in the nature of rent for the use of property of the carrier in the Philippines, is considered income from Philippine source and is subject to income tax under the regular rate as the other types of income of the on-line carrier*." On the other hand, detention fees and other charges "*relating to outbound cargoes and inbound cargoes are all considered Philippine-sourced income of international sea carriers they being collected for the use of property or rendition of services in the Philippines, and are subject to the Philippine income tax under the regular rate*." Demurrage fee is the allowance or compensation due to the master or owners of a ship, by the freighter, for the time the vessel may have been detained beyond the time specified or implied in the contract of affreightment or the charter-party. It is only an extended freight or reward to the vessel, in compensation for the earnings the carrier is improperly caused to lose. Detention occurs when the consignee holds on to the carrier's container outside of the port, terminal, or depot beyond the free time that is allotted. Detention fee is charged when import containers have been picked up, but the container (regardless if it is full or empty) is still in the possession of the consignee and has not been returned within the allotted time. Detention fee is also charged for export containers in which the empty container has been picked up for loading, and the loaded container is returned to the steamship line after the allotted free time.

9. ID.; ID.; ID.; ID.; BOTH DEMURRAGE AND DETENTION FEES SHOULD BE EXCLUDED FROM THE PREFERENTIAL RATE OF 2.5%, SINCE THEY ARE NOT CONSIDERED INCOME DERIVED FROM TRANSPORTATION OF PERSONS, GOODS AND/OR MAIL, BUT FORM PART OF AN INTERNATIONAL SEA

CARRIER'S GROSS INCOME, AS THEY ARE ACQUIRED IN THE NORMAL COURSE OF TRADE OR BUSINESS; DEMURRAGE AND DETENTION FEES FALL WITHIN THE DEFINITION OF "GROSS INCOME" — THE FORMER IS CONSIDERED AS RENT PAYMENT FOR THE VESSEL; AND THE LATTER, COMPENSATION FOR USE OF A CARRIER'S CONTAINER.— Indeed, the exclusion of demurrage and detention fees from the preferential rate of 2.5% is proper since they are not considered income derived from transportation of persons, goods and/or mail, in accordance with the rule *expressio unios est exclusio alterius*. Demurrage and detention fees definitely form part of an international sea carrier's gross income. For they are acquired in the normal course of trade or business. The phrase "*in the course of trade or business*" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity. Surely, gross income means income derived from whatever source, including compensation for services; the conduct of trade or business or the exercise of a profession; dealings in property; interests; rents; royalties; dividends; annuities; prizes and winnings; pensions; and a partner's distributive share in the net income of a general professional partnership, among others. Demurrage and detention fees fall within the definition of "gross income" — the former is considered as rent payment for the vessel; and the latter, compensation for use of a carrier's container.

10. ID.; ID.; ID.; INTERPRETATIVE REGULATIONS AND THOSE MERELY INTERNAL IN NATURE ARE NOT REQUIRED TO BE FILED WITH THE U.P. LAW CENTER FOR THEIR EFFECTIVITY; WHEN AN ADMINISTRATIVE RULE IS MERELY INTERPRETATIVE IN NATURE, ITS APPLICABILITY NEEDS NOTHING FURTHER THAN ITS BARE ISSUANCE, FOR IT GIVES NO REAL CONSEQUENCE MORE THAN WHAT THE LAW ITSELF HAS ALREADY PRESCRIBED; RR 15-2013 IS AN INTERNAL ISSUANCE FOR THE GUIDANCE OF *"ALL INTERNAL REVENUE OFFICERS AND OTHERS*

CONCERNED," AND* AN INTERPRETATIVE ISSUANCE *VIS-À-VIS* R.A. NO. 10378; AS SUCH, IT NEED NOT PASS THROUGH A PUBLIC HEARING OR CONSULTATION, GET PUBLISHED, NAY, REGISTERED WITH THE U.P. LAW CENTER FOR ITS EFFECTIVITY.—** An interpretative or implementing rule is defined under Section 2 (2), chapter 1, Book VIII of the Revised Administrative Code x x x. Chapter 2 of Book VII of the same Code further provides the manner by which administrative rules attain effectivity x x x. Excepted are interpretative regulations and those merely internal in nature, which do not require filing with the U.P. Law Center for their effectivity. On this score, ***ASTEC v. ERC is proper: x x x. However, in Board of Trustees of the Government Service Insurance System v. Velasco, this Court pronounced that **"[n]ot all rules and regulations adopted by every government agency are to be filed with the UP Law Center." Interpretative regulations and those merely internal in nature are not required to be filed with the U.P. Law Center.** x x x. RR 15-2013 is an internal issuance for the guidance of "*all internal revenue officers and others concerned*." It is also an interpretative issuance *vis-à-vis* R.A. No. 10378, x x x. RR 15-2013 merely sums up the rules by which international carriers may avail of preferential rates or exemption from income tax on their gross revenues derived from the carriage of persons and their excess baggage based on the principle of reciprocity or an applicable tax treaty or international agreement to which the Philippines is a signatory. Interpretative regulations are intended to interpret, clarify or explain existing statutory regulations under which the administrative body operates. Their purpose or objective is merely to construe the statute being administered and purport to do no more than interpret the statute. Simply, they try to say what the statute means and refer to no single person or party in particular but concern all those belonging to the same class which may be covered by the said rules. Indeed, when an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed. As such, RR 15-2013 need not pass through a public hearing or consultation, get published, nay, registered with the U.P. Law Center for its effectivity.

APPEARANCES OF COUNSEL

S*ycip Salazar Hernandez & Gatmaitan* for petitioners.
Robinita P. Chua & Bernardito Paul R. Somera, Jr. for respondent Commissioner of Internal Revenue.

D E C I S I O N

LAZARO-JAVIER, *J.*:

Antecedents

On July 1, 2005, Republic Act No. 9337[1] (RA 9337) was enacted, amending select provisions of the 1997 National Internal Revenue Code (NIRC), namely, Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288.

In relation to these amendments, then Commissioner of Internal Revenue (CIR) Lilian Hefti issued Revenue Memorandum Circular No. 31-2008[2] (RMC 31-2008) dated January 30, 2008. It sought to "*clarify certain provisions of the National Internal Revenue Code of 1997, as amended (Code), as it applies to shipping companies and their agents as well as their suppliers to ensure that the law is properly implemented and taxes are properly collected, in a manner that aligns with acceptable business practices*." Its relevant portions read:

> Q-3: Are on-line international sea carriers subject to VAT?
> A-3: No. On-line international sea carriers are not subject to VAT they being subject to percentage tax under Title V of the Tax Code. They are liable to the three percent (3%) percentage tax imposed on their gross receipts from outbound fares and freight, pursuant to Section 118 of the Code.

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[1] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

[2] Clarification of Issues Concerning Common Carriers by Sea and their Agents Relative to the Transport of Passengers, Goods or Cargoes.

However, if these on-line international sea carriers engage in other transactions not exempt under Section 119 of the Code, they shall be liable to the twelve percent (12%) VAT on these transactions.

Q-4: Are demurrage fees collected by on-line international sea carriers due to delay by the shipper in unloading their inbound cargoes subject to tax?
A-4: Yes, Demurrage fees, which are in the nature of rent for the use of property of the carrier in the Philippines is considered income from Philippine source and is subject to income tax under the regular rate as the other types of income of the on-line carrier. Said other line of business may likewise be subject to VAT or percentage tax applying the rule on threshold discussed in the succeeding paragraph.

Q-5: Are detention fees and other charges collected by international sea carriers subject to tax?
A-5: Detention fees and other charges relating to outbound cargoes and inbound cargoes are all considered Philippine-sourced income of the international sea carriers they being collected for the use of property or rendition of services in the Philippines, and are subject to the Philippine income tax under the regular rate, and to the Value added tax, if the total annual receipts from all the VAT-registered activities exceeds one million five hundred thousand pesos (₱1,500,000.00). However, if the total annual gross receipts do not exceed one million five hundred thousand pesos, said taxpayer is liable to pay the 3% percentage tax.

x x x x x x x x x

Q-14: Are sales of goods, supplies, equipment, fuel and services to persons engaged in international shipping operations subject to VAT?
A-14: The sale of goods, supplies, equipment, fuel and services including leases of property) to the common carrier to be used in its international sea transport operations is zero-rated. Provided, that the same is limited to goods, supplies, equipment, fuel and services pertaining to or attributable to the transport of goods and passengers from a port in the Philippine directly to a foreign port without docking or stopping at any other port in the Philippines to unload passengers and/or cargoes loaded in and from another domestic port; Provided, further, that if any portion of such fuel, equipment, goods or supplies and services is used for purposes other than that mentioned in this paragraph, such portion of fuel, equipment, goods, supplies and services shall be subject to 12% VAT.

x x x x x x x x x

Q-34: Are commission incomes received by the local shipping agents from their foreign principals subject to VAT?
A-34: The commission income or fees received by the local shipping agents for outbound freights/fares received by their foreign principals which are on-line international sea carriers (touching any port in the Philippines as part of their operation) shall be zero-rated pursuant to the provisions of Section 108(B)(4) of the Code. Said provision does not require that payments of the commission income or fees for "services rendered to persons engaged in international shipping operations, including leases of property for use thereof," be paid in acceptable foreign currency in order that such transaction may be zero-rated. On the other hand, commission income or fees received by the local shipping agents pertaining to inbound freights/fares received by their foreign principals/on-line international sea carriers or pertaining to freights/fares received by off-line international sea carriers shall be subject to VAT at 12%.

Five (5) years after the enactment of RA 9337, on December 6, 2010, petitioners Association of International Shipping Lines, Inc.[3] (AISL), APL Co. Pte. Ltd.[4] (APL), and Maersk-Filipinas, Inc. (Maersk) sought to nullify RMC 31-2008 via a petition for declaratory relief entitled "*Association of International Shipping Lines, Inc. (AISL), APL Co. Pte. Ltd. (APL), and Maersk-Filipinas, Inc. (Maersk) v. Commissioner of Internal Revenue*." The case was raffled to RTC-Branch 98, Quezon City, and docketed as Civil Case No. Q-09-64241.[5]

Petitioners prayed that the trial court: 1) issue a writ of preliminary injunction enjoining the then BIR Commissioner and her representatives, agents, or those acting under her instructions or on her behalf from implementing, enforcing, or

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[3] Is a non-stock, non-profit corporation duly organized and existing under the laws of the Republic of the Philippines, whose members are international shipping carriers and/or their agents operating in the Philippines.

[4] Is an AISL member-firm engaged in international shipping business. It is a corporation duly organized and existing under the laws of Singapore and licensed to do business in the Philippines.

[5] *Rollo*, p. 102.

acting pursuant to or on the basis of the challenged provisions of RMC 31-2008; and 2) render judgment declaring these challenged provisions void.[6]

According to petitioners, RMC 31-2008 was void insofar as it imposed regular tax rate of thirty percent (30%) and twelve percent (12%) VAT on the demurrage and detention fees collected by international shipping carriers from shippers or consignees for delay in the return of containers, on the domestic portion of services to persons engaged in international shipping operations, and on commission income received by local shipping agents from international shipping carriers or in connection with inbound shipments.

By Order[7] dated May 18, 2012, Branch 98 held that international carriers were not subject to income tax under Section 28 (A)(1)(3b)[8] of the NIRC. Too, demurrage fees were not considered income derived from other or separate business

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[6] *Id.*

[7] *Id.* at 102-115.

[8] SEC. 28. Rates of Income Tax on Foreign Corporations. —

(A) Tax on Resident Foreign Corporations. —

(1) In General. - Except as otherwise provided in this Code, a corporation organized, authorized, or existing under the laws of any foreign country, engaged in trade or business within the Philippines, shall be subject to an income tax equivalent to thirty-five percent (35%) of the taxable income derived in the preceding taxable year from all sources within the Philippines: Provided, That effective January 1, 2009, the rate of income tax shall be thirty percent (30%).

In the case of corporations adopting the fiscal-year accounting period, the taxable income shall be computed without regard to the specific date when sales, purchases and other transactions occur. Their income and expenses for the fiscal year shall be deemed to have been earned and spent equally for each month of the period.

The corporate income tax rate shall be applied on the amount computed by multiplying the number of months covered by the new rate within the fiscal year by the taxable income of the corporation for the period, divided by twelve.

Provided, however, That a resident foreign corporation shall be granted the option to be taxed at fifteen percent (15%) on gross income under the same conditions, as provided in Section 27(A).

of the international carrier. Being incidental to the trade or business of the international carrier, demurrage fees should instead form part of the Gross Philippine Billings (GPB) subject to 2.5% tax under Section 28. Further the law did not expressly impose 12% VAT on the domestic portion of the services rendered by international carriers.[9] Thus:

> **WHEREFORE**, premises considered, and pursuant to Rule 35 of the 1997 Rules of Civil Procedure, the Court grants the motion for summary judgment and declares as **INVALID**, the pertinent portions of Revenue Memorandum Circular No. 31-2008, insofar as the latter subjects the: a) demurrage and detention fees to the regular corporate income tax rate under Section 28(A)(1) and 12% VAT; b) domestic portion of the services rendered to persons engaged in international shipping operation to 12% VAT; and c) commission income or fees received by local shipping agents from international shipping carriers for the latter's inbound freights/fares to 12% VAT, for being contrary to Section 28 (A)(1), and (3) and Section 108 (B)(4) of the National Internal Revenue Code of 1997, as amended.
>
> SO ORDERED.[10]

The Order became final and executory as of June 16, 2012.[11]

On March 7, 2013, Republic Act No. 10378[12] (RA 10378) was enacted, amending Section 28 (A)(3)(a) of the NIRC. The provision now reads:

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x x x x x x x x x

(3) International Carrier. -An international carrier doing business in the Philippines shall pay a tax of two and one-half percent (2 1/2%) on its 'Gross Philippine Billings' as defined hereunder:

x x x x x x x x x

(b) International Shipping.— 'Gross Philippine Billings' means gross revenue whether for passenger, cargo or mail originating from the Philippines. up to final destination, regardless of the place of sale or payments of the passage or freight documents.

x x x x x x x x x

[9] *Rollo*, pp. 111-114.

[10] *Id.* at 114-115.

[11] *Id.* at 116.

[12] AN ACT RECOGNIZING THE PRINCIPLE OF RECIPROCITY AS BASIS FOR

SEC. 28. Rates of Income Tax on Foreign Corporations.—
(A) Tax on Resident Foreign Corporations. —
(1) x x x
(2) x x x
(3)International Carrier. — An international carrier doing business in the Philippines shall pay a tax of two and one-half percent (2½ %) on its 'Gross Philippine Billings' as defined hereunder:

(a) International Air Carrier. — 'Gross Philippine Billings' refers to the amount of gross revenue derived from carriage of persons, excess baggage, cargo, and mail originating from the Philippines in a continuous and uninterrupted flight, irrespective of the place of sale or issue and the place of payment of the ticket or passage document: Provided, That tickets revalidated, exchanged and/or indorsed to another international airline form part of the Gross Philippine Billings if the passenger boards a plane in a port or point in the Philippines: Provided, further, That for a flight which originates from the Philippines, but transshipment of passenger takes place at any part outside the Philippines on another airline, only the aliquot portion of the cost of the ticket corresponding to the leg flown from the Philippines to the point of transshipment shall form part of Gross Philippine Billings.

(b) International Shipping. — 'Gross Philippine Billings' means gross revenue whether for passenger, cargo or mail originating from the Philippines up to final destination, regardless of the place of sale or payments of the passage or freight documents.

Provided, That international carriers doing business in the Philippines may avail of a preferential rate or exemption from the tax herein imposed on their gross revenue derived from the carriage of persons and their excess baggage on the basis of an applicable tax treaty or international agreement to which the Philippines is a signatory or on the basis of reciprocity such that an international carrier, whose home country grants income tax exemption to Philippine carriers, shall likewise be exempt from the tax imposed under this provision.

x x x x x x x x x.

THE GRANT OF INCOME TAX EXEMPTIONS TO INTERNATIONAL CARRIERS AND RATIONALIZING OTHER TAXES IMPOSED THEREON BY AMENDING SECTIONS 28(A)(3)(A), 109, 118 AND 236 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC), AS AMENDED, AND FOR OTHER PURPOSES.

The Secretary of Finance, thereafter, issued the implementing rules under Revenue Regulation No. 15-2013[13] (RR 15-2013), the validity of which is now the subject of this petition.

The Proceedings Before the Trial Court

Over three (3) years later, on December 4, 2013, petitioners initiated the present petition for declaratory relief,[14] this time, challenging Section 4.4 of RR 15-2013 and impleading as respondents both the Secretary of Finance and the CIR. Section 4.4 reads:

> 4.4) Taxability of Income Other Than Income From International Transport Services. — All items of income derived by international carriers that do not form part of Gross Philippine Billings as defined under these Regulations shall be subject to tax under the pertinent provisions of the NIRC, as amended.
>
> **Demurrage fees, which are in the nature of rent for the use of property of the carrier in the Philippines, is considered income from Philippine source and is subject to income tax under the regular rate as the other types of income of the on-line carrier.**
>
> **Detention fees and other charges relating to outbound cargoes and inbound cargoes are all considered Philippine-sourced income of international sea carriers they being collected for the use of property or rendition of services in the Philippines, and are subject to the Philippine income tax under the regular rate.** (Emphasis supplied)

The case was raffled to RTC-Branch 77, Quezon City, and docketed Special Civil Action No. R-QZN-13-05590-CV, then presided by Acting Presiding Judge Cleto R. Villacorta III.

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[13] Revenue Regulations Implementing Republic Act No. 10378 entitled "An Act Recognizing the Principle of Reciprocity as Basis for the Grant of Income Tax Exemptions to International Carriers and Rationalizing Other Taxes Imposed thereon by Amending Sections 28 (A)(3)(A), 109, 118 And 236 of the National Internal Revenue Code (NIRC), as amended, and for other Purposes."

[14] With applications for a temporary restraining order and a writ of preliminary injunction, *rollo*, pp. 136-165.

Petitioners' Arguments

Petitioners argued that Section 4.4 of RR 15-2013 invalidly subjects demurrage and detention fees collected by international shipping carriers to regular corporate income tax rate. This very same imposition had been previously declared invalid by Branch 98 through its final and executory Order dated May 18, 2012.[15] Section 4.4 of RR 15-2013 should not, therefore, be given effect by reason of *res judicata*.[16] The treatment of demurrage and detention fees on the carriage of cargoes prior to and after the enactment of RA 10378 did not change. There is nothing in RA 10378 which even touches on demurrage and detention fees, much less, provides or even implies that they should be treated as income subject to tax at the regular corporate income tax rate.[17]

In fact, RR 15-2013 unduly widens the scope of RA 10378 by imposing additional taxes on international shipping carriers not authorized or provided by law. Besides, demurrage and detentions fees are not income but penalties imposed by the carrier on the charterer, shipper, consignee, or receiver, as the case may be, to allow the carrier to recover losses or expenses associated with or caused by the undue delay in the loading and/or discharge of the latter's shipments from the containers.[18] They are akin to damages.[19] Assuming that demurrage and detention fees may be treated as income, these fees are taxable only if they form part of Gross Philippine Billings (GPB) and taxed at the preferential rate of 2.5%.[20]

Further, RR 15-2013 is invalid because it was promulgated without public hearing as required by the Revised Administrative

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[15] *Id.* at 139.

[16] *Id.* at 141-146.

[17] *Id.* at 149.

[18] *Id.* at 150-151.

[19] *Id.* at 152.

[20] *Id.* at 155.

Code and case law. Also, no copies of RR 15-2013 were filed with the University of the Philippines - Law Center, as required by the Revised Administrative Code, thus, the same is deemed not to have become effective.[21]

Respondents' Arguments

By Comment[22] dated February 3, 2014, the Secretary of Finance, through the Office of the Solicitor General (OSG), countered that the Order dated May 18, 2012 in Civil Case No. Q-09-64241 did not preclude the Secretary of Finance from issuing Section 4.4 of RR 15-2013 because a) the first case involves RMC 31-2008 which the CIR issued to clarify matters involving common carriers by sea, in relation to their transport of passengers, goods, and services, while the second case involves RR 15-2013 which the Secretary of Finance issued pursuant to his mandate under RA 10378; b) RMC 31-2008 was issued based on the authority of the CIR to interpret the provisions of the NIRC while RR 15-2013 was issued by virtue of the authority of the Secretary of Finance under RA 10378; and c) the Secretary of Finance was not impleaded as respondent in the first case, thus, he is not bound by the finality of Order dated May 18, 2012. Besides, the Secretary of Finance and the CIR are two (2) distinct officials governing two (2) separate agencies.

According to respondents, RR 15-2013 does not expand the provisions of RA 10378. It simply clarifies what constitutes Gross Philippine Billings (GPB) such that anything outside the definition of GPB is subject to the regular income tax rate for resident foreign corporations. Thus, the law need not specifically mention demurrage or detention fees as among those falling outside the definition of GPB.[23]

Respondents stress that demurrage and detention fees are income. They not only serve as penalties for consignees, they also serve as compensation for extended use of containers. As

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[21] *Id.* at 160.

[22] *Id.* at 411-426.

[23] *Id.* at 417-418.

resident foreign corporations, they are covered by the provisions on the regular income tax rate and not the preferential rate of 2.5% imposed on GPB.[24]

Lastly, respondents argue that the absence of public hearing prior to the publication of RR 15-2013 or non-submission of copies thereof to the UP- Law Center did not render it ineffective. An interpretative regulation such as RR 15-2013, to be effective, needs nothing further than its bare issuance for it gives no real consequence more than what the law itself already prescribes. It adds nothing to the law and does not affect the substantial rights of any person.[25]

In its Answer[26] dated January 27, 2014, the CIR, through the BIR Litigation Department riposted that the trial court had no jurisdiction over the petition for declaratory relief because its subject matter involved a revenue regulation. Under Commonwealth Act No. 55[27] (CA 55), actions for declaratory relief do not apply to cases involving tax liabilities under any law administered by the BIR.[28] Further, *res judicata* does not apply to the case.

Petitioners' Omnibus Motion

Petitioners subsequently filed an Omnibus Motion 1) for Judicial Notice; and 2) for Summary Judgment[29] dated December 4, 2014.

Petitioners prayed that the trial court take judicial notice of the following: 1) the existence of RMC 31-2008; 2) the final

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[24] *Id.* at 420-424.

[25] *Id.* at 424.

[26] *Id.* at 427-444.

[27] AN ACT TO AMEND SECTION ONE OF ACT NUMBERED THIRTY-SEVEN HUNDRED AND THIRTY-SIX, BY PROVIDING THAT THE PROVISIONS OF THE SAID ACT SHALL NOT APPLY TO CASES INVOLVING LIABILITY FOR ANY TAX, DUTY, OR CHARGE COLLECTIBLE UNDER ANY LAW ADMINISTERED BY THE BUREAU OF CUSTOMS OR THE BUREAU OF INTERNAL REVENUE.

[28] *Rollo*, pp. 428-432.

[29] *Id.* at 474-491.

and executory Order dated May 18, 2012 in Civil Case No. Q-09-64241 and its Certificate of Finality dated August 28, 2012; 3) the enactment of Republic Act No. 10378[30] (RA 10378), which recognized the principle of reciprocity for grant of income tax exemptions to international shipping carriers and rationalized the taxes imposed thereon; and 4) the issuance of RR 15-2013.

Petitioners also filed a motion for summary judgment on ground that there was no genuine issue as to any material fact and/or the facts were undisputed and certain based on the pleadings, admissions, and affidavits on record.

The Ruling of the Trial Court

Following the parties' exchange of pleadings, the trial court, then presided by Acting Presiding Judge Villacorta, through its first assailed Order[31] dated September 15, 2015: 1) granted petitioners' motion for judicial notice of the existence of RMC 31-2008, the issuance of Order dated May 18, 2012 in Civil Case No. Q-09-64241 and its corresponding Certificate of Finality dated August 28, 2012, and the enactment of RA 10378 — all these being the official acts of different branches of government; 2) declared that it had no jurisdiction over the petition for declaratory relief pursuant to CA 55 which removed from regional trial courts the authority to rule on cases involving one's liability for tax, duty, or charge collectible under any law administered by the Bureau of Customs or the BIR; 3) ruled against the application of *res judicata* to the case because — first, *res judicata* does not give rise to a cause of action for the purpose of initiating a complaint, *res judicata* being a shield not a sword and executive and legislative authorities have the power to enact laws and rules to supersede judge-made laws or rules, second, the enactment and implementation of RA 10378

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[30] AN ACT RECOGNIZING THE PRINCIPLE OF RECIPROCITY AS BASIS FOR THE GRANT OF INCOME TAX EXEMPTIONS TO INTERNATIONAL CARRIERS AND RATIONALIZING OTHER TAXES IMPOSED THEREON BY AMENDING SECTIONS 28(A)(3)(a), 109, 118 AND 236 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC), AS AMENDED, AND FOR OTHER PURPOSES.

[31] *Rollo*, pp. 89-94.

constituted a supervening event which negated the application of *res judicata*, third, there is no similarity of parties, subject matters, and causes of action between the present case and Civil Case No. Q-09-64241; and 4) found RR No. 15-2013 to be a reasonable tax regulation and an interpretative issuance, the effectivity of which does not require a public hearing, nay, prior registration with the UP Law Center. Thus, the trial court decreed:

WHEREFORE:

(1) The Motion for Judicial Notice is **granted**. This Court **declares** that the issuance of (i) RMC 31-2008, (ii) RTC-Branch 98 Order dated May 18, 2012 in Civil Case No. Q-09-64241, (iii) RTC-Branch 98 Certification of the finality of the Order dated May 18, 2012 in Civil Case No. Q-09- 64241, (iv) RA 10378, and (v) RR 15-2013, is an established fact in this case.

(2) The Motion for Summary Judgment is **denied** and as a result the instant petition for declaratory relief is **dismissed**.

Costs de oficio.

SO ORDERED.[32]

Petitioners' partial motion for reconsideration was denied under Order dated January 8, 2016.

The Present Petition

Petitioners now seek, on pure questions of law, the Court's discretionary appellate jurisdiction to review and reverse the assailed dispositions. They essentially reiterate the arguments raised in their petition for declaratory relief, *i.e.* a) *res judicata* and immutability of judgments apply to this case and the enactment of RA 10378 is not a supervening event which operates to negate the application of the aforesaid principles; b) RR 15-2013 is invalid because it erroneously subjects demurrage and detention fees collected by international shipping carriers to regular income tax rate, albeit these are not income; and c) RR 15-2013 is not an interpretative issuance, thus, a public hearing

[32] *Id.* at 94.

and prior registration with the UP Law Center are required for its validity and effectivity.

Respondents Secretary of Finance and CIR, through Senior State Solicitor Jonathan dela Vega, submits: *Res judicata* does not apply here because there is no commonality of parties between this case and Civil Case No. Q-09-64241. The Secretary of Finance and the CIR are two (2) distinct officials.[33] RR 15-2013 does not add to the provisions of RA 10378. It simply clarifies how the GPB of international sea carriers should be determined. Its issuance is germane to the purpose of the law.[34] Lastly, RR 15-2013 is an interpretative regulation, thus, to be effective, it need not be filed with the UP Law Center.[35]

Petitioners' Reply[36] dated October 27, 2016 echoes their previous arguments against RR 15-2013.

Issues

1. Does *res judicata* apply in this case?

2. Is a petition for declaratory relief proper for the purpose of invalidating RR No. 15-2013?

3. Is RR 15-2013 a valid revenue regulation?

Ruling

Res judicata does not apply here

Res judicata applies in the concept of "bar by prior judgment" if the following requisites concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) there must be, between the first and the second action, identity of parties, of subject matter, and of causes of action.[37]

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[33] *Id.* at 654-655.

[34] *Id.* at 658.

[35] *Id.* at 665.

[36] *Id.* at 674-700.

[37] *Diaz, Jr. v. Valenciano, Jr.*, G.R. No. 209376, December 6, 2017, 848 SCRA 85, 96 (2017).

Here, we rule that there is no substantial identity of parties and subject matter.

a) No substantial identity of parties

Tambunting, Jr. v. Sumabat[38] explains the nature of a petition for declaratory relief, thus:

> An action for declaratory relief should be filed by a person interested under a deed, will, contract or other written instrument, and whose rights are affected by a statute, executive order, regulation or ordinance before breach or violation thereof. **The purpose of the action is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, contract, etc. for their guidance in its enforcement or compliance and not to settle issues arising from its alleged breach.** It may be entertained only before the breach or violation of the statute, deed, contract, etc. to which it refers. Where the law or contract has already been contravened prior to the filing of an action for declaratory relief, the court can no longer assume jurisdiction over the action. In other words, a court has no more jurisdiction over an action for declaratory relief if its subject, i.e., the statute, deed, contract, etc., has already been infringed or transgressed before the institution of the action. Under such circumstances, inasmuch as a cause of action has already accrued in favor of one or the other party, there is nothing more for the court to explain or clarify short of a judgment or final order. (Emphasis supplied)

Thus, it is required that the parties to the action for declaratory relief be those whose rights or interests are affected by the contract or statute being questioned.[39] Section 2 of Rule 63 of the Rules of Court further underscores that a judgment in a petition for declaratory relief binds only the impleaded parties:

> Section 2. Parties. — All persons who have or claim any interest which would be affected by the declaration shall be made parties; and no declaration shall, except as otherwise provided in these Rules, prejudice the rights of persons not parties to the action. (2a, R64)

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[38] 507 Phil. 94, 98 (2005).

[39] *City of Lapu-Lapu v. PEZA*, 748 Phil. 473, 512-513 (2014).

Heirs of Marcelino Doronio v. Heirs of Fortunato Doronio[40] further elucidates on this principle, thus:

Petitioners cannot also use the finality of the RTC decision in Petition Case No. U-920 as a shield against the verification of the validity of the deed of donation. According to petitioners, the said final decision is one for quieting of title. In other words, it is a case for declaratory relief under Rule 64 (now Rule 63) of the Rules of Court, which provides:

> SECTION 1. Who may file petition. — Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, or ordinance, may, before breach or violation thereof, bring an action to determine any question of construction or validity arising under the instrument or statute and for a declaration of his rights or duties thereunder.

An action for the reformation of an instrument, to quiet title to real property or remove clouds therefrom, or to consolidate ownership under Article 1607 of the Civil Code, may be brought under this rule.

> SECTION 2. Parties. — All persons shall be made parties who have or claim any interest which would be affected by the declaration; and no declaration shall, except as otherwise provided in these rules, prejudice the rights of persons not parties to the action.

However, respondents were not made parties in the said Petition Case No. U-920. Worse, instead of issuing summons to interested parties, the RTC merely allowed the posting of notices on the bulletin boards of *Barangay* Cabalitaan, Municipalities of Asingan and Lingayen, Pangasinan. As pointed out by the CA, citing the ruling of the RTC:

> x x x In the said case or Petition No. U-920, notices were posted on the bulletin boards of *barangay* Cabalitaan, Municipalities of Asingan and Lingayen, Pangasinan, so that there was a notice to the whole world and during the initial hearing and/or hearings, no one interposed objection thereto.

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[40] 565 Phil. 766, 786-787 (2007).

Suits to quiet title are not technically suits *in rem*, nor are they, strictly speaking, *in personam*, but being against the person in respect of the *res*, these proceedings are characterized as *quasi in rem*. **The judgment in such proceedings is conclusive only between the parties. Thus, respondents are not bound by the decision in Petition Case No. U-920 as they were not made parties in the said case. (Emphasis supplied)**

Applying the foregoing principles here, we find that there is no identity of parties between Civil Case No. Q-09-64241 and this case.

The final and executory Order dated May 18, 2012 of RTC-Branch 98 in Civil Case No. Q-09-64241 is only binding on herein petitioners Association of International Shipping Lines, Inc., APL Co. Pte. Ltd. and Maersk-Filipinas, Inc. and the lone respondent in that case, the CIR. Meanwhile, in this case, although the petitioners are the same, the respondents include not only the CIR but the Secretary of Finance as well. Note that the Secretary of Finance was not party in Civil Case No. Q-09-64241. Consequently, the Secretary of Finance is not bound by the final and executory judgment in Civil Case No. Q-09-64241. Additionally, unlike in the said case, it is the Secretary of Finance's issuance which is the subject of the present challenge, not the CIR's.

The distinction between the CIR and the Secretary of Finance, as respondents, is not hairsplitting. On one hand, when BIR Commissioner Lilian B. Hefti issued RMC 31-2008 on January 30, 2008, she did so under the auspices of Section 4[41] of the NIRC. On the other hand, when Secretary Cesar Purisima issued RR 15-2013 on September 20, 2013, he did so in obedience to

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[41] SEC. 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases — The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other

the legislative directive under Section 5[42] of RA 10378 and pursuant to his rule-making power under Section 244[43] of the NIRC.

Verily, the Commissioner and the Secretary cannot be considered as one, For when they issued their respective revenue memoranda or regulation, they did so pursuant to the separate powers and prerogatives granted by law.

b) No substantial identity of subject matter

While it is true that RMC 31-2008, subject of Civil Case No. Q-09- 64241, on one hand, and RR 15-2013, subject of the present case, on the other, both treat demurrage and detention fees to be within the prism of regular corporate income tax rate, each, however, differs from the other with respect to the authority from which it emanated.

In Civil Case No. Q-09-64241, what was challenged was the CIR's authority to issue RMC 31-2008 pursuant to Section 4 of the NIRC. On the other hand, what is being challenged here is the Secretary of Finance's authority to issue RR 15-2013 in accordance with Section 244 of the NIRC and Section 5 of RA 10378. The CIR and the Secretary of Finance derive

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matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

[42] Section 5. Implementing Rules and Regulations. — The Secretary of Finance shall, upon the recommendation of the Commissioner of Internal Revenue, promulgate not later than thirty (30) days upon the effectivity of this Act the necessary rules and regulations for its effective implementation. The Department of Finance (DOF), in coordination with the Department of Foreign Affairs (DFA), shall oversee the exchange of notes between the Philippines and concerned countries for purposes of facilitating the availment of reciprocal exemptions intended under this Act.

[43] SEC. 244. Authority of Secretary of Finance to Promulgate Rules and Regulations. — The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code.

their respective powers from two (2) distinct sources, thus, their respective issuances, too, are separate and independent of each other.

More, the supposed invalidity of the CIR's issuance in Civil Case No. Q-09-64241 does not preclude the Secretary of Finance from rendering his issuance on the same subject.

More important, the judgment in Civil Case No. Q-09-64241 does not rise to a level of a judicial precedent to be followed in subsequent cases by all courts in the land, since the same was rendered by a regional trial court, and not by this Court. Verily, the Order dated May 18, 2012 of RTC-Branch 98, although binding on the CIR, cannot serve as a judicial precedent for the purpose of precluding the Secretary of Finance from promulgating a similar issuance on the same subject.

A petition for declaratory relief is not the proper remedy to seek the invalidation of RR 15-2013; petition is treated as one for prohibition

To begin with, the trial court dismissed the case below, among others, for lack of jurisdiction pursuant to Section 1 of CA 55, which reads:

> Section 1. Section one of Act Numbered Thirty-seven hundred and thirty-six is hereby amended so as to read as follows:
>
> "SECTION 1. Construction. — Any person interested under a deed, contract or other written instrument, or whose rights are affected by a statute, may bring an action in a Court of First Instance to determine any question of construction or validity arising under such deed, contract, instrument or statute and for a declaration of his rights or duties thereunder: Provided, however, **That the provisions of this Act shall not apply to cases where a taxpayer questions his liability for the payment of any tax, duty, or charge collectible under any law administered by the Bureau of Customs or the Bureau of Internal Revenue.**" (Emphasis supplied)

In ***CJH Development Corp. v. BIR***,[44] this Court clarified that CA 55 is still good law, thus:

> CJH alleges that CA No. 55 has already been repealed by the Rules of Court; thus, the remedy of declaratory relief against the assessment made by the BOC is proper. It cited the commentaries of Moran allegedly to the effect that declaratory relief lies against assessments made by the BIR and BOC. Yet in *National Dental Supply Co. v. Meer*, this Court held that:
>
> > From the opinion of the former Chief Justice Moran may be deduced that the failure to incorporate the above proviso [CA No. 55] in section 1, rule 66, [now Rule 64] is not due to an intention to repeal it but rather to the desire to leave its application to the sound discretion of the court, which is the sole arbiter to determine whether a case is meritorious or not. And even if it be desired to incorporate it in rule 66, it is doubted if it could be done under the rule-making power of the Supreme Court considering that the nature of said proviso is substantive and not adjective, **its purpose being to lay down a policy as to the right of a taxpayer to contest the collection of taxes on the part of a revenue officer or of the Government**. With the adoption of said proviso, our law-making body has asserted its policy on the matter, which is **to prohibit a taxpayer to question his liability for the payment of any tax that may be collected by the Bureau of Internal Revenue**. As this Court well said, quoting from several American cases, "The Government may fix the conditions upon which it will consent to litigate the validity of its original taxes..." "The power of taxation being legislative, all incidents are within the control of the Legislature." In other words, it is our considered opinion that the proviso contained in Commonwealth Act No. 55 is still in full force and effect and bars the plaintiff from filing the present action.
>
> **As a substantive law that has not been repealed by another statute, CA No. 55 is still in effect and holds sway. Precisely, it has removed from the courts' jurisdiction over petitions for declaratory relief involving tax assessments.** The Court cannot repeal, modify or alter an act of the Legislature. (Emphasis supplied)

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[44] 595 Phil. 1051, 1057-1058 (2008).

CIR v. Standard Insurance, Co., Inc.[45] further reinforced the rule that regional trial courts have no jurisdiction over petitions for declaratory relief against the imposition of tax liability or validity of tax assessments:

> The more substantial reason that should have impelled the RTC to desist from taking cognizance of the respondent's petition for declaratory relief except to dismiss the petition was its lack of jurisdiction.
>
> We start by reminding the respondent about the inflexible policy that taxes, being the lifeblood of the Government, should be collected promptly and without hindrance or delay. Obeisance to this policy is unquestionably dictated by law itself. Indeed, Section 218 of the NIRC expressly provides that "[n]o court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by th[e] [NIRC]." **Also, pursuant to Section 11[15] of R.A. No. 1125, as amended, the decisions or rulings of the Commissioner of Internal Revenue, among others, assessing any tax, or levying, or distraining, or selling any property of taxpayers for the satisfaction of their tax liabilities are immediately executory, and their enforcement is not to be suspended by any appeals thereof to the Court of Tax Appeals unless "in the opinion of the Court [of Tax Appeals] the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and/or the taxpayer," in which case the Court of Tax Appeals "at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount."**
>
> In view of the foregoing, the RTC not only grossly erred in giving due course to the petition for declaratory relief, and in ultimately deciding to permanently enjoin the enforcement of the specified provisions of the NIRC against the respondent, but even worse acted without jurisdiction. (Emphasis supplied)

Tambunting, Jr. v. Sumabat,[46] explained the nature of a petition for declaratory relief, thus:

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[45] G.R. No. 219340, November 7, 2018.

[46] *Supra* note 38.

An action for declaratory relief should be filed by a person interested under a deed, will, contract or other written instrument, and whose rights are affected by a statute, executive order, regulation or ordinance before breach or violation thereof. The purpose of the action is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, contract, etc. for their guidance in its enforcement or compliance and not to settle issues arising from its alleged breach. It may be entertained only before the breach or violation of the statute, deed, contract, etc. to which it refers. Where the law or contract has already been contravened prior to the filing of an action for declaratory relief, the court can no longer assume jurisdiction over the action. In other words, a court has no more jurisdiction over an action for declaratory relief if its subject, *i.e.*, the statute, deed, contract, *etc*., has already been infringed or transgressed before the institution of the action. Under such circumstances, inasmuch as a cause of action has already accrued in favor of one or the other party, there is nothing more for the court to explain or clarify short of a judgment or final order.

Verily, since there is no actual case involved in a petition for declaratory relief, it cannot be the proper vehicle to invoke the power of judicial review to declare a statute as invalid or unconstitutional. As decreed in ***DOTR v. PPSTA***,[47] the proper remedy is *certiorari* or prohibition, thus:

The Petition for Declaratory Relief is not the proper remedy

One of the requisites for an action for declaratory relief is that it must be filed before any breach or violation of an obligation. Section 1, Rule 63 of the Rules of Court states, thus:

x x x x x x x x x

Thus, there is no actual case involved in a Petition for Declaratory Relief. It cannot, therefore, be the proper vehicle to invoke the judicial review powers to declare a statute unconstitutional.

It is elementary that before this Court can rule on a constitutional issue, there must first be a justiciable controversy. A justiciable controversy refers to an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely

[47] G.R. No. 230107, July 24, 2018.

anticipatory. As We emphasized in *Angara v. Electoral Commission*, any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities.

To question the constitutionality of the subject issuances, respondents should have invoked the expanded *certiorari* jurisdiction under Section 1 of Article VIII of the 1987 Constitution. The adverted section defines judicial power as the power not only "to settle actual controversies involving rights which are legally demandable and enforceable," but also "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."

There is a grave abuse of discretion when there is patent violation of the Constitution, the law, or existing jurisprudence. On this score, it has been ruled that "the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions, but also to set right, undo[,] and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions." **Thus, petitions for *certiorari* and prohibition are the proper remedies where an action of the legislative branch is seriously alleged to have infringed the Constitution.** (Emphasis supplied)

In ***Diaz, et al. v. Secretary of Finance, et al.***,[48] the Court, nonetheless, held that a petition for declaratory relief may be treated as one for prohibition if the case has far-reaching implications and raises questions that need to be resolved for the public good; or if the assailed act or acts of executive officials are alleged to have usurped legislative authority, thus:

On August 24, 2010 the Court issued a resolution, treating the petition as one for prohibition rather than one for declaratory relief, the characterization that petitioners Diaz and Timbol gave their action. The government has sought reconsideration of the Court's resolution, however, arguing that petitioners' allegations clearly made out a case

[48] 669 Phil. 371, 382-383 (2011).

for declaratory relief, an action over which the Court has no original jurisdiction. The government adds, moreover, that the petition does not meet the requirements of Rule 65 for actions for prohibition since the BIR did not exercise judicial, quasi-judicial, or ministerial functions when it sought to impose VAT on toll fees. Besides, petitioners Diaz and Timbol has a plain, speedy, and adequate remedy in the ordinary course of law against the BIR action in the form of an appeal to the Secretary of Finance.

But there are precedents for treating a petition for declaratory relief as one for prohibition if the case has far-reaching implications and raises questions that need to be resolved for the public good. The Court has also held that a petition for prohibition is a proper remedy to prohibit or nullify acts of executive officials that amount to usurpation of legislative authority.

Here, the imposition of VAT on toll fees has far-reaching implications. Its imposition would impact, not only on the more than half a million motorists who use the tollways everyday, but more so on the government's effort to raise revenue for funding various projects and for reducing budgetary deficits. (Emphasis supplied)

Here, RR 15-2013 greatly impacts the Philippine maritime industry since it is considered "*as more of the 'backbone' of the Philippines' burgeoning economy due to its significance both for trade and transportation*."[49] For this reason and the fact that the issue at hand has already pended since 2013 or for more than six (6) years now, first with the trial court and now with this Court, we resolve to treat the present case as one for *certiorari* or prohibition and settle the controversy once and for all. ***Diaz*** aptly enunciated:

Although the petition does not strictly comply with the requirements of Rule 65, the Court has ample power to waive such technical requirements when the legal questions to be resolved are of great importance to the public. The same may be said of the requirement of *locus standi* which is a mere procedural requisite. (Emphasis supplied)

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[49] Letran, Bjorn Biel M. "A bustling and thriving sector," BWorldOnline.Com., April 25, 2018. See https://www.bworldonline.com/a-bustling-and-thriving-sector.

RR 15-2013 is a valid issuance

In treating demurrage and detention fees as regular income subject to regular income tax rate, the Secretary of Finance relied on Section 28(A)(I)(3a) of the NIRC, as amended by RA 10378, *viz.*:

SEC. 28. Rates of Income Tax on Foreign Corporations. —

(A) Tax on Resident Foreign Corporations. —
(1) x x x
(2) x x x

(3). International Carrier.—An international carrier doing business in the Philippines shall pay a tax of two and one-half percent (2 1/2 %) on its 'Gross Philippine Billings' as defined hereunder:

(c) International Air Carrier. — 'Gross Philippine Billings' refers to the amount of gross revenue derived from carriage of persons, excess baggage, cargo, and mail originating from the Philippines in a continuous and uninterrupted flight, irrespective of the place of sale or issue and the place of payment of the ticket or passage document: Provided, That tickets revalidated, exchanged and/or indorsed to another international airline form part of the Gross Philippine Billings if the passenger boards a plane in a port or point in the Philippines: Provided, further, That for a flight which originates from the Philippines, but transshipment of passenger takes place at any part outside the Philippines on another airline, only the aliquot portion of the cost of the ticket corresponding to the leg flown from the Philippines to the point of transshipment shall form part of Gross Philippine Billings.

(d) International Shipping. — 'Gross Philippine Billings' means gross revenue whether for passenger, cargo or mail originating from the Philippines up to final destination, regardless of the place of sale or payments of the passage or freight documents.

Provided, That international carriers doing business in the Philippines may avail of a preferential rate or exemption from the tax herein imposed on their gross revenue derived from the carriage of persons and their excess baggage on the basis of an applicable tax treaty or international agreement to which the

Philippines is a signatory or on the basis of reciprocity such that an international carrier, whose home country grants income tax exemption to Philippine carriers, shall likewise be exempt from the tax imposed under this provision. (Emphasis supplied)

x x x x x x x x x.

This provision is still in effect since it was not amended by RA 10963 or the Tax Reform for Acceleration and Inclusion law.

To determine whether demurrage and detention fees are subject to the preferential 2.5% rate, we refer to the definition of "Gross Philippine Billings" (GPB) under Section 28(A)(I)(3a) of the NIRC, as amended by RA 10378, *viz*.: "*gross revenue whether for passenger, cargo or mail originating from the Philippines up to final destination, regardless of the place of sale or payments of the passage or freight documents*."

RR 15-2013 echoes this definition, thus:

B) Determination of Gross Philippine Billings of International Sea Carriers. — In computing for "Gross Philippine Billings" of international sea carriers, there shall be included the total amount of gross revenue whether for passenger, cargo, and/or mail originating from the Philippines up to final destination, regardless of the place of sale or payments of the passage or freight documents.

x x x x x x x x x

Verily, the GPB covers gross revenue derived from transportation of **passengers, cargo and/or mail** originating from the Philippines up to the final destination. Any other income, therefore, is subject to the regular income tax rate. When the law is clear, there is no other recourse but to apply it regardless of its perceived harshness. *Dura lex sed lex*.[50]

Under RR 15-2013, demurrage and detention fees are not deemed within the scope of GPB. For demurrage fees "*which are in the nature of rent for the use of property of the carrier*

[50] *Obiasca v. Basallote*, 626 Phil. 775, 785 (2010).

in the Philippines, is considered income from Philippine source and is subject to income tax under the regular rate as the other types of income of the on-line carrier." On the other hand, detention fees and other charges "*relating to outbound cargoes and inbound cargoes are all considered Philippine-sourced income of international sea carriers they being collected for the use of property or rendition of services in the Philippines, and are subject to the Philippine income tax under the regular rate*."

Demurrage fee is the allowance or compensation due to the master or owners of a ship, by the freighter, for the time the vessel may have been detained beyond the time specified or implied in the contract of affreightment or the charter-party. It is only an extended freight or reward to the vessel, in compensation for the earnings the carrier is improperly caused to lose.[51]

Detention occurs when the consignee holds on to the carrier's container outside of the port, terminal, or depot beyond the free time that is allotted. Detention fee is charged when import containers have been picked up, but the container (regardless if it is full or empty) is still in the possession of the consignee and has not been returned within the allotted time. Detention fee is also charged for export containers in which the empty container has been picked up for loading, and the loaded container is returned to the steamship line after the allotted free time.[52]

Indeed, the exclusion of demurrage and detention fees from the preferential rate of 2.5% is proper since they are not considered income derived from transportation of persons, goods and/or mail, in accordance with the rule *expressio unios est exclusio alterius*.

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[51] *Black's Law Dictionary* See: < a href="https://thelawdictionary.org/demurrage/" title="DEMURRAGE" >DEMURRAGE < /a > (Last accessed: November 13, 2019).

[52] PNG Logistics See: http://pnglc.com/detention-and-demurrage-whats-the-difference/ (Last accessed: November 13, 2019).

Demurrage and detention fees definitely form part of an international sea carrier's gross income. For they are acquired in the normal course of trade or business. The phrase "*in the course of trade or business*" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.[53]

Surely, gross income means income derived from whatever source, including compensation for services; the conduct of trade or business or the exercise of a profession; dealings in property; interests; rents; royalties; dividends; annuities; prizes and winnings; pensions; and a partner's distributive share in the net income of a general professional partnership,[54] among others. Demurrage and detention fees fall within the definition of "gross income" — the former is considered as rent payment for the vessel; and the latter, compensation for use of a carrier's container.

RR 15-2013 is an interpretative and internal issuance

An interpretative or implementing rule is defined under Section 2 (2), Chapter 1, Book VIII of the Revised Administrative Code, *viz*.:

> Section 2. Definitions. — As used in this Book:
>
> x x x x x x x x x
>
> (2) "Rule" means any agency statement of general applicability that implements or interprets a law, fixes and describes the procedures in, or practice requirements of, an agency, including its regulations. The term includes memoranda or statements concerning the internal administration or management of an agency not affecting the rights of, or procedure available to, the public.

[53] Section 105, RA 8424.

[54] See *CIR v. PAL*, 535 Phil. 95, 106 (2006).

Chapter 2 of Book VII of the same Code further provides the manner by which administrative rules attain effectivity:

Section 3. Filing.—

(1) Every agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it. Rules in force on the date of effectivity of this Code which are not filed within three (3) months from that date shall not thereafter be the basis of any sanction against any party or persons.

(2) The records officer of the agency, or his equivalent functionary, shall carry out the requirements of this section under pain of disciplinary action.

(3) A permanent register of all rules shall be kept by the issuing agency and shall be open to public inspection.

Section 4. Effectivity. — In addition to other rule-making requirements provided by law not inconsistent with this Book, **each rule shall become effective fifteen (15) days from the date of filing as above provided unless a different date is fixed by law,** or specified in the rule in cases of imminent danger to public health, safety and welfare, the existence of which must be expressed in a statement accompanying the rule. The agency shall take appropriate measures to make emergency rules known to persons who may be affected by them.

SECTION 5. Publication and Recording.—The University of the Philippines Law Center shall:

(1) Publish a quarterly bulletin setting forth the text of rules filed with it during the preceding quarter; and

(2) Keep an up-to-date codification of all rules thus published and remaining in effect, together with a complete index and appropriate tables.

SECTION 6. Omission of Some Rules.— (1) The University of the Philippines Law Center may omit from the bulletin or the codification any rule if its publication would be unduly cumbersome, expensive or otherwise inexpedient, but copies

of that rule shall be made available on application to the agency which adopted it, and the bulletin shall contain a notice stating the general subject matter of the omitted rule and new copies thereof may be obtained.

(2) Every rule establishing an offense or defining an act which, pursuant to law is punishable as a crime or subject to a penalty shall in all cases be published in full text.

SECTION 7. Distribution of Bulletin and Codified Rules.—The University of the Philippines Law Center shall furnish one (1) free copy each of every issue of the bulletin and of the codified rules or supplements to the Office of the President, Congress, all appellate courts and the National Library. The bulletin and the codified rules shall be made available free of charge to such public officers or agencies as the Congress may select, and to other persons at a price sufficient to cover publication and mailing or distribution costs.

SECTION 8. Judicial Notice.—The court shall take judicial notice of the certified copy of each rule duly filed or as published in the bulletin or the codified rules.

SECTION 9. Public Participation.—(1) If not otherwise required by law, an agency shall, as far as practicable, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule.

(2) In the fixing of rates, no rule or final order shall be valid unless the proposed rates shall have been published in a newspaper of general circulation at least two (2) weeks before the first hearing thereon.

(3) In case of opposition, the rules on contested cases shall be observed. (Emphasis supplied)

Excepted are interpretative regulations and those merely internal in nature, which do not require filing with the U.P. Law Center for their effectivity. On this score, ***ASTEC v. ERC***[55] is proper:

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[55] 695 Phil. 243, 280 (2012).

As interpretative regulations, the policy guidelines of the ERC on the treatment of discounts extended by power suppliers are also not required to be filed with the U.P. Law Center in order to be effective. Section 4, Chapter 2, Book VII of the Administrative Code of 1987 requires every rule adopted by an agency to be filed with the U.P. Law Center to be effective. However, in Board of Trustees of the Government Service Insurance System v. Velasco, this Court pronounced that **"[n]ot all rules and regulations adopted by every government agency are to be filed with the UP Law Center." Interpretative regulations and those merely internal in nature are not required to be filed with the U.P. Law Center.** Paragraph 9 (a) of the Guidelines for Receiving and Publication of Rules and Regulations Filed with the U.P. Law Center states:

> 9. Rules and Regulations which need not be filed with the U.P. Law Center, shall, among others, include but not be limited to, the following:
>
> > a. Those which are interpretative regulations and those merely internal in nature, that is, regulating only the personnel of the Administrative agency and not the public. (Emphasis supplied)

RR 15-2013 is an internal issuance for the guidance of "*all internal revenue officers and others concerned*." It is also an interpretative issuance *vis-à-vis* RA 10378, thus:

SECTION 2. SCOPE. — Pursuant to Section 244 of the National Internal Revenue Code of 1997 (NIRC), as amended, and Section 5 of RA No. 10378, these Regulations are hereby promulgated to implement RA No. 10378, amending Sections 28(A)(3)(a), 109, 118 and 236 of the NIRC.

RR 15-2013 merely sums up the rules by which international carriers may avail of preferential rates or exemption from income tax on their gross revenues derived from the carriage of persons and their excess baggage based on the principle of reciprocity or an applicable tax treaty or international agreement to which the Philippines is a signatory. Interpretative regulations are intended to interpret, clarify or explain existing statutory regulations under which the administrative body operates. Their purpose or objective is merely to construe the statute being administered and purport to do no more than interpret the statute.

Simply, they try to say what the statute means and refer to no single person or party in particular but concern all those belonging to the same class which may be covered by the said rules.[56]

Indeed, when an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed.[57] As such, RR 15-2013 need not pass through a public hearing or consultation, get published, nay, registered with the U.P. Law Center for its effectivity.

ACCORDINGLY, the petition is **DENIED** for lack of merit. The Orders dated September 15, 2015 and January 8, 2016 of the Regional Trial Court, Branch 77, Quezon City, in Special Civil Action No. R-QZN-13-05590-CV are **AFFIRMED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Reyes, J. Jr., and *Lopez, JJ.*, concur.

FIRST DIVISION

[G.R. No. 227581. January 15, 2020]

JOSEPH DELOS SANTOS *y* PADRINAO, *petitioner*, *vs.* **PEOPLE OF THE PHILIPPINES**, *respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; ONLY QUESTIONS OF LAW SHALL BE

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[56] *Republic of the Philippines v. Drugmaker's Laboratories, Inc., et al.*, 728 Phil. 480, 490 (2014).

[57] *Id.*

RAISED IN A PETITION FOR REVIEW ON *CERTIORARI*, EXCEPT WHEN THE JUDGMENT IS BASED ON MISAPPREHENSION OF FACTS, OR WHEN THE COURT OF APPEALS MANIFESTLY OVERLOOKED CERTAIN RELEVANT FACTS NOT DISPUTED BY THE PARTIES, WHICH, IF PROPERLY CONSIDERED, WOULD JUSTIFY A DIFFERENT CONCLUSION; EXCEPTIONS NOT APPLICABLE TO CASE AT BAR.— Rule 45 of the Rules of Court, as amended, states that only questions of law shall be raised in a petition for review on *certiorari*. This rule has exceptions and Delos Santos raised two of them as grounds to allow his petition: 1) when the judgment is based on misapprehension of facts, and 2) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. The Court finds that none of the exceptions raised are applicable in this case. The CA was correct to affirm the RTC's conviction of Delos Santos. The CA's ruling was based on facts, law, and jurisprudence. The Court opines that the exceptions raised were intended to mask the factual nature of the issue raised before the Court.

2. ID.; ID.; ID.; ID.; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED; THE TEST OF WHETHER A QUESTION IS ONE OF LAW OR OF FACT IS NOT THE APPELLATION GIVEN TO SUCH QUESTION BY THE PARTY RAISING THE SAME; RATHER, IT IS WHETHER THE APPELLATE COURT CAN DETERMINE THE ISSUE RAISED WITHOUT REVIEWING OR EVALUATING THE EVIDENCE, IN WHICH CASE, IT IS A QUESTION OF LAW; OTHERWISE IT IS A QUESTION OF FACT.— To determine whether the prosecution established all the elements of the crime, the Court has to read the transcript of stenographic notes and review the documentary evidence presented. In short, the Court has to reevaluate the evidence on record. Evaluation of evidence is an indication that the question or issue posed before the Court is a question of fact or a factual issue. In *Century Iron Works, Inc. v. Bañas*, the Court differentiated between question of law and question of fact, thus: 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 question 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. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact. Applying the test to this case, it is without doubt that the issue presented before the Court is factual in nature, which is not a proper subject of a petition for review on *certiorari* under Rule 45 of the Rules of Court. It has been repeatedly pronounced that the Court is not a trier of facts. Evaluation of evidence is the function of the trial court.

3. CRIMINAL LAW; SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT (REPUBLIC ACT NO. 7610); SECTION 10 (a), ARTICLE VI THEREOF; PUNISHABLE ACTS; TERMS "CHILD ABUSE", "DEBASEMENT" AND "DEGRADATION", DEFINED; HURLING INVECTIVES ON A PERSON IS DEBASING, DEGRADING, AND DEMEANING AS IT REDUCES A PERSON'S WORTH.— Delos Santos was charged, tried, and found guilty of violating Section 10 (a), Article VI, of R.A. No. 7610, which states: SEC. 10. *Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development*. — (a) **Any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development** x x x. Section 3(b) of the same law defined child abuse as: x x x **(b) "Child abuse" refers to the maltreatment, whether habitual or not, of the child which includes any of the following: (1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment; (2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being[.]** x x x Debasement is defined as "the act of reducing the value, quality, or purity of something." Degradation, on the other hand, means the

"lessening of a person's or thing's character or quality." Intent is a state of mind that accompanies the act. Since intent is an internal state, the same can only be verified through the external acts of the person. In this case, there are several circumstances that reveal the intent of Delos Santos to debase or degrade the intrinsic worth of AAA. x x x. *Third*, Bob said "*tama lang yan sa inyo pagtripan dahil dinemanda n'yo kami*." Then De los Santos hurled invectives at AAA and Daluro. Their words reveal that they were motivated by revenge, which is their justification for their actions. Hurling invectives on a person is debasing, degrading, and demeaning as it reduces a person's worth. x x x Delos Santos and Bob's words and actions characterized physical and psychological child abuse, and emotional maltreatment, all of which debase, degrade, and demean the intrinsic worth and dignity of a child as a human being.

4. REMEDIAL LAW; EVIDENCE; DEFENSES OF ALIBI AND DENIAL; INHERENTLY WEAK DEFENSES, WHICH DESERVE SCANT REGARD WHEN THE PROSECUTION HAS CLEARLY ESTABLISHED THE IDENTITY OF THE ACCUSED.— Delos Santos merely interposes an alibi that he was resting and smoking at his sister's store at the time of the incident. It is a well-settled rule that alibi and denial are inherently weak defenses and they deserve scant regard when the prosecution has clearly established the identity of the accused.

5. CRIMINAL LAW; SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT (REPUBLIC ACT NO. 7610); SECTION 10 (A), ARTICLE VI THEREOF; CONVICTION OF THE ACCUSED-APPELLANT FOR SLIGHT PHYSICAL INJURIES IN RELATION TO R.A. NO. 7610, AFFIRMED; PROPER IMPOSABLE PENALTY.— The Court resolves to deny the petition after finding that the CA did not commit any reversible error in the assailed decision and resolution. The CA had exhaustively explained the law and jurisprudence, which were the bases of its decision and resolution. Both the trial court and the appellate court are consistent in their findings of fact that Delos Santos is guilty beyond reasonable doubt of slight physical injuries in relation to R.A. No. 7610. x x x. On the imposable penalty, the Court modifies the maximum indeterminate penalty. Considering the absence of any modifying circumstance, the maximum indeterminate penalty must be *prision*

mayor in its medium period of six (6) years, eight (8) months and one (1) day to seven (7) years and four (4) months. The Court sustains the minimum indeterminate penalty imposed by the RTC.

APPEARANCES OF COUNSEL

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

D E C I S I O N

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

The Case

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assails the July 7, 2016 Decision[1] and the October 12, 2016 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CR No. 35865, which affirmed the June 28, 2013 Decision[3] of the Regional Trial Court (RTC), Branch 172, Valenzuela City in Criminal Case No. 870-v-07, finding the petitioner Joseph Delos Santos *y* Padrinao (Delos Santos) guilty beyond reasonable doubt of violating Section 10 (a), Article VI of Republic Act (R.A.) No. 7610 or the Special Protection of Children Against Abuse, Exploitation and Discrimination Act.

The Facts

The Information[4] charged Delos Santos with slight physical injuries, in relation to R.A. No. 7610, as follows:

That on or about August 31, 2007, in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused,

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[1] Penned by Associate Justice Melchor Q.C. Sadang, with Associate Justices Celia C. Librea-Leagogo and Amy C. Lazaro-Javier (now a Member of the Court), concurring; *rollo*, pp. 33-40.

[2] *Id.* at 42-42-A.

[3] Penned by Judge Nancy Rivas-Palmones; *id.* at 58-60.

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

together with other person whose name, identity, and present whereabout[s] still unknown, conspiring, confederating and mutually helping one another, without any justifiable cause, did then and there willfully, unlawfully, and feloniously maul one AAA, 17 years old, hitting the latter on the face and chest, thereby inflicting upon the latter physical injuries which injuries required medical attendance for a period of less than (9) days and incapacitated said victim from performing her habitual work for the same period of time, thereby subjecting said minor to psychological and physical abuse, cruelty and emotional maltreatment.

Delos Santos pleaded not guilty during arraignment.[5]

During trial, the prosecution presented: (1) AAA,[6] the victim, and (2) Clemente Daluro, Jr. (Daluro), the victim's companion, as witnesses.[7] The parties stipulated on the testimony of Elizabeth Lim, who was the records custodian of Valenzuela General Hospital.[8]

AAA testified that at around 11:00 p.m. on August 31, 2007, she and Daluro were on their way to her house along Padrinao Street, Karuhatan, Valenzuela when Delos Santos and his group confronted them. Delos Santos' brother, Bob Delos Santos (Bob), said *"nag-iinit na ako,"* as he wanted to punch Daluro. Bob attempted to hit Daluro with a rock, but AAA apologized to prevent a commotion. Bob remarked that he was not holding a rock.[9]

Delos Santos attempted to punch Daluro, but he dodged it and AAA was hit on the right cheek instead. Bob punched AAA

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[5] *Id.* at 34.

[6] Pursuant to *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 533 Phil. 703-719, the Court shall withhold the real name of the victim-survivor and shall use fictitious initials instead to represent her. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well those of their immediate family or household members, shall not be disclosed.

[7] *Id.*

[8] *Id.* at 35.

[9] *Id.* at 34.

on the chest causing her to hit a wall. AAA asked Delos Santos' companions to call her mother for help, but Bob interrupted and said *"tama lang yan sa inyo pagtripan dahil dinemanda n'yo kami."* Delos Santos hurled invectives at AAA, who was calling her mother on her way to her house with Daluro.[10]

AAA's mother, who had earlier filed a complaint against Delos Santos' group, heard the call and turned on the terrace light. Delos Santos and his group fled. AAA told her mother what happened and they reported the incident to the *barangay*. At the *barangay*, four of the six men apologized, but Delos Santos and Bob did not. AAA was brought to the Valenzuela General Hospital for treatment. She suffered a "contusion at the right supraorbital area, secondary to mauling."[11]

Daluro corroborated AAA's testimonies that Delos Santos' group approached them and that Bob uttered *"nag-iinit na ako."* Bob said he was holding a rock and threatened to hit him, but AAA got in the way causing her to be hit instead. AAA asked them why they were "making fancy of them," to which Bob replied, *"Dapat lang sa inyo yan dinemanda kami ng nanay n'yo."* AAA and Daluro went away, but Delos Santos' group followed them to her house. When the terrace light was turned on, Delos Santos' group ran away.[12]

On the other hand, the defense presented: (1) Delos Santos, and (2) Noel Magbanua (Magbanua), as their witnesses.[13]

Delos Santos denied the charge against him and testified that at around 11:30 p.m. of August 31, 2007, he was in his sister's store resting and smoking when a *barangay* official came to arrest him because he allegedly hurt AAA. Delos Santos claimed that AAA's accusation was due to the confrontation of their respective mothers at the *barangay*.[14]

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[10] *Id.*

[11] *Id.* at 34-35.

[12] *Id.* at 35.

[13] *Id.*

[14] *Id.*

Magbanua testified that he was a *purok* leader of Purok 31 from 2006 to 2007. He kept a log of incidents within his jurisdiction, and there was no incident recorded on August 31, 2007.[15]

On June 28, 2013, the RTC convicted Delos Santos of the crime charged and imposed the penalty of imprisonment of four years, two months, and one day of *prision correccional* as minimum to six years and one day of *prision mayor* as maximum, and to pay ₱10,000.00 as moral damages.[16]

Delos Santos appealed to the CA, which the latter denied in its July 7, 2016 Decision.[17] Delos Santos moved for reconsideration, which the CA again denied in its October 12, 2016 Resolution.[18] Undeterred, Delos Santos filed this petition before the Court assailing the CA Decision and Resolution.

The Issue

The sole issue presented before the Court is whether or not the CA erred in affirming the RTC Decision.

The Court's Ruling

The petition is denied.

Rule 45 of the Rules of Court, as amended, states that only questions of law shall be raised in a petition for review on *certiorari*. This rule has exceptions and Delos Santos raised two of them as grounds to allow his petition: 1) when the judgment is based on misapprehension of facts, and 2) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[19]

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[15] *Id.*

[16] *Id.* at 60.

[17] *Supra* note 1.

[18] *Supra* note 2.

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

The Court finds that none of the exceptions raised are applicable in this case. The CA was correct to affirm the RTC's conviction of Delos Santos. The CA's ruling was based on facts, law, and jurisprudence. The Court opines that the exceptions raised were intended to mask the factual nature of the issue raised before the Court. Delos Santos alleges that "the [CA] gravely erred in convicting [him] despite the prosecution's failure to establish that all the elements to constitute the crime of child abuse under Section 10 of R.A. No. 7610 are present in this case."[20]

To determine whether the prosecution established all the elements of the crime, the Court has to read the transcript of stenographic notes and review the documentary evidence presented. In short, the Court has to reevaluate the evidence on record. Evaluation of evidence is an indication that the question or issue posed before the Court is a question of fact or a factual issue.

In *Century Iron Works, Inc. v. Bañas*,[21] the Court differentiated between question of law and question of fact, thus:

> 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 question 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.
>
> Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.

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[20] *Id.* at 18.

[21] 711 Phil. 576, 585-586 (2013).

Applying the test to this case, it is without doubt that the issue presented before the Court is factual in nature, which is not a proper subject of a petition for review on *certiorari* under Rule 45 of the Rules of Court. It has been repeatedly pronounced that the Court is not a trier of facts. Evaluation of evidence is the function of the trial court.

The Court finds no error in the substance of the CA Decision.

Delos Santos was charged, tried, and found guilty of violating Section 10 (a), Article VI, of R.A. No. 7610, which states:

SEC. 10. *Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development*.

(a) **Any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development** including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *[prision mayor]* in its minimum period. (Emphasis supplied)

Section 3 (b) of the same law defined child abuse as:

SEC. 3. *Definition of Terms*.

x x x x x x x x x

(b) "Child abuse" refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

(1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;

(2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being[.] (Emphases supplied)

x x x x x x x x x

Debasement is defined as "the act of reducing the value, quality, or purity of something." Degradation, on the other hand,

means the "lessening of a person's or thing's character or quality."[22]

Intent is a state of mind that accompanies the act.[23] Since intent is an internal state, the same can only be verified through the external acts of the person. In this case, there are several circumstances that reveal the intent of Delos Santos to debase or degrade the intrinsic worth of AAA.

First, AAA and Daluro testified that Delos Santos' group approached them and Bob said *"nag-iinit na ako."* The initial move came from Delos Santos' group without provocation on the part of AAA or Daluro. The act of approaching with the words *"nag-iinit na ako"* indicates that there was intent to confront or to challenge AAA and Daluro to a fight. This is contrary to Delos Santos' claim that the incident was accidental.

Second, Bob threatened to hit Daluro with a stone and Delos Santos attempted to punch him, which unfortunately landed on AAA. Then Bob punched AAA on the chest causing her to hit a wall. These acts are obviously aimed to hurt, harass, and to cause harm, either physically, mentally, emotionally, or psychologically, on AAA and Daluro.

Third, Bob said *"tama lang yon sa inyo pagtripan dahil dinemanda n'yo kami."* Then Delos Santos hurled invectives at AAA and Daluro. Their words reveal that they were motivated by revenge, which is their justification for their actions. Hurling invectives on a person is debasing, degrading, and demeaning as it reduces a person's worth.

Fourth, Delos Santos' group followed AAA and Daluro home, which implies that they had no intention to stop their misdeeds had it not been for the timely intervention of AAA's mother.

Lastly, Delos Santos and Bob did not apologize to AAA and to Daluro during the confrontation at the *barangay*. If indeed

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[22] *Jabalde v. People*, 787 Phil. 255, 270 (2016), citing *Black's Law Dictionary* 430 (8th ed. 2004).

[23] *Id.* at 272.

the incident was unintentional, they could have explained so during the confrontation. However, there was no trace of remorse from them.

Delos Santos and Bob's words and actions characterized physical and psychological child abuse, and emotional maltreatment, all of which debase, degrade, and demean the intrinsic worth and dignity of a child as a human being.

The Court resolves to deny the petition after finding that the CA did not commit any reversible error in the assailed decision and resolution. The CA had exhaustively explained the law and jurisprudence, which were the bases of its decision and resolution. Both the trial court and the appellate court are consistent in their findings of fact that Delos Santos is guilty beyond reasonable doubt of slight physical injuries in relation to R.A. No. 7610.

Delos Santos was mistaken when he cited the case of *Bongalon v. People*.[24] The factual backdrop of that case is different from the instant case. In *Bongalon*, the accused was convicted of the crime of slight physical injuries instead of violation of Section 10 (a) of R.A. No. 7610, because of the absence of intent to debase the intrinsic worth and dignity of the child. The physical harm committed against the minor was committed "at the spur of the moment and in anger, indicative of his being then overwhelmed by his fatherly concern for the personal safety of his own minor daughters x x x."[25]

Here, the accosting and laying of hands are deliberately intended by Delos Santos and his group. As interpreted by the CA, the word *"pagtripan"* signified an intention to debase or degrade that did not result from an unexpected event. The acts of Delos Santos were offshoots of an intent to take revenge arising from the conflict existing between his mother and AAA's mother. Delos Santos did not lose his self-control and the acts were not done at the spur of the moment.

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[24] 707 Phil. 11 (2013).

[25] *Id.* at 21.

Delos Santos merely interposes an alibi that he was resting and smoking at his sister's store at the time of the incident. It is a well-settled rule that alibi and denial are inherently weak defenses and they deserve scant regard when the prosecution has clearly established the identity of the accused.[26]

On the imposable penalty, the Court modifies the maximum indeterminate penalty. Considering the absence of any modifying circumstance, the maximum indeterminate penalty must be *prision mayor* in its medium period of six (6) years, eight (8) months and one (1) day to seven (7) years and four (4) months. The Court sustains the minimum indeterminate penalty imposed by the RTC.

WHEREFORE, premises considered, the July 7, 2016 Decision and the October 12, 2016 Resolution of the Court of Appeals in CA-G.R. CR No. 35865 are **AFFIRMED WITH MODIFICATION** in that the moral damages imposed by the Regional Trial Court shall earn an interest of 6% per annum from the date of finality of this Decision until fully paid.

The Court imposes the minimum indeterminate penalty of *prision correccional* in its maximum period of four (4) years, two (2) months, and one (1) day and a maximum indeterminate penalty of *prision mayor*, in its medium period of six (6) years, eight (8) months and one (1) day.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Gesmundo,[*] and *Lopez, JJ.*, concur.

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[26] See *People v. Barberan*, 788 Phil. 103, 113 (2016).

[*] Additional member in lieu of Associate Justice Amy C. Lazaro-Javier, per Raffle dated January 6, 2020.

FIRST DIVISION

[G.R. No. 227739. January 15, 2020]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSEPH SOLAMILLO AMAGO and CERILO BOLONGAITA VENDIOLA, JR.,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; ARREST WITHOUT WARRANT, WHEN LAWFUL; FOR A WARRANTLESS ARREST OF AN ACCUSED CAUGHT *IN FLAGRANTE DELICTO* TO BE VALID, IT MUST BE ESTABLISHED THAT THE PERSON TO BE ARRESTED EXECUTED AN OVERT ACT INDICATING THAT HE HAS JUST COMMITTED, IS ACTUALLY COMMITTING, OR IS ATTEMPTING TO COMMIT A CRIME, AND SUCH OVERT ACT WAS DONE IN THE PRESENCE OR WITHIN THE VIEW OF THE ARRESTING OFFICER.— [T]he record shows that there have been valid *in flagrante delicto* arrests. Section 5, Rule 113 of the Revised Rules of Criminal Procedure provides the occasions on which a person may be arrested without a warrant, to wit: Section 5. Arrest without warrant; when lawful. — A peace officer or a private person may, without a warrant, arrest a person: (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another. As per the established facts during the trial, the instant case falls within paragraph (a). For a warrantless arrest of an accused caught *in flagrante delicto* to be valid, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.

2. ID.; ID.; SEARCH AND SEIZURE; SEARCH INCIDENT TO A LAWFUL ARREST; A VALID ARREST ALLOWS THE SEIZURE OF EVIDENCE OR DANGEROUS WEAPONS EITHER ON THE PERSON OF THE ONE ARRESTED OR WITHIN THE AREA OF HIS IMMEDIATE CONTROL, WHICH IS THE AREA FROM WITHIN WHICH HE MIGHT GAIN POSSESSION OF A WEAPON OR DESTRUCTIBLE EVIDENCE.— [R]egarding the admissibility of the confiscated items, they fall within the exception of warrantless search. The search conducted inside the utility box of the motorcycle was legal. A search incident to a lawful arrest under Section 13, Rule 126 of the Rules of Court states: SEC. 13. Search incident to lawful arrest. — A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant. In the instant case, the *shabu* was found in a peppermint gum container inside the utility box of accused-appellants' motorcycle that was within their immediate control. Therefore, it is within the permissible area that the apprehending officers could validly execute a warrantless search incidental to a lawful arrest. In *People v. Uyboco,* this Court declared that: In lawful arrests, it becomes both the duty and the right of the apprehending officers to conduct a warrantless search not only on the person of the suspect, but also in the permissible area within the latter's reach. Otherwise stated, a valid arrest allows the seizure of evidence or dangerous weapons either on the person of the one arrested or within the area of his immediate control. The phrase "within the area of his immediate control" means the area from within which he might gain possession of a weapon or destructible evidence.

3. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); CHAIN OF CUSTODY RULE; 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; COMPLIED WITH IN CASE AT BAR.— It is worth mentioning that in the present case, there was a strict compliance with the chain of custody rule under Section 21 (1) of R.A. No. 9165 which specifies that: 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. In the instant case, the prosecution presented PO1 Lee, Benlot, Parong, Omoyon, Gallarde and Maginsay as witnesses who were all present during the inventory. All the persons mentioned above were required witnesses mandated by Section 21 of R.A. No. 9165. In fact, the handling of evidence in the crime laboratory was specifically proven by the prosecution to have been preserved with integrity. Hence, there is no room for doubt and there are no other reasons for the seized items not to be admitted as evidence in this case.

4. ID.; ID.; ILLEGAL TRANSPORTATION OF DANGEROUS DRUGS; THE MOVEMENT OF THE DANGEROUS DRUG FROM ONE PLACE TO ANOTHER IS AN ESSENTIAL ELEMENT THEREOF; ACTUAL CONVEYANCE OF THE DANGEROUS DRUGS SUFFICES TO SUPPORT A FINDING THAT THE ACT OF TRANSPORTING WAS COMMITTED; CONVICTION OF ACCUSED-APPELLANTS FOR THE CRIME OF ILLEGAL TRANSPORTATION OF DRUGS, AFFIRMED.— "Transport" as used under the Comprehensive Dangerous Drugs Act of 2002 means "to carry or convey x x x from one place to another." The essential element of the charge is the movement of the dangerous drug from one place to another. There is no definitive moment when an accused "transports" a prohibited drug. When the circumstances establish the purpose of an accused to transport and the fact of transportation itself, there should be no question as to the perpetration of the criminal act. The fact that there is actual conveyance suffices to support a finding

that the act of transporting was committed. In the instant case, records established that accused-appellants were found in possession of six (6) sachets containing *shabu*. It cannot be denied that they used a motor vehicle to transport the said illegal drugs from one place to another. As stated earlier, transportation means to carry or convey from one place to another, the fact alone that the accused-appellants were found in possession of the illegal drugs while traversing the South National Highway is sufficient to justify their conviction.

5. ID.; ID.; ID.; THE VERY ACT OF TRANSPORTING A PROHIBITED DRUG IS A *MALUM PROHIBITUM*; THUS, THE MERE COMMISSION OF THE ACT CONSTITUTES THE OFFENSE AND IS SUFFICIENT TO VALIDLY CHARGE AND CONVICT AN INDIVIDUAL COMMITTING THE ACT, REGARDLESS OF CRIMINAL INTENT; IT IS INCONSEQUENTIAL TO PROVE THAT THE ILLEGAL DRUGS WERE DELIVERED OR TRANSPORTED TO ANOTHER PERSON, AS ONLY THE MOVEMENT OF THE ILLEGAL DRUGS FROM ONE PLACE TO ANOTHER MUST BE PROVEN.— The case of *People v. Del Mundo* provides that: The very act of transporting a prohibited drug, like in the instant case, is a *malum prohibitum* since it is punished as an offense under a special law. The mere commission of the act constitutes the offense and is sufficient to validly charge and convict an individual committing the act, regardless of criminal intent. Since the crime is *malum prohibitum*, it is inconsequential to prove that the illegal drugs were delivered or transported to another person. The only thing that had to be proven was the movement of the illegal drugs from one place to another. The records show that the prosecution has successfully proven such fact.

6. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IN THE ABSENCE OF EVIDENCE THAT THEY HAVE BEEN INSPIRED BY AN IMPROPER OR ILL MOTIVE, THE TESTIMONIES OF POLICE OFFICERS WHO CAUGHT THE ACCUSED-APPELLANTS *IN FLAGRANTE DELICTO* ARE USUALLY CREDITED WITH MORE WEIGHT AND CREDENCE, THAN THE ACCUSED'S BARE, UNSUBSTANTIATED, UNPERSUASIVE AND UNCORROBORATED DEFENSES OF DENIAL AND FRAME-UP, WHICH HAVE BEEN

INVARIABLY VIEWED WITH DISFAVOR FOR IT CAN EASILY BE CONCOCTED.— The evidence on record established beyond reasonable doubt that accused-appellants were in possession of the illegal drugs and drug paraphernalia. The items were found inside the vehicle they were using at the time they were apprehended. In fact, accused-appellants tried to evade arrest by making an abrupt U-turn before reaching the checkpoint. They were also in possession of an illegal firearm and a bladed weapon. It is worthy to note that they both tested positive for the use of illegal drugs. Taking into consideration all the circumstances of the present case, there is no doubt that accused-appellants were transporting illegal drugs. Their bare, unsubstantiated, unpersuasive and uncorroborated denials will not suffice to absolve them from any liability. The Court stressed in *People v. Maongco, et al*. that: Moreover, accused-appellants' uncorroborated defenses of denial and claims of frame-up cannot prevail over the positive testimonies of the prosecution witnesses, coupled with the presentation in court of the *corpus delicti*. The testimonies of police officers who caught the accused-appellants *in flagrante delicto* are usually credited with more weight and credence, in the absence of evidence that they have been inspired by an improper or ill motive, than the defenses of denial and frame-up of an accused which have been invariably viewed with disfavor for it can easily be concocted. In order to prosper, the defenses of denial and frame-up must be proved with strong and convincing evidence, which accused-appellants failed to present in this case.

7. CRIMINAL LAW; CONSPIRACY; BASIC PRINCIPLES IN DETERMINING THE EXISTENCE OF CONSPIRACY, DISCUSSED; CONSPIRACY CAN BE PROVEN BY EVIDENCE OF A CHAIN OF CIRCUMSTANCES AND MAY BE INFERRED FROM THE ACTS OF THE ACCUSED BEFORE, DURING, AND AFTER THE COMMISSION OF THE CRIME WHICH INDUBITABLY POINT TO AND ARE INDICATIVE OF A JOINT PURPOSE, CONCERT OF ACTION AND COMMUNITY OF INTEREST; CONSPIRACY IN THE COMMISSION OF THE CRIME OF ILLEGAL TRANSPORTATION OF DANGEROUS DRUGS, ESTABLISHED IN CASE AT BAR.— In *People v. Lababo*, citing *Bahilidad v. People*, the Court summarized the basic principles in determining whether

conspiracy exists or not. Thus: There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy is not presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, the evidence must be strong enough to show the community of criminal design. For conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is the product of intentionality on the part of the cohorts. It is necessary that a conspirator should have performed some overt act as a direct or indirect contribution to the execution of the crime committed. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his [co-conspirators] by being present at the commission of the crime or by exerting moral ascendancy over the other [co-conspirators]. Hence, the mere presence of an accused at the discussion of a conspiracy, even approval of it, without any active participation in the same, is not enough for purposes of conviction. Conspiracy is said to exist where two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It can be proven by evidence of a chain of circumstances and may be inferred from the acts of the accused before, during, and after the commission of the crime which indubitably point to and are indicative of a joint purpose, concert of action and community of interest. The CA correctly ruled that conspiracy existed based from the totality of the circumstances of the instant case. x x x. The evidence shows that the chain of circumstances necessarily leads to the conclusion that there was concerted action between accused-appellants, with the objective of transporting illegal drugs. Based on the foregoing, we sustain accused-appellants' conviction.

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.*:

On appeal is the May 31, 2016 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 01953 which affirmed the September 17, 2014 Judgment[2] of the Regional Trial Court (*RTC*), 7th Judicial Region, Branch 30, Dumaguete City, in Criminal Case No. 2013-21877, finding accused-appellants Joseph Solamilio Amago and Cerilo Bolongaita Vendiola, Jr. guilty of violating Section 5, Article II of Republic Act (*R.A.*) No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

In an Amended Information[3] dated September 25, 2013, accused-appellants were charged with illegal transportation of dangerous drugs, specifically, violation of Section 5, Article II of R.A. No. 9165, committed as follows:

> That on or about the 5th day of September, 2013 in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, JOSEPH SOLAMILLO AMAGO and CERILO BOLONGAITA VENDIOLA, JR. conspiring, confederating and mutually aiding each other, did then and there willfully, unlawfully and knowingly deliver or transport six [6] pieces elongated heat-sealed transparent plastic sachet/s containing white crystalline substance weighing 0.05 gram/s, 0.06 gram/s, 0.05 gram/s, 0.06 gram/s, 0.02 gram/s and 0.07 gram/s, respectively, or with a total aggregate weight of 0.31 [gram], more or less, without any lawful authority or permission to deliver or transport the same and which substances after examination conducted on specimen was found positive to the test of Methamphetamine Hydrochloride, also known as shabu, a dangerous drug, in violation of Republic Act No. 9165.
>
> That the accused JOSEPH SOLAMILLO AMAGO was found positive for Methamphetamine, a dangerous drug, as reflected in Chemistry Report No. DT-105-13.

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[1] *Rollo*, pp. 4-34. Penned by Associate Justice Geraldine C. Fiel-Macaraig, with the concurrence of Associate Justices Edgardo L. Delos Santos and Edward B. Contreras.

[2] Records, pp. 217-223.

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

That the accused CERILO BOLONGAITA VENDIOLA, JR., was found positive for Methamphetamine, a dangerous drug, as reflected in Chemistry Report No. DT-106-13.

Contrary to Section 5, Article II of Republic Act No. 9165.[4]

In their arraignment, accused-appellants pleaded not guilty[5] and the trial of the case subsequently ensued.

The prosecution presented Police Chief Inspector (*PCI*) Josephine Llena, Police Officer 3 (*PO3*) Edilmar Manaban, Police Officer 2 (*PO2*) Rico Larena, Police Auxiliary Unit (*PAU*) member Emilio Silva Piñero, Police Senior Inspector (*PSI*) Don Richmon Conag, PO2 Placido Xandro Paclauna, Police Officer 1 (*PO1*) Ranie Cuevas Lee, Department of Justice (*DOJ*) representative Anthony Chilius Benlot, *Barangay* Banilad *Kagawads* Ceasar A. Parong and Alfredo M. Omoyon, and media representatives Juancho Gallarde and Anthony Maginsay as its witnesses. Meanwhile, the defense presented accused-appellants as its witnesses.

Version of the Prosecution

On September 5, 2013, at around 8:00 a.m., PO2 Larena was on duty at the Dumaguete City Police Station, together with Piñero, a civilian contractual employee of the City of Dumaguete detailed with the PAU, a program for the city to augment the police force. They were ordered by PSI Conag to join in the conduct of a police checkpoint along the South National Highway, at the crossing of Sta. Monica Road, Barangay Banilad, Dumaguete City, as a security measure to strengthen precautions against any possible terror plans by any threat group or individual law violator. PO2 Larena and Piñero went to the said area at around 8:30 a.m. of the same day. They positioned themselves at about one hundred (100) meters away from the checkpoint sign for northbound vehicles to pass through them before reaching the actual checkpoint stand sign.[6]

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[4] *Id.*

[5] *Id.* at 101.

[6] CA *rollo*, pp. 99-100.

At around 9:45 a.m. of the same day, PO2 Larena and Piñero noticed two (2) persons onboard a blue and black Honda Wave 125 motorcycle, bearing LTO plate number 2352 IR, pass by their location. Before reaching the checkpoint sign, the driver of the motorcycle appeared to be rattled and he abruptly executed a U-turn and went back towards the direction of PO2 Larena and Piñero. The action of the two (2) persons led PO2 Larena and Piñero to believe that they have committed traffic violations or were transporting/delivering something illegal. PO2 Larena was prompted to walk in the middle of the road and Piñero to drive his motorcycle to block the two (2) motorists. Before the two (2) motorists could reach PO2 Larena and Piñero, the driver intentionally slumped down his motorcycle and, in doing so, his t-shirt was lifted, enabling PO2 Larena to see in plain view the handle of a handgun that was tucked in his waistband. PO2 Larena and Piñero cautiously went over to the driver and his companion. PO2 Larena asked the driver for the necessary license and permit to carry the said firearm. However, the driver could not produce the necessary papers, leading to his arrest for illegal possession of firearm by PO2 Larena; he was simultaneously apprised of his constitutional rights in the Visayan dialect. Subsequently, the driver was identified as Amago. Meanwhile, at the same instance that the motorcycle was slumped down, Piñero saw a folding knife protrude from the left pocket of the passenger. As he informed PO2 Larena of what he saw, they confiscated the knife from the passenger.[7]

As PO2 Larena confiscated from Amago the loaded handgun which was a caliber .45 pistol colt with serial number 566124, he bodily searched Amago and was able to recover and seize another load of magazine, a black-colored holster, a cellular phone, and money amounting to five hundred sixty pesos (₱560.00). The utility box of the motorcycle was also searched by PO2 Larena to check if there were other illegal firearms concealed inside. Eventually it was found out that the utility box contained one (1) peppermint gum container with six (6) elongated heat-sealed transparent plastic sachets containing white

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

crystalline granules. From his training and experience, PO2 Larena was able to conclude that the sachets contained "*shabu*." This led to the rearrest of Amago for illegal possession of "*shabu*" and was again apprised of his constitutional rights in Visayan dialect.[8]

At the crime scene, PO2 Larena marked the six (6) heat-sealed transparent plastic sachets with "JSA-P1-9-5-13" to "JSA-P6-9-5-13" then signed the same. JSA stood for Joseph Solamillo Amago, P stood for the crime of possession, and numbers 9-5-13 referred to the date of the incident. The other items that were recovered from Amago were also marked at the crime scene. Subsequent to the marking of the items recovered from Amago, PO2 Larena arrested the passenger for illegal possession of bladed weapon and was apprised of his constitutional rights, also in the Visayan dialect. Incident to his arrest, the passenger was bodily searched, which resulted in the recovery and seizure of one (1) improvised tooter and one (1) folder strip of aluminum foil suspected to be used for illegal drugs. The passenger was later identified as Vendiola. At the crime scene, PO2 Larena marked the three (3) items confiscated from Vendiola, as follows: "CBVJ-P1-9-5-13" for the improvised tooter; "CBVJ-P2-9-5-13" for the folding knife; and "CBVJ-P3-9-5-13" for the aluminum foil.[9] The same method was used in marking the items seized from Vendiola.

After marking the items confiscated from accused-appellants, PO2 Larena conducted an inventory of the seized items in their presence, together with *Barangay* Banilad *Kagawad* Felomino Flores, Jr., Omoyon, Parong, Maginsay, and Gallarde, who signed the two (2) receipts/inventories prepared by PO2 Paclauna, who was ordered to proceed to the crime scene. PO2 Larena as seizing officer and PO1 Lee, the assigned photographer, signed both receipts/inventories during the conduct of the inventory. PO2 Larena and Piñero then brought the seized and confiscated items, together with accused-appellants, to the Dumaguete City Police

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[8] *Id.* at 101-102.

[9] *Id.* at 40.

Station for the continuation of the inventory, as well as the standard booking procedure. The inventory was continued at the City Anti-Illegal Drugs Operations Task Group office inside the police station as the DOJ representative, Benlot, arrived and signed both receipts/inventories upon verification that the items listed tallied with the items he saw on the table. When the inventory was finished, PO2 Larena placed the six (6) transparent plastic sachets, containing suspected "*shabu*," inside a brown envelope and sealed it with a masking tape and affixed his signature thereon. PO2 Larena then prepared a Memorandum Request for Laboratory Examination and Drug Test for Amago and a Memorandum Request for Drug Test for Vendiola, addressed to the Provincial Chief of the Philippine National Police Crime Laboratory Office in Dumaguete City and signed by PSI Benedick Poblete.[10]

It was PO3 Manaban from the crime laboratory who received the tape-sealed envelope containing six (6) heat-sealed transparent plastic sachets with markings "JSA-P1-9-5-13" to "JSA-P6-9-5-13", indicated in the Memorandum Request, at 2:15 p.m. Upon checking if the contents tallied with the Memorandum Request, PO3 Manaban resealed the envelope and kept the items inside his locker to which he has the only access to. Afterwards, PO3 Manaban took separate urine samples from accused-appellants and kept the same in the refrigerator in the laboratory. At 6:05 a.m. of September 6, 2013, PO3 Manaban submitted to a forensic chemist of the crime laboratory, PCI Llena, the tape-sealed envelope containing the seized items. Upon receipt, PCI Llena made her own markings on the specimens, and weighed them that resulted with an aggregate weight of 0.31 gram. The conduct of a qualitative examination on the seized items yielded a positive result for Methamphetamine Hydrochloride. Her findings and conclusions were indicated in her Chemistry Report No. D-156-13. Urine samples were taken from accused-appellants, and the screening and confirmatory tests conducted gave a positive result for the presence of Methamphetamine. The results were indicated in

[10] *Id.* at 41.

Chemistry Report No. DT-105-13 and Chemistry Report No. DT-106-13. The pieces of evidence were then kept in the evidence vault of the crime laboratory, accessed only by PCI Llena, prior to the submission to the court for trial.[11]

Version of the Defense

The defense presented accused-appellants as its witnesses, and the following facts were established in their combined testimonies.

Amago is married, worked as a bamboo furniture maker, and a resident of *Barangay* Lutao, Bacong, Negros Oriental. On the other hand, Vendiola is married, worked as an ambulance driver, and is a resident of West Poblacion, Bacong, Negros Oriental. Accused-appellants are longtime friends and neighbors as they are residents of adjacent *barangays*.[12]

At about 7:00 a.m. of September 5, 2013, Amago was at his house tending to his cow and at past 8:00 a.m., he decided to go to Dumaguete City to collect his receivables from his customers on Sta. Rosa Street, Dumaguete City who previously bought bamboo furniture on installment basis. Meanwhile, also at around 8:00 a.m., Vendiola just finished his duty as an ambulance driver of Bacong Municipal Health Office. As he was off duty, Vendiola immediately went to a privately-owned auto repair shop because the ambulance he was using needed an oil change. The shop mechanic then told him that he needed an oil filter to be procured by him at Diesel Auto Parts in Tabuctubig, Dumaguete City.[13]

During that time, Amago was traversing the South National Highway onboard a borrowed motorcycle allegedly owned by Roger Pamen. Vendiola saw Amago and asked where Amago was headed. Amago replied that he was on his way to Dumaguete City and Vendiola asked for a ride since he was also headed to Dumaguete City to buy the said oil filter. Upon reaching

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

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

[13] *Id.* at 43.

Dumaguete City, Amago saw a checkpoint sign somewhere near Sta. Monica Road, Banilad, Dumaguete City. He slowed down and eventually stopped before reaching the checkpoint knowing that the registration of the borrowed motorcycle had already expired. While both accused-appellants were parked on the shoulder of the road, they were approached by a male person in civilian clothes who introduced himself as a police officer and later identified by Amago as PO2 Paclauna. Right after, Amago was asked to show his driver's license and registration. He told PO2 Paclauna that the motorcycle he was driving had an expired registration and that it was borrowed. Eventually, PO2 Paclauna informed Amago that he would impound the motorcycle.[14]

Thereafter, Vendiola disembarked from the motorcycle while Amago remained seated there. PO1 Lee approached Vendiola and the two spoke with each other; Amago did not hear the conversation. PO1 Lee then approached and informed PO2 Paclauna that Amago still had not returned the three thousand pesos (₱3,000.00) that PO1 Lee gave him for the bamboo intended for the fence of his house. PO2 Paclauna responded and told PO1 Lee, "*butangan nato ni*" which means that they would plant evidence against Amago. Right after, PO2 Paclauna kicked the motorcycle while Amago was still seated thereon that resulted in Amago falling from the motorcycle. Vendiola tried to approach Amago but he was told by PO1 Lee to go away. PO1 Lee then dragged Vendiola towards a Tamaraw FX which was parked about fifty (50) meters away from where Amago fell. Afterwards, PO1 Lee bodily searched Vendiola and recovered from him a request slip from the shop mechanic, a folding knife, and twenty-five pesos (₱25.00); afterwards, Vendiola was made to board the Tamaraw FX.[15]

On the other hand, Amago was handcuffed by PO2 Paclauna, together with another police officer in civilian clothes, and was dragged towards the grassy portion near an acacia tree in

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[14] *Id.*

[15] *Id.*

the same direction where the Tamaraw FX was parked. Later on, a table taken from the Tamaraw FX was set up on a grassy area. The items recovered and seized from Amago were placed on the table. It was then when Amago was told that the six (6) sachets, containing suspected "*shabu*," came from the utility box of the borrowed motorcycle he was driving.[16]

When Amago was detained, it was the only time when he found out that he was charged with possession of illegal drugs. Surprisingly, when Amago was preparing his counter-affidavit, he was informed that he was already being charged with violation of Section 5, Article II of R.A. No. 9165. Amago denied the crimes charged against him and claimed that he had no knowledge of the drugs that were allegedly taken from the motorcycle he was driving.[17]

Vendiola, on the other hand, did not know that he was already arrested when he was made to board the Tamaraw FX. He also denied ownership of the drug paraphernalia allegedly recovered from him. He was surprised by the fact that he was being charged with violation of Section 5, Article II of R.A. No. 9165 as there were no illegal drugs confiscated from him. Lastly, he denied knowing PO2 Larena and Piñero prior to the incident nor does he have any grudge with either of the two.[18]

RTC Ruling

After trial, the RTC handed a guilty verdict on accused-appellants for violation of Article II, Section 5 of R.A. No. 9165 for the sale, trade, delivery, administration, dispensation, distribution and transportation of *shabu*. The dispositive portion of the September 17, 2014 Judgment[19] states:

WHEREFORE, in the light of the foregoing, the two (2) accused JOSEPH SOLAMILLO AMAGO and CERILO BOLONGAITA

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

[17] *Id.* at 44.

[18] *Id.*

[19] Records, pp. 217-223.

VENDIOLA, JR. are hereby found GUILTY beyond reasonable doubt of the offense of illegal transport of 0.31 gram of *shabu* in violation of Section 5, Article II of RA 9165 and are hereby sentenced each to suffer a penalty of life imprisonment and each to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).

The six (6) heat-sealed transparent plastic sachets with markings "JSA-P1-9-5-13" to "JSA-P6-9-5-13" and containing 0.05 gram, 0.06 gram, 0.05 gram, 0.06 gram, 0.02 gram and 0.07 gram, respectively, or with a total aggregate weight of 0.31 gram of *shabu* are hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

In the service of sentence, the accused JOSEPH SOLAMILLO AMAGO and CERILO BOLONGAITA VENDIOLA, JR. shall be credited with the full time during which they have undergone preventive imprisonment, provided they agree voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.[20]

CA Ruling

Accused-appellants, on appeal, assigned before the CA the following issues:

[I.]

THE HONORABLE TRIAL COURT ERRED IN ADMITTING AS EVIDENCE THE SEIZED ITEM BEING THE FRUIT OF A POISONOUS TREE.

[II.]

THE HONORABLE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANTS DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE ELEMENTS OF THE CRIME CHARGED.

[III.]

THE HONORABLE TRIAL COURT ERRED IN FINDING THE EXISTENCE OF CONSPIRACY IN THE INSTANT CASE.[21]

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[20] *Id.* at 222-a.

[21] CA *rollo*, pp. 29-33.

On appeal, the CA affirmed the RTC Judgment. It was convinced that the trial court was correct in admitting the seized items as evidence as the warrantless search was incidental to a lawful arrest. The CA was in the position that the fact that there is actual conveyance suffices to support a finding that the act of transporting is committed and it is immaterial whether the place of destination is reached. On the issue of conspiracy, taking into consideration all the circumstances, the CA inevitably led to conclude that there was a concerted action between accused-appellants before and during the time when the offense was carried out, which ably demonstrated their unity of design and objective to transport the dangerous drugs. Lastly, according to the CA, there was no reason to detract from the trial court's pronouncement, the same being supported by the records; thus, accused-appellants' defense of denial deserves scant consideration as it is viewed with disfavor.

Before us, the People manifested that it would no longer file a supplemental brief in view of the adequate discussion of the relevant issues and arguments in its Brief for the Appellee.[22] On the other hand, accused-appellants submitted a Supplemental Brief.[23] Essentially, they maintain their main arguments in the CA that the dangerous drugs allegedly seized from them were inadmissible in evidence for being the fruit of a poisonous tree, the elements of the crime charged were not sufficiently established, and the conspiracy in the commission of the crime was not proven.

Our Ruling

We find the appeal bereft of merit.

On the first assignment of error, the record shows that there have been valid *in flagrante delicto* arrests. Section 5, Rule 113 of the Revised Rules of Criminal Procedure provides the occasions on which a person may be arrested without a warrant, to wit:

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[22] *Id.* at 66-87.

[23] *Rollo,* pp. 57-65.

Section 5. Arrest without warrant; when lawful. — A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

As per the established facts during the trial, the instant case falls within paragraph (a). For a warrantless arrest of an accused caught *in flagrante delicto* to be valid, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.[24]

It is apparent that Amago's act of making an abrupt U-turn, instead of stopping at the checkpoint sign, made a reasonable belief for the police officers to suspect that accused-appellants might have committed some traffic violations or delivering something illegal. The police officers stopped them and, in the course, Amago intentionally slumped down the motorcycle he was riding causing his t-shirt to be lifted, thereby exposing the handle of a handgun that was tucked in his waistband. At the same time, Piñero saw a folding knife protruding from the left pocket of Vendiola who had fallen from the motorcycle. Due to the failure of Amago to produce any license to carry the firearm and for the illegal possession of a bladed weapon by Vendiola, they were arrested.

Meanwhile, regarding the admissibility of the confiscated items, they fall within the exception of warrantless search. The search conducted inside the utility box of the motorcycle was

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[24] *Zalameda v. People*, 614 Phil. 710, 729 (2009).

legal. A search incident to a lawful arrest under Section 13, Rule 126 of the Rules of Court states:

> SEC. 13. Search incident to lawful arrest. — A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant.

In the instant case, the *shabu* was found in a peppermint gum container inside the utility box of accused-appellants' motorcycle that was within their immediate control. Therefore, it is within the permissible area that the apprehending officers could validly execute a warrantless search incidental to a lawful arrest.

In *People v. Uyboco*,[25] this Court declared that:

> In lawful arrests, it becomes both the duty and the right of the apprehending officers to conduct a warrantless search not only on the person of the suspect, but also in the permissible area within the latter's reach. Otherwise stated, a valid arrest allows the seizure of evidence or dangerous weapons either on the person of the one arrested or within the area of his immediate control. The phrase "within the area of his immediate control" means the area from within which he might gain possession of a weapon or destructible evidence.[26]

It is worth mentioning that in the present case, there was a strict compliance with the chain of custody rule under Section 21 (1) of R.A. No. 9165 which specifies that:

> 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.

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[25] 655 Phil. 143 (2011).

[26] *Id.* at 172.

In the instant case, the prosecution presented PO1 Lee, Benlot, Parong, Omoyon, Gallarde and Maginsay as witnesses who were all present during the inventory. All the persons mentioned above were required witnesses mandated by Section 21 of R.A. No. 9165. In fact, the handling of evidence in the crime laboratory was specifically proven by the prosecution to have been preserved with integrity. Hence, there is no room for doubt and there are no other reasons for the seized items not to be admitted as evidence in this case.

On the second issue, under Section 5, Article II of R.A. No. 9165 or illegal delivery or transportation of prohibited drugs, the provision reads:

> 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.

Accused-appellants contend that the prosecution failed to prove the fact of delivery or transport of the seized illegal drugs by them to another person or entity. They are in the position that the act of passing on the dangerous drugs from one to the other must be established. The mere presence of dangerous drugs inside the motorcycle should not be construed to mean that such items were intended for delivery.

This Court does not agree.

"Transport" as used under the Comprehensive Dangerous Drugs Act of 2002 means "to carry or convey x x x from one place to another." The essential element of the charge is the movement of the dangerous drug from one place to another.[27]

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[27] *People v. Dimaano*, 780 Phil. 586, 603 (2016).

There is no definitive moment when an accused "transports" a prohibited drug. When the circumstances establish the purpose of an accused to transport and the fact of transportation itself, there should be no question as to the perpetration of the criminal act. The fact that there is actual conveyance suffices to support a finding that the act of transporting was committed.[28]

In the instant case, records established that accused-appellants were found in possession of six (6) sachets containing *shabu*. It cannot be denied that they used a motor vehicle to transport the said illegal drugs from one place to another. As stated earlier, transportation means to carry or convey from one place to another, the fact alone that the accused-appellants were found in possession of the illegal drugs while traversing the South National Highway is sufficient to justify their conviction.

Accused-appellants argued that the prosecution failed to prove the fact of delivery or transport of the seized illegal drugs to another person or entity. They are in the position that the act of passing on the dangerous drugs from one to the other must be established and the mere presence of a dangerous drug inside the vehicle could not be construed to mean that such item is intended for delivery.

We do not agree.

The case of *People v. Del Mundo*[29] provides that:

> The very act of transporting a prohibited drug, like in the instant case, is a *malum prohibitum* since it is punished as an offense under a special law. The mere commission of the act constitutes the offense and is sufficient to validly charge and convict an individual committing the act, regardless of criminal intent.

Since the crime is *malum prohibitum*, it is inconsequential to prove that the illegal drugs were delivered or transported to another person. The only thing that had to be proven was the movement of the illegal drugs from one place to another. The

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[28] *People v. Asislo*, 778 Phil. 509, 523 (2016).

[29] 418 Phil. 740, 755 (2001).

records show that the prosecution has successfully proven such fact. The testimony of PO2 Larena sufficiently provided the following details in his direct testimony:

Q: Mister Witness, basing the direction of the Dumaguete City, which side of the road were you located?
A: Right side ma'am.

Q: When you were near the crossing of San Jose, what happened?
A: We noticed two (2) persons riding in tandem going to the North direction.

x x x x x x x x x

Q: What were used by the two (2) persons?
A: Motorcycle color blue and black ma'am.

Q: When you noticed the two (2) persons, what happened next?
A: They passed to where we stood up going towards the North direction ma'am and before they reached the next stand sign ma'am, they made a U-turn ma'am.

Q: Were you able to see them from the position where you were positioned?
A: Yes ma'am.

Q: When you noticed them making a U-turn, what happened next?
A: So I and my buddy went immediately to the middle of the road to block the said motorist ma'am.[30]

The evidence on record established beyond reasonable doubt that accused-appellants were in possession of the illegal drugs and drug paraphernalia. The items were found inside the vehicle they were using at the time they were apprehended. In fact, accused-appellants tried to evade arrest by making an abrupt U-turn before reaching the checkpoint. They were also in possession of an illegal firearm and a bladed weapon. It is worthy to note that they both tested positive for the use of illegal drugs. Taking into consideration all the circumstances of the present case, there is no doubt that accused-appellants were transporting

[30] TSN, PO2 Larena, June 18, 2014, p. 4.

illegal drugs. Their bare, unsubstantiated, unpersuasive and uncorroborated denials will not suffice to absolve them from any liability.

The Court stressed in *People v. Maongco, et al.*[31] that:

> Moreover, accused-appellants' uncorroborated defenses of denial and claims of frame-up cannot prevail over the positive testimonies of the prosecution witnesses, coupled with the presentation in court of the corpus delicti. The testimonies of police officers who caught the accused-appellants *in flagrante delicto* are usually credited with more weight and credence, in the absence of evidence that they have been inspired by an improper or ill motive, than the defenses of denial and frame-up of an accused which have been invariably viewed with disfavor for it can easily be concocted. In order to prosper, the defenses of denial and frame-up must be proved with strong and convincing evidence, which accused-appellants failed to present in this case.[32] (Citation omitted)

The last issue presented by the accused-appellants is their position that the conspiracy in the commission of the crime was not proven. They argued that in the instant case, the prosecution failed to establish that both of them assented to the same act of delivering or transporting the six (6) sachets of *shabu*.

We are not persuaded.

In *People v. Lababo*,[33] citing *Bahilidad v. People*,[34] the Court summarized the basic principles in determining whether conspiracy exists or not. Thus:

> There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy is not presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond

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[31] 720 Phil. 488 (2013).

[32] *Id.* at 509-510.

[33] G.R. No. 234651, June 6, 2018, 865 SCRA 609, 628.

[34] 629 Phil. 567, 575 (2010).

reasonable doubt. While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, the evidence must be strong enough to show the community of criminal design. For conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is the product of intentionality on the part of the cohorts.

It is necessary that a conspirator should have performed some overt act as a direct or indirect contribution to the execution of the crime committed. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his [co-conspirators] by being present at the commission of the crime or by exerting moral ascendancy over the other [co-conspirators]. Hence, the mere presence of an accused at the discussion of a conspiracy, even approval of it, without any active participation in the same, is not enough for purposes of conviction.[35]

Conspiracy is said to exist where two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It can be proven by evidence of a chain of circumstances and may be inferred from the acts of the accused before, during, and after the commission of the crime which indubitably point to and are indicative of a joint purpose, concert of action and community of interest.[36] The CA correctly ruled that conspiracy existed based from the totality of the circumstances of the instant case. The CA held that:

Based on the evidence on record, We do not entertain any doubt that conspiracy had animated the perpetrators in delivering or transporting the seized illegal drugs: Amago conspired with Vendiola in a common desire to transport the dangerous drugs using the motorcycle. Both were positively identified to have been respectively carrying a firearm, a folding knife, an improvised tooter and a folded strip of aluminum foil. As they approached the checkpoint sign, accused-appellants appeared rattled and hastily executed a u-turn, which clearly manifest that they were committing some offense. They were then apprehended for illegal possession of firearm and illegal possession of a bladed weapon. The arrest further resulted to the confiscation of

[35] *Id.* at 628.

[36] *People v. Peralta*, 435 Phil. 743, 764 (2002).

the illegal drugs in the u-box of the motorcycle. It is worth noting as well that both the accused-appellants tested positive for methamphetamine hydrochloride or *shabu*.[37]

The evidence shows that the chain of circumstances necessarily leads to the conclusion that there was concerted action between accused-appellants, with the objective of transporting illegal drugs.

Based on the foregoing, we sustain accused-appellants' conviction.

WHEREFORE, premises considered, the September 17, 2014 Judgment[38] of the Regional Trial Court in Criminal Case No. 2013-21877, finding Joseph Solamillo Amago and Cerilo Bolongaita Vendiola, Jr. guilty of violating Section 5, Article II of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002, and the May 31, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC. No. 01953, which affirmed the September 17, 2014 Judgment of the RTC, are **AFFIRMED**.

SO ORDERED.

Caguioa, Reyes, J. Jr., Lazaro-Javier, and *Lopez, JJ.*, concur.

FIRST DIVISION

[G.R. No. 229086. January 15, 2020]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PHILIP CARREON *y* MENDIOLA,** *accused-appellant.*

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[37] *Rollo*, pp. 29-30.

[38] Records, pp. 217-223.

SYLLABUS

1. **CRIMINAL LAW; KIDNAPPING AND SERIOUS ILLEGAL DETENTION; ELEMENTS.—** ***People v. Bringas*** enumerates the elements of kidnapping and serious illegal detention, thus: The crime of *Kidnapping and serious illegal detention*, under Art. 267 of the RPC, has the following elements: (1) the offender is a private individual; not either of the parents of the victim or a public officer who has a duty under the law to detain a person; (2) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (3) the act of detention or kidnapping must be illegal; and (4) in the commission of the offense, any of the following circumstances is present: (a) the kidnapping or detention lasts for more than three days; (b) it is committed by simulating public authority; (c) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made or (d) the person kidnapped or detained is a minor, female or a public official.

2. **ID.; ID.; ID.; ESSENCE OF ILLEGAL DETENTION IS THE DEPRIVATION OF THE VICTIM'S LIBERTY; PROSECUTION MUST PROVE ACTUAL CONFINEMENT OR RESTRICTION OF THE VICTIM AND THAT SUCH DEPRIVATION WAS THE INTENTION OF THE OFFENDER.—** The essence of illegal detention is the deprivation of the victim's liberty. The prosecution must prove actual confinement or restriction of the victim, and that such deprivation was the intention of the appellant. The accused must have knowingly acted to restrain the victim. After all, the offense requires taking coupled with intent to restrain. More, if the victim is a minor, or the victim is kidnapped and illegally detained for the purpose of extorting ransom, the duration of his or her detention becomes inconsequential.

3. **ID.; ID.; ID.; WHEN THE VICTIM IS A MINOR, CURTAILMENT OF VICTIM'S LIBERTY NEED NOT INVOLVE ANY PHYSICAL RESTRAINT UPON THE VICTIM'S PERSON.—** When it comes to a victim who is a minor, the prevailing jurisprudence on illegal detention is that the curtailment of the victim's liberty need not involve any physical restraint upon the victim's person. Leaving a minor in a place from which she or he did not know the way home, even if she or he had the freedom to roam around the place of detention,

would still amount to deprivation of liberty. Under such a situation, the minor's freedom remains at the mercy and control of the abductor.

4. ID.; ID.; ID.; WHEN KIDNAPPING OR DETENTION IS COMMITTED FOR THE PURPOSE OF EXTORTING RANSOM, THE PENALTY OF DEATH IS PRESCRIBED.— The penalty of death is prescribed for the offense of kidnapping and serious illegal detention when the kidnapping or detention is committed for the purpose of extorting ransom. The penalty one degree lower is *reclusion perpetua*. The last paragraph of Article 267 of the RPC provides that if the victim is killed or dies as a consequence of the detention, or is raped or subjected to torture or dehumanizing acts, the maximum penalty shall be imposed. The last paragraph gives rise to a special complex crime of kidnapping and serious illegal detention with rape.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; RIGHTS OF THE ACCUSED; RIGHT TO BE PRESUMED INNOCENT UNTIL THE CONTRARY IS PROVED BEYOND REASONABLE DOUBT; A FUNDAMENTAL PRINCIPLE OF BOTH CONSTITUTIONAL AND CRIMINAL LAW; THUS, THE PROSECUTION HAS THE BURDEN OF PROVING EVERY SINGLE FACT ESTABLISHING GUILT.— Every accused has the right to be presumed innocent until the contrary is proven beyond reasonable doubt. The presumption of innocence stands as a fundamental principle of both constitutional and criminal law. Thus, the prosecution has the burden of proving every single fact establishing guilt. Every vestige of doubt having a rational basis must be removed. The defense of the accused, even if weak, is no reason to convict. Within this framework, the prosecution must prove its case beyond any hint of uncertainty. The defense need not even speak at all. The presumption of innocence is more than sufficient.

6. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; TEST TO DETERMINE VALUE AND CREDIBILITY OF A WITNESS' TESTIMONY IS WHETHER THE SAME IS IN CONFORMITY WITH COMMON KNOWLEDGE AND IS CONSISTENT WITH THE EXPERIENCE OF MANKIND; CASE AT BAR.— It is settled that testimonial evidence to be believed must not only proceed from the mouth of a credible witness but must foremost be credible in itself.

Accordingly, the test to determine the value or credibility of a witness' testimony is whether the same is in conformity with common knowledge and is consistent with the experience of mankind. Complainant's testimony does not conform with the experience of someone who had been illegally and seriously detained. To reiterate, her testimony rather reveals that she willingly chose to stay with appellant, her lover at that time.

7. ID.; ID.; WEIGHT AND SUFFICIENCY OF EVIDENCE; REASONABLE DOUBT; MAY ARISE FROM THE EVIDENCE ADDUCED OR FROM THE LACK OF EVIDENCE, AND IT SHOULD PERTAIN TO THE FACTS CONSTITUTIVE OF THE CRIME CHARGED.— Reasonable doubt may arise from the evidence adduced or from the lack of evidence, and it should pertain to the facts constitutive of the crime charged. While no test definitively determines what is reasonable doubt under the law, the view is that it must involve genuine and irreconcilable contradictions based, not on suppositional thinking, but on the hard facts constituting the elements of the crime.

8. ID.; ID.; CREDIBILITY OF WITNESSES; WHEN THERE ARE TWO CONFLICTING TESTIMONIES OF THE SAME WITNESS PERTAINING TO MATERIAL POINTS, ONE INCULPATORY AND THE OTHER EXCULPATORY, THE LATTER BEING COMPATIBLE WITH THE PRESUMPTION OF INNOCENCE, A VERDICT OF ACQUITTAL MUST PREVAIL.— Verily, when there are two (2) conflicting testimonies of the same witness pertaining to material points, one inculpatory and the other exculpatory, the latter being compatible with the presumption of innocence and a verdict of acquittal must prevail. Too, the exculpatory evidence emanating from the prosecution itself is an admission against interest, hence, assumes the highest degree of credibility. It is the best evidence which affords the greatest certainty of the facts in dispute since no one would declare anything against himself or herself unless such declaration is true. Thus, an admission against interest binds the person who makes the same, and absent any showing that this was made through palpable mistake, no amount of rationalization can offset it.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This appeal assails the Decision[1] dated May 13, 2016 of the Court of Appeals in CA-G.R. CR HC No. 07003 entitled "*People of the Philippines v. Philip Carreon y Mendiola*," disposing, thus:

WHEREFORE, the appeal is **PARTIALLY GRANTED**. The August 8, 2014 Decision of the Regional Trial Court, Branch 45, San Fernando, Pampanga in Criminal Case No. FC 1874 is **AFFIRMED** with **MODIFICATIONS**. Accordingly, accused-appellant Philip Carreon *y* Mendiola is found **GUILTY** of kidnapping and serious illegal detention but **ACQUITTED** of rape on the ground of reasonable doubt. He is hereby **SENTENCED** to suffer the penalty of *reclusion perpetua* and **ORDERED** to pay *AAA* ₱50,000.00 civil indemnity *ex delicto*, ₱50,000.00 moral damages, and ₱30,000.00 exemplary damages, all with 6% interest *per annum* from date of finality of this judgment until fully paid.

SO ORDERED.[2]

The Antecedents

The Charge

Appellant Philip Carreon was indicted for kidnapping and serious illegal detention with rape and physical injuries, *viz*.:

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[1] Penned by Associate Justice Pedro B. Corales with the concurrence of Associate Justices Sesinando E. Villon and Rodil V. Zalameda (now a member of this Court), all members of the Eleventh Division, CA *rollo*, pp. 92-112.

[2] *Id.* at 111.

That sometime in March 31, 2010 to June 3, 2010, in the City of San Fernando, province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused Philip Carreon *y* Mendiola, without authority of law or any justifiable reason, did then and there willfully, unlawfully, and feloniously detain and deprive AAA, a female and seventeen year old minor, born on January 28, 1993, of her liberty, against her will and without her consent, and on the occasion of the latter's detention, the above-named accused, did then and there willfully, unlawfully and feloniously, by means of force, violence and intimidation, had carnal knowledge of the said minor AAA three (3) times against her will and without her consent, and inflicted upon her physical injuries also on the occasion of such detention.

Contrary to law.[3]

Proceedings before the Trial Court

The case was raffled to the Regional Trial Court - Branch 45, City of San Fernando, Pampanga.

On arraignment, appellant pleaded not guilty.[4]

The Pre-Trial Order[5] dated July 23, 2010 bore the parties' stipulation, *viz.*: a) appellant Philip Carreon's identity; b) the trial court has jurisdiction over the case, the subject matter, and the parties; c) complainant AAA was seventeen (17) years old at the time of the incident; d) complainant and appellant were sweethearts at the time of the incident; e) complainant's father BBB and appellant's father Angelo Carreon are friends and neighbors at [redacted]; and f) complainant had a miscarriage but appellant was not the child's father.

Trial proper ensued.

Prosecution's Evidence

Complainant testified: She was born on January 28, 1993 and she had been living with her parents in

[3] *Id.* at 45.

[4] RTC Record, p. 19.

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

[redacted] Sometime in February 2010, she and appellant became sweethearts. As of March 31, 2010, appellant was twenty-one (21) years old, and she, seventeen (17). That day, he asked to take her home. But instead of taking her home, he brought her to the house of his third cousin, Akime, in Sta. Lucia, San Fernando City, Pampanga. He introduced her to his cousins. He refused to take her home even after she asked him to because he wanted to stay on and participate in the flagellation rites during lent. She could not go home on her own because she did not have money and she did not know how to get home from there. They stayed in Akime's house for two (2) days. She cried a lot during that time but appellant did not do anything.[6]

He later on brought her to the house of his "Ate Marmel" also in San Fernando City. She cried because she wanted to go home. She had a cellphone but sold it to buy medicine for her leg that got swollen after getting hit by a motorcycle. Her parents were able to contact her when she still had her cellphone but she could not respond because she had no money to buy phone credits. From there, she also did not know how to find her way home. There, she met appellant's father Angelo Carreon who informed her that her father had filed a case against his son and that she should not leave Pampanga. Appellant forced her to stay in his Ate Marmel's house for four (4) more days.[7]

At Ate Marmel's house, she slept beside Ate Marmel herself, although a piece of plywood separated them. While she was sleeping, appellant got drunk and "*ginalaw siya*."[*8] He inserted his penis into her vagina. At first, he held both her hands and asked her if she loved him. After that, she could not do anything anymore.[9] Appellant, thereafter, brought her to Calulut, San

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[6] TSN, September 21, 2010, pp. 4-12.

[7] *Id.* at 13-16.

[*] Euphemism for sexual intercourse.

[8] *Id.* at 16-17.

[9] TSN, October 5, 2010, pp. 8-9.

Fernando City, Pampanga in the house of his friend Robinson. They stayed there for a week. She asked Robinson to help her get home but he refused because he had no money to spare. There, appellant had carnal knowledge of her but she did not resist because there was nothing more to lose.[10]

Appellant later on brought her to the house of his grandmother Adoracion Mendiola in Teopaco, San Fernando. She asked help from appellant's uncle Danny who called Angelo, appellant's father. But Angelo wanted appellant and their relatives to hide her as Angelo was scared her parents would file a case against them. Appellant and his relatives heeded Angelo and hid her in Teopaco for about a month. She tried to ask Adoracion and Danny to help her but they said it was not possible because the situation was delicate.[11]

Appellant eventually started hurting her. He hurt her whenever she made a mistake. One time, when appellant was drunk and while they were fooling around, appellant suddenly pulled out a knife on her and slashed the upper side of her garment. On June 3, 2010, around 3 o'clock in the afternoon, appellant was installing cable wire on the roof of the house. She was asked to get some more cable wire for him but it took her some time to deliver it. Because of her delay, appellant got mad and threw a piece of barbed wire, with a nail attached, at her. The wire hit her chest and it caused a slight swelling. He threw a bottle cap at her and got down from the roof. He called her "stupid" many times. He slapped her left ear several times with a slipper. He also banged her head against the concrete wall. Fortunately, the police arrived and took her into custody and brought her to the Jose B. Lingad Memorial Regional Hospital (JBL Hospital), also in San Fernando. She was then eventually reunited with her parents.[12]

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[10] *Id.* at 11-17.

[11] TSN, January 18, 2011, pp. 9-11.

[12] *Id.* at 13-17.

The parties dispensed with the testimonies of PO1 Ma. Felisa Cubacub, PO3 Edwin Abad, Dr. Lisa Bagalso, and the Records Officer of the JBL Hospital.[13]

Appellant's Evidence

In his defense, appellant Philip Carreon averred: He and complainant became sweethearts on March 7, 2010. On March 31, 2010, she eloped with him. Her father filed the case against him because he (complainant's father) was angry with him.[14]

On March 30, 2010, she went to his house in [redacted]. She asked his father if she could have a drinking spree with him because she just graduated from high school. He accompanied her to the house of her friend Belinda, thus, he got drunk there. When they went back to their respective houses, they discovered they had been locked out, so they decided to sleep in a nearby empty house owned by her sister.[15]

They woke up around 7 o'clock the following morning. Her mother arrived and asked why she did not come home. Instead of responding, complainant jumped out of the window. Her mother told him to go after complainant, which he did. He found her crying along Teraza Street. She embraced him, pleaded with him not to leave her, and said they should not go back to their respective homes. He embraced and assured her he would talk to her mother but complainant dissuaded him.[16]

He went back to complainant's mother and told her he did not find complainant. Then he returned to Teraza Street and informed complainant he was going to Pampanga. She insisted to go with him. They first went to the house of Robinson Canapi in Calulut, Northville, San Fernando, Pampanga. They stayed there for five (5) days. He sold complainant's cellphone and

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[13] CA *rollo*, p. 45.

[14] *Id.* at 47.

[15] *Id.*

[16] *Id.*

drove a three-wheeler. He was able to talk to complainant's mother, who told him she had accepted his relationship with her daughter. Complainant's mother asked him to go back to Rizal.[17]

They also stayed with his cousin Marmel in Calulut for about a week. They subsequently stayed with his uncle Danilo Mendiola in Arayat, Pampanga for two (2) weeks. He informed complainant's mother where they were staying. They then moved to his grandmother's house in Teopaco, San Fernando, Pampanga. His grandmother Adoracion called his uncle. It was agreed that complainant should return to her parents. But before it could even happen, he already got arrested.[18]

Robinson Canapi, appellant's friend, stated: In April 2010, appellant and his girlfriend (complainant) approached him while he was driving his three-wheeler vehicle in Lourdes, San Fernando City, Pampanga. Appellant asked him if they could stay with him in Calulut, Pampanga. He was staying in a small house with his wife. Appellant and complainant stayed with him there for a week. Whenever he and appellant left, complainant stayed with his wife and watched television with the neighbors. He even offered money to complainant so that she could go home because her parents might be worried about her. But complainant just remained silent. Complainant had every opportunity to escape whenever appellant left but she never took the chance. He never saw appellant and complainant quarrel.[19]

Adoracion Mendiola, appellant's grandmother testified: On March 31, 2010, a certain Father Robert called her from Manila and asked if appellant and complainant were in her residence in Teopaco, San Fernando City, Pampanga. Father Robert said complainant was afraid of her father, the reason why she went with appellant and refused to return to San Mateo, Rizal.[20] Father

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[17] *Id.*

[18] *Id.*

[19] TSN, November 16, 2011, pp. 3-9.

[20] TSN, February 1, 2012, pp. 2-7.

Robert said that complainant herself told him she would stay with appellant no matter what. They stayed in her house from May 25 up until June 3, 2010 when appellant got arrested. During her stay there, complainant was free to leave whenever she wished.[21]

Aida Mendiola, appellant's aunt, asserted: Appellant and complainant came to her house in Barangay Cupang, Arayat, Pampanga on April 15, 2010. When she learned that the two (2) had eloped, she and her husband reported it to the barangay authorities. On April 18, 2010, appellant and complainant executed a *sinumpaang salaysay* before Punong Barangay Leonardo Salac and Barangay Kagawad Edwin Palabasan, attesting they had in fact eloped. Complainant happily signed the document.[22] When she suggested that they meet up with complainant's parents, complainant refused, explaining that her father would get mad and punish her. The couple stayed with her for three (3) weeks, during which, complainant tended her *sari-sari* store. The whole time, complainant was free to go home.[23]

By Decision[24] dated August 8, 2014, the trial court found appellant guilty of serious illegal detention with rape, thus:

> WHEREFORE, this court hereby (a) finds accused Philip Carreon y Mendiola guilty beyond reasonable doubt of the crime of serious detention with rape under the last paragraph of Article 267 of the Revised Penal Code, as amended by R.A. No. 7659; (b) sentences him to suffer the penalty of *reclusion perpetua*, without eligibility for parole; and (c) orders him to pay AAA the amounts of ₱75,000.00 as civil indemnity *ex delicto*, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages plus interest at the rate of 6% *per annum* on all damages awarded from the date of the finality of this judgment until fully paid.

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[21] TSN, March 7, 2012, pp. 3-9.

[22] TSN, July 19, 2013, pp. 2-5.

[23] TSN, September 6, 2013, pp. 3-5.

[24] CA *rollo*, pp. 45-57.

SO ORDERED.[25]

Proceedings before the Court of Appeals

On appeal, appellant faulted the trial court for rendering the verdict of conviction. He argued that it was improbable for him to have raped complainant because there was no proof that he employed force, threat, or intimidation on her. Also, there was no medical evidence showing that complainant sustained lacerations in her vagina. There could have been no crime of serious illegal detention because it was not proved that complainant was ever locked up — an essential element of the crime. Complainant was neither confined nor her movements restricted. Lastly, the trial court neglected to rule on whether he was guilty of inflicting physical injuries on complainant. He, nonetheless, argued that the crime of physical injuries was deemed absorbed in the crime of serious illegal detention.[26]

The Office of the Solicitor General (OSG), through Assistant Solicitor General Hermes Ocampo and Associate Solicitor Ramoncito Parel, submitted that actual physical deprivation of the offended party is not necessary in the crime of serious illegal detention. Deprivation of liberty in any form consummates the crime of serious illegal detention. Leaving a minor in a place unfamiliar to him or her and not knowing how to get home amount to deprivation of liberty, as in the case of complainant. Through her testimony, complainant was able to prove that appellant employed force, threat, and intimidation in order to have carnal knowledge of her.[27]

By its assailed Decision dated May 13, 2016, the Court of Appeals affirmed with modification. It convicted appellant of serious illegal detention but acquitted him of rape on ground of reasonable doubt. According to the Court of Appeals, complainant was effectively deprived of her liberty because

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

[26] *Id.* at pp. 23-42.

[27] CA *rollo*, pp. 73-87.

she was not informed of the directions by which she could go home. Appellant also stopped her from leaving the area or areas he brought her to. And whenever appellant left, she was under constant surveillance by appellant's relatives. As for the alleged physical injuries inflicted on complainant, the same, assuming they were in fact inflicted, are deemed absorbed in the crime of serious illegal detention. There was no evidence that appellant had carnal knowledge of complainant through force, threat, or intimidation.

The Present Petition

Appellant now implores the Court for a verdict of acquittal. In compliance with the Court's directive, both appellant[28] and the OSG[29] manifested that in lieu of supplemental briefs, they were adopting their respective briefs in the Court of Appeals.

Issue

Did the Court of Appeals err in convicting appellant of kidnapping and serious illegal detention?

Ruling

Article 267 of the Revised Penal Code defines the crime of kidnapping and serious illegal detention, *viz.*:

> ART. 267. Kidnapping and serious illegal detention. - Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:
>
> 1. If the kidnapping or detention shall have lasted more than three days.
> 2. If it shall have been committed simulating public authority.
> 3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained, or if threats to kill him shall have been made.

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[28] *Rollo*, pp. 44-46.

[29] *Id.* at 40-43.

4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

People v. Bringas[30] enumerates the elements of kidnapping and serious illegal detention, thus:

The crime of *Kidnapping and serious illegal detention*, under Art. 267 of the RPC, has the following elements:

(1) the offender is a private individual; not either of the parents of the victim or a public officer who has a duty under the law to detain a person;

(2) he kidnaps or detains another, or in any manner deprives the latter of his liberty;

(3) the act of detention or kidnapping must be illegal; and

(4) in the commission of the offense, any of the following circumstances is present:

   (a) the kidnapping or detention lasts for more than three days;

   (b) it is committed by simulating public authority;

   (c) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made or

   (d) the person kidnapped or detained is a minor, female or a public official.

The essence of illegal detention is the deprivation of the

[30] 633 Phil. 486, 514-515 (2010).

victim's liberty. The prosecution must prove actual confinement or restriction of the victim, and that such deprivation was the intention of the appellant. The accused must have knowingly acted to restrain the victim. After all, the offense requires taking coupled with intent to restrain.[31] More, if the victim is a minor, or the victim is kidnapped and illegally detained for the purpose of extorting ransom, the duration of his or her detention becomes inconsequential.[32]

When it comes to a victim who is a minor, the prevailing jurisprudence on illegal detention is that the curtailment of the victim's liberty need not involve any physical restraint upon the victim's person. Leaving a minor in a place from which she or he did not know the way home, even if she or he had the freedom to roam around the place of detention, would still amount to deprivation of liberty. Under such a situation, the minor's freedom remains at the mercy and control of the abductor.[33]

The penalty of death is prescribed for the offense of kidnapping and serious illegal detention when the kidnapping or detention is committed for the purpose of extorting ransom. The penalty one degree lower is *reclusion perpetua*.[34] The last paragraph of Article 267 of the RPC provides that if the victim is killed or dies as a consequence of the detention, or is raped or subjected to torture or dehumanizing acts, the maximum penalty shall be imposed. The last paragraph gives rise to a special complex crime of kidnapping and serious illegal detention with rape.[35]

Here, there is no question that appellant is a private individual (first element) and that per the parties' stipulation, complainant was a minor, being only seventeen (17) years old at the time her purported kidnapping and serious illegal detention took

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[31] *People v. Nuguid*, 465 Phil. 495, 510 (2004).

[32] *People v. Con-ui, et al.*, 723 Phil. 827, 832-833 (2013).

[33] *People v. Fabro or Manalastas*, 813 Phil. 831, 841 (2017).

[34] *People v. Castro*, 434 Phil. 206, 223 (2002).

[35] *People v. Anticamara*, 666 Phil. 484, 501 (2011).

place (fourth element). What appellant disputes though is the presence of the second and third elements.

On this score, appellant argues that complainant was not illegally deprived of her liberty because in all the places they went to, she was free to leave and find her way back home. This was also the tenor of the testimonies of appellant's corroborating witnesses, namely, Robinson Canapi, Adoracion Mendiola, and Aida Mendiola.

The OSG counters that complainant was a minor at the time the incident happened. She was unfamiliar with the places they went to and did not have any means to go back home, thus, her liberty was effectively restrained.

We acquit.

Every accused has the right to be presumed innocent until the contrary is proven beyond reasonable doubt. The presumption of innocence stands as a fundamental principle of both constitutional and criminal law. Thus, the prosecution has the burden of proving every single fact establishing guilt. Every vestige of doubt having a rational basis must be removed. The defense of the accused, even if weak, is no reason to convict. Within this framework, the prosecution must prove its case beyond any hint of uncertainty. The defense need not even speak at all. The presumption of innocence is more than sufficient.[36]

Here, we are confronted with complainant's lone testimony on how appellant supposedly detained her against her will. When we rely on the testimony of a complainant, we require her testimony to be entirely credible, trustworthy, and realistic. For when certain parts would seem unbelievable, especially when it concerns one of the elements of the crime, the victim's testimony as a whole will not pass the test of credibility.[37]

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[36] *People v. Castillo*, 469 Phil. 87, 118 (2004).

[37] *People v. Amarela*, G.R. Nos. 225642-43, January 17, 2018, 852 SCRA 54, 82.

At the outset, the records substantially negate complainant's assertion that although she had a certain degree of mobility, she was totally incapable of escaping her captor. Consider:

First. Appellant brought her first to the house of his cousin Akime in Sta. Lucia, San Fernando, Pampanga on March 31, 2010, where she stayed for two (2) days during the Lenten season. She testified, *viz*.:

Q: While you were there for two (2) days at the place of Akime, did you try to go home?
A: I tried, Ma'am.

Q: How did you try to go home?
A: I told him that I wanted to go home because I would be scolded by my parents, Ma'am.

Q: To whom did you say that you wanted to go home?
A: To Philip, Ma'am.

Q: When did you first tell Philip the accused in this case, that you wanted to go home?
A: When we were still in the house of Akime, Ma'am. That was during the first day.

Q: At around what time was that in the first day?
A: Around 2:00 o'clock, Ma'am.

Q: When you told Philip you wanted to go home, what did he say?
A: He had so many alibis, Ma'am.

Q: What kind of alibi?
A: That he would only finish the Lenten season as he was joining in the flagellation, Ma'am.

Q: And you readily agreed to stay?
A: I was not able to do anything because I had no money, your Honor.

x x x x x x x x x

Q: Why did you not try to go home alone, aside from the fact that you did not have money?
A: I do not know how to go home, Ma'am. That was my first time.[38]

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[38] TSN, September 21, 2010, pp. 9-10.

Complainant never mentioned or alluded to any action appellant supposedly did to curtail her liberty or otherwise restrain her movements. They may have disagreed on whether they should stay in Sta. Lucia for the lent: complainant wanted to go home but appellant wanted to participate in the flagellation rites. Although she claimed she could not go home because she did not know her way home and she had no money, this did not equate to restriction or prohibition, let alone, detention. Again, she testified that she and complainant disagreed on how they should spend the lent, but despite this disagreement, she stayed on anyway.

The deprivation required under Article 267 means not only imprisonment in, but also the deprivation of complainant's liberty in whatever form and for whatever length of time. It involves a situation where the victim cannot leave the place of confinement or detention or is restricted or impeded in his or her liberty to move around. In other words, the essence of serious illegal detention is the actual deprivation of the victim's liberty, coupled with indubitable proof of the intent of the accused to effect such deprivation.[39]

Here, the prosecution failed to prove that appellant actually deprived complainant of her liberty or otherwise restrained her freedom of movement. The mere fact that appellant wanted to stay and participate in the flagellation rites, standing alone, did not amount to an intention to deprive, restrain, let alone, detain complainant against her will.

Second. From Sta. Lucia, complainant and appellant moved to stay in the house of appellant's cousin Marmel in Northville, Calulut, San Fernando, Pampanga. She testified:

Q: After you said that you asked Philip to bring home and he had so many alibis, what did you do?
A: I was crying, Ma'am.

Q: When you were crying, what did Philip do?
A: Nothing, Ma'am. He just did not mind me.

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[39] *People v. Baluya*, 664 Phil. 140, 151 (2011).

Q: After that what happened next?
A: We went to the place of his cousin, Ma'am.

Q: And who is that cousin?
A: Ate Marmel, Ma'am.

x x x x x x x x x

Q: What happened when you went to Ate Marmel?
A: We stayed there, Ma'am.

Q: Did you not try to go home?
A: I tried, Ma'am.

Q: How did you try to go home this time?
A: I was crying, Ma'am.

Q: You have no cellphone?
A: It was sold, your Honor.

Q: When did you sell it?
A: On the second day that we stayed here, your Honor.

Q: When you went to Pampanga, you still have your cellphone?
A: Yes, your Honor.

Q: When you were in the house of Akime, you still have your cellphone?
A: Yes, your Honor.

Q: You said you wanted to go home. You did not try to communicate with your parents?
A: I did, your Honor. They called me but I was not there and I did not also have load in my cellphone.

Q: What did you reply?
A: I forgot already, your Honor.

Q: You did not tell them that you were in Pampanga and with Philip?
A: Not yet, your Honor.

Q: Even if you said that you wanted to go home?
A: Yes, your Honor.

x x x x x x x x x

Q: Why did you not tell them that you were in Pampanga for them to fetch you?
A: Because according to his papa a case was already filed by my parents against us. I got afraid, Ma'am.

Q: When you say papa, to whom were you referring?
A: Angelo Carreon, Ma'am.

Q: The father of Philip Carreon?
A: Yes, Ma'am.

Q: The father of Philip Carreon told you and Philip that?
A: Not to leave because a case was already filed against us but he not sure, Ma'am. His father was not sure.

Q: Did the father of Philip Carreon tell you who filed the case against you and Philip?
A: Yes, Ma'am.

Q: Who was that?
A: My papa, Ma'am.

Q: At that time that you were told by Philip's father that a case was filed against you and Philip, did you believe that?
A: Yes, Ma'am.

Q: Why did you believe that?
A: I do not know anything about our laws, Ma'am.

x x x x x x x x x

Q: After you received that call on the second day, what happened to your cellphone?
A: It was sold, Ma'am.

Q: Why was it sold?
A: I met an accident, Ma'am.

Q: What kind of accident?
A: Nabangga po ng motorcycle.

Q: Who sold your cellphone?
A: Us, Ma'am.

Q: Why did you sell your cellphone?
A: I had a swollen leg and I needed to buy medicine, Ma'am.[40]

Again, complainant did not testify how appellant illegally detained her. Instead, she confessed that she did not go home since she was scared of the consequences of the case that her

[40] TSN, September 21, 2010, pages 12-16.

parents allegedly filed against them. More, although she knew her parents were trying to contact her through her cellphone, she did not even bother to return their call, citing as reason she had no money to buy phone credits to do so. And she had another reason why she could not go back home yet, *i.e.* her leg swelled when it got hit by a motorcycle.

In kidnapping and serious illegal detention, it is necessary that there be indubitable proof that the accused actually intended to deprive the witness of his or her liberty. The accused must have had a purposeful or knowing action to forcibly restrain the victim.[41] As stated, however, there is no showing here that complainant was forcibly transported away, locked up, restrained of her freedom, or prevented from communicating with anyone. Nor was it established that such indeed was appellant's intention toward her.

Third. For their third stop, complainant and appellant stayed in the house of appellant's friend Robinson Canapi in Calulut, San Fernando, Pampanga. Complainant testified:

Q: And who is this Robinson?
A: His friend, Ma'am.

Q: And where is the house of Robinson?
A: Also in Calulut, ma'am.

Q: How long did you stay at the house of Robinson?
A: One (1) week, ma'am.

Q: Is this Robinson a male or female?
A: Male, ma'am.

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Q: Okay. When you were at Robinson's house, did you not try to go home?
A: I tried, ma'am.

Q: How?
A: I told Kuya Robinson, ma'am, but he is also hard up in life. "Kasi nagtatabag lang siya ng semento".[42]

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[41] *People v. Soberano*, 346 Phil. 449, 458 (1997).

[42] TSN, October 5, 2010, pp. 11-12.

x x x x x x x x x

Again, complainant did not at all mention or give any details how she was supposedly detained or closely watched by appellant's friend Robinson. There is no evidence either that she was deliberately denied assistance by appellant's friend for the purpose of restraining her freedom of movement. In fact, complainant herself explained that Robinson could not give her transportation fare to go back home because he also did not have money.

Fourth. Complainant further testified on what took place when she and appellant stayed in the house of appellant's grandmother, *viz.*:

Q: Whose house?
A: The house of his grandmother, Ma'am.

Q: Whose grandmother?
A: Adoracion Mendiola, Ma'am.

Q: The grandmother of Philip?
A: Yes, Ma'am.

Q: Where is the house of the grandmother if you know?
A: Teopaco, Ma'am.

Q: Who were living in that house when you got there?
A: Kami lang po, the grandmother and the child of Philip, Ma'am.

Q: And then while you were at the house of Adoracion, what happened?
A: We reached his Tito Danny there.

Q: And what happened when you reached his Tito Danny thereat?
A: According to his Tito Danny this Philip created a big problem and we have to tell his parents about it, Ma'am.

Q: Did you ask help from this Tito Danny?
A: Yes, ma'am and then instead they called the father of Philip.

Q: And what happened after they called Philip's father?
A: The father of Philip told them that they have to hide me because they will file a complaint against us, Ma'am.

Q: And what did Philip do after that talk with his father?
A: They hide me, Ma'am.

Q: Where?
A: There in Teopaco, Ma'am.

Q: While you were at Teopaco what did the accused do to you?
A: None, Ma'am.

Q: How long did you stay at Teopaco?
A: Matagal po.

Q: One month?
A: Yes, your Honor.

Q: Two (2) months?
A: More than one month only, your Honor.

Q: Did you not try to go home in that period of one month?
A: I tried, Ma'am.

Q: How did you try to go home this time?
A: I was telling them, Ma'am.

Q: Who in particular did you tell that?
A: To his grandmother and to his uncle, Ma'am.

Q: And what did they tell you?
A: According to them that is not possible because the situation is still delicate, Ma'am.

Q: While you were there where is Philip?
A: Also there in Teopaco, Ma'am.

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Q: Could you describe to us your relationship with Philip at that time while you were there for more than a month?
A: At first it was okay and later on he is already hurting me, Ma'am.

Q: How many times did he try to hurt you?
A: Whenever I commit mistake and when I am trying to go home, Ma'am.

Q: When you were trying to go home what did he do to you?
A: Napagbubuhatan po ng kamay.

Q: What exactly do you mean by napagbubuhatan ng kamay?
A: Nasasaktan po.

Q: What exactly did he do to you?
A: There was an instance that he was drunk and then naghaharutan po kami bigla niya ibinaling sa akin ang kutsilyo.[43]

In fine, complainant described how their romantic idyll had been shattered by reality and how the consequences of their actions had caught up with them. As it was, appellant's family got alarmed because of the alleged case complainant's parents purportedly filed against appellant. Appellant's family allegedly decided to take precautionary measures by keeping complainant with them in the house of appellant's grandmother. Complainant claimed she was hidden inside this house but how it was done complainant did not say exactly.

Complainant's bare statement "*They hide me, Ma'am*" is equivocal. lt is not a definitive statement of the so-called unlawful restraint on her personal liberty. Indubitably, complainant's tale on how the sweet fruit of infatuation had turned bitter will not suffice to convict her former lover, herein appellant, of kidnapping and serious illegal detention.

Based therefore on complainant's lone testimony, the following facts had been established: 1) she willingly went with appellant when they first went to Sta. Lucia and when they later on moved to three [3] different houses, two [2] in Calulut and one [1] in Teopaco, from March 31, 2010 to June 3, 2010; 2) she was not forcibly transported away, locked up, restrained, or prevented from communicating with anyone; 3) she had ample opportunities to leave appellant and go home but she never did; and 4) she and appellant were in a romantic relationship when they eloped. Indeed, the main prosecution witness herself, complainant no less, disproved the prosecution's theory that she was kidnapped and seriously detained.

Ironically, complainant's testimony even strengthened appellant's theory that they were sweethearts who were travelling together as such. Ever since she and appellant left San Mateo, Rizal, they had always stayed together in the houses of appellant's

[43] TSN, January 19, 2011, pp. 9-15.

friend and relatives. The proximity of their ages, appellant was twenty-one (21) while complainant was seventeen (17), and the fact that they moved together from one house to another, indicate a more intimate relationship, rather than a kidnapper-victim dynamics. She deferred to him whenever she expressed her desire to go home, and they argued, as lovers would, whenever they failed to reach a compromise about their plans. On this score, the Court of Appeals' finding that complainant and appellant had consensual sexual relation is relevant, *viz*.:

> It is quite plain from the foregoing that Philip did not employ any force or intimidation upon *AAA* either during the first or the second alleged rape incident. Although Philip held *AAA*'s hands, it was not shown that he continuously did before or while having carnal knowledge of the victim. There was not even an indication that he uttered any threat or intimidation on *AAA*. In rape cases alleged to have been committed by force, threat, or intimidation, it is imperative for the prosecution to establish that the element of voluntariness on the part of the victim be absolutely lacking. The prosecution must prove that force or intimidation was actually employed by accused upon his victim to achieve his end. Failure to do so is fatal to its cause.
>
> Further, *AAA* testified that the bed where she and Philip slept was only separated by a plywood from Marmel's bed. It need not be overemphasized that the settled principle that lust is no respecter of time and place should not be applied *tout de suite* without considering the attending circumstances. Notably, when *AAA* was allegedly being raped by Philip, she did not even bother to shout or ask help from Marmel as a woman would instinctively do. It is also quite telling that after the alleged rape incident, Philip and *AAA* had sexual intercourse every day for six (6) days during their stay at Marmel's house. Even during the supposed sexual assaults, *AAA* did not actively defend herself as shown by her aforequoted testimony. It took the RTC's clarificatory questioning to elicit from *AAA* the pithy statement "*lumaban po*". It does not appear logical that *AAA* did not resist Philip's advances during the supposed second rape incident on the mere reasoning that "*wala na pong mawawala*". It bears stressing that resistance must be manifested and tenacious. A mere attempt to resist is not the resistance required and expected of a woman defending her honor and chastity.[44]

[44] *Rollo*, p. 15.

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AAA's conduct immediately following the alleged sexual assault is also of utmost importance in establishing the truth or falsity of the charge of rape. Even if she had several opportunities to share her ordeal with Robinson's wife or Aida who accompanied her when Philip was driving a "triwheeler", *AAA* inexplicably failed to do so. She even asked for the dismissal of the rape case not just during her cross-examination but even during the direct examination stating that "*wala na po yung kasong rape, sinaktan nalang man niya po ako"* and *"minahal ku naman po siya, [a]ng magulang lang po niya ang nagpalala sa lahat*". Undeniably, *AAA* only wanted to file kidnapping and physical injuries case because Philip hurt her. Such actuations are totally uncharacteristic of one who has been raped.[45]

The case here involves two (2) young people, who being so much in love with each other, decided to go out into the world in the hope of living in bliss together. But this did not happen. Instead, it resulted in the filing of a baseless criminal complaint for kidnapping and serious illegal detention with rape and physical injuries against appellant. ***People v. Soberano***[46] has this to say:

The serious illegal detention theory appears to be an impulsion upon complainant and her relatives who, frantic about the ardor of appellant in his romance with complainant, wanted to keep appellant away from her because she apparently no longer reciprocated his love with the same degree of passion. **If what transpired was not a frivolous indiscretion of lovers, the most that can be said is that it was the foolish nurturing by a young man of a love affair that had gone sour but which, by itself, is not punishable.** (Emphasis supplied)

So must it be.

As for complainant's assertion that she was helpless because she did not know her whereabouts and did not know how to get home, the Court refers to the decision in ***People v. Baluya***.[47]

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[45] *Id.* at 18-19.

[46] 346 Phil. 449, 462 (1997).

[47] 664 Phil. 140, 151 (2011).

In that case, the Court pronounced that the child-victim who was nine (9) years old and in fact illegally detained was found to have had the presence of mind to run away from his captor. He was intelligent enough to read the signboards of the passenger jeepneys and follow the route of the ones going to the place where he lived.

Here, complainant was already a seventeen (17)-year old high school graduate at the time of her alleged serious illegal detention. Although she was a minor, it was not shown that she was incapable of ascertaining her whereabouts and determining the possible ways by which she could go back home. How can a young woman who had completed secondary education and lived in the proximity of the Manila suburbs be totally clueless on how she could find her way back home? Complainant was definitely old enough to read and understand how the transportation system works. She was already possessed of more than sufficient discretion and aptitude to formulate a plan on how to get home. Also, she was not detained or restrained. She was free to leave and was capable of leaving the company of appellant, his friends, and his relatives in Pampanga. Why she did not take any of the ample chances to escape is truly inexplicable. It can only happen to one who in reality opted to stay and not leave his or her beloved behind. It is settled that testimonial evidence to be believed must not only proceed from the mouth of a credible witness but must foremost be credible in itself. Accordingly, the test to determine the value or credibility of a witness' testimony is whether the same is in conformity with common knowledge and is consistent with the experience of mankind.[48] Complainant's testimony does not conform with the experience of someone who had been illegally and seriously detained. To reiterate, her testimony rather reveals that she willingly chose to stay with appellant, her lover at that time.

Reasonable doubt may arise from the evidence adduced or from the lack of evidence, and it should pertain to the facts constitutive of the crime charged. While no test definitively

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[48] *People v. Reyes*, G.R. No. 224498, January 11, 2018, 851 SCRA 133, 155.

determines what is reasonable doubt under the law, the view is that it must involve genuine and irreconcilable contradictions based, not on suppositional thinking, but on the hard facts constituting the elements of the crime.[49]

It has been repeatedly ruled that in criminal litigation, the evidence of the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the defense. The burden of proof rests on the State. Thus, the failure of the prosecution to discharge its burden of evidence in this case entitles appellant to an acquittal[50] as a matter of right. Surely, where the evidence of the prosecution is concededly weak, even if the evidence for the defense itself is equally weak, the accused must be duly accorded the benefit of the doubt in view of the constitutional presumption of innocence that an accused enjoys.[51]

In retrospect, both courts below relied on the following testimony of complainant to pin down appellant for kidnapping and serious illegal detention: a) they stayed at Akime's house in Sta. Lucia for two (2) days, and during that time, she told appellant she wanted to go home but appellant refused to heed her request; b) it was her first time travelling in Pampanga and she did not know her way home; c) appellant brought her to the house of his cousin Marmel Calulut; d) complainant did not know how to get home from Calulut; e) appellant's father Angelo Carreon said that she should not leave Pampanga because her father had filed a case against appellant and she was forced to stay in Marmel's house for four (4) days; f) appellant, thereafter, brought her to the house of his friend Robinson who was also living in Calulut and stayed there for a week; g) she asked Robinson for help but he refused and she could not leave Calulut and go home; h) appellant's father, Angelo, and relatives decided to hide her in Teopaco as Angelo was scared her parents. would file a case against them; and i) she was hidden in the Teopaco house for about a month.

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[49] *People v. Ramos*, 369 Phil. 84, 101 (1999).

[50] *People v. Tionloc*, 805 Phil. 907, 920 (2017).

[51] *Astorga v. People*, 480 Phil. 585, 596 (2004).

But complainant's testimony also contains exculpatory evidence that would absolve appellant of the crime of kidnapping and serious illegal detention, *viz*.: 1) she and appellant were sweethearts; 2) appellant did not want to leave Sta. Lucia because he wanted to participate in the flagellation rites; 3) she had a cellphone but sold it to buy medicine for her leg that got swollen after getting hit by a motorcycle; 4) her parents were able to contact her when she still had her cellphone but she could not respond because she had no money to buy phone credits; 5) she voluntarily submitted to appellant's sexual advances in the name of love; 6) she asked Robinson for money so that she could go home but Robinson did not have any to spare; 7) the reason she was kept at Adoracion Mendiola's house in Teopaco for a month was because the situation involving her and appellant was delicate; 8) appellant's relatives intervened because of the problems appellant caused when he brought complainant with him, and in the process, kept complainant in their company; and 9) for most of the time that they were together, complainant admitted that appellant did nothing whenever she told him she wanted to go home.

Verily, when there are two (2) conflicting testimonies of the same witness pertaining to material points, one inculpatory and the other exculpatory, the latter being compatible with the presumption of innocence and a verdict of acquittal must prevail.[52] Too, the exculpatory evidence emanating from the prosecution itself is an admission against interest, hence, assumes the highest degree of credibility. It is the best evidence which affords the greatest certainty of the facts in dispute since no one would declare anything against himself or herself unless such declaration is true. Thus, an admission against interest binds the person who makes the same, and absent any showing that this was made through palpable mistake, no amount of rationalization can offset it.[53]

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[52] *Supra* note 51.

[53] *Heirs of Peter Donton v. Stier*, 817 Phil. 165, 180 (2017).

ACCORDINGLY, the appeal is **GRANTED**. The assailed Decision dated May 13, 2016 of the Court of Appeals in CA-G.R. CR HC No. 07003 is **REVERSED** and **SET ASIDE**. Appellant Philip Carreon *y* Mendiola is **ACQUITTED** of kidnapping and serious illegal detention on ground of **REASONABLE DOUBT**.

The Superintendent of the New Bilibid Prison, Muntinlupa City, Metro Manila is ordered to immediately **RELEASE** Philip Carreon *y* Mendiola from detention unless he is being held in custody for some other lawful cause; and to **REPORT** to this Court his compliance within five (5) days from notice.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Reyes, J. Jr., and *Lopez, JJ.*, concur.

FIRST DIVISION

[G.R. No. 229634. January 15, 2020]

ATTY. AROLF M. ANCHETA, *petitioner, vs.* **FELOMINO C. VILLA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE; NOT TO BE RIGIDLY APPLIED SO AS TO FRUSTRATE THE GREATER INTEREST OF SUBSTANTIAL JUSTICE.— [I]t should be emphasized that compliance with procedural rules is necessary for an orderly administration of justice. Nevertheless, these rules are not to be rigidly applied so as to frustrate the greater interest of substantial justice. As stated in the Rules of Court, these rules "shall be liberally construed in order to promote

their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding."

2. ID.; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT; PROPER REMEDY TO ASSAIL THE FINAL, EXECUTORY AND UNAPPEALABLE DECISION OF THE OMBUDSMAN; CASE AT BAR.— [A]s regards the propriety of the petition for *certiorari* filed by Ancheta, the CA erred in dismissing his petition for being the wrong remedy. Contrary to the ruling of the CA, Ancheta correctly filed a petition for *certiorari* under Rule 65 instead of a petition for review on *certiorari* under Rule 43. Even the Ombudsman conceded in its Comment that Ancheta availed of the correct remedy. Indeed, the Court had ruled in *Fabian v. Desierto* that appeals from the decisions of the Ombudsman rendered in administrative disciplinary cases should be filed before the CA through a Rule 43 petition. However, the CA's reliance on *Fabian* in dismissing Ancheta's petition is misplaced. The CA failed to consider that Ancheta was meted the penalty of a fine equivalent to one-month salary by the Ombudsman. Such penalty was final, executory, and unappealable under Section 7, Rule III, of Administrative Order No. 07, issued by the Ombudsman to implement Section 27 of R.A. 6770. x x x Given the final, executory and unappealable nature of the Ombudsman's decision, Ancheta's remedy is a Rule 65 Petition. x x x Ancheta was therefore correct in filing a petition for *certiorari* before the CA to assail the Ombudsman decision considering that the same was final, executory and unappealable and he was able to show that the Ombudsman grossly misappreciated the evidence so as to compel a contrary conclusion. Thus, the CA erred in dismissing his petition outright.

3. ID.; EVIDENCE; CREDIBILITY; FACTUAL FINDINGS OF ADMINISTRATIVE AND QUASI-JUDICIAL AGENCIES, SUCH AS THE OMBUDSMAN, ARE GENERALLY ACCORDED NOT ONLY RESPECT BUT AT TIMES FINALITY, WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE.— While factual findings of administrative and *quasi-judicial* agencies, such as the Ombudsman, are generally accorded not only respect but at times finality, this holds true only when they are supported by substantial evidence. Here, a judicious review of the records of the case reveals that there is

no substantial evidence to hold Ancheta liable for simple neglect of duty.

4. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; SIMPLE NEGLECT OF DUTY; DEFINED AS 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; CASE AT BAR.— Simple neglect of duty means 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. In this case, the Ombudsman ruled that Ancheta "fell short of the reasonable diligence required of him, for failing to exercise due care and prudence in ascertaining that the printed unofficial order or its soft copy in his computer files [is] already torn or deleted after issuing the order inhibiting himself from the DARAB case." However, there appears to be insufficient basis for the Ombudsman's findings. Its ruling that Ancheta "either neglected to tear or pierce the printed unofficial order, or delete the same in his computer files after he issued the Order x x x inhibiting himself" is mere conjecture, which is not enough to hold Ancheta administratively liable especially when coupled with the established fact, admitted by the Ombudsman herself, that there is no evidence linking Ancheta to the inclusion of the subject Order in the case records before the DARAB Regional Office.

APPEARANCES OF COUNSEL

Ancheta Salvador and Associates Law Firm for petitioner.

D E C I S I O N

CAGUIOA, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Resolutions dated September

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

20, 2016[2] and December 28, 2016[3] of the Court of Appeals (CA) in CA-G.R. SP No. 147457. The CA dismissed outright the petition for *certiorari* filed by petitioner Arolf M. Ancheta (Ancheta).

The Facts

This case stemmed from an administrative complaint filed by respondent Felomino C. Villa (Villa) against Ancheta, former Provincial Agrarian Reform Adjudicator (PARAD) of the Department of Agrarian Reform Adjudication Board (DARAB) Regional Office No. III, Talavera, Nueva Ecija for Grave Misconduct and Dishonesty and for violation of Republic Act No. (R.A.) 3019 in connection with Ancheta's alleged irregular Issuance of an Order granting the quashal of a writ of execution in favor of Villa.[4]

According to Villa's complaint, he was the winning party in a case before the CA, the Decision of which was promulgated on June 30, 2004. On May 12, 2010, he filed a Motion for Immediate Issuance of a Writ of Execution and Urgent Manifestation before the DARAB-Talavera to implement said Decision. On June 23, 2010, Villa filed an Urgent Manifestation with Motion for Early Resolution because the five-year execution period for the CA Decision would expire in October 2010. On September 8, 2010, Ancheta issued an Order granting Villa's motion for issuance of a writ of execution, which was implemented on October 4, 2010.[5]

On November 23, 2010, the opposing party filed a Motion to Quash the Writ of Execution. On December 6, 2010, the opposing party also filed a Complaint for Enforcement of Judgment by Action/Revival of Judgment. On January 12, 2011,

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[2] *Id.* at 32-33. Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela, concurring.

[3] *Id*. at 35.

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

[5] *Id.* at 55-56.

Villa filed a Verified Answer with Motion to Admit the Answer as Opposition to the Motion to Quash Writ of Execution.[6]

Subsequently, Villa learned from close friends and relatives that the opposing party was allegedly boasting that the latter would soon recover the subject property after giving a huge amount of money to Ancheta. He also learned that a resolution or order was already issued and that the opposing party already went to DARAB-Talavera to get a copy of the same.[7] Villa further claimed that some employees of the DARAB-Talavera secretly told him that there was indeed a resolution or order reversing the writ of execution earlier issued in his favor. Thus, Villa was constrained to file an Urgent Motion for Inhibition against Ancheta.[8]

On June 10, 2011, Ancheta issued an Order granting the motion for inhibition and inhibited himself from handling the case. The case was then indorsed to the DARAB Regional Office at San Fernando City, Pampanga.[9]

Meanwhile, Villa sent a copy of the Motion for Inhibition to Director Marlyn Torres-Galvez (Dir. Torres-Galvez) of the Public Assistance Bureau, Office of the Ombudsman. Because of this, Dir. Torres-Galvez wrote Ancheta on July 18, 2011 asking about the status of said motion. In the last week of August 2011, Dir. Torres-Galvez sent a letter to Villa informing him that the case records were already turned over to the DARAB Regional Office.[10]

Villa alleged that after his initial follow-up on the case, he observed that there was still no "Order" added to the case records. However, after his next follow-up on October 27, 2011,[11] he

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[6] *Id.* at 56.

[7] *Id.* at 57.

[8] *Id.*

[9] *Id.*

[10] *Id.* at 58.

[11] *Id.* at 40.

was surprised that a supposed Order dated May 18, 2011 by Ancheta granting the quashal of the writ (subject Order) was added to the records of the case. According to Villa, the subject Order might have been secretly put into the case records to influence the Regional Adjudicator in resolving the case in favor of the other party.[12] Thus, Villa claimed that Ancheta's acts made him liable for Dishonesty and Grave Misconduct and for violation of R.A. 3019.[13]

In his counter-affidavit, Ancheta denied the charges against him, mainly arguing that Villa's claims were all hearsay and unsupported by evidence. Ancheta claimed that if there was indeed a resolution on the opposing party's motion, then the parties would have received it officially. Ancheta pointed out that Villa himself admitted that he only got a copy of the subject Order from the DARAB Regional Office which is already beyond his jurisdiction as PARAD.[14]

Moreover, Ancheta contended that even if the subject Order existed, it was unenforceable and invalid as it was not released officially. Also, he averred that Villa was not prejudiced as he was still in possession of the subject landholding. Additionally, Ancheta claimed that he could not influence the Regional Adjudicator who inherited the case since the latter was higher in rank than him and has a mind of his own.[15]

The Ruling of the Ombudsman

In a Decision[16] dated May 7, 2013, the Ombudsman found Ancheta guilty of simple neglect of duty and imposed on him a fine in lieu of suspension, to wit:

Considering that this is respondent's first offense and that he is already separated from public service, we deem it proper to impose

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[12] *Id.* at 58.

[13] *Id.* at 59.

[14] *Id.* at 60.

[15] *Id.*

[16] *Id.* at 54-80. Prepared by Graft Investigation and Prosecution Officer Quijano S. Laure and approved by Ombudsman Conchita Carpio Morales.

a fine, in lieu of suspension, equivalent to **one (1) month of his salary** which shall be reckoned at the time of his resignation on December 1, 2011.

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered finding respondent AROLF M. ANCHETA ***guilty*** of Simple Neglect of Duty and is hereby meted the penalty of **fine, in lieu of suspension, equivalent to one (1) month of his salary,** pursuant to Section 46 (D), Rule 10 of the Revised Rules in Administrative Cases in the Civil Service (RRACCS), in relation to Section 10, Rule III of Administrative Order No. 07, as amended by Administrative Order No. 17, and Section 25 of R.A. No. 6770.[17]

The Ombudsman found no relevant and competent evidence linking Ancheta to the alleged inclusion of the subject Order in the case records because the statements of Villa and his witnesses were all hearsay.[18] The Ombudsman also pointed out that if Ancheta was indeed biased and partial against Villa, the former would not have inhibited from the case but would have resolved it in the other party's favor.[19]

However, the Ombudsman found it perplexing that despite Ancheta's inhibition from the case, the subject Order still found its way in the case records which was already reassigned to the Regional Adjudicator. Thus, the Ombudsman ruled that Ancheta either neglected to tear or pierce the printed unofficial order, or delete the same in his computer files after he inhibited from the case. According to the Ombudsman, this has unreasonably led to the filing of the instant case which could have been avoided had Ancheta not been remiss with his duty. Thus, the Ombudsman found Ancheta guilty of neglect of duty classified as simple considering that the subject Order did not cause undue injury or prejudice to Villa.[20]

Ancheta moved for reconsideration, which was denied in an Order[21] dated March 7, 2016. On May 26, 2016, Ancheta

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[17] *Id.* at 78.

[18] *Id.* at 75-76.

[19] *Id.* at 72.

[20] *Id.* at 76-77.

[21] *Id.* at 87-90.

filed an Appeal to the Head Office, which was likewise denied in an Order[22] dated June 14, 2016. The Ombudsman treated said appeal as a second Motion for Reconsideration (MR), which is a prohibited pleading.[23]

Aggrieved, Ancheta filed a petition for *certiorari* before the CA.

The Ruling of the CA

In a Resolution[24] dated September 20, 2016, the CA dismissed the petition outright for the following procedural defects: 1) there was no allegation as to when Ancheta received a copy of the assailed Decision and when he filed the MR; 2) the assailed Decision and Resolution stemmed from an administrative disciplinary complaint before the Ombudsman; hence, a petition for review under Rule 43 was the proper remedy, not a petition for *certiorari* under Rule 65; 3) the "Appeal to the Head of Office," being in the nature of a second MR, did not toll the running of the period to file a petition for review; and 4) payment of docket and other legal fees is short by ₱1,180.00.

Ancheta filed an MR, which was denied in a Resolution[25] dated December 28, 2016. Hence, the instant petition.

Petition before the Court

In his Petition for Review on *Certiorari*,[26] Ancheta argues that the CA erred in dismissing his petition outright based on technicalities. On the lack of allegation as to when he received a copy of the assailed Ombudsman Decision, Ancheta claims that the same was indicated in his petition and in any case, the

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[22] *Id.* at 98-100.

[23] *Id.* at 99.

[24] *Id.* at 32-33. Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela, concurring.

[25] *Id.* at 35.

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

lack of allegation of such is not sufficient to dismiss his appeal.[27] Further, Ancheta argues that the CA erred in ruling that a Rule 43 petition, instead of a Rule 65 petition, was the proper remedy in questioning the Ombudsman's Decision.[28] Also, Ancheta avers that he filed, in good faith, the Appeal to the Head of Office in order to exhaust administrative remedies.[29] Finally, Ancheta claims that he already paid the correct docket fees.[30]

Even assuming that the petition had procedural lapses, Ancheta insists that the CA should not have dismissed the petition outright considering the merits of the petition.[31]

In its Comment,[32] the Ombudsman, through the Office of the Solicitor General, maintains that the CA correctly dismissed Ancheta's petition. According to the Ombudsman, the CA was within its right to choose not to apply liberality of the rules considering the numerous errors in the petition and its lack of merit.[33]

In the meantime, Villa's wife sent a letter informing the Court of the death of Villa and reiterating the arguments of her late husband.[34]

In his Reply,[35] Ancheta reiterates his position, asserting anew that there is no evidence pointing to his liability.[36]

Issue

Whether the CA erred in dismissing the petition outright, and in the affirmative, whether Ancheta is administratively liable.

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[27] *Id.* at 7-8.
[28] *Id.* at 9-10.
[29] *Id.* at 11-12.
[30] *Id.* at 24.
[31] *Id.* at 24-25.
[32] *Id.* at 138-153.
[33] *Id.* at 140.
[34] *Id.* at 179-184.
[35] *Id.* at 189-192.
[36] *Id.* at 190.

The Court's Ruling

The petition is meritorious.

On the outright dismissal of the petition before the CA

To begin with, it should be emphasized that compliance with procedural rules is necessary for an orderly administration of justice. Nevertheless, these rules are not to be rigidly applied so as to frustrate the greater interest of substantial justice. As stated in the Rules of Court, these rules "shall be liberally construed in order to promote their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding."[37]

To recall, the CA outrightly dismissed Ancheta's petition on the following grounds: 1) failure to pay the correct docket fees; 2) failure to state the date of receipt of a copy of the assailed decision; 3) filing before the Ombudsman of an Appeal to the Head of Office which was treated as a second MR, a prohibited pleading; hence, the reglementary period was not tolled; and 4) availing of the wrong remedy. The Court shall discuss these grounds *ad seriatim*.

As regards the payment of the correct docket fees, the Court gives credence to Ancheta's claim that there was no intention on his part to defraud the CA when he failed to pay the full amount of docket fees. According to him, he immediately paid the correct amount upon learning of the shortage,[38] as evidenced by the postal money order in the amount of ₱1,180.00.[39]

On Ancheta's failure to state the date of receipt of the assailed decision and for his filing of a prohibited second MR, while these are indeed procedural irregularities, the same do not warrant a dismissal of the petition. Litigations should, as much as

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[37] RULES OF COURT, Rule 1, Sec. 6.

[38] *Rollo*, p. 24.

[39] *Id.* at 132.

possible, be decided on the merits and not on technicalities.[40] Here, a relaxation of the technical rules of procedure is warranted considering the substantial merits of the case, as will be explained later.

Finally, as regards the propriety of the petition for *certiorari* filed by Ancheta, the CA erred in dismissing his petition for being the wrong remedy. Contrary to the ruling of the CA, Ancheta correctly filed a petition for *certiorari* under Rule 65 instead of a petition for review on *certiorari* under Rule 43. Even the Ombudsman conceded in its Comment that Ancheta availed of the correct remedy.[41]

Indeed, the Court had ruled in *Fabian v. Desierto*[42] that appeals from the decisions of the Ombudsman rendered in administrative disciplinary cases should be filed before the CA through a Rule 43 petition. However, the CA's reliance[43] on *Fabian* in dismissing Ancheta's petition is misplaced. The CA failed to consider that Ancheta was meted the penalty of a fine equivalent to one-month salary by the Ombudsman. Such penalty was final, executory, and unappealable under Section 7, Rule III, of Administrative Order No. 07, issued by the Ombudsman to implement Section 27 of R.A. 6770,[44] which reads in part:

> SEC. 7. *Finality and execution of decision.*—Where the respondent is absolved of the charge, and **in case of conviction where the penalty imposed is** public censure or reprimand, suspension of not more than one month, or **a fine equivalent to one month salary, the decision shall be final, executory and unappealable.** In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule

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[40] *Mitra v. Sablan-Guevarra*, G.R. No. 213994, April 18, 2018, 862 SCRA 32, 37-38.

[41] *Rollo*, p. 143.

[42] 356 Phil. 787, 808 (1998).

[43] *Rollo*, p. 33 (see footnote no. 4 of the CA Decision).

[44] See *Crebello v. Office of the Ombudsman*, G.R. No. 232325, April 10, 2019, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65037>.

43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the motion for Reconsideration. (Emphasis and underscoring supplied)

Given the final, executory and unappealable nature of the Ombudsman's decision, Ancheta's remedy is a Rule 65 Petition, as held in *Dagan v. Office of the Ombudsman*:[45]

x x x In *Republic v. Francisco*, we ruled that decisions of administrative or quasi-administrative agencies which are declared by law final and unappealable are subject to judicial review if they fail the test of arbitrariness, or upon proof of gross abuse of discretion, fraud or error of law. **When such administrative or quasi-judicial bodies grossly misappreciate evidence of such nature as to compel a contrary conclusion, the Court will not hesitate to reverse the factual findings. Thus, the decision of the Ombudsman may be reviewed, modified or reversed via petition for *certiorari* under Rule 65 of the Rules of Court**, on a finding that it had no jurisdiction over the complaint, or of grave abuse of discretion amounting to excess or lack of jurisdiction.

That said, there still is the question which court has jurisdiction over a *certiorari* petition under Rule 65.

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Considering that a special civil action for *certiorari* is within the concurrent original jurisdiction of the Supreme Court and the Court of Appeals, such petition **should be initially filed with the Court of Appeals** in observance of the doctrine of hierarchy of courts.[46] (Emphasis supplied)

Ancheta was therefore correct in filing a petition for *certiorari* before the CA to assail the Ombudsman decision considering that the same was final, executory and unappealable and he was able to show that the Ombudsman grossly misappreciated the evidence so as to compel a contrary conclusion. Thus, the CA erred in dismissing his petition outright.

To avert further delay, the Court opts to resolve the instant petition on its merits rather than remand the case to the appellate

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[45] 721 Phil. 400 (2013).

[46] *Id.* at 411-413.

court, a remand not being necessary where, as in the instant case, the ends of justice would not be served thereby and the Court is in a position to resolve the dispute based on the records before it.[47]

On Ancheta's administrative liability

While factual findings of administrative and *quasi-judicial* agencies, such as the Ombudsman, are generally accorded not only respect but at times finality, this holds true only when they are supported by substantial evidence.[48] Here, a judicious review of the records of the case reveals that there is no substantial evidence to hold Ancheta liable for simple neglect of duty.

Below are the findings of the Ombudsman as stated in the assailed Decision:

> [Villa] claimed that [Ancheta] should be administratively sanctioned for trying to induce or persuade the Regional Adjudicator by sending a copy of the alleged irregular order for the latter's reference, and personally following up the DARAB case through text messages.
>
> However, the following undisputed facts militate against [Villa's] position, thus:
>
> 1. In an Order dated June 10, 2011, [Ancheta] **inhibited** from handling the subject DARAB case;
> 2. As of date, the subject **landholding is still in the possession of [Villa]**, thus, the latter was not clearly prejudiced;
> 3. The **questioned order was unofficial as it was not released and received by the parties themselves**; and
> 4. The assailed order **was traced at the DARAB Regional Office at San Fernando City, Pampanga where [Ancheta] had no jurisdiction**.

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[47] *Fulgencio v. National Labor Relations Commission*, 457 Phil. 868, 882 (2003).

[48] *Baylon v. Fact-Finding Intelligence Bureau*, 442 Phil. 217, 235 (2002).

Tested against the foregoing undisputed facts, we are of the impression that if [Ancheta] was indeed bias[ed] and partial against [Villa], the former would not have inhibited from the case but would have resolved it in the other party's favor. It is certainly against common human experience that a person would inhibit from a case and then follow it up again from a person who is superior than him, as what [Villa] claimed.

Furthermore, **this Office struggles to trace [Ancheta's] link in the surfacing of the alleged irregular order at the DARAB Regional Office.** x x x

x x x x x x x x x

In the instant case, [Villa] and his witnesses gave statements that they talked and heard Ms. Fernanda Paraan saying that the alleged order was brought by two men in [Ancheta's] employ and that the latter was following up the DARAB case from the Regional Adjudicator by sending text messages advising the latter to use the alleged order in resolving the case.

Verily, **[Villa] and his witnesses' statements are considered hearsay** since they had no personal knowledge of [the facts alleged] x x x.

x x x What [Villa] and his witnesses stated, therefore, were matters which were not derived from their own perception but from Paraan's and the Regional Adjudicator's, who both did not give sworn statements to that effect.[49] (Emphasis and underscoring supplied)

From the foregoing, the Ombudsman concluded that there is **no relevant and competent evidence linking Ancheta to the alleged inclusion of the unofficial Order in the case records**. In fact, according to the Ombudsman, the subject Order was incorporated in the case records by the staff at the DARAB Regional Office in San Fernando, Pampanga.[50]

Despite the foregoing, the Ombudsman still ruled as follows:

However, we are perplexed by the fact that despite [Ancheta's] Order dated June 10, 2011 inhibiting from the DARAB case, the alleged

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[49] *Rollo*, pp. 71-76.

[50] *Id.* at 76.

irregular Order dated May 18, 2011 still found its way in the case records which was already reassigned to the Regional Adjudicator. This means that [Ancheta], **either neglected to tear or pierce the printed unofficial order, or delete the same in his computer files after he issued the Order dated June 10, 2011 inhibiting himself from handling the DARAB case. As a result, the said unofficial order may have found its way in the hands of unscrupulous individuals** who may have used the same for evil purposes. This has unreasonably led to the filing of the instant case which could have been avoided had [Ancheta] not been remiss with his duty.[51] (Emphasis supplied)

The Court disagrees with the Ombudsman.

To reiterate, the Ombudsman has already made a categorical finding that "there is no relevant and competent evidence linking [Ancheta] into the alleged inclusion of the unofficial order in the case records."[52] Moreover, Villa himself alleged that during his initial follow-up of the case before the DARAB Regional Office, the subject Order was not yet attached to the case records, and it was only during his next follow-up that he saw the subject Order in the case records.[53] Logically, it would mean that when Ancheta transferred the case records to the Regional Office, he did not include the subject Order. This is confirmed by the Ombudsman's own finding that "the said order was incorporated in the case records by the staff at the DARAB Regional Office in San Fernando Pampanga,"[54] where Ancheta had no jurisdiction.[55]

As the Ombudsman "struggle[d] to trace [Ancheta's] link in the surfacing of the alleged irregular order at the DARAB Regional Office,"[56] so too does the Court struggle in subscribing

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[51] *Id.* at 76-77.

[52] *Id.* at 76.

[53] *Id.* at 58.

[54] *Id.* at 76.

[55] *Id.* at 72.

[56] *Id.*

to the Ombudsman's finding of administrative liability against Ancheta.

Simple neglect of duty means 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.[57] In this case, the Ombudsman ruled that Ancheta "fell short of the reasonable diligence required of him, for failing to exercise due care and prudence in ascertaining that the printed unofficial order or its soft copy in his computer files [is] already torn or deleted after issuing the order inhibiting himself from the DARAB case."[58]

However, there appears to be insufficient basis for the Ombudsman's findings. Its ruling that Ancheta "either neglected to tear or pierce the printed unofficial order, or delete the same in his computer files after he issued the Order x x x inhibiting himself" is mere conjecture, which is not enough to hold Ancheta administratively liable especially when coupled with the established fact, admitted by the Ombudsman herself, that there is no evidence linking Ancheta to the inclusion of the subject Order in the case records before the DARAB Regional Office.

While substantial evidence — which is more than a mere scintilla but is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion — suffices to hold one administratively liable, this does not authorize any finding to be made just as long as there is any evidence to support it. It does not excuse administrative agencies from taking into account countervailing evidence which fairly detracts from the evidence supporting a finding.[59] Here, as demonstrated by the Court, the evidence (or lack thereof) in support of the Ombudsman's findings failed to satisfy the quantum of evidence required. There is simply not enough evidence to hold Ancheta liable for simple neglect of duty.

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[57] *Republic v. Canastillo*, 551 Phil. 987, 996 (2007), citing *Dajao v. Lluch*, 429 Phil. 620, 626 (2002).

[58] *Rollo*, p. 77.

[59] *Baylon v. Fact-Finding Intelligence Bureau, supra* note 48.

WHEREFORE, the Petition is **GRANTED**. The Court of Appeals Resolutions dated September 20, 2016 and December 28, 2016 in CA-G.R. S.P. No. 147457, as well as the Office of the Ombudsman Decision dated May 7, 2013 and Orders dated March 7, 2016 and June 14, 2016 in OMB-L-A-11-0801-L are **REVERSED** and **SET ASIDE**. Petitioner Arolf M. Ancheta is hereby **ABSOLVED** from any administrative liability in connection with the instant case.

SO ORDERED.

Gesmundo,[*] *Reyes, J. Jr., Lazaro-Javier*, and *Lopez, JJ.*, concur.

FIRST DIVISION

[G.R. No. 231120. January 15, 2020]

RADAMES F. HERRERA, *petitioner, vs.* **NOEL P. MAGO, SIMEON B. VILLACRUSIS, and JOSE R. ASIS, JR.,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; THE CONDONATION DOCTRINE ENUNCIATED IN THE 1959 CASE OF *PASCUAL V. PROVINCIAL BOARD OF NUEVA ECIJA* HAD BEEN CATEGORICALLY ABANDONED IN THE NOVEMBER 10, 2015 CASE OF *CARPIO MORALES V. COURT OF APPEALS*.— The condonation doctrine had been considered as good law since then until November 10, 2015 when the Court promulgated ***Carpio Morales v. Court of Appeals,***

[*] Per Raffle dated December 11, 2019.

thus: Relatedly it should be clarified that there is no truth in *Pascual's* postulation that the courts would be depriving the electorate of their right to elect their officers if condonation were not to be sanctioned. In political law, election pertains to the process by which a particular constituency chooses an individual to hold a public office. In this jurisdiction, there is, again, no legal basis to conclude that election automatically implies condonation. Neither is there any legal basis to say that every democratic and republican state has an inherent regime of condonation. If condonation of an elective official's administrative liability would perhaps, be allowed in this jurisdiction, then the same should have been provided by law under our governing legal mechanisms. May it be at the time of *Pascual* or at present, by no means has it been shown that such a law, whether in a constitutional or statutory provision, exists. Therefore, inferring from this manifest absence, it cannot be said that the electorate's will has been abdicated. Equally infirm is *Pascual's* proposition that the electorate, when re-electing a local official, are assumed to have done so with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any. Suffice it to state that no such presumption exists in any statute or procedural rule. Besides, it is contrary to human experience that the electorate would have full knowledge of a public official's misdeeds. x x x That being said, this Court simply finds no legal authority to sustain the condonation doctrine in this jurisdiction. As can be seen from this discourse, it was a doctrine adopted from one class of US rulings way back in 1959 and thus, out of touch from - and now rendered obsolete by - the current legal regime. In consequence, it is high time for this Court to abandon the condonation doctrine that originated from *Pascual*, and affirmed in the cases following the same, such as *Aguinaldo*, *Salalima*, *Mayor Garcia*, and *Governor Garcia, Jr*. which were all relied upon by the CA.

2. ID.; ID.; ID.; ID.; THE CASE OF *CREBELLO V. OMBUDSMAN* UNDERSCORED THAT THE PROSPECTIVE APPLICATION OF *CARPIO MORALES* SHOULD BE RECKONED FROM APRIL 12, 2016; HAVING BEEN REELECTED ON MAY 9, 2016, PETITIONER CAN NO LONGER AVAIL OF THE CONDONATION DOCTRINE. — [I]n ***Crebello v. Ombudsman***, it was underscored that the prospective application of *Carpio Morales* should be reckoned

from April 12, 2016 because that was the date on which this Court had acted upon and denied with finality the motion for clarification/motion for partial reconsideration thereon. Verily, we hold that petitioner can no longer avail of the condonation doctrine because although the complaint below was instituted on January 9, 2015, he got reelected only on May 9, 2016, well within the prospective application of *Carpio Morales*.

3. ID.; ID.; ID.; GRAVE MISCONDUCT, DEFINED; RELEASE OF THE RATA DIFFERENTIAL WITHOUT THE MANDATORY REQUISITES REQUIRED BY THE LOCAL GOVERNMENT CODE CONSTITUTES GRAVE MISCONDUCT; PETITIONER IS ALSO FOUND GUILTY OF CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE.— Grave misconduct is defined as the transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer coupled with the elements of corruption, willful intent to violate the law or to disregard established rules. Here, petitioner undoubtedly committed grave misconduct when he facilitated the release of the RATA differential despite the absence of the mandatory requisites prescribed by Section 344 of the Local Government Code that "*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*." x x x Petitioner was shown to have willfully violated the law or disregarded established rules when he facilitated, pursued, and even forced the release of the RATA differential to persons who were not legally entitled to receive them. This constitutes grave misconduct. Further, petitioner is guilty of conduct prejudicial to the best interest of the service considering that his questioned act tainted the image and integrity of his office as Vice-Mayor.

4. ID.; ID.; ID.; HAVING BEEN FOUND GUILTY OF GRAVE MISCONDUCT AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE, THE PENALTY OF DISMISSAL AND ITS ACCESSORY PENALTIES SHOULD BE IMPOSED ON PETITIONER.— Under Section 50 of the Revised Rules on Administrative Cases in the Civil Service, if the respondent is found guilty of two (2) or more charges, the penalty for the most serious charge shall be imposed and the

other charges shall be considered as aggravating circumstances. Likewise, under Section 49 of the same Rules, the maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present. Grave misconduct is classified as a grave offense for which the penalty of dismissal is meted even for first time offenders. On the other hand, conduct prejudicial to the best interest of the service is a grave offense, which carries the penalty of suspension for six (6) months and one (1) day to one (1) year for the first offense, and the penalty of dismissal for the second offense. Since grave misconduct is the more serious charge and in the absence of any mitigating circumstance, the penalty of dismissal and its accessory penalties should be imposed on petitioner.

APPEARANCES OF COUNSEL

The S-Firm and Associates for petitioner.

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. 144741 entitled "*Radames F. Herrera v. Noel P. Mago, Simeon B. Villacrusis, and Jose R. Asis, Sr.*":

1) Decision[1] dated October 24, 2016, affirming petitioner's liability for grave misconduct and conduct prejudicial to the best interest of service and the penalty of dismissal and accessory penalties imposed on him; and

2) Resolution[2] dated April 7, 2017, denying petitioner's motion for reconsideration.

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[1] Penned by Associate Justice Ramon R. Garcia, with the concurrence of Associate Justices Leoncia R. Dimagiba and Jhosep Y. Lopez, all members of Fifteenth Division, *rollo*, pp. 29-42.

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

Antecedents

On May 15, 2013, the Department of Budget and Management (DBM) issued Local Budget Circular No. 103 granting an increase in the Representation and Transportation Allowances (RATA) of local chief executives, local vice-chief executives, *sanggunian* members, department heads, assistant department heads, chiefs of hospitals, and division chiefs in special cities. The increase was chargeable to the local government units (LGUs) concerned. The increase was retroactive to January 1, 2013, subject to the 45% to 55% limitation on personal services expenditure under Section 325(a) of Republic Act No. 7160[3] (RA 7160).[4]

On August 12, 2013, the *Sangguniang Bayan* of Vinzons, Camarines Norte passed Supplemental Budget No. 21-2013 and Appropriation Ordinance No. 02-2013 appropriating the amount of ₱4,136,512.83 to cover its members' RATA increase from January to June 2013. Mayor Agnes Diezno-Ang, however, vetoed in part the appropriation for "RATA differential" insofar as it exceeded the 45% statutory limitation on personal services expenditure or a total of ₱443,520.00 only.[5]

By Resolution No. 34-2013 dated October 14, 2013, the *Sangguniang Bayan* unanimously voted to override the veto.[6]

On December 25, 2013, former councilor Enrique Palacio, Jr. wrote petitioner Vice-Mayor Radames Herrera for the release of his "RATA differential" for January to June 2013. In response, petitioner instructed Municipal Accountant Leonilo Pajarin to prepare the corresponding payroll for "RATA differentials" due not only to Enrique Palacio, Jr., but also to other former councilors Victor Ingatan, Gilberto Adorino, and Nestor Pajarillo.[7]

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[3] The Local Government Code.

[4] *Rollo*, p. 30.

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

[6] *Id.* at 31.

[7] *Id.*

Municipal Accountant Leonilo Pajarin signified his reservations about the payment of "RATA differentials" to the four (4) former councilors. He opined that pursuant to Section 106 of Presidential Decree No. 1445 (PD 1445) and Section 454 of RA 7160, they were not entitled to RATA differential because they were no longer in active service when the supplemental budget and ordinance were passed. But despite Pajarin's reservations, Obligation Request No. 713-12-13-2722 for ₱76,800.00 corresponding to the four (4) councilors' RATA differentials was released.[8]

The obligation request was forwarded to Municipal Budget Officer Raul Rigodon, who refused to sign it for the same reason. He annotated his objection on the obligation request. But, again, despite this objection, Disbursement Voucher No. 1002014030061 for ₱76,800.00 was prepared and referred to Municipal Treasurer Cynthia Jimenez, who refused to sign it and wrote "*I invoke Section 344 of RA 7160 and Section 40 of NGA's and the right not to be liable/accountable from any liability that may arise in this transaction.*"[9]

In the end, it was only petitioner who signed the disbursement voucher in his capacity as agency head or authorized representative. The amount of ₱76,800.00 was released and the four (4) former councilors received their RATA differential.[10]

On review, the *Sangguniang Panlalawigan* of Camarines Norte declared as inoperative Supplemental Budget No. 21-2013 and Appropriation Ordinance No. 02-2013 based on the same ground cited by Mayor Agnes Diezno-Ang, *i.e.*, the appropriation exceeded the 45% limit set by law on personal services expenditures. Subsequently, the Commission on Audit (COA), Daet, Camarines Norte issued Notice of Disallowance dated October 14, 2014 to the extent of ₱76,800.00. Petitioner and the four (4) former councilors were, therefore, directed to return the amount, which they did.[11]

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

[9] *Id.* at 32.

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

[11] *Id.* at 33.

Proceedings before the Office of the Ombudsman

On January 9, 2015, respondents Noel Mago, Simeon Villacrusis, and Jose Asis, Sr., all residents of the Municipality of Vinzons, filed a Complaint-Affidavit (with Urgent Prayer for Preventive Suspension) against petitioner. They accused petitioner of disregarding the ethical standards of public officials and gravely abusing his position when he facilitated the release of the RATA differential for the four (4) former councilors despite the refusal/reservations of the municipal accountant, municipal treasurer, and municipal budget officer. Notably, Municipal Accountant Leonilo Pajarin still issued Obligation Request No. 713-12-13-2722 because petitioner told him "*Ipaparelease ko yan at ako na ang may sagot kung idis-allow yan ng COA*." Petitioner was guilty of grave abuse of authority, gross ignorance of law, conduct prejudicial to the best interest of the service, and violation of the rules and regulations on the disbursement of public funds because of his act of illegally releasing the RATA differentials to the four (4) former councilors.[12]

Petitioner, in turn, denied any wrongdoing and prayed for the dismissal of the complaint. He asserted that the complaint was politically-motivated because it was initiated by the supporters of Mayor Agnes Ang, with whom he was not in good terms. He admitted that he requested the Office of the Municipal Accountant to prepare the RATA differential because he believed in good faith that the four (4) former councilors were entitled thereto. He, however, denied compelling the municipal officers to release the RATA differentials. The municipal officers voluntarily signed the pertinent documents although they expressed reservations thereon. Proper procedures were observed and there were, in fact, available funds for the RATA differentials. When COA disallowed the payment, the four (4) former councilors returned the corresponding amounts they received.[13]

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[12] *Id.* at 34.

[13] *Id.* at 34.

Ruling of the Ombudsman

By Decision[14] dated October 2, 2015, the Office of the Ombudsman found petitioner guilty of grave misconduct and conduct prejudicial to the best interest of service, thus, meting on him the penalty of dismissal from the service with all the accessory penalties. Petitioner improperly interfered with the release of the RATA differentials, despite the objections of the municipal officers, tarnished the integrity of his office, and committed an act prejudicial to public interest. Further, his clear intent to violate the law was manifest, amounting to grave misconduct when he allowed payment of the RATA differential despite the absence of the respective signatures of the municipal accountant and the municipal treasurer on the disbursement voucher.[15] Consequently, the Office of the Ombudsman decreed:

> WHEREFORE, finding substantial evidence, respondent RADAMES F. HERRERA is found administratively liable for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service and is meted the penalty of DISMISSAL FROM THE SERVICE with all its accessory penalties including cancellation of eligibility, forfeiture of retirement benefits, except accrued leaves, perpetual disqualification to hold public office and bar from taking civil service examinations pursuant to Section 10, Rule III, Administrative Order No. 07 as amended by Administrative Order No. 17, in relation to Section 25 of Republic Act No. 6770.
>
> In the event that the penalty of dismissal can no longer be enforced due to respondent's separation from the service, the same shall be converted into a fine in the amount equivalent to respondent's salary for one (1) year payable to the Office of the Ombudsman and may be deductible from respondent's retirement benefits, accrued leave credits, or any receivable from their office.
>
> The Honorable Secretary, Department of the Interior and Local Government is hereby directed to implement this DECISION immediately upon receipt thereof pursuant to Section 7, Rule III of Administrative Order No. 07, as amended by Administrative Order

[14] *Id.* at 35.

[15] *Id.*

No. 17 (Ombudsman Rules of Procedure) in relation to Memorandum Circular No. 1 Series of 2005 dated 11 April 2006 and to promptly (notify) this Office of the action taken hereon.

SO ORDERED.[16]

Petitioner moved for reconsideration which the Office of the Ombudsman denied under Joint Order dated January 18, 2016.[17]

Proceedings before the Court of Appeals

Petitioner, thereafter, sought affirmative relief from the Court of Appeals. He basically argued that he acted in good faith in facilitating the release of the RATA differentials. Since he acted in good faith, he could not be guilty of conduct prejudicial to the best interest of the service and grave misconduct.[18]

By its assailed Decision dated October 24, 2016, the Court of Appeals affirmed. It held that the factual findings of the Office of the Ombudsman are accorded with great respect and finality especially when these are supported by substantial evidence.[19] Petitioner was guilty of grave misconduct when he facilitated the release of the RATA differential without following the procedure set by law, *viz.*: 1) the local budget officer must certify to the existence of appropriation that has been legally made for the purpose; 2) the local accountant must obligate said appropriation; and 3) the local treasurer must certify to the availability of funds for the purpose.[20] By facilitating the

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[16] *Id.* at 35-36.

[17] *Id.* at 36.

[18] *Id.* at 35-36.

[19] *Id.* at 38.

[20] See Local Government Code: Section 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,

release of the funds, he was guilty of conduct prejudicial to the best interest of service.[21]

Petitioner cannot invoke good faith for the attendant circumstances would have already put him on guard. He was duly informed of the objections of the municipal officers concerned but he still compelled the release of the RATA differential. He had been repeatedly told that the release of the RATA differential was illegal.[22]

Since petitioner committed two (2) offenses, the imposable penalty should correspond to the most serious offense. Conduct prejudicial to the best interest of service is punishable by suspension from six (6) months and one (1) day to one (1) year for the first offense and dismissal for the second offense. Grave misconduct is punishable by dismissal with cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification for reemployment in the government service and bar from taking the civil service examination. Since grave misconduct was the more serious offense, dismissal and its accessory penalties were duly imposed by the Office of the Ombudsman.[23]

Petitioner moved for reconsideration, which the Court of Appeals denied through its assailed Resolution[24] dated April 7, 2017.

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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 government creditor agencies such as 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.

In cases of special or trust funds, disbursements shall be approved by the administrator of the fund.

ln case of temporary absence or incapacity of the department head or chief of office, the officer next-in-rank shall automatically perform his function and he shall be fully responsible therefor.

[21] *Rollo,* pp. 38-39.

[22] *Id.* at 40.

[23] *Id.* at 41.

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

The Present Petition

Petitioner now invokes this Court's discretionary appellate jurisdiction for affirmative relief *via* Rule 45 of the Revised Rules of Court. He basically argues: his alleged illegal acts were committed sometime between 2013 and 2014. He was re-elected as Vice-Mayor of the Municipality of Vinzons, Camarines Norte in the 2016 national and local elections, thus, he was already exonerated of the charges per the "Aguinaldo doctrine." The "Binay doctrine," which abandoned the "Aguinaldo doctrine," only has prospective application, that is, it only covers administrative charges from November 10, 2015 onward. Nonetheless, he was not guilty of serious misconduct because he was not impelled by malice, ill motive, or corruption when he facilitated the release of the RATA differential. Nor was he guilty of conduct prejudicial to the best interest of service because the disbursement of funds was merely an internal matter and did not involve the public at large.[25]

In their Manifestation[26] dated September 6, 2017, respondents aver that they would no longer file a comment since their former counsel is abroad and no other lawyer would accept the case.

Ruling

Petitioner can no longer avail of the condonation doctrine

The condonation doctrine was first enunciated on October 31, 1959 in ***Pascual v. Provincial Board of Nueva Ecija***,[27] *viz*.:

> We now come to the main issue of the controversy—the legality of disciplining an elective municipal official for a wrongful act committed by him during his immediately preceding term of office.

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[25] *Id.* at 3-21.

[26] *Id.* at 61.

[27] 106 Phil. 466, 471-472 (1959).

In the absence of any precedent in this jurisdiction, we have resorted to American authorities. We found that cases on the matter are conflicting due in part, probably, to differences in statutes and constitutional provisions, and also, in part, to divergence of views with respect to the question of whether the subsequent election or appointment condones the prior misconduct. The weight of authority, however, seems to incline to the rule denying the right to remove one from office because of misconduct during a prior term, to which we fully subscribe.

> "Offenses committed, or acts done, during previous term are generally held not to furnish cause for removal and this is especially true where the constitution provides that the penalty in proceedings for removal shall not extend beyond the removal from office, and disqualification from holding office for the term for which the officer was elected, or appointed." (67 C.J.S. p. 248, citing Rice vs. State, 161 S.W. 2d. 401; Montgomery vs. Nowell, 40 S.W. 2d. 418; People ex rel. Bagshaw vs. Thompson, 130 P. 2d. 237; Board of Com'rs of Kingfisher County vs. Shutler, 281 P. 222; State vs. Blake, 280 P. 388; In re Fudula, 147 A. 67; State vs. Ward, 43 S.W. 2d. 217).

The underlying theory is that each term is separate from other terms, and that the reelection to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor. (43 Am. Jur. p. 45, citing Atty. Gen. vs. Hasty, 184 Ala. 121, 63 So. 559, 50 L.R.A. (NS) 553. As held in Conant vs. Brogan (1887) 6 N.Y.S.R. 332, cited in 17 A.I.R. 281, 63 So. 559, 50 LRA (NS) 553-

> **"The Court should never remove a public officer for acts done prior to his present term of office. To do otherwise would be to deprive the people of their right to elect their officers. When the people have elected a man to office, it must be assumed that they did this with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any. It is not for the court, by reason of such faults or misconduct to practically overrule the will of the people."** (Emphasis supplied)

The condonation doctrine had been considered as good law since then until November 10, 2015 when the Court promulgated ***Carpio-Morales v. Court of Appeals***,[28] thus:

Relatedly it should be clarified that there is no truth in *Pascual's* postulation that the courts would be depriving the electorate of their right to elect their officers if condonation were not to be sanctioned. In political law, election pertains to the process by which a particular constituency chooses an individual to hold a public office. In this jurisdiction, there is, again, no legal basis to conclude that election automatically implies condonation. Neither is there any legal basis to say that every democratic and republican state has an inherent regime of condonation. If condonation of an elective official's administrative liability would perhaps, be allowed in this jurisdiction, then the same should have been provided by law under our governing legal mechanisms. May it be at the time of *Pascual* or at present, by no means has it been shown that such a law, whether in a constitutional or statutory provision, exists. Therefore, inferring from this manifest absence, it cannot be said that the electorate's will has been abdicated.

Equally infirm is *Pascual's* proposition that the electorate, when re-electing a local official, are assumed to have done so with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any. Suffice it to state that no such presumption exists in any statute or procedural rule. Besides, it is contrary to human experience that the electorate would have full knowledge of a public official's misdeeds. The Ombudsman correctly points out the reality that most corrupt acts by public officers are shrouded in secrecy, and concealed from the public. Misconduct committed by an elective official is easily covered up, and is almost always unknown to the electorate when they cast their votes. At a conceptual level, condonation presupposes that the condoner has actual knowledge of what is to be condoned. Thus, there could be no condonation of an act that is unknown. As observed in *Walsh v. City Council of Trenton* decided by the New Jersey Supreme Court:

Many of the cases holding that re-election of a public official prevents his removal for acts done in a preceding term of office are reasoned out on the theory of condonation. We cannot subscribe to that theory because condonation, implying as it does forgiveness, connotes

[28] 772 Phil. 672, 773-775 (2015).

knowledge and in the absence of knowledge there can be no condonation. One cannot forgive something of which one has no knowledge.

That being said, this Court simply finds no legal authority to sustain the condonation doctrine in this jurisdiction. As can be seen from this discourse, it was a doctrine adopted from one class of US rulings way back in 1959 and thus, out of touch from - and now rendered obsolete by - the current legal regime. In consequence, it is high time for this Court to abandon the condonation doctrine that originated from *Pascual*, and affirmed in the cases following the same, such as *Aguinaldo, Salalima, Mayor Garcia*, and *Governor Garcia, Jr.* which were all relied upon by the CA.

It should, however, be clarified that this Court's abandonment of the condonation doctrine should be prospective in application for the reason that judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system of the Philippines. x x x

In ***Office of the Ombudsman v. Vergara***,[29] the Court clarified that administrative cases against elective officials instituted prior to *Carpio-Morales* are still covered by the condonation doctrine, thus:

The above ruling, however, was explicit in its pronouncement that the abandonment of the doctrine of condonation is prospective in application, hence, the same doctrine is still applicable in cases that transpired prior to the ruling of this Court in *Carpio Morales v. CA and Jejomar Binay, Jr.* Thus:

> It should, however, be clarified that this Court's abandonment of the condonation doctrine should be prospective in application for the reason that judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system of the Philippines. Unto this Court devolves the sole authority to interpret what the Constitution means, and all persons are bound to follow its interpretation. As explained in *De Castro v. Judicial Bar Council*:
>
> > Judicial decisions assume the same authority as a statute itself and, until authoritatively abandoned, necessarily

[29] G.R. No. 216871, December 06, 2017, 848 SCRA 151, 171-173.

> become, to the extent that they are applicable, the criteria that must control the actuations, not only of those called upon to abide by them, but also of those duty-bound to enforce obedience to them.

Hence, while the future may ultimately uncover a doctrine's error, it should be, as a general rule, recognized as "good law" prior to its abandonment. Consequently, the people's reliance thereupon should be respected. The landmark case on this matter is *People v. Jabinal*, wherein it was ruled:

> [W]hen a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.

Later, in *Spouses Benzonan v. CA*, it was further elaborated:

> [P]ursuant to Article 8 of the Civil Code "judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines." But while our decisions form part of the law of the land, they are also subject to Article 4 of the Civil Code which provides that "laws shall have no retroactive effect unless the contrary is provided." This is expressed in the familiar *legal maxim lex prospicit, non respicit*, the law looks forward not backward. The rationale against retroactivity is easy to perceive. The retroactive application of a law usually divests rights that have already become vested or impairs the obligations of contract and hence, is unconstitutional.

Indeed, the lessons of history teach us that institutions can greatly benefit from hindsight and rectify its ensuing course. Thus, while it is truly perplexing to think that a doctrine which is barren of legal anchorage was able to endure in our jurisprudence for a considerable length of time, this Court, under a new membership, takes up the cudgels and now abandons the condonation doctrine.

Considering that the present case was instituted prior to the above-cited ruling of this Court, the doctrine of condonation may still be applied. (Emphasis supplied)

Yet, in ***Crebello v. Ombudsman***,[30] it was underscored that the prospective application of *Carpio Morales* should be

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[30] G.R. No. 232325, April 10, 2019.

reckoned from April 12, 2016 because that was the date on which this Court had acted upon and denied with finality the motion for clarification/motion for partial reconsideration thereon.

Verily, we hold that petitioner can no longer avail of the condonation doctrine because although the complaint below was instituted on January 9, 2015, he got reelected only on May 9, 2016, well within the prospective application of *Carpio Morales*.

The Office of the Ombudsman's factual findings are supported by substantial evidence

Grave misconduct is defined as the transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer coupled with the elements of corruption, willful intent to violate the law or to disregard established rules.[31]

Here, petitioner undoubtedly committed grave misconduct when he facilitated the release of the RATA differential despite the absence of the mandatory requisites prescribed by Section 344 of the Local Government Code that "*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*." As keenly noted by the Court of Appeals:

> Petitioner's hand in the questioned transaction is unassailable. He admitted that he had requested Municipal Accountant Leonilo Pajarin to prepare the payroll for the RATA differential despite the fact that they were no longer connected with the *Sangguniang Bayan*. He also went to the Office of the Municipal Accountant to follow up his request for the release of the RATA differentials of the four former Councilors. Moreover, despite knowledge of the Municipal Officers' unanimous

[31] *Fajardo v. Corral*, 813 Phil. 149, 158 (2017).

opinion that the former Councilors were not entitled to RATA differentials for the period of January to June 2013 and their refusal to sign the necessary documents therefor, petitioner still approved for payment the Disbursement Voucher No. 1002014030061. He was, in fact, the sole signatory approving the release of the amount of ₱76,800.00 representing the total salary differentials of the four former Councilors.[32]

Petitioner was shown to have willfully violated the law or disregarded established rules when he facilitated, pursued, and even forced the release of the RATA differential to persons who were not legally entitled to receive them. This constitutes grave misconduct.

Further, petitioner is guilty of conduct prejudicial to the best interest of the service considering that his questioned act tainted the image and integrity of his office as Vice-Mayor.

Under Section 50[33] of the Revised Rules on Administrative Cases in the Civil Service, if the respondent is found guilty of two (2) or more charges, the penalty for the most serious charge shall be imposed and the other charges shall be considered as aggravating circumstances. Likewise, under Section 49[34] of the same Rules, the maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.[35]

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[32] *Rollo*, p. 39.

[33] Section 50. Penalty for the Most Serious Offense. - If the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances.

[34] Section 49. Manner of Imposition. - When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below:

x x x x x x x x x

c. The maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.

x x x x x x x x x

[35] *Office of the Ombudsman, FIO v. Faller*, 786 Phil. 467, 483 (2016).

Grave misconduct is classified as a grave offense for which the penalty of dismissal is meted even for first time offenders.[36] On the other hand, conduct prejudicial to the best interest of the service is a grave offense, which carries the penalty of suspension for six (6) months and one (1) day to one (1) year for the first offense, and the penalty of dismissal for the second offense.[37] Since grave misconduct is the more serious charge and in the absence of any mitigating circumstance, the penalty of dismissal and its accessory penalties should be imposed on petitioner.

ACCORDINGLY, the petition is **DENIED**, and the assailed Decision dated October 24, 2016 and Resolution dated April 7, 2017 of the Court of Appeals in CA-G.R. SP No. 144741, **AFFIRMED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Reyes, J. Jr., and *Lopez, JJ.*, concur.

FIRST DIVISION

[G.R. No. 231913. January 15, 2020]

SAMUEL ANG and FONTAINE BLEAU FINANCE AND REALTY CORPORATION, *petitioners, vs.* **CRISTETA ABALDONADO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW MAY BE ENTERTAINED;

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[36] *Sabio v. FIO*, G.R. No. 229882, February 13, 2018, 855 SCRA 293, 305.

[37] *Miranda v. CSC*, G.R. No. 213502, February 18, 2019.

QUESTIONS OF LAW DIFFERENTIATED FROM QUESTIONS OF FACT.— As a general rule, only questions of law may be entertained in petitions for review on *certiorari* under Rule 45 of the Rules of Court. In *Far Eastern Surety and Insurance Co., Inc. v. People*, the Court differentiated questions of law from questions of fact, to wit: 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, its resolution must not involve an examination of the probative value of the evidence presented by the litigants, but must rely solely on what the law provides on the given set of facts. **If the facts are disputed or if the issues require an examination of the evidence, the question posed is one of fact.** The test, therefore, is not the appellation given to a question by the party raising it, but whether the appellate court can resolve the issue without examining or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact. However, the said rule admits of several exceptions where questions of fact may be raised in the said petition.

2. **ID.; ID.; ID.; ID.; EXCEPTIONS; WHEN THE COURT OF APPEALS AND THE TRIAL COURT HAVE DIVERGING FINDINGS OF FACT.—** The present petition for review on *certiorari* involves questions of fact since the determination of whether Abaldonado was guilty of laches requires the examination and evaluation of the evidence on record. Nevertheless, the said petition, though raising questions of fact, is cognizable by the Court as one of the recognized exceptions to the general rule is when the CA and trial courts have diverging findings of fact.

3. **ID.; ID.; ACTIONS; UNREASONABLE DELAY IN ASSERTING ONE'S RIGHTS AMOUNTS TO LACHES; CASE AT BAR.—** Laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier. Essentially, it is present in cases of unreasonable neglect to protect one's rights giving rise to the presumption that the party entitled to assert it either has abandoned or declined to assert it. x x x The testimony of petitioners' witnesses shows that Abaldonado never participated in the negotiations concerning her loan obligation with petitioners, x x x Abaldonado was never present in the negotiations with petitioners in trying to reach

an amicable settlement for her loan obligation. In fact, she even admits her passivity in the efforts to satisfy her debt with petitioners, x x x Abaldonado's neglect or inactivity amounted to laches which precluded her from questioning the mortgage contract and the subsequent foreclosure proceedings.

APPEARANCES OF COUNSEL

Defensor Teodosio Daquilanea Ventilacion Averia and Associates Law Offices for petitioners.

Jacela Geduspan and Parcon Law Offices for respondent.

D E C I S I O N

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

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the July 28, 2016 Decision[1] and April 20, 2017 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 05150, which reversed and set aside the September 26, 2013 Decision[3] of the Regional Trial Court, Branch 35, Iloilo City (RTC).

On August 27, 1998, respondent Cristeta Abaldonado (Abaldonado) obtained a ₱700,000.00 loan from petitioner Samuel Ang (Ang). The loan was subject to a compounded interest rate of four percent per month, with another four percent compounded interest as penalty in case of delay in the payment of the obligation.[4] The loan was secured by a Real Estate Mortgage[5] (REM) over Lot 334-C registered in Abaldonado's name under Transfer Certificate of Title (TCT) No. T-125491.

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[1] Penned by Associate Justice Justice Edward B. Contreras, with Associate Justices Edgardo L. Delos Santos (now a member of the Court) and Geraldine C. Fiel-Macaraig, concurring; *rollo*, pp. 51-58.

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

[3] Penned by Judge Fe Gallon-Gayanilo; *id.* at 64-74.

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

[5] *Id.* at 108-111.

Unfortunately, Abaldonado failed to pay several installments of the loan. Thus, on July 18, 2001, she received a Demand Letter[6] from Ang requiring her to pay her total indebtedness amounting to ₱2,543,807.64, otherwise, he would be constrained to initiate foreclosure proceedings. Ang's demand fell on deaf ears and he was constrained to file a Petition for Extrajudicial Foreclosure of REM on August 16, 2002.

However, the intended foreclosure proceedings did not push through due to a case filed by Abaldonado's children against her and Ang. The said case sought to nullify the Extrajudicial Adjudication with Waiver of Rights allegedly executed by Abaldonado's children as well as the REM between Ang and Abaldonado. Abaldonado's children claimed that as a result of their mother's forgery of the waiver of interest, she made it appear that they were surrendering their right to the subject property they inherited from their deceased father in her favor. Nevertheless, the case filed by Abaldonado's children was eventually dismissed without prejudice for lack of interest.[7]

Subsequently, on December 1, 2005, Ang assigned his mortgage rights to petitioner Fontaine Bleau Finance and Realty Corporation (Fontaine Bleau), a domestic corporation of which Ang is the president. Another Petition for Extrajudicial Foreclosure was filed this time by Fontaine Bleau as the assignee of the REM. On March 28, 2006, a public bidding for the mortgaged property was conducted where Fontaine Bleau emerged as the winning bidder. On June 18, 2007 a Final Deed of Sale was executed in its favor and it was able to consolidate its title to the property - TCT No. T-161718 was issued in its name on October 2, 2007.[8]

On June 18, 2010, Abaldonado filed a Complaint for Declaration of Nullity of Foreclosure Proceedings, Annulment of Interest Rate, Accounting and Damages against petitioners. She lamented that the interest rate under the REM was

[6] *Id.* at 104.

[7] *Id.* at 31.

[8] *Id.* at 52.

unconscionable and iniquitous. Abaldonado asserted that the debt should be deemed as without such interest stipulation, and the REM and the subsequent foreclosure proceeding should be declared void *ab initio*.

RTC Decision

In its September 26, 2013 Decision, the RTC dismissed Abaldonado's complaint. The trial court ruled that the stipulated interest and penalty in the REM must be equitably reduced for being excessive, iniquitous and unconscionable. It, however, explained that the nullity of the interest and its reduction do not affect the terms of the REM, and that the REM between Abaldonado and Fontaine Bleau and the foreclosure proceedings are left unaffected.

Nevertheless, the RTC found that Abaldonado was guilty of laches because she slept on her right when she failed to raise at the earliest opportunity the validity of the REM and of the stipulated interest. The trial court observed that Abaldonado questioned the loan and the REM only after twelve years from its execution, almost eleven years from the notice of demand, and almost six years from the initiation of the foreclosure proceedings. It opined that Abaldonado could have assailed the interest or filed an action to annul the REM from the moment she received the demand letter or when Fontaine Bleau had commenced the foreclosure proceedings. The RTC added that Abaldonado could have also questioned the loan and the REM in the case filed against her by her children. The trial court highlighted that while petitioners tried to amicably settle the matter, Abaldonado failed to take specific steps to challenge the exorbitant stipulated interest. The RTC disposed:

> WHEREFORE, in view of the foregoing considerations, the complaint is hereby DISMISSED. For the failure of the defendants to support their counterclaim, the same is likewise ordered dismissed.
>
> SO ORDERED.[9]

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[9] *Id.* at 74.

Aggrieved, petitioners appealed to the CA.

CA Decision

In its July 28, 2016 Decision, the CA reversed and set aside the RTC decision. The appellate court agreed with Abaldonado that the four percent interest and penalty were iniquitous and unconscionable. It, however, clarified that in usurious loans, the entire obligation does not become void as the unpaid principal debt remains valid with only the stipulation on the interest rate void. The CA further explained that the foreclosure proceedings were null and void because the usurious interest and penalty imposed on the obligation prevented Abaldonado from settling her debt at the correct amount without the iniquitous interest. The appellate court expounded that as a consequence of the nullity of the foreclosure proceedings, the ensuing registration of the foreclosure sale cannot transfer any rights or vest title over the mortgaged property to Fontaine Bleau. It, however, stressed that this was without prejudice to Fontaine Bleau's right to recover the principal loan with the appropriate interest and to initiate all appropriate actions against Abaldonado in the event of her failure to pay the same.

Further, the CA disagreed that Abaldonado's complaint should be dismissed on account of laches. The appellate court elaborated that not all elements of laches were present highlighting that according to Ang's testimony itself, Abaldonado exerted many efforts to settle or redeem her property after the institution of the foreclosure proceedings. In addition, it pointed out that the element of injury was lacking considering that petitioners failed to prove any injury they would suffer if Abaldonado's action for nullification of foreclosure proceedings is not dismissed. Thus, it ruled:

> WHEREFORE, the appeal is GRANTED. The Decision of the Regional Trial Court, Branch 35, Iloilo City, in Civil Case No. 10-30556, dated September 26, 2013, is SET ASIDE. Judgment is hereby rendered, as follows:
>
> 1. The extrajudicial foreclosure and auction sale on Lot No. 334-C that was held on March 28, 2006 is VOID;

2. The Certificate of Sale elated March 28, 2006, Final Deed of Sale dated June 18, 2007, and TCT No. T-161718, all issued in the name of Fontaine Bleau Finance and Realty Corporation, are ANNULLED. TCT No. T-125491 in the name of Cristeta Abaldonado is ORDERED REINSTATED;

3. The interest rate and penalty interests stipulated in the Real Estate Mortgage between Cristeta Abaldonado and Samuel Ang dated August 27, 1998, is VOID for being iniquitous and unconscionable. The obligation secured by the Real Estate Mortgage shall, instead, be subject to the legal interest rate of 6% per annum from July 18, 2001 until its full satisfaction;

4. This case is ordered REMANDED to the Regional Trial Court, Branch 35, Iloilo City, for proper accounting and computation, taking into consideration the foregoing dispositions; [and]

5. Cristeta Abaldonado is ORDERED to pay Fontaine Bleau Finance and Realty Corporation the amount of the recomputed obligation, within 60 days from the finality of this decision; otherwise, she shall be considered in default, and Fontaine Bleau Finance and Realty Corporation may initiate against her the appropriate action/s for a defaulted debtor.

The trial court is ORDERED to proceed with the above directives with dispatch.

SO ORDERED.[10]

Unsatisfied, petitioners moved for reconsideration but it was denied by the CA in its April 20, 2017 resolution.

Hence, this present Petition raising:

Issues

I

WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING THAT THE ALLEGED EFFORTS OF PRIVATE RESPONDENT CRISTETA ABALDONADO TO AMICABLY SETTLE HER UNPAID OBLIGATIONS TO THE PETITIONERS NEGATED THE EXISTENCE OF LACHES, AND,

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

CONSEQUENTLY, DECLARING THE AUCTION SALE ON LOT 344-C HELD ON MARCH 28, 2006 AS VOID, WHEN SUCH FINDINGS ARE PREMISED ON THE ABSENCE OF EVIDENCE BUT CONTRADICTED BY THE EVIDENCE ON RECORD[;]

II

WHETHER OR NOT THE PRIVATE RESPONDENT CRISTETA ABALDONADO HAS FORECLOSED ON HER RIGHT TO REDEEM OR RE-ACQUIRE LOT NO. 344-C BECAUSE OF HER FAILURE TO VALIDLY TENDER THE REDEMPTION PRICE PRIOR TO THE EXPIRATION OF THE PERIOD TO DO SO, AND, IF THE COURT OF APPEALS ERRED IN FAILING TO CONSIDER THE RELEVANCE OF THIS FACT WHICH, IF PROPERLY APPRECIATED, WOULD JUSTIFY A DIFFERENT CONCLUSION[; AND]

III

WHETHER OR NOT THE COURT OF APPEALS ERRED IN IMPOSING THE INTEREST RATE OF SIX PERCENT (6%) PER ANNUM FROM JULY 28, 2001 UNTIL ITS FULL SATISFACTION AND WITHOUT IMPUTING PENALTY CHARGES BY WAY OF LIQUIDATED DAMAGES, FAILING TO TAKE INTO ACCOUNT THAT THE LOAN WAS OBTAINED ON AUGUST 27, 1998 BY PRIVATE RESPONDENT CRISTETA ABALDONADO WHO ADMITTEDLY INCURRED DELAY IN THE PAYMENT OF HER LOAN OBLIGATIONS TO THE PETITIONERS[.][11]

Petitioners argue that the CA misappreciated Ang's testimony in concluding that Abaldonado had exerted efforts to settle her debt. They clarify that based on Ang's testimony, it was he who repeatedly offered to Abaldonado's children the chance to redeem the property and that Abaldonado had not participated in any attempt to amicably settle the loan obligation. Petitioners assail that Abaldonado had foreclosed her right to redeem the mortgaged property on account of her failure to tender the redemption price or to file the corresponding legal action to fix the redemption price. They insist that Abaldonado should have opposed the public auction or consigned the redemption

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

price to establish her good faith in redeeming the property and then simultaneously file a case to fix the redemption price. On the other hand, petitioners lament that the CA erred in imposing an interest rate of six percent commencing on July 18, 2001 because the prevailing legal interest rate at the time the parties entered into the loan was twelve percent. They likewise assert that penalty charges, by way of liquidated damages, should be imposed on account of Abaldonado's neglect and delay in the payment of her loan obligations.

In her Comment[12] dated July 31, 2018, Abaldonado countered that petitioners' petition for review on *certiorari* should be denied as it raises questions of fact. She averred that the findings of the CA are supported by evidence and that it correctly ruled that laches was inapplicable in the present controversy. Abaldonado also claimed that she has not foreclosed the right to redeem the mortgaged property as she was not given the opportunity to settle her debt at the correct amount in view of the usurious interest imposed. Finally, she posited that the CA correctly reduced the usurious interest to six percent per annum reckoned from July 18, 2001 until the satisfaction of the loan.

In their Reply[13] dated January 7, 2019, petitioners stated that the present petition falls under the exceptions to the rule that only questions of law may be raised in petitions for review on *certiorari*. They highlighted that findings of the CA that Abaldonado had exerted efforts to settle her claim was against the evidence on record. Petitioners reiterated that Abaldonado had foreclosed her right to redeem the property and that the CA erred in reckoning the six percent interest rate from July 18, 2001.

The Court's Ruling

The petition is meritorious.

As a general rule, only questions of law may be entertained in petitions for review on *certiorari* under Rule 45 of the Rules

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[12] *Id.* at 133-143.

[13] *Id.* at 148-159.

of Court.[14] In *Far Eastern Surety and Insurance Co., Inc. v. People*,[15] the Court differentiated questions of law from questions of fact, to wit:

> 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, its resolution must not involve an examination of the probative value of the evidence presented by the litigants, but must rely solely on what the law provides on the given set of facts. **If the facts are disputed or if the issues require an examination of the evidence, the question posed is one of fact.** The test, therefore, is not the appellation given to a question by the party raising it, but whether the appellate court can resolve the issue without examining or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact. (Emphasis supplied)

However, the said rule admits of several exceptions where questions of fact may be raised in the said petition. The Court takes cognizance of questions of fact in the following scenarios:

(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;

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[14] *Bugaoisan v. Owi Group Manila*, G.R. No. 226208, February 7, 2018.

[15] 721 Phil. 760 (2013).

(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.[16]

The present petition for review on *certiorari* involves questions of fact since the determination of whether Abaldonado was guilty of laches requires the examination and evaluation of the evidence on record. Nevertheless, the said petition, though raising questions of fact, is cognizable by the Court as one of the recognized exceptions to the general rule is when the CA and trial courts have diverging findings of fact and when there is a misapprehension opined the contrary and saw that she had exerted diligent effort in protecting her rights.

Unreasonable delay in asserting one's rights amounts to laches

Laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier.[17] Essentially, it is present in cases of unreasonable neglect to protect one's rights giving rise to the presumption that the party entitled to assert it either has abandoned or declined to assert it.[18] In *Heirs of Anacleto B. Nieto v. Municipality of Meycauayan, Bulacan*,[19] the Court had established the elements of laches, *viz*.:

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[16] *Heirs of Juan M. Dinglasan v. Ayala Corporation*, G.R. No. 204378, August 5, 2019.

[17] *Oropeza v. Allied Banking Corporation*, G.R. No. 222078, April 1, 2019.

[18] *Id.*

[19] 564 Phil. 674 (2007).

(1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made for which the complaint seeks a remedy;

(2) delay in asserting the complainant's rights, the complainant having had knowledge or notice, of the defendant's conduct and having been afforded an opportunity to institute a suit;

(3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and

(4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held to be barred.

In ruling for Abaldonado, the CA highlighted that she exerted several efforts to settle or redeem the property but despite negotiations, the parties never arrived at a decision favorable to both. However, contrary to the CA's assessment, the evidence on record does not negate the presence of laches. Rather, it actually supports the finding thereof.

The testimony of petitioners' witnesses shows that Abaldonado never participated in the negotiations concerning her loan obligation with petitioners, to wit:

Direct testimony of Samuel Ang

Q: You testified that you did not strictly follow the rate of interest stipulated in the terms and conditions in the Real Estate Mortgage?
A: Yes, during our hearing in Branch 26, I offered 1.8 million to Cristeta Abaldonado as redemption and it was relayed by Atty. Regalado but nothing came out of that, ma'am.

x x x x x x x x x

Q: After the loan was due and demandable what happened to the foreclosure?
A: It was not pursued because I strive for the amicable settlement, ma'am.

x x x x x x x x x

Q: After the filing of the judicial foreclosure, was there an effort on the part of the plaintiff to settle or redeem her property?
A: There were many efforts exerted and there was an instance

that we [had] a meeting at the Centennial Hotel, but nothing came out. Again they wanted that the title be transferred to their names, but it's not good anymore, ma'am. According to them, they will get money from the bank and pay me.[20]

Direct testimony of Lolly Guy Ang

Q: In this regard Madam Witness, in relation to the testimony that you have mentioned, can you recall what efforts were exerted on your part to settle this case amicably?
A: We have exerted many efforts to settle this case [amicably]. Last April 2007, we met at Centennial Hotel. I was with Atty. George Demaisip together with my husband and the other party was with their counsel also, Atty. Regalado together with Cecilia Jaspela, her brother Edgar Abaldonado and my friend from DENR, Mercy Velasco, ma'am.

Q: Madam Witness, who is this Cecilia Jaspela?
A: This Cecilia Jaspela is the daughter of Cristeta Abaldonado, because Cecilia Jaspela's maiden name is Cecilia Abaldonado, ma'am.

Q: Madam Witness, what was the reason why you met in April 2007 with Cecilia Jaspela and their counsel at the Centennial Hotel?
A: So that we could come up with [an] amicable settlement with her case at Branch 26, ma'am.

x x x x x x x x x

Q: After that meeting in April 2007, were there occasions that you [talked] or met with this Cristeta Abaldonado?
A: We were not able to meet again but I was able to call her that night.

Q: When you tried to contact this Cristeta Abaldonado, can you please tell us what happened next?
A: I was surprised after I made a call because it was Cecilia Jaspela who answered my call.

Q: When this Cecilia Jaspela answered the phone, when you tried to contact Cristeta Abaldonado, what did you talk about?
A: I asked her if (sic) where her mother was.

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[20] TSN dated September 12, 2012, pp. 18-21.

Atty. Sanzon:

Please continue.

A: She told me that her mother was not feeling well and was already asleep.

Q: What was your reaction when you heard that the same phone number of Cristeta Abaldonado was with Cecilia Jaspela that night?
A: I wondered because Cecilia Jaspela has filed a case against her mother and yet they still live in the same roof.

Q: So after that, what did you do?
A: After that, I have not heard anything from them because it seemed that Cristeta Abaldonado was avoiding us.

x x x x x x x x x

Q: In all those previous efforts to amicably resolve the issue between you and the Abaldonado's, can you recall what was the participation of the plaintiff, Cristeta Abaldonado, was she present in the meeting and exert efforts to contact or call you during those times?
A: In all our efforts to settle this case, Cristeta Abaldonado, did not show actual interest to settle this case because her daughter, Cecilia Jaspela and her brother Edgar, were the ones who would always represent their mom.[21]

Contrary to the CA's observation, Abaldonado was never present in the negotiations with petitioners in trying to reach an amicable settlement for her loan obligation. In fact, she even admits her passivity in the efforts to satisfy her debt with petitioners, to wit:

Direct testimony of Cristeta Abaldonado

Q: And madam witness, you said you signed this document, can you remember who else signed this document?
A: I could not recall.

Q: Madam witness, you said you contracted loan with Mr. Ang with certain provisions and terms, now who paid for the said loan?

[21] TSN dated November 22, 2012, pp. 9-20.

A: My daughter Corazon and sometimes I am also helping her, sir.

Q: And until when did you pay for the said loan?
A: More or less for one (1) year, sir.

Q: And after that one (1) year what happened madam witness?
A: My daughter Corazon did not ask anymore help in paying the said loan.

Q: And what happened after when your daughter Corazon was no longer asking help from you to pay the loan?
A: I do not know what happened because she was not asking money from me anymore, sir.

Q: And when you already stopped paying this, what happened to the property?
A: She was the one taking care of the property and I do not know the other things anymore.

x x x x x x x x x

Q: And what actions did you take after knowing that the property was already foreclosed by Mr. Ang?

A: Since my daughter Corazon was taking over the case and so my other children were also taking over the case.

Thus, Abaldonado's inaction from the time the loan obligation was contracted until the negotiations for an amicable settlement is readily apparent. It must be remembered that the law protects the vigilant and not those who slumber on their rights.[22]

Abaldonado's neglect or inactivity amounted to laches which precluded her from questioning the mortgage contract and the subsequent foreclosure proceedings. Abaldonado never questioned the rates imposed from the time the loan was contracted until after the foreclosure sale was finalized. It is worth emphasizing that petitioners had already filed a first extrajudicial foreclosure complaint but did not push through

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[22] *Pangasinan v. Disonglo-Almazora*, G.R. No. 200558, July 1, 2015.

due to a case filed by Abaldonado's children against her and Ang. At this juncture, she could have readily challenged the mortgage contract and petitioners' attempt to foreclose the property. Yet, Abaldonado remained silent and did not impugn the validity of the mortgage contract on account of the interest rates imposed.

Again, petitioners filed another complaint for extrajudicial foreclosure against Abaldonado. Even then, she did not assail the validity of the mortgage contract obligation nor contest the foreclosure proceedings. Rather, Abaldonado waited until a Final Deed of Sale was issued before she sprung into action. In sum, she only questioned the mortgage contract after 12 years from the loan was contracted and three years after Fontaine Bleau obtained a Final Deed of Sale.

Further, Abaldonado's inaction led petitioners to believe that she would not challenge the interest rates they had fully agreed upon. It is too late in the day for her to seek refuge from the courts after the long time she slumbered on her rights. In *Spouses Carpo v. Chua*,[23] the Court had likewise denied relief to the party for belatedly questioning the validity of the mortgage contract, to wit:

> The RTC had likewise concluded that petitioners were barred by laches from assailing the validity of the real estate mortgage. We wholeheartedly agree. If indeed petitioners unwillingly gave their consent to the agreement, they should have raised this issue as early as in the foreclosure proceedings. It was only when the writ of possession was issued did petitioners challenge the stipulations in the loan contract in their action for annulment of mortgage. Evidently, petitioners slept on their rights. The Court of Appeals succinctly made the following observations:
>
> > In all these proceedings starting from the foreclosure, followed by the issuance of a provisional certificate of sale; then the definite certificate of sale; then the issuance of TCT No. 29338 in favor of the defendants and finally the petition for the issuance

[23] 508 Phil. 462 (2005).

> of the writ of possession in favor of the defendants, there is no showing that plaintiffs questioned the validity of these proceedings. It was only after the issuance of the writ of possession in favor of the defendants, that plaintiffs allegedly tendered to the defendants the amount of ₱260,000.00 which the defendants refused. In all these proceedings, why did plaintiffs sleep on their rights?

Just like the debtor-mortgagor in the above-mentioned case, Abaldonado sat idly by while petitioners instituted foreclosure proceedings over the mortgaged property. Also, just like in the said case, she assailed the mortgage contract only after the title over the property was transferred to the winning bidder during the public auction for the mortgaged property.

Further, the negotiations between petitioners and Abaldonado's children for an amicable settlement do not detract from the fact that Abaldonado had slept on her rights. The evidence presented by both parties established that Abaldonado never actually participated in the negotiation for a possible settlement. She did not communicate personally or through other means with petitioners as the latter were only able to talk to her children. In addition, there was no proof that Abaldonado had authorized her children to act in her behalf. Neither was there any showing that her children represented her interest in the attempt to arrive at a settlement. In fact, Abaldonado's children had even filed a case against her claiming that their signature in the Extrajudicial Adjudication with Waiver of Rights, where they purportedly waived their right to the subject property they inherited from their father in her favor, was a forgery.

WHEREFORE, the petition is **GRANTED**. The July 28, 2016 Decision and the April 20, 2017 Resolution of the Court of Appeals in CA-G.R. CV No. 05150 is **REVERSED** and **SET ASIDE**. The September 26, 2013 Decision of the Regional Trial Court, Branch 35, Iloilo City is **REINSTATED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Lazaro-Javier, and *Lopez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 205515. January 20, 2020]

NOEL M. ODRADA, *petitioner, vs.* **VIRGILIO LAZARO and GEORGE ASENIERO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; NOTARIZED DOCUMENTS; PRESUMPTION OF REGULARITY ACCORDED THERETO IS NOT CONCLUSIVE AS IT CAN BE REFUTED BY CLEAR AND CONVINCING EVIDENCE.** — While Odrada may have presented a notarized Deed of Sale between Basa and Transmix, the said document is of little value in proving that a sale had occurred considering that none of the parties thereto testified in court and identified the said document. It is true that the act of notarization converts a private document to a public document making it admissible in evidence without proof of its authenticity. x x x The presumption of regularity accorded to notarized documents is not conclusive as it can be refuted by clear and convincing evidence. In the present case, respondents had presented clear and convincing evidence to overcome the presumption of regularity of the Deed of Sale between Basa and Transmix.

2. **CIVIL LAW; SALES; DOUBLE SALE OF IMMOVABLE AND MOVABLE PROPERTIES, DISTINGUISHED.—** It is readily apparent that the rules concerning double sale of movable properties differ from that of immovable properties. In double sale of immovable sale, the law provides for a three-pronged approach in determining ownership, to wit: (1) to the person acquiring it who in good faith first recorded it in the Registry of Property; (2) in default thereof, to the person who in good faith was first in possession; and (3) in default thereof, to the person who presents the oldest title, provided there is good faith. On the other hand, in case of double sale of a movable property, ownership is simply transferred to the first who may have taken possession thereof in good faith. Since the present case involves a sale of a motor vehicle, its ownership should then belong to the first possessor in good faith.

3. ID.; ID.; DOUBLE SALE OF A MOTOR VEHICLE; OWNERSHIP OVER THE MOTOR VEHICLE RIGHTFULLY BELONGS TO THE FIRST POSSESSOR IN GOOD FAITH.— While the Deed of Sale between Basa and Transmix bore an earlier date, there is no evidence to sufficiently establish when Basa had actually possessed the Range Rover. x x x In contrast, without any direct testimonial or documentary evidence to establish when Basa actually acquired possession of the property, the closest piece of evidence which could somehow indicate that Basa already possessed the motor vehicle would be the Deed of Sale between Basa and Odrada. Even if it were to be presumed that Basa had possession of the Range Rover at the time it was sold to Odrada, it would still be after Aseniero had actual possession of the Range Rover. Further, there is no evidence to show that Aseniero was aware of the September 4, 2003 Deed of Sale between Basa and Transmix. As such, it is clear that it was Aseniero who first possessed the Range Rover in good faith. Consequently, ownership over the motor vehicle rightfully belongs to Aseniero as the first possessor in good faith. Since Basa did not acquire ownership over the Range Rover, he did not transmit any rights when he sold the same to Odrada. This is in keeping with the principle that one cannot give what one does not have — *nemo dat quod non habet.*

4. ID.; DAMAGES; MORAL DAMAGES; CIRCUMSTANCES THAT MUST CONCUR FOR MORAL DAMAGES TO BE AWARDED; UNMERITORIOUS COMPLAINT DOES NOT *IPSO FACTO* WARRANT THE AWARD OF MORAL DAMAGES.— In order for moral damages to be awarded, the following circumstances must concur: (1) there is an injury, whether physical, mental or psychological, clearly sustained by the claimant; (2) there is a culpable act or omission factually established; (3) the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and (4) the award of damages is predicated on any of the cases stated in Article 2219. x x x In *Delos Santos v. Papa*, the Court elucidated that the mere filing of an unmeritorious complaint does not *ipso facto* warrant the award of moral damages, to wit: Assuming *arguendo* that the petitioner's case lacked merit, the award of moral damages is not a legal consequence that automatically followed. Moral damages are only awarded if the

basis therefor, as provided in the law quoted above, is duly established. x x x In other words, the mere fact that the courts *a quo* ultimately dismissed Odrada's complaint and found Aseniero to be the lawful owner of the Range Rover would not automatically entitle the latter to recover moral damages from the former. The same would not necessarily amount to a malicious prosecution where moral damages may be recovered.

5. ID.; ID.; ID.; MALICIOUS PROSECUTION FOR PURPOSES OF RECOVERING MORAL DAMAGES, DEFINED AND EXPLAINED; WHERE PETITIONER ACTED IN GOOD FAITH AND OBSERVED THE NECESSARY DILIGENCE EXPECTED FROM A BUYER, HE CANNOT BE LIABLE FOR MORAL DAMAGES.— Malicious prosecution, for purposes of recovering moral damages, has been defined as "an action for damages brought by or against whom a criminal prosecution, civil suit or other legal proceeding has been instituted maliciously and without probable cause, after the termination of such prosecution, suit, or other proceeding in favor of the defendant therein." In *Villanueva v. United Coconut Planters Bank*, the Court had elucidated that actions filed in good faith cannot be penalized by the imposition of moral damages, to wit: x x x **Resort to judicial processes, by itself, is not an evidence of ill will, as the mere act of filing a criminal complaint does not make the complainant liable for malicious prosecution.** There must be proof that the suit was prompted by legal malice — an inexcusable intent to injure, oppress, vex, annoy or humiliate. x x x [T]he evidence on record supports the finding that Odrada had acted in good faith when he purchased the Range Rover and when he filed the complaint for damages against respondents. It must be remembered that good faith is always presumed and he who alleges bad faith must establish it by clear and convincing evidence. There was no proof that Odrada had knowledge that Pueo had dispossessed Aseniero of the motor vehicle which ultimately landed in Basa's possession. The CA merely assumed that since they were colleagues in the business of selling used cars and had the same business address it was unlikely for him to have not gathered relevant information over the motor vehicle. Further, Odrada had observed the necessary diligence expected from a buyer of a used car as he bought the car from Basa only after he was able to present a

CR in his name and after Odrada had secured PNP clearance that the Range Rover was not tagged as stolen. He cannot be faulted in relying on official documents which showed Basa as the registered owner of the vehicle and that the same had not been stolen. Unfortunately for Odrada, Basa never acquired ownership over the said motor vehicle as ownership thereto was already transferred to Aseniero. Nevertheless, he did not act with ill will or improper motives in filing a complaint for damages against respondents as he reasonably believed to be the owner of the Range Rover after buying it from Basa.

6. ID.; ID.; ID.; NEITHER PETITIONER COULD BE HELD LIABLE FOR MORAL DAMAGES FOR ABUSE OF RIGHT; REQUISITES FOR ABUSE OF RIGHT ARE LACKING IN THIS CASE.— Neither could Odrada be liable for moral damages on the ground of abuse of rights under Article 19 of the Civil Code. For there to be abuse of rights, the following must concur: (1) there is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another. In the present case, the requisites for abuse of rights are lacking. To reiterate, Odrada did not act in bad faith when he filed the complaint for damages against respondents. He reasonably believed that he was the rightful owner of the Range Rover considering that Basa was able to present a CR from the LTO showing that he was the registered owner of the motor vehicle. In addition, Odrada was able to secure a clearance from the PNP certifying that the car he was about to purchase from Basa was not stolen. As such, he acted within reason when he filed the present complaint for damages thinking he was the rightful owner of the Range Rover. In addition, there was no evidence to support that Odrada merely filed the complaint against respondents to prejudice them.

APPEARANCES OF COUNSEL

Marasigan & Dangazo Law Offices for petitioner.
Reynaldo Z. Calabio for respondents.

D E C I S I O N

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

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the July 25, 2012 Decision[1] and January 21, 2013 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 96154, which affirmed with modification the April 24, 2009 Decision[3] of the Regional Trial Court, Branch 22, Imus, Cavite (RTC).

Version of the petitioner

Petitioner Noel M. Odrada (Odrada) is the registered owner of a black Range Rover under Certificate of Registration (CR) No. 1188065-4. He bought it from Roberto S. Basa (Basa), the previous registered owner of the motor vehicle, for ₱1.2 Million. On December 4, 2003, Odrada arranged for an exchange of motor vehicle with a certain Alfonso De Leon (De Leon) where the latter took the Range Rover for a test drive. At around 6:00 p.m. De Leon was about to drop Odrada's driver at his office when Odrada suddenly heard successive gun shots nearby. After investigating what had happened, he learned that his motor vehicle had been shot by personnel of the Philippine National Police Eastern Police District (PNP-EPD).[4]

Because of the incident, Odrada learned that respondent George Aseniero (Aseniero), claiming to be the owner of the Ranger Rover, had reported to the Anti-Carnapping Unit of the PNP-EPD (PNP-EPD-ANCAR) that the said motor vehicle had been stolen. As a result, respondent Virgilio Lazaro (Lazaro), head of the PNP-EPD-ANCAR, issued a flash alarm on

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[1] Penned by Associate Justice Priscilla J. Baltazar-Padilla, with Associate Justices Rosalinda Asuncion-Vicente and Agnes Reyes-Carpio, concurring; *rollo*, pp. 32-49.

[2] *Id*. at 49-52.

[3] Penned by Judge Cesar A. Mangrobang; *id*. at 240-255.

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

November 14, 2003. Thereafter, another flash alarm was issued on December 4, 2003 after the PNP-EPD-ANCAR received information that the Range Rover was spotted at Auto Camp near Ortigas Avenue.[5]

Due to the shooting incident, Odrada's Range Rover was considerably damaged and he discovered that the motor vehicle sustained 16 bullet holes. On top of the ₱300,000.00 estimated cost of repair, he also lost income of the same amount, which he would have earned had the transaction with De Leon pushed through.[6] As a result, he filed a Complaint for Damages[7] against respondents.

Version of the Respondents

In their Answer with Compulsory Counterclaims,[8] respondents alleged that:

Sometime in February 2003, William Joseph Rosmarino (Rosmarino) acquired the Range Rover from Eagle Ridge as payment for the services he rendered to the latter. Eagle Ridge then made arrangements with Transmix Builders and Construction, Inc. (Transmix) to give the said motor vehicle to Rosmarino, who in turn placed it on display at *Kotse Pilipinas*. Through Jose Pueo (Pueo), manager of Kotse Pilipinas, Aseniero was able to buy the Range Rover for ₱1.2 Million. In order to facilitate the transaction, Rosmarino requested Transmix to transfer the ownership of the Range Rover directly to Aseniero.[9]

On November 5, 2003, Pueo called Aseniero and offered to take the Range Rover to the Land Transportation Office (LTO) for registration but the latter was hesitant as the vehicle was being mechanically serviced. Pueo was able to persuade him

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[5] *Id*. at 6.

[6] *Id*. at 6-7.

[7] *Id*. at 56-63.

[8] *Id*. at 228-232.

[9] *Id*. at 35.

by telling him that if the Range Rover would not be registered on the same day, he would again go through the entire process of securing the necessary clearances to register the motor vehicle. However, after getting the Range Rover from the mechanic, Pueo brought the car to Oscar Tan (Tan), Pueo's business colleague in Kotse Pilipinas, to serve as collateral for the ₱700,000.00 loan the former obtained from the latter. The following day, Aseniero tried to call Pueo to ask about the car but the latter could no longer be reached by phone and was also not in his office.[10]

Thereafter, Aseniero went to the LTO to ask for a hold order where he found that the Range Rover was already registered in Odrada's name. He also discovered that the said motor vehicle was allegedly sold by Transmix to Basa, who eventually sold the same to Odrada. Aseniero confronted Transmix about the purported transaction but the latter denied having sold the car to Basa and disavowed the Deed of Sale covering the sale. Transmix thereafter executed a Deed of Confirmation of Sale in Aseniero's favor attesting to the fact that the Range Rover was only sold to him.[11]

Then, Aseniero went to the Traffic Management Group (TMG), Camp Crame to present the Deed of Sale and Confirmation of Deed of Sale Transmix had executed in his favor to prove ownership over the Range Rover. On the bases of these documents, the TMG issued a request for an alarm watch list for the said car.[12]

As such, respondents prayed that Odrada's complaint be dismissed and that he be ordered to pay exemplary damages in the amount of ₱100,000.00, moral damages in the amounts of ₱1 Million and ₱500,000.00 for Arsenio and Lazaro respectively, attorney's fees, and costs of suit.

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[10] *Id*. at 35-36.

[11] *Id*. at 36.

[12] *Id*. at 37.

RTC Decision

In its April 24, 2009 Decision, the RTC ruled in respondents' favor. The trial court found that respondents were able to prove that Aseniero bought the Range Rover from Transmix through Pueo. It highlighted that Transmix executed a Deed of Confirmation of Sale acknowledging that it had sold the said motor vehicle to Aseniero.

Further, the RTC noted that respondents presented testimonial and documentary evidence detailing the manner and nature of the payment and sale of the Range Rover. On the other hand, the trial court had found the transaction between Odrada and Basa to be dubious and irregular. It explained that the Deed of Sale between Odrada and Basa was never identified in court and that the latter never appeared to testify regarding the matter. The trial court added that Odrada failed to prove that Basa had validly acquired the motor vehicle from Transmix. The RTC surmised that Odrada ultimately got hold of the motor vehicle through a series of transactions which emanated from Pueo's improper taking of the motor vehicle. Lastly, the trial court ruled that respondents were entitled to moral and exemplary damages. The RTC disposed:

> WHEREFORE, premises considered, judgment is hereby rendered dismissing this case against defendants GEORGE ASENIERO and VIRGILIO LAZARO.
>
> The Court also adjudged plaintiff Noel Odrada:
>
> 1. To return to defendant Aseniero the Black Range Rover 4.6 HSE with Plate No. URS-812, if he will accept the same or to pay or indemnify George Aseniero the actual value of the car in the amount of ONE MILLION TWO HUNDRED THOUSAND PESOS (Ph[P]1,200,000.00) with interest thereon at the rate of 12% percent (sic) per annum computed from the time possession of (sic) subject car was taken from him on November 5, 2003 until the same is fully paid;
>
> 2. To pay damages to both defendants as follows:

a) GEORGE ASENIERO — PHP1,000,000.00 as moral damages and Php100,000.00 as exemplary damages, and,

b) VIRGILIO LAZARO — Php200,000.00 as moral damages and Php100,000.00 as exemplary damages.

3. Attorney's fees — Php100,000.00 plus Php3,000.00 as appearance fee per hearing.

4. Costs of suit.

SO ORDERED.[13]

Undeterred, Odrada appealed to the CA.

CA Decision

In its July 25, 2012 Decision,[14] the CA affirmed the RTC decision but modified the amount of moral and exemplary damages awarded. The appellate court agreed that respondents were able to sufficiently prove that Aseniero was the rightful owner of the Range Rover. It noted that Aseniero gave a detailed and straight forward account of how he purchased the said motor vehicle from Transmix complete with supporting documents on the transfer of ownership and payments made thereon. The CA added that the sale between Transmix and Aseniero was confirmed by virtue of the Deed of Confirmation of Sale, which was identified by Rosmarino in open court.

On the other hand, the appellate court pointed out that Odrada merely presented documents showing that the Range Rover was registered in his name. It expounded that the Deeds of Sale showing the transfer of the motor vehicle from Transmix to Basa, from Basa to him were never identified in court. The CA highlighted that Odrada's claim that Basa bought the Range Rover from Transmix was negated by the fact that the latter had affirmed that it had sold the motor vehicle only to Aseniero.

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[13] *Id*. at 254-255.

[14] *Supra* note 1.

Further, the appellate court negated Odrada's claim that he was a buyer in good faith. It expounded that he failed to prove that the Range Rover was acquired for consideration from Transmix. The CA also averred that Odrada's claim of good faith is likewise negated by the fact that while the Deed of Sale between Transmix and Basa was executed on September 4, 2003, the vehicle was registered in Basa's name only on November 21, 2003 or after the Range Rover was taken from Aseniero's possession by Pueo. In addition, the CA highlighted that the successive transfer of ownership of the motor vehicle revolved around Pueo, Tan, Basa, and Odrada, who were all colleagues sharing the same business address and rent a car slots at Kotse Pilipinas. As such, the appellate court posited that it was very unlikely that Odrada would not have any knowledge or information concerning irregularities over the sale of the said motor vehicle.

Meanwhile, the CA agreed that respondents were entitled to moral and exemplary damages as it found that Odrada's complaint for damages was merely an afterthought on the part of Odrada and was merely meant to harass respondents. The appellate court reasoned that if Odrada was truly a victim in this case, he should have filed a case against Basa as the one who sold the motor vehicle. Nevertheless, the CA reduced the award of moral and exemplary damages for being exorbitant. Thus, it ruled:

> **WHEREFORE**, the appealed Decision of the Regional Trial Court of Imus, Cavite in Civil Case No. 0021-04 dated April 24, 2009 is **AFFIRMED with MODIFICATION**. Plaintiff-appellant Noel M. Odrada is ordered to pay defendant-appellee George Aseniero, as follows: [₱]300,000.00 as moral damages and [₱]50,000.00 as exemplary damages and defendant-appellee Virgilio Lazaro, [₱]100,000.00 as moral damages and [₱]50,000.00 as exemplary damages. The award of attorney's fees is hereby **DELETED**.
>
> **SO ORDERED.**[15]

Aggrieved, Odrada moved for reconsideration but it was denied by the CA in its January 21, 2013 Resolution.

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[15] *Id*. at 49.

Hence, this present petition, raising the following:

Issues

I

WHETHER ODRADA IS THE LAWFUL OWNER OF THE BLACK RANGE ROVER IN QUESTION; AND

II

WHETHER RESPONDENTS ARE ENTITLED TO MORAL AND EXEMPLARY DAMAGES.

Odrada argues that he should have been accorded the presumption that he owned the Range Rover in good faith considering that he was able to establish that he had bought the said motor vehicle from Basa, who in turn had acquired the same from Transmix. He explains that he had no actual or constructive notice that the Range Rover was stolen. Odrada highlights that he had secured a clearance from the PNP that the Range Rover was not listed as stolen before he purchased the same from Basa. To bolster his claim of ownership, he points out that he is the registered owner of the Range Rover pursuant to a CR issued by the LTO.

Odrada further assails that he should not be held liable to pay moral and exemplary damages because he had legal title and possession of the Range Rover. On the contrary, he believes that he should be compensated with moral and exemplary damages on account of respondents' act of reporting the motor vehicle as stolen and the arbitrary shooting of the motor vehicle on December 4, 2003. In particular, Odrada laments that Aseniero, in spite the absence of proof that the vehicle was stolen, had maliciously reported it to be so with Lazaro. In addition, he bewails that Lazaro had failed to comply with the Rules on Engagement when the Range Rover was fired upon by the police officers and that he should have resorted to judicial processes knowing fully well that there was a dispute as to the car's ownership.

In their Comment[16] dated June 5, 2013, respondents reiterated the CA's discussion of the issues and merely stated that Odrada had failed to show that the appellate court committed reversible error in the challenged decision.

In his Reply[17] dated March 28, 2014, Odrada reiterated that he had established that he was an innocent purchaser in good faith and for value. He emphasized that he was able to show that he had a valid CR under his name and that it was coupled with the actual possession of the motor vehicle. Odrada lamented that the CA failed to consider the presumption of lawful ownership in his favor. He bewailed that he exercised due diligence before purchasing the Range Rover from Basa as evidenced by the fact that he checked the registration papers of the said motor vehicle and had it cleared before the PNP.

In their respective Memoranda,[18] the parties reiterated their positions and the arguments raised in their Comment and Reply.

The Court's Ruling

The petition is partly meritorious.

Central to the resolution of this case is the issue of ownership of the Range Rover. On the one hand, Odrada insists that he is the rightful owner of the motor vehicle having purchased it from Basa. In addition, he notes that he is both the registered owner and actual possessor of the motor vehicle.

On the other hand, Aseniero asserts that he is the lawful owner of the Range Rover. He assails that he was unjustly deprived of his possession of the motor vehicle when Pueo, under false pretenses, took possession thereof and which eventually led to Odrada buying the said vehicle from Basa.

After a careful perusal of the records, the Court finds that the courts *a quo* correctly ruled in favor of Aseniero and adjudging him to be the lawful owner of the motor vehicle.

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[16] *Id*. at 310-321.

[17] *Id*. at 342-348.

[18] *Id*. at 363-387 and 409-425.

It is true that Odrada is the registered owner of the Range Rover by virtue of a CR issued by the LTO in his name. The CR in Odrada's name created a strong presumption that he is the owner of the motor vehicle indicated therein.[19] No matter how strong the presumption, it would still not amount to a conclusive proof of ownership. In other words, while Odrada enjoys the presumption of ownership by virtue of the CR in his name, such presumption may be overcome by controverting evidence.

According to Odrada, he acquired the Range Rover from Basa, who in turn had acquired the same from Transmix. As proof of the transmission of ownership from Transmix until ultimately to Odrada, he presented the September 4, 2003 Deed of Sale[20] between Transmix and Basa, and the November 25, 2003 Deed of Sale[21] between Basa and him. Nevertheless, as pointed out by the courts *a quo*, Odrada never presented Basa to testify in court and to identify the Deed of Sale between Transmix and the latter.

While Odrada may have presented a notarized Deed of Sale between Basa and Transmix, the said document is of little value in proving that a sale had occurred considering that none of the parties thereto testified in court and identified the said document. It is true that the act of notarization converts a private document to a public document making it admissible in evidence without proof of its authenticity.[22] In *Almeda v. Heirs of Ponciano Almeda*,[23] the Court explained that a notarized document enjoys a presumption that it was duly executed by the parties, to wit:

A notarized Deed of Absolute Sale has in its favor the presumption of regularity, and it carries the evidentiary weight conferred upon it

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[19] *Amante v. Serwelas*, 508 Phil. 344, 349 (2005).

[20] *Rollo*, p. 154.

[21] *Id.* at 84.

[22] *Heirs of Spouses Liwagon v. Heirs of Spouses Liwagon*, 748 Phil. 675, 686 (2014).

[23] G.R. No. 194189, September 14, 2017, 839 SCRA 630-644.

with respect to its due execution. It is admissible in evidence without further proof of its authenticity and is entitled to full faith and credit upon its face. Thus, a notarial document must be sustained in full force and effect so long as he who impugns it does not present strong, complete and conclusive proof of its falsity or nullity on account of some flaws or defects.

Absent evidence of falsity so clear, strong and convincing, and not merely preponderant, the presumption of regularity must be upheld. The burden of proof to overcome the presumption of due execution of a notarial document lies on the party contesting the same. (Citations omitted)

The presumption of regularity accorded to notarized documents is not conclusive as it can be refuted by clear and convincing evidence.[24] In the present case, respondents had presented clear and convincing evidence to overcome the presumption of regularity of the Deed of Sale between Basa and Transmix.

First, there was the November 5, 2003 Deed of Sale between Transmix and Aseniero whereby the latter had bought the Range Rover for ₱1.2 Million. *Second*, the November 27, 2003 Deed of Confirmation of Sale acknowledged the transaction between Transmix and Aseniero. It is noteworthy that the said documents were likewise notarized. In addition, Rosmarino testified in court to identify the Deed of Confirmation of Sale and to narrate the circumstances surrounding the sale between Transmix and Aseniero.

Thus, the courts *a quo* correctly ruled that the evidence on record tilted in favor of Aseniero's claim of ownership. Between Odrada and Aseniero, it was the latter who was able to prove a clear and consistent transmission of ownership from Transmix as the original owner of the motor vehicle. Odrada failed to establish that Basa had validly acquired the motor vehicle from Transmix. On the other hand, Aseniero had sufficiently shown that Transmix had only sold the motor vehicle to him. Consequently, even if Odrada may have acquired possession

[24] *Tortona v. Gregorio*, G.R. No. 202612, January 17, 2018.

over the property, Aseniero may still recover the same as he was unlawfully deprived of its possession.[25]

Ownership belongs to the first possessor in good faith

Even assuming that respondents failed to overcome the presumption of regularity accorded to the Deed of Sale between Basa and Transmix, ownership over the Range Rover would still rest with Aseniero. Such scenario would amount to a double sale and the rules on double sale would apply.

The rule on double sale is provided in Article 1544 of the Civil Code. It reads:

> ARTICLE 1544. If the same thing should have been sold to different vendees, **the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property**.
>
> Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.
>
> Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith. (Emphasis and underscoring supplied)

It is readily apparent that the rules concerning double sale of movable properties differ from that of immovable properties. In double sale of immovable sale, the law provides for a three-pronged approach in determining ownership, to wit: (1) to the person acquiring it who in good faith first recorded it in the Registry of Property; (2) in default thereof, to the person who

[25] Article 559 of the Civil Code. The possession of movable property acquired in good faith is equivalent to a title. Nevertheless, one who has lost any movable or has been unlawfully deprived thereof, may recover it from the person in possession of the same.

If the possessor of a movable lost or which the owner has been unlawfully deprived, has acquired it in good faith at a public sale, the owner cannot obtain its return without reimbursing the price paid therefor.

in good faith was first in possession; and (3) in default thereof, to the person who presents the oldest title, provided there is good faith.[26] On the other hand, in case of double sale of a movable property, ownership is simply transferred to the first who may have taken possession thereof in good faith. Since the present case involves a sale of a motor vehicle, its ownership should then belong to the first possessor in good faith.

The Deed of Sale between Basa and Transmix was executed on September 4, 2003. On the other hand, the Deed of Sale between Transmix and Aseniero was executed on November 5, 2003. While the Deed of Sale between Basa and Transmix bore an earlier date, there is no evidence to sufficiently establish when Basa had actually possessed the Range Rover. It must be remembered that Basa never appeared in court to testify on the circumstances of the purchase of the motor vehicle and when he acquired possession thereto. The execution of the deed of sale alone did not transfer the ownership of the motor vehicle from Transmix to Basa because ownership over movable property is transferred by delivery and not merely by contract.[27]

In contrast, without any direct testimonial or documentary evidence to establish when Basa actually acquired possession of the property, the closest piece of evidence which could somehow indicate that Basa already possessed the motor vehicle would be the Deed of Sale between Basa and Odrada. Even if it were to be presumed that Basa had possession of the Range Rover at the time it was sold to Odrada, it would still be after Aseniero had actual possession of the Range Rover. Further, there is no evidence to show that Aseniero was aware of the September 4, 2003 Deed of Sale between Basa and Transmix. As such, it is clear that it was Aseniero who first possessed the Range Rover in good faith.

Consequently, ownership over the motor vehicle rightfully belongs to Aseniero as the first possessor in good faith. Since Basa did not acquire ownership over the Range Rover, he did not transmit any rights when he sold the same to Odrada. This

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[26] *Rosaroso v. Soria*, 711 Phil. 644, 658 (2013).

[27] *Aznar v. Yapdiangco*, 121 Phil. 458, 463 (1965).

is in keeping with the principle that one cannot give what one does not have — *nemo dat quod non habet.*[28]

As the lawful owner of the Range Rover, Aseniero cannot be faulted in reporting the said motor vehicle as stolen after he was unjustly deprived of its possession. It is but a reaction from an owner who has been divested of possession of his property. Aseniero acted well within his rights in initiating the posting of a Flash Report with the PNP in order to recover the Range Rover taken from him.

Basis of moral and exemplary damages must be sufficiently proven

Nevertheless, the Court disagrees with the courts *a quo* in finding Odrada liable to pay moral and exemplary damages.

In order for moral damages to be awarded, the following circumstances must concur: (1) there is an injury, whether physical, mental or psychological, clearly sustained by the claimant; (2) there is a culpable act or omission factually established; (3) the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and (4) the award of damages is predicated on any of the cases stated in Article 2219.[29]

Under Article 2219 of the Civil Code, Moral Damages may be recovered in the following cases:

(1) A criminal offense resulting in physical injuries;

(2) Quasi-delicts causing physical injuries;

(3) Seduction, abduction, rape, or other lascivious acts;

(4) Adultery or concubinage;

(5) Illegal or arbitrary detention or arrest;

(6) Illegal search;

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[28] *Daclag v. Macahilig*, 582 Phil. 138, 153 (2008).

[29] *Delos Santos v. Papa*, 605 Phil. 460, 467 (2009).

(7) Libel, slander or any other form of defamation;

(8) Malicious prosecution;

(9) Acts mentioned in Article 309;

(10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

On the other hand, exemplary damages are imposed by way of example or correction for the public good.[30] It is awarded when the defendant has acted with gross negligence in *quasi-delict* cases,[31] or when the defendant in contracts or *quasi*-contracts cases has acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.[32] In any case, the award of exemplary damages presupposes that the plaintiff is entitled to moral, temperate or compensatory damages.[33] Exemplary damages are to be given only in addition to moral damages such that complainants must first establish a clear right to moral damages before they are deemed entitled to exemplary damages.[34]

In its April 24, 2009 Decision, the RTC, without specifically stating its reasons in reaching such conclusion, awarded moral and exemplary damages in respondents' favor. Meanwhile, the CA reduced the amount awarded for moral and exemplary damages but still affirmed the grant thereof. The appellate court reasoned that Odrada's baseless filing of the complaint for

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[30] CIVIL CODE, Article 2229.

[31] *Id*. at Article 2231.

[32] *Id*. at Article 2232.

[33] *Id*. at Article 2234.

[34] *Interport Resources Corporation v. Securities Specialist, Inc.*, 786 Phil. 275, 289-290 (2016).

damages against respondents had cause them embarrassment and humiliation as its filing was merely in retaliation for the criminal complaint of carnapping Aseniero had filed against Odrada, Pueo, Tan and Basa.

In *Delos Santos v. Papa*,[35] the Court elucidated that the mere filing of an unmeritorious complaint does not *ipso facto* warrant the award of moral damages, to wit:

> Assuming *arguendo* that the petitioner's case lacked merit, the award of moral damages is not a legal consequence that automatically followed. Moral damages are only awarded if the basis therefor, as provided in the law quoted above, is duly established. In the present case, the ground the respondents invoked and failed to establish is malicious prosecution. *Crystal v. Bank of the Philippine Islands* is instructive on this point, as it tells us that the law never intended to impose a penalty on the right to litigate so that the filing of an unfounded suit does not automatically entitle the defendant to moral damages:
>
> > The spouses' complaint against BPI proved to be unfounded, but it does not automatically entitle BPI to moral damages. Although the institution of a clearly unfounded civil suit can at times be a legal justification for an award of attorney's fees, such filing, however, has almost invariably been held not to be a ground for an award of moral damages. The rationale for the rule is that the law could not have meant to impose a penalty on the right to litigate. ***Otherwise, moral damages must every time be awarded in favor of the prevailing defendant against an unsuccessful plaintiff.***
>
> Given this conclusion, we find it unnecessary to rule on whether the respondents indeed suffered injuries for which they should be awarded moral damages. (Emphasis and italics in the original; citation omitted)

In other words, the mere fact that the courts *a quo* ultimately dismissed Odrada's complaint and found Aseniero to be the lawful owner of the Range Rover would not automatically entitle the latter to recover moral damages from the former. The same would not necessarily amount to a malicious prosecution where moral damages may be recovered.

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[35] *Supra* note 29.

Malicious prosecution, for purposes of recovering moral damages, has been defined as "an action for damages brought by or against whom a criminal prosecution, civil suit or other legal proceeding has been instituted maliciously and without probable cause, after the termination of such prosecution, suit, or other proceeding in favor of the defendant therein.[36] In *Villanueva v. United Coconut Planters Bank*,[37] the Court had elucidated that actions filed in good faith cannot be penalized by the imposition of moral damages, to wit:

> The respondent bank filed the criminal Complaints for violations of the General Banking Act in its honest belief that these charges were meritorious. There is no credible evidence to show that it was impelled by a desire to unjustly vex, annoy and inflict injury on the petitioner. Before these cases were referred to the city fiscal, it had even conducted its own investigation with the assistance of the National Bureau of Investigation.
>
> Malicious prosecution requires proof that the prosecution was prompted by a sinister design to vex and humiliate the plaintiff. The respondent bank had neither a "bone to pick" with the petitioner nor a "previous dealing with petitioner that could have prompted the respondent bank to turn the tables on him."
>
> **Resort to judicial processes, by itself, is not an evidence of ill will, as the mere act of filing a criminal complaint does not make the complainant liable for malicious prosecution.** There must be proof that the suit was prompted by legal malice — an inexcusable intent to injure, oppress, vex, annoy or humiliate. A contrary rule would discourage peaceful recourse to the courts and unjustly penalize the exercise of a citizen's right to litigate. **Where the action is filed in good faith, no penalty should be imposed thereon**. (Emphases supplied and citations omitted)

In affirming the award of moral damages, the CA anchored its conclusion on the fact that Odrada did not acquire the Range Rover from Basa in good faith. It explained that subsequent transfer of ownership of the motor vehicle revolved around business colleagues who shared the same business address. The

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[36] *Diaz v. Davao Light and Power Co., Inc*., 549 Phil. 271, 298 (2007).

[37] 384 Phil. 130, 144 (2000).

CA thus opined that it was very unlikely that Odrada could not gather relevant information as to the circumstances surrounding the purchase and sale of the vehicle. In addition, the appellate court explained that the complaint for damages was merely filed with the goal of having leverage *vis-a-vis* the criminal complaints Aseniero had filed against Odrada and his colleagues. It surmised that the complaint was merely an afterthought intended to complicate matters and to harass respondents.

Verily, the CA reached its conclusions based on mere assumptions and conjunctures. The records are bereft of evidence to categorically indicate that Odrada had knowledge of the irregularities surrounding Basa's acquisition of the Range Rover. Neither was there proof that Odrada was motivated with ill will in filing the complaint for damages against respondents.

On the contrary, the evidence on record supports the finding that Odrada had acted in good faith when he purchased the Range Rover and when he filed the complaint for damages against respondents. It must be remembered that good faith is always presumed and he who alleges bad faith must establish it by clear and convincing evidence.[38] There was no proof that Odrada had knowledge that Pueo had dispossessed Aseniero of the motor vehicle which ultimately landed in Basa's possession. The CA merely assumed that since they were colleagues in the business of selling used cars and had the same business address it was unlikely for him to have not gathered relevant information over the motor vehicle.

Further, Odrada had observed the necessary diligence expected from a buyer of a used car as he bought the car from Basa only after he was able to present a CR in his name and after Odrada had secured PNP clearance that the Range Rover was not tagged as stolen. He cannot be faulted in relying on official documents which showed Basa as the registered owner of the vehicle and that the same had not been stolen. Unfortunately for Odrada, Basa never acquired ownership over the said motor vehicle as ownership thereto was already transferred to Aseniero.

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[38] *Spouses Espinoza v. Mayandoc*, 812 Phil. 95 (2017).

Nevertheless, he did not act with ill will or improper motives in filing a complaint for damages against respondents as he reasonably believed to be the owner of the Range Rover after buying it from Basa.

Neither could Odrada be liable for moral damages on the ground of abuse of rights under Article 19 of the Civil Code. For there to be abuse of rights, the following must concur: (1) there is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another.[39]

In the present case, the requisites for abuse of rights are lacking. To reiterate, Odrada did not act in bad faith when he filed the complaint for damages against respondents. He reasonably believed that he was the rightful owner of the Range Rover considering that Basa was able to present a CR from the LTO showing that he was the registered owner of the motor vehicle. In addition, Odrada was able to secure a clearance from the PNP certifying that the car he was about to purchase from Basa was not stolen. As such, he acted within reason when he filed the present complaint for damages thinking he was the rightful owner of the Range Rover. In addition, there was no evidence to support that Odrada merely filed the complaint against respondents to prejudice them.

WHEREFORE, the petition is partially **GRANTED**. The July 25, 2012 Decision and the January 21, 2013 Resolution of the Court of Appeals in CA-G.R. CV No. 96154 are **AFFIRMED with MODIFICATION** in that the award of moral and exemplary damages in favor of respondents Virgilio Lazaro and George Aseniero is **DELETED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa (*Working Chairperson*), *Lazaro-Javier,* and *Lopez, JJ.*, concur.

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[39] *Metroheights Subdivision Homeowners Association, Inc. v. CMS Construction and Development Corporation*, G.R. No. 209359, October 17, 2018.

FIRST DIVISION

[G.R. No. 217576. January 20, 2020]

PATRICK G. MADAYAG, *petitioner, vs.* **FEDERICO G. MADAYAG,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ALLEGATIONS IN THE COMPLAINT DETERMINE THE NATURE OF THE ACTION AND THE COURT THAT HAS JURISDICTION OVER THE CASE.— The invariable rule is that what determines the nature of the action, as well as the court has jurisdiction over the case, are the allegations in the complaint. In ejectment cases, the complaint must state and sufficiently show on its face the essential facts laid down under Section 1, Rule 70 of the Rules of Court, to give the court jurisdiction without resort to parol evidence.

2. ID.; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY; WHAT MUST BE ALLEGED IN THE COMPLAINT THEREOF.— [Section 1, Rule 70 of the Rules of Court] requires that in action for forcible entry, as in this case, it must be alleged that the complainant was deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, and that the action was filed anytime within one year from the time the unlawful deprivation of possession took place, except that when the entry is through stealth, the one-year period is counted from the time the complainant learned of the dispossession. It is not necessary, however, for the complainant to utilize the language of the statute. It would suffice that the facts are set up showing that complainant has prior physical possession of the property in litigation and that he was dispossessed thereof through defendant's unlawful act/s constituting force, intimidation, threat, strategy, or stealth.

3. ID.; ID.; ID.; ID.; MAIN ISSUE IS POSSESSION *DE FACTO*, INDEPENDENT OF ANY CLAIM OF OWNERSHIP OR POSSESSION *DE JURE*; POSSESSION CAN BE ACQUIRED NOT ONLY BY MATERIAL OR ACTUAL OCCUPATION, BUT ALSO BY THE FACT THAT A

THING IS SUBJECT TO THE ACTION OF ONE'S WILL OR BY THE PROPER ACTS AND LEGAL FORMALITIES ESTABLISHED FOR ACQUIRING SUCH RIGHT.— The only question that courts must resolve in an ejectment case is who between the parties is entitled to the physical or material possession of the property in dispute. The main issue is possession *de facto*, independent of any claim of ownership or possession *de jure*. Thus, courts should base their decision on who had prior physical possession of the premises under litigation. As a rule, "possession" in forcible entry cases refers to nothing more than prior physical possession or possession *de facto*, not possession *de jure* or that arising from ownership. Title is not an issue. The Court has, however, consistently ruled that possession can be acquired not only by material or actual occupation, but also by the fact that a thing is subject to the action of one's will or by the proper acts and legal formalities established for acquiring such right. In *Quizon v. Juan*, the Court explained: Possession can be acquired by juridical acts. These are acts to which the law gives the force of acts of possession. Examples of these are donations, succession, execution and registration of public instruments, inscription of possessory information titles and the like. The reason for this exceptional rule is that possession in the eyes of the law does not mean that a man has to have his feet on every square meter of ground before it can be said that he is in possession. It is sufficient that petitioner was able to subject the property to the action of his will.

4. ID.; ID.; ID.; ID.; STEALTH, DEFINED; ONE'S ENTRY IN THE PREMISES OF THE SUBJECT PROPERTY WITHOUT THE CONSENT AND KNOWLEDGE OF THE REGISTERED OWNER, WHO WAS ABROAD AT THAT TIME, CLEARLY FALLS UNDER STEALTH.— We are also one with the RTC in ruling that Patrick was dispossessed of the subject property by Federico through stealth. As correctly observed by the RTC, Federico's entry in the premises of the subject property without the consent and knowledge of the registered owner, who was abroad at that time, clearly falls under stealth, defined in our jurisprudence as "any secret, sly or clandestine act to avoid discovery and to gain entrance into, or to remain within [the] residence of another without permission.

APPEARANCES OF COUNSEL

Agranzamendez Liceralde Gallardo & Associates for petitioner.

Aces Law Firm for respondent.

D E C I S I O N

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

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated October 31, 2014 and the Resolution[3] dated February 24, 2015 of the Court of Appeals (CA) in CA- G.R. SP No. 134040, which reversed the Decision[4] dated August 3, 2012 of the Regional Trial Court (RTC) of Baguio City in Civil Case No. 7567-R and accordingly, reinstated the Judgment[5] dated January 6, 2012 of the Municipal Trial Court in Cities (MTCC) of Baguio City in MTCC Case No. 13478.

The Facts

Patrick G. Madayag (Patrick), Federico G. Madayag (Federico), Dionisio Madayag (Dionisio), Arthuro Madayag (Arthuro), Lourdes Madayag Dennison (Lourdes), and Carlos Madayag (Carlos) are all children of the spouses Anatalio Madayag (Anatalio) and Maria Consuelo Madayag (Maria Consuelo).[6]

Anatalio was an employee of John Hay Air Base during his lifetime. As such, he was allowed to occupy a parcel of land

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[1] *Rollo*, pp. 11-26.

[2] Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Francisco P. Acosta and Myra V. Garcia-Fernandez, concurring; *id.* at 28-42.

[3] *Id.* at 44.

[4] *Id.* at 46-51.

[5] *Id.* at 52-60.

[6] *Id.* at 29.

in a housing facility for John Hay Air Base's employees located at Lot 24, Block 7, Scout Barrio Housing Project, Baguio City with an area of 493 square meters. Anatalio built a residential building thereon which served as the family home. Notably, said housing facility was under the jurisdiction of the Bases Conversion Development Authority (BCDA).[7]

After their father and mother passed in 1979 and 1994, respectively, or on February 7, 1994, the siblings agreed to execute a Deed of Adjudication of Real Property and Quitclaim, whereby Federico, along with his brothers Dionisio, Arthuro, and Carlos waived and relinquished their interest in the property in favor of Patrick and their sister, Lourdes, who is an American citizen.[8]

Sometime in 2002, BCDA issued a Certificate of Lot Award in favor of the "Heirs of Anatalio F. Madayag." This Certificate was, however, cancelled and corrected as attested to by Bobby Akia, an officer of the Land and Asset Development Division of the John Hay Management Corporation, by virtue of the said Deed.[9] Consequently, on March 20, 2006, a Certificate of Lot Award was issued by the BCDA solely in favor of Patrick, and his named co-owner in the Deed, Lourdes, being an American citizen. By virtue thereof, BCDA sold the parcel of land to Patrick per Deed of Absolute Sale dated March 4, 2009. Two days later, or on March 6, 2009, the subject parcel of land was registered under Patrick's name as evidenced by Transfer Certificate of Title (TCT) No. 98257.[10]

On November 5, 2010, Patrick filed a Complaint for Forcible Entry and Damages against Federico, averring that after the subject property was adjudicated by the siblings to him and their sister, Lourdes, he took possession of the same and made improvements thereon, making it his residence whenever he

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[7] *Id.*

[8] *Id.*

[9] *Id.* at 50.

[10] *Id.* at 30.

goes to Baguio City from the United States of America (USA). He, however, learned later on that Federico entered and occupied the subject property without his permission. When he came back from the USA sometime in March 2010, he tried to settle the matter with his brother, but instead of apologizing, Federico threatened Patrick with bodily harm if he comes back to Baguio.[11]

For his part, Federico averred in his Answer with Special and Affirmative Defenses that the subject property is an ancestral and family home put up by their parents; that upon the death of their parents, he and his siblings became co-owners thereof; that the Deed of Adjudication of Real Property and Quitclaim was agreed upon by the siblings to be executed merely for the purpose of facilitating the award and titling of the property, with the clear understanding that the same will remain to be their ancestral and family home to be enjoyed by any of the siblings including their respective families. Federico further averred that Patrick cannot invoke that he was in prior physical possession of the property when he never possessed the property exclusively on his own. Neither was it right for Patrick to claim that he was the one who introduced the improvements in the subject property when it was their sister, Lourdes, who primarily provided therefor.[12]

The MTCC Ruling

In a Judgment dated January 6, 2012, the MTCC dismissed Patrick's Complaint, ruling that he failed to sufficiently allege, much less prove, an essential element of a forcible entry case, *i.e.*, that he had prior physical possession of the property. Further, the MTCC found the Complaint lacking of allegations that Patrick was dispossessed of the subject property by force, intimidation, threats, strategy, or stealth. In fact, the allegations in the Complaint showed that the alleged dispossession of the property was not done, if at all, by any of the means above-cited. The MTCC disposed, thus:

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

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

WHEREFORE, premises considered, this case is hereby *dismissed*.

No pronouncement as to costs.

SO ORDERED.[13]

The RTC Ruling

On appeal, the RTC reversed the MTCC's Judgment, finding that the Complaint sufficiently alleged Patrick's prior possession of the property, as well as that he was dispossessed thereof by Federico through stealth. Specifically, the RTC ruled that Patrick's allegation that he "took possession of the house and made improvements, using the same as his residence whenever he comes up to Baguio" after the siblings executed the Deed of Adjudication of Real Property and Quitclaim in his and Lourdes' favor, was sufficient allegation of prior possession. Likewise, according to the RTC, Patrick's allegation that Federico "entered and occupied the house" without the former's knowledge and consent, "taking advantage of [his] absence" is a sufficient allegation of stealth or strategy.

Moreover, the RTC ruled that both elements of forcible entry were proven by Patrick's evidence. The RTC held that prior physical possession does not only mean actual or physical possession, but also possession acquired by juridical acts, which in this case was through the adjudication of the subject property to Patrick and Lourdes, and the subsequent registration thereof in Patrick's name. That it was by means of stealth that Patrick was dispossessed of the property was also proven by his allegation that he discovered Federico's possession and occupation thereof only upon his return from the USA. Thus:

WHEREFORE, all premises duly considered, the Decision of the first level court in Civil Case No. MTCC Case No. 13478 is hereby reversed and set aside.

The [respondent], Federico G. Madayag, his predecessors-in-interest, and all persons under him are hereby ordered to vacate the property subject matter of this case located at No. 63 Scout Barrio

[13] *Id.* at 60.

Housing Project, Baguio City, and to peacefully turn-over possession thereof to [petitioner], Patrick G. Madayag.

SO ORDERED.[14]

Federico's motion for reconsideration was denied by the RTC in its Order[15] dated March 14, 2013.

The CA Ruling

In its assailed Decision, the CA reversed the RTC Decision and reverted to the MTCC Judgment, emphasizing on the essential elements of a forcible entry suit, which must be sufficiently alleged and proved. The CA ruled that when the law speaks of prior physical possession in forcible entry cases, the law speaks of possession *de facto* as distinguished from possession *de jure*. Citing jurisprudence, the CA also held that a complaint for forcible entry should also specify what made the activities alleged therein illegal and what made the entry unlawful.

In reviewing the allegations in the Complaint, the CA found that the allegation of prior physical possession therein does not satisfy the requirement in forcible entry cases. The CA found no allegation that Patrick physically possessed the property and was ousted therefrom by Federico through force, intimidation, threat, strategy or stealth. The CA emphasized that the claim of prior physical possession by virtue of absolute ownership, or possession as an attribute of ownership, is not the same as actual possession or possession *de facto*. Further, Patrick failed to allege how he was deprived of possession of the property by Federico as he simply stated that the latter entered and occupied the house, without specifying how and when entry and possession was effected.

In addition, the CA sustained the alleged agreement among the siblings, invoked by Federico, that the subject property remains to be the ancestral and family home which could be

[14] *Id.* at 51.

[15] *Id.* at 75-78.

freely used by any member of the family. One of their brothers, Dionisio, executed an affidavit attesting to such agreement. The Certificate of Lot Award issued by the BCDA, proving that the subject parcel of land was awarded to the "Heirs of Anatalio F. Madayag" was also presented.

The CA, therefore, ruled:

> WHEREFORE, the Decision dated August 3, 2012 and Order dated March 14, 2013 of the Regional Trial Court are reversed and set aside. The Judgment dated January 6, 2012 of the Municipal Trial Court in Cities is reinstated.
>
> SO ORDERED.

The Issue

Did the CA err in reinstating the MTCC Judgment dismissing Patrick's complaint for forcible entry?

The Court's Ruling

We answer in the affirmative.

The invariable rule is that what determines the nature of the action, as well as the court has jurisdiction over the case, are the allegations in the complaint.[16] In ejectment cases, the complaint must state and sufficiently show on its face the essential facts laid down under Section 1, Rule 70 of the Rules of Court, to give the court jurisdiction without resort to parol evidence.

The above-cited provision requires that in action for forcible entry, as in this case, it must be alleged that the complainant was deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, and that the action was filed anytime within one year from the time the unlawful deprivation of possession took place,[17] except that when the entry is through stealth, the one-year period is counted from the time the complainant learned of the dispossession.[18] It is

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[16] *Javier v. Lumontad*, 749 Phil. 360, 368 (2014).

[17] *Id.*

[18] *Diaz v. Spouses Punzalan*, 783 Phil. 456, 462 (2016).

not necessary, however, for the complainant to utilize the language of the statute.[19] It would suffice that the facts are set up showing that complainant has prior physical possession of the property in litigation and that he was dispossessed thereof through defendant's unlawful act/s constituting force, intimidation, threat, strategy, or stealth.[20]

It is imperative, thus, to carefully scrutinize the allegations in the Complaint to determine whether the required jurisdictional averments were complied with. Pertinent portions thereof are quoted herein, *viz.*:

> 3. [Patrick] is an owner of a 493[-]square[-]meter parcel of land, known as Lot 24, Block 7, located at No. 63 Scout Barrio Housing Project, Baguio City, having acquired the same from Bases Conversion Development Authority (BCDA). Copy of the Deed of Sale and Certificate of Title are hereto attached[.]
>
> 4. Standing on the lot is a one-storey residential house which was the subject of a DEED OF ADJUDICATION OF REAL PROPERTY AND QUITCLAIM dated February 4, 1994 in favor of [Patrick] and his sister, Lourdes M. Dennison, an American citizen. Copy of the deed is hereto attached[.]
>
> **5. Thereafter, [Patrick] took possession of the house and made improvements, using the same as his residence whenever he comes up to Baguio.**
>
> **6. Lately[,] however, [Patrick] learned that [Federico] has been frequenting [Patrick's] house at #63 Scout Barrio, Baguio City without even bothering to seek permission from [Patrick].**
>
> **7. Subsequent thereto, without knowledge and consent of [Patrick], taking advantage of [Patrick's] absence, [Federico] entered and occupied the house at #63 Scout Barrio, Baguio City.**
>
> **8. Upon his return from the United States in March of 2010, [Patrick] came to know of [Federico's] act, and as any brother would do, tried to settle the matter with [Federico].**

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[19] *Dela Cruz v. Hermano*, 757 Phil. 9, 18 (2015).

[20] *Javier v. Lumontad, supra.*

9. But instead of apologizing for his unlawful act, [Federico] had the arrogance of even threatening [Patrick] with bodily harm if he comes up to Baguio, an incident which was reported by [Patrick] to the Baguio Police.[21] (Emphases supplied)

Clearly, the Complaint sufficiently stated the essential elements of an action for forcible entry. Patrick clearly alleged that upon adjudication of the property to him and Lourdes in 1994, he took possession thereof, made improvements therein, and used the same as his residence every time he goes to Baguio. Patrick also alleged that Federico entered and occupied the property without the former's knowledge and consent. Federico's entry and occupation *as alleged*, therefore, was effected clandestinely and consequently, his possession thereof is by stealth.[22] Notably, there was no question that the Complaint was filed within a year from Patrick's discovery of Federico's unlawful entry in the subject property.

The question now is whether Patrick was able to prove these allegations of prior physical possession of the subject property and dispossession thereof by Federico through stealth.

We likewise answer in the affirmative.

The only question that courts must resolve in an ejectment case is who between the parties is entitled to the physical or material possession of the property in dispute. The main issue is possession *de facto*, independent of any claim of ownership or possession *de jure*.[23] Thus, courts should base their decision on who had prior physical possession of the premises under litigation.[24]

As a rule, "possession" in forcible entry cases refers to nothing more than prior physical possession or possession *de facto*, not possession *de jure* or that arising from ownership. Title is

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[21] *Rollo*, pp. 121-123.

[22] *Diaz v. Spouses Punzalan*, *supra* note 18 and *Dela Cruz v. Hermano*, *supra* note 19.

[23] *Echanes v. Spouses Hailar*, 792 Phil. 724, 732 (2016).

[24] *Muñoz v. Atty. Yabut, Jr.*, 665 Phil. 488, 517 (2011).

not an issue. The Court has, however, consistently ruled that possession can be acquired not only by material or actual occupation, but also by the fact that a thing is subject to the action of one's will or by the proper acts and legal formalities established for acquiring such right.[25]

In *Quizon v. Juan*,[26] the Court explained:

> Possession can be acquired by juridical acts. These are acts to which the law gives the force of acts of possession. Examples of these are donations, succession, execution and registration of public instruments, inscription of possessory information titles and the like. The reason for this exceptional rule is that possession in the eyes of the law does not mean that a man has to have his feet on every square meter of ground before it can be said that he is in possession. It is sufficient that petitioner was able to subject the property to the action of his will. (Citations omitted)

In the case of *Mangaser v. Ugay*,[27] the Court also held that the plaintiff therein, who is the registered owner of the property in dispute, acquired possession thereof by juridical act, specifically, through the issuance of a free patent under Commonwealth Act No. 141 and its subsequent registration with the Register of Deeds. The Court ruled that if such juridical acts to obtain prior possession would be disregarded, then it would create an absurd situation. It would be putting premium in favor of land intruders against Torrens title holders, who spent months or even years, in order to register their land, and who religiously pay their taxes thereon.[28]

Also cited in *Mangaser* is the case of *Habagat Grill v. DMC-Urban Property Developer, Inc.*,[29] wherein the Court gave weight to the prior possession of the registered owner's predecessor-in-interest as evidenced by the execution and registration of

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[25] *Mangaser v. Ugay*, 749 Phil. 372, 382 (2014).

[26] 577 Phil. 470, 480 (2008).

[27] *Supra* note 25.

[28] *Id.* at 386.

[29] 494 Phil. 603 (2005).

public instruments for such purpose to rule in favor of said registered owner's prior possession.

In this case, it is undisputed that Patrick is the registered owner of the subject property. The subject property was awarded solely to Patrick, as evidenced by the Certificate of Lot Award dated March 20, 2006. By virtue of said award, the subject property was sold to Patrick as evidenced by the Deed of Absolute Sale dated March 4, 2009. On March 6, 2009, the subject property was registered under Patrick's name as evidenced by TCT No. 98257. Certainly, a right to the possession of the property flows from Patrick's ownership thereof. Well-settled is the rule that a person who has a Torren's title over the property is entitled to the possession thereof.[30]

On the other hand, the CA heavily relied upon the affidavit executed by one of the siblings, Dionisio, stating to the effect that there was a verbal agreement among the siblings that the subject property remains to be an ancestral home which can be used by any of them, in ruling in favor of Federico. Notably, aside from said affidavit, no other evidence was presented to support Federico's claim that his entry and possession of the subject property registered in Patrick's name was not unlawful.

As correctly held by the RTC, thus, Patrick has sufficiently proven prior possession of the subject property by juridical act, specifically, through the issuance of a Certificate of Lot Award and subsequent sale of the subject property in his favor, and the registration thereof in the Torrens system in his name. As consistently held by the Court, if we are to disregard such juridical acts and unreasonably constrict the concept of prior possession to "physical occupation" in its rigid literal sense, then it will open floodgates of absurdity wherein land intruders will be favored under the law than Torrens title holders. Such intruders may then easily be favored in a summary procedure of ejectment by mere assertion of physical occupation. On the other hand, Torrens title holders would have to resort to the protracted litigation in an ordinary civil procedure by filing

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[30] *Mangaser v. Ugay*, *supra* note 25, at 385.

either an *accion publiciana* or *accion reivindicatoria*, while the intruders, in the meantime, enjoy the use of another man's land.[31]

We are also one with the RTC in ruling that Patrick was dispossessed of the subject property by Federico through stealth. As correctly observed by the RTC, Federico's entry in the premises of the subject property without the consent and knowledge of the registered owner, who was abroad at that time, clearly falls under stealth, defined in our jurisprudence as "any secret, sly or clandestine act to avoid discovery and to gain entrance into, or to remain within [the] residence of another without permission.[32]

Lastly, that the action was filed within one year from Patrick's discovery of the forcible entry was undisputed in this case.

WHEREFORE, premises considered, the Petition is **GRANTED**. The Decision dated October 31, 2014 and the Resolution dated February 24, 2015 of the Court of Appeals in CA-G.R. SP No. 134040 are **REVERSED** and **SET ASIDE**. Accordingly, the Decision dated August 3, 2012 of the Regional Trial Court of Baguio City in Civil Case No. 7567-R is hereby **REINSTATED**.

SO ORDERED.

Caguioa (*Acting Chairperson*), *Lazaro-Javier, Inting,*[*] and *Lopez, JJ.*, concur.

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[31] *Id.* at 386.

[32] *Diaz v. Spouses Punzalan*, *supra* note 18.

[*] Additional member per Raffle dated January 20, 2020 in lieu of Chief Justice Diosdado M. Peralta.

FIRST DIVISION

[G.R. No. 223825. January 20, 2020]

LUIS G. GEMUDIANO, JR., *petitioner, vs.* **NAESS SHIPPING PHILIPPINES, INC. and/or ROYAL DRAGON OCEAN TRANSPORT, INC. and/or PEDRO MIGUEL F. OCA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; EMPLOYMENT; THE CONTRACT OF EMPLOYMENT BETWEEN THE DOMESTIC SEAFARER AND THE EMPLOYER HAD PASSED THE NEGOTIATION STAGE, AND REACHED THE PERFECTION STAGE WHERE ALL THE ESSENTIAL ELEMENTS OF A CONTRACT, THAT IS, THE CONSENT, OBJECT, AND CAUSE, ARE ALL PRESENT AT THE TIME OF ITS CONSTITUTION; THUS, BY VIRTUE OF SUCH PERFECTED CONTRACT, BOTH PARTIES ASSUMED THE OBLIGATIONS WHICH PERTAIN TO THOSE OF AN EMPLOYER AND EMPLOYEE, EVEN WITHOUT ACTUAL DEPLOYMENT OF THE DOMESTIC SEAFARER.— [O]n February 18, 2013, petitioner and respondents entered into a contract of employment stipulating that it shall take effect on March 12, 2013. Subsequently, the parties executed an Addendum with an agreement that said Addendum shall form of employment. But respondents cancelled petitioner's embarkation and informed him that he would not be deployed because of his existing medical condition which he failed to disclose. Thus, petitioner was not able to leave even though he duly passed the PEME and was declared fit for sea service. In the instant case, there is no doubt that there was already a perfected contract of employment between petitioner and respondents. The contract had passed the negotiation stage or "the time the prospective contracting parties manifest their interest in the contract." It had reached the perfection stage or the so-called "birth of the contract" as it was clearly shown that the essential elements of a contract, *i.e.*, consent, object, and cause, were all present at the time of its

constitution. Petitioner and Fetero, respondents' Crewing Manager, freely entered into the contract of employment, affixed their signatures thereto and assented to the terms and conditions of the contract *(consent),* under which petitioner binds himself to render service *(object)* to respondents on board the domestic vessel "M/V Meiling 11" for the gross monthly salary of ₱30,000.00 *(cause).* An examination of the terms and conditions agreed upon by the parties will show that their relationship as employer and employee is encapsulated in the perfected contract of employment. Thus, by virtue of said contract, respondents and petitioner as assumed obligations which pertain to those of an employer and an employee.

2. ID.; ID.; ID.; A CONDITION IN THE EMPLOYMENT CONTRACT WHERE THE COMMENCEMENT OF THE EMPLOYMENT RELATIONS IS AT THE DISCRETION OR PREROGATIVE OF THE EMPLOYER'S MASTER OF THE SHIP THROUGH THE ISSUANCE OF A BOARDING CONFIRMATION TO THE DOMESTIC SEAFARER, IS VOID, AS THE CONDITION IS SOLELY DEPENDENT ON THE WILL OR WHIM OF THE EMPLOYER; WHEN THE FULFILLMENT OF THE CONDITION DEPENDS EXCLUSIVELY UPON THE WILL OF THE DEBTOR, THE CONDITIONAL OBLIGATION IS VOID.— Under Section D of the Addendum, "the employment relationship between the Employer on one hand and the Seaman on the other shall commence once the Master has issued boarding confirmation to the seaman." Relying on this provision, the respondents insist that there is no employer-employee relationship between them and petitioner and that the labor arbiter had no jurisdiction over the petitioner's complaint. True, the parties to a contract are free to adopt such stipulations, clauses, terms and conditions as they may deem convenient provided such contractual stipulations should not be contrary to law, morals, good customs, public order or public policy.[11] But such is not the case here. The stipulation contained in Section D of the Addendum is a condition which holds in suspense the performance of the respective obligations of petitioner and respondents under the contract of employment, or the onset of their employment relations. It is a condition solely dependent on the will or whim of respondents since the commencement of the employment relations is at the discretion or prerogative of

the latter's master of the ship through the issuance of a boarding confirmation to the petitioner. The Court in *Naga Telephone Co., Inc. v. Court of Appeals* referred to this kind of condition as a "potestative condition," the fulfillment of which depends exclusively upon the will of the debtor, in which case, the conditional obligation is void. Article 1182 of the Civil Code of the Philippines reads: Art. 1182. When the fulfillment of the condition depends upon the sole will of the debtor, the conditional obligation shall be void. If it depends upon chance or upon the will of a third person, the obligations shall take effect in conformity with the provisions of this Code.

3. **ID.; ID.; ID.; A PURELY POTESTATIVE CONDITION THAT IS IMPOSED NOT ON THE BIRTH OF THE CONTRACT OF EMPLOYMENT BECAUSE THE CONTRACT HAS ALREADY BEEN PERFECTED, BUT ONLY ON THE FULFILLMENT OR PERFORMANCE OF THE PARTIES' RESPECTIVE OBLIGATIONS, SUCH AS FOR THE DOMESTIC SEAFARER TO RENDER SERVICES ON BOARD THE SHIP AND FOR THE COMPANY TO PAY HIM THE AGREED COMPENSATION FOR SUCH SERVICES, IS VOID AND MUST BE OBLITERATED FROM THE FACE OF THE CONTRACT WITHOUT AFFECTING THE REST OF THE STIPULATIONS.—** [T]he Court stressed in *Romero v. Court of Appeals*: We must hasten to add, however, that where the so-called "potestative condition" is imposed not on the birth of the obligation but on its fulfillment, only the condition is avoided, leaving unaffected the obligation itself. Clearly, the condition set forth in the Addendum is one that is imposed not on the birth of the contract of employment since the contract has already been perfected, but only on the fulfillment or performance of their respective obligations, *i.e.*, for petitioner to render services on board the ship and for respondents to pay him the agreed compensation for such services. A purely potestative imposition, such as the one in the Addendum, must be obliterated from the face of the contract without affecting the rest of the stipulations considering that the condition relates to the fulfillment of an already existing obligation and not to its inception. Moreover, the condition imposed for the commencement of the employment relations offends the principle of mutuality of contracts ordained in Article 1308 of the Civil Code which states that contracts must bind

both contracting parties, and its validity or compliance cannot be left to the will of one of them. The Court is thus constrained to treat the condition as void and of no effect, and declare the respective obligations of the parties as unconditional. Consequently, the employer-employee relationship between petitioner and respondents should be deemed to have arisen as of the agreed effectivity date of the contract of employment, or on March 12, 2013.

4. LABOR AND SOCIAL LEGISLATION; LABOR ARBITERS; JURISDICTION; CLAIMS FOR ACTUAL, MORAL, EXEMPLARY AND OTHER FORMS OF DAMAGES ARISING FROM EMPLOYER-EMPLOYEE RELATIONS FALL UNDER THE ORIGINAL AND EXCLUSIVE JURISDICTION OF LABOR ARBITERS.— Article 224 (now Art. 217) of the Labor Code provides: ART. 217. Jurisdiction of Labor Arbiters and the Commission. - (a) Except as otherwise provided under this Code, the Labor Arbiter shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or nonagricultural: x x x; **4. Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;** x x x. Based on this provision, it is clear that claims for actual, moral, exemplary and other forms of damages arising from employer-employee relations are under the original and exclusive jurisdiction of labor arbiters. While there are cases which hold that the existence of an employer-employee relationship does not negate the civil jurisdiction of the trial courts, in this particular case, we find that jurisdiction properly lies with the Labor Arbiter. Not only are the terms under Article 224, above quoted, clear and unequivocal, practical considerations bolster the Court's resolve that jurisdiction of the instant case falls under the labor tribunals and not with the civil courts.

5. ID.; ID.; THE DETERMINATION OF PROPRIETY OF THE DOMESTIC SEAFARER'S NON-DEPLOYMENT INVOLVES THE INTERPRETATION AND APPLICATION OF LABOR LAWS, WHICH ARE WITHIN THE EXPERTISE OF LABOR TRIBUNALS.— The determination of propriety of petitioner's non-deployment necessarily involves

the interpretation and application of labor laws, which are within the expertise of labor tribunals. The question of whether respondents are justified in cancelling the deployment of petitioner requires determination of whether a subsequent advice from the same medical provider as to the health of petitioner could validly supersede its initial finding during the required PEME that petitioner is fit to work.

6. ID.; ID.; IF THE COURT WERE TO MAKE A DISTINCTION BETWEEN THE PERFECTION OF A CONTRACT OF EMPLOYMENT AND THE COMMENCEMENT OF AN EMPLOYMENT RELATIONSHIP ON ITS FACE, AND SO RULE THAT A MERE PERFECTED CONTRACT WOULD MAKE THE JURISDICTION OF THE CASE FALL UNDER REGULAR COURTS, THE COURT WILL ARRIVE AT A DANGEROUS CONCLUSION WHERE DOMESTIC SEAFARERS' ONLY RECOURSE IN LAW IN CASE OF BREACH OF CONTRACT IS TO FILE A COMPLAINT FOR DAMAGES BEFORE THE REGIONAL TRIAL COURT; IN SO DOING, THE DOMESTIC SEAFARERS WOULD HAVE TO PAY FILING FEES, WHICH THEIR OVERSEAS COUNTERPART NEED NOT COMPLY WITH IN FILING A COMPLAINT BEFORE THE LABOR ARBITERS, AND THE FORMER WOULD NEED TO PROVE THEIR CLAIM BY PREPONDERANCE OF EVIDENCE, WHICH IS GREATER THAN WHAT OVERSEAS SEAFARERS NEED TO DISCHARGE IN CASES BEFORE LABOR ARBITERS, WHERE THEY ONLY HAVE TO PROVE THEIR CLAIMS BY SUBSTANTIAL EVIDENCE.— [I]f the Court were to make a distinction between the perfection of a contract of employment and the commencement of an employment relationship on its face, and so rule that a mere perfected contract would make the jurisdiction of the case fall under regular courts, the Court will arrive at a dangerous conclusion where domestic seafarers' only recourse in law in case of breach of contract is to file a complaint for damages before the Regional Trial Court. In so doing, domestic seafarers would have to pay filing fees which his overseas counterpart need not comply with in filing a complaint before the labor arbiters. As a necessary consequence, the domestic seafarers would need to prove their claim by preponderance of evidence or "evidence which is of greater

weight, or more convincing than that which is offered in opposition to it," which is greater than what overseas seafarers need to discharge in cases before labor arbiters, where they only have to prove their claims by substantial evidence or "that amount of evidence which a reasonable mind might accept as adequate to support a conclusion."

APPEARANCES OF COUNSEL

Valmores & Valmores Law Offices for petitioner.
Lara Uy Santos Tayag and Danganan Law Offices for respondents.

D E C I S I O N

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

Assailed in this Petition for Review on *Certiorari* are the Decision[1] dated December 11, 2015 and the Resolution[2] dated March 28, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 139164 dismissing the complaint for breach of contract filed by Luis G. Gemudiano, Jr. (petitioner) against Naess Shipping Philippines, Inc. (Naess Shipping) and/or Royal Dragon Ocean Transport, Inc. (Royal Dragon) and/or Pedro Miguel F. Oca (collectively referred to as respondents). The CA annulled and set aside the October 30, 2014 Decision[3] of the National Labor Relations Commission (NLRC) the dispositive portion of which reads:

WHEREFORE, the Decision of the Labor Arbiter is AFFIRMED with modification. The Respondents are hereby ORDERED to pay the Complainant actual damages in the amount of the peso equivalent of ₱180,000.00 representing his salary for six months under the contract; moral damages in the amount of Thirty Thousand Pesos (₱30,000.00);

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[1] Penned by Associate Justice Ramon R. Garcia with Associate Justices Leoncia R. Dimagiba and Jhosep Y. Lopez, concurring; *rollo,* pp. 251-265.

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

[3] *Id.* at 165-176.

exemplary damages of Fifty Thousand Pesos (₱50,000.00); attorney's fees equivalent to ten percent (10%) of the recoverable amount; and ₱18,000.00 for refund of the cost of the PEME.

SO ORDERED.[4]

The Antecedents

Sometime in December 2012, petitioner applied with Naess Shipping for possible employment as seaman upon learning of a job opening in its domestic vessel operations. He had an interview with Naess Shipping and completed the training on International Safety Management (ISM) Code at the Far East Maritime Foundation, Inc. As advised by Naess Shipping's crewing manager Leah G. Fetero (Fetero), petitioner underwent the mandatory pre-employment medical examination (PEME) where he was declared fit for sea service. The expenses for the PEME were shouldered by petitioner.

On February 15, 2013, petitioner signed an Embarkation Order duly approved by Fetero stipulating the terms and conditions of his employment, and directing him to request for all the necessary documents and company properties from the person he was going to replace in his vessel of assignment.

On February 18, 2013, Naess Shipping, for and in behalf of its principal Royal Dragon, executed a "Contract of Employment for Marine Crew on Board Domestic Vessels" (contract of employment) engaging the services of petitioner as Second Officer aboard the vessel "M/V Meiling 11," an inter-island bulk and cargo carrier, for a period of six months with a gross monthly salary of ₱30,000.00. It was stipulated that the contract shall take effect on March 12 , 2013. Subsequently, petitioner and respondents executed an "Addendum to Contract of Employment for Marine Crew Onboard Domestic Vessels" (Addendum) stating that the employment relationship between them shall commence once the Master of the Vessel issues a boarding confirmation to the petitioner. Petitioner also bound himself to abide by the Code of Discipline as provided for in the Philippine Merchant Marine Rules and Regulations.

[4] *Id.* at 175.

On March 8, 2013, petitioner received a call from Fetero informing him that Royal Dragon cancelled his embarkation. Thus, he filed a complaint for breach of contract against respondents before the Arbitration Branch of the NLRC.

In his Position Paper,[5] petitioner alleged that respondents' unilateral and unreasonable failure to deploy him despite the perfected contract of employment constitutes breach and gives rise to a liability to pay actual damages. He also asserts that he is entitled to the award of moral and exemplary damages and attorney's fees on account of respondents' dishonesty and bad faith, as well as their wanton, fraudulent and malevolent violation of the contract of employment.

Respondents, on the other hand, argued that petitioner's employment did not commence because his deployment was withheld by reason of misrepresentation. They stressed that petitioner did not disclose the fact that he is suffering from diabetes mellitus and asthma which render him unfit for sea service. They claimed that the Labor Arbiter has no jurisdiction over the petitioner's complaint for breach of contract, invoking the absence of employer-employee relationship.

On March 28, 2014, the LA found respondents to have breached their contractual obligation to petitioner and ordered them to pay him ₱180,000.00 representing his salary for the duration of the contract. The LA applied Section 10 of Republic Act (R.A.) No. 8042, otherwise known as the " Migrant Workers and Overseas Filipinos Act of 1995," which provides that the labor arbiters shall have original and exclusive jurisdiction over "claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages." The Labor Arbiter declared that upon perfection of the employment contract on February 18, 2013, the rights and obligations of the parties had already arisen. Thus, when respondents failed to deploy petitioner in accordance with their perfected contract, they

[5] *Id.* at 34-47.

became liable to pay him actual damages in the amount of ₱180,000.00.[6]

Aggrieved thereby, respondents filed an appeal with the NLRC assailing the March 28, 2014 Labor Arbiter's Decision. In its Decision dated October 30, 2014, the NLRC affirmed the Labor Arbiter Decision but with modification as to damages. It awarded petitioner moral damages in the amount of ₱30,000.00, exemplary damages of ₱50,000.00, attorney's fees equivalent to ten percent (10%) of the recoverable amount, and refund of the cost of the PEME in the amount of ₱18,000.00. It held that even without petitioner's actual deployment, the perfected contract already gave rise to respondents' obligations under the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC).[7]

Respondents moved for reconsideration but the same was denied in a Resolution dated December 11, 2014.[8]

On appeal, the CA annulled and set aside the October 30, 2014 Decision and December 11, 2014 Resolution of the NLRC. It declared that the LA did not acquire jurisdiction over the petitioner's complaint because of the non-existence of an employer-employee relationship between the parties. It emphasized that the perfected contract of employment did not commence since petitioner's deployment to his vessel of assignment did not materialize. It enunciated that petitioner does not fall within the definition of "migrant worker" or "seafarer" under R.A. No. 8042 because his services were engaged for local employment.[9]

Hence, this petition raising the sole issue:

THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF LAW IN HOLDING THAT THE LABOR ARBITER HAS NO

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[6] *Id.* at 135-140.

[7] *Id.* at 165-176.

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

[9] *Supra* note 1.

JURISDICTION OVER THE COMPLAINT, AND IN NOT SUSTAINING THE AWARD OF DAMAGES IN FAVOR OF RESPONDENT.[10]

Petitioner maintains that his claim for damages was well-within the jurisdiction of the Labor Arbiter because an employer-employee relationship exists between the parties. He contends that the respondents' failure to deploy him constitutes breach of his employment contract that warrants his claim for unpaid wages, damages, and attorney's fees against respondents.

Respondents, on the other hand, argue that the Labor Arbiter has no jurisdiction over the case because of the absence of an employer-employee relationship between them. They assert that petitioner's non-deployment was a valid and sound exercise of management prerogative because of his misrepresentation that he was fit to work despite the fact that he was suffering from diabetes mellitus and asthma.

Our Ruling

We find merit in the petition.

To reiterate, on February 18, 2013, petitioner and respondents entered into a contract of employment stipulating that it shall take effect on March 12, 2013. Subsequently, the parties executed an Addendum with an agreement that said Addendum shall form an integral part of petitioner's contract of employment. But respondents cancelled petitioner's embarkation and informed him that he would not be deployed because of his existing medical condition which he failed to disclose. Thus, petitioner was not able to leave even though he duly passed the PEME and was declared fit for sea service.

In the instant case, there is no doubt that there was already a perfected contract of employment between petitioner and respondents. The contract had passed the negotiation stage or "the time the prospective contracting parties manifest their interest in the contract."[11] It had reached the perfection stage

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[10] *Rollo,* p. 14.

[11] *Swedish Match, AB v. Court of Appeals*, 483 Phil. 735, 750 (2004).

or the so-called " birth of the contract" as it was clearly shown that the essential elements of a contract, *i.e.*, consent, object, and cause, were all present at the time of its constitution. Petitioner and Fetero, respondents' Crewing Manager, freely entered into the contract of employment, affixed their signatures thereto and assented to the terms and conditions of the contract *(consent)*, under which petitioner binds himself to render service *(object)* to respondents on board the domestic vessel "M/V Meiling 11" for the gross monthly salary of ₱30,000.00 *(cause)*. An examination of the terms and conditions agreed upon by the parties will show that their relationship as employer and employee is encapsulated in the perfected contract of employment. Thus, by virtue of said contract, respondents and petitioner assumed obligations which pertain to those of an employer and an employee.

Under Section D of the Addendum, "the employment relationship between the Employer on one hand and the Seaman on the other shall commence once the Master has issued boarding confirmation to the seaman." Relying on this provision, the respondents insist that there is no employer-employee relationship between them and petitioner and that the labor arbiter had no jurisdiction over the petitioner's complaint. True, the parties to a contract are free to adopt such stipulations, clauses, terms and conditions as they may deem convenient provided such contractual stipulations should not be contrary to law, morals, good customs, public order or public policy.[12] But such is not the case here.

The stipulation contained in Section D of the Addendum is a condition which holds in suspense the performance of the respective obligations of petitioner and respondents under the contract of employment, or the onset of their employment relations. It is a condition solely dependent on the will or whim of respondents since the commencement of the employment relations is at the discretion or prerogative of the latter's master

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[12] *Lakas sa Industriya ng Kapatirang Haligi ng Alyansa-Pinagbuklod ng Manggagawang Promo ng Burlingame v. Burlingame Corp.*, 552 Phil. 58, 65 (2007).

of the ship through the issuance of a boarding confirmation to the petitioner. The Court in *Naga Telephone Co., Inc. v. Court of Appeals*[13] referred to this kind of condition as a "potestative condition," the fulfillment of which depends exclusively upon the will of the debtor, in which case , the conditional obligation is void. Article 1182 of the Civil Code of the Philippines reads:

> Art. 1182. When the fulfillment of the condition depends upon the sole will of the debtor, the conditional obligation shall be void. If it depends upon chance or upon the will of a third person, the obligations shall take effect in conformity with the provisions of this Code.

In this regard, the Court stressed in *Romero v. Court of Appeals:*[14]

> We must hasten to add, however, that where the so-called "potestative condition" is imposed not on the birth of the obligation but on its fulfillment, only the condition is avoided, leaving unaffected the obligation itself. (Citation omitted)

Clearly, the condition set forth in the Addendum is one that is imposed not on the birth of the contract of employment since the contract has already been perfected, but only on the fulfillment or performance of their respective obligations, *i.e.*, for petitioner to render services on board the ship and for respondents to pay him the agreed compensation for such services. A purely potestative imposition, such as the one in the Addendum, must be obliterated from the face of the contract without affecting the rest of the stipulations considering that the condition relates to the fulfillment of an already existing obligation and not to its inception.[15] Moreover, the condition imposed for the commencement of the employment relations offends the principle of mutuality of contracts ordained in Article 1308 of the Civil Code which states that contracts must bind both contracting parties , and its validity or compliance cannot

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[13] 300 Phil. 367, 389 (1994).

[14] 320 Phil. 269, 282 (1995).

[15] *Rustan Pulp & Paper Mills, Inc. v. Intermediate Appellate Court,* 289 Phil. 279, 286 (1992).

be left to the will of one of them. The Court is thus constrained to treat the condition as void and of no effect, and declare the respective obligations of the parties as unconditional. Consequently, the employer-employee relationship between petitioner and respondents should be deemed to have arisen as of the agreed effectivity date of the contract of employment, or on March 12, 2013.

At this point, it is settled that an employer-employee relationship exists between respondents and petitioner.

We now come to the issue of whether the Labor Arbiter had jurisdiction over petitioner's claim for damages arising from breach of contract.

Article 224 (now Art. 217) of the Labor Code provides:

> ART. 217. Jurisdiction of Labor Arbiters and the Commission. — (a) Except as otherwise provided under this Code, the Labor Arbiter shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or nonagricultural:
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> 1. Unfair labor practice cases;
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> 2. Termination disputes;
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> 3. If accompanied with acclaim for reinstatement, those cases that workers may file involving wages, rate[s] of pay, hours of work and other terms and conditions of employment;
>
> **4. Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;**
>
> 5. Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; and
>
> 6. Except claims for employees compensation, social security, medicare and maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or house hold service ,involving an amount exceeding five thousand pesos (₱5,000.00), whether accompanied with a claim for reinstatement. (Emphasis supplied)

Based on this provision, it is clear that claims for actual, moral, exemplary and other forms of damages arising from employer-employee relations are under the original and exclusive jurisdiction of labor arbiters.

While there are cases which hold that the existence of an employer-employee relationship does not negate the civil jurisdiction of the trial courts,[16] in this particular case, we find that jurisdiction properly lies with the Labor Arbiter.

Not only are the terms under Article 224, above quoted, clear and unequivocal, practical considerations bolster the Court's resolve that jurisdiction of the instant case falls under the labor tribunals and not with the civil courts.

The determination of propriety of petitioner's non-deployment necessarily involves the interpretation and application of labor laws, which are within the expertise of labor tribunals. The question of whether respondents are justified in cancelling the deployment of petitioner requires determination of whether a subsequent advice from the same medical provider as to the health of petitioner could validly supersede its initial finding during the required PEME that petitioner is fit to work.

Moreover, if the Court were to make a distinction between the perfection of a contract of employment and the commencement of an employment relationship on its face, and so rule that a mere perfected contract would make the jurisdiction of the case fall under regular courts, the Court will arrive at a dangerous conclusion where domestic seafarers' only recourse in law in case of breach of contract is to file a complaint for damages before the Regional Trial Court. In so doing, domestic seafarers would have to pay filing fees which his overseas counterpart need not comply with in filing a complaint before the labor arbiters.[17] As a necessary consequence, the domestic

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[16] *Georg Grotjahn GMBH & Co. v. Isnani,* 305 Phil. 231, 238 (1994); *Singapore Airlines Ltd. v. Paño,* 207 Phil. 585, 589-590 (1983); and *Philippine Commercial International Bank v. Gomez,* 773 Phil. 387, 394 (2015).

[17] See Sec. 10, R.A. No. 8042 or the Migrant Workers and Overseas Filipino Act of 1995.

seafarers would need to prove their claim by preponderance of evidence or "evidence which is of greater weight, or more convincing than that which is offered in opposition to it," which is greater than what overseas seafarers need to discharge in cases before labor arbiters, where they only have to prove their claims by substantial evidence or "that amount of evidence which a reasonable mind might accept as adequate to support a conclusion."

WHEREFORE, the petition is **GRANTED.** The December 11**,** 2015 Decision and the March 28, 2016 Resolution of the Court of Appeals in CA-G.R. SP. No. 139164 are **REVERSED AND SET ASIDE.** The Decision dated October 30, 2014 of the National Labor Relations Commission is **REINSTATED.**

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Lazaro-Javier, and *Lopez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 231827. January 20, 2020]

EDGARDO PATUNGAN, JR. *y* LAGUNDI, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PUBLIC DOCUMENTS; A DEATH CERTIFICATE IS A PUBLIC DOCUMENT THAT IS ADMISSIBLE IN EVIDENCE EVEN WITHOUT FURTHER PROOF OF THEIR EXECUTION AND GENUINENESS; CASE AT BAR.— A death certificate is a public document. As a public document, it is admissible in evidence even without further proof of their due execution and

genuineness. Thus, even if Dr. Beran, the one who issued the death certificate, did not testify in court as he had already died, the death certificate is admissible to prove the cause of Venancio's death. Moreover, the death certificate also deserves to be given evidentiary weight because it constitutes *prima facie* evidence of the facts stated therein. Notably, petitioner had not presented any evidence to contradict the entries in the said death certificate which showed the cause of Venancio's death, which is stab wound.

2. ID.; ID.; CREDIBILITY OF WITNESSES; THE MATTER OF ASSIGNING VALUES TO DECLARATIONS ON THE WITNESS STAND IS BEST AND MOST COMPETENTLY PERFORMED BY THE TRIAL JUDGE WHO, UNLIKE APPELLATE MAGISTRATES, CAN WEIGH SUCH TESTIMONY IN LIGHT OF THE DECLARANT'S DEMEANOR, CONDUCT AND POSITION TO DISCRIMINATE BETWEEN TRUTH AND FALSEHOOD; CASE AT BAR.— Well-entrenched is the rule that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, can weigh such testimony in light of the declarant's demeanor, conduct and position to discriminate between truth and falsehood. This is especially true when the trial court's findings have been affirmed by the appellate court, because said findings are generally conclusive and binding upon this Court, unless it be manifestly shown that the latter court had overlooked or disregarded arbitrarily the facts and circumstances of significance in the case. Here, we find that petitioner failed to show that the RTC and the CA had overlooked any significant facts which could affect the result of the case.

3. ID.; ID.; ID.; DENIAL; BEING NEGATIVE AND SELF-SERVING, DENIAL IS UNDESERVING OF WEIGHT BY VIRTUE OF ITS LACK OF SUBSTANTIATION BY CLEAR AND CONVINCING PROOF; CASE AT BAR.— Kristine and Gladys' positive identification of petitioner as their father's assailant prevailed over petitioner's mere denial, because such denial, being negative and self-serving evidence, was undeserving of weight by virtue of its lack of substantiation by clear and convincing proof.

4. ID.; ID.; ID.; WHERE THERE IS NOTHING TO INDICATE THAT A WITNESS FOR THE PROSECUTION WAS

ACTUATED BY IMPROPER MOTIVE, THE PRESUMPTION IS THAT HE WAS NOT SO ACTUATED, AND HIS TESTIMONY IS ENTITLED TO FULL FAITH AND CREDIT; CASE AT BAR.— [The Supreme Court finds] no showing that Kristine and Gladys were motivated by ill feelings towards petitioner as to impute to him the responsibility of killing their father. It is well settled that where there is nothing to indicate that a witness for the prosecution was actuated by improper motive, the presumption is that he was not so actuated, and his testimony is entitled to full faith and credit.

APEARANCES OF COUNSEL

Melchor A. Battung for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PERALTA, *C.J.*:

Assailed in this petition for review on *certiorari* under Rule 45 of the Rules of Court are the Decision[1] dated January 17, 2017 and the Resolution[2] dated April 4, 2017 issued by the Court of Appeals in CA-G.R. CR No. 38444.

In an Information[3] dated March 24, 2008 filed with the Regional Trial Court *(RTC)*, Carig, Tuguegarao City, Cagayan, petitioner was charged with the crime of homicide, the accusatory portion of which reads:

That on or about OCTOBER 13, 2007 in the Municipality of Solana, Province of Cagayan and within the jurisdiction of this Honorable Court, the said accused EDGARDO PATUNGAN, JR. Y LAGUNDI armed with a pointed knife, with intent to kill, did then and there

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[1] Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Amy C. Lazaro-Javier (now a member of this Court) and Marie Christine Azcarraga-Jacob, concurring; *rollo*, pp. 46-67.

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

[3] Records, pp. 1-2; docketed as Criminal Case No. 12128.

willfully, unlawfully and feloniously attack, assault and stab VENANCIO L. FURIGAY, thereby inflicting upon him stab wounds on the different parts of his body which caused his death.[4]

Upon arraignment, petitioner, duly assisted by counsel, pleaded not guilty[5] to the charge. Pre-trial conference and trial thereafter ensued.

The prosecution presented the following witnesses: PO3 Isagani Bago *(PO3 Bago),* Kristine Furigay *(Kristine),* Gladys Furigay *(Gladys),* and Dr. Josefina Chua *(Dr. Chua).* Their testimonies established the following facts:

At 9 o'clock in the evening of October 13, 2007, sisters Kristine and Gladys went to the store of a certain Viring located near petitioner's house in Barangay Centro, Northwest Solana, Cagayan.[6] While on their way back home, they met Richard Ventura (*Richard*) who shouted *"pokpok"* at Kristine,[7] and he proceeded to the house of petitioner. Kristine and Gladys hurriedly went home to report the incident to their father, Venancio Furigay *(Venancio)*.[8] As Venancio was not in their house, the sisters went to petitioner's house to talk to Richard. Kristine and Gladys saw that there was a group of men — composed of petitioner, Erwin Patungan and Ismael Portina — having a drinking spree at petitioner's house.[9] Initially, Richard hid upon seeing Kristine, but eventually went out of petitioner's house and Kristine, who was then crying, asked Richard why he called her *"pokpok,"* but Richard just kept quiet. Petitioner even tried to cover up for Richard saying that the latter could not have uttered the word "*pokpok"* at Kristine.[10]

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[4] *Id*. at 1.

[5] *Id*. at 124.

[6] TSN, March 21, 2012, p. 5; TSN, July 30, 2012, p. 5.

[7] *Id.; Id.*

[8] *Id.* at 19; *Id.* at 5.

[9] *Id*. at 7; *Id*. at 6.

[10] *Id*. at 7.

Later, Venancio arrived at the petitioner's house to fetch her daughters. Kristine told her father to wait as she had to confront Richard on why he called her *"pokpok."*[11] Venancio had a heated argument with Richard.[12] Gladys asked Kristine and their father to just go home instead.[13] However, after Venancio and his daughters had left the place and were already on the road, petitioner, who was running, suddenly stabbed Venancio on his stomach.[14] Venancio subsequently fell to the ground. Gladys tried to rescue her father, but Erwin Patungan even boxed him.[15] When Kristine tried to pacify Erwin, the latter slapped her and so she screamed for help. Their uncle Lauro went to their rescue and rushed Venancio to the St. Paul Hospital, and was later transferred to the Cagayan Valley Medical Center where he was operated on because of the stab wound, but he died after the operation.[16]

At 10:30 p.m., PO3 Bago of the Solana Police Station, received a report of an incident in Barangay Centro Northwest, so he and Special Police Officer *(SPO4)* Florante Balagan were immediately dispatched to the area. Upon arriving at the scene of the incident, they were met by Gladys who told them that her father Venancio was rushed to the hospital as he was stabbed by petitioner. They then proceeded to petitioner's house, where the latter voluntarily surrendered and was brought to the police station.[17] PO3 Bago and SPO4 Balagan went to the St. Paul Hospital and asked the victim, Venancio, if he could identify his assailant to which the victim replied that it was petitioner.[18] PO3 Bago took the victim's ante-mortem statement which was

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[11] *Id*. at 8-9.

[12] *Id*. at 21.

[13] *Id*. at 9; *Id*. at 6.

[14] *Id*.; *Id*. at 7.

[15] *Id*.

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

[17] TSN, October 7, 2010, pp. 8-11.

[18] *Id*. at 12.

reduced to writing. However, the statement was not reflected in PO3 Bago's affidavit of arrest nor in the police blotter because according to him, they were running out of time and had no pen and paper.[19]

Dr. Josefina C. Chua, Medical Officer III of the City Health Office of Tuguegarao City, was presented to interpret the findings in the death certificate issued by the late Dr. Beran. She testified that the underlying cause of Venancio's death was stab wound in the umbilical area hitting parts of small intestines.[20]

Petitioner denied the charge. He testified that at 7 o'clock in the evening of October 13, 2007, he was in his house with one Venerando Danga practicing church songs; that he heard someone shouting outside his house and he saw Richard holding a knife and screaming that he was slapped three times by Kristine.[21] He advised Richard to hide his knife as it was embarrassing to fight with a woman, so the latter went home. After a while, there was someone yelling behind him and saw Kristine, who smelled intoxicated, asking him why he called her *"pokpok"* that Kristine was with Gladys who was crying. He asked Kristine why she was blaming him when he never called her *"pokpok";* Kristine then admitted that she mistook him for Richard and left.[22] Few minutes after, Richard, together with his companions, arrived with a bottle of gin and invited him to a drink, but he refused as he had LBM.[23] He just allowed them to drink in the veranda of his house and excused himself to go to the comfort room *(CR)*.[24] While he was inside the CR, he heard Karla Melissa Patungan *(Karla)* shouting. When he came out, he asked Karla what was happening, and the latter replied that there was a commotion outside the house. He went

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[19] TSN, March 28, 2011, pp. 9-11.

[20] TSN, November 26, 2012, p. 6.

[21] TSN, October 9, 2014, p. 5.

[22] *Id*. at 6.

[23] *Id*.

[24] *Id*. at 8.

outside and saw Venancio sprawled on the ground. He helped Venancio to stand up, but the latter told him to leave him or he would implicate him.[25] When he noticed Venancio's bloodied body, he left him alone because of what he said. Later, their house was stoned by the brother and son of Venancio. The police invited him and Richard to their station because they were both wearing white t-shirts and have the same physical appearance. While at the station, Richard gave his statement ahead of him and the police did not take his statement anymore.

Karla, wife of Erwin Patungan, and Melecio Patungan, corroborated petitioner's testimony that he was in the comfort room when the commotion happened in his house. Karla added that petitioner went outside of the house and carried Venancio's body, and then putting it down as he might be suspected of causing his injuries.[26] Melecio was the one who reported that there was someone causing trouble in petitioner's house and the stoning incident.[27]

On January 28, 2016, the RTC rendered its Decision,[28] the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered finding the accused EDGARDO PATUNGAN, JR. *y* Lagundi GUILTY beyond reasonable doubt of the crime of Homicide, appreciating in his [favor] the mitigating circumstance of voluntary surrender and applying the Indeterminate. Sentence Law hereby sentences him to suffer a prison term of Eight (8) years and One (1) day of *prision mayor*[,] as minimum[,] to Twelve (12) years of *prision mayor*[,] as maximum[,] and to pay the heirs of the deceased Venancio Furigay the following amounts: ₱75,000.00, mandatory damages death; ₱50,000.00 moral damages, ₱70,000[.]00 as nominal damages; and ₱1,512,000.00 as unearned salaries.
>
> The accused should also suffer the accessory penalty provided for in Art. 42 of the Revised Penal Code.

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[25] *Id*. at 9.

[26] TSN, March 11, 2014, p. 9.

[27] TSN, February 17, 2015, p. 7.

[28] Per Judge Jezarene C. Aquino; *rollo*, pp. 68-76.

SO ORDERED.[29]

The RTC found that petitioner's defense in his Counter-Affidavit was self-defense which he changed during trial to denial, *i.e.*, he has no participation in the stabbing incident. It found petitioner's defense not credible because it cannot be that his Counter-Affidavit and his testimony in court are both true, that one is necessarily false or it can be that both are false; that why did he surrender to the police and why did he not tell them that he did not stab Venancio; that there was no motive for the family of Venancio to falsely accuse petitioner nor was there any reason for PO3 Bago to implicate petitioner in the killing of Venancio.

Dissatisfied, petitioner filed an appeal with the CA. After the submission of the parties' respective pleadings, the case was submitted for decision.

On January 17, 2017, the CA affirmed with modification the RTC Judgment, the decretal portion of which reads:

> WHEREFORE, premises considered, the Judgment dated 28 January 2016 of the Regional Trial Court of Tuguegarao City, Cagayan, Branch 5 in Criminal Case No. 12128, finding accused-appellant Edgardo Patungan, Jr. *y* Lagundi guilty beyond reasonable doubt of the crime of homicide under Article 249 of the Revised Penal Code, and requiring him to pay the heirs of the victim Venancio Furigay the amount of Php50,000.00 as moral damages is AFFIRMED with MODIFICATIONS in that the award of nominal damages in the amount of Php70,000.00 and unearned salaries in the amount of Php l,512,000.00 are hereby DELETED; he should suffer the accessory penalties provided for in Articles 41 and 42 of the Revised Penal Code; and accused-appellant is hereby ORDERED, as follows:
>
> 1. to suffer the indeterminate penalty of imprisonment of eight (8) years and one (1) day of *prision mayor*, as minimum, to twelve (12) years and one (1) day of *reclusion temporal*, as maximum;
>
> 2. to pay the heirs of the victim Venancio Furigay civil

[29] *Id*. at 76.

indemnity in the decreased amount of Php50,000.00, and temperate damages in the amount of Php50,000.00; and

3. to pay interest at the rate of 6% *per annum* on all damages, from the date of finality of this Decision until fully paid; and

SO ORDERED.[30]

The CA found that the evidence adduced by the prosecution established the elements of the crime of homicide beyond reasonable doubt. Venancio's daughters, who were with him on his way home, both categorically and positively identified petitioner, their neighbor, as the one who stabbed their father on the stomach; that although the incident happened at night, there were streetlights near the *locus criminis*; and that with the sisters' eyewitness account of their father's death, it would not matter whether or not the testimony of PO3 Bago as to the alleged ante-mortem statement is hearsay.

The alleged inconsistencies in the testimonies of prosecution witnesses involved minor details and did not touch upon the material points which cannot overturn a conviction established by competent evidence. While the CA agreed to petitioner's claim that his Counter-Affidavit could not be considered since it was never formally offered in court as evidence, however, the prosecution was able to prove petitioner's guilt based on the testimonies of Gladys and Kristine.

The CA ruled that petitioner's defense of denial could not prevail over the prosecution's positive identification of him as the perpetrator of the crime; and that no ill motive could be attributed to Gladys and Kristine on why they would implicate petitioner to such a serious crime.

Petitioner's motion for reconsideration was denied in a Resolution dated April 4, 2017.

Hence, this petition for review on *certiorari* on the following grounds:

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

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN GIVING WEIGHT TO THE HEARSAY TESTIMONY OF DOCTOR CHUA.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE CONVICTION OF THE ACCUSED DESPITE THE FAILURE OF THE STATE TO PROVE BEYOND REASONABLE DOUBT THE IDENTITY OF THE ACCUSED-APPELLANT AS THE ASSAILANT.[31]

Anent the first issue, petitioner claims that he objected to the presentation of the testimony of Dr. Chua to interpret the death certificate, since she was not the one who prepared the same and treated the victim; that hence, there was no evidence to prove the cause of the victim's death because the doctor who treated him did not testify in court.

We are not persuaded.

Article 410 of the Civil Code provides:

> ART. 410. The books making up the civil register and all documents relating thereto shall be considered public documents and shall be *prima facie* evidence of the facts therein contained.

A death certificate is a public document.[32] As a public document, it is admissible in evidence even without further proof of their due execution and genuineness.[33] Thus, even if Dr. Beran, the one who issued the death certificate, did not testify in court as he had already died, the death certificate is admissible to prove the cause of Venancio's death. Moreover, the death certificate also deserves to be given evidentiary weight because it constitutes *prima facie* evidence of the facts stated therein.[34] Notably, petitioner had not presented any evidence to contradict the entries in the said death certificate which showed the cause of Venancio's death, which is stab wound.

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[31] *Id*. at 19.

[32] See *People v. Silvestre*, 314 Phil. 397, 410 (1995).

[33] *Iwasawa v. Gangan, et al.*, 717 Phil. 825, 830 (2013).

[34] *Id*.

Petitioner next contends that the testimonies of prosecution witnesses, Kristine and Gladys, on his identity as the one who stabbed their father is doubtful; that the alleged stabbing incident happened during nighttime and there was no evidence that there was sufficient illumination; that Kristine was crying and looking for Richard, thus, her emotional state as well as her state of intoxication as shown in the excerpt of the police blotter, could have diminished her degree of perception and she could not make a clear identification of the one who stabbed her father.

Well-entrenched is the rule that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, can weigh such testimony in light of the declarant's demeanor, conduct and position to discriminate between truth and falsehood.[35] This is especially true when the trial court's findings have been affirmed by the appellate court, because said findings are generally conclusive and binding upon this Court, unless it be manifestly shown that the latter court had overlooked or disregarded arbitrarily the facts and circumstances of significance in the case.[36] Here, we find that petitioner failed to show that the RTC and the CA had overlooked any significant facts which could affect the result of the case.

A review of the records would show that the prosecution witnesses, Kristine and Gladys, had sufficiently proven that petitioner was the one who stabbed their father, Venancio. In her direct examination, Kristine testified, thus:

Q. After leaving the place, what happened next?
A. Edgardo Patungan stabbed my father, sir.

Q. Did you see him personally stab your father?
A. Yes, sir.

Q. What part of the body of your father was stabbed by the accused?

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[35] *Madali, et al. v. People,* 612 Phil. 582, 595 (2009), citing *People v. Matito,* 468 Phil. 14, 24 (2004).

[36] *Id.,* citing *People v. Castillo,* 474 Phil. 44, 57-58 (2004).

MR. INTERPRETER.
The witness is pointing to the left side of her stomach.

PROS. DALIUAG:
Q. After your father was stabbed, what happened to him?
A. He fell to the ground.

Q. When he fell to the ground, what happened next?
A. My sister went to his rescue, bu[t] Erwin Patungan boxed my father and when I tried to pacify Erwin, he slapped me.

Q. How many times did Erwin slap you?
A. Once only, sir.

Q. After that, what happened next?
A. I screamed for help and my Uncle Lauro went to our rescue.[37]

And Gladys corroborated Kristine's testimony as follows:

Q. After that what happened next?
A. While we were with our father along the road going home suddenly Edgar Patungan was running, sir.

Q. After that what happened?
A. He suddenly stabbed our father, sir.

Q. What part of the body of your father was stabbed?

THE INTERPRETER:
The witness is pointing to her stomach.

PROS. DALIUAG:
Q. After stabbing your father what happened next?
A. He ran towards their house while our father was already lying and then his brother Erwin ran towards the person of our father and boxed the head of our father, sir.

Q. How did you know that it was the accused who stabbed your father?
A. Because I know him very much, sir.

THE COURT.
Q. How far were you from the accused when the accused stabbed your father?
A. He was beside me because I was holding his back, sir.

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[37] TSN, March 21, 2012, p. 9.

Q. After Erwin Patungan boxed your father, what happened next?
A. He went near my sister and slapped my sister, sir.

Q. How many times the accused stabbed your father?
A. Once, sir.[38]

Kristine and Gladys positively identified petitioner as the one who stabbed their father. They could not be mistaken on the identity of petitioner as they were just beside their father walking on their way home when their father was stabbed by petitioner. Notably, petitioner is their neighbor whom they know very much.[39] We have ruled that the familiarity of the witness to the perpetrator of the crime erased any doubt that the witness could have erred in identifying him; and that a witness related to the victim of a crime has a natural tendency to remember the faces of the person involved in the attack on the victim, because relatives, more than anybody else, would be concerned with seeking justice for the victim and bringing the malefactor before the law.[40] Moreover, to blame an innocent man for the killing of the victim would serve them no purpose.[41]

Moreover, contrary to petitioner's claim that the prosecution failed to show that there was sufficient illumination on the night when the stabbing incident happened, Kristine's testimony proved otherwise. She declared on cross-examination, to wit:

Q. Now, how far was the street light from the so[-]called incident?
A. It is located in front of the house, sir.

Q. How many meters from where you were seated? Will you please point.
A. Around 2 or 1 meter, sir.

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[38] TSN, July 30, 2012, pp. 6-7.

[39] *Id.* at 7.

[40] *Marturillas v. People*, 521 Phil. 404, 433 (2006), citing *People v. Dela Cruz*, 446 Phil. 549, 570 (2003); *People v. Gallego*, 392 Phil. 552, 570 (2000).

[41] *Gerasta v. People*, 595 Phil. 1087, 1101 (2008).

THE INTERPRETER:
The witness is pointing to a distance from the place where she was seated which is approximately 2 meters, your Honor.

Q. What kind of light is that to illuminate the place of the incident?
A. A street light, sir.

Q. How far is the street light from the Viring's Store? Let us assume you are at the Viring's Store, How far is the street light from the place where you were seated?

PROS. DALIUAG:
It is immaterial, your Honor.

ATTY. LASAM:
Very material, your Honor.

THE COURT
Q. How far were you from the Viring's Store when your father was stabbed?
A. Approximately 2 meters, sir.

THE COURT.
So[,] I will allow the question.

ATTY. LASAM:
Q. How far is the street light from Viring's Store from where you were seated?
A. Maybe 3 meters away, sir.

Q. From Viring's store?
A. Yes, sir.

Q. 3 meters away from Viring's Store. So[,] if that is true then you stated that when your father was allegedly stabbed you were two meters only from Viring's store?
A. Yes, sir.

Q. So[,] in short when you stated that it is two meters away and the street light was also three meters away from Viring's store there is no possibility for you [to] identify the accused and his companion because that street light according to you is in front of Viring's store and not the residence of the accused?
A. There were two street lights, sir one is located at the other house.

Q. Why did you not tell us a while ago that there were two and you mentioned only one?

A. That is the reason why I was thinking which of the two street lights you are referring to, sir.

Q. So[,] in short there are two street lights?
A. Yes, sir.

Q. And the first street light is 3 meters away from Viring's store or fronting Viring's store?
A. Yes, sir.

Q. And how far is the next street light?
A. It is located adjacent to Viring's store, sir.

Q. So[,] in front of Viring's store there are two adjacent street lights?
A. One is located beside the Viring's store and the other one is located fronting the house of auntie Rina, sir.[42]

Thus, there were two streetlights near the area where the stabbing incident happened which provided sufficient visibility for Kristine and Gladys to identify petitioner even when the incident happened at night and coupled with the fact that petitioner is known to them for being their neighbor. In several cases, we have found that illumination from a lamp post is sufficient for purposes of identification.[43]

Kristine and Gladys' positive identification of petitioner as their father's assailant prevailed over petitioner's mere denial, because such denial, being negative and self-serving evidence, was undeserving of weight by virtue of its lack of substantiation by clear and convincing proof.[44] Moreover, we find no showing that Kristine and Gladys were motivated by ill feelings towards petitioner as to impute to him the responsibility of killing their father. It is well settled that where there is nothing to indicate that

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[42] TSN, July 30, 2012, pp. 23-24.

[43] *People v. Galano*, 384 Phil. 206, 215 (2000), citing *People v. Evangelista*, 326 Phil. 621, 632 (1996); *People v. Fulinara*, 317 Phil. 31, 47 (1995); *People v. Abalos*, 328 Phil. 24, 34 (1996).

[44] *Medina, Jr. v. People*, 724 Phil. 226, 237 (2014), citing *People v. Agcanas*, 674 Phil. 626, 632 (2011), citing *People v. Caisip, et al.*, 105 Phil. 1180 (1959).

a witness for the prosecution was actuated by improper motive, the presumption is that he was not so actuated, and his testimony is entitled to full faith and credit.[45]

WHEREFORE, the petition is **DENIED**. The Decision dated January 17, 2017 and the Resolution dated April 4, 2017 issued by the Court of Appeals in CA-G.R. CR No. 38444 are hereby **AFFIRMED**.

SO ORDERED.

Caguioa, Reyes, J. Jr., Zalameda,[*] and *Lopez, JJ.*, concur.

EN BANC

[A.C. No. 7075. January 21, 2020]

JOSELITO C. CABALLERO, *complainant, vs.* **ATTY. ARLENE G. PILAPIL,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; THE HIGHLY FIDUCIARY NATURE OF THE LAWYER-CLIENT RELATIONSHIP IMPOSES UPON THE LAWYER THE DUTY TO ACCOUNT FOR THE MONEY OR PROPERTY COLLECTED OR RECEIVED FOR OR FROM HIS CLIENT; FAILURE OF A LAWYER TO RETURN UPON DEMAND THE FUNDS HELD BY HIM ON BEHALF OF HIS CLIENT GIVES RISE TO THE PRESUMPTION THAT

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[45] *People v. Ritz Baring Moreno*, G.R. No. 217889, March 14, 2018.

[*] Designated additional member in lieu of Associate Justice Amy C. Lazaro-Javier, per Raffle dated November 25, 2019.

HE HAS APPROPRIATED THE SAME FOR HIS OWN USE IN VIOLATION OF THE TRUST REPOSED TO HIM BY HIS CLIENT.— The relationship between a lawyer and his client is highly fiduciary and prescribes on a lawyer a great fidelity and good faith. The highly fiduciary nature of this relationship imposes upon the lawyer the duty to account for the money or property collected or received for or from his client. A lawyer's failure to return upon demand the funds held by him on behalf of his client gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed to him by his client. Such act is a gross violation of general morality as well as of professional ethics.

2. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); CANON 11 THEREOF REQUIRES A LAWYER TO OBSERVE AND MAINTAIN DUE RESPECT TO THE COURT AND ITS JUDICIAL OFFICERS; CASE AT BAR.— [I]t bears stressing that respondent failed to comply with our several Resolutions requiring her to file a Comment on the instant Complaint as well as to pay the fine of ₱1,000.00 imposed on her in our Resolution dated October 18, 2010. Her stubborn disregard of the Court's Orders and Resolutions resulted in unduly delaying the disposition of the case and a violation of her oath to obey the laws as well as the legal orders of the duly constituted authorities. Canon 11 of the Code of Professional Responsibility provides that a lawyer is required to observe and maintain due respect to the court and its judicial officers. In *Atty. Vaflor-Fabroa v. Atty. Paguinto*, we reiterated our earlier ruling in *Sebastian v. Bajar*, where we held that: x x x Respondent's cavalier attitude in repeatedly ignoring the orders of the Supreme Court constitutes utter disrespect to the judicial institution. Respondent's conduct indicates a high degree of irresponsibility. A Court's Resolution is "not to be construed as a mere request, nor should it be complied with partially, inadequately, or selectively". Respondent's obstinate refusal to comply with the Court's orders "not only betrays a recalcitrant flaw in her character; it also underscores her disrespect of the Court's lawful orders which is only too deserving of reproof.

3. ID.; ID.; PRACTICE OF LAW; A PROFESSION, A FORM OF PUBLIC TRUST, THE PERFORMANCE OF WHICH IS ENTRUSTED TO THOSE WHO ARE QUALIFIED AND

WHO POSSESS GOOD MORAL CHARACTER; IN CASE OF VIOLATION OF THE LAWYER'S OATH, BREACH OF ETHICS OF THE LEGAL PROFESSION AS EMBODIED IN THE CPR, A LAWYER MAY BE PENALIZED, EVEN DISBARRED OR SUSPENDED.— 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 for an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.

D E C I S I O N

***PER CURIAM*:**

Before us is a Verified Complaint[1] dated September 20, 2005 filed by complainant Joselito C. Caballero charging respondent Atty. Arlene G. Pilapil for gross misconduct, in violation of the Code of Professional Responsibility (*CPR*).

In his complaint, complainant alleged: that sometime in June 2004, he engaged the services of respondent to prepare a Deed of Sale for the purchase of a 258-square-meter (*sq. m.*) lot with improvements, in Consolacion, Cebu, registered under Transfer Certificate of Title (*TCT*) No. 64507 in the names of the spouses Alexander Ardenete and Adelia Hermosa; that respondent did prepare the document but it had to be amended to include the names of his two sisters as vendees; that respondent agreed to amend the deed of sale and had also taken the original copy of TCT No. 64507 as well as the original sketch plan and tax declaration of the lot; and that respondent asked for and was given the total amount of ₱53,500.00 for the alleged payment of the capital gains tax, real estate tax and her legal fees for the transfer of title.

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[1] *Rollo*, pp. 3-11.

On November 5, 2004, while waiting for the processing of their first transaction, complainant again hired respondent for the preparation of a Deed of Sale for the 123-sq.-meter lot located in Liloan Cebu which complainant and his sisters purchased from the spouses Francisco dela Cuesta and Elena Sanguenza. Respondent prepared the Deed and notarized the same and convinced the complainant that she could facilitate the payment of the corresponding capital gains tax with the Bureau of Internal Revenue (*BIR*) and asked for and was given the amount of ₱69,000.00, inclusive of her service fees in the amount of ₱15,000.00.

Respondent, however, had not performed her obligation regarding the payment of the capital gains tax and the real estate tax for the transfer of titles to complainant and his sisters' names, thus, making them liable to pay the penalties thereof. She also failed to return all the documents she got from the complainant. She was not seen or heard from since her last meeting with complainant on February 25, 2005 where she promised to return the documents.[2]

Complainant sought the help of the *Lupong Tagapamayapa* of Consolacion, Cebu, but respondent failed to attend the mediation. He then wrote a letter-complaint to the Integrated Bar of the Philippines (*IBP*) Cebu Chapter, which then sent a letter to respondent and scheduled a conference. Respondent requested for a resetting of the conference, but she still failed to attend.

Respondent then sent a letter-reply[3] dated July 25, 2005 to the IBP Cebu Chapter, claiming that she had talked with complainant's sister, Rowena, who was a high school friend, regarding the latter's need for the transfer of properties; that she told Rowena that she could not make personal follow-ups on the transaction, but she could help her find a fixer and to prepare the documents; that she later informed Rowena that the expenses for the transfer of property would cost ₱40,000.00

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[2] *Id.* at 53.

[3] *Id.* at 20-21.

to ₱45,000.00, excluding the documentation of the same; that Rowena, through complainant, gave her ₱40,000.00 for the taxes and ₱5,000.00 for her documentation; that she had prepared several documents for their properties; and that the money she got from the complainant, together with the documents, were all given to a fixer friend by the name of Wilmer Esmero, who later just left the documents to a common friend and disappeared. Rowena contacted her again for the preparation of documents for another property that she and her siblings bought; that she contacted another fixer friend, Raul Isoto, to facilitate the transfer of complainant and his sisters' two properties in their names and gave him the money and all the documents, however, the money and documents had not been returned to her despite several demands.

Respondent still failed to appear before the IBP Cebu Chapter. Complainant then brought his complaint with the Office of the Court Administrator (*OCA*) which referred the same to the Office of the Bar Confidant through a 1st Indorsement[4] dated October 5, 2005.

In a Resolution[5] dated March 13, 2006, we required the respondent to file her Comment on the verified complaint. However, respondent failed to file her comment; hence, we required respondent to show cause why she should not be disciplinarily dealt with or held in contempt and required the filing of Comment.[6] Respondent still failed to comply with our resolution, and she was repeatedly fined[7] in the total amount of ₱2,000.00 or imprisonment of five days and to file her Comment.[8]

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[4] *Id.* at 27.

[5] *Id.* at 55.

[6] *Id.* at 56.

[7] Resolution dated June 4, 2008, *id.* at 57; Resolution dated February 16, 2009, *id.* at 59.

[8] Resolution dated August 10, 2009, *id.* at 65; Resolution dated February 8, 2010, *id.* at 71; Resolution dated October 18, 2010, *id.* at 74.

Respondent filed her motion for reconsideration and asked that she be furnished with the verified complaint and be allowed to file her Comment thereto.

In a Resolution[9] dated August 10, 2009, We denied respondent's motion for reconsideration of our Resolutions imposing upon her a total fine of ₱2,000.00 and further ordered that she be furnished with a copy of the verified complaint and to file her Comment. Respondent paid the fines imposed upon her in the amount of ₱2,000.00 on October 7, 2009. Respondent again failed to file her Comment despite receipt of the notice and the copy of the complaint, so she was fined again in the amount of ₱1,000.00 or imprisonment of five days, and we reiterated the filing of her Comment.[10]

In a Resolution[11] dated June 8, 2011, we noted that a copy of the Resolution dated October 18, 2010 imposing a fine of ₱1,000.00 which was sent to her address on record was returned with a notation, "RTS-Addressee is no longer visiting her two known addresses in Consolacion, Cebu," and we required the IBP to inform the court of respondent's current address. In a letter[12] dated July 22, 2011, the IBP stated respondent's office address in RTC Branch 55, Mandaue City, and her home address in Poblacion Occidental, Consolacion Cebu.

Despite the fact that the Resolutions requiring her to file Comment were later sent to the above-stated addresses, respondent still failed to comply therewith, thus, we directed the complainant to submit to the court the correct and current address of respondent,[13] which the latter failed to do. Based on the certification issued by the Cashier's Division, respondent had not paid the amount of ₱1,000.00 imposed as court fine in our Resolution dated October 18, 2010.[14]

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[9] *Rollo*, p. 65.

[10] *Id.* at 74.

[11] *Id.* at 75.

[12] *Id.* at 77.

[13] Resolution dated September 14, 2011, *id*. at 79.

[14] *Rollo*, p. 80.

Since a considerable time had already lapsed and respondent was given several opportunities to file her Comment to the complaint, which she failed to do, we deem it appropriate to resolve the case on the basis of the complaint and other documents attached thereto, instead of referring the same to the IBP for its investigation, report, and recommendation.

The issue for resolution is whether respondent should be held administratively liable for her failure to return the money given to her by complainant for the payment of capital gains tax and the documents she took from him.

Rules 16.01 and 16.03 of Canon 16, and Canon 17 of the Code of Professional Responsibility respectively provides:

CANON 16 - A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.

RULE 16.01- A lawyer shall account for all money or property collected or received for or from the client.

x x x x x x x x x

Rule 16.03 - A lawyer shall deliver the funds and property of his client when due or upon demand. x x x.

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.

The relationship between a lawyer and his client is highly fiduciary and prescribes on a lawyer a great fidelity and good faith.[15] The highly fiduciary nature of this relationship imposes upon the lawyer the duty to account for the money or property collected or received for or from his client.[16] A lawyer's failure to return upon demand the funds held by him on behalf of his client gives rise to the presumption that he has appropriated

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[15] *Agot v. Atty. Rivera*, 740 Phil. 393, 400 (2014), citing *Bayonla v. Atty. Reyes*, 676 Phil. 500, 509 (2011).

[16] *Id.* at 400-401, citing see *Navarro, et al. v. Atty. Solidum, Jr.*, 725 Phil. 358, 368 (2014), citing *Belleza v. Atty. Macasa*, 611 Phil. 179, 190 (2009).

the same for his own use in violation of the trust reposed to him by his client. Such act is a gross violation of general morality as well as of professional ethics.[17]

In this case, complainant had sufficiently proved that respondent received from him the total amount of ₱53,500.00[18] for the payment of capital gains tax and for the services rendered for the transfer of his and his siblings' property from the Spouses Ardente; and that she also took the original copy of TCT No. 64507 covering the said property as well as the original copy of the sketch plan to facilitate the transfer of title.[19] In fact, respondent, in her letter reply to the IBP Cebu Chapter, to which the complainant first referred his complaint before filing the same with us, did not deny receiving the said amount of ₱53,500.00 and the documents from complainant, but put up the defense that they were all given to a fixer who never returned the money and documents to her despite several demands.

The money which was given to respondent for the purpose of the payment of the capital gains tax, which was not used for that purpose, should have been immediately returned by respondent upon complainant's demand. However, respondent never did. Her failure to pay the capital gains tax and real estate tax for the transfer of the title and to return the documents she took from complainant violates the trust and confidence reposed on her by the complainant. A lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable.[20]

We could not make the same findings regarding complainant's claim that he gave respondent the sum of ₱69,000.00 to facilitate the payment of the capital gains tax of the other property he bought from the Spouses Dela Cuesta, as there was no evidence showing such receipt.

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[17] *Adrimisin v. Atty. Javier*, 532 Phil. 639, 645-646 (2006).

[18] *Rollo*, pp. 33-34.

[19] *Id.* at 33.

[20] Code of Professional Responsibility, Rule 18.03.

Finally, it bears stressing that respondent failed to comply with our several Resolutions requiring her to file a Comment on the instant Complaint as well as to pay the fine of ₱1,000.00 imposed on her in our Resolution dated October 18, 2010. Her stubborn disregard of the Court's Orders and Resolutions resulted in unduly delaying the disposition of the case and a violation of her oath to obey the laws as well as the legal orders of the duly constituted authorities. Canon 11 of the Code of Professional Responsibility provides that a lawyer is required to observe and maintain due respect to the court and its judicial officers.

In *Atty. Vaflor-Fabroa v. Atty. Paguinto*,[21] we reiterated our earlier ruling in *Sebastian v. Bajar*, where we held that:

> x x x Respondent's cavalier attitude in repeatedly ignoring the orders of the Supreme Court constitutes utter disrespect to the judicial institution. Respondent's conduct indicates a high degree of irresponsibility. A Court's Resolution is "not to be construed as a mere request, nor should it be complied with partially, inadequately, or selectively". Respondent's obstinate refusal to comply with the Court's orders "not only betrays a recalcitrant flaw in her character; it also underscores her disrespect of the Court's lawful orders which is only too deserving of reproof.
>
> Lawyers are called upon to obey court orders and processes and respondent's deference is underscored by the fact that willful disregard thereof will subject the lawyer not only to punishment for contempt but to disciplinary sanctions as well. In fact, graver responsibility is imposed upon a lawyer than any other to uphold the integrity of the courts and to show respect to their processes.[22]

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.[23] For the practice of law is "a profession, a form of public trust, the performance of

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[21] 629 Phil. 230 (2010).

[22] *Id.* at 236-237. (Citations omitted)

[23] *Foster v. Atty. Agtang*, 749 Phil. 576, 595 (2014), citing *Catu v. Atty. Rellosa*, 569 Phil. 539, 550-551 (2008).

which is entrusted to those who are qualified and who possess good moral character."[24] The appropriate penalty for an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.[25]

In *Jinon v. Atty. Jiz*,[26] we suspended Atty. Jiz from the practice of law for two (2) years for his failure to facilitate the recovery of the land title of his client and to return the money he received from the latter for such purpose despite demand. In *Rollon v. Atty. Naraval*,[27] we also suspended Atty. Naraval from the practice of law for two (2) years for his failure to render any legal service in relation to the complainant's case despite receiving money from the latter and for refusing to return the money and documents he received.

WHEREFORE, respondent Atty. Arlene G. Pilapil is hereby **SUSPENDED** from the practice of law for two (2) years for violating Rules 16.01 and 16.03 of Canon 16, Canon 17 as well as Canon 11 of the Code of Professional Responsibility, effective from notice. She is **ORDERED** to **RETURN** to the complainant the sum of ₱53,500.00, with legal interest of six percent (6%) *per annum* reckoned from the date of the receipt of this Decision until full payment. She is further **ORDERED** to **RETURN** to the complainant the original copy of TCT No. 64507, the sketch plan and tax declaration which she took from complainant.

Respondent is also **ORDERED** to **PAY** the fine of ₱1,000.00 imposed on her in our Resolution dated October 18, 2010 within ten (10) days from receipt of this Decision, otherwise a more severe penalty will be imposed against her.

Let copies of this Decision be furnished the Office of the Bar Confidant, to be appended to respondent's personal record as an attorney; the Integrated Bar of the Philippines; and the

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[24] *Id.*, citing *Barcenas v. Atty. Alvero*, 633 Phil. 25, 34 (2010).

[25] *Id.*, citing *Lim-Santiago v. Atty. Sagucio*, 520 Phil. 538, 552 (2006).

[26] 705 Phil. 321 (2013).

[27] 493 Phil. 24 (2005).

Office of the Court Administrator for circulation to all courts in the country for their information and guidance.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Reyes, J. Jr., Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos, and *Gaerlan, JJ.*, concur.

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

EN BANC

[G.R. No. 170867. January 21, 2020]

REPUBLIC OF THE PHILIPPINES, represented by RAPHAEL P.M. LOTILLA, Secretary, Department of Energy (DOE), MARGARITO B. TEVES, Secretary, Department of Finance (DOF), and ROMULO L. NERI, Secretary, Department of Budget and Management (DBM), *petitioners, vs.* **PROVINCIAL GOVERNMENT OF PALAWAN, represented by GOVERNOR ABRAHAM KAHLIL B. MITRA,** *respondent.*

[G.R. No. 185941, January 21, 2020]

BISHOP PEDRO DULAY ARIGO, CESAR N. SARINO, DR. JOSE ANTONIO N. SOCRATES, and PROF. H. HARRY L. ROQUE, JR., *petitioners, vs.* **HON. EXECUTIVE SECRETARY EDUARDO R. ERMITA, HON. ENERGY SECRETARY ANGELO T. REYES, HON. FINANCE SECRETARY MARGARITO B. TEVES, HON. BUDGET AND MANAGEMENT SECRETARY ROLANDO D. ANDAYA, JR., HON.**

PALAWAN GOVERNOR JOEL T. REYES, HON. REPRESENTATIVE ANTONIO C. ALVAREZ (1ST District), HON. REPRESENTATIVE ABRAHAM MITRA (2ND District), and RAFAEL E. DEL PILAR, President and CEO, PNOC EXPLORATION CORPORATION, *respondents.*

SYLLABUS

1. POLITICAL LAW; LOCAL GOVERNMENT CODE; LOCAL GOVERNMENT UNIT'S TERRITORIAL JURISDICTION; IN DETERMINING A LOCAL GOVERNMENT UNIT'S TERRITORIAL JURISDICTION IN RELATION TO ITS ENTITLEMENT TO AN EQUITABLE SHARE IN THE UTILIZATION AND DEVELOPMENT OF THE NATURAL WEALTH, THE REQUIREMENT OF CONTIGUITY SHALL NOT APPLY IF THE LOCAL GOVERNMENT UNIT IS COMPRISED OF ISLANDS; ALL THAT IS REQUIRED IS THAT IT IS PROPERLY IDENTIFIED BY ITS METES AND BOUNDS.— Article X, Section 7 of the Constitution mandates that local government units shall be entitled to an equitable share in the utilization and development of the natural wealth within their area. x x x. While "territorial jurisdiction" does not appear in the Constitution, it is inscribed in the Local Government Code, the law meant to implement the constitutional mandate under Article X, Section 7. The Local Government Code provides that local government units shall be entitled to a 40% share in the gross collection the State derives from the utilization and development of these natural resources "within their territorial jurisdiction." x x x. The Constitution does not define a local government unit's territorial jurisdiction in relation to its entitlement to an equitable share in the utilization and development of the natural wealth. It does, however, mandate that the shares shall be *within their respective areas* and *in the manner provided by law* x x x. Moreover, the Constitution assigns the natural boundaries of local government units as either "territorial and political subdivisions" or "autonomous regions" x x x. Territorial and political subdivisions are the provinces, cities, municipalities, and barangays, and are covered by the

entirety of Article X of the Constitution. Autonomous regions are covered by a different set of constitutional provisions; their territorial jurisdiction, therefore, is not defined akin to that of territorial and political subdivisions. A local government unit is created by law, with due regard to "verifiable indicators of viability and projected capacity to provide services[.]" By correlating *territorial jurisdiction* with *territorial boundaries* in its December 4, 2018 Decision, this Court placed too much reliance on *land area* as indicative of the metes and bounds of a local government unit. The Local Government Code defines "land area" as: (c) Land Area. - It must be contiguous, unless it comprises two (2) or more islands or is separated by a local government unit independent of the others; properly identified by metes and bounds with technical descriptions; and sufficient to provide for such basic services and facilities to meet the requirements of its populace. x x x. Since the Local Government Code requires that the land area "must be contiguous," this Court emphasized in its Decision that *contiguity* is essential in determining territorial jurisdiction. However, the phrase "must be contiguous" is followed by an important proviso: "*unless it comprises two or more islands*[.]" x x x. Thus, it is clear from the laws and regulations defining a local government unit's "respective area" that the requirement of contiguity *shall not apply if the local government unit is comprised of islands*. All that is required is that it is properly identified by its metes and bounds. This clarification is necessary considering the geographical peculiarities unique to the Province of Palawan.

2. ID.; ID.; ID.; A LOCAL GOVERNMENT UNIT'S TERRITORY, AND BY EXTENSION, ITS TERRITORIAL JURISDICTION GOES BEYOND THE CONTIGUITY OF ITS LAND MASS; WHEN THE TERRITORY CONSISTS OF ONE (1) OR MORE ISLANDS, TERRITORIAL JURISDICTION CAN ALSO BE EXERCISED OVER ALL WATERS FOUND INLAND, OR IN ANY AREA THAT IS PART OF ITS SEABED, SUBSOIL, OR CONTINENTAL MARGIN, IN THE MANNER PROVIDED BY LAW; THE TERRITORIAL JURISDICTION OF THE PROVINCE OF PALAWAN EXTENDS TO THE ENTIRETY OF THE MUNICIPALITY OF KALAYAAN, INCLUDING ITS SEABED, SUBSOIL, AND THE CONTINENTAL

MARGIN.— The Province of Palawan, previously known as the Province of Paragua, was created under Act No. 422. Section 2 of the Act, as amended, provides the Province of Paragua's specific metes and bounds x x x. The Province of Paragua had no technical description based on land area. Act No. 422 instead anchored the province's borders on the bodies of water surrounding it. The Province of Palawan currently comprises l,780 islands and islets. To determine its metes and bounds, one would have to go beyond the contiguity of its land mass. The Local Government Code provides that a local government unit's territory extends to its municipal waters x x x. Section 16 of the Philippine Fisheries Code further provides: Section 16. *Jurisdiction of Municipality/City Government*. — The municipal/city government shall have jurisdiction over municipal waters as defined in this Code. x x x. Going strictly by these provisions would mean that the Province of Palawan can only exercise jurisdiction over waters that are within 15 kilometers of its general coastline. This narrow interpretation, however, disregards other laws that may have defined and specified portions of the Province of Palawan's territory and its unique archipelagic design. Foremost of these laws is Presidential Decree No. 1596, which established the Kalayaan Island Group x x x. Included in the metes and bounds of the Municipality of Kalayaan are the seabed, subsoil, continental margin, and air space over this territory. This is consistent with Article 76(1) of the United Nations Convention on the Law of the Sea. x x x. Presidential Decree No. 1596 categorically states that the seabed, subsoil, and continental margin shall be included in the Municipality of Kalayaan and made part of the Province of Palawan. *This means that the territory—and thus, the territorial jurisdiction—of the Province of Palawan extends to the entirety of the Municipality of Kalayaan, including its seabed, subsoil, and the continental margin.* This interpretation is more consistent with the factual findings of the Permanent Court of Arbitration in its landmark ruling, which used the Province of Palawan as its baseline point to determine the contested reefs' proximity to the Philippines x x x. Including the Kalayaan Island Group's continental shelf in the Province of Palawan's territorial jurisdiction is likewise consistent with the Republic's manifestations on Reed Bank in asserting its sovereignty over the Kalayaan Island Group x x x. It is, thus, inaccurate to declare that a local government unit's

territory, and by extension, its territorial jurisdiction, can only be over land that is contiguous. When the territory consists of one (1) or more islands, territorial jurisdiction can also be exercised over all waters found inland, or in any area that is part of its seabed, subsoil, or continental margin, "in the manner provided by law[.]"

3. STATUTORY CONSTRUCTION; CONTEMPORANEOUS CONSTRUCTION; CONTEMPORANEOUS CONSTRUCTION IS RESORTED TO WHEN THERE IS AN AMBIGUITY IN THE LAW AND ITS PROVISIONS CANNOT BE DISCERNED THROUGH PLAIN MEANING; THE INTERPRETATION OF THOSE CALLED UPON TO IMPLEMENT THE LAW IS GIVEN GREAT RESPECT; THE COURT WILL GIVE DUE WEIGHT TO THE EXECUTIVE BRANCH'S INTERPRETATION AND IMPLEMENTATION OF "EQUITABLE SHARE" AND "TERRITORIAL JURISDICTION" IN ARTICLE 290 OF THE LOCAL GOVERNMENT CODE, AND WILL UPHOLD THE SAME UNLESS IT IS IN CLEAR CONFLICT WITH THE CONSTITUTION, THE STATUTE BEING INTERPRETED, OR OTHER LAWS.— This Court must also clarify whether the Province of Palawan was misled into believing that it was entitled to an equitable share in the proceeds of the Natural Gas Project. According to this Court's December 4, 2018 Decision, this entitlement was "based on a mistaken assumption" from the prior acts of the Republic. The Province of Palawan, however, cannot be faulted for relying on the Republic's prior repeated recognition that it was indeed entitled to its claimed share. In 1998, then President Ramos expressly recognized in Administrative Order No. 381 that the Province of Palawan would partake in the Republic's share in the net proceeds of the Natural Gas Project. x x x. Then Energy Secretary Viray also wrote to then Palawan Governor Socrates, requesting that 50% of Palawan's share in the Natural Gas Project be deferred. This shows that the executive branch indeed exerted efforts to fulfill its commitments to the Province of Palawan. x x x. Officers from the Arroyo administration and the Province of Palawan, in conformity with the representatives of the legislative districts of Palawan, likewise executed a Provisional Implementation Agreement, which allowed for the release of 50% of the disputed 40% share to be used for development

projects in Palawan. Then President Macapagal-Arroyo even issued Executive Order No. 683. x x x. From these enactments, the executive branch's interpretation and implementation of Section 290 of the Local Government Code in relation to Service Contract No. 38 are shown; that is, that the Province of Palawan's territorial jurisdiction included the Camago-Malampaya natural gas reservoirs. Otherwise stated, its prior acts are its contemporaneous construction of an otherwise ambiguous provision of law. Contemporaneous construction is resorted to when there is an ambiguity in the law and its provisions cannot be discerned through plain meaning. The interpretation of those called upon to implement the law is given great respect. In *Tamayo v. Manila Hotel Company*: It is a rule of statutory construction that "courts will and should respect the contemporaneous construction placed upon a statute by the executive officers, whose duty it is to enforce it and unless such interpretation is clearly erroneous will ordinarily be controlled thereby." x x x. Thus, this Court will give due weight to the executive branch's interpretation and implementation of "equitable share" and "territorial jurisdiction" in Article 290 of the Local Government Code. This contemporaneous construction will be upheld unless it is in clear conflict with the Constitution, the statute being interpreted, or other laws.

4. POLITICAL LAW; LOCAL GOVERNMENT CODE; LOCAL GOVERNMENT UNIT'S TERRITORIAL JURISDICTION; REPUBLIC ACT NO. 7611 OR THE STRATEGIC ENVIRONMENTAL PLAN FOR PALAWAN ACT, CANNOT BE THE BASIS TO PROVE THAT THE CAMAGO-MALAMPAYA RESERVOIRS ARE WITHIN THE PROVINCE OF PALAWAN, AS STRICTLY APPLYING THE SAME TO DETERMINE THE PROVINCE OF PALAWAN'S TERRITORY WILL RESULT IN SUBSTANTIAL ALTERATION OF ITS BOUNDARIES BECAUSE RA 7611 EXCLUDES SEVERAL MUNICIPALITIES THAT HAVE ALWAYS BEEN PART OF THE PROVINCE; THE COURT UPHELD THE RULING THAT THE CAMAGO-MALAMPAYA NATURAL GAS RESERVOIRS REMAIN UNDER THE TERRITORIAL JURISDICTION OF THE REPUBLIC, AS NONE OF THE MAPS ON RECORD OR THE RELEVANT LAWS COULD CONCLUSIVELY PROVE THAT THE

PROVINCE OF PALAWAN HAS TERRITORIAL JURISDICTION OVER THE SAME.— Unfortunately, none of the maps on record or the relevant laws could conclusively prove that the Province of Palawan has territorial jurisdiction over the Camago-Malampaya natural gas reservoirs. In the amicus brief submitted by then Department of Foreign Affairs - Commission on Maritime and Ocean Affairs Secretariat Secretary General Henry S. Bensurto, Jr. (Secretary General Bensurto), it can be clearly seen that the reservoirs are not within the scope of the Province of Palawan's territory. The area is beyond the province's territory when the 15-kilometer boundary of the Local Government Code and the Philippine Fisheries Code is applied x x x. The area is also beyond the Province of Palawan's territory when the United Nations Convention on the Law of the Sea, Republic Act No. 9522, and the 1898 Treaty of Paris are applied: x x x. Likewise, the area is beyond the province's territory when Presidential Decree No. 1596 is applied x x x. It is true that Republic Act No. 7611, or the Strategic Environmental Plan for Palawan Act, appears to have extended the territory of the Province of Palawan x x x. The coordinates, when plotted, show that the Camago-Malampaya reservoirs are within the area known as "Palawan." x x x. However, strictly applying Republic Act No. 7611 to determine the Province of Palawan's territory poses a problem: it excludes several municipalities that have always been part of the province, namely Balabac, Cagayancillo, Busuanga, Coron, Agutaya, Magsaysay, Cuyo, Araceli, Linapacan, and Dumaran. This results in a substantial alteration of its boundaries, an act that can only be done through a plebiscite called for that purpose. Thus, Republic Act No. 7611 cannot be the basis to prove that the Camago-Malampaya reservoirs are within the Province of Palawan. For their part, none of the parties have presented maps or statutes that conclusively prove that the Camago-Malampaya reservoirs are within the Province of Palawan. This Court is, thus, constrained to uphold the ruling that the area remains under the territorial jurisdiction of the Republic, unless otherwise provided by law.

5. ID.; ID.; AMOUNT OF SHARE OF LOCAL GOVERNMENT UNITS; THE PROVINCE OF PALAWAN NEED NOT RETURN THE FUNDS IT RECEIVED UNDER EXECUTIVE ORDER NO. 683, FOR TO REQUIRE THE RETURN OF FUNDS NOT ONLY UNDERMINES PUBLIC

WELFARE AND THE PRESUMPTION OF REGULARITY OF THE ACTIONS OF PUBLIC OFFICIALS, BUT WILL LIKEWISE WEAKEN THE LOCAL AUTONOMY ENVISIONED BY THE CONSTITUTION.— The Province of Palawan argues that it should be entitled to its share based on equity, considering its proximity and the environmental repercussions of the Natural Gas Project. x x x The Republic, however, correctly states that whatever environmental or socio-economic impact the Natural Gas Project may have, has been addressed by the Environmental Compliance Certificate issued to the Shell Consortium x x x. Notably, since the Camago-Malampaya Natural Gas Project was launched in 2001, the Province of Palawan has yet to submit any factual documentation of the environmental or socio-economic damage it may have caused, such that the province may be entitled to a share in its proceeds on equitable grounds. It is to be recalled, however, that Executive Order No. 683 authorized the release of funds from Natural Gas Project's proceeds to the Province of Palawan, to be used for development projects for the people of Palawan, without prejudice to the final outcome of this case. It was clear with the Executive Order that the national government did not commit itself to perpetually share the proceeds from the Natural Gas Project. However, it was also clear that the Province of Palawan was not required to diminish its future resources in order to reimburse the national government for the funds received should there be a final ruling in this Resolution. For this Court, it is a reasonable presumption that the national government wanted to immediately augment the Province of Palawan's funds for its constituents. Certainly, at that point when the funds were made available, both the national government and the Province of Palawan intended to provide for the general welfare. To require the return of funds now after this Court finally decides not only undermines public welfare and the presumption of regularity of the actions of public officials, but it will likewise weaken the very local autonomy envisioned by the Constitution. Therefore, the Province of Palawan need not return the ₱600 million it received under Executive Order No. 683. Moving forward, any share that Congress will allot for the province will purely be an act of political discretion. Executive Order No. 683 has, thus, become *functus officio*.

APPEARANCES OF COUNSEL

Roque & Butuyan Law Offices for petitioners in G.R. Nos. 170867 & 185941.

Teodoro Jose S. Matta, Gil A. Acosta, Jr., Grace N. Mana-Ay and Mae Joyce S. Magbanua-Anjalin for respondent in G.R. No. 170867 and petitioners in G.R. No. 185941.

The Solicitor General for petitioners in G.R. No. 170867 and respondents in G.R. No. 185941.

R E S O L U T I O N

LEONEN, *J.*:

For this Court's resolution are the Motion for Reconsideration[1] and Supplemental Motion for Reconsideration[2] filed by respondents in G.R. No. 170867, as well as the Motion for Reconsideration[3] of petitioners in G.R. No. 185941. The parties ask this Court to reconsider its December 4, 2018 Decision[4] in which it declared, among others, that the Province of Palawan was not entitled to an equitable share in the proceeds of the Camago-Malampaya Natural Gas Project (Natural Gas Project).

To recall, the Republic, through the Department of Energy, entered into Service Contract No. 38 dated December 11, 1990 with Shell Philippines Exploration B.V. and Occidental Philippines. The 20-year contract was made for the drilling of the natural gas reservoirs in the Camago-Malampaya area, about 80 kilometers from mainland Palawan.[5]

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[1] *Rollo* (G.R. No. 170867), pp. 2253-2278.

[2] *Id.* at 2280-2305. Filed with a Motion for Leave of Court.

[3] *Id.* at 2174-2211.

[4] *Republic v. Provincial Government of Palawan*, G.R. Nos. 170867 and 185941, December 4, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64868> [Per *J.* Tijam, *En Banc*].

[5] *Rollo* (G.R. No. 170867), p. 89.

Service Contract No. 38 provided a 60-40 production sharing scheme for the sale of petroleum, where the national government would receive 60% of the net proceeds, while Shell Philippines Exploration B.V. and Occidental Philippines, as service contractors, would receive 40%. Later, the service contractors were replaced by a consortium of Shell B.V., Shell Philippines LLC, Chevron Malampaya LLC, and PNOC Exploration Corporation (Shell Consortium).[6]

On February 17, 1998, then President Fidel V. Ramos (President Ramos) issued Administrative Order No. 381,[7] which provided that per the Local Government Code, part of the national government's 60% share would be given to the concerned local government units.[8] It further provided that the Province of Palawan was "expected to receive about US$2.1 billion from the total government share of US$8.1 billion"[9] throughout the contract's 20-year period.[10]

On June 10, 1998, then Energy Secretary Francisco L. Viray (Energy Secretary Viray) wrote to then Palawan Governor Salvador P. Socrates (Governor Socrates), requesting that the payment of half of Palawan's expected share be "spread over the initial seven years of operations"[11] in order to pay for the National Power Corporation's obligations in its Gas Sales and Purchase Agreements with the Shell Consortium.[12]

Later, in a July 30, 2001 letter, then Finance Secretary Jose Isidro N. Camacho sought the legal opinion of then Justice Secretary Hernando B. Perez on whether the Province of Palawan had a share in the national wealth from the proceeds of the

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[6] *Id.* at 392-J and 549-549-A.

[7] *Id.* at 549-550-A.

[8] *Id.* at 550.

[9] *Id.* at 549-A.

[10] *Id.*

[11] *Id.* at 552.

[12] *Id.* at 551-552.

Natural Gas Project. The Department of Finance had taken the position that the province did not, as a local government unit's territorial jurisdiction was only within its land area and excludes marine waters more than 15 kilometers from its coastline.[13]

The Natural Gas Project in the Camago-Malampaya area was inaugurated on October 16, 2001.[14]

Negotiations were held between the Departments of Energy, Finance, and Budget and Management, and the Province of Palawan to determine the province's expected share in the net proceeds of the Natural Gas Project.[15] However, since the national government would not grant the province's expected US$2.1 billion share, the Sangguniang Panlalawigan of Palawan on February 11, 2003 called off further negotiations and instead authorized the Palawan Governor to file the appropriate judicial action.[16]

On May 7, 2003, the Province of Palawan filed before the Regional Trial Court a Petition for Declaratory Relief,[17] docketed as Special Civil Action No. 3779, seeking a judicial determination of its rights under Administrative Order No. 381, Republic Act No. 7611, Section 290 of the Local Government Code, and Palawan Provincial Ordinance No. 474, series of 2000. In particular, the Province of Palawan sought a judicial declaration that it has territorial jurisdiction over the Camago-Malampaya natural gas reservoirs, entitling it to an equitable share in the proceeds from the Natural Gas Project.[18]

On February 9, 2005, while the declaratory relief case was still pending, then Energy Secretary Vincent S. Perez, Jr., then

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[13] *Id.* at 554. The *rollo* does not state whether the Department of Justice issued a legal opinion.

[14] *Id.* at 19.

[15] *Id.* at 127-129.

[16] *Id.* at 129.

[17] *Id.* at 130-159.

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

Budget and Management Secretary Mario L. Relampagos, and then Finance Secretary Juanita D. Amatong executed an Interim Agreement[19] with then Palawan Governor Joel T. Reyes.

Under the agreement, half of the 40% revenue share being claimed by the Province of Palawan, to be called the "Palawan Share," would be used in its development and infrastructure projects, environment protection and conservation, electrification of 431 barangays, and establishment of facilities to enhance the exclusive economic zone's security.[20]

The Interim Agreement likewise stated that the release of funds would be without prejudice to the outcome of Special Civil Action No. 3779. Once the case is decided with finality in favor of either party, the shares already received would be treated as financial assistance. The parties further agreed that the ₱600 million already released to the Province of Palawan would be deducted from the initial release of the province's 50% share of 40% of the remitted funds.[21]

On December 16, 2005, the Regional Trial Court rendered a Decision[22] in the Province of Palawan's favor. It found that, under Article X, Section 7 of the Constitution and the Local Government Code, the province was entitled to a 40% share of the revenues generated from the Natural Gas Project since October 16, 2001.[23]

On February 16, 2006, the Republic filed before this Court a Petition for Review,[24] docketed as G.R. No. 170867, assailing the trial court's December 16, 2005 Decision and its January 16, 2006 Amended Order.[25]

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[19] *Id.* at 555-561.

[20] *Id.* at 557-558.

[21] *Id.*

[22] *Id.* at 83-112. The Decision was penned by Judge Bienvenido C. Blancaflor of Branch 95, Regional Trial Court, Puerto Princesa City, Palawan.

[23] *Id.* at 112.

[24] *Id.* at 9-82.

[25] *Id.* at 113-116. The original Order was erroneously dated December

On July 25, 2007, while the Petition was pending, the national government executed a Provisional Implementation Agreement[26] with the Province of Palawan, in conformity with the representatives of its legislative districts. Per the agreement, half of the disputed 40% share was allowed to be used for development projects in Palawan.

On December 1, 2007, then President Gloria Macapagal-Arroyo (President Macapagal-Arroyo) issued Executive Order No. 683, which authorized the release of funds pursuant to the Provisional Implementation Agreement. Notably, it provided that the funds' release would be without prejudice to this Court's final resolution in G.R. No. 170867.[27]

Subsequently, Bishop Pedro Dulay Arigo, Cesar N. Sarino, Jose Antonio N. Socrates, and H. Harry L. Roque, Jr. (Arigo, *et al*.), as taxpayers, filed a Petition for *Certiorari*, Prohibition, and *Mandamus*[28] before the Court of Appeals against the Executive Secretary, the Department Secretaries of Energy, Finance, and Budget and Management, the Palawan Governor, the First District Representative of Palawan, and PNOC Exploration Corporation's President and Chief Executive Officer. In their Petition, Arigo, *et al.* assailed Executive Order No. 683 and the Provisional Implementation Agreement for violating the Constitution and the Local Government Code.[29] They also sought the release of the Province of Palawan's full 40% share in the proceeds of the Natural Gas Project.[30]

In a May 29, 2008 Resolution,[31] the Court of Appeals dismissed outright Arigo, *et al.*'s Petition for their failure to

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16, 2006 instead of January 16, 2006. The Order was amended to conform to the correct date.

[26] *Rollo* (G.R. No. 185941), pp. 498-503.

[27] *Id.* at 489-491.

[28] *Id.* at 62-98.

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

[30] *Id.* at 89.

[31] *Id.* at 218-224. The Resolution was penned by Associate Justice Rebecca

submit the documents necessary to substantiate their allegations.[32] It likewise noted that the Petition was prematurely filed since the implementation of the Provisional Implementation Agreement was contingent on the final adjudication of G.R. No. 170867, the case pending before this Court.[33]

Arigo, *et al*. filed a Motion for Reconsideration,[34] which was denied by the Court of Appeals in a December 16, 2008 Resolution.[35]

Subsequently, Arigo, *et al*. filed before this Court a Petition for Review on *Certiorari*,[36] docketed as G.R. No. 185941. They essentially reiterated their argument before the Court of Appeals that Executive Order No. 683 and the Provisional Implementation Agreement were invalid for being unconstitutional and for violating the Local Government Code.[37]

On June 23, 2009, this Court consolidated G.R. No. 170867 and G.R. No. 185941.[38] Oral arguments were held on September 1, 2009[39] and November 24, 2009.[40]

De Guia-Salvador and concurred in by Associate Justices Vicente S.E. Veloso and Apolinario D. Bruselas, Jr. of the Eleventh Division of the Court of Appeals, Manila.

[32] *Id.* at 220-221.

[33] *Id.* at 221-223.

[34] *Id.* at 225-243.

[35] *Id.* at 250-252. The Resolution was penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Vicente S.E. Veloso and Apolinario D. Bruselas, Jr. of the Former Eleventh Division of the Court of Appeals, Manila.

[36] *Id.* at 13-58.

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

[38] *Rollo* (G.R. No. 170867), p. 1092. The cases were also elevated to the Court *En Banc*, having been initially filed before the First Division and Second Division.

[39] *Id.* at 1210-1214.

[40] *Id.* at 1262-1263. Dean Raul Pangalanan and Atty. Henry Bensurto, Jr. (Atty. Bensurto) were made *amici curiae* for the oral arguments. Only Atty. Bensurto submitted an *amicus* brief.

In a December 4, 2018 Decision,[41] this Court granted the Petition in G.R. No. 170867 but denied the Petition in G.R. No. 185941. It held that since no law grants the Province of Palawan territorial jurisdiction over the area where the Natural Gas Project was located, the province was not entitled to an equitable share in the project's proceeds.[42] It likewise held that a local government unit's territorial jurisdiction requires contiguity and is limited only to land area or land mass.[43] Since the Camago-Malampaya gas reservoirs were located in the continental shelf, this territory would be beyond the Province of Palawan's territorial jurisdiction.[44]

This Court pointed out that the Constitution did not apportion the territories of the Philippines among the local government units.[45] It also ruled that the United Nations Convention on the Law of the Sea conferred no continental shelves on local government units.[46]

This Court further ruled that the State could not be estopped by the acts of its officials, as in this case, when the executive branch issued pronouncements recognizing the Province of Palawan's equitable share.[47] It also found that the Province of Palawan's share could not be granted based on equity.[48]

The dispositive portion of the Decision read:

WHEREFORE, the Petition in G.R. No. 170867 is **GRANTED.**

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[41] *Id.* at 2056-2149. See *Republic v. Provincial Government of Palawan*, G.R. Nos. 170867 and 185941, December 4, 2018. <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64868> [Per J. Tijam, *En Banc*].

[42] *Id.* at 2118-2133.

[43] *Id.* at 2109-2118.

[44] *Id.* at 2133-2135.

[45] *Id.* at 2135-2137.

[46] *Id.* at 2137-2138.

[47] *Id.* at 2134-2135.

[48] *Id.* at 2143-2147.

The Decision dated December 16, 2005 of the Regional Trial Court of the Province of Palawan, Branch 95 in Civil Case No. 3779 is **REVERSED** and **SET ASIDE**. The Court declares that under existing law, the Province of Palawan is not entitled to share in the proceeds of the Camago-Malampaya natural gas project. The Petition in G.R. No. 185941 is **DENIED**.

SO ORDERED.[49] (Emphasis in the original)

In its Motion for Reconsideration,[50] the Province of Palawan insists that the Camago-Malampaya gas reservoirs are within its territorial jurisdiction. This is because, it argues, the area is located within the continental shelf of the Municipality of Kalayaan, over which the province exercises territorial jurisdiction under Presidential Decree No. 1596.[51] The Province of Palawan also maintains that the State can be estopped when it promulgated issuances recognizing Camago-Malampaya as part of the Province of Palawan and granting it its 40% share in the proceeds of the Natural Gas Project.[52]

In its Supplemental Motion for Reconsideration,[53] the Province of Palawan adds that since the Municipality of Kalayaan has territorial jurisdiction over its continental shelf, which goes up to 200 nautical miles, its territorial jurisdiction necessarily extends to the Camago-Malampaya area, which is barely 51 nautical miles from the municipality.[54]

The Province of Palawan likewise adds that it is entitled to its 40% share on the basis of equity, since it is the nearest local government unit that "is capable of rendering the necessary and immediate assistance and services regarding any issue or concern within the area[.]"[55]

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[49] *Id.* at 2147-2148.

[50] *Id.* at 2253-2278.

[51] *Id.* at 2257-2259.

[52] *Id.* at 2269-2274.

[53] *Id.* at 2285-2305.

[54] *Id.* at 2289-2293.

[55] *Id.* at 2298.

For their part, Arigo, *et al*. argue in their Motion for Reconsideration[56] that the doctrine on the continental shelf has been "constitutionalized," and its "constitutionalization" means "recognizing that the natural prolongation of the landmass of the Province of Palawan leading to a Continental Shelf, as defined under the [United Nations Convention on the Law of the Sea], is an area that is appurtenant to it and fall[s] within its jurisdiction but is nevertheless part and parcel of the unitary state that is the Republic of the Philippines."[57]

Since the oil and gas wells in Camago-Malampaya are "within the natural prolongation" of the Province of Palawan's land mass, Arigo, *et al*. argue that the province is entitled to the Natural Gas Project's proceeds.[58] They also point out that both Republic Act No. 7611 and Administrative Order No. 381 recognize Malampaya as part of Palawan's continental shelf.[59]

Moreover, Arigo, *et al*. argue that since the Republic has used the island of Palawan as the reference point to mark its maritime entitlements in the South China Sea dispute, it has already recognized the province's unique geological features as comprised of islands.[60] They contend that this Court made "a fundamental and irreconcilable contradiction"[61] in declaring that international law was inapplicable while still referring to the United Nations Convention on the Law of the Sea to conclude that the Province of Palawan had no territorial jurisdiction over Camago-Malampaya.[62]

Arigo, *et al*. further point out that by declaring that the Province of Palawan cannot generate its own continental shelf, this Court "stands to erase all that remains of the legal gains

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[56] *Rollo* (G.R. No. 185941), pp. 926-963.

[57] *Id.* at 932.

[58] *Id.* at 935.

[59] *Id.* at 936-937.

[60] *Id.* at 938-944.

[61] *Id.* at 948.

[62] *Id.* at 944-948.

the Philippines achieved"[63] in the arbitral case on the South China Sea dispute. If not reversed, its ruling "may become binding as a sovereign admission . . . under the principle of estoppel under international law."[64]

The Republic, represented by the Office of the Solicitor General, counters in its Consolidated Comment[65] that while the Municipality of Kalayaan is indeed within the Province of Palawan's territory, there is nonetheless no law granting the province territorial jurisdiction over the continental shelf between these areas, where Camago-Malampaya is located. As such, it argues, the Province of Palawan is not entitled to an equitable share in the proceeds of the Natural Gas Project.[66]

The Republic also maintains that Camago-Malampaya is beyond the boundaries designated by Presidential Decree No. 1596 and Act No. 422, as shown in the maps plotted by the National Mapping and Resource Information Authority.[67] It insists that any continental margin or shelf outside the metes and bounds described in Presidential Decree No. 1596 does not form part of the Municipality of Kalayaan and, thus, is beyond the Province of Palawan's territorial jurisdiction.[68]

As for the United Nations Convention on the Law of the Sea, the Republic asserts that the treaty's provisions apply to the sovereign state, not a local government unit. Thus, the rights over the state's continental shelf pertain to the sovereign state, not to any of its local government units.[69]

The Republic also maintains that Article X, Section 1 of the Constitution does "not require that every portion of the Philippine

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[63] *Id.* at 949.

[64] *Id.*

[65] *Rollo* (G.R. No. 170867), pp. 2358-2401.

[66] *Id.* at 2359-2364.

[67] *Id.* at 2366 and 2368.

[68] *Id.* at 2369-2372.

[69] *Id.* at 2372-2378.

territory be made part of the territory of a local government unit."[70] It asserts that a local government unit's territory only pertains to its land area and not to its waters.[71] It maintains that it cannot be estopped since the Province of Palawan was neither misled nor injured by the State's prior declarations.[72]

Moreover, the Republic maintains that the principle of equity does not apply here. This is because any possible damage that the Natural Gas Project may cause the environment has already been addressed by the Environmental Compliance Certificate issued to the Shell Consortium, which was required to provide an Environmental Guarantee Fund for any possible damages.[73]

The principal issue raised by all the parties in their pleadings before this Court is whether or not the Province of Palawan is entitled, under Article X, Section 1 of the Constitution and Section 290 of the Local Government Code, to a 40% equitable share in the proceeds from the Camago-Malampaya Natural Gas Project.

I

Article X, Section 7 of the Constitution mandates that local government units shall be entitled to an equitable share in the utilization and development of the natural wealth within their area. It states:

ARTICLE X
Local Government
General Provisions

. . . . . .

SECTION 7. Local governments shall be entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, in the manner provided by law, including sharing the same with the inhabitants by way of direct benefits.

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[70] *Id.* at 2379.

[71] *Id.* at 2381-2385.

[72] *Id.* at 2385-2389.

[73] *Id.* at 2389-2393.

While "territorial jurisdiction" does not appear in the Constitution, it is inscribed in the Local Government Code, the law meant to implement the constitutional mandate under Article X, Section 7. The Local Government Code provides that local government units shall be entitled to a 40% share in the gross collection the State derives from the utilization and development of these natural resources "within their territorial jurisdiction."

Section 290 of the Local Government Code provides:

> SECTION 290. *Amount of Share of Local Government Units*. — Local government units shall, in addition to the internal revenue allotment, have a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from mining taxes, royalties, forestry and fishery charges, and such other taxes, fees, or charges, including related surcharges, interests, or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction.

Until this Court's December 4, 2018 Decision, "territorial jurisdiction" has not been defined. Thus, drawing from the provisions of the Local Government Code and jurisprudence, this Court concluded that territorial jurisdiction referred to "the [local government unit's] territorial boundaries,"[74] or that jurisdiction "pertaining to a physical location or area as identified by its boundaries":[75]

> The Local Government Code does not define the term "territorial jurisdiction." Provisions therein, however, indicate that territorial jurisdiction refers to the LGU's territorial boundaries.
>
> Under the Local Government Code, a "province" is composed of a cluster of municipalities, or municipalities and component cities. A "municipality," in turn, is described as a group of barangays, while

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[74] *Republic v. Provincial Government of Palawan*, G.R. Nos. 170867 and 185941, December 4, 2018, http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64868> [Per *J.* Tijam, *En Banc*].

[75] *Id.*

a "city" is referred to as consisting of more urbanized and developed barangays.

In the creation of municipalities, cities and barangays, the Local Government Code uniformly requires that the territorial jurisdiction of these government units be "properly identified by metes and bounds," thus:

> Section 386. *Requisites for Creation*.—
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> x x x x x x x x x
>
> (b) The territorial jurisdiction of the new barangay shall be properly identified by metes and bounds or by more or less permanent natural boundaries. The territory need not be contiguous if it comprises two (2) or more islands.
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> x x x x x x x x x
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> Section 442. *Requisites for Creation*.—
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> x x x x x x x x x
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> (b) The territorial jurisdiction or a newly-created municipality shall be properly identified by metes and bounds. The requirement on land area shall not apply where the municipality proposed to be created is composed of one (1) or more islands. The territory need not be contiguous if it comprises two (2) or more islands.
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> x x x x x x x x x
>
> Section 450. *Requisites for Creation*.
>
> x x x x x x x x x
>
> (b) The territorial jurisdiction of a newly-created city shall be properly identified by metes and bounds. The requirement on land area shall not apply where the city proposed to be created is composed of one (1) or more islands. The territory need not be contiguous if it comprises two (2) or more islands.
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> x x x x x x x x x

The intention, therefore, is to consider an LGU's territorial jurisdiction as pertaining to a physical location or area as identified by its boundaries. This is also clear from other provisions of the Local Government Code, particularly Sections 292 and 294, on the allocation of LGUs' shares from the utilization of national wealth, which speak of the location of the natural resources:

Section 292. *Allocation of Shares*. - The share in the preceding Section shall be distributed in the following manner:

(a) Where the natural resources are located in the province:

(1) Province - Twenty percent (20%);
(2) Component City/Municipality - Forty-five percent (45%); and
(3) Barangay - Thirty-five percent (35%)

Provided, however, That where the natural resources are located in two (2) or more provinces, or in two (2) or more component cities or municipalities or in two (2) or more barangays, their respective shares shall be computed on the basis of:

(1) Population- Seventy percent (70%); and
(2) Land area - Thirty percent (30%)

(b) Where the natural resources are located in a highly urbanized or independent component city:

(1) City - Sixty-five percent (65%); and
(2) Barangay - Thirty-five percent (35%)

Provided, however, That where the natural resources are located in such two (2) or more cities, the allocation of shares shall be based on the formula on population and land area as specified in paragraph (a) of this Section.

Section 294. *Development and Livelihood Projects*. - The proceeds from the share of local government units pursuant to this chapter shall be appropriated by their respective sanggunian to finance local government and livelihood projects: Provided, however, That at least eighty percent (80%) of the proceeds derived from the development and utilization of hydrothermal, geothermal, and other sources of energy shall be applied solely to lower the cost of electricity in the local government unit where such a source of energy is located. . . .

That "territorial jurisdiction" refers to the LGU's territorial boundaries is a construction ref1ective of the discussion of the framers of the 1987 Constitution who referred to the local government as the "locality" that is "hosting" the national resources and a "place where God chose to locate His bounty." It is also consistent with the language

ultimately used by the Constitutional Commission when they referred to the national wealth as those found within (the LGU's) respective areas. By definition, "area" refers to a particular extent of space or surface or a geographic region.

Such construction is in conformity with the pronouncement in *Sen. Alvarez v. Hon. Guingona, Jr*. where the Court, in explaining the need for adequate resources for LGUs to undertake the responsibilities ensuing from decentralization, made the following disquisition in which "territorial jurisdiction" was equated with territorial boundaries:

> The practical side to development through a decentralized local government system certainly concerns the matter of financial resources. With its broadened powers and increased responsibilities, a local government unit must now operate on a much wider scale. More extensive operations, in turn, entail more expenses. Understandably, the vesting of duty, responsibility and accountability in every local government unit is accompanied with a provision for reasonably adequate resources to discharge its powers and effectively carry out its functions. Availment of such resources is effectuated through the vesting in every local government unit of (1) the right to create and broaden its own source of revenue; (2) the right to be allocated a just share in national taxes. such share being in the form of internal revenue allotments (IRAs); and (3) the right to be given its equitable share in the proceeds of the utilization and development of the national wealth, if any, within its territorial boundaries. . . .

An LGU has been defined as a political subdivision of the State which is constituted by law and possessed of substantial control over its own affairs. LGUs, therefore, are creations of law. In this regard, Sections 6 and 7 of the Local Government Code provide:

> Section 6. *Authority to Create Local Government Units*. - A local government unit may be created, divided, merged, abolished, or its boundaries substantially altered either by law enacted by Congress in the case of a province, city, municipality, or any other political subdivision, or by ordinance passed by the sangguniang panlalawigan or sangguniang panlungsod concerned in the case of a barangay located within its territorial jurisdiction, subject to such limitations and requirements prescribed in this Code.
>
> Section 7. *Creation and Conversion*. - As a general rule, the

> creation of a local government unit or its conversion from one level to another level shall be based on verifiable indicators of viability and projected capacity to provide services, to wit:
>
> (a) Income. - It must be sufficient, based on acceptable standards, to provide for all essential government facilities and services and special functions commensurate with the size of its population, as expected of the local government unit concerned;
>
> (b) Population. - It shall be determined as the total number of inhabitants within the territorial jurisdiction of the local government unit concerned; and
>
> (c) Land Area. - It must be contiguous, unless it comprises two or more islands or is separated by a local government unit independent of the others; properly identified by metes and bounds with technical descriptions; and sufficient to provide for such basic services and facilities to meet the requirements of its populace.
>
> Compliance with the foregoing indicators shall be attested to by the Department of Finance (DOF), the National Statistics Office (NSO), and the Land Management Bureau (LMB) of the Department of Environment and Natural Resources (DENR). . . .

In enacting charters of LGUs, Congress is called upon to properly identify their territorial jurisdiction by metes and bounds. *Mariano, Jr. v. COMELEC* stressed the need to demarcate the territorial boundaries of LGUs with certitude because they define the limits of the local governments' territorial jurisdiction. Reiterating this dictum, the Court, in *Municipality of Pateros v. Court of Appeals, et al.*, held:

> [W]e reiterate what we already said about the importance and sanctity of the territorial jurisdiction of an LGU:
>
> The importance of drawing with precise strokes the territorial boundaries of a local unit of government cannot be overemphasized. The boundaries must be clear for they define the limits of the territorial jurisdiction of a local government unit. It can legitimately exercise powers of government only within the limits of its territorial jurisdiction. Beyond these limits, its acts are *ultra vires*. Needless to state, any uncertainty in the boundaries of local government units will sow costly conflicts

> in the exercise of governmental powers which ultimately will prejudice the people's welfare. This is the evil sought to be avoided by the Local Government Unit in requiring that the land area of a local government unit must be spelled out in metes and bounds, with technical descriptions.[76]

In view of this definition, this Court then went on to state that a local government unit's territorial jurisdiction refers only to its land area. Thus, its 40% share only pertains to the proceeds from the use and development of natural resources found only in its land area:

> To recapitulate, an LGU's territorial jurisdiction refers to its territorial boundaries or to its territory. The territory of LGUs, in turn, refers to their land area, unless expanded by law to include the maritime area. Accordingly, only the utilization of natural resources found within the land area as delimited by law is subject to the LGU's equitable share under Sections 290 and 291 of the Local Government Code.[77]

At this juncture, this Court takes the opportunity to clarify its prior interpretation of the scope of a local government unit's territorial jurisdiction.

II

The Constitution does not define a local government unit's territorial jurisdiction in relation to its entitlement to an equitable share in the utilization and development of the natural wealth. It does, however, mandate that the shares shall be *within their respective areas* and *in the manner provided by law*:

> SECTION 7. Local governments shall be entitled to an equitable share in the proceeds of the utilization and development of the national

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[76] *Id.* citing LOCAL GOVERNMENT CODE, Secs. 459, 440, and 448; Record of the 1986 Constitution Commission, Volume III, pp. 178 and 194; Merriam Webster, Definition of Area, <http:// www.merriam-webster.com/ dictionary/area>; *Alvarez v. Hon. Guingona, Jr.*, 322 Phil. 774 (1996) [Per *J*. Hermosisima, Jr., *En Banc*]; *Mariano, Jr. v. COMELEC*, 312 Phil. 259, 265-266 (1995) [Per *J*. Puno, *En Banc*]; and *Municipality of Pateros v. Court of Appeals*, 607 Phil. 104 (2009) [Per *J*. Nachura, Third Division].

[77] *Id.*

wealth within their respective areas, in the manner provided by law, including sharing the same with the inhabitants by way of direct benefits.[78]

Moreover, the Constitution assigns the natural boundaries of local government units as either "territorial and political subdivisions" or "autonomous regions":

SECTION 1. The territorial and political subdivisions of the Republic of the Philippines are the provinces, cities, municipalities, and barangays. There shall be autonomous regions in Muslim Mindanao and the Cordilleras as hereinafter provided.[79]

Territorial and political subdivisions are the provinces, cities, municipalities, and barangays, and are covered by the entirety of Article X of the Constitution. Autonomous regions are covered by a different set of constitutional provisions;[80] their territorial jurisdiction, therefore, is not defined akin to that of territorial and political subdivisions.

A local government unit is created by law,[81] with due regard to "verifiable indicators of viability and projected capacity to provide services[.]"[82] By correlating *territorial jurisdiction* with *territorial boundaries* in its December 4, 2018 Decision, this Court placed too much reliance on *land area* as indicative of the metes and bounds of a local government unit.

The Local Government Code defines "land area" as:

(c) Land Area. - It must be contiguous, unless it comprises two (2) or more islands or is separated by a local government unit independent of the others; properly identified by metes and bounds with technical descriptions; and sufficient to provide for such basic services and facilities to meet the requirements of its populace.

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[78] CONST., Art. X, Sec. 7.

[79] CONST., Art. X, Sec. 1.

[80] CONST., Art. X, Secs. 15, 16, 17, 18, 19, 20, and 21.

[81] LOCAL GOVERNMENT CODE, Sec. 6.

[82] LOCAL GOVERNMENT CODE, Sec. 7(c).

Compliance with the foregoing indicators shall be attested to by the Department of Finance (DOF), the National Statistics Office (NSO), and the Land Management Bureau (LMB) of the Department of Environment and Natural Resources (DENR).[83]

Since the Local Government Code requires that the land area "must be contiguous," this Court emphasized in its Decision that *contiguity* is essential in determining territorial jurisdiction. However, the phrase "must be contiguous" is followed by an important proviso: "*unless it comprises two or more islands*[.]"

SECTION 386. *Requisites for Creation*. — . . .

. . . . . .

(b) The territorial jurisdiction of the new Barangay shall be properly identified by metes and bounds or by more or less permanent natural boundaries. The territory need not be contiguous if it comprises two (2) or more islands.

. . . . . .

SECTION 442. *Requisites for Creation*.—. . .

. . . . . .

(b) The territorial jurisdiction of a newly-created municipality shall be properly identified by metes and bounds. The requirement on land area shall not apply where the municipality proposed to be created is composed of one (1) or more islands. The territory need not be contiguous if it comprises two (2) or more islands.

. . . . . .

SECTION 450. *Requisites for Creation*—. . .

. . . . . .

(b) The territorial jurisdiction or a newly-created city shall be properly identified by metes and bounds. The requirement on land area shall not apply where the city proposed to be created is composed of one (1) or more islands. The territory need not be contiguous if it comprises two (2) or more islands.

The Implementing Rules and Regulations of the Local Government Code is even more explicit. Article 9(2) provides:

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[83] LOCAL GOVERNMENT CODE, Sec. 7(c).

ARTICLE 9. *Provinces.* — (a) Requisites for creation — A province shall not be created unless the following requisites on income and either population or land area are present:

. . . . . .

(2) Population or land area — Population which shall not be less than two hundred fifty thousand (250,000) inhabitants, as certified by NSO; or land area which must be contiguous with an area of at least two thousand (2,000) square kilometers, as certified by LMB. The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income or the province. *The land area requirement shall not apply where the proposed province is composed of one (1) or more islands.* The territorial jurisdiction of a province sought to be created shall be properly identified by metes and bounds. (Emphasis supplied)

Incidentally, Article 9(2)—and notably its exemption to land area requirement—had been put into question before, with this Court eventually upholding its constitutionality.

In *Navarro v. Ermita*,[84] this Court was confronted with the issue of whether Dinagat Islands could be considered a province since its total land mass was only 802.12 square kilometers, which was below the 2,000 square kilometers required by Article 9(2). Petitioners in that case, who were the former Vice Governor and members of the Provincial Board of Surigao del Norte, questioned the provision's constitutionality, arguing that the exemption to land area requirement was not explicitly provided in the Local Government Code.

The majority initially declared Article 9(2) unconstitutional for being "an extraneous provision not intended by the Local Government Code[.]"[85] On reconsideration, however, the majority reversed its decision and upheld the constitutionality of the assailed provision.[86] It found:

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[84] 626 Phil. 23 (2010) [Per *J.* Peralta, *En Banc*].

[85] *Id.* at 54.

[86] *Navarro v. Ermita*, 663 Phil. 546 (2011) [Per *J.* Nachura, *En Banc*].

[W]hen the local government unit to be created consists of one (1) or more islands, it is exempt from the land area requirement as expressly provided in Section 442 and Section 450 of the LGC if the local government unit to be created is a municipality or a component city, respectively. This exemption is absent in the enumeration of the requisites for the creation of a province under Section 461 of the LGC, although it is expressly stated under Article 9 (2) of the LGC-IRR.

There appears neither rhyme nor reason why this exemption should apply to cities and municipalities, but not to provinces. In fact, considering the physical configuration of the Philippine archipelago, there is a greater likelihood that islands or group of islands would form part of the land area of a newly-created province than in most cities or municipalities. It is, therefore, logical to infer that the genuine legislative policy decision was expressed in Section 442 (for municipalities) and Section 450 (for component cities) of the LGC, but was inadvertently omitted in Section 461 (for provinces). Thus, when the exemption was expressly provided in Article 9 (2) of the LGC-IRR, the inclusion was intended to correct the congressional oversight in Section 461 of the LGC — and to reflect the true legislative intent. It would, then, be in order for the Court to uphold the validity of Article 9 (2) of the LGC-IRR.

This interpretation finds merit when we consider the basic policy considerations underpinning the principle of local autonomy.

. . . . . .

Consistent with the declared policy to provide local government units genuine and meaningful local autonomy, contiguity and minimum land area requirements for prospective local government units should be liberally construed in order to achieve the desired results. The strict units genuine and meaningful local autonomy, contiguity and minimum land area requirements for prospective local government units should be liberally construed in order to achieve the desired results. The strict interpretation adopted by the February 10, 2010 Decision could prove to be counter-productive, if not outright absurd, awkward, and impractical. Picture an intended province that consists of several municipalities and component cities which, in themselves, also consist of islands. The component cities and municipalities which consist of islands are exempt from the minimum land area requirement,

pursuant to Sections 450 and 442, respectively, of the LGC. Yet, the province would be made to comply with the minimum land area criterion of 2,000 square kilometers, even if it consists of several islands. This would mean that Congress has opted to assign a distinctive preference to create a province with contiguous land area over one composed of islands — and negate the greater imperative of development of self-reliant communities, rural progress, and the delivery of basic services to the constituency. This preferential option would prove more difficult and burdensome if the 2,000-square-kilometer territory of a province is scattered because the islands are separated by bodies of water, as compared to one with a contiguous land mass.

Moreover, such a very restrictive construction could trench on the equal protection clause, as it actually defeats the purpose of local autonomy and decentralization as enshrined in the Constitution. Hence, the land area requirement should be read together with territorial contiguity.[87]

Thus, it is clear from the laws and regulations defining a local government unit's "respective area" that the requirement of contiguity *shall not apply if the local government unit is comprised of islands*. All that is required is that it is properly identified by its metes and bounds.

This clarification is necessary considering the geographical peculiarities unique to the Province of Palawan.

III

The Province of Palawan, previously known as the Province of Paragua, was created under Act No. 422.[88] Section 2 of the Act, as amended,[89] provides the Province of Paragua's specific metes and bounds:

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[87] *Id.* at 584-586.

[88] An Act Providing for the Organization of a Provincial Government in the Province of Paragua, and Defining the Limits of that Province, June 23, 1902.

[89] Act No. 567 (1902), Sec. 2.

SECTION 2. The Province of Paragua shall consist of all that portion of the Island of Paragua north of a line beginning in the middle of the channel at the mouth of the Ulugan River in the Ulugan Bay, thence following the main channel of the Ulugan River to the village of Bahile, thence along the main trail leading from Bahile to the Tapul River, thence following the course of the Tapul River to its mouth in the Honda Bay; except that the towns or Bahile and Tapul the west boundary line shall be Dumaran and the islands forming the Calamianes group and the Cuyos Group.

The Province of Paragua had no technical description based on land area. Act No. 422 instead anchored the province's borders on the bodies of water surrounding it.

The Province of Palawan currently comprises l,780 islands and islets.[90] To determine its metes and bounds, one would have to go beyond the contiguity of its land mass.

The Local Government Code provides that a local government unit's territory extends to its municipal waters, defined as:

SECTION 131. Definition of Terms. —. . .

(r) "Municipal Waters" includes not only streams, lakes, and tidal waters within the municipality, not being the subject of private ownership and not comprised within the national parks, public forest, timber lands, forest reserves or fishery reserves, but also marine waters included between two lines drawn perpendicularly to the general coastline from points where the boundary lines of the municipality or city touch the sea at low tide and a third line parallel with the general coastline and fifteen (15) kilometers from it. Where two (2) municipalities are so situated on the opposite shores that there is less than fifteen (15) kilometers of marine waters between them, the third line shall be equally distant from opposite shores of their respective municipalities[.][91]

Section 16 of the Philippine Fisheries Code[92] further provides:

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[90] Palawan, DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT - LOCAL GOVERNMENT ACADEMY, <http://lga.gov.ph/province/info/palawan> (last accessed on January 20, 2020).

[91] LOCAL GOVERNMENT CODE, Sec. 131(r).

[92] Republic Act No. 8550 (1998).

SECTION 16. *Jurisdiction of Municipal/City Government*.— The municipal/city government shall have jurisdiction over municipal waters as defined in this Code. The municipal/city government, in consultation with the FARMC shall be responsible for the management, conservation, development, protection, utilization, and disposition of all fish and fishery/aquatic resources within their respective municipal waters.

The municipal/city government may, in consultation with the FARMC, enact appropriate ordinances for this purpose and in accordance with the National Fisheries Policy. The ordinances enacted by the municipality and component city shall be reviewed pursuant to Republic Act No. 7160 by the sanggunian of the province which has jurisdiction over the same.

The LGUs shall also enforce all fishery laws, rules and regulations as well as valid fishery ordinances enacted by the municipal/city council.

The LGUs shall also enforce all fishery laws, rules and regulations as well as valid fishery ordinances enacted by the municipal/city council.

Going strictly by these provisions would mean that the Province of Palawan can only exercise jurisdiction over waters that are within 15 kilometers of its general coastline. This narrow interpretation, however, disregards other laws that may have defined and specified portions of the Province of Palawan's territory and its unique archipelagic design.

Foremost of these laws is Presidential Decree No. 1596,[93] which established the Kalayaan Island Group:

SECTION 1. The area within the following boundaries:

KALAYAAN ISLAND GROUP

From a point [on the Philippine Treaty Limits] at latitude 7°40' North and longitude 116°00' East of Greenwich, thence due West along the parallel of 7°40' N to its intersection with the meridian of longitude 112°10' E. thence due north along the meridian of 112°10' E to its intersection with the parallel of 9°00" N. thence northeastward to the intersection of parallel of 12°00' N with the meridian of longitude 114°30' E, thence, due East along the parallel of 12°00' N to its

[93] Declaring Certain Area Part of the Philippine Territory and Providing for their Government and Administration, June 11, 1978.

intersection with the meridian of 118°00' E, thence, due South along the meridian of longitude 118°00' E to its intersection with the parallel of 10°00' N, thence Southwestwards to the point of beginning at 7°40' N, latitude and 116°00' E longitude;

including the sea-bed, sub-soil, continental margin and air space shall belong and be subject to the sovereignty of the Philippines. Such area is hereby constituted as a distinct and separate municipality of the Province of Palawan and shall be known as "Kalayaan."[94]

Included in the metes and bounds of the Municipality of Kalayaan are the seabed, subsoil, continental margin, and air space over this territory. This is consistent with Article 76(1) of the United Nations Convention on the Law of the Sea, which states:

1. The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

Presidential Decree No. 1596 categorically states that the seabed, subsoil, and continental margin shall be included in the Municipality of Kalayaan and made part of the Province of Palawan. *This means that the territory—and thus, the territorial jurisdiction—of the Province of Palawan extends to the entirety of the Municipality of Kalayaan, including its seabed, subsoil, and the continental margin.*

This interpretation is more consistent with the factual findings of the Permanent Court of Arbitration in its landmark ruling,[95] which used the Province of Palawan as its baseline point to determine the contested reefs' proximity to the Philippines:

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[94] Presidential Decree No. 1596 (1978), Sec. 1.

[95] *In the Matter of the South Sea China Arbitration*, PCA Case No. 2013-19, July 12, 2016, <http://www.pcacases.com/pcadocs/PH-CN%20-%2020160712% 20-%20Award.pdf> (last accessed on January 20, 2020).

285. Cuarteron Reef is known as "Huayang Jiao" (see image, p. 21) in China and "Calderon Reef" in the Philippines. It is a coral reef located at 08° 51' 41" N, 112° 50' 08" E and is the easternmost of four maritime features known collectively as the London Reefs that are located on the western edge of the Spratly Islands. Cuarteron Reef is 245.3 nautical miles from the archipelagic baseline of the Philippine island of Palawan and 585.3 nautical miles from China's baseline point 39 (Dongzhou (2)) adjacent to the island of Hainan. The general location of Cuarteron Reef, along with the other maritime features in the Spratly Islands, is depicted in Map 3 on page 125 below.

286. Fiery Cross Reef is known as "Yongshu Jiao" (see image, p. 21) in China and "Kagitingan Reef" in the Philippines. It is a coral reef located at 09° 33' 00" N, 112° 53' 25" E, to the north of Cuarteron Reef and along the western edge of the Spratly Islands, adjacent to the main shipping routes through the South China Sea. Fiery Cross Reef is 254.2 nautical miles from the archipelagic baseline of the Philippine island of Palawan and 547.7 nautical miles from the China's baseline point 39 (Dongzhou (2)) adjacent to the island of Hainan.

287. Johnson Reef, McKennan Reef, and Hughes Reef are all coral reefs that form part of the larger reef formation in the centre of the Spratly Islands known as Union Bank. Union Bank also includes the high-tide feature of Sin Cowe Island. Johnson Reef (also known as Johnson South Reef) is known as "Chigua Jiao" (see image, p. 21) in China and "Mabini Reef'' in the Philippines. It is located at 9° 43' 00" N, 114° 16' 55" E and is 184.7 nautical miles from the archipelagic baseline of the Philippine island of Palawan and 570.8 nautical miles from China's baseline point 39 (Dongzhou (2)) adjacent to Hainan. Although the Philippines has referred to "McKennan Reef (including Hughes Reef)" in its Submissions, the Tribunal notes that McKennan Reef and Hughes Reef are distinct features, albeit adjacent to one another, and considers it preferable, for the sake of clarity, to address them separately. McKennan Reef is known as "Ximen Jiao" (see image, p. 21) in China and, with Hughes Reef, is known collectively as "Chigua Reef" in the Philippines. lt is located at 09° 54' 13" N, 114° 27' 53" E and is 181.3 nautical miles from the archipelagic baseline of the Philippine island of Palawan and 566.8 nautical miles from China's baseline point 39 (Dongzhou (2)) adjacent to Hainan. Hughes Reef is known as "Dongmen Jiao" (see image, p. 21) in China and, with McKennan Reef, is known collectively as "Chigua Reef" in the Philippines. It is located at 09° 54' 48" N 114° 29' 48" E and is

180.3 nautical miles from the archipelagic baseline of the Philippine island of Palawan and 567.2 nautical miles from China's baseline point 39 (Dongzhou (2)) adjacent to Hainan.

288. The Gaven Reefs are known as "Nanxun Jiao" (see image, p. 22) in China and "Burgos" in the Philippines. They constitute a pair of coral reefs that forms part of the larger reef formation known as Tizard Bank, located directly to the north of Union Bank. Tizard Bank also includes the high-tide features of Itu Aba Island, Namyit Island, and Sand Cay. Gaven Reef (North) is located at 10° 12' 27" N. 114° 13' 21" E and is 203.0 nautical miles from the archipelagic baseline of the Philippine island of Palawan and 544.1 nautical miles from China's baseline point 39 (Dongzhou (2)) adjacent to Hainan. Gaven Reef (South) is located at 10° 09' 42" N 114° 15' 09" E and is 200.5 nautical miles from the archipelagic baseline of the Philippine island of Palawan and 547.4 nautical miles from China's baseline point 39 (Dongzhou (2)) adjacent to Hainan.

289. Subi Reef is known as "Zhubi Jiao" (see image, p. 22) in China and "Zamora Reef" in the Philippines. It is a coral reef located to the north of Tizard Bank and a short distance to the south-west of the high-tide feature of Thitu Island and its surrounding Thitu Reefs. Subi Reef is located at 10° 55' 22" N. 114° 05' 04" E and lies on the north-western edge of the Spratly Islands. Subi Reef is 231.9 nautical miles from the archipelagic baseline of the Philippine island of Palawan and 502.2 nautical miles from China's baseline point 39 (Dongzhou (2)) adjacent to Hainan.

290. Mischief Reef and Second Thomas Shoal are both coral reefs located in the centre of the Spratly Islands, to the east of Union Bank and to the south-east of Tizard Bank. Mischief Reef is known as "Meiji Jiao" (see image, p. 22) in China and "Panganiban" in the Philippines. It is located at 09° 54' 17" N. 115° 31' 59" E and is 125.4 nautical miles from the archipelagic baseline of the Philippine island of Palawan and 598.1 nautical miles from China's baseline point 39 (Dongzhou (2)) adjacent to Hainan. Second Thomas Shoal is known as "Ren'ai Jiao" (see image, p. 22) in China and "Ayungin Shoal" in the Philippines. It is located at 09° 54' 17" N, 115° 51' 49" E and is 104.0 nautical miles from the archipelagic baseline of the Philippine island of Palawan and 616.2 nautical miles from China's baseline point 39 (Dongzhou (2)) adjacent to Hainan.[96]

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

Including the Kalayaan Island Group's continental shelf in the Province of Palawan's territorial jurisdiction is likewise consistent with the Republic's manifestations on Reed Bank in asserting its sovereignty over the Kalayaan Island Group:

> FIRST, the Republic of the Philippines has sovereignty and jurisdiction over the Kalayaan Island Group (KIG):
>
> SECOND, even while the Republic of the Philippines has sovereignty and jurisdiction over the KIG, the Reed Bank where GSEC 101 is situated does not form part of the "adjacent waters," specifically the 12 M territorial waters of any relevant geological feature in the KIG either under of the Sea (UNCLOS);
>
> THIRD, Reed Bank is not an island, a rock, or a low tide elevation. Rather, Reed Bank is a completely submerged bank that is part of the continental margin of Palawan. Accordingly, Reed Bank, which is about 85 M from the nearest coast of Palawan and about 595 M from the coast of Hainan, forms part of the 200 M continental shelf of the Philippine archipelago under UNCLOS[.][97] (Citation omitted)

It is, thus, inaccurate to declare that a local government unit's territory, and by extension, its territorial jurisdiction, can only be over land that is contiguous. When the territory consists of one (1) or more islands, territorial jurisdiction can also be exercised over all waters found inland, or in any area that is part of its seabed, subsoil, or continental margin, "in the manner provided by law[.]"[98]

IV

This Court must also clarify whether the Province of Palawan was misled into believing that it was entitled to an equitable share in the proceeds of the Natural Gas Project.

According to this Court's December 4, 2018 Decision, this entitlement was "based on a mistaken assumption"[99] from the

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[97] *Id.* at 266.

[98] CONST., Art. X, Sec. 7.

[99] *Republic v. Provincial Government of Palawan*, G.R. Nos. 170867 and 185941, December 4, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64868> [Per *J.* Tijam, *En Banc*].

prior acts of the Republic. The Province of Palawan, however, cannot be faulted for relying on the Republic's prior repeated recognition that it was indeed entitled to its claimed share.

In 1998, then President Ramos expressly recognized in Administrative Order No. 381 that the Province of Palawan would partake in the Republic's share in the net proceeds of the Natural Gas Project.[100] In particular, the whereas clauses of Administrative Order No. 381 provide:

> WHEREAS, under SC 38, as clarified, a production sharing scheme has been provided where by the Government is entitled to receive an amount equal to sixty percent (60%) of the net proceeds from the sale of Petroleum (including Natural Gas) produced from Petroleum Operations (all as defined in SC 38) while Shell/Oxy, as Service Contractor is entitled to receive an amount equal to forty percent (40%) of the net proceeds;
>
> . . . . . .
>
> WHEREAS, the Government has determined that it can derive the following economic and social benefits from the Natural Gas Project:
>
> . . . . . .
>
> 2. based on the estimated production level and Natural Gas pricing formula between the Sellers and the Buyers of such Natural Gas, the estimated Government revenues for the 20-year contract period will be around US$8.1 billion; this includes estimated revenues to be generated from the available oil and condensate reserves of the Camago-Malampaya Reservoir; the province of Palawan is expected to receive about US$2.1 billion from the total Government share of US$8.1 billion;
>
> . . . . . .
>
> WHEREAS, the Government's share in Petroleum (including Natural Gas) produced under SC 38, as clarified, will be reduced (i) by the share of concerned local government units pursuant to the Local Government Code and (ii) by amounts of income taxes due from and paid on behalf of the Service Contractor (the resulting amounts hereinafter called the "Net Government Share")[.]

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[100] *Rollo* (G.R. No. 170867), pp. 549-550-A.

Then Energy Secretary Viray also wrote to then Palawan Governor Socrates, requesting that 50% of Palawan's share in the Natural Gas Project be deferred.[101] This shows that the executive branch indeed exerted efforts to fulfill its commitments to the Province of Palawan.

After the Natural Gas Project had been launched, meetings were held between the executive branch and the Province of Palawan to determine the province's share in the net proceeds.[102] Even while the declaratory relief case was pending before the Regional Trial Court, the executive branch executed an Interim Agreement[103] with the Province of Palawan. This provided for equal sharing of the 40% claim by the Province of Palawan, to be called the "Palawan Share," for the province's use and development.[104]

Officers from the Arroyo administration and the Province of Palawan, in conformity with the representatives of the legislative districts of Palawan, likewise executed a Provisional Implementation Agreement,[105] which allowed for the release of 50% of the disputed 40% share to be used for development projects in Palawan.

Then President Macapagal-Arroyo even issued Executive Order No. 683, the pertinent portions of which state:

> WHEREAS, on 11 December, 1990, the Republic of the Philippines, represented by the Department of Energy (DOE), entered into Philippines, represented by the Department of Energy (DOE), entered into Service Contract No. 38 (SC 38) and engaged the services of a consortium composed today of Shell B.V., Shell Philippines LLC, Chevron Malampaya LLC and PNOC-Exploration Corporation (EC), as Contractor for the exploration, development and production of

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[101] *Id.* at 551-552.

[102] *Id.* at 127-129.

[103] *Id.* at 555-561.

[104] *Id.* at 557.

[105] *Rollo* (G.R. No. 185941), pp. 498-503.

petroleum resources in an identified offshore area, known as the Camago-Malampaya Reservoir, to the West Philippines Sea;

. . . . . .

WHEREAS, President as Chief Executive has a broad perspective of the requirements to develop Palawan as a major tourism destination from the point of view of the National Government, which has identified the Central Philippines Superregion, of which Palawan is a part, for tourism infrastructure investments;

WHEREAS, there is a pending court dispute between the National Government and the Province of Palawan on the issue of whether Camago-Malampaya Reservoir is within the territorial boundaries of the Province of Palawan thus entitling the said province to 40% of the Net Government Share in the proceeds of SC 38 pursuant to Sec. 290 of Republic Act No. (RA) 7160, otherwise known as the "Local Government Code";

WHEREAS, Sec. 25 of RA 7160 provides that the President may, upon request of the local government unit (LGU) concerned, direct the appropriate national government agency to provide financial, technical or other forms of assistance to the LGU;

WHEREAS, the duly-authorized representatives of the National Government and the Province of Palawan, with the conformity of the Representatives of the Congressional District of Palawan, have agreed on a Provisional Implementation Agreement (PIA) that would allow 50% of the disputed 40% of the Net Government Share in the proceeds of SC 38 to be utilized for the immediate and effective implementation of development projects for the people of Palawan;

NOW, THEREFORE, I, GLORIA M. ARROYO, President of the Philippines, by virtue of the power vested in me by law, do hereby order:

SECTION 1. Subject to existing laws, and the usual government accounting and auditing rules and regulations, the Department of Budget and Management (DBM) is hereby authorized to release funds to the implementing agencies (IA) pursuant to the PIA, upon the endorsement and submission by the DOE and/or the PNOC Exploration Corporation of the following documents:

1.1 Directive by the Office of the President or written request of the Province of Palawan, the Palawan Congressional

Districts or the Highly Urbanized City of Puerto Princesa, for the funding of designated projects;

1.2 A certification that the designated projects fall under the investment program of the Province of Palawan, City of Puerto Princesa, and/or the development projects identified in the development program of the National Government or its agencies; and

1.3 Bureau of Treasury certification on the availability of funds from the 50% of the 40% share being claimed by the Province of Palawan from the Net Government Share under SC 38;

Provided, that the DBM shall be subject to the actual collections deposited with the National Treasury, and shall be in accordance with the Annual Fiscal Program of the National Government.

. . . . . .

SECTION 3. The National government, with due regard to the pending judicial dispute, shall allow the Province of Palawan, the Congressional Districts of Palawan and the City of Puerto Princesa to securitize their respective shares in the 50% of the disputed 40% of the Net Government Share in the proceeds of SC 38 pursuant to the PIA. For the purpose, the DOE shall, in consultation with the Department of Finance, be responsible for preparing the Net Government Revenues for the period of to (*sic*) June 30, [2]010.

SECTION 4. The amounts released pursuant to this EO shall be without prejudice to any on-going discussions or final judicial resolution of the legal dispute regarding the National Government's territorial jurisdiction over the areas covered by SC 38 in relation to the claim of the Province of Palawan under Sec. 290 of RA 7160.[106]

From these enactments, the executive branch's interpretation and implementation of Section 290 of the Local Government Code in relation to Service Contract No. 38 are shown; that is, that the Province of Palawan's territorial jurisdiction included the Camago-Malampaya natural gas reservoirs. Otherwise stated, its prior acts are its contemporaneous construction of an otherwise ambiguous provision of law.

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[106] Executive Order No. 683 (2007), whereas clauses and Secs. 3 and 4.

Contemporaneous construction is resorted to when there is an ambiguity in the law and its provisions cannot be discerned through plain meaning. The interpretation of those called upon to implement the law is given great respect.[107] In *Tamayo v. Manila Hotel Company*:[108]

> It is a rule of statutory construction that "courts will and should respect the contemporaneous construction placed upon a statute by the executive officers, whose duty it is to enforce it and unless such interpretation is clearly erroneous will ordinarily be controlled thereby."[109]

Similarly, in *Alvarez v. Guingona, Jr.*:[110]

> [An] order, constituting executive or contemporaneous construction of a statute by an administrative agency charged with the task of interpreting and applying the same, is entitled to full respect and should be accorded great weight by the courts, unless such construction is clearly shown to be in sharp conflict with the Constitution, the governing statute, or other laws.[111] (Citation omitted)

Thus, this Court will give due weight to the executive branch's interpretation and implementation of "equitable share" and "territorial jurisdiction" in Article 290 of the Local Government Code.

This contemporaneous construction will be upheld unless it is in clear conflict with the Constitution, the statute being interpreted, or other laws.

V

Unfortunately, none of the maps on record or the relevant laws could conclusively prove that the Province of Palawan

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[107] See *Lim Hoa Ting v. Central Bank of the Philippines*, 104 Phil. 573 (1958) [Per *J.* Montemayor, *En Banc*].

[108] 101 Phil. 810 (1957) [Per *J.* Reyes, A., *En Banc*].

[109] *Id.* at 815 citing *Molina v. Rafferty*, 37 Phil. 545 (1918) [Per *J.* Malcolm, First Division]; *In re Allen*, 2 Phil. 630 (1903) [Per *J.* McDonough, *En Banc*]; and *Everet v. Bautista*, 69 Phil. 137 (1939) [Per *J.* Diaz, *En Banc*].

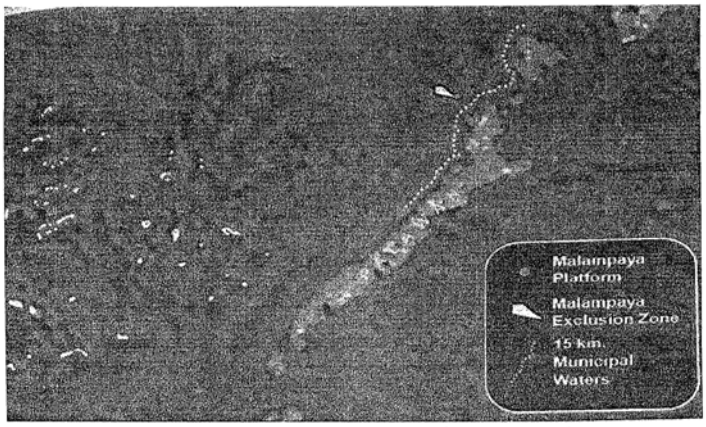
[110] 322 Phil. 774 (1996) [Per *J.* Hermosisima, Jr., *En Banc*].

[111] *Id.* at 786.

has territorial jurisdiction over the Camago-Malampaya natural gas reservoirs.

In the amicus brief[112] submitted by then Department of Foreign Affairs - Commission on Maritime and Ocean Affairs Secretariat Secretary General Henry S. Bensurto, Jr. (Secretary General Bensurto), it can be clearly seen that the reservoirs are not within the scope of the Province of Palawan's territory.

The area is beyond the province's territory when the 15-kilometer boundary of the Local Government Code and the Philippine Fisheries Code is applied:[113]



The area is also beyond the Province of Palawan's territory when the United Nations Convention on the Law of the Sea, Republic Act No. 9522,[114] and the 1898 Treaty of Paris are applied:[115]

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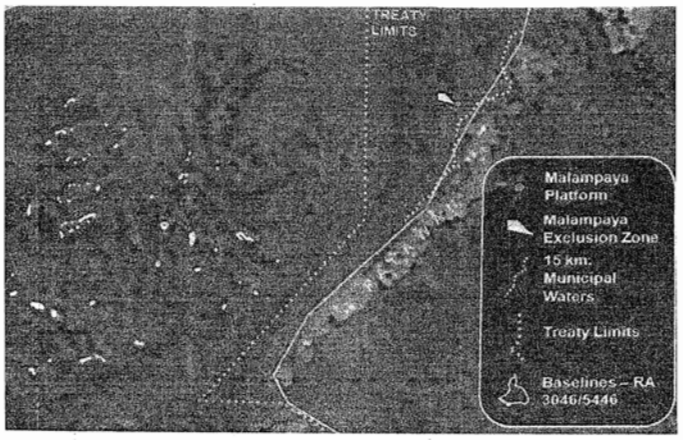
[112] *Rollo* (G.R. No. 170867), pp. 1336-1358.

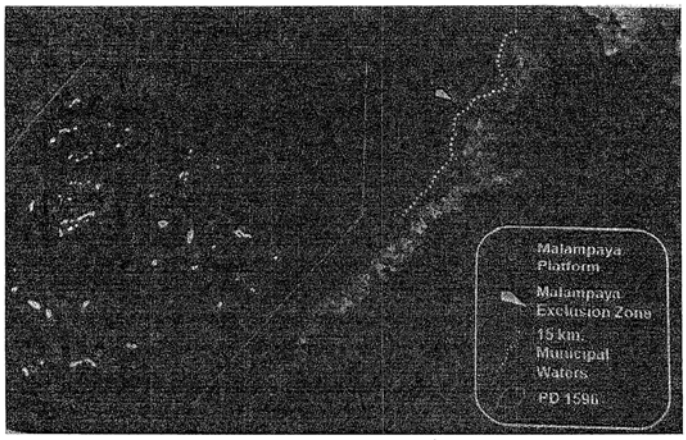
[113] *Id.* at 1345. Figure #1 in the *Amicus Curiae* Memorandum.

[114] An Act to Amend Certain Provisions of Republic Act No. 3046, as Amended by Republic Act No. 5446, to Define the Archipelagic Baselines of the Philippines, and for Other Purposes, March 10, 2009.

[115] *Rollo* (G.R. No. 170867), p. 1345, Figure #3 in the *Amicus Curiae* Memorandum.



Likewise, the area is beyond the province's territory when Presidential Decree No. 1596 is applied:[116]



The non-applicability of Presidential Decree No. 1596 over the Camago-Malampaya area was even clarified during the oral arguments:

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[116] *Id.* at 1346. Figure #4 in the *Amicus Curiae* Memorandum.

JUSTICE DE CASTRO: Now, the question is — if in the other islands even assuming that there is a continental shelf which extends up to Camago there is now that legal question of whether that belongs to Palawan, whether Palawan, that is within the area of Palawan even if it is protruding from an island in Palawan because there is no such law like P.D. 1596 pertaining to the other islands?

ATTY. HENRY BENSURTO: Yes, Your Honor.

JUSTICE DE CASTRO: So, if there is none and Camago is in the continental shelf protruding from any other island in Palawan and then we cannot apply 1596?

ATTY. HENRY BENSURTO: No, Your Honor.[117]

It is true that Republic Act No. 7611, or the Strategic Environmental Plan for Palawan Act, appears to have extended the territory of the Province of Palawan:

SECTION 3. *Definition of Terms*. — As used in this Act, the following terms are defined as follows:

(1) "Palawan" refers to the Philippine province composed of islands and islets located 7°47' and 12°'22' north latitude and 117°'00' and 119°'51' east longitude, generally bounded by the South China Sea to the northwest and by the Sulu Sea to the east.[118]

These coordinates, when plotted, show that the Camago-Malampaya reservoirs are within the area known as "Palawan":[119]

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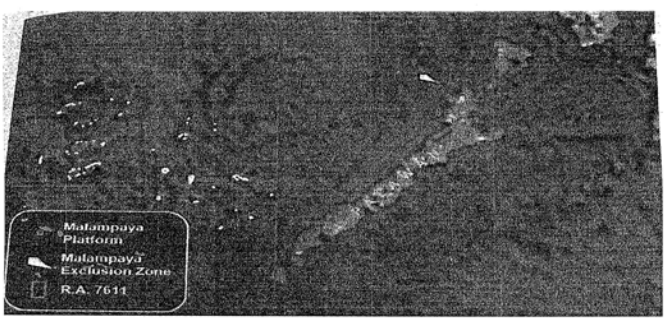
[117] *Republic v. Provincial Government of Palawan*, G.R. Nos. 170867 and 185941, December 4, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64868> [Per *J.* Tijam, *En Banc*].

[118] Republic Act No. 7611 (1992), Sec. 3.

[119] *Rollo* (G.R. No. 170867), p. 1348. Figure #5 in the *Amicus Curiae* Memorandum.



Republic Act No. 7611 includes in its Environmentally Critical Areas Network the following components:

SECTION 8. *Main Components*. —. . .

(1) Terrestrial — The terrestrial component shall consist of the mountainous as well as ecologically important low hills and lowland areas of the whole province. It may be further subdivided into smaller management components;

(2) *Coastal marine area — This area includes the whole coastline up to the open sea*. This is characterized by active fisheries and tourism activities; and

(3) Tribal Ancestral land — These are the areas traditionally occupied by the cultural communities.[120] (Emphasis supplied)

Local chief executives, together with representatives of national government, are tasked with protecting and preserving environmentally critical areas in Palawan. These duties necessarily include the exercise of jurisdiction beyond the Province of Palawan's land mass.

However, strictly applying Republic Act No. 7611 to determine the Province of Palawan's territory poses a problem: it excludes several municipalities that have always been part of the province, namely Balabac, Cagayancillo, Busuanga, Coron,

[120] Republic Act No. 7611 (1992), Sec. 8.

Agutaya, Magsaysay, Cuyo, Araceli, Linapacan, and Dumaran.[121] This results in a substantial alteration of its boundaries, an act that can only be done through a plebiscite called for that purpose.[122] Thus, Republic Act No. 7611 cannot be the basis to prove that the Camago-Malampaya reservoirs are within the Province of Palawan.

For their part, none of the parties have presented maps or statutes that conclusively prove that the Camago-Malampaya reservoirs are within the Province of Palawan. This Court is, thus, constrained to uphold the ruling that the area remains under the territorial jurisdiction of the Republic, unless otherwise provided by law.

VI

The Province of Palawan argues that it should be entitled to its share based on equity, considering its proximity and the environmental repercussions of the Natural Gas Project.[123]

Indeed, *amicus curiae* Secretary General Bensurto made the following observations:

1. The proximity of the Camago-Malampaya gas reservoir to the Province of Palawan makes the latter environmentally vulnerable to any major accidents in the gas reservoir;

2. The gas pipes of the Camago-Malampaya pass through the Northern part of the Palawan Province.[124]

The Republic, however, correctly states[125] that whatever environmental or socio-economic impact the Natural Gas Project may have has been addressed by the Environmental Compliance Certificate issued to the Shell Consortium, which provides:

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[121] *Rollo* (G.R. No. 170867), p. 1535.

[122] LOCAL GOVERNMENT CODE, Sec. 10.

[123] *Rollo* (G.R. No. 170867), p. 2298.

[124] *Id.* at 1356.

[125] *Id.* at 2390-2392.

> 26. The proponent shall set up an Environmental Guarantee Fund (EGF) to cover expenses for environmental monitoring and the establishment of a readily available and replenishable fund to compensate for whatever damage, may be caused by the project, for the rehabilitation and/or restoration of affected areas, the future abandonment/decommissioning of project facilities and other activities related to the prevention of possible negative impacts.
>
> The amount and mechanics of the EGF shall be determined by the DENR and the proponent taking into consideration the concerns of the affected areas stakeholders and formalized through a MOA which shall be submitted within ninety (90) days prior to project implementation. The absence of the EGF shall cause the cancellation of this Certificate;
>
> . . . . . .
>
> 29. In cases where pipe laying activities will adversely affect existing fishing grounds, the proponent in coordination with the Bureau of Fisheries and Aquatic Resources (BFAR) shall identify alternative fishing grounds and negotiate with affected fisherfolks (*sic*) the reasonable compensation to be paid[.][126]

Notably, since the Camago-Malampaya Natural Gas Project was launched in 2001, the Province of Palawan has yet to submit any factual documentation of the environmental or socio-economic damage it may have caused, such that the province may be entitled to a share in its proceeds on equitable grounds.

It is to be recalled, however, that Executive Order No. 683 authorized the release of funds from Natural Gas Project's proceeds to the Province of Palawan, to be used for development projects for the people of Palawan, without prejudice to the final outcome of this case.

It was clear with the Executive Order that the national government did not commit itself to perpetually share the proceeds from the Natural Gas Project. However, it was also clear that the Province of Palawan was not required to diminish

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[126] *Id.* at 2392.

its future resources in order to reimburse the national government for the funds received should there be a final ruling in this Resolution.

For this Court, it is a reasonable presumption that the national government wanted to immediately augment the Province of Palawan's funds for its constituents. Certainly, at that point when the funds were made available, both the national government and the Province of Palawan intended to provide for the general welfare. To require the return of funds now after this Court finally decides not only undermines public welfare and the presumption of regularity of the actions of public officials, but it will likewise weaken the very local autonomy envisioned by the Constitution.

Therefore, the Province of Palawan need not return the ₱600 million it received under Executive Order No. 683. Moving forward, any share that Congress will allot for the province will purely be an act of political discretion. Executive Order No. 683 has, thus, become *functus officio*.

WHEREFORE, the Motion for Reconsideration and Supplemental Motion for Reconsideration in G.R. No. 170867 and the Motion for Reconsideration in G.R. No. 185941 are **DENIED** with **FINALITY**. Let entry of judgment be issued immediately.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Caguioa, Gesmundo, Reyes, J. Jr., Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, De Los Santos, and *Gaerlan, JJ.*, concur.

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

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the conduct of initiation rites that cause physical and psychological harm *malum prohibitum,* the law rejects the defense that one's desire to belong to a group gives that group the license to injure, or even cause the person's death. (*Id.*)

— Those group members who do not actually perform the hazing ritual, but who by their presence incite or exacerbate the violence being committed, may be principals either by inducement or by indispensable cooperation. (*Id.*)

Constitutionality of — The Anti-Hazing Law is not a bill of attainder; bills of attainder are prohibited under Article III, Section 22 of the Constitution, which states: SECTION 22. No *ex post facto* law or bill of attainder shall be enacted; a bill of attainder encroaches on the courts' power to determine the guilt or innocence of the accused and to impose the corresponding penalty, violating the doctrine of separation of powers; for a law to be considered a bill of attainder, it must be shown to contain all of the following: "a specification of certain individuals or a group of individuals, the imposition of a punishment, penal or otherwise, and the lack of judicial trial." (Fuertes *vs.* Senate of the Philippines, *et al.*, G.R. No. 208162, Jan. 7, 2020) p. 117

ANTI-HAZING LAW (R.A. NO. 8049), AS AMENDED BY R.A. NO. 11053

Application of — Section 14, paragraph 4 of the Anti-Hazing Law turns cowardice into virtue, shame into strength, and disobedience into heroism; more than that, this serves as a grave warning that failing to act knowing fully well that others are being traumatized, injured, maimed, or killed does not make a person only an observer or witness. (Fuertes *vs.* Senate of the Philippines, *et al.*, G.R. No. 208162, Jan. 7, 2020) p. 117

— Section 14(c) imposes the lower penalty for one's presence during the hazing — *reclusion temporal* in its maximum period with a ₱1-million fine; as the penalty is not *reclusion perpetua,* the accused may also benefit from

— Respondent's cavalier attitude in repeatedly ignoring the orders of the Supreme Court constitutes utter disrespect to the judicial institution; respondent's conduct indicates a high degree of irresponsibility; a Court's Resolution is "not to be construed as a mere request, nor should it be complied with partially, inadequately, or selectively"; respondent's obstinate refusal to comply with the Court's orders "not only betrays a recalcitrant flaw in her character; it also underscores her disrespect of the Court's lawful orders which is only too deserving of reproof." (*Id.*)

Presumption of misappropriation — A lawyer's failure to return upon demand the funds held by him on behalf of his client gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed to him by his client; such act is a gross violation of general morality as well as of professional ethics. (Caballero *vs.* Pilapil, A.C. No. 7075, Jan. 21, 2020) p. 800

Solicitation of legal business — The standards of the legal profession condemn the lawyer's advertisement of his talents; a lawyer cannot, without violating the ethics of his profession, advertise his talents or skills in a manner similar to a merchant advertising his goods; the proscription against advertising of legal services or solicitation of legal business rests on the fundamental postulate that the practice of law is a profession. (Aguirre *vs.* Atty. Reyes, A.C. No. 4355, Jan. 8, 2020) p. 171

Sui generis — It must be noted that administrative cases are *sui generis* and are not affected by the result of any civil or criminal case; they do not involve a trial of an action or a suit, being neither purely civil nor purely criminal, but rather involve investigations by the Court into the conduct of its officers. (Hierro *vs.* Nava II, A.C. No. 9459, Jan. 7, 2020) p. 56

Suspension from practice of law — Jurisprudence is replete with cases where the Court held that "the lifting of a lawyer's suspension is not automatic upon the end of the period stated in the Court's decision, and an order

Duties SEC. 1. Court personnel shall at all times perform official duties properly and with diligence. They shall commit themselves exclusively to the business and responsibilities of their office during working hours. (Mondejar *vs.* Laspiñas, Legal Researcher, *et al.*, A.M. No. P-19-3996, Jan. 7, 2020) p. 73

— CANON I Fidelity to Duty SEC. 4. Court personnel shall not accept any fee or remuneration beyond what they receive or are entitled to in their official capacity; CANON III Conflict of Interest SEC. 2. Court personnel shall not: (b) Receive tips or other remuneration for assisting or attending to parties engaged in transactions or involved in actions or proceedings with the Judiciary. (*Id.*)

— CANON I Fidelity to Duty SEC. 5. Court personnel shall use the resources, property and funds under their official custody in a judicious manner and solely in accordance with the prescribed statutory and regulatory guidelines or procedures. (*Id.*)

— In *Office of the Court Administrator v. Dalawis*, the Court enunciated that court personnel must follow a high standard of honesty and integrity in the administration of justice; respondents were fixers, and they carry out this arrangement for a fee; as correctly held by Judge Chua, respondents violated several provisions of A.M. No. 03-06-13-SC or the Code of Conduct for Court Personnel, promulgated on April 13, 2004; respondents' infractions are classified as grave offenses and punishable by dismissal from the service under Section 50(A)(3)(10) of the Civil Service Commission Resolution No. 1701077, or the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS), promulgated on July 3, 2017. (*Id.*)

COMPREHENSIVE AGRARIAN REFORM LAW (R.A. NO. 3844)

Agricultural leasehold relations — In agricultural leasehold relations, the agricultural lessor who can be the owner, civil law lessee, usufructuary, or legal possessor of the

agricultural land; (3) there is consent between the parties; (4) the purpose is agricultural production; (5) there is personal cultivation by the tenant; and (6) there is sharing of the harvests between the parties; all these elements must be proven by substantial evidence; "the absence of one or more requisites is fatal"; as with any affirmative allegation, the burden of proof rests on the party who alleges it. (*Id.*)

— Section 5 of Republic Act No. 3844 also allows agricultural leasehold relations to be established impliedly: Section 5. Establishment of Agricultural Leasehold Relation; the agricultural leasehold relation shall be established by operation of law in accordance with Section four of this Code and, in other cases, either orally or in writing, expressly or impliedly. (*Id.*)

COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (R.A. NO. 6657)

Death of a tenant-beneficiary — Memorandum Circular No. 19, series of 1978 (MC 19), which governs the transfer of farm holdings upon the death of the farmer-beneficiary, provides that upon the death of the original farmer-beneficiary, the ownership and cultivation of the farm holding shall ultimately be consolidated in one heir; such succeeding sole owner-cultivator is required to compensate the *other* compulsory heirs of the original farmer-beneficiary, to the extent of their respective legal interests in the farmland as of the death of the original farmer-beneficiary. (Golez, in his own behalf and his children Crispino Golez, *et al. vs.* Abais, G.R. No. 191376, Jan. 08, 2020) p. 186

— Upon the death of the new sole owner-cultivator, his or her successor-in-interest is bound to compensate the other compulsory heirs of the deceased farmer-beneficiary, to the extent of their respective legal interests in the disputed lots, subject to the payment of whatever outstanding obligations the deceased farmer-beneficiary might still have; the identification of the other heirs of the deceased original farmer-beneficiary, the determination of their

Assessments/charges Collected by Condominium Corporations", G.R. No. 215801, Jan. 15, 2020) p. 517

— Section 9 allows a condominium corporation to provide for the means by which it should be managed; it authorizes a condominium corporation to collect association dues, membership fees, and other assessments/charges for: a) maintenance of insurance policies; b) maintenance, utility, gardening and other services benefiting the common areas, for the employment of personnel necessary for the operation of the building, and legal, accounting and other professional and technical services; c) purchase of materials, supplies and the like needed by the common areas; d) reconstruction of any portion or portions of any damage to or destruction of the project; and e) reasonable assessments to meet authorized expenditures. (*Id.*)

— To enable the orderly administration over these common areas which the unit owners jointly own, RA 4726 permits the creation of a condominium corporation for the purpose of holding title to the common areas; the unit owners shall in proportion to the appurtenant interests of their respective units automatically be members or shareholders of the condominium corporation to the exclusion of others. (*Id.*)

Condominium — Under the law, a condominium is an interest in real property consisting of a separate interest in a unit in a residential, industrial or commercial building and an undivided interest in common, directly or indirectly, in the land on which it is located and in other common areas of the building. (In the Matter of Declaratory Relief on the Validity of BIR Revenue Memorandum Circular No. 65-2012 "Clarifying the Taxability of Association Dues, Membership Fees and Other Assessments/charges Collected by Condominium Corporations", G.R. No. 215801, Jan. 15, 2020) p. 517

CONSPIRACY

CONTRACTS

Principle of relativity of contracts — Pursuant to the principle of relativity of contracts under Article 1311 of the Civil Code, which provides that "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." (Llorente *vs.* Star City PTY Limited, represented by the Jimeno, G.R. No. 212050, Jan. 15, 2020) p. 469

CO-OWNERSHIP

Concept of — A reading of Article 147 of the Family Code would show that the provision did not make any distinction or make any qualification in terms of the manner the property must be acquired before the presumption of co-ownership shall apply; as such, the term "acquired" must be taken in its ordinary acceptation. (Paterno *vs.* Paterno, G.R. No. 213687, Jan. 08, 2020) p. 206

— For as long as the properties had been purchased, whether on installment, financing or other mode of payment, during the period of cohabitation, the disputable presumption that they have been obtained by the parties' joint efforts, work or industry, and shall be owned by them in equal share, shall arise. (*Id.*)

— If the respondent is able to present proof that she contributed through her salary, income, work or industry in the acquisition of the properties, the parties' share shall be in proportion to their contributions; in the event that the respondent had not been able to contribute through her salary, income, work or industry, but was able to show that she cared for and maintained the family and the household, her efforts shall be deemed the equivalent of the contributions made by the petitioner. (*Id.*)

— The presumption that the properties are co-owned and thus must be shared equally is not conclusive but merely disputable; the petitioner may rebut the presumption by presenting proof that the properties, although acquired

— The administrative liability of court personnel who are not judges or justices of the lower courts shall be governed by the Code of Conduct for Court Personnel, which incorporates, among others, the civil service laws and rules; under the 2017 Rules on Administrative Cases in the Civil Service, Simple Misconduct may be penalized by one (1) month and one (1) day to six (6) months suspension for the first offense. (*Id*.)

Misconduct — In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, and not a mere error of judgment, or flagrant disregard of established rule, must be manifest in the former. (Sarno-Davin, Presiding Judge, Regional Trial Court, Digos, Davao del Sur, Branch 19 *vs.* Quirante, Clerk III, Regional Trial Court, Digos, Davao del Sur, Branch 19, A.M. No. P-19-4021, Jan. 15, 2020) p. 405

— Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer; it is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior and to constitute an administrative offense, the misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. (Sarno-Davin, Presiding Judge, Regional Trial Court, Digos, Davao del Sur, Branch 19 *vs.* Quirante, Clerk III, Regional Trial Court, Digos, Davao del Sur, Branch 19, A.M. No. P-19-4021, Jan. 15, 2020) p. 405

Neglect of duty — Neglect of duty is the failure of a public official or employee to give attention to a task expected of him; the public official or employee of the Judiciary responsible for such act or omission cannot escape the disciplinary power of this Court; simple neglect of duty is contrasted from gross neglect; gross neglect of duty refers to negligence characterized by the glaring want of care; by acting or omitting to act in a situation where there is a duty to act, not inadvertently, but willfully and intentionally; or by acting with a conscious indifference to consequences with respect to other persons

level of the judiciary performs its designated roles in an effective and efficient manner; this Court will not entertain direct resort to it when relief can be obtained in the lower courts; this holds especially true when questions of fact are raised. (*Id.*)

— This court has "full discretionary power to take cognizance and assume jurisdiction over special civil actions for *certiorari* filed directly with it for exceptionally compelling reasons or if warranted by the nature of the issues clearly and specifically raised in the petition." (*Id.*)

CRIMINAL PROCEDURE

Complaint or information — Amendments that do not charge another offense different from that charged in the original one; or do not alter the prosecution's theory of the case so as to cause surprise to the accused and affect the form of defense he has or will assume are considered merely as formal amendments. (Quiambao *vs.* People, G.R. No. 195957, Jan. 15, 2020) p. 417

— Section 14, Rule 110 of the Revised Rules of Criminal Procedure governs the matter of amending the information: there is no precise definition of what constitutes a substantial amendment; according to jurisprudence, substantial matters in the complaint or information consist of the recital of facts constituting the offense charged and determinative of the jurisdiction of the court; under Section 14, however, the prosecution is given the right to amend the information, regardless of the nature of the amendment, so long as the amendment is sought before the accused enters his plea, subject to the qualification under second paragraph of Section 14. (*Id.*)

— The amendments to the original information for the crime of *estafa*, specifying the various dates of the acts complained of, are merely formal and not substantial, as the same do not amount to a change in the nature of the charges such that the accused would have to prepare a new defense, and it would not cause prejudice to the

brought by or against whom a criminal prosecution, civil suit or other legal proceeding has been instituted maliciously and without probable cause, after the termination of such prosecution, suit, or other proceeding in favor of the defendant therein. (*Id.*)

— Neither could Odrada be liable for moral damages on the ground of abuse of rights under Article 19 of the Civil Code; for there to be abuse of rights, the following must concur: (1) there is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another. (*Id.*)

Nominal damages — It has been settled that nominal damages cannot co-exist with actual damages; nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him; since respondent has already been indemnified for the damages made on the leased premises, there is no more reason to further grant nominal damages. (Philippine-Japan Active Carbon Corporation *vs.* Borgaily, G.R. No. 197022, Jan. 15, 2020) p. 434

DECLARATORY RELIEF

Notice to the Solicitor General — In any action which involves the validity of a statute, executive order or regulation, or any other governmental regulation, the Solicitor General shall be notified by the party assailing the same and shall be entitled to be heard upon such question; the Rules only require that notice be given to the Solicitor General; they do not state that if the Solicitor General fails to participate in the action, the action would be dismissed. (Zomer Development Company, Inc. *vs.* Special Twentieth Division of the Court of Appeals, Cebu City, *et al.*, G.R. No. 194461, Jan. 7, 2020) p. 93

Petition for — A petition for declaratory relief may be treated as one for prohibition if the case has far-reaching implications and raises questions that need to be resolved

Substantive and procedural due process — In an illegal dismissal case, the *onus probandi* rests on the employer to prove that the employee's dismissal was for a valid cause; a valid dismissal requires compliance with both substantive and procedural due process, that is, the dismissal must be for any of the just or authorized causes enumerated in Article 297 [282] and Article 298 [283], respectively, of the Labor Code, and only after notice and hearing. (Villanueva *vs.* Ganco Resort and Recreation, Inc., *et al.*, G.R. No. 227175, Jan. 8, 2020) p. 234

EMPLOYMENT, TERMINATION OF

Backwages — Our labor laws dictate that backwages must be computed from the time the employee was unjustly dismissed until his or her actual reinstatement or upon payment of his or her separation pay if reinstatement is no longer feasible; insofar as accrued backwages and other benefits are concerned, the employer's obligation to the employee continues to accumulate until he actually implements the reinstatement aspect of the final judgment or fully satisfies the monetary award in case reinstatement is no longer possible. (Tan and/or C&L Lending Investor *vs.* Dagpin, G.R. No. 212111, Jan. 15, 2020) p. 504

Insubordination — Insubordination or willful disobedience requires the concurrence of the following requisites: (1) the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a "wrongful and perverse attitude"; and (2) 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. (Villanueva *vs.* Ganco Resort and Recreation, Inc., *et al.*, G.R. No. 227175, Jan. 8, 2020) p. 234

Neglect of duties — Jurisprudence provides that in order to constitute a valid cause for dismissal, the neglect of duties must be both gross and habitual; gross negligence has been defined as "the want or absence of or failure to exercise slight care or diligence, or the entire absence of care; it evinces a thoughtless disregard of consequences

acts of falsification enumerated in Article 171 as a necessary means to commit estafa. (*Id.*)

EVIDENCE

Burden of proof — The Court cannot entertain "what-ifs" when the life and liberty of a person is at stake certainly, as "it is not proper to torture the minds of the members of this Court by placing them in the trying position of running the risk of convicting an innocent man, all because of the prosecution's failure to do its duty of gathering evidence to establish his guilt beyond reasonable doubt." (People *vs.* Dolandolan, G.R. No. 232157, Jan. 8, 2020) p. 291

Public document — A death certificate is a public document; as a public document, it is admissible in evidence even without further proof of their due execution and genuineness. (Patungan, Jr. *vs.* People, G.R. No. 231827, Jan. 20, 2020) p. 785

Substantial evidence — In order to sustain a finding of culpability for the administrative offenses, substantial evidence is required, or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; the standard of substantial evidence is satisfied when there is reasonable ground to believe that a person is responsible for the misconduct complained of. (Sarno-Davin, Presiding Judge, Regional Trial Court, Digos, Davao del Sur, Branch 19 *vs.* Quirante, Clerk III, Regional Trial Court, Digos, Davao del Sur, Branch 19, A.M. No. P-19-4021, Jan. 15, 2020) p. 405

Weight and sufficiency of — Reasonable doubt may arise from the evidence adduced or from the lack of evidence, and it should pertain to the facts constitutive of the crime charged; while no test definitively determines what is reasonable doubt under the law, the view is that it must involve genuine and irreconcilable contradictions based, not on suppositional thinking, but on the hard facts constituting the elements of the crime. (People *vs.* Carreon, G.R. No. 229086, Jan. 15, 2020) p. 657

FILING AND SERVICE

Pleadings, judgments and other papers — Where a party appears by attorney in an action or proceeding in a court of record, all notices must be served on the attorney of record; service of the court's order on any person other than the counsel of record is not legally effective, nay, binding on the party; nor may it start the corresponding reglementary period for the subsequent procedural steps which may be taken by the attorney; this rule is founded on considerations of fair play. (Tan and/or C&L Lending Investor *vs.* Dagpin, G.R. No. 212111, Jan. 15, 2020) p. 504

FORCIBLE ENTRY

Action for — As correctly observed by the RTC, Federico's entry in the premises of the subject property without the consent and knowledge of the registered owner, who was abroad at that time, clearly falls under stealth, defined in our jurisprudence as "any secret, sly or clandestine act to avoid discovery and to gain entrance into, or to remain within the residence of another without permission." (Madayag *vs.* Madayag, G.R. No. 217576, Jan. 20, 2020) p. 758

— Section 1, Rule 70 of the Rules of Court requires that in action for forcible entry, as in this case, it must be alleged that the complainant was deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, and that the action was filed anytime within one year from the time the unlawful deprivation of possession took place, except that when the entry is through stealth, the one-year period is counted from the time the complainant learned of the dispossession. (*Id.*)

— The only question that courts must resolve in an ejectment case is who between the parties is entitled to the physical or material possession of the property in dispute; the main issue is possession *de facto*, independent of any claim of ownership or possession *de jure*; courts should base their decision on who had prior physical possession

money claim is merely incidental to the principal relief sought, then the subject matter of the action is not capable of pecuniary estimation and is within the jurisdiction of the RTC. (*Id.*)

Jurisdiction over the subject matter — The invariable rule is that what determines the nature of the action, as well as the court has jurisdiction over the case, are the allegations in the complaint; in ejectment cases, the complaint must state and sufficiently show on its face the essential facts laid down under Section 1, Rule 70 of the Rules of Court, to give the court jurisdiction without resort to parol evidence. (Madayag *vs.* Madayag, G.R. No. 217576, Jan. 20, 2020) p. 758

— Under BP Blg. 129, Section 19, RTCs have exclusive jurisdiction "in all other cases in which the demand, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs or the value of property in controversy exceeds Three hundred thousand pesos (₱300,000.00) or, in such other cases in Metro Manila, where the demand, exclusive of the abovementioned items exceeds Four hundred thousand pesos (₱400,000.00)." (Llorente *vs.* Star City PTY Limited, represented by the Jimeno and Cope Law Offices as Attorney-in-fact, G.R. No. 212050, Jan. 15, 2020) p. 469

KIDNAPPING AND SERIOUS ILLEGAL DETENTION

Elements — The crime of *Kidnapping and serious illegal detention*, under Art. 267 of the RPC, has the following elements: (1) the offender is a private individual; not either of the parents of the victim or a public officer who has a duty under the law to detain a person; (2) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (3) the act of detention or kidnapping must be illegal; and (4) in the commission of the offense, any of the following circumstances is present: (a) the kidnapping or detention lasts for more than three days; (b) it is committed by simulating public authority; (c) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill

LABOR RELATIONS

Doctrine of strained relations — In the case of *Digital Telecommunications Philippines, Inc. v. Digitel Employees Union,* We held that the length of time from the occurrence of the incident to its resolution and the demonstrated litigiousness of the parties showed that their relationship is strained; the protracted litigation between the parties here sufficiently demonstrate that their relationship is strained. (Papertech, Inc *vs.* Katando, G.R. No. 236020, Jan. 8, 2020) p. 338

— In the case of *Globe-Mackay Cable and Radio Corp. vs. National Labor Relations Commission*, wherein We discussed the following considerations in applying the doctrine of strained relations: (1) the employee must occupy a position where he or she enjoys the trust and confidence of his or her employer; (2) it is likely that if reinstated, an atmosphere of antipathy and antagonism may be generated as to adversely affect the efficiency and productivity of the employee concerned; (3) it cannot be applied indiscriminately because some hostility is invariably engendered between the parties as a result of litigation; and (4) it cannot arise from a valid and legal act of asserting one's right; after Globe-Mackay, We clarified that the doctrine cannot apply when the employee has not indicated an aversion to returning to work, or does not occupy a position of trust and confidence in, or has no say in the operation of, the employer's business; in addition, strained relations between the parties must be proven as a fact. (*Id.*)

LABOR STANDARDS

Contract of employment between the domestic seafarer and the employer — A condition in the employment contract where the commencement of the employment relations is at the discretion or prerogative of the employer's master of the ship through the issuance of a boarding confirmation to the domestic seafarer, is void, as the condition is solely dependent on the will or whim of the employer; when the fulfilment of the condition depends

exclusively upon the will of the debtor, the conditional obligation is void. (Gemudiano, Jr. *vs.* Naess Shipping Philippines, Inc. and/or Royal Dragon Ocean Transport, Inc. and/or Pedro Miguel F. Oca, G.R. No. 223825, Jan. 20, 2020) p.771

— A purely potestative condition that is imposed not on the birth of the contract of employment because the contract has already been perfected, but only on the fulfillment or performance of the parties' respective obligations, such as for the domestic seafarer to render services on board the ship and for the company to pay him the agreed compensation for such services, is void and must be obliterated from the face of the contract without affecting the rest of the stipulations. (*Id.*)

— If the court were to make a distinction between the perfection of a contract of employment and the commencement of an employment relationship on its face, and so rule that a mere perfected contract would make the jurisdiction of the case fall under regular courts, the court will arrive at a dangerous conclusion where domestic seafarers' only recourse in law in case of breach of contract is to file a complaint for damages before the regional trial court; in so doing, the domestic seafarers would have to pay filing fees, which their overseas counterpart need not comply with in filing a complaint before the labor arbiters, and the former would need to prove their claim by preponderance of evidence, which is greater than what overseas seafarers need to discharge in cases before labor arbiters, where they only have to prove their claims by substantial evidence. (*Id.*)

— In the instant case, there is no doubt that there was already a perfected contract of employment between petitioner and respondents; the contract had passed the negotiation stage or "the time the prospective contracting parties manifest their interest in the contract"; it had reached the perfection stage or the so-called "birth of the contract" as it was clearly shown that the essential

elements of a contract, *i.e.,* consent, object, and cause, were all present at the time of its constitution. (*Id.*)

— The determination of propriety of petitioner's non-deployment necessarily involves the interpretation and application of labor laws, which are within the expertise of labor tribunals; the question of whether respondents are justified in cancelling the deployment of petitioner requires determination of whether a subsequent advice from the same medical provider as to the health of petitioner could validly supersede its initial finding during the required PEME that petitioner is fit to work. (*Id.*)

LACHES

Principle of — Laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is present in cases of unreasonable neglect to protect one's rights giving rise to the presumption that the party entitled to assert it either has abandoned or declined to assert it. (Ang, *et al. vs.* Abaldonado, G.R. No. 231913, Jan. 15, 2020) p. 719

LEASE

Contract of — The lessor must return the security deposit to the lessee after the expiration of the lease, but he has the right to withhold the same and to apply it to the damages made on the leased premises by the lessee; a lessee, when it occupies the premises, acknowledges that the leased premises are in good and tenantable condition, and that upon termination of the lease, it will surrender the premises, also in the same good and tenantable condition when taken, with the exception of ordinary wear and tear. (Philippine-Japan Active Carbon Corporation *vs.* Borgaily, G.R. No. 197022, Jan. 15, 2020) p. 434

LOCAL GOVERNMENT UNIT (LGU)

Territorial jurisdiction — A local government unit is created by law, with due regard to "verifiable indicators of viability and projected capacity to provide services"; by correlating

— Since the Local Government Code requires that the land area "must be contiguous," this Court emphasized in its Decision that *contiguity* is essential in determining territorial jurisdiction; however, the phrase "must be contiguous" is followed by an important proviso: "*unless it comprises two or more islands"*; thus, it is clear from the laws and regulations defining a local government unit's "respective area" that the requirement of contiguity *shall not apply if the local government unit is comprised of islands*; all that is required is that it is properly identified by its metes and bounds; this clarification is necessary considering the geographical peculiarities unique to the Province of Palawan. (*Id.*)

— The Constitution assigns the natural boundaries of local government units as either "territorial and political subdivisions" or "autonomous regions"; territorial and political subdivisions are the provinces, cities, municipalities, and barangays, and are covered by the entirety of Article X of the Constitution; autonomous regions are covered by a different set of constitutional provisions; their territorial jurisdiction, therefore, is not defined akin to that of territorial and political subdivisions. (*Id.*)

— The Constitution does not define a local government unit's territorial jurisdiction in relation to its entitlement to an equitable share in the utilization and development of the natural wealth; it does, however, mandate that the shares shall be within their respective areas and in the manner provided by law. (*Id.*)

— The province of Palawan need not return the funds it received under Executive Order No. 683, for to require the return of funds not only undermines public welfare and the presumption of regularity of the actions of public officials, but will likewise weaken the local autonomy envisioned by the constitution. (*Id.*)

inquiries, he/she believes that under the circumstances, the absent spouse is already dead; it requires exertion of active effort (not a mere passive one). (*Id.*)

NEGOTIABLE INSTRUMENTS LAW (ACT NO. 2031)

Liability of drawer — Generally, by drawing a check, the drawer: admits the existence of the payee and his then capacity to endorse; impliedly represents that he (the payee) has funds or credits available for its payment in the bank in which it is drawn; engages that if the bill is not paid by the drawee and due proceedings on dishonour are taken by the holder, he will upon demand pay the amount of the bill together with the damages and expenses accruing to the holder by reason of the dishonor of the instrument; and, if the drawee refuses to accept a bill drawn upon him, becomes liable to pay the instrument according to his original undertaking. (Llorente *vs.* Star City PTY Limited, represented by the Jimeno and Cope Law Offices as Attorney-in-fact, G.R. No. 212050, Jan. 15, 2020) p. 469

— Its secondary liability under Section 61 of the NIL became primary when the payment of the subject demand/bank drafts had been stopped which had the same effect as if the instruments had been dishonored and notice thereof was given to the drawer pursuant to Section 84 of the NIL. (*Id.*)

— Regarding the effect of countermand or stopping payment, the drawer of a bill, including a draft or check, as a general rule, may by notice to the drawee prior to acceptance or payment countermand his order and command the drawee not to pay, in which case the drawee is obliged to refuse to accept or pay; there are however cases which hold that a draft drawn by one bank upon another and bought and paid for by a remitter, as the equivalent of money or as an executed sale of credit by the drawer, is not subject to rescission or countermand so as to avoid the drawer's liability thereon. (*Id.*)

made; (4) the amount was placed at the disposal of the court; and (5) the person interested in the performance of the obligation was given notice after the consignation was made. (In the Matter of Declaratory Relief on the Validity of BIR Revenue Memorandum Circular No. 65-2012 "Clarifying the Taxability of Association Dues, Membership Fees and Other Assessments/charges Collected by Condominium Corporations", G.R. No. 215801, Jan. 15, 2020) p. 517

Solidary liability — According to Article 1207 of the Civil Code, there is solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity. (Llorente *vs.* Star City PTY Limited, represented by the Jimeno and Cope Law Offices a Attorney-in-fact, G.R. No. 212050, Jan. 15, 2020) p. 469

PRESUMPTIONS

Presumption of innocence — Before the accused in a criminal case may be convicted, the evidence must be strong enough to overcome the presumption of innocence and to exclude every hypothesis except that of the guilt of the defendant; if the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not pass the test of moral certainty and will not suffice to support a conviction. (People *vs.* Dolandolan, G.R. No. 232157, Jan. 8, 2020) p. 291

— The constitutional presumption of innocence is not violated when there is a logical connection between the fact proved and the ultimate fact presumed; when such *prima facie* evidence is unexplained or not contradicted by the accused, the conviction founded on such evidence will be valid; however, the prosecution must still prove the guilt of the accused beyond reasonable doubt; the existence of a disputable presumption does not preclude the presentation of contrary evidence. (Fuertes *vs.* Senate of the Philippines, *et al.*, G.R. No. 208162, Jan. 7, 2020) p. 117

Presumption of regularity of a notarized document — The presumption of regularity accorded to notarized documents is not conclusive as it can be refuted by clear and convincing evidence. (Odrada *vs.* Lazaro, *et al.*, G.R. No. 205515, Jan. 20, 2020) p. 736

PUBLIC OFFICERS AND EMPLOYEES

Condonation doctrine — In *Crebello v. Ombudsman,* it was underscored that the prospective application of *Carpio-Morales* should be reckoned from April 12, 2016 because that was the date on which this Court had acted upon and denied with finality the motion for clarification/ motion for partial reconsideration thereon. (Herrera *vs.* Mago, *et al.*, G.R. No. 231120, Jan. 15, 2020) p. 702

— The condonation doctrine had been considered as good law since then until November 10, 2015 when the Court promulgated *Carpio-Morales v. Court of Appeals,* thus: relatedly it should be clarified that there is no truth in *Pascual's* postulation that the courts would be depriving the electorate of their right to elect their officers if condonation were not to be sanctioned; in political law, election pertains to the process by which a particular constituency chooses an individual to hold a public office; in this jurisdiction, there is, again, no legal basis to conclude that election automatically implies condonation. (*Id.*)

Grave misconduct — Defined as the transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer coupled with the elements of corruption, willful intent to violate the law or to disregard established rules. (Herrera *vs.* Mago, *et al.*, G.R. No. 231120, Jan. 15, 2020) p. 702

Liability of — Under Section 50 of the Revised Rules on Administrative Cases in the Civil Service, if the respondent is found guilty of two (2) or more charges, the penalty for the most serious charge shall be imposed and the other charges shall be considered as aggravating circumstances; under Section 49 of the same Rules, the

daughter who was a minor at the time the crime was committed, his moral ascendancy or influence over the latter substitutes for violence and intimidation.) (*Id*.)

Sexual abuse of minors — The Court herein observes that R.A. No. 8353 amending the RPC should now be uniformly applied in cases involving sexual intercourse committed against minors, and not Section 5 (b) of R.A. No. 7610; while R.A. No. 7610 has been considered as a special law that covers the sexual abuse of minors, R.A. No. 8353 has expanded the reach of our already existing rape laws; these existing rape laws should not only pertain to the old Article 335 of the RPC but also to the provision on sexual intercourse under Section 5 (b) of R.A. No. 7610 which, applying *Quimvel*'s characterization of a child "exploited in prostitution or subjected to other abuse," virtually punishes the rape of a minor. (People *vs.* Gratela, G.R. No. 225961, Jan. 6, 2020) p. 8

RES JUDICATA

Bar by prior judgment — *Res judicata* applies in the concept of "bar by prior judgment" if the following requisites concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) there must be, between the first and the second action, identity of parties, of subject matter, and of causes of action. (Association of International Shipping Lines, Inc., *et al. vs.* Secretary of Finance, *et al.*, G.R. No. 222239, Jan. 15, 2020) p. 582

Principle of — A prior decision is conclusive in a second suit where the elements of *res judicata* are present; for a prior judgment to constitute a bar to a subsequent case, the following requisites must concur: a. it must be a final judgment or order; b. the court rendering the same must have jurisdiction over the subject matter and over parties; c. there must be between the two cases identity of parties, identity of subject matter and identity of causes

in the Philippines may not be denied the right to file an action in the Philippine courts for an isolated transaction. (*Id.*)

REVISED RULES OF ADMINISTRATIVE CASES IN THE CIVIL SERVICE (RRACCS)

Application of — Section 46, Rule 10 of the Revised Rules of Administrative Cases in the Civil Service (RRACCS) classifies grave misconduct and gross neglect of duty as grave offenses punishable by dismissal from the service even on the first violation; Section 52(a) of the RRACCS states that the penalty of dismissal shall carry with it the cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from holding public office and bar from taking civil service examinations. (Sarno-Davin, Presiding Judge, Regional Trial Court, Digos, Davao del Sur, Branch 19 *vs.* Quirante, Clerk III, Regional Trial Court, Digos, Davao del Sur, Branch 19, A.M. No. P-19-4021, Jan. 15, 2020) p. 405

SALES

Double sale — It is readily apparent that the rules concerning double sale of movable properties differ from that of immovable properties; in double sale of immovable sale, the law provides for a three-pronged approach in determining ownership, to wit: (1) to the person acquiring it who in good faith first recorded it in the Registry of Property; (2) in default thereof, to the person who in good faith was first in possession; and (3) in default thereof, to the person who presents the oldest title, provided there is good faith; on the other hand, in case of double sale of a movable property, ownership is simply transferred to the first who may have taken possession thereof in good faith. (Odrada *vs.* Lazaro, *et al*., G.R. No. 205515, Jan. 20, 2020) p. 736

— Ownership over the motor vehicle rightfully belongs to the first possessor in good faith. (*Id.*)

and unless such interpretation is clearly erroneous will ordinarily be controlled thereby." (*Id.*)

Interpretation of — It is a fundamental rule in statutory construction that a special law cannot be repealed or modified by a subsequently enacted general law in the absence of any express provision in the latter law to that effect; special law must be interpreted to constitute an exception to the general law in the absence of special circumstances warranting a contrary conclusion. (Commissioner of Internal Revenue *vs.* Bases Conversion and Development Authority, G.R. No. 217898, Jan. 15, 2020) p. 567

— It is settled that between a general law and a special law, the latter prevails; for a special law reveals the legislative intent more clearly than a general law does. Verily, the special law should be deemed an exception to the general law. (*Id.*)

— The Court has invariably ruled that when the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application. (*Id.*)

Procedural rules — It should be emphasized that compliance with procedural rules is necessary for an orderly administration of justice; these rules are not to be rigidly applied so as to frustrate the greater interest of substantial justice; as stated in the Rules of Court, these rules "shall be liberally construed in order to promote their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding." (Ancheta *vs.* Villa, G.R. No. 229634, Jan. 15, 2020) p. 686

— Time and again, this Court has relaxed the observance of procedural rules to advance substantial justice; legal technicalities may be excused when strict adherence thereto will impede the achievement of justice it seeks to serve; what should guide judicial action is that a party is given the fullest opportunity to establish the merits of his or

if any, authorized for such types of income by this Code or other special laws. (In the Matter of Declaratory Relief on the Validity of BIR Revenue Memorandum Circular No. 65-2012 "Clarifying the Taxability of Association Dues, Membership Fees and Other Assessments/charges Collected by Condominium Corporations", G.R. No. 215801, Jan. 15, 2020) p. 517

— Section 32 of RA 8424 does not include association dues, membership fees, and other assessments/charges collected by condominium corporations as sources of gross income; the subsequent amendment under the TRAIN Law substantially replicates the old Section 32. (*Id.*)

Value-added tax — The value-added tax is a burden on transactions imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services, even in the absence of profit attributable thereto, so much so that even a non-stock, non-profit organization or government entity, is liable to pay value-added tax on the sale of goods or services. (In the Matter of Declaratory Relief on the Validity of BIR Revenue Memorandum Circular No. 65-2012 "Clarifying the Taxability of Association Dues, Membership Fees and Other Assessments/charges Collected by Condominium Corporations", G.R. No. 215801, Jan. 15, 2020) p. 517

Withholding tax — The withholding tax system was devised for three (3) primary reasons, *i.e.* - (1) to provide taxpayers a convenient manner to meet their probable income tax liability; (2) to ensure the collection of income tax which can otherwise be lost or substantially reduced through failure to file the corresponding returns; and (3) to improve the government's cash flow; this results in administrative savings, prompt and efficient collection of taxes, prevention of delinquencies and reduction of governmental effort to collect taxes through more complicated means and remedies. (In the Matter of Declaratory Relief on the Validity of BIR Revenue Memorandum Circular No.

WITNESSES

Credibility of — Accused-appellants' uncorroborated defenses of denial and claims of frame-up cannot prevail over the positive testimonies of the prosecution witnesses, coupled with the presentation in court of the *corpus delicti;* the testimonies of police officers who caught the accused-appellants in *flagrante delicto* are usually credited with more weight and credence, in the absence of evidence that they have been inspired by an improper or ill motive, than the defenses of denial and frame-up of an accused which have been invariably viewed with disfavor for it can easily be concocted. (People *vs.* Amago, G.R. No. 227739, Jan. 15, 2020) p. 634

— In rape cases, the accused may be convicted on the basis of the lone, uncorroborated testimony of the rape victim, provided that her testimony is clear, convincing, and otherwise consistent with human nature; this is a matter best assigned to the trial court which had the first-hand opportunity to hear the testimonies of the witnesses and observe their demeanor, conduct, and attitude during cross-examination. (People *vs.* Dolandolan, G.R. No. 232157, Jan. 8, 2020) p. 291

— It is inherent in the crime of rape that the conviction of an accused invariably depends upon the credibility of the victim as she is oftentimes the sole witness to the dastardly act; the rule is that when a woman claims that she has been raped, she says in effect all that is necessary to show that rape has been committed and that if her testimony meets the crucible test of credibility, the accused may be convicted on the basis thereof. (*Id.*)

— It is settled that testimonial evidence to be believed must not only proceed from the mouth of a credible witness but must foremost be credible in itself; the test to determine the value or credibility of a witness' testimony is whether the same is in conformity with common knowledge and is consistent with the experience of mankind. (People *vs.* Carreon, G.R. No. 229086, Jan. 15, 2020) p. 657

— While inconsistencies and contradictions in the complainant's testimony do not necessarily impair her credibility, "for said inconsistencies to be dismissed so as to give full credence to the alleged victim, they must be minor, trivial and as far as practicable, few and far between." (People *vs.* Dolandolan, G.R. No. 232157, Jan. 8, 2020) p. 291

— While the Court recognizes that a "truth-telling witness is not always expected to give an error-free testimony, considering the lapse of time and treachery of human memory" the prosecution bears the burden of reconciling and explaining any lapses, errors, or inconsistencies in said testimony, in accordance with the principle that the "evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense." (*Id.*)

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